EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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Case Document No. 1

International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece
Complaint No. 173/2018

COMPLAINT

Registered at the Secretariat on 30 November 2018

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Collective complaint

ECRE and ICJ v. Greece

Violation of Articles 31(1), 31(2), 16, 17, 7(10), 11(1), 11(3) and 13 of the Charter towards unaccompanied migrant children in Greece and accompanied migrant children on the North Eastern Aegean islands on account of the grave saturation of reception facilities which are meant to assure basic care and protection of children, the deleterious conditions that children are subject to for lengthy periods of time as a result of the serious shortcomings in reception, or when living without any shelter, and the danger that such conditions pose for children's mental and psychical health, as well as a lack of access to education for migrant children on the North Eastern Aegean islands.

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PART I. Admissibility of the Complaint and Parties to the Case

I.1 State Party

1. Greece signed and ratified the Revised European Social Charter on 18 March 2016, accepting 96 of the 98 Articles and sub-Articles including Articles 7, 11, 13, 16, 17 and 31. Moreover, Greece accepted the Additional Protocol providing for a system of collective complaints on 18 June 1998. This followed ratification of the 1961 European Social Charter on 6 June 1984. This complaint therefore meets the admissibility criteria under Article 1 and 13 of the Additional Protocol.

I.2 Complainant Organisations

2. The European Council on Refugees and Exiles (hereinafter "ECRE") is an international alliance of 99 non-governmental organisations across Europe working together to protect and advance the rights of refugees, asylum seekers and displaced persons. ECRE's mission is to promote the establishment of fair and humane European asylum policies and practices in accordance with international human rights law. ECRE engages in legal research and training on the application and interpretation of EU asylum law, the EU Charter of Fundamental Rights ("CFR") and relevant international human rights instruments, including the 1951 Refugee Convention and the European Convention on Human Rights ("ECHR"). ECRE maintains consultative status with the Council of Europe and has had standing with the European Social Charter collective complaint mechanism since 2014. ECRE therefore enjoys the right to submit complaints under Article 1.b of the Additional Protocol to the European Social Charter providing for a system of collective complaints and is currently registered in the list of NGOs entitled to submit a collective complaint for the period between 1 January 2018 – 31 December 2021.

3. The International Commission of Jurists (hereinafter "ICJ") is a non-governmental organisation working to advance understanding and respect for the Rule of Law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva (Switzerland). It is made up of some 60 eminent jurists representing different justice systems throughout the world and has 90 national sections and affiliated justice organisations. The ICJ works globally, and in particular in the Council of Europe region to uphold the protection of human rights in the criminal justice system, through legal research and analysis, third party interventions, and training of lawyers. It has worked with national lawyers and NGOs across the region to access to justice for vulnerable groups of children, such as migrant children. The ICJ maintains consultative status with the Council of Europe, and therefore enjoys the right to submit complaints under Article 1.b of the Additional Protocol to the European Social Charter providing for a system of collective complaints and is currently registered in the list of NGOs entitled to submit a collective complaint for the period between 1 January 2018 – 31 December 2021.

4. Under Article 3 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, international non-governmental organisations referred to in Article 1.b may submit complaints with respect to those matters regarding which they have been recognised as having particular competences. ECRE has been involved in a number of research studies on reception and detention of asylum seekers and asylum

seeking children in Europe, including the Point of Non-Return, Right to Justice: Quality Legal Assistance for Unaccompanied Children, Reception and detention conditions for applicants for international protection in light of the Charter of Fundamental Rights of the EU, and is managing the Asylum Information Database (hereinafter "AIDA") that, amongst other issues, focuses on asylum procedures, reception conditions and detention practices of asylum seekers, including children, across Europe and within specific Member States. The ICJ works globally, and in particular in the Council of Europe region to uphold the protection of human rights for vulnerable groups of children, such as migrant children, through legal research and analysis, third party interventions, and training of lawyers. Most recently, it has worked with national lawyers and NGOs across the region on a project entitled Fostering Access to Immigrant Children's Rights ("FAIR"). The ICJ has already submitted collective complaints on the rights of children (ICJ v. Portugal, no. 1/1998), which was declared admissible and decided on the merits by the ECSR and more recently has submitted a collective complaint to the ECSR on the legal protection and participation of children in the criminal justice system in the Czech Republic (ICJ v. Czech Republic, no.148/2017). Lastly, ECRE and ICJ have jointly intervened as third party interveners before the European Court of Human Rights (ECtHR) in the cases of *Bilalova v Poland, O.M. v Hungary, Sh.D. v Greece, H.A. v Greece, J.B. v Greece*, *M.A. and Others v Poland*, and more recently *Trawalli v Italy* which have all raised issues pertaining to the subject matter of this complaint. In addition, ECRE and ICJ have so far made five submissions to the Committee of Ministers of the Council of Europe on the execution of the ECtHR judgment in the case of *M.S.S. v. Belgium and Greece.* Consequently, this complaint meets the admissibility criteria under Article 1.b and 3 of the Additional Protocol to the European Social Charter.

5. ECRE and ICJ are supported in this complaint by the Greek Council for Refugees (hereinafter "GCR"), a non-governmental organisation active since 1989 in the field of asylum and human rights in Greece. GCR is a member of ECRE and has been the Greek national partner for ICJ's FAIR project. GCR welcomes and offers free legal and social advice and services to refugees and people coming from third countries who are entitled to international protection in Greece, while special emphasis is placed on vulnerable cases, such as unaccompanied minors. The ultimate goal is their protection and their smooth integration in Greece.

PART II. Purpose and Focus of the Complaint

II.1 Statement of Alleged Violations

6. ECRE and ICJ ask the European Committee of Social Rights to adopt a finding that Greece has failed to comply with its obligations under the revised European Social Charter in relation to unaccompanied and accompanied migrant children (hereinafter "migrant children") on the North Eastern Aegean Islands and unaccompanied migrant children on the Greek mainland. The violations arise from the oversaturation of reception facilities which are meant to assure basic care and protection of children, the deleterious conditions that children are subject to for lengthy periods of time as a result of the serious shortcomings in reception and care and the danger that such conditions pose for children's mental and physical health. ECRE and ICJ further submit that Greece is in breach of the revised Charter by its failure to ensure access to the procedural safeguards to migrant children that they are entitled to by virtue of their age and that the absence of a formal

education system in Greece for migrant children violates their right to education. ECRE and ICJ respectfully submit to the Committee that the situation in Greece for unaccompanied and accompanied migrant children violates their rights under:

- Article 31(1) and 31(2) of the revised European Social Charter (the right to housing);
- Article 17(1) of the revised European Social Charter (the right of children and young persons to social, legal and economic protection);
- Article 16 of the revised European Social Charter (the right of the family to social, legal and economic protection);
- Article 7(10) of the revised European Social Charter (the right of children and young persons to protection);
- Article 11(1) and 11(3) of the revised European Social Charter (the right to protection of health);
- Article 13 of the revised European Social Charter (the right to social and medical assistance);
- Article 17(2) of the revised European Social Charter (the right to education).

II.2. Factual Profile Overview

II.2.1 Population Concerned and Definition of Terms Used

7. The current complaint concerns the violation of unaccompanied and accompanied migrant children's human rights guaranteed under the Charter by Greece. In the present submission the term 'children' is taken from the definition under international human rights law, in particular the UN Convention on the Rights of the Child (Article 1), meaning everyone under the age of 18.[1] 'Unaccompanied child/children' is defined with reference to the definition given by the United Nations Committee on the Rights of the Child (hereinafter "UN Committee on the Rights of the Child"), namely every human being below the age of eighteen who has been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.[2] An 'accompanied child/children' is, therefore, defined as every human being below the age of eighteen who has not been separated from both parents and other relatives and are being cared for by an adult who, by law or custom, is responsible for doing so. In addition, the present complaint also refers to the situation of 'separated child/children'. Whilst not a primary focus of the complaint, separated children are subject to the same violations of Charter rights as unaccompanied and accompanied children in Greece and the authors reference their situation where applicable. The definition of separated child/children is also taken from the jurisprudence of the UN Committee on the Rights of the Child as children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.[3]
8. The term 'migrant' is used with reference to the definition given by the International Organization for Migration (hereinafter "IOM") as "any person who is moving or has moved across an international border or within a State away from his/her habitual place of

[1] In this submission the term 'minor' is equivalent to the term 'child'.
[2] UN Committee on the Rights of the Child (CRC), *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* CRC/GC/2005/6, para. 7, available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiQql8gX5Zxh0cQqSRzx6ZfXmRo9mdg35%2bm8BvAjgxjOPXPQUmY0uSJjNwpdL6bFpqljfu3aX2s6Yi1797MERXI29uw8wUJlTT3kCKSbL1T9
[3] *Ibid*., para. 8.

residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is." The definition used, therefore, includes asylum seekers and refugees. For reasons of brevity, the authors use 'migrant children' when referring to both unaccompanied and accompanied migrant children.

9. The complaint primarily pertains to conduct on the Greek mainland and North Eastern Aegean islands (hereinafter "Greek islands"): Lesvos, Kos, Samos, Chios and Leros.

II.2.2 The Reception and Provision of Care to Migrant Children

10. The oversaturation of reception places in Greece, well below the needs of the migrant population in general, is not a temporary situation but remains an endemic and longstanding problem within the country. The shortage of accommodation is particularly dire for unaccompanied migrant children on the Greek mainland and migrant children on the Greek islands. In particular, and notwithstanding that there has been a certain increase in the available accommodation places for unaccompanied minor children, this remains dangerously below needs. In addition, on the Greek islands overcrowding, lack of sufficient places and unsuitable living conditions are affecting a significant number of migrant children.
11. The lack of accommodation for migrant children in Greece means that children are either simply without shelter and there is, thus, an entire absence of immediate or continuous assistance catered to their individual needs, or they are accommodated in overpopulated and inherently unsuitable facilities (including placement of unaccompanied migrant children in detention). Both contexts render any basic child care and protection arrangements meaningless and children are left in conditions of squalor, insecurity and violence, all of which have an impact upon their mental and physical well-being and even their survival.

II.2.3 Living Conditions for Migrant Children

12. The lack of accommodation coupled with placement in overcrowded facilities and/or in detention has meant that migrant children are entirely deprived of a protective framework in Greece and, as a result, are subject to conditions which are substandard and harmful. Basic care provision, namely shelter, food, water, electricity, heating and health-care are all reported by international and national human rights bodies and civil society organisations to be insufficient. The absence of such facilities has a serious knock-on effect on hygiene, sanitation and substantive physical and mental health care and treatment, including clinical or preventative care. Instances of children (especially on the Greek islands) suffering from repeated bouts of the same medical or mental health problem demonstrates that living conditions are a clear aggravator and, most likely, the root cause of the particular illness.
13. The inadequacy of services is compounded by a reduction in the numbers of medical professionals working with migrant children meaning that children are having to wait for lengthy periods of time or, worse, are simply not getting medical treatment for their symptoms. The reported consequences have been children self-harming and even attempting suicide. Furthermore, urgent child protection concerns arise in such unsuitable and overpopulated living arrangements where mixed sex and unrelated adults are also residing. Reports of sexual abuse, violent assaults, harassment and humiliation in camps on the Greek islands demonstrate the impact of living conditions on children's security and safety.

II.2.4. Procedural Guarantees for Migrant Children and their Access to Education

14. Safeguards which migrant children are entitled to by virtue of their status as underage persons, namely effective guardianship, are riddled with deficiencies in Greece. The lack of an operational and effective guardianship system deprives unaccompanied migrant children of the enjoyment of their rights. In sum, this means that they are without information, advice and protection, leaving them susceptible to being placed in detention or being left to live on the streets. Children's rights are further rendered illusory in the context of education with a minority of migrant children on the Greek islands being able to access and attend formal education.

II.3 Personal Scope and Applicable International Law

15. The current complaint concerns violations of specific rights guaranteed under the Charter against migrant children. The complaint limits the geographical and personal scope as available evidence shows a particularly dire situation for the rights of unaccompanied migrant children in mainland Greece and on the Greek islands and of accompanied migrant children in the islands.
16. In previous complaints concerning children, the European Committee of Social Rights (hereinafter "ECSR" or "this Committee") has consistently recognised the obligation to protect all children, regardless of their legal status in the respective State Party and regardless of whether they are accompanied or unaccompanied.[4] This protection is particularly important for children in light of their vulnerability and, as a consequence, the heightened risk that this presents to their fundamental rights and of violations thereof.[5] As for migrant children who are irregularly present in a territory, vulnerability is compounded in view of their status as children and their limited autonomy. Moreover, where a migrant child is unaccompanied, their vulnerability is extreme.[6] Their protection and care lies entirely in the hands of the State apparatus.
17. The vulnerable status of migrant children has led the ECSR, on several occasions, to dismiss submissions from States on the non-applicability of the revised Charter to migrant children in view of the Appendix (paragraph 1) to the Charter. The ECSR has recognised the application of the Charter to migrant children, including those unlawfully resident in the State, where failing such application there would be serious detrimental consequences on a child's fundamental rights.[7] The ECSR has recently confirmed the application of Charter rights in its decision given in *EUROCEF v. France*, which specifies that "in light of the mandatory, universally recognised requirement to protect all children, the Committee considers that paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights due to failure to guarantee the social rights enshrined in the Charter."[8]
18. Such fundamental rights have been found by the ECSR to include the right to life, the preservation of human dignity, and the right to psychological and physical integrity and health. More particularly, the ECSR has held that the right to special protection for children and young persons against physical and moral dangers,[9] the right to protection of health under Article 11,[10] the right to medical assistance and emergency care under Article

[4] *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, ECSR, Complaint No. 114/2015, 24 January 2018, paras. 53-55.
[5] *Ibid*., para. 56.
[6] *Defence for Children International (DCI) v. Belgium*, ECSR, Complaint No. 69/2011, 23 October 2012, para. 37.
[7] *DCI v Belgium*, *op. cit.*, para 35.
[8] *EUROCEF v. France op. cit.*, para. 55.
[9] *EUROCEF v France op. cit.*, paras. 135-139.
[10] *International Federation of Human Rights Leagues (FIDH) v France*, ESCR, Complaint No. 14/2003, 8 September 2004, para. 32.

13,[11] the right of the family, children and young persons to social, legal and economic protection under Articles 16 and 17[12] and the right to access to housing of an adequate standard and to prevent and reduce homelessness under Article 31(1) and (2) all apply to migrant children.[13] ECRE and ICJ respectfully submit to the ECSR that the population of migrant children referred to in this complaint, therefore, falls within the scope of the Articles submitted.

19. The organisations further submit that the ECSR, when reasoning the application of specific Articles to migrant children, has consistently had regard to the aim and purpose of the Charter as an instrument of human rights protection. As such, the protection of Charter rights are to be assured both in theory and fact. The substantial provisions of the Charter are thus to be based on a teleological approach and are, as far as possible, to be interpreted in harmony with other rules of international law of which the Charter forms part.[14] Indeed, the ECSR has stated that the Charter aims to implement, at an European level, the rights guaranteed by the Universal Declaration of Human Rights (hereinafter "UDHR") and that it is a complement to the European Convention on Human Rights (hereinafter "ECHR"). Additionally, in matters pertaining to children regard must be had to the UN Convention on the Rights of the Child (hereinafter "UN CRC") as interpreted by the UN Committee on the Rights of the Child in view of its broad ratification by States and the influence that the Convention has had on the substance of the Charter.[15]

20. Since the ECSR has directed itself to interpret the Charter in the most appropriate manner to achieve its aim and objective, it follows logically therefrom that other international and European instruments with corresponding rights to the Charter are also relevant to the ECSR's interpretation. Indeed, other instruments must be taken into account in order to ensure that the Charter remains a living instrument and fundamental social rights of all persons are effectively safeguarded. In addition, it is a principle of treaty interpretation that Treaties should be interpreted in a manner consistent with applicable legal rules, including other treaty obligations. As such, the interveners refer throughout the submission to analogous rights in the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR"), International Covenant on Civil, Political Rights (hereinafter "ICCPR") and the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter "1951 Convention"). The interveners further cite from EU primary and secondary asylum law, namely the EU Charter of Fundamental Rights (hereinafter "Charter of Fundamental Rights" or "CFR"), the recast Reception Conditions Directive (hereinafter "RCD") and the recast Asylum Procedures Directive (hereinafter "APD"). Not only do these instruments provide interpretative guidance for the relevant Charter Articles, Greece is bound by the Conventions mentioned hereto, having ratified the ECHR in 1974, UN CRC in 1993 and, and acceded to the ICESCR in 1985 and the ICCPR in 1997. Moreover, as a Member State of the European Union, Greece is obliged to transpose secondary legislation into its domestic framework and when it applies EU law it must guarantee that the norms of primary law and general principles of EU law are complied with.

II.4 Articles of the Revised European Social Charter[16] Concerned

[11] *DCI v. Belgium, op cit.*, para. 122.
[12] *DCI v. Belgium*, *op. cit.*, paras. 39 and 86.
[13] *Defence for Children International (DCI) v. the Netherlands*, ESCR, Complaint No. 47/2008, 20 October 2009, paras. 47-48 and 66; ECSR Conclusions 2011, Ukraine.
[14] *DCI v. Belgium, op. cit.*, para. 29; *EUROCEF v ,France op. cit.*, para. 52.
[15] *EUROCEF v. France*, *op. cit*., para. 54.
[16] Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.

Article 7 – The right of children and young persons to protection

(10) "to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work."

Article 11 - Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

(1) to remove as far as possible the causes of ill-health

(3) to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 13 - The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

(1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

(2) to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

(3) to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

(4) to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 –The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

(1) a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular

by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b. to protect children and young persons against negligence, violence or exploitation;

c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

(2) to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

(1) to promote access to housing of an adequate standard;

(2) to prevent and reduce homelessness with a view to its gradual elimination;

PART III. Applicable Greek Law

III.1. Procedures for Those Newly Arrived to Greece and the Asylum Procedure

Law 4375/2016

Law 4375/2016[17] provides a comprehensive legal framework that regulates, *inter alia,* the procedures to be followed in the case of newly arrived third country nationals in Greece. Reception and identification provisions, as well as asylum procedures, are all included in this recent legislation that amended most of the previous asylum-related laws.

Under Part A, Chapter B, Articles 8-17 establish the new Reception and Identification Service (RIS) and specify the content of reception and identification procedures for new arrivals, along with relevant exceptions and safeguards. Among these, Article 9 provides a detailed description of the different reception and identification procedures, marking the first mention of the need to distinguish groups with specific needs from the general newly-arrived population. This differentiation ensures the referral of vulnerable populations to the appropriate procedures and guarantees the enjoyment of specialised care and protection.

"Part A

[…]

Chapter B

[…]

Article 9

Reception and identification procedures

1. All third-country nationals and stateless persons who enter without complying with the legal formalities in the country shall be submitted to reception and identification procedures. Reception and identification procedures include: a) the registration of their personal data and the taking and registering of fingerprints for those who have reached the age of 14, b) the verification of their identity and nationality, c) their medical screening and provision of any necessary care and psycho-social support, d) informing them about their rights and obligations, in particular the procedure for international protection or the procedure for entering a voluntary return program, e) attention for those belonging to vulnerable groups, in order to put them under the appropriate procedure and to provide them with specialized care and protection, f) referring those who wish to submit an application for international protection to start the procedure for such an application, g) referring those who do not submit an application for international protection or whose application is rejected while they remain in the RIC to the competent authorities for readmission, removal or return procedures.

[17] The full text of Law 4375/2016 can be found in English at: https://bit.ly/2PhNKtr. Other than those articles listed in detail below and which are relevant for this specific complaint, subsequent legislation has amended several articles of L 4375/2016, namely L 4399/2016 and L 4540/2018 and in respect of the competences of EASO to undertake interviews of applicants in the asylum procedure.

2. Third-country nationals or stateless persons residing in Greece without complying with the legal formalities, and whose nationality or identity cannot be certified by a public authority document shall also be submitted to reception and identification procedures.

After highlighting the special status of groups with specific needs, the law delineates the status of residence of newly arrived people in the Reception and Identification Centres (RIC) in Article 14, further elaborating on the concept of vulnerability and the obligations it entails. In this context, paragraph 8 serves as a general guidance regarding the identification and handling of vulnerable cases, including families and unaccompanied minors:

[…]

Article 14

Status of residence and procedures in the Reception and Identification Centres and in Mobile Units

1. Third-country nationals or stateless persons entering without complying with the legal formalities in the country shall be directly led, under the responsibility of the police or port authorities dealing in accordance with the relevant provisions, to a Reception and identification Centre. The transfer may also be made under the responsibility of the Reception and identification Service, in case the police or port authorities are unable to provide for it, or in order to carry out, speedily and properly, the transfer of persons belonging to vulnerable groups, as per paragraph 8.

2. Third-country nationals or stateless persons entering the Reception and identification Centre, are subject to the procedures set out in Article 9; they shall be placed under a status of restriction of liberty by decision of the Manager of the Centre, to be issued within three (3) days of their arrival. If, upon expiry of the three days, the above procedures have not been completed, the Manager of the Centre may, without prejudice to Article 46 below which shall apply accordingly, decide to extend the restriction of the freedom of the abovementioned persons until the completion of these procedures and for a period not exceeding twenty-five (25) days from their entry into the Center. Alternatively, the Manager of the Reception and identification Centre at the border, may, due to urgent needs caused by an increase in arrivals or in order to adequately complete these procedures, in particularly in the case of persons belonging to vulnerable groups, may, by a decision, refer the third-country national or stateless person to a Reception and identification Centre located inland or to other appropriate structures in order to continue and complete the reception and identification procedure. The said decision shall also provide for the details of the transfer of these third-country nationals or stateless persons between various regional services of the Reception and identification Service. In the context of such procedures, special care shall be given to the provisions of paragraph 8, concerning persons belonging to vulnerable groups, in particular unaccompanied minors.

3. Restriction of liberty shall entail the prohibition to leave the Center and the obligation to remain in it, in accordance with the provisions and conditions laid down in its Rules of Procedure; residents shall be informed of the content thereof in a language they understand. By way of exception, such as for reasons of health of a resident in the Center or of a relative of his/her, the Manager may grant a temporary permission to leave these facilities.

4. The decision to extend the restriction of liberty in order to complete the reception and identification procedures shall contain the reasoning, in fact and in law, and shall be in writing. […].

5. In any event, throughout the reception and identification procedures, the Manager and the staff of the Center shall, in accordance with the procedure laid down on each case, ensure that that the third-country nationals or stateless persons: a) live under decent living conditions, b) maintain their family unity, c) have access to emergency health care and essential treatment of illness or psychosocial support, d) receive, if they belong to vulnerable groups, the appropriate treatment for each case, e) are adequately informed of their rights and obligations; f) have access to guidance and legal advice and assistance on their situation, g) keep contact with civil society groups and organizations active in the area of migration and human rights and providing legal or social assistance, and h) have the right to contact their family and close persons.

[…]

7. The information unit or the Reception and identification Center shall inform third country nationals or stateless persons of their rights and obligations as well as of the procedures to receive international protection status and the procedures for voluntary repatriation. Applicants for international protection shall be referred to the competent Regional Asylum Office, a unit of which may operate inside the Centre. At any stage of the proceedings, the request for international protection shall entail the separation of the applicant from the remaining persons in the Center, if this is feasible, and his/her referral to the appropriate procedures and/or reception facilities. Receipt of applications and interviews of applicants may be carried out within the premises of the Centre, in a place that ensures confidentiality. Applicants for international protection may remain in the premises for the duration of the application examination procedure, up to a period of twenty-five days from their arrival at the centre. If, after the expiry of that period, the examination of the application is not completed, the competent Regional Asylum Office shall issue the applicant the relevant card for applicants for international protection in application of the provisions in part three of this law. Subsequently, the applicant shall be referred by the Reception and identification Center to the appropriate reception structures. If the application and any appeal lodged are rejected while the applicant remains in the Reception and Identification Center, s/he shall be referred to the competent authority in view of his/her return, readmission or removal procedures.

8. The Manager of the Center or the Unit, acting on a proposal of the Head of the medical screening and psychosocial support unit shall refer persons belonging to vulnerable groups to the competent social support and protection institution. A copy of the medical screening and psychosocial support file shall be sent to the Head of the Open Temporary Reception or Accommodation Structure or competent social support and protection institution, as per case, where the person is being referred to. In all cases the continuity of the medical treatment followed shall be ensured, where necessary. As vulnerable groups shall be considered for the purposes of this law: a) Unaccompanied minors, b) Persons who have a disability or suffering from an incurable or serious illness, c) The elderly, d) Women in pregnancy or having recently given birth, e) Single parents with minor children, f) Victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks, g) Victims of trafficking in human beings.

Persons belonging to vulnerable groups can remain in Reception and identification Centers in special areas until completion of the procedures laid down in Article 9, without prejudice to the deadlines set out in paragraph 2 above. Reception and Identification Services shall take special care to cater for the particular needs and the referral of families with children under the age of 14, especially infants and babies.

9. Whenever, at any stage of the procedure, doubts arise as to whether a third country national or stateless person is a minor or not, the Manager of the Center shall, by decision, refer him/her to the age assessment procedures as per the provisions in force. In any case and until the age assessment ruling is issued, the person shall be considered to be a minor and shall receive the relevant treatment.

10. Upon the completion of the reception and identification procedures, third-country nationals or stateless persons who do not fall under the provisions of international protection or other forms of protection and who possess no legal residence title in Greece, shall be referred, by decision of the Manager of the Center, to the competent police authority for the return, readmission or expulsion procedures, in accordance with the relevant provisions.

11. The provisions of this Article shall apply, mutatis mutandis, to Reception and Identification Mobile Units.

[…]

Part C

PROCEDURES FOR GRANTING AND WITHDRAWING INTERNATIONAL PROTECTION STATUS AND TRANSPOSITION INTO GREEK LEGISLATION OF THE DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON" common procedures for granting and withdrawing international protection (recast)" (L 180/29.6.2013)

Article 33

(Article 1 of the Directive)

Purpose

The purpose of this part is to transpose into Greek legislation Council Directive 2013/32/EU of the European Parliament and the Council (recast) "on common procedures for granting and withdrawing international protection status" (L 180/29.6.2013).

Article 34

(Articles 2 and 4 of the Directive)

Definitions

[…]

d. "Applicant for international protection" or "applicant for asylum" or "applicant" is the alien or stateless person, who declares orally or in writing before any Greek authority, at entry points of the Greek State or inland, that s/he is asking for asylum or subsidiary protection, or asks, in any form, not to be expelled to a country for fear of prosecution due to race,

religion, nationality, political opinion or membership to a particular social group, in accordance with the Geneva Convention, or because he is at risk of suffering serious harm in accordance with Article 15 of Presidential Decree 141/2013 (A' 226) and on whose application no final decision has yet been reached. Additionally, "applicant for international protection" is also the alien who applied for international protection in another EU Member State, pursuant to Council Regulation (EU) 604/2013 of the European Parliament and the Council from 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), or to another state which is bound by and applies the above Regulation and who is transferred to Greece in accordance with its provisions.

[…]

k. "Unaccompanied minor" is a person below the age of 18, who arrives in Greece unaccompanied by an adult who exercises parental care on him/her according to Greek Legislation and for as long as such parental care has not been assigned by law and exercised in practice, or a minor who is left unaccompanied after he/she has entered Greece.

l. "Representative of an unaccompanied minor" is the temporary or permanent guardian of the minor or the person appointed by the competent Public Prosecutor for Minors or, in the absence of the latter, by the First Instance Public Prosecutor to ensure the minor's best interests. The task of the representative, as defined in the previous sentence, can be assigned to the legal representation of a non-profit making legal entity. In the latter case, the representative of that legal entity may authorize another person to represent the minor, in accordance with the provisions of the present law.

[…]

y. "Applicants in need of special procedural guarantees" are applicants whose ability to benefit from the rights and comply with the obligations provided for in this Part is limited due to individual circumstances related to their personal situation, such as their health condition.

Article 36

(Articles 6 and 7 of the Directive)

Access to the procedure

a. Any alien or stateless person has the right to apply for international protection. The application is submitted before the competent receiving authorities, which shall immediately proceed to register it fully. Full registration shall include at least the applicant's identity, his/her country of origin, the names of his/her father, mother, spouse and children, as well as biometric identification data and a brief reference to the reasons for which the applicant requests international protection.

b. When, for any reason, it is not possible to proceed to the full registration as per point (a) above, the receiving authorities may, following a decision by the Director of the Asylum Service, proceed, no later than three (3) working days after the application is made, to a simple registration of the minimum necessary elements and proceed to the full registration, as per point (a) above, as soon as this is rendered possible and by priority.

[…]

3. […] The person who expresses his/her intention to submit an application for international protection is an asylum applicant, in accordance with the provisions of Article 34 point (d) of the present law.

[…]

6. The applicant may submit an application on behalf of his/her family members. In such cases, the adult members having legal capacity must consent in writing to the lodging of the application on their behalf, or otherwise have the opportunity to submit an application on their own. Before consent is requested, dependent adult members shall be informed in private of the relevant procedural consequences of lodging an application on their own and on their right to lodge an individual application for international protection. The consent shall be requested at the time the application is lodged or, at the latest, during the personal interview with the said member.

7. An applicant, who bears a child after his/her entry in the country, may submit an application on behalf of the child; the application must be accompanied by the child's birth certificate. This application is consolidated with the application of the parent applicant at any stage and instance of the procedure this may be.

8. A minor above 15 years of age, can lodge an application, independently and in person. In case he/she is unaccompanied, the provisions of Article 45 of the present law shall apply.

9. An unaccompanied minor, under 15 years of age, lodges an application through a representative, as defined in Article 45 of the present law.

10. The representative of the minor, as well as the representative of the accommodation centre that hosts the minor, in accordance with Article 19 of the Presidential Decree 220/2007, may submit an application for international protection on the minor's behalf, as long as, on the basis of an individual assessment of the personal circumstances, they consider that the minor might have the need of international protection. The minor must be present during the lodging of the application, unless this is not possible due to force majeure.

Article 37

(Article 9 of the Directive)

Right of the applicants to remain – Exceptions

1. Applicants shall be allowed to remain in the country until the conclusion of the administrative procedure for the examination of their application and they shall not be removed in any way.

[…]

Article 44

(Articles 19 and 23 of the Directive)

Provision of information - Legal representation and assistance

[…]

3. In procedures before the Appeals' Authority, applicants shall be provided with free legal assistance under the terms and conditions set in the ministerial decision provided for in Article 7, paragraph 8 above. In the cases of an application before a court, applicants may receive free legal assistance under the terms and conditions set in law 3226/2004 (OG' A' 24), which shall apply accordingly.

Article 45

(Article 25 of the Directive)

Applications of unaccompanied minors

1. When an unaccompanied minor lodges an application, the competent authorities shall take action according to par. 1 of Article 19 of P.D. 220/2007 in order to appoint a guardian for the minor. The minor is immediately informed about the identity of the guardian. The guardian represents the minor, ensures that his/her rights are safeguarded during the asylum procedure and that he/she receives adequate legal assistance and representation before the competent authorities. The guardian or the person exercising a particular guardianship act shall ensure that the unaccompanied minor is duly informed in a timely and adequate manner especially of the meaning and possible consequences of the personal interview, as well as how to be prepared for it. The guardian or the person exercising a particular guardianship act is invited and may attend the minor's interview and may submit questions or make observations to facilitate the procedure. During the personal interview, the presence of the unaccompanied minor may be considered necessary, despite the presence of the guardian or the person exercising a particular guardianship act.

2. The case-handlers who conduct interviews with unaccompanied minors and take relevant decisions shall have the necessary knowledge regarding the special needs of the minors and must conduct the interview in such a way as to make it fully understandable by the applicant, taking in particular account of his/her age.

3. If the guardian or the person exercising a particular guardianship act is a lawyer, the applicant cannot be the beneficiary of free legal assistance, pursuant to Article 44 paragraph 3, first indent.

4. The competent Receiving Authorities may, when in doubt, refer unaccompanied minors for age determination examinations according to the provisions of the Joint Ministerial Decision 1982/16.2.2016 (O.G. B' 335). When such a referral for age determination examinations is considered necessary and throughout this procedure, attention shall be given to the respect of gender-related special characteristics and of cultural particularities. Attention shall also be given so as:

a. a guardian for the minor is appointed who shall undertake all necessary action in order to protect the rights and the best interest of the minor, throughout the age determination procedure;

b. unaccompanied minors are informed prior to the examination of their application and in a language which they understand, of the possibility and the procedures to determine their age, of the methods used therefore, the possible consequences of the results of the above mentioned age determination procedures for the examination of the application for international protection, as well as the consequences of their refusal to undergo this examination;

c. the unaccompanied minors or their guardians consent to carry out the procedure for the determination of the age of the minors concerned;

d. the decision to reject an application of an unaccompanied minor who refused to undergo this age determination procedure shall not be based solely on that refusal and

e. until the completion of the age determination procedure, the person who claims to be a minor shall be treated as such.

5. If after the age determination procedure, it does not transpire with certainty that the applicant is an adult, he/she shall be treated as a minor.

6. The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the Decision Authorities from taking a decision on his/her application.

7. Applications for international protection of unaccompanied minors shall always be examined under the regular procedure.

8. Ensuring the child's best interest shall be a primary obligation when implementing the provisions of this Article.

[…]

Article 60

(Article 47 of the Directive)

Border procedures

[…]

4. In case of third country nationals or stateless persons arriving in large numbers and applying for international protection at the border or at airport/ port transit zones or while they remain in Reception and Identification Centres, the following procedures shall exceptionally apply, following a relevant Joint Decision by the Minister of Interior and Administrative Reconstruction and the Minister of National Defence:

(a) The registration of applications for international protection, the notification of decisions and other procedure-related documents as well as the receiving of appeals may be conducted by staff of the Hellenic Police or the Armed Forces.

(b) In the implementation of procedures under (a) above, the Asylum Service may be assisted, in the conduct of interviews with applicants for international protection as well as any other procedure, by staff and interpreters deployed by the European Asylum Support Office.

(c) The time limit provided for in Article 52, paragraph 5, shall be one (1) day. The time limit provided for in Article 62, paragraph 2(c), shall be two (2) days. The time limits provided for in Article 62, paragraph 3, regarding the invitation of the applicant to an oral interview as well for the submission of a memorandum after the examination of an appeal shall be one (1) day.

(d) Decisions on applications for international protection shall be issued, at the latest, the day following the day the interview is conducted and shall be notified to the individuals concerned, at the latest, the day following the day of issuance.

(e) Appeals shall be examined within three (3) days from their submission. Decisions on appeals shall be issued, at the latest, two (2) days following the day of the appeal examination or the submission of a memorandum and shall be notified to the individuals concerned, at the latest, the day following the day of their issuance. When the applicant requests to be granted an oral hearing, as per Article 62, paragraph 1 (e) below, the Appeals Committee may, according to its judgement, invite or not the applicant to a hearing.

(f) Individuals falling under Articles 8 to 11 of EU Regulation 604/2013 of the Parliament and the Council as well as vulnerable persons under Article 14 paragraph 8 of this law shall be exempted from the procedures described above.

In summary, children are entitled to special care and attention in the context of asylum procedures in Greece, as stipulated in the aforementioned provisions. The law imposes an obligation on all relevant actors to consider the exceptional vulnerability of this particular group through all stages of the asylum procedure, ensuring the best interest of the child is upheld at all instances.

The general procedures regarding the lodging of applications for international protection by minors are laid out in Article 36, while Article 45 focuses on the specific issue of applications by unaccompanied minors. In this case, the immediate appointment of a guardian is required, in order to provide assistance to the child throughout the entire procedure. The same Article provides a general guidance on age determination procedures, with the guardian again playing a central role in informing and safeguarding the child's interests (see below, under *c. guarantees for children)*.

III.2. Reception, Detention and Restriction of Movement

Law 4540/2018

In the most recent and significant amendment of asylum legislation since L. 4375/2016, the recast RCD has been transposed by L. 4540/2018[18] on May 2018.

In sum:

- *Article 7* refers to "Residence and freedom of movement" of applicants for international protection, setting out a basic framework for the restriction of movement, including principles and reasons thereof, as well as the consequences of its violation.
- *Article 9* amends Art. 46 (10) of L. 4375/2016 and designates the minimum conditions of detention, focusing on information provision and access of medical, legal and social actors to detainees.
- *Article 10* added an additional paragraph to Art. 46 (10) of L. 4375/2016, titled "10A". This new paragraph is exclusively dedicated to the detention of vulnerable persons, which was previously incorporated in Art. 46 (10). Under this more detailed framework, the detention of minors emerges as a measure of last resort, to be imposed for the shortest possible time, under child-appropriate considerations and provisions. The authorities are instructed to make any effort to swiftly transfer minors to RICs; the time limits of minors detention, however, remain as previously laid out, namely 25 days maximum, with the exceptional possibility to extend for another 20 days.
- *Article 11* refers to the principle of "family unity", in the context of accommodation of families.

[18] Law L 4540/2018 (in Greek) available at: https://bit.ly/2L0EpTI.

- *Article 13* outlines the basic rules regarding access of minors to the educational system of Greece, focusing on the need to promptly address enrolment and attendance difficulties.
- *Article 17* provides the "General Rules for the provision of material reception conditions and health care", reiterating of the obligation to provide dignified reception conditions and access to basic healthcare.
- *Article 21* (corresponding to art. 23 of the recast Reception Directive) refers to "Minors" and is mainly related to the best interest of the child. Indicators for best interest assessment are suggested, as well as psychosocial support for minors with different vulnerabilities.
- *Article 22* (art 24. of the recast RCD) refers to "Unaccompanied and separated minors" and lays out the provisions of protection and representation of minors from the moment of arrival. Formalising the guardianship model, this Article also includes provisions for accommodation of minors, family tracking and unity of siblings.

Detention of Third Country Nationals, Including Minors

The legal basis for the detention of migrant children is provided by L. 3907/2011, which incorporated the Return Directive[19] into the Greek legal order, Art. 46 L. 4375/2016 refers to the detention of asylum seekers and PD 141/1991 (Article 118) refers to the possibility a child to be placed under protective custody.

Law 4375/2016

Article 46

(Article 26 of Directive 2013/32 (EU) and 8-11 of Directive 2013/33 (EU)

Detention of applicants

1. An alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has submitted an application for international protection, and that he/she entered irregularly and/or stays in the country without a legal residence permit.

2. An alien or a stateless person who submits an application for international protection while in detention according to the relevant provisions of Laws 3386/2005 (O.G. A' 212) and 3907/2011 (O.G. A' 7) as in force shall remain in detention, exceptionally and if this is considered necessary after an individual assessment under the condition that no alternative measures, such as those referred to in Article 22 paragraph 3 of Law 3907/2011 can be applied, for one of the following reasons:

a. in order to determine his /her identity or nationality, or

b. in order to determine those elements on which the application for international protection is based which could not be obtained otherwise, in particular when there is a risk of absconding of the applicant, as defined in Article 18 point (f) of Law 3907/2011, or

c. when it is ascertained on the basis of objective criteria, including that he/she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to

[19] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC.

delay or frustrate the enforcement of a return decision, if it is probable that the enforcement of such a measure can be effected;

d. when he/she constitutes a danger for national security or public order, according to the reasoned judgment of the competent authority of point 3 of this Article, or

e. when there is a serious risk of absconding of the applicant, pursuant to Article 2 point (n) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 according to the criteria of Article 18 point (f) of law 3907/2011 which apply respectively and in order to ensure the enforcement of a transfer decision according to the above Regulation.

3. The detention order shall be taken by the respective Police Director and, in the cases of the General Police Directorates of Attica and Thessaloniki, by the competent Police Director for Aliens matters and shall include a complete and comprehensive reasoning. In cases (a), (b) (c) and (e) of paragraph 2 of this Article the detention order is taken upon a recommendation of the Head of the competent Receiving Authority.

4. a. The detention of applicants for international protection shall be imposed for the minimum necessary period of time. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

b. The detention of applicants on the grounds mentioned in points (a), (b) and (c) shall, initially, not exceed 45 days and can later be prolonged by a further 45 days, as long as the recommendation of paragraph 3 is not recalled.

c. The detention of applicants for international protection on the grounds of points (d) and (e) shall not exceed three (3) months.

d. In any case, and independently of whether the time limits for points (d) and (e) above have been completed or not, the total detention period may not exceed in any case the maximum time limits for detention, as they are foreseen in Article 30 of Law 3907/2011.

5. The initial detention order and the order for the prolongation of detention shall be transmitted to the President of the Administrative Court of First Instance, or the judge appointed by this former, who is territorially competent for the applicant's place of detention and who decides on the legality of the detention measure and issues immediately his decision, in a brief record, a copy of which he/she immediately delivers to the competent police authority. In case this is requested, the applicant or his/her legal representative must mandatorily be heard in court by the judge. This can also be ordered, in all cases, by the judge. In this case, the provisions of paragraph 3 and subsequent paragraphs of Article 76 of Law 3386/2005 shall apply respectively. The aforementioned procedure shall not restrict the possibility of the applicant to raise objections against the detention order or the order to prolong the detention period, pursuant to the provisions of the following Article.

6. Applicants in detention, according to the above paragraphs, have the rights to appeal and submit objections as foreseen in paragraphs 3 and subsequent of Article 76 of Law 3386/2005, as in force.

7. Detainees who are applicants for international protection shall be entitled to free legal assistance and representation to challenge the detention order according to the provisions valid for third country nationals in detention, according to the provisions set in law 3226/2004 (O.G. A' 24) which apply accordingly.

8. The detention of an applicant constitutes a reason for the acceleration of the asylum procedure, taking into account possible shortages in adequate premises and the difficulties in ensuring decent living conditions for detainees. These difficulties, as well as the vulnerability of applicants, as per Article 14 paragraph 8 above shall be taken into account when deciding to detain or to prolong detention. When an alien or stateless person applies for international protection while in detention, the Head of the competent Receiving Authority and/or the Administrative Director of the Appeals Authority shall be immediately informed and shall ensure the prioritized examination of the application or the appeal.

9. Applicants are detained in detention areas as provided in Article 31 of Law 3907/2011.

10. In cases of detention of applicants, the competent authorities, without prejudice to the international and national legal rules on detention, shall apply the following as per case:

a. They shall ensure that women are detained in an area separately from men as well as the due respect for the privacy of families in detention.

b. They shall avoid the detention of minors. Minors who have been separated from their families and unaccompanied minors shall not be detained, as a rule. Only in very exceptional cases, unaccompanied minors who applied for international protection while in detention according to the relevant provisions of Law 3386/2005 and Law 3907/2011, may remain in detention, as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors. This detention is exclusively imposed for the necessary time for the safe referral to appropriate accommodation facilities and cannot exceed twenty-five (25) days. When, due to exceptional circumstances, such as the significant increase in arrivals of unaccompanied minors, and despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities, detention may be prolonged for a further twenty (20) days. Minors who have been separated from their families and unaccompanied minors shall be detained separately from adult detainees. When minors are detained, they shall be given the possibility to occupy themselves with activities, including games and recreational activities appropriate for their age.

c. They shall avoid detaining women during pregnancy and for three (3) months after labour.

d. They shall provide detainees with the appropriate medical care.

e. They shall ensure the right of detainees to legal representation.

f. They shall ensure that detainees are informed in a language they understand of the reasons and the duration of their detention, their right and means to challenge the detention decision and their right to free legal assistance.

11. When the reasons set out in paragraph 2 justifying detention of the applicant cease to exist, the authorities which ordered the detention, with a reasoned decision, shall release the applicant and inform without delay the Receiving Authorities or the Appeals Authority, if the application is pending before the second instance.

L. 3907/2011

L. 3907/2011 transposes the Returns Directive. Art. 30-33 provides for the detention in view of removal, including the detention of minors.[20]

PD 141/1991

(Article 118) Protective custody –

According to Art. 118 (1) *"Persons who, due to their age or their mental health situation, are dangerous to public order or expose themselves to danger are placed in protective custody"*. No time limit is provided, as protective custody is imposed until the person is handed over to a relative. Minors, "who have deliberately or involuntarily, disappeared" are explicitly mentioned by said provision as persons who can be placed under protective custody. In case that the measure is imposed, a report by the police is sent to the Public Prosecutor.

Restriction of Movement

As mentioned above, Article 7 of L. 4548/2018 refers to "Residence and freedom of movement" of applicants for international protection, setting out a basic framework for the restriction of movement, including principles and reasons thereof, as well as the consequences of its violation.

Decision of the Director of the Asylum Service No 8269 (Gov. Gazette B΄- 1366/20.04.2018)

According to the Decision of the Director of the Asylum Service, applicants who enter the Greek territory through Lesvos, Samos, Rhodes, Kos, Leros and Chios are subject to a geographical limitation *inter alia* for the purposes of the EU-Turkey Statement. The limitation is lifted if the case is referred to the regular procedure. This decision was later struck down by the Council of State and replaced with Decision 8269/2018 which justifies the geographical limitation on grounds of public interest and the implementation of the EU-Turkey Statement.

Decision of the Director of the Asylum Service No 18984 (Gov. Gazette B' - 4427/05.10.2018)

In October 2018, Decision 8269/2018 has been replaced by Decision No 18984 (Gov. Gazette B' - 4427/05.10.2018) with a similar content, i.e. applicant whose application is lodged before the North Eastern Aegean Island Asylum Offices/Units are subject to a geographical limitation, with the exception of Dublin cases eligible for family reunification (Articles 8-11 of the Dublin Regulation) and persons belonging to vulnerable groups.

III.3. Guarantees for Children

III.3.a. Guardianship

L. 4554/2018

[20] L 3907/2011 (in English) available at: http://www.refworld.org/docid/4da6ee7e2.html

Part three of L. 4554/2018[21], issued on 18 July 2018, foresees the "Regulatory Framework for the Guardianship of Unaccompanied Minors" (Art. 13-32). The law provides, *inter alia*, that the Public Prosecutor for Minors or the local competent Public Prosecutor – in case that no Public Prosecutor for minors exists - is considered as the temporary guardian of the unaccompanied minor (Art. 16). This responsibility includes, among others, the appointment of a permanent guardian of the minor. The guardian of the minor is selected from a registry of guardians created under the National Center for Social Solidarity (EKKA/NCSS) (Art. 16). In addition, the law provides a best interest of the child determination procedure (Art. 21). Ministerial Decisions and standard operational procedures required by law in order to further regulate the functioning of the Registry of Guardians (Art.25) and the best interest of the child determination procedure (Art 21) have not been issued by mid-November 2018.

III.4. International Instruments Incorporated into Greek Law

Law 2101/1992, Gov. Gazette A' 192/2-12-1992

The Convention on the Rights of the Child has been ratified by L. 2101/1992. Article 1 declares the ratification of the Convention by the Greek State and includes the French and Greek texts of the international instrument in their entirety. Article 2 outlines the details of the instrument's entry into force, according to Article 49 of the Convention, orders the publication of the law in the official Government Gazette and its execution as national law.

Legislative Decree 53/1974, Gov. Gazette A' 256/20-09-1974

The ECHR has been transposed into Greek law with the Legislative Decree 53/1974. Its first Article declares the ratification of the Convention and its validity, as equivalent to that of national law. Article 2 provides that the ratified Convention will enter into force after the deposit of Greece's instrument of ratification.

Law 4359/2016, Gov. Gazette A' 5/20-01-2016

Law 4359/2016 transposes the Revised European Charter into Greek law, with a specific mention to Article 28 (1) of the Greek Constitution, regarding the primary position of ratified international Conventions in the Greek legal order. Article 4 stipulates that the date of entry into force will be the date of publication in the Government Gazette. The 1961 European Social Charter had already been ratified with L. 1426/1984 (Gov. Gazette A' 32/21-03-1984).

Law 2595/1998, Gov. Gazette A' 63/24-03-1998

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints has been ratified with Law 2595/1998. Article 1 of this law also refers to Article 28 (1) of the Greek Constitution, while Article 2 orders the publication of the law in the Government Gazette and declares its entry into force since that date.

Law 2462/1997, Gov. Gazette A' 25/26.02.1997

The ICCPR has been ratified with Law 2462/1997, entering into force since its publication in the Government Gazette.

[21] L. 4554/2018 (in Greek) available at: https://bit.ly/2Bj1bq6

Article 28 (1) of the Greek Constitution stipulates that international conventions prevail over conflicting national law, as long as they have been ratified by a domestic statute and they have entered into force, according to their respective provisions. The Article reads as follows:

"Article 28

1. The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. [..]"

Part IV. Description of the Problem

IV.1 Access to Shelter for Migrant Children

IV.1.1. Access to Shelter for Migrant Children on the Greek islands

IV.1.1.a Reception Structures on the Greek islands

21. There are various types of accommodation facilities on the Greek islands. L 4375/2016 (referred to above) regulates the functioning of Reception and Identification Centres (hereinafter "RICs"). RICs on the Greek islands serve as reception structures as well as centres where, *inter alia*, registration, verification of nationality, assessment of vulnerability, medical screening and referral of persons to an international protection procedure take place (Article 9 L 4375/2016). Apartments and buildings dedicated to vulnerable persons run by the UNHCR as well as temporary camps have also been established on the Greek islands. Moreover, a number of accommodation places are available on the Greek islands for unaccompanied minors under the referral network of the National Centre for Social Solidarity (hereinafter "EKKA").[22]
22. As can be seen from *Table 1* (below) the majority of reception capacity is within the RICs on the Greek islands. Their functioning is regulated by L 4375/2016, which, in turn, originated from the entry into force of the EU-Turkey Statement.[23] The Statement opens the road for the return of people who enter Greece irregularly through the islands bordering Turkey after 20 March 2016. In practice, all new arrivals to the Greek islands from 20 March 2016 are transferred to the respective RIC, where they are subject to a 3-day "restriction of freedom within the premises of the centre" which can be extended for a maximum period of 25 days, to be revoked once registration is completed several days later.
23. In addition, all applications made on the Greek islands are followed by the imposition of a geographical restriction to remain within the limits of each island, based on the abovementioned decision of the Director of the Greek Asylum Service. [24] As stated in this Decision, the geographical limitation on the islands is linked to the implementation of the EU-Turkey Statement.[25] The geographical restriction is imposed for the duration of the examination of the applicant's application, which is a designated fast-track procedure under Article 60 para. 4 of L. 4375/2016. Applicants considered to be vulnerable, including unaccompanied migrant children and single parent families[26] or applicants falling within the scope of the family provisions of the Dublin Regulation, are excluded from the fast-track border procedure.[27] This exclusion entails the lifting of the geographical limitation and their transfer to the mainland, where their application will be examined according to the regular procedure. Migrant children, who are accompanied by both parents, are not considered as vulnerable as such and thus the fast-track border procedure still applies to their case, along with the geographical restriction to remain on the island.[28]

[22] EKKA (National Center for Social Solidarity) is the competent authority for the placement of unaccompanied minors in a shelter
[23] EU-Turkey Statement, 18 March 2016, Press release 144/16.
[24] Decision 8269/2018 and Decision 18984/2018.
[25] According to the Decision "in accordance with the existing practice, Turkey does not accept the readmission of failed asylum seekers who have left the islands", see Decision 18984/2018, preamble 7.
[26] Article 14, para.8, L. 4375/2016.
[27] Article 60, para.4, point f, L. 4375/2016.
[28] Whilst this geographical restriction was found by the Greek Council of State (Council of State, Fourth Section, Decision 805/2018, 17 April 2018) to have resulted in an unequal distribution of asylum seekers across the national territory and significant pressure on the affected islands, a new decision given by the Asylum Service re-instated the geographical restriction, whilst providing a legal basis for its imposition (Decision 8269/2018 cites grounds relating to a need to implement the EU-Turkey Statement and public interest). The later has been followed by Decision 18984/2018 (Gov. Gazetta 4427/05.10.2018) with the same content.

Consequently, children accompanied by both parents can leave the Greek islands only in cases where they are granted international protection status, following a lengthy asylum procedure.

24. Whilst this asylum procedure is foreseen to be a fast-track one (according to the law it should be completed within 14 days),[29] it, in practice, lasts for significantly longer periods during which applicants have the obligation to remain on the islands due to the geographical limitation imposed. For example, in December 2017, the average waiting time for a first instance decision, between the registration of the intention to apply for asylum up until the issuance of a first instance decision, was 83 days.[30] This time is further prolonged where appeals and judicial review procedures are initiated.

25. A continuous non-adherence to domestic legislation is also apparent in the significant delay in transfers of asylum seekers, who have been identified as vulnerable, to mainland sites.[31] Under Decision of the Director of the Asylum Service No 18984, this part of the island population is exempt from the fast-track border procedure and should, instead, be transferred to the mainland, in order to access both the regular asylum procedure and specialised healthcare services. As indicated by UNHCR's monthly factsheets for the Greek islands, 2,100 vulnerable persons were transferred in January 2018 whereas in March 2018 only 699 vulnerable people were transferred to the mainland, 58 of whom were unaccompanied minors.[32] The situation further deteriorated in April, despite a slight increase in transfers of vulnerable people that month (1,600), due to the record number of 3,000 new arrivals, only 25 unaccompanied migrant children made it to the mainland.[33] In the same vein, 60 unaccompanied migrant children were transferred to the mainland in May and only 8 in June.[34] In September 2018, 2,500 persons were transferred to the mainland, however, as noted by UNHCR "[m]ore is needed to ease overcrowding and improve conditions."[35]

26. Delays in transfers to the mainland originate in a lack of accommodation places for vulnerable persons there. For example, as of June 2018, some 2,700 people, whose geographical restriction had been lifted by the authorities, remain on the island due to issues of limited accommodation capacity.[36] Moreover, as the decrease in transfers of unaccompanied migrant children shows, accommodation capacity is particularly limited for them. Reception capacity for unaccompanied migrant children on the mainland is, in fact, a third of what is required to meet the reception demands for them.[37] They are, thus, left waiting on the islands for a reception place on the mainland which simply does not exist.

27. The imposition of the geographical limitation, alongside lengthy asylum procedures and the slow pace of transfers to the mainland for persons with their geographical restriction lifted (i.e. vulnerable persons) means a severe concentration of persons within an ever-decreasing reception space for significant periods. Migrant children are, therefore,

[29] Art. 60(4) L. 4375/2016
[30] AIDA, *Country Report on Greece 2017*, *op. cit.* p.69.
[31] UNHCR, *Top UNHCR Official urges action to tackle overcrowding on Greek islands*, 28 June 2018, available at: http://www.unhcr.org/gr/en/7541-top-unhcr-official-urges-action-tackle-overcrowding-greek-islands.html.
[32] UNHCR, Factsheets for March, available at: https://bit.ly/2wmrE1m, and January available at: https://bit.ly/2LDF91g.
[33] See UNHCR, Factsheet for April, available at: https://bit.ly/2wqCLVW.
[34] See UNHCR, Factsheets for May, available at: https://bit.ly/2JYq7TL, and June, available at: https://bit.ly/2C5hEP0.
[35] UNHCR, Greece, Fact Sheet, September 2018, https://data2.unhcr.org/en/documents/download/66298.
[36] See UNHCR Factsheet for June, available at: https://bit.ly/2C5hEP0.
[37] As of June 2018, 3,790 unaccompanied migrant children are in Greece, whereas 1,141 reception places are allocated to unaccompanied migrant children. Situation Update: Unaccompanied Children (UAC) in Greece 15 June 2018, available at: https://data2.unhcr.org/en/documents/download/64331

entrapped for prolonged periods of time,[38] which is only exacerbated with continuous numbers of arrivals to the Greek islands who are, equally, faced with the same delays and living conditions. For example, in Lesvos, a recent Refugee Rights Europe report states that of the children interviewed, nearly 70% had been residing on the islands for up to four months.[39] In September 2018, UNICEF highlighted that "[s]ome children have spent more than a year at these congested and ill-equipped facilities."[40]

IV.1.1.b. Current Population Figures and Reception Capacity

28. UNHCR estimates that at the beginning of October 2018, over 17,500 refugees and migrants reside on the Greek islands. According to official data from the Greek government this figure, as of 1 October 2018, appears to, in fact, be more at 19,021.[41] The majority of new arrivals in 2018 are from Syria (6,843), Afghanistan (5,455) and Iraq (4,600). Typically, these three nationalities arrive in family groups.[42]
29. Official published data does not disaggregate occupancy of provided accommodation according to the individual's profile and it is, thus, difficult to know, beyond NGO reports concerning specific Greek islands and data compiled by inter-state organisations, the exact number of migrant children, who are either residing in RICs, or who are in other accommodation facilities or who are simply homeless. Notwithstanding the lack of transparency in respect of official data, it is estimated, from the statistics below, that a significant number of migrant children reside in overcrowded conditions in RICs.

[38] The National Commission for Human Rights has asked for a re-examination of the geographical limitation and stated the need to eliminate the entrapment of applicants for international protection on the islands. UNCHR, Report on the condition of Reception and Asylum system in Greece, 22 December 2017, available at: http://bit.ly/2nkf1P0

[39] Refugee Rights Europe (RRE): *An island in despair – documenting the situation for refugees and displaced people in Lesvos, Greece*, June 2018, p. 22.

[40] UNICEF, *Refugee and migrant children arriving on Greek Islands up by one-third in 2018*, 21 September 2018, available at: https://www.unicef.org/press-releases/refugee-and-migrant-children-arriving-greek-islands-one-third-2018-unicef.

[41] National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 1 October 2018, available at: https://bit.ly/2qfp4Xk.

[42] UNHCR, *Sea Arrivals Dashboard*, September 2018, available at: https://data2.unhcr.org/en/documents/download/66190

Table 1.

Reception Capacity – Persons remaining on the islands 2017-2018 (based on official data from the National Coordination Centre for Border Control, Immigration and Asylum)								
	31 October 2017[43]	31 December 2017[44]	28 February 2018[45]	30 April 2018[46]	30 June 2018[47]	31 July 2018[48]	31 August 2018[49]	30 September 2018[50]
Total reception capacity[51]	6926	7000	7838	8080	8121	8211	8192	8199
Total number of migrants on the Greek islands	14715	13671	12869	15672	17559	17995	18843	19328
Total reception capacity in RIC facilities	5576	5576	6292	6338	6338	6438	6438	6438
Total number of persons residing in RIC facilities	11834	10907	9913	12588	14356	15043	15904	16174

30. According to the UNHCR's statistics, out of the over 17,500 refugees and migrants residing on the Aegean islands at the beginning of October, children account for 29% of the population (i.e. about 5,000) of whom nearly 7 out of 10 are younger than 12 years old. In addition, approximately 18% of the children are unaccompanied or separated, mainly Afghan and Syrian (i.e. about 910 unaccompanied migrant children).[52] As UNICEF stated in September 2018, "more than 5,000 children, are being sheltered in unsanitary, overfilled Reception and Identification Centers… With the capacity to host 3,100 people, the Moria Centre on Lesvos Island hosts nearly 9,000 people including more than 1,700 children. The Centre in Vathy, Samos, built for 650 people, now shelters 680 children - 4,000 refugees and migrants in total. More children and families arrive every day."[53]

[43] https://bit.ly/2z7rQlm
[44] https://bit.ly/2OVJByR
[45] https://bit.ly/2CM25e2
[46] https://bit.ly/2PsnVtB
[47] https://bit.ly/2Py4Lm6
[48] https://bit.ly/2zfJvHY
[49] https://bit.ly/2qh7nGQ
[50] https://bit.ly/2qiI4Eq
[51] Total reception capacity is calculated on the basis of the numbers of the reception/accommodation facilities on the islands as provided by the Authorities. The number of places in detention facilities are not included.
[52] UNHCR, Greece - Aegean Islands Weekly Snapshot, 01 – 07 October 2018, available at: https://data2.unhcr.org/en/documents/download/66251.
[53] UNICEF, *Refugee and migrant children arriving on Greek Islands up by one-third in 2018*, 21 September 2018, https://www.unicef.org/press-releases/refugee-and-migrant-children-arriving-greek-islands-one-third-2018-unicef.

31. Notwithstanding the significant number of migrant children on the Greek islands, accommodation within the RICs and elsewhere, thus, remains dangerously insufficient. [54] The data below corroborates the shrinking reception environment and demonstrates that the glaring discrepancy between the migration population on the Greek islands and the reception capacity should be considered as a systematic failure to guarantee reception on the islands rather than as a temporary situation.

32. A breakdown of the data per RIC and per island as of 9 July 2018 demonstrates a failure to address reception needs on the islands and the severe overcrowding that is left in the wake of such shortcomings:
Lesvos: (capacity) 3100, (occupancy) 7403,
Chios: (capacity) 1014, (occupancy) 1859,
Samos: (capacity) 648, (occupancy) 3656,
Leros: (capacity) 805, (occupancy) 860,
Kos: (capacity) 932, (occupancy) 816.[55]

As of 9 October 2018 official data demonstrates the complete stagnation of reception capacity in the face of increasing occupancy; an occupancy, which in Samos, is almost seven fold the number that capacity allows for:
Lesvos: (capacity) 3100, (occupancy) 7352,
Chios: (capacity) 1014, (occupancy) 2361,
Samos: (capacity) 648, (occupancy) 4185,
Leros: (capacity) 805, (occupancy) 718,
Kos: (capacity) 932, (occupancy) 1114.[56]

33. Such overpopulation leads to the impoverishment of inhabitants, including migrant children, on the islands as recently highlighted in a GCR report which states that in Moria, given the renewed surge in arrivals in October 2017, the RIC had been "over-flooded by small tents (some on the road), usually shared by more than one inhabitant and/or family, and even those lucky enough to be placed in so-called "pre-fabricated accommodation" (i.e. containers), were crammed by the 20s (20-25 persons/container)." Tents outside the RIC's premises in Moria have been placed "in an area originally reserved for the creation of recreational spaces ("Olive Grove" [a makeshift camp next to Moria]) […] and despite many of the "grove's" inhabitants consisting of families with children, the area has been largely left unsupervised."[57] This is corroborated by a MSF report which states that "currently, more than 7,500 people are living in Moria camp (including the Olive Grove) which has a maximum capacity for 3,000 people. In recent months there has been an increase in the number of families with children living in Moria, with the population of children growing from 1,500 to over 2,500 between March and May 2018."[58]

34. In sum, available reception places cannot address the needs and requirements of migrant children, whether accompanied or unaccompanied, on the Greek islands. In light of population numbers on the Greek islands going dramatically beyond the number of reception places, it follows that migrant children are either residing in conditions of severe

[54] The total number of persons remaining on the islands was 18,607 (which according to the pattern of arrivals a percentage of about 30% are children), while at the same time the nominal official reception capacity was of 8, 201 places, which inter alia include a number of 1324 places under UNHCR accommodation scheme (which is reserved for all vulnerable persons including those with serious medical illnesses, women at risk and pregnant women) and 188 places under the EKKA/NCSS referral scheme reserved to UAMs. At the same time, 15,730 persons were living at the RIC Facilities with a nominal capacity of 6,438.
[55] https://bit.ly/2AyQygw
[56] https://bit.ly/2qiE8Ui
[57] GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*
[58] Medecins Sans Frontieres (MSF), *Briefing Note: Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018. See Annex II.

overcrowding or, do not have access to an official reception structure, given the shortfall in places. As such, and as argued in Part V.1., the saturation and even entire absence of reception on the islands attacks the very core of protection and care guaranteed to migrant children under various legal regimes, including the European Social Charter.

IV.1.2 Particular Problems of Access to Shelter for Unaccompanied Migrant Children, on Both the Mainland and the Greek Islands

35. As of 30 September 2018, and according to official statistics from the National Centre of Social Solidarity (hereinafter "NCSS/EKKA"), the estimated number of unaccompanied children present throughout the Greek territory was 3,400. Conversely, the number of shelters specifically for unaccompanied children, which include both long term and short term/"transit" facilities and a small number of Supported Independent Living (hereinafter "SIL") apartments all under the NCSS/EKKA accommodation scheme, was 1,191.[59] Needs for shelter are, therefore, more than double the actual capacity in Greece. As a result, a number of 2,363 unaccompanied migrant children are on the waiting list for NCSS/EKKA shelter,[60] meaning that almost two thirds of the unaccompanied migrant children in Greece did not have access to official reception structures as of September 2018.
36. Living arrangements for these 2,363 unaccompanied migrant children are extremely precarious. Of this group, 451 unaccompanied migrant children are homeless; 415 are accommodated in hotels, which according to NCSS are used as emergency accommodation for unaccompanied children on account of the insufficient number of available shelter places; 275 do not have a known accommodation status and 430 remain in one of the RICs on the Greek islands and one in Evros on the Greek mainland. Moreover, 252 are accommodated in so-called "safe zones", which are supposedly designated supervised spaces within open accommodation and are to be used as a short-term measure for not more than 3 months, 90 remain in "protective custody"[61] in police stations and pre-removal detention facilities and 178 reside in open accommodation sites. These sites are meant to be temporary in nature and are not suitable for long-term accommodation, not least because their legal statuses are unclear with different administrative authorities responsible for the sites.[62]
37. The shortage in accommodation places for unaccompanied migrant children means that they are left waiting for shelter in environments which are overcrowded (RICs), which deprive them of their liberty (protective custody in police stations) and/or which are highly nefarious (living on the streets). These living arrangements are not recent but are demonstrative of a systemic problem, which has lasted for years in Greece. For over a decade international bodies and civil society organisations have highlighted the dangerous shortage of accommodation compared to actual needs, the crucial gaps in the effective protection of unaccompanied minors and a resort to systematic detention of unaccompanied migrant children as a response to such reception deficiencies.[63] To

[59] Out of the total 1101 available places under the EKKA scheme in January 2018, 783 of the places available were in long-term shelters and 318 places concerned short-term ("transit") shelters for unaccompanied children, AIDA Report: Greece, update 2017, p. 141.
[60] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 30 September 2018*, available at: https://www.unicef.org/eca/sites/unicef.org.eca/files/2018-10/Situation-Update-unaccompanied-children-greece-sep-2018.pdf.
[61] Protective custody is a *de facto* detention (see section IV.2).
[62] Parliamentary Assembly of the Council of Europe, *Refugees at risk in Greece*, Doc. 14082, 7 June 2016, available at: http://bit.ly/2m9oryB; A Joint NGO roadmap for more fair and humane policies: *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, p. 13, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/greece_roadmap_oxfam_final.pdf
[63] UNHCR, *Observations on Greece as a country of asylum*, December 2009, available at: http://www.refworld.org/docid/4b4b3fc82.html; Human Rights Watch (HRW), *Left to Survive. Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, 22 December 2008, available at: http://www.refworld.org/docid/4950a7382.html;

illustrate in 2011, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressed his concern about "the fate of unaccompanied minors in Greece, as they are not protected properly at any stage of their stay in the country".[64] The serious absence of protection for unaccompanied migrant children continued into 2016 and 2017 where NGOs identified hundreds of unaccompanied migrant children living in squats and abandoned buildings[65] as well as 'emergency camps', with no supervision and, therefore, children faced dangers of drugs, trafficking and sexual abuse.[66]

38. The long-standing shortcomings in reception for unaccompanied migrant children remain alarming with almost two thirds of unaccompanied migrant children being deprived of access to an age-appropriate facility, as demonstrated by the data below.

Table 2.

Reception capacity for UAMs 2016-2018 based on the data of the National Centre for Social Solidarity (NCSS/EKKA)					
	Estimated number of UAM currently in Greece	**Total number of places in UAM shelters and SIL apartments**	**Number of UAM in the waiting list for shelter**	**Out of the number of UAM in a waiting list, number of UAM in 'protective custody'**	**Out of the number of UAM in a waiting list, number of UAM in RIC facilities**
September 2018[67]	**3,320**	**1,195**	**2,291**	90	365
15 August 2018[68]	**3,290**	**1,191**	**2,242**	127	296
15 July 2018[69]	**3,510**	**1,191**	**2,485**	137	341

UNHCR, UNHCR Position on Important Aspects of Refugee Protection in Greece, February 2006, available at: http://www.refworld.org/docid/46d530bf2.htm.

[64] UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Addendum: Mission to Greece, 21 April 2011, A/HRC/16/52/Add.4, available at: http://www.refworld.org/docid/4e6082e72.html.

[65] UNICEF – REACH, *Children on the Move in Italy and Greece, Report*, June 2017, p. 63, available at: https://www.unicef.org/eca/sites/unicef.org.eca/files/2017-10/REACH_ITA_GRC_Report_Children_on_the_Move_in_Italy_and_Greece_June_2017.pdf

[66] Network for Children's Rights: *Conditions in refugee camps: The case of Schisto,* January 2017. Available at: http://ddp.net.gr/wp-content/uploads/2017/02/SchistoReport_en.pdf

[67] EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece 15 September 2018,* available at: https://reliefweb.int/sites/reliefweb.int/files/resources/EKKA%20dashboard%2015-9-2018.pdf

[68] EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece 15 August 2018,* available at: https://reliefweb.int/sites/reliefweb.int/files/resources/EKKA%20dashboard%2015-8-2018.pdf

[69] EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece 15 July 2018,* available at: https://reliefweb.int/sites/reliefweb.int/files/resources/EKKA%20dashboard%2015-7-2018.pdf

15 June 2018[70]	**3,790**	**1,141**	**2,832**	216	368
15 May 2018[71]	**3,400**	**1,101**	**2,569**	175	313
15 April 2018[72]	**3,050**	**1,099**	**2,200**	103	186
15 March 2018[73]	**2,940**	**1,118**	**2,082**	89	140
15 February 2018[74]	**3,090**	**1,115**	**2,158**	54	176
31 January 2018[75]	**3,270**	**1,083**	**2,312**	89	180
31 December 2017[76]	**3,350**	**1,101**	**2,290**	54	438
20 June 2017[77]	**2,250**	**1,270**	**1,149**	81	215
27 January 2017[78]	**2,200**	**1,282**	**1,350**	4	317
19 October 2016[79]	**2,500**	**1,140**	**1,604**	27	332

IV.2. The Treatment of and Conditions in which Migrant Children Live

IV.2.1 Greek Islands: Overcrowding

39. Overcrowding on the Greek islands, as detailed in section IV.1.1.b., has important consequences on the availability of shelter, sanitary facilities, food and medical resources for inhabitants which, in turn, means that living conditions, and consequently the enjoyment of human rights on the islands are in a continuous state of deterioration. Indeed, the conditions, which arise as a result of overcrowding, have persisted for several years, demonstrating the short-sightedness of emergency-driven responses to systemic reception failures. Actors in the field have repeatedly warned of the effects on migrant children of

[70] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 15 June 2018*, *op. cit.*
[71] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 15 May 2018*, available at: https://data2.unhcr.org/en/documents/download/63728.
[72] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 15 April 2018*, available at: https://data2.unhcr.org/en/documents/download/63153.
[73] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 15 March 2018*, available at: https://data2.unhcr.org/en/documents/download/62835.
[74] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 15 February 2018*, available at: https://data2.unhcr.org/en/documents/download/62191.
[75] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 31 January 2018*, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/61808.pdf.
[76] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 31 December 2017*, available at: https://data2.unhcr.org/en/documents/download/61484.
[77] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 20 June 2017*, available at: https://data2.unhcr.org/en/documents/download/58423.
[78] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 27 January 2017*, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/EKKA%20dashboard%2027-01-2017.pdf.
[79] UNHCR, *Situation Update: Unaccompanied Children (UAC) in Greece 19 October 2016*, available at: https://data2.unhcr.org/fr/documents/download/52004.

the dire living context; conditions which have been described as uninhabitable,[80] alarming,[81] unsecure,[82] unsuitable for children and as presenting serious public health risks.[83]

IV.2.1.a. Shortage of Shelter and Basic Care Facilities

40. Overpopulation has led to a severe saturation in reception space with basic care facilities reaching dangerously insufficient levels. For migrant children, along with other vulnerable population groups, there is an inadequate access to shelter and services.[84] As corroborated by official data above, the majority of the RICs are exceeding by far their capacity. In October 2018, the population in Samos RIC was nearly seven fold its capacity, Lesvos and Chios RIC were over double their capacity, Kos RIC was exceeding its capacity and Leros RIC was reaching its capacity. As underlined by a UNHCR public statement at the end of August 2018, "[c]entres are severely overcrowded. This means that thousands of asylum-seekers and migrants, including many children, live in squalid, inadequate and rapidly deteriorating conditions. Some have been living in these centres for more than six months".[85]
41. In Lesvos, accompanied migrant children have simply been provided with plastic sheeting, so that they would build their own shelters. Indeed, Médecins Sans Frontières (hereinafter "MSF") notes that "two thirds of the children who are currently being treated by MSF live in tents."[86] The same is apparent in Chios where in June 2018 "over half of the population in Vial are without geographical restriction and could be transferred to mainland sites" but yet remain on the islands in makeshift shelters and tents.[87] For those hosted at Chios RIC, the population was double capacity.[88] Video footage has documented the squalid conditions that inhabitants live in in the RIC as a result, in part, of the overpopulation.[89]
42. In addition, "living conditions for unaccompanied children remained alarming on Lesvos where unaccompanied children often share space with adults."[90] The same is apparent in Chios where "over half of the population in Vial are without geographical restriction and could be transferred to mainland sites" but yet remain on the islands in makeshift shelters and tents.[91] In Samos, the UNHCR has also reported the situation of unaccompanied migrant children as particularly concerning since their designated accommodation area "remains uninhabitable."[92]
43. The severe saturation of reception on the Greek islands combined with the impact of the geographical restriction[93] is made worse by the lengthy asylum procedures that applicants are faced with. According to MSF "many new arrivals are being given their first asylum interview appointment 6-8 months after having arrived on the island, the second interview

[80] UNHCR, *Factsheet, Aegean islands*, 1-30 April 2018, *op. cit.*
[81] UNHCR, *Factsheet, Aegean islands*, 1-31 May 2018, *op. cit*.
[82] MSF, *Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018, *op. cit.*
[83] Council of Europe – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Greek Government on the visits to Greece from 13 to 18 April and 19 to 25 July 2016, CPT/Inf (2017) 25, Strasbourg, 26 September 2016, paras. 21, 56-57, available at: https://rm.coe.int/pdf/168074f85d.
[84] UNHCR, *Factsheet - Aegean islands*, 1-30 June 2018, *op. cit*.
[85] UNHCR, *UNHCR urges Greece to address overcrowded reception centres on Aegean islands*, 31 August 2018, available at: http://www.unhcr.org/5b88f5c34?utm_source=PR_COMMS&utm_medium=email&utm_content=http%3a%2f%2fwww.unhcr.org%2f5b88f5c34&utm_campaign=HQ_EN_BriefingNotes_171027.
[86] MSF, *Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018*, op. cit.,* p.1.
[87] UNHCR, *Factsheet – Aegean Islands*, 1-30 June 2018, *op. cit.*
[88] https://bit.ly/2qiE8Ui.
[89] Vial Refugee Camp, Autumn 2018, 14 October 2018, https://www.youtube.com/watch?time_continue=13&v=TQEEGFsZIpw
[90] UNHCR, *Factsheet – Aegean Islands*, 1-30 May 2018, *op. cit.*
[91] UNHCR, *Factsheet – Aegean Islands*, 1-30 June 2018, *op. cit.*
[92] *Ibid*.
[93] See more in the section on legislation on the geographical restriction.

brings them to more than one year of waiting on the islands."[94] The delays are progressively increasing with MSF reporting that many of their patients in Lesvos, including vulnerable persons, were, in September 2018, being given their first asylum interview appointments in November 2019, 14 months later, without the possibility to leave the island during this time.[95] This is in clear violation of Article 31(3) of the Asylum Procedures Directive which requires Member States to undertake a *complete examination* of the application within 6 months, with the potential of extension for a period not exceeding a further 9 months where a large number of third country nationals simultaneously apply for protection.

44. The conditions in the Moria RIC and Olive Grove, a makeshift camp next to Moria RIC, in Lesvos, where about 7,350 people are being hosted, as of 9 October 2018,[96] has meant that the living environment is severely unhygienic. For example, MSF has noted that water and sanitation services are insufficient for the size of the population, thereby presenting significant risks to health and safety. Indeed, "in the main area of Moria camp and Olive Grove, there are 62-70 people per functioning toilet and 91 people per functioning shower. This is respectively twice and as three times many as the recommended number in emergency situations."[97] Moreover, on a field trip at the end of 2017, GCR highlighted the constant overflowing of garbage bins, situated next to tents where families resided, of the sewage system regularly clogging and of the insufficiency of bottled water and food leading to rationing.[98] As stated by UNHCR in June 2018, "with the Moria reception centre on Lesvos at triple its capacity, conditions are abysmal for some 6,000 people, including children who represent 25 per cent of the population,"[99] while in August 2018 UNHCR urged that "the situation is reaching boiling point at the Moria RIC on the Island of Lesvos."[100]

45. A similar situation has also been reported in the Vathy RIC on Samos, where "overcrowding persists in the centre where some 1,500 people do not have access to safe shelter, appropriate hygiene facilities and gender-separated areas. Some 400 people, including vulnerable, women and children, live in tents or makeshift shelters".[101] UNHCR has reported frequent water cuts there, contributing to "a rapid deterioration of hygiene and sanitation."[102] In August 2018, UNHCR underlined that "an estimated 2,700 people, mainly Syrian and Iraqi families, are staying at the Vathy RIC on Samos, originally designed to hold less than 700. This is forcing many to stay in flimsy tents and makeshift shelters. This is likely to become a serious concern if not addressed before winter sets in. People in need of medical attention are being forced to queue for hours before receiving treatment."[103] A number of media reports highlight that the situation has further deteriorated in September 2018.[104]

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[94] MSF, *Briefing Note: Health and Protection conditions in Moria hotspot, op.cit*., p. 2.
[95] MSF, MSF Brief: *Health Needs of Children in Lesvos*, September 2018, See Annex III., p. 1
[96] http://www.mindigital.gr/index.php/%CF%80%CF%81%CE%BF%CF%83%CF%86%CF%85%CE%B3%CE%B9%CE%BA%CF%8C-%CE%B6%CE%AE%CF%84%CE%B7%CE%BC%CE%B1-refugee-crisis/3054-national-situational-picture-regarding-the-islands-at-eastern-aegean-sea-09-10-2018.
[97] MSF, *Health Needs of Children in Lesvos,* September 2018, *op. cit.,* p. 3
[98] GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders,* 25 May 2018, *op. cit.*, p. 32-34.
[99] UNHCR, *Factsheets*, *Factsheet - Aegean Islands*, 1-30 June 2018, *op. cit.*
[100] UNHCR, *UNHCR urges Greece to address overcrowded reception centres on Aegean islands*, 31 August 2018, available at*: http://www.unhcr.org/news/briefing/2018/8/5b88f5c34/unhcr-urges-greece-address-overcrowded-reception-centres-aegean-islands.html*.
[101] UNHCR, *Factsheets*, *Factsheet - Aegean Islands*, 1-31 March 2018, *op. cit.*
[102] UNHCR, *Factsheets*, *Factsheet - Aegean islands*, 1-30 June 2018, *op. cit.*
[103] UNHCR, *UNHCR urges Greece to address overcrowded reception centres on Aegean islands,* 31 August 2018, op. cit.
[104] CGTN.com, *Samos refugee camp in Greece: Rodents, snakes and rotting food*, 19 September 2018, available at: https://news.cgtn.com/news/3d3d674e336b6a4d7a457a6333566d54/share_p.html; Kathimerini.gr, *Samos island has its own "Moria"*, 30 September 2018, available at: http://www.kathimerini.gr/987348/interactive/epikairothta/ereynes/exei-kai-h-samos-th-dikh-ths-moria.

"The refugee camp on the small island of Samos, built with a maximum capacity of 700, currently hosts close to 4,000 asylum seekers. A former military installation on a hill overlooking Vathy, the capital of Samos (population 6,000), the camp has reached a breaking point with tents and makeshift shelters spilling out deep in the forest. Women, children and men live in squalid conditions, with no running water, amid rotting food, stacks of empty plastic bottles, rodents and even snakes. They spend their days drifting into nothingness, on their mobile phones, in line for hours to get the daily meals provided by the Greek Army inside the camp. Fights there break out almost daily. Each new arrival gets a bundle with a foam mat and a sleeping bag. If there is space, they will be escorted to a tent. If not, they will have to find a spot to settle."[105]

46. A dearth in shelter provision as a result of overpopulation was also apparent in 2017 where, during the summer, families were kept in a shaded open space, many sleeping on the ground.[106] As MSF reports "there was no segregation between men, women and children" and "the system for screening and identifying vulnerable people broke down and people were unable to access healthcare for days or longer, despite severe health conditions."[107]

The family is living in a tent, at the RIC of Vial, Chios, between a number of containers and tents, inhabited by single men, next to the camp's fences, with virtually no space to move. Despite the lack of adequate living conditions and the fact that the minor daughter of the family is suffering from phobias with policemen due to her past experiences, the family has to remain there due the geographical limitation imposed against them.

Family of Egyptian nationals with two children aged 12 and 7 years old.

GCR, Situation for minors in Greece: GCR's observations from the field[108]

47. Reports have documented a shortage in food as well as lengthy queues to get food. This exacerbates tensions among inhabitants and provokes violence. To illustrate, in Moria RIC, Lesvos, MSF reports that people sometimes wait for 2-3 hours with many starting to queue at 3 or 4 am in order to ensure they get food for breakfast. Many parents of children, especially single parents, do not always queue for food for fear that waiting in line for food will leave their children exposed to violence and sexual abuse. MSF also reports cases of food being exchanged for sex.[109]

"The violence means our little ones don't get to sleep. […] My family spends all day queuing for food at the camp and all night ready to run – in fear of the fights that break out constantly."

September 2018, Mother living in one of the camps in Greek islands[110]

[105] CGTN.com, Samos refugee camp in Greece: Rodents, snakes and rotting food, 19 September 2018, https://news.cgtn.com/news/3d3d674e336b6a4d7a457a6333566d54/share_p.html
[106] MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, p. 9, available at: https://msf.gr/sites/default/files/msfpublications/msf_report_vulnerable_lesvos_en.pdf
[107] MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, *op. cit.,* p. 3.
[108] GCR, *Situation of minors in Greece: GCR's observations from the field*, 30 July 2018, see Annex I.
[109] MSF: *Health Needs of Children in Lesvos*, September 2018, *op. cit.,* p. 3
[110] Catrine Nye: *Children 'attempting suicide' at Greek refugee camp*, BBC News, 28 August 2018, available at: https://www.bbc.co.uk/news/world-europe-45271194

48. As a result of such deficiencies, UNHCR, in September and October 2017, urged action to ease conditions on Greek islands: "[t]he situation is most critical in Samos. Despite the recent transfer of some 640 people to the mainland from the island, more than 1,900 people remain crammed into an area meant for 700 at the Reception and Identification Centre (RIC) in Vathy. Among them there are more than 600 children as well as pregnant women, serious medical cases and people with disabilities. We are concerned at the growing risks to their health and welfare, due to water shortages and poor hygienic conditions...".[111] According to the agency, several hundred migrant children were sleeping in "small tents in the woods outside the RIC due to the lack of space and adequate services inside (the RIC)". In Lesvos, UNHCR also noted that "tension remains high at the Moria RIC, which has been twice rocked by riots in recent weeks in protest at the slow pace of registration and asylum processing for certain nationalities, as well as the crowded conditions." Once again migrant children were sleeping in makeshift shelters, tents without insulation or heating.[112] UNHCR calls have been repeated in February 2018, June 2018 and August 2018.[113]

49. Notwithstanding UNHCR's call, overcrowding and shortage of material provision continues. In September 2018, the UN Refugee Agency stated that "the situation is worse in islands' reception centres... The dire conditions can have serious consequences for asylum seekers' health, safety and protection, especially for children and other vulnerable people".[114] In November 2018, UNHCR has called the authorities to accelerate emergency measures to address conditions in overcrowded RICs.[115]

IV.2.1.b Shortage in Medical Care

50. Shortages in medical care on the Greek islands are widely documented. According to UNHCR, "across the islands … the low number of staff under the Ministry of Health, in particular doctors and cultural mediators, is not sufficient to help refugees with medical and psychosocial needs".[116] More specifically, a lack of child and adolescent mental health services is reported in the Northern Aegean area.[117] The Commissioner for Human Rights of the Council of Europe has also recently underlined that "[a]ccess to health care services appears to be particularly difficult in the overcrowded reception camps, especially on the Aegean Islands… [t]he number of medical staff working in the RICs is clearly insufficient to meet the needs".[118]

51. Shortage in medical staff along with overcrowding on the Greek islands has led to severe delays in identifying medical and vulnerability issues, in accessing medical care services as well as the asylum procedure. According to MSF, due to overcrowding "[n]ew arrivals

[111] UNHCR, *UNHCR urges action to ease conditions on Greek islands*, 8 September 2017, available at: http://bit.ly/2FSMxEM.
[112] UNHCR, *UNHCR calls for acceleration winter preparations before winter hits*, 1 December 2017.
[113] See UNHCR, *Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands*, 9 February 2018, available at: http://www.unhcr.org/5a7d67c4b?utm_source=PR_COMMS&utm_medium=email&utm_content=UNHCR%20Communication%20Service&utm_campaign=HQ_EN_BriefingNotes_171027; UNHCR, *Top UNHCR Official urges action to tackle overcrowding on Greek islands,* 28 June 2018, available at: http://www.unhcr.org/gr/en/7541-top-unhcr-official-urges-action-tackle-overcrowding-greek-islands.html
[114] UNHCR, Greece, Fact Sheet, September 2018, *op.cit.*
[115] *UNHCR urges Greece to accelerate emergency measures to address conditions on Samos and Lesvos*, 6 November 2018, http://www.unhcr.org/news/briefing/2018/11/5be15c454/unhcr-urges-greece-accelerate-emergency-measures-address-conditions-samos.html?fbclid=IwAR2Yjz7sXgnRId9GNkvGtbCLfMRjtsMCk2poYRYp-H3RHK6z8Ymy3d7idHk
[116] UNHCR, *Factsheet – Aegean Islands*, September 2018, *op.cit,*
[117] United Nations, International Children's Emergency Fund (UNICEF):, *Rapid Assessment of Mental Health, Psycho-social Needs and Services for Unaccompanied Children in Greece*, October 2017, p. 1-2, available at: *https://data2.unhcr.org/en/documents/download/60380*
[118] Council of Europe: Commissioner for Human Rights, Report by Dunja Mijatovic following her visit to Greece from 25 to 29 June 2018, CommDH(2018)24, 6 November 2018, https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatov/16808ea5bd, paras. 41-42.

[…] have to wait for up to 4 months for their medical and vulnerability screening with the governmental healthcare provider, Keelpno."[119]

52. MSF has warned that in Lesvos, as in much of Greece, vulnerable people's health and well-being are being put at risk by a grossly deficient vulnerability screening system and policies aimed at returning as many people as possible to Turkey.[120] Indeed, in 2017 and according to the organisation, the system for screening and identifying vulnerable people in Lesvos broke down and people were unable to access healthcare for days or longer, despite severe health conditions.[121] The capacity to identify and screen for medical and vulnerability issues as well as providing primary health care seems to be as limited as ever with MSF reporting that only four medical actors are currently present in Lesvos, the majority of whom are volunteer organisations, not always operational due to volunteer staff shortages. This insufficiency is set to continue since Keelpno is planning to reduce their, already small, team on Lesvos by 2 psychologists and 3 nurses.[122]

53. On other Greek islands, namely Kos and Leros, UNHCR has also reported low numbers of doctors, which results in considerable delays to vulnerability assessments[123] and a limited provision of primary healthcare.[124]

54. Respectively, in Vathy RIC on Samos, the provision of medical services, including medical staff, is reported to be below needs.[125] According to the medical coordinator of Keelpno in the RIC, who is the only doctor at the camp and supported by a small team of nurses, social workers and psychologists, "the situation is intolerable for everyone, for those who live at the camp, for those who work there and also for the locals". [126]

55. Medical services, specifically for migrant children, are near breaking point. Indicative of this are a doubling of demands for paediatric services in 2018 in Lesvos and MSF medical staff treating over 100 children a day but still turning approximately 20% of patients away. In July 2018, MSF referred about 40 patients to the hospital, including many children with very serious health problems. The hospital certified that they must be transferred to Athens for medical reasons – however, as of September, most remain on the island.[127] Human Rights Watch has also recently reported cases of migrant children being denied care in hospitals due to understaffing and a lack of medical resources on the Greek islands.[128] A similar shortfall in mental health services has been felt with patients (including migrant children) waiting three to six months for appointments with psychiatrists.[129]

56. The shortage of medical facilities and resources has a debilitating effect on the migrant population on the Greek islands, many of whom have lived through extreme violence and traumatic events. Physical and mental illnesses are often aggravated or even caused by the conditions on the islands, as MSF notes "the severe overcrowding, appalling living conditions and the reduction in the provision of medical care, including mental health care,

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[119] MSF, *Briefing Note: Health and Protection conditions in Moria hotspot, op.cit*., p.2.
[120] MSF, *Confronting the mental health emergency on Samos and Lesvos Why the containment of asylum seekers on the Greek islands must end*, *op.cit.,* p. 12.
[121] *Ibid.*, p.3
[122] MSF, *Briefing Note: Health and Protection conditions in Moria hotspot, op.cit*., p. 1.; See, MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 2.
[123] UNHCR, *Factsheet - Aegean islands*, 1-30 April 2018, *op. cit.*
[124] UNHCR*, Factsheet - Aegean islands*, 1-30 June 2018, *op. cit.*
[125] Kathimerini.gr, *Samos island has its own "Moria", op. cit.*
[126] CGTN.com, Samos refugee camp in Greece: Rodents, snakes and rotting food, 19 September 2018*, op. cit.*
[127] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 3
[128] Human Rights Watch (HRW), *Greece: Children Blocked from Health Care*, 1 August 2018, available at: https://www.hrw.org/news/2018/08/02/greece-children-blocked-health-care.
[129] HRW, *Greece: Children Blocked from Health Care*, 1 August 2018, *op. cit.*; MSF, *Confronting the mental health emergency on Samos and Lesvos*, *op. cit.* p. 6.: According to this report in August 2017, a psychiatrist in a hospital in Lesvos stopped taking new appointments altogether.

are creating a deterioration of the health and well-being of the people trapped on the island."[130]

> 'Life in the camp is not good, when there are fights between people and the police, the police used tear gas. The environment in Moria makes people sick, even the children, the food is not good, people are frustrated and fight at the food line, if you miss your turn, you do not get your food and water….All the children in Moria, they are always sick, coughing, when they eat they vomit all time, for me it makes me angry because my little sisters and brothers are always sick because of this environment. I am always angry because of this.…I get nightmares, my little brother gets nightmares, I remember the war before, here we are sleeping in crowded and small places, this reminds me of the war, and it is also dark.'
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> **12 year old Syrian girl,** Moria camp, Lesvos, June 2018.[131]

> "Moria camp is both unsafe and wholly unhealthy, especially for children….Every day we treat many hygiene-related conditions such as vomiting and diarrhea, skin infections, and other infectious diseases, and we must then return these people to the same risky living conditions. It's an unbearable vicious circle."
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> **Declan Barry, MSF medical coordinator, 4 May, 2018**

IV.2.2 Greek Islands: The Impact of Living Conditions on Migrant Children's Physical and Mental Health

57. Overcrowding and scarcity of shelter, basic care and medical facilities have led to migrant children living in conditions of destitution and squalor.[132] The effect on their (and the general population's) physical and mental health is dire. As underlined by Médecins du Monde, "[a] direct consequence of the camp based accommodation is the cross-cutting deterioration of the health status & psychological condition of all different groups of population." [133] According to data gathered by the organisation and their field assessment activities, "there is a significant deterioration in mental health for refugees and migrants due to the harsh living conditions and their restriction of movement on the islands". [134] In addition to medical actors, Greek courts have also recognised that the conditions on the Greek islands directly affect a person's integrity and health. In February 2017, in a case supported by GCR, the Misdemeanour Court of Thessaloniki ruled that the accused persons who had left Leros island in violation of their geographical restriction should be acquitted. According to the Court, their act to leave Leros and consequently to violate the geographic restriction was committed in order to safeguard their personal health and integrity and thus the conditions of a state of emergency pursuant to Article 25 of the Criminal Code were met. Likewise, in February 2018, in a case also supported by GCR concerning an infringement of the geographical restriction on Lesvos and the obligation to reside in the RIC of Moria, the Administrative Court of Piraeus ruled that the infringement

[130] MSF, *Briefing Note: Health and Protection conditions in Moria hotspot, op.cit*., p 2.
[131] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 4
[132] GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*, p. 32-34.
[133] MdM, *Snap Shot, Greek Islands*, June 2018, available at: https://mdmgreece.gr/app/uploads/2018/07/SnapShot_EN-1.pdf.
[134] *Ibid.*

of the geographical restriction was due to a threat against the physical integrity of the applicant given the conditions prevailing at the time of his stay in the hotspot.[135]

58. Living conditions at the RIC facilities can have serious consequences for the health of migrant children. The NGO Refugee Rights Europe has highlighted that families living in Lesvos are residing in tents close to showers "and when these are in use, dirty water leaks into their tent, ruining their limited possessions and creating an unhygienic sleeping space."[136] These conditions have culminated in a Decision given by the Prefecture of the North Aegean in September 2018 who noted that due to, *inter alia*, an uncontrolled leak of sewage the situation in Moria RIC "was considered a hazard to public health and the environment in general." The Prefecture further underlined that "severe overcrowding… result[s] in a grave hazard of disease transmission" and that "hygiene conditions of living areas…[are] poor."[137] Such deficiencies in sanitation and hygiene are compounded by shortages in water for toilet and shower facilities, leading to the spreading of diseases, scabies and skin infections. Indeed, Save the Children have noted that many migrant children living on the Greek islands are dirty and have developed rashes and skin problems as a result of the shortage of bare basics. Moreover, they are often stripped of their dignity by having to fight for the most simple of material resources.[138]

59. MSF reports that in Moria they are treating around 120-150 children a day and that the most common morbidities treated are largely linked to the appalling living conditions in the RIC: respiratory tract infections, lice, watery diarrhoea or scabies.[139] As stated "the mix of unhygienic and dangerous living conditions which increase the rate of childhood illnesses, the obstacles to providing appropriate recovery conditions for sick children, and the inadequate access to healthcare services, represent a perfect storm for the health and well-being of children."[140]

60. These living conditions alongside pervading tensions and extreme violence amongst and between migrants on the Greek islands have serious repercussions on the mental well-being of children, who have already suffered from trauma in their countries of origin or transit. NGOs have reported that children are virtually trapped in trauma on the Greek islands, with conditions triggering memories of insecurity and brutality elsewhere[141] and, as a consequence, children re-enacting or mimicking violent and aggressive behaviour that they have witnessed.[142]

61. Preventative health care for children is also insufficient. According to MSF, in Moria RIC camp children are not receiving the required vaccinations to protect them against the common preventable childhood illnesses.[143]

62. In light of the particularly acute physical and mental needs that migrant children have, it is particularly worrying that medical or psychological care on the Greek islands is at such a premium. Indeed, and as stated above, the general inadequacy of the care compared to the actual needs of the population has been continuously documented with cases of migrant children being turned away from care, not being referred to relevant services and waiting

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[135] AIDA, *Country Report on Greece 2017*, *op. cit.*, p. 131.
[136] RRE, *An island in despair,* June 2018*, op. cit.* p .10.
[137] Prefecture of North Aegean, Decision 1962/07 September 2018.
[138] Save the Children:,: *A tide of self-harm and depression*, 2017, p. 4, 8, 11-12, available at: https://www.savethechildren.es/sites/default/files/imce/final_report_eu_turkey_deal_a_tide_of_self-harm_and_depression_march_20171.pdf .
[139] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 3.
[140] MSF, Overcrowded, dangerous and insufficient access to healthcare in Moria, 4 May 2018, available at: https://www.msf.org/greece-overcrowded-dangerous-and-insufficient-access-healthcare-moria.
[141] Human Rights Watch (HRW), "Without Education They Lose Their Future" Denial of Education to Child Asylum Seekers on the Greek Islands, July 2018, p. 43, available at: https://www.hrw.org/sites/default/files/report_pdf/greece0718_web.pdf
[142] *Ibid*.
[143] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 5

months for medical and psychosocial and psychological services.[144] These deficiencies illustrate the many significant obstacles which exist on the Greek islands preventing residents from accessing the medical care they need and, in turn, creating a vicious cycle of further physical and psychological illnesses.

63. An additional reported obstacle is the lengthy and cumbersome administrative procedures to remove migrant children from the Greek islands in order for them to receive care, which is more adequate or available on the mainland.[145] Such transfer delays to the mainland compounded with the living conditions on the islands have, therefore, meant that migrant children are not being or are being inadequately treated, with the inevitable consequences of physical deterioration and psychological distress following as a result.[146]

64. As such, there is an increase in aggressive behaviour amongst migrant children, of self-harm and suicide attempts and there is an entire absence of optimism amongst many migrant children with staff noting that some migrant children have turned to substance abuse as a coping mechanism.[147] As MSF stated in September 2018 "MSF teams are witnessing an unprecedented health and mental health emergency amongst the men, women and especially children kept in Moria refugee camp, on Lesvos, Greece… MSF teams are seeing multiple cases each week of teenagers who have attempted to commit suicide or have self-harmed. Teams are also responding to numerous critical incidents as a result of violence, child self-harm and the lack of access to urgent medical care, highlighting significant gaps in the protection of children and other vulnerable people. In group mental health activities for children (aged between six and 18 years) between February and June this year, MSF teams observed that nearly a quarter of the children (18 out of 74) had self-harmed, attempted suicide or had thought about committing suicide. Other child patients suffer from panic attacks, anxiety, aggressive outbursts, constant nightmares or voluntarily become mute. "These children come from countries that are at war, where they have experienced extreme levels of violence and trauma. Rather than receiving care and protection in Europe, they are instead subjected to ongoing fear, stress and episodes of further violence, including sexual violence", [148] says Dr Declan Barry, MSF's medical coordinator in Greece. "Moreover, the environment in the camp is unsafe and unsanitary, and as a result we see many cases of recurrent diarrhoea and skin infections in children of all ages. At this level of overcrowding and unsanitary conditions, the risk of outbreaks of disease is very high."[149]

65. Actors documenting the physical and mental health emergency unfolding on the Greek islands have noted the risk of new vulnerabilities for unaccompanied migrant children being created and/or re-traumatisation due to the totally inadequate health care resources, including health-care staff, doctors, basic medical equipment[150] and psycho-social services.[151] As evidence of this, Refugee Rights Europe has stated that nearly 74% of children interviewed on Lesvos have suffered from a health problem whilst on the island

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[144] HRW, "Without Education They Lose Their Future" Denial of Education to Child Asylum Seekers on the Greek Islands, July 2018, *op. cit.,* p. 43

[145] HRW, *Greece: Children Blocked from Health Care*, 1 August 2018, *op. cit.*

[146] For example, Refugee Rights Europe has reported that medicine given for serious injuries or illnesses is restricted to painkillers. Beyond that, persons have to buy their own medicine which can be costly. See: RRE, *An island in despair – documenting the situation for refugees and displaced people in Lesvos, Greece*, June 2018, *op. cit*., p. 16

[147] *Ibid*.

[148] MSF, *"Self-harm and attempted suicides increasing for child refugees in Lesvos Children in Moria camp",* 17 September 2018, available at: https://www.msf.org/child-refugees-lesvos-are-increasingly-self-harming-and-attempting-suicide.

[149] *Ibid*.

[150] Council of Europe – Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Preliminary observations made by CPT which visited Greece from 10 to 19 April 2018, CPT/Inf(2018)20, Strasbourg, 1 June 2018, para. 21, available at: http://www.refworld.org/docid/5b110d824.html; See also GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*

[151] CPT, *Report to the Greek Government on the visits to Greece from 13 to 18 April and 19 to 25 July 2016*, *op. cit.,* para.

with 47% believing that their illnesses were caused by the insalubrious conditions on the island.[152] A high number of self-harming and suicide attempts are regularly reported.[153]

> "In the therapeutic groups, we are often witness of the improvement of the psychological state of children. But we are also witnessing some sudden inexplicable deterioration: kids, who were proactive, smiling, clever and playful, have started showing deep sadness/depression, anger and passivity, not interested in playing anymore.
>
> "Starting this work, we did expect a lot of old trauma: coming from countries of conflict, family issues, and incidents that happened during the journey. Though, currently we are experiencing that our work is dominated by structural abuse happening now, in Moria. And what we know is only the top of an iceberg as many people don't reach out"
>
> MSF Mental Health Staff, Lesvos, June 2018[154]

> The Moria camp is horrible place, it is unsafe for women and children, there are a lot of fights, it is not clean and they don't have enough space for everyone. If you stay here for a long time it amplifies whatever mental problems you had before, if you were depressed you will be more depressed because there is nothing that can give you hope or happiness in the camp. Even for people who had no problems before, when you first arrive you have hope that I will get out eventually, but after a months you lose hope and if you lose hope there is really nothing else for you….I still have hope, every morning I make sure I say to myself, stay strong, try to stay happy or be as happy as you can during the day, eventually it will pass, this is just a phase, things will be better…..When people lose hope, they get angry, they pick on people smaller than them, they let go of their humanity to survive. You can't survive in this camp if you are weak not because of other people but because of the situation.
>
> **15-year-old Iraqi girl,** Moria Camp, Lesvos. June 2018[155]

> It is harrowing and incredibly disempowering to see the mental health status of the asylum seekers in Lesvos progressively getting worse. We do our best to help those that we can, but the situation they are in is so horrendous. We hear of 15 suicide attempts every month in Moria – it's an unbearable situation.
>
> MSF psychologist, Lesvos, September 2017[156]

66. Even if conditions in Lesvos have constantly been in the spotlight, substandard and overcrowded living conditions prevail to a similar extent on the other North Eastern Aegean islands. As a result, the physical and mental health of children living there is also deteriorating. For example, and as stated by a UNHCR protection officer on Samos island in September 2018 "The fact that many of these people have resided in this site for over six months has also aggravated the situation, even for those who didn't have a condition,

[152] RRE, *An island in despair,* June 2018, *op. cit.* p. 24-25.
[153] MSF, *Confronting the mental health emergency on Samos and Lesvos Why the containment of asylum seekers on the Greek islands must end*, *op.cit*., p. 10.
[154] MSF, *Briefing Note: Health and Protection conditions in Moria hotspot, op.cit*., p 2.
[155] MSF, *Health Needs of Children in Lesvos,* September 2018, *op. cit.,* p.4.
[156] MSF, *Confronting the mental health emergency on Samos and Lesvos Why the containment of asylum seekers on the Greek islands must end*, *op. cit.,* p. 10.

medical or psychological, eventually the deteriorating living conditions have aggravated their mental health and their physical health".[157] As reported by UNHCR in November 2018, "[a]t the Vathy RIC on Samos, the situation has been worsening… New arrivals are left having to buy flimsy tents from local stores, which they are pitching on a steep slope in adjacent fields. This offers little protection from the cold weather, without electricity, running water or toilets. There are snakes in the area, and rats are thriving in the uncollected waste. Many of the asylum-seekers arrive in Greece in a vulnerable state, but even those who turn up at the RIC in good condition soon find themselves suffering from health problems. A single doctor per shift provides medical care to the entire population and often only the most urgent cases get seen. Doctors at the local hospital are also overwhelmed…On the other islands, conditions are only marginally better, with the RICs on Chios and Kos close to double their intended capacities". [158]

> The family arrived on Samos in 2017. They remained in the Samos RIC in overcrowded and deplorable conditions. The 7 year old daughter of the family has been examined by the psychiatrist of the Samos General Hospital, in December 2017. In his medical opinion the psychiatrist, among other points, stressed "reported behavioral disorders - … The psychological condition of the child is burdened… by the difficult living conditions and the prolonged stay at the Reception Center (RIC) … She is in need of a child psychiatrist assessment and treatment of the clinical symptoms, which cannot take place is Samos as no child psychiatrist is present in Samos Hospital".
>
> Family of Iranian applicants with a 7-year-old girl.[159]

67. The impact of conditions is compounded by the trauma that migrant children have faced in their countries of origin. As outlined in IV.1.1.b. many of the migrant children trapped on the islands come from Afghanistan, Syria and Iraq and have experienced many forms of violence and trauma in their lives. It is, therefore, highly alarming that there has been no provision of mental health services to meet this very significant need. The child population is severely traumatised, and the unsafe and fearful conditions in which they live in render the traumatisation extreme.[160]

> "Children face health and protection risks including severe psychological distress. Violence, domestic abuse, protests and unrest are daily occurrences. Access to basic sanitation and hygiene is inadequate […] The majority of children and young people I met have dealt with the trauma of war and then been forced to flee their homes. Now they are living in miserable conditions, with no end in sight. Many are in severe emotional distress"
>
> UNICEF, 21 September 2018[161]

IV.2.3. Greek Islands: Protection Risks

[157] CGTN.com, Samos refugee camp in Greece: Rodents, snakes and rotting food, 19 September 2018, *op. cit.*
[158] UNHCR urges Greece to accelerate emergency measures to address conditions on Samos and Lesvos, 6 November 2018, http://www.unhcr.org/news/briefing/2018/11/5be15c454/unhcr-urges-greece-accelerate-emergency-measures-address-conditions-samos.html?fbclid=IwAR2Yjz7sXgnRId9GNkvGtbCLfMRjtsMCk2poYRYp-H3RHK6z8Ymy3d7idHk
[159] GCR, Situation of minors in Greece: GCR's observations from the field, 30 July 2018, see Annex I, Medical Opinion on file with the author.

[160] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 5
[161] UNICEF, Refugee and migrant children arriving on Greek Islands up by one-third in 2018, 21 September 2018, available at: https://www.unicef.org/press-releases/refugee-and-migrant-children-arriving-greek-islands-one-third-2018-unicef

68. Overcrowding, ill-suited accommodation and a shortage of shelter on the Greek islands[162] increase the risk to children's safety and protection. According to Refugee Rights Europe, over 78% of the children interviewed in Lesvos never felt safe, primarily due to the physical and verbal abuse that they have received from other refugees and the local population.[163]

69. Action Aid and MSF reported that overcrowding means that single women and female heads of households and their daughters are often placed in tents with unknown men. Other shortcomings in infrastructure and overall management of the site also lead to a feeling of fear and to sexual and gender based violence (hereinafter "SGBV"). For example, as a result of a lack of sufficient lighting and adequate safety and security at night in Moria, adult women ask NGOs for diapers so that they and their daughters do not have to walk alone to the toilets at night out of fear of being assaulted.[164] In September 2018, UNHCR stressed that "[s]exual harassment and violence, including against men and boys, is a major risk in the RICs... The limited number of specialized services, interpreters and police officers hinders the management of cases and perpetuates feelings of insecurity among the refugee population".[165]

70. Moreover, the risk of violent outbreaks, attacks and sexual exploitation is particularly high due to different ethnic groups placed into congested areas. This results in a lack of security,[166] limited access to services (health and education), poor living conditions (ranging from accommodation to the quality and quantity of the food) and scarce livelihood opportunities[167] in a number of camps.[168]

71. As a result, extreme violence, including SGBV, occurs frequently, with 65% of SGBV across the Greek territory taking place on the islands between July 2016 and June 2017. The lack of an adequate response on the part of the authorities in terms of services including an absence of interpreters[169] and case management[170] in many accommodation facilities only serves to worsen SGBV and increases the tendency of victims not to report violence.[171] Moreover, the unavailability of adequate night patrols, the entire absence of security personnel in the evenings and at night and dimly lit toilet and shower areas are also long-standing issues on the islands. Indeed, such conditions add a heightened risk of SGBV within the RICs and areas adjacent to it.[172] To illustrate, "[B]athrooms and latrines are no-go zones after dark for women or children, unless they are accompanied. Even bathing during daytime can be dangerous. In Moria, one woman told […] that she had not

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[162] See more, Council of Europe - Commissioner for Human Rights, *Greece: Immediate action needed to protect human rights of migrants*, 29 June 2018, available at: *https://www.coe.int/en/web/commissioner/-/greece-immediate-action-needed-to-protect-human-rights-of-migrants.*

[163] RRE, *An island in despair,* June 2018*, op. cit.*, p 23.

[164] A Joint NGO roadmap for more fair and humane policies: *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, *op. cit.*, p. 9.; MSF: *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 3

[165] UNHCR, Greece, Factsheets, September 2018, *op. cit.*

[166] Harvard University - FXB Center for Health and Human Rights, *Emergency within an emergency: The growing epidemic of sexual exploitation and abuse of migrant children in Greece*, 13 April 2017*.,* p. 17. and 19.., available at: https://reliefweb.int/report/greece/emergency-within-emergency-growing-epidemic-sexual-exploitation-and-abuse-migrant..

[167] UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: *http://www.refworld.org/docid/595675554.html*.

[168] UNHCR, *Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands*, 9 February 2018, *op. cit.*; Harvard University:- FXB Center for Health and Human Rights,: *Emergency within an emergency: The growing epidemic of sexual exploitation and abuse of migrant children in Greece*, 13 April 2017, *op. cit.,* p.17.

[169] UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, *op.cit.* p. 11

[170] A Joint NGO roadmap for more fair and humane policies, *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, *op. cit.*, p. 9.

[171] UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, *op.cit.* p. 7

[172] UNHCR, *Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands*, 9 February 2018, *op. cit.*

taken a shower in two months from fear… The actual number of incidents is therefore likely to be much more higher than reported."[173] As a result, migrant children are, in practice, prevented from accessing basic facilities, adding another layer to the destitution and deprivation that they already face.

> When you are underage here you have no autonomy. Some people have families who send some money, and the rest have to do dirty work to make money. I have seen a lot – things that I didn't want to see….some cleaning garbage, the selling and buying of drugs, of yourself. I've seen it all here. If any person here is not able to take care of yourself or fend for yourself, you will very quickly become addicted or you'll be abused or you'll end up selling your body very, very soon.
>
> **17 year old Afghani boy,** unaccompanied minor, Moria camp, Lesvos, Greece, August 2018[174]

72. According to MSF, the abuse of migrant children is particularly rife in Moria.[175] Since January 2018, MSF in Moria clinic has treated 21 victims of rape and sexual abuse, of which nine cases were children, including a case of sexual abuse of a five-year-old child.[176] In five cases the violence against the children took place in their own tents.[177] In addition, MSF reports providing specialised psycho-social support to 20 children impacted by violence including assaults, harassment and humiliation in Lesvos in the 6-months period.[178]

73. The prolonged stay of the newcomers under substandard conditions further results in great tensions among the various groups that are trapped for months, some of them exceeding a year, on the islands without any timeframe regarding their future prospects.[179] This tension leads to different forms of violence, self-harm and sexual violence which affects the physical and mental health of persons remaining on the Greek islands.[180] As MSF has recently reported "[i]n their island prison on Lesvos, they are forced to live in a context that promotes frequent violence in all its forms – including sexual and gender-based violence that affects children and adults. This constant violence serves as a recurrent trigger for the development of severe psychiatric symptoms. The increase in the number of arrivals we're now seeing on the island, in combination with the disproportionately low departure rate to the mainland, is further exacerbating these conditions and contributes to the growing mental health burden of these people."[181]

> "No one guards the camp. Even the fence has holes in it and anyone can go in and out through them including dangerous individuals who don't live here and whose aim is to sell drugs or do other bad things."

[173] *Ibid.*
[174] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 4.
[175] MSF, *Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018*, op. cit.*
[176] *Ibid*.
[177] MSF, *Health Needs of Children in Lesvos,* September 2018*, op. cit.,* p. 3 and 5.
[178] MSF, *Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018*, op. cit,* p.3
[179] See, AIDA: *Country Report on Greece 2017*, *op. cit.,* p. 130
[180] UNHCR, *UNHCR urges action to ease conditions on Greek islands*, 8 September 2017, *op. cit.* See more, for example, in December 2017, following a fight in the RIC of Lesvos, 15 persons have been transferred injured to the hospital. One of them was badly injured with a knife on the chest; see Huffington Post, 'Νύχτα έντασης στη Μόρια. Συγκρούσεις, ΜΑΤ, φωτιές και τραυματίες', 20 December 2017, available in Greek at: http://bit.ly/2F0enhe.
[181] MSF, Moria is in a state of emergency, 17 September 2018, available at: https://www.msf.org/moria-state-emergency.

> Unaccompanied child on one of the Greek islands, April [182]
>
> Drug selling, riots, interethnic, and interpersonal fights have become commonplace, with one such fight occurring in broad daylight.
>
> Greek Council for Refugees, May 2018[183]

74. At the same time, police violence is also reported. For example, close to a quarter (23.1%) of people surveyed on Samos in a study undertaken by MSF had experienced violence in Greece. Half of those cases of violence were described as beatings, 45% of which had been committed by the police or army.[184] In particular, the European Committee for the Prevention on Torture (hereinafter "CPT") has reported police violence leading to hospitalisation of unaccompanied migrant children after fights had broke out in 2016 in Moria.[185] Taking into account the extremely vulnerable situation of unaccompanied migrant children, reports of police brutality which take place against them is particularly concerning.
75. Indeed, for unaccompanied migrant children on the islands, "[b]oth GCR and MSF have highlighted that notwithstanding allegedly guarded and separate sections for unaccompanied migrant children in RICs and their legal guardianship being provided by the Public Prosecutor's Office, these children have suffered sexual harassment, humiliation, assaults and sexual abuse".[186] This is unsurprising since these "safe zones" are comprised of "large "rubb halls" with minimal privacy, internal partitions made from blankets or in containers that do not have locks."[187]
76. The vulnerability of the minors has also been highlighted by the CPT in Samos RIC where "no designated section or separated "safe place" for unaccompanied migrant children have been maintained."[188] In addition, owing to "the open nature of the center, both unaccompanied minors and local or international volunteers were free to go inside and leave the camp at day-time without any checks of possible unregistered persons." Such practice is clearly demonstrative of protection failings for unaccompanied migrant children.[189]

> "Cynthia" 18, from Cameroon, said a male asylum seeker in Moria threatened and assaulted her repeatedly because she identifies as a lesbian and wears clothing that doesn't conform to gender norms. "He once pushed me against a tree by the throat," she said. "I haven't reported it. I'm afraid . . . If I report it to the police, maybe they won't do anything, [but] if he is reprimanded, his friends will come and hurt me."[190]

> "It's really hard for the unaccompanied children...to survive. It's the survival of the fittest in there[..]."*Source: "Emergency within an emergency", Harvard University's report interview with a MSF worker on the Greek islands, April 2017*

[182] Harvard University - FXB Center for Health and Human Rights, *Emergency within an emergency: The growing epidemic of sexual exploitation and abuse of migrant children in Greece*, 13 April 2017, *op. cit.,* p.13.
[183] GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*, p.33.
[184] See, AIDA: *Country Report on Greece 2017, op. cit*., p. 130.
[185] CPT, *Report to the Greek Government on the visits to Greece from 13 to 18 April and 19 to 25 July 2016*, *op. cit.,* para. 39.
[186] GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*, p 35 and 39; MSF, *Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018, *op. cit.*
[187] MSF, *Health and Protection Conditions in Moria Hotspot, Lesvos*, June 2018, *op. cit.*
[188] CPT, *Report to the Greek Government on the visits to Greece from 13 to 18 April and 19 to 25 July 2016*, *op. cit.,* para. 40.
[189] *Ibid*.; See more, Council of Europe - Parliamentary Assembly: Resolution 2174(2017) on *Human rights implications of the European response to transit migration across the Mediterranean*, 28 June 2017, paras. 2 and 5.
[190] Human Rights Watch (HRW): *Misery for Women and Girls in Greece's Island Paradise*, 14 February 2018, available at: https://www.hrw.org/news/2018/02/14/misery-women-and-girls-greeces-island-paradise.

77. In sum, and as stated by UNHCR in August 2018 "children, including hundreds of unaccompanied boys and girls, are particularly at risk" due to the levels of overcrowding, limited access to services, woefully inadequate sanitary facilities, fighting amongst frustrated communities, rising levels of sexual harassment and assaults and the increasing need for medical and psycho-social care.[191] To this end "UNICEF is advocating for all vulnerable refugees and migrants, including children, on the Greek islands to be immediately transferred to the mainland and to appropriate accommodation facilities. This is essential, so that all refugees and migrants – especially children – can access adequate protection from violence and abuse, as well as essential health and education services".[192]

IV.2.4. Living Conditions for Unaccompanied Migrant Children in Greece

78. The shortage of tailored reception facilities for unaccompanied migrant children in Greece has, as described in section IV.1.2, led to them either living in sub-standard conditions or becoming homeless and destitute or being placed in detention. As the data demonstrates in IV.1.2, the majority of unaccompanied migrant children deprived of a place in age-appropriate shelters, face homelessness and live on the streets or in precarious conditions, are subject to detention or remain for prolonged periods in overcrowded RIC facilities on the islands.
79. The situation of unaccompanied migrant children living on the streets is of particular concern. These children are forced to survive alone whilst facing extreme poverty, destitution and an increasing number of protection risks, including violence and exploitation. As of September 2018, over 800 unaccompanied migrant children were either homeless or had no known accommodation status. Reports of unaccompanied migrant children living on the streets, in squats and/or abandoned buildings in Athens and Thessaloniki[193] is clear evidence of a failure in children protection systems.[194]

Case of N.A.B.: 16 years old, Afghan male with a chronic eye condition

N.A.B. arrived in Greece from the northeast Greek-Turkish land borders, without undergoing reception and identification procedures. In March 2018 he managed to register his asylum application together with a family reunification request based on the Dublin Regulation III with the support of a volunteer, as at the time he did not have any type of legal support. With the support of GCR, on 26 April 2018 an application for housing was made to EKKA. While waiting to be referred to a proper accommodation, he remained homeless living on the streets. On 06 July 2018, he was attacked while sleeping in Victoria square in Athens, where he had found temporary refuge for the night. He was robbed and severely bitten in the face, back and torso. EKKA was once more contacted, so as to proceed with his placement to a shelter as a

[191] UNHCR, *UNHCR urges Greece to address overcrowded reception centres on Aegean islands*, 31 August 2018, *op. cit.*
[192] Euronews, *In their words: Children and young refugees living in camps on Greek islands*, 1 October 2018, https://www.euronews.com/2018/11/01/in-their-words-children-and-young-refugees-living-in-camps-on-greek-islands-view?fbclid=IwAR1gW-c6EDFWaY3XBxgNnA9ve1DsiaQldCiRPFyuVKc4lG5OsLHMaSbrwXc.
[193] UNICEF, *Rapid Assessment of Mental Health, Psycho-social Needs and Services for Unaccompanied Children in Greece,* October 2017, *op. cit.*; Harvard University - FXB Center for Health and Human Rights,: *Emergency within an emergency: The growing epidemic of sexual exploitation and abuse of migrant children in Greece*, 13 April 2017, *op. cit.*; *According to METAdrasi reports, fifteen percent of unaccompanied minors in Greece are homeless*, The Greek Observer, 13 July 2018, available at: http://thegreekobserver.com/greece/Article/46547/according-to-metadrasi-reports-fifteen-percent-of-unaccompanied-minors-in-greece-are-homeless/
[194] The UN Human Rights Committee found conditions in Greece for an unaccompanied migrant child to be in violation of Articles 7 and 24 of the International Covenant on Civil and Political Rights, prohibiting torture or cruel, inhuman or degrading treatment and obliging the State to provide measures of protection for the child respectively. See also: United Nations Human Rights Committee, *O.Y.K.A. v. Denmark*, Communication No. 2770/2016, CCPR/C/121/D2770/2016, 30 November 2017. The Committee found the proposed removal of the applicant by Denmark to be in breach of these Articles given that he had lived on the streets in Greece for several months and had not received any assistance from the Greek authorities.

matter of urgency. His allocation to a shelter was ultimately made possible on 13 July 18, i.e. about 3 months after the initial referral.

Case of A.N.G., age 17 Iranian male

A.N.G. entered Greece in September 2017 (16-years old, then) through the Evros region. Without undergoing reception and identification procedures or benefitting from any reception conditions for newly arrived persons, he came directly to Athens. He had to remain homeless for a total of approximately 4 months. As he was already facing a mental health problem (borderline personality disorder), the precarious situation in which he remained contributed to the deterioration of his health. In particular, while homeless, he became a victim of a racist attack and robbery, which resulted in a minor injury for which he received medical treatment. With severe symptoms of anxiety and depression becoming all the more evident, the boy started expressing feelings of self-harm and even suicidal urges.

Greek Council for Refugees, Situation for minors in Greece: GCR's observations from the field, August 2018.[195]

80. Moreover, at the end of September 2018, 90 unaccompanied migrant children were placed in 'protective custody' on the Greek mainland. As described in detail below, unaccompanied migrant children can be placed in police stations, pre-removal centres or in the Evros RIC at the Greek-Turkish land border with an order prohibiting them from leaving the RIC and obliging them to remain in it. Placement in these various different locations is otherwise known as "protective custody" and is enforced with a view to their subsequent placement in specific shelters for unaccompanied migrant children. Whilst in protective custody unaccompanied migrant children are held with unrelated adults of the opposite sex,[196] deprived of access to outdoor facilities, recreational or educational activities, interpreters, legal assistance or child-friendly information.[197] These conditions are in direct violation of domestic legislation[198] which provides that unaccompanied migrant children should not be detained with adult detainees and should have access to recreational activities and legal representation.
81. In police stations and pre-removal centres, unaccompanied migrant children have been found to be held in overcrowded cells. For example, the Council of Europe CPT in its recent visit stated that 41 persons, including young children and a baby, were held in less than 2 m^2 of living space per person in Isaakio Police and Border Guard station and 95 foreign nationals including unaccompanied migrant children with single adult men were detained in about 1m2 of living space per person in Fylakio pre-departure centre. As a result, inmates were forced to share mattresses and conditions were found to be filthy, malodorous and hygiene extremely poor.
82. Furthermore, a significant number of them remain for prolonged periods in overcrowded RICs facilities on the islands where due to the situation prevailing there, as described in detail in section IV.2.1 – IV.2.3, they face squalid living conditions, exploitation, violence and on-going protection risks. To illustrate, in Moria RIC in Lesvos unaccompanied

[195] See Annex.
[196] *Ibid.*, p. 75; UNHCR, *Recommendations for Greece in 2017*, February 2017, available at: http://www.unhcr.org/58d8e8e64.pdf.
[197] UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, A/HRC/35/25/Add.2, paras 101-102; GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*
[198] Article 46(10) Law 4375/2016

migrant children "often share shelter with adults" and in Vathy RIC in Samos the designated area for unaccompanied migrant children remains without security.[199]

83. The lack of sufficient reception capacity and inadequate care and resources for unaccompanied migrant children exposes them to dramatic protection risks such as physical violence, smuggling, child trafficking, sexual exploitation, abuse and extreme poverty.[200] Indeed, research undertaken on sexual exploitation and abuse of migrant children in Greece has stated that the main causes for sexual exploitation of unaccompanied migrant children is "the failure of the child protection and welfare system to act as a safety net for children and the prolonged exposure to inhumane living conditions and a protracted and overly burdensome path to legal status."[201] Unaccompanied migrant children's basic needs are, therefore, being manifestly violated in Greece.[202]

84. Sexual abuse of unaccompanied migrant children has been reported in the parks of Athens by UNHCR,[203] while the relevant response by the State authorities have been limited.[204] The United States Department of State have highlighted that "The increase in unaccompanied child migrants in Greece has increased the number of children susceptible to exploitation. Some public officials have been investigated for suspected involvement in human trafficking. Unaccompanied children, primarily from Afghanistan, engage in survival sex and are vulnerable to trafficking."[205]

IV.2.5. The Impact of Living Conditions on Unaccompanied Migrant Children's Physical and Mental Health

85. The living conditions for unaccompanied migrant children in Greece give rise to physical and psychological abuse, which, in turn, has a devastating impact on children's well-being. There is a prevailing sense amongst unaccompanied migrant children that they are stuck in a state limbo, they become hopeless and desperate and, as a result, suffer from psychological illnesses, self-harming and suicide attempts.[206] To illustrate, UNICEF has underlined the severe deterioration in unaccompanied migrant children's mental health as a result of living in destitution on the mainland. Children suffer from depression and anxiety and serious "psychiatric incidents and suicide attempts are on the rise". Reports of unaccompanied migrant children residing in temporary accommodation sites note that they feel particularly unsafe in light of racist attacks, drug use or selling, theft and violent fights

[199] UNHCR, Factsheet, September 2018, *op.cit.*

[200] See more, UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, *op. cit*., para. 60; UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, p. 6-7, available at: http://www.refworld.org/docid/595675554.html; and UNHCR Greece, We debunked some myths about the boys in the parks of Athens, 15 March 2017, available at: http://www.unhcr.org/gr/en/3788-we-debunked-some-myths-about-the-boys-in-the-parks-of-athens.html

[201] Harvard University- FXB Center for Health and Human Rights, *Emergency within an emergency: The growing epidemic of sexual exploitation and abuse of migrant children in Greece*, op.cit., p. p. 25

[202] UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, *op.cit.* p. 6-7. *http://www.refworld.org/docid/595675554.html.*

[203] UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, *op.cit.,* p. 6-7; UNHCR Greece, We debunked some myths about the boys in the parks of Athens, 15 March 2017, *op. cit.*

[204] UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, *op.cit.*

[205] ,http://www.refworld.org/docid/5b3e0b344.html, "The increase in unaccompanied child migrants in Greece has increased the number of children susceptible to exploitation. Some public officials have been investigated for suspected involvement in human trafficking. Unaccompanied children, primarily from Afghanistan, engage in survival sex and are vulnerable to trafficking." United States of America, Department of State, *2018 Trafficking in Persons Report - Greece*, 28 June 2018, p. 203., available at: https://www.state.gov/documents/organization/282798.pdf

[206] UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, A/HRC/35/25/Add.2, *op. cit*., para 63; GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018.

in and around these areas.[207] Moreover, and as described above, living conditions on the Greek islands have a dire effect on children's, including unaccompanied minors, physical and mental health.

86. Detention of unaccompanied migrant children is also a factor aggravating their mental and physical health. The detrimental effect of detention of minors on their mental and physical well-being has been widely documented. The Special Rapporteur on the Human Rights of Migrants, following his visit to Greece, has found that "[unaccompanied minors] are not aware of their reason for detention, of the next steps in the process and of their rights. Most of them face serious mental health issues, with a particularly high number of suicide attempts" and has underlined that "regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development. Even short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development". [208]

IV.3. Procedural Guarantees for Migrant Children

87. Under national, European and international law specific procedural guarantees are accorded to migrant children in order for them to fully benefit from the legal rights and safeguards that they are entitled to on account of their specific circumstances. Amongst such rights is the substantive right of the best interests of the child, which, as detailed in Section V is also a fundamental principle and a rule of procedure under international law. In order for the best interests of the migrant child to be correctly assessed, determined and implemented a contracting State to European and international human rights instruments must have in place, amongst other procedural safeguards, a well-functioning guardianship system.

IV.3.1 Guardianship

88. As recently underscored by this Committee,[209] the appointment of a guardian and effective functioning of the guardianship system for migrant children, especially unaccompanied migrant children, is crucial for their best interests, their protection, well-being, safety and knowledge and understanding of specific procedures and rights. In Greece, as has been repeatedly underlined by international actors, there is a lack of an effective guardianship system. The United Nations Special Rapporteur on the human rights of migrants recommended to the Greek authorities to "address as a matter of priority the issue of unaccompanied minors; [to] develop a substantial and effective guardianship system, ensure guardians underwent the necessary professional training, have the experience, expertise and competence (such as social workers), and are appropriately supported with the necessary resources."[210] The adoption of an effective guardianship system has also been a prevalent theme of the execution of the M.S.S and Rahimi group v. Greece with the Committee of Ministers of the Council of Europe calling on the authorities to put in place a guardianship system guaranteeing the full protection of unaccompanied migrant

[207] UNICEF - REACH, *Children on the Move in Italy and Greece, Report*, June 2017, *op. cit.,* p. 62

[208] UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, *op. cit*., paras. 101-102.

[209] *EUROCEF v. France*, *op. cit.*, paras. 88, 98 and 100.

[210] UN Human Rights Council*, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, A/HRC/35/25/Add.2, 24 April 2017, *op. cit*., para.147

children.[211] Moreover, the Committee on the Elimination of Racial Discrimination (hereinafter 'CERD') has in the past few years criticised "[t]he ineffectiveness of the guardianship system for unaccompanied children, the lack of sufficient appropriate accommodation for such children and the de facto practice of detaining them, including in substandard conditions and with unrelated adults."[212]

89. More precisely, the appointment of a guardian rests with the Public Prosecutor for Minors or the territorially competent First Instance Public Prosecutor who acts as a temporary guardian for all unaccompanied children in Greece and then takes steps to appoint a permanent guardian.[213] In practice, and due to the lack of any state institution dedicated to support his/her duty, the Public Prosecutor has a merely figurative role as a guardian. In view of the large number of unaccompanied migrant children in Greece, the exercise of duties under the temporary guardianship system of the Public Prosecutor are rendered impossible since they are responsible for a large number of unaccompanied migrant children and are practically unable to have any involvement with the decisions that affect these children. Whilst a number of (limited) services are provided to unaccompanied migrant children by NGOs, such services cannot substitute the need for an effective guardianship system.

90. Without an effective guardianship system in Greece, unaccompanied migrant children do not have representation[214] or access to basic rights such as education and health, and they are, thus, deprived of the requisite care and protection that they are entitled to under Article 17 of the Charter and other international instruments. In the words of the Greek Ombudsman *"significant rights in the minors' lives become a dead letter without the existence of a guardian*."[215] As reported by UNICEF, "the absence of an individual (e.g. guardian) to advise and provide [unaccompanied minors] with continuous support through their stay in Greece has been listed as one of the external conditions upon arrival in Greece, also directly or indirectly contributed to increasing the psychosocial distress of UAC".[216]

91. In a positive move, a new act (L. 4554/2018) was adopted by the National Parliament in July 2018 with the aim of introducing a new regulatory framework for the guardianship system in Greece. Given the recent adoption of the piece of legislation, its implementation and effectiveness is still to be assessed. However, by October 2018 Ministerial Decisions needed, *inter alia*, for the creation of the Registry of the Guardians, are yet to be issued.

IV.3.2. Resort to Detention of Migrant Children

92. The resort to detention of migrant children has been a consistent practice, as described above, in Greece for many years and stems, *inter alia*, from the severe accommodation shortage across the country and as well as the severe shortcomings in the child protection system in Greece. The detention of unaccompanied migrant children may be prolonged for periods exceeding several weeks/months pending their transfer to an accommodation

[211] CoE Committee of Ministers 1288 meeting, 6-7 June 2017; See more, Council of Europe – GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, GRETA(2017)27, 7 July 2017.
[212] UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the twentieth to twenty-second periodic reports of Greece*, 3 October 2016, UN Doc. CERD/C/GRC/CO/20-22, para 22(d).
[213] Article 19(1) of PD 220/2007
[214] AIDA: *Country Report on Greece 2017*, *op. cit.*, p. 88, 91 and 92.
[215] Greek Ombudsman, *Migration Flows and Refugee Protection – Administrative challenges and human rights issues*, April 2017, p 86.p 86, available at: https://www.synigoros.gr/resources/docs/greek_ombudsman_migrants_refugees_2017_en.pdf, p 86.
[216] UNICEF, Executive Summary: Rapid Assessment of Mental Health, Psychosocial Needs and Services for Unaccompanied Children in Greece, October 2017, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/FINAL_MHPSS%20EXEC%20SUM%202017_EN%20-%2017%20OCT%2017.pdf.

facility. For example, at the end of 2017 the average period of detention of unaccompanied migrant children in Amygdaleza Pre-removal Detention Center in Athens, pending their placement in a shelter, has been reported between 2 weeks and 2 months.[217] In October 2018, the average period of detention of unaccompanied migrant children in North Greece has been reported between 30 days and 3 months.[218]

93. Greek law does not prohibit the detention of migrant children and detention of unaccompanied migrant children takes place on the basis of provisions regulating detention in view of return (L. 3907/2011 transposing the Return Directive, 2008/115/EC), the detention of asylum seekers (L. 4375/2016 transposing Art. 8 of the recast Reception Directive 2013/33/EC) or on the ground of "protective custody" (Art. 118 P.D. 141/1991). Detention on the ground of 'protective custody' is not subject to a maximum time limit.[219] Moreover, and despite the fact that detention, according to national legislation,[220] should be imposed on the basis of an individual assessment and as a measure of last resort, no assessment of the best interests of the child takes place before or during detention, in contravention of national legislation and the UN CRC.[221] Furthermore, and as there is no legislation prescribing a procedure for assessing migrant children's ages in detention, detained unaccompanied migrant children are deprived of any age assessment guarantees.[222] These shortcomings with regard to the age assessment procedure result in a number of children being wrongfully identified and registered as adults, and placed in detention together with adults.[223]

5 Pakistani children aged 15 - 17 years old were arrested between 30 April 2018 and 12 May 2018. They were registered by the police as adults, after which they were detained in Corinth Pre-Removal Detention Facility with unrelated adults on the basis of return decisions that were issued. During a GCR mission at this detention facility, they had the chance to inform a GCR lawyer and social worker regarding the wrongful registration of their age, who respectively intervened before the authorities. Following a GCR intervention they were referred to the medical staff of the detention facility. Finally, they were identified as minors and they were transferred to accommodation facilities for minors in the second half of June 2018. During the initial period of detention and also while the procedure in order to be identified as minors was pending, they remained detained with unrelated adults. 5 Pakistani children detained in Corinth Pre-Removal Detention Facility (three of them 17 years old and two of them 15 years old).[224]

94. As repeatedly found by international monitoring bodies and civil society organisations, detention of unaccompanied migrant children takes place in inadequate conditions in Greece, in police stations, which by their nature are not suitable for detention exceeding 24

[217] ARSIS, Annual Report 2017, http://arsis.gr/wp-content/uploads/%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91-%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97-%CE%9A%CE%A1%CE%91%CE%A4%CE%97%CE%A3%CE%97-2017.pdf (in Greek), p. 7

[218] ARSIS, The practice of protective custody of unaccompanied minors and the notion of the protection of minor, 31 October 2018, http://www.arsis.gr/deltio-typoy-i-praktiki-tis-prostateytikis-fylaxis-asynodeyton-anilikon-kai-i-ennoia/(in Greek).

[219] Article 118 PD 141/1991.

[220] Art. 30 L. 3907/2011 and art. 46 L. 4375/2016.

[221] AIDA: *Country Report on Greece 2017*, *op. cit.*, p.156.

[222] AIDA: *Country Report on Greece 2017*, *op. cit.*, p.157.

[223] Greek Ombudsman, Migration *Flows and Refugee Protection – Administrative challenges and human rights issues*, April 2017, *op. cit.*, p. 75.

[224] GCR, Situation for minors in Greece: GCR's observations from the field, 30 July 2018, see Annex I.

hours,[225] and in pre-removal detention facilities. In a recent visit to Greece, the Special Rapporteur on the Human Rights of Migrants identified "unaccompanied minors locked in police station cells 24/7 without access to the outdoors for over two weeks and without any recreational or educational activity. He was informed that some may stay for a month or more."[226] Respectively, the Greek Ombudsman, following a visit in police stations of Northern Greece, has found that "many minors remain in police stations up to several weeks without yarding and in totally inadequate facilities".[227] More recently, and as cited above, the CPT found that "[a]t Fylakio Pre-departure Centre, material conditions are unacceptable. In one of the cells, the delegation met 95 foreign nationals, including families with young children, unaccompanied minors, pregnant women and single adult men, who were detained in about 1m² of living-space per person. The cell was severely overcrowded (many persons were required to share mattresses), filthy and malodorous. Hygiene was extremely poor, hygiene items were not distributed, and the provisions for children were insufficient. The other cells showed similar poor material conditions. Access to outdoor exercise was only granted for 10 to 20 minutes per day". The CPT has also noted that in the pre-departure centers visited, including the Amygdaleza Pre-Removal Center in Athens, used regularly for the detention of unaccompanied migrant children, available resources for the provision of health-care were totally inadequate and the number of health-care staff in each of the centres is insufficient.[228]

95. Apart from detention in police facilities, unaccompanied migrant children who arrive at the Greek – Turkish border are also subject to *de facto* detention within the premises of the RIC in Fylakio. On the basis of Art. 14 L. 4375/2016, newly arrived persons, including unaccompanied migrant children, are subject to a 3-day "restriction of freedom within the premises of the centre" which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed. Restriction of freedom within the RIC, in fact, amounts to detention since there is no possibility to exit the centre, instead there is an obligation to remain in it. As GCR have noted, the measure provided by Article 14 is a *de facto* detention measure, even if it is not classified as such under Greek law.[229] In addition, and whilst Article 14 sets a limit of 25 days, unaccompanied migrant children are not released after the completion of the reception and identification procedures in the Fylakio RIC. On the contrary, they remain detained, for a significant period, under the authority of the reception identification service or under the pretext of "protective custody", until they can be transferred to accommodation shelters for children.[230] As reported, this period of detention in RIC Fylakio pending the placement to a shelter, has reached 6 months for a number of unaccompanied migrant children in 2017.[231] Once again conditions of "restriction of freedom of movement" of unaccompanied migrant children in Fylakio RIC are alarming as they are often held with unrelated adults.[232]

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[225] Council of Europe - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Immigration detention, March 2017, CPT/Inf(2017)3, https://rm.coe.int/16806fbf12, p. 3., available at: https://rm.coe.int/16806fbf12,.

[226] UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, *op. cit*., paras. 101-102.

[227] Greek Ombudsman, "The Ombudsman found unacceptable detention conditions at detention places in Northern Greece", 31 June 2017, available at: https://www.synigoros.gr/resources/20170731-dt-asynodeutoi-b-ellada.pdf (in Greek).

[228] CPT: *Preliminary observations made by CPT which visited Greece from 10 to 19 April 2018, op. cit*.

[229] AIDA: *Country Report on Greece 2017*, *op. cit.*, p. 27.

[230] AIDA: *Country Report on Greece 2017*, *op. cit.*; UNHCR, *Factsheet – Aegean Islands*, 1-31 May 2018, *op. cit.* The 3,400 unaccompanied children in Greece exceed the 1,101 places in shelters. As a result, children risk spending extended periods in the reception and identification centres (RICs) and in protective custody in police stations.

[231] AIDA: *Country Report on Greece 2017*, *op. cit.*, p. 152; GCR: *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, op. cit.

[232] HRW, *Greece: Asylum-Seeking Women Detained with Men*, 7 June 2018, available at: https://www.hrw.org/news/2018/06/07/greece-asylum-seeking-women-detained-men.

> Most children just tell you they want to go to school…they want to move forward…do something better with their life…why do you keep me here? [they ask]...I haven't done anything bad…[And] you see a disappointment in their face, an anxiety…[ultimately they become] accustomed with the whole situation...an indefinite wait…You see children…fourteen, fifteen, sixteen year olds from Syria being surrounded by futility…a constant agony…[waiting] to leave…[to be] transferred to a hosting facility…go to school…[waiting] to recover that lost childhood they [once] had.
>
> NGO-staff at the Fylakio RIC, in Evros. Interview held on 21 December 2017[233]

> Suraya, a woman in her twenties (nationality withheld) in the RIC with her four-year-old nephew while awaiting confirmation of their family links, spent nearly five months in a section she said housed only men and unaccompanied boys.
>
> Nada, 16, from Syria, who had been in the RIC with her older brother and sister for nearly two months: "We're the only family in our section, it's all single men. The only women are me and my sister. Everyone is afraid here. There are more than 20 men [or unaccompanied boys] living in our section…. At first, we were 20 people in the [same] container, but they have all left. It was mixed men and women. We didn't feel safe and couldn't sleep. We stayed up all night…. We shared the toilet with strangers. I used to take my sister with me and ask her to wait at the door."
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> *Human Rights Watch, 7 June 2018*[234]

96. Finally, and due to the lack of available places in Fylakio RIC, newly arrived persons may be detained pending their transfer to Fylakio RIC in police facilities on the Northeast Borders, including the Fylakio Pre-Removal Detention Facility, police stations and border guards stations. As noted by the Ombudsman, this detention pending the transfer to the RIC facility and prior to reception and identification procedures, is lacking any legal basis in national law.[235]
97. As specified above, the practice of detaining migrant children has existed for years in Greece with multiple international and domestic actors condemning its systematic use and calling for reform of the Greek authorities approach to detaining children for immigration purposes.[236] Already in 2011, in the case *Rahimi v. Greece,* the ECtHR has found a violation of Article 3 and 5(1)(f) of the ECHR due to the detention in substandard conditions of an unaccompanied minor in Greece,[237] while the execution of the judgment is still under the supervision of the Committee of Ministers of the Council of Europe. Calls for a fundamental change in practice have also been made by the UN CPT, which, in 2016, considered it "high time for the Greek authorities to fundamentally review their approach with regard to protective custody of unaccompanied migrant children and to take the necessary measures to end immigration detention of children".[238] Indeed, the Committee of Ministers of the Council of Europe in its latest decision regarding the execution of the *M.S.S. and Rahimi groups v. Greece* of the European Court of Human Rights has requested

[233] GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, *op. cit.*, p. 36.
[234] HRW, *Greece: Asylum-Seeking Women Detained with Men*, 7 June 2018, *op. cit*.
[235] Greek Ombudsman, Special Report on Returns 2017, p. 17, available in Greek at: https://www.synigoros.gr/resources/docs/2018_epistrofes_gr_web.pdf
[236] CPT: *Preliminary observations made by CPT which visited Greece from 10 to 19 April 2018, op. cit*; Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, A/HRC/35/25/Add.2, 24 April 2017, *op. cit.*
[237] ECtHR, *Rahimi v. Greece* , ECtHR, Application No. 8687/08, Judgment of 5 April 2011.
[238] CPT: *Report to the Greek Government on the visits to Greece from 13 to 18 April and 19 to 25 July 2016*, *op. cit.*

the Greek authorities to guarantee, as a priority, alternative measures to the detention of children.[239] In 2018, the CPT repeated its call to the Greek Authorities to increase efforts to end detention of unaccompanied migrant children.[240]

98. Nonetheless, neither legislation nor policy or practice has changed in this respect. As is evidenced by the data in Table 2, resort to detaining unaccompanied migrant children has increased in 2018 despite the commitment of the competent authorities, that "*not a single child would be kept in protective custody (detention)*" by the end of 2017.[241]

IV.4. Access to Education on the Greek Islands

99. According to statistics from UNHCR, and as mentioned above, approximately 5,300 migrant children are on the Greek islands, of whom 2,500 are of school age (5-17 years of age).[242] Notwithstanding domestic legislation which provides that asylum-seeking children have access to the education system under similar conditions as Greek nationals,[243] available sources demonstrate that the majority of children on the islands do not have access to education. To illustrate, in April 2017, a report Published by the Scientific Committee for the Support of the Children of the Refugees under the Ministry of Education, pointed out that "[n]umerous children trapped with their parents on the islands of the Aegean, following a decision of the Ministry of Immigration Policy, have no access to formal education."[244]

100. By the end of October 2017, only 300 children on the islands were reported to have been enrolled at public schools.[245] Respectively by February 2018, there were no afternoon preparatory classes operating in the Northern Aegean.[246] In July 2018, research undertaken by Human Rights Watch in respect of access to education on the Greek islands states that fewer than 15% of migrant children (approximately 400 children) are enrolled in formal education at any given time;[247] no children living in RICs have been able to enrol in public primary or secondary schools; and only around 610 migrant children have access to non-formal education on the islands.[248]

101. In September 2018, according to a document prepared with the support of I-NGO's, UNHCR and IOM, aiming to provide detailed information for better planning regarding accommodation sites in Greece, migrant children in RIC facilities in Lesvos (Moria), Chios (Vial) and Samos (Vathy) did not have access to formal education, while less than 25% of the migrant children remaining at the RIC facilities in Leros and Kos had access to formal

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[239] CoE Committee of Ministers 1288 meeting, 6-7 June 2017, available at: https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168070e978

[240] CPT, *Preliminary observations made by CPT which visited Greece from 10 to 19 April 2018, op. cit.*

[241] AMNA, 'Υπ. Μεταναστευτικής Πολιτικής: Ως το τέλος του έτους όλα τα ασυνόδευτα παιδιά σε κατάλληλες δομές', 2 August 2017, available in Greek at: http://bit.ly/2wo3hO; Human Rights Watch (HRW): *Dispatches Police Cells Are No Place for Migrant Kids*, 19 September 2017, available at: https://www.hrw.org/news/2017/09/19/police-cells-are-no-place-migrant-kids.

[242] https://data2.unhcr.org/en/documents/download/66190 and https://data2.unhcr.org/en/documents/download/66251.

[243] Providing that there is no enforceable removal measure against them or their parents. see Art. 18 L.4540/2018

[244] Ministry of Education, Scientific Committee for the Support of the Children of the Refugees, *The work of Refugees' Education*, p. 35, available in Greek at: http://www.minedu.gov.gr/publications/docs2017/16_06_17_Epistimoniki_Epitropi_Prosfygon_YPPETH_Apotimisi_Protaseis_2016_2017_Final.pdf (in Greek).

[245] Children on the Move Network, 'Βασικά στοιχεία για τα παιδία που μετακινούνται', 31 October 2017, available in Greek at: http://bit.ly/2FVlSXV; Human Rights Watch, (HRW), Greece: No School for Many AsylumSeeking Kids, 17 September 2017, available at: http://bit.ly/2xeXJss.

[246] Refugee Support Aegean, 'Majority of refugee children in the Aegean Islands Hot Spots are excluded from education', 18 February 2018, available at: http://bit.ly/2oD3FHj.

[247] HRW, *"Without Education They Lose Their Future" Denial of Education to Child Asylum Seekers on the Greek Islands,* July 2018, *op.cit.,* p. 21.

[248] This calculation is taken from the Human Rights Watch report and the figures they provide on migrant children on the Greek islands who have access and attend non-formal education.

education.[249] To this end, the Commissioner for Human Rights of the Council of Europe has expressed her particular concern "about the lack of access to education available in the Aegean islands RICs" and urged the Greek Authorities to guarantee the effective enjoyment of the right to education. [250]

102. Formal education for migrant children in Greece is split into formal pre-primary, primary and secondary education. It is provided through two governmental programs, namely Reception Facilities for Refugee Education (hereinafter 'DYEP') afternoon classes and Zones of Educational Priorities (hereinafter 'ZEP') morning integration classes. DYEP classes are preparatory classes in public schools and cover lessons in Greek, English, maths, sports, arts and computer science during the afternoons. Whilst the DYEP programme has been expanded across the Greek mainland, lessons under DYEP on the Greek islands have been stalled due to a lack of organisation and overlapping ministerial jurisdictions.[251]
103. As a result, the creation and attendance of DYEP classes are minimal with 30 children attending pre-primary DYEP classes in Chios, 33 children attending primary DYEP classes in Lesvos and 60 children enrolled in formal education in Samos (although this number may also relate to enrolment in ZEP classes (see below)). Moreover, out of these children attending DYEP classes almost all have been transferred out of RICs and are in specific shelters for unaccompanied migrant children or apartments,[252] meaning that migrant children staying in RICs do not have access to DYEP classes.
104. A similar situation is apparent for ZEP classes, which are integration classes and cover Greek, English, science and maths and allows migrant children to join Greek school children in other lessons. Out of the 47 migrant children who were enrolled in 2016-2017 in ZEP classes, all lived outside RICs. Compounding these obstacles to access formal education for the increasingly large population of migrant children has also been the lack of vaccinations, a pre-requisite for migrant children to access formal education as well as a shortage of information and assistance to be able to enrol migrant children in public schools. Indeed, of the migrant children identified by Human Rights Watch as being enrolled in public schools, all relied solely on NGO support or Greek volunteers for enrolment. Whilst there have been statements by responsible ministerial bodies that DYEP and ZEP classes will be enlarged to cover classes in RICs, needs far outweigh the proposals meaning that there is an ongoing risk that migrant children will continue to be denied their right to education.
105. Since formal education on the Greek islands reaches a minority of migrant children, many of whom reside outside RICs, the majority of migrant children rely on non-formal education operated by NGOs. The non-formal education programmes that have been set up on the Greek islands vary considerably in terms of quality, hours of teaching, teachers and permanency. Non-formal educational programmes suffer from a variety of shortcomings, which ultimately leads to children not attending the classes. To illustrate, classes in some cases take place for as little as four hours per week, rather than the 30 hours per week a child would receive in formal education in Greece and the learning environment is often hindered by makeshift classrooms and class attendance well beyond capacity. Moreover,

[249] Arbeiter - Samariter – Bund, Danish Refugee Council, International Organization for Migration, United Nations High Commissioner for Refugees, Greece-SMS WG-Site Profiles - August - September 2018, pp.43-46, 48, https://data2.unhcr.org/en/documents/download/66038.
[250] Council of Europe: Commissioner for Human Rights, Report by Dunja Mijatovic following her visit to Greece from 25 to 29 June 2018, CommDH(2018)24, 6 November 2018, https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatov/16808ea5bd, paras. 52 and 62.
[251] HRW, "*Without Education They Lose Their Future" Denial of Education to Child Asylum Seekers on the Greek Islands*, July 2018, *op.cit*., p. 25.
[252] *Ibid*, p. 21.

non-formal education on the Greek islands is characterised by a lack of stability, since teachers are often refugees themselves and are liable to move from the islands at some stage. There is also a lack of motivation to attend classes since the lessons do not lead to a formal certificate or qualification which will be recognised by a public educational institution. Last, and given the prevailing environment of violence and sexual abuse across the islands, there is also a fear amongst parents of letting their children go on transport and attend schooling outside of the RIC. The approval from a parent or guardian to go to and attend classes is a severe issue for unaccompanied children, who have neither and are therefore, in some cases, unable to attend non-formal educational classes.

106. Non-formal education, as explained by teaching staff of NGOs and volunteers themselves, cannot and does not substitute formal education. It has, however, played an important part in facilitating migrant children's enrolment in public schools. This is set to be seriously undermined by a re-direction of Commission funding from NGOs working on the provision of informal education to cash assistance and rental accommodation. As a result, NGOs providing informal education have ceased their programmes on the islands, in turn resulting in the removal of primary information and referral actors for enrolment in public schools.

107. Domestic legislation prescribing access to education for asylum seeking children as well as newly adopted legislation specifically focusing in on enrolment and attendance clearly stands in stark opposition to the reality on the Greek islands. Formal educational programmes on the islands are insufficient, the beneficiaries of such education programmes are situated outside RICs, leaving a paucity in educational provision for those inside RICs, and procedural shortcomings in enrolment and vaccination exacerbate the insufficiency of formal education for migrant children. Where non-formal education is provided and accessible, it does not constitute an appropriate replacement for formal education, especially in the light of cuts in funding for providers. The absence of structured educational programmes inevitably affects the mental health of migrant children who need a formalised routine in order to overcome many of the traumas that they have undergone.

> The structured routine of going to class has such an amazing impact on many children," said an NGO educator on Chios. "Over time, you see them relax."
>
> Human Rights Watch[253]

[253] HRW, *"Without Education They Lose Their Future" Denial of Education to Child Asylum Seekers on the Greek Islands,* July 2018, *op.cit.*, p. 46.

Part V. Subject Matter of the Complaint: Articles 31(1), 31(2), 16, 17, 7(10), 11(1), 11(3) and 13

108. At issue in this collective complaint is the housing situation and living conditions for migrant children on the Greek islands and mainland, the procedural guarantees which are accorded to migrant children by virtue of their status and migrant children's access to education. As housing, procedural safeguards, and education constitute centrepieces in the protection, safety, health and well-being of children, ECRE and ICJ maintain that the array of housing-related failings, namely severe shortages of accommodation, basic facilities and medical and psychological care on the Greek islands and mainland, amount to violations of the revised Charter, in particular: the right to housing (Article 31(1) and 31(2)), the right of children and young persons to social, legal and economic protection (Article 17(1)), the right of the family to social, legal and economic protection (Article 16), the right of children and young persons to protection (Article 7), the right to protection of health (Article 11(1) and 11(3)), the right to social and medical assistance (Article 13), and the right to education (Article 17(2)). Furthermore, ECRE and ICJ hold that the current accommodation circumstances confronting migrant children on the Greek islands and mainland – such as systemic violations of the right to adequate housing and living conditions, lack of security and use of detention as a substitute to accommodation - are all important indicators that migrant children are entirely deprived of a protective framework implemented by the State in violation of Articles 7(10) and 17(1). Finally ECRE and ICJ submit that Greece, in breach of Article 17(1) and (2), have failed to implement and take measures to address the structural failings of the guardianship system in Greece, and to provide migrant children with formal education.

General principles: the best interests of the child

109. The ECSR has affirmed that it is bound by the best interests of the child principle, particularly as safeguarded under Article 3 UN CRC and its elaboration by the Committee on the Rights of the Child.[254] Fundamental to the operation of the best interests principle is an examination of what serves the child best in the context of a formalised procedure and the accompanying procedural guarantees that are required.
110. As a means of ensuring that the status and development of the child and all their rights under the ECSR are wholly respected, protected and fulfilled, Article 3(1) UN CRC establishes the best interests of the child as the primary consideration in all actions concerning children. The principle has been described by the UN Committee on the Rights of the Child as a fundamental interpretative legal principle, substantive right and rule of procedure.[255] States are, thus, obliged to guarantee this right whenever a decision or action is made or undertaken concerning children, whether it be from a public or private social welfare institution, courts of law, administrative authorities or legislative bodies. Indeed, these authorities must assess and be guided by the principle in all their acts and omissions.[256] Moreover, the procedural dimensions of the Article 3(1) UN CRC obligation requires States to make explicit how the best interest principle has been respected in practice in the decision making process and to document its assessment outlining "what

[254] See for instance: *DCI v Belgium*, *op cit.*, para. 32; *EUROCEF v. France*, *op. cit.*, para.54.
[255] UN Committee on the Rights of the Child, *General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration* (Art. 3, para. 1), 29 May 2013, CRC/C/GC/14. Available at: https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf
[256] *Ibid.*

criteria it is based on; and how the child's interests have been weighed against other considerations."[257]

111. The Committee on the Rights of the Child and the Committee on the Rights of Migrant Workers have elaborated the best interest principle in the context of migration in a General Comment issued in 2017.[258] *Inter alia,* it stated that "States parties shall ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement and restrictions on access to social rights by children and/or their parents or legal guardians, and decisions regarding family unity and child custody, where the best interests of the child shall be a primary consideration and thus have high priority."[259]

112. A documented evaluation of the possible impact of the decision on the child's best interests in a formal best interests process with strict procedural safeguards is, thus, an obligation under the UN CRC.[260] As part of its realisation for unaccompanied or separated children the Committee has stated that "the best interests of the child be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the….residence….placement or care of a child" and continues throughout all stages of displacement. Moreover, in the migration context a primary means of its operationalisation is the immediate contact of child protection or welfare officials to screen the child for protection, shelter and other needs[261] and the appointment of a competent guardian free of charge as soon as the unaccompanied or separated child is identified,[262] and at the very latest prior to administrative or judicial proceedings.[263] This guardian must have the necessary expertise in the field of childcare so as to meet the child's social and legal needs and be consulted and informed in respect of all actions relating to the child. To be compliant with the UN CRC, the appointed guardian must be present in all actions, whether it be planning, decision making, hearings or care arrangements and if the guardian is not able to adequately represent the child's best interests entirely and in all aspects of their life, additional measures must be implemented, for example the appointment of a legal representative to fulfil some of these functions.[264] From Article 3(2) UN CRC it is clear that States are required to have in place review mechanisms to monitor the quality of guardianship and ensure that the best interests of the child are represented throughout the decision making process. In addition, all children, whether accompanied or

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[257] *Ibid*. para 6(c).

[258] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, paras. 27-33. Available at: http://www.refworld.org/docid/5a1293a24.html

[259] *Ibid*., para. 29.

[260] UN Committee on the Rights of the Child, General Comment No. 14 (2013), The right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1), 29 May 2013, CRC/C/GC/14, *op. cit.*, paras. 6(c) and 14(b).

[261] Joint general comment No. 4 (2017) of the Committee on the Protection of the rights of All Migrant Workers and Members of Their Family and No. 23 (2017) of the Committee on the Rights of the Child on the State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: http://www.refworld.org/docid/5a12942a2b.html

[262] UN Committee on the Rights of the Child, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, op. cit.* paras. 21 and 33.

[263] *Ibid*, paras. 21, 33 and 72; UN Committee on the Rights of the Child, General Comment No. 14 (2013), The right of the child to have his or her best interests taken as a primary consideration (Art. 3,1), 29 May 2013, CRC/C/GC/14, *op. cit.,* para..96; Council of Europe Parliamentary Assembly, Unaccompanied children in Europe: issues of arrival, stay and return, Resolution 1810 (2011), para. 5.7.

[264] UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, op.cit.*

unaccompanied, must be appointed a qualified legal representative as soon as possible on arrival and free of charge.[265]

113. For its part, the ECtHR has repeatedly affirmed the principle of the primacy of the best interests of the child.[266] In *Rahimi v. Greece* the Court confirmed that in all actions relating to children an assessment of the child's best interests must be undertaken separately and prior to a decision that will affect that child's life. Strict adherence to the principle is all the more crucial in the migration context where the ECtHR has consistently recognised the extreme vulnerability of an asylum-seeking child; a decisive factor which takes precedence over considerations relating to the status of illegal immigrant.[267]
114. States have specific positive obligations under Article 3 ECHR to take appropriate measures with a view to protecting and caring for the child. These obligations are especially salient in the context of unaccompanied asylum-seeking children on account of their extreme vulnerability, characterised by their age, arrival to an unfamiliar country, and sole reliance on themselves.[268]
115. Under EU law, the principle of the best interests of the child is enshrined in Article 24 of the Charter of Fundamental Rights (CFR)[269] and is embedded in all secondary legislative instruments which make up the Common European Asylum System (hereinafter "CEAS"). In light of the CFR and the Court of Justice of the EU (hereinafter "CJEU") jurisprudence, the EU asylum *acquis* requires that the best interests of the child principle underpin all decisions taken with regard to children, and that Member States ensure the child's protection and care as necessary for their well-being.[270] Moreover, under the RCD unaccompanied children are entitled to the appointment of a competent guardian as soon as possible.[271] The general principle of effectiveness requires rights under EU law to be protected in a real and practical sense and prohibits national rules and procedures which render the exercise of EU rights impossible in practice.[272] Pursuant to this principle, the child's representative must be appointed before any administrative proceedings, including proceedings regarding detention, are undertaken. In addition, and under the APD, unaccompanied children are entitled to appropriate understandable information in light of the child's specific circumstances to enable them to benefit from the rights under the APD as well as receive free legal assistance and information.[273]
116. For its part, the United Nations High Commissioner for Refugees (hereinafter "UNHCR"), who is competent to provide legal interpretative legal guidance under its mandate,[274] has outlined in its Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum of 1997: "The basic guiding principle in any child care and

[265] UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, *op. cit.*
[266] Neulinger and Shuruk v. Switzerland, ECtHR, Application No. 41615/07, Judgment 6 July 2010, para. 135.
[267] Mubilanzila Mayeka and Kaniki Mitunga v. *Belgium*, ECtHR, Application No. 13178/03, Judgment of 12 October 2006, para. 55; Popov v. *France*, ECtHR, Application Nos. 39472/07 and 39474/07, Judgment of 19 January 2012, para. 91.
[268] Rahimi v. Greece. *op. cit.*
[269] The EU Charter of Fundamental Rights (CFR) is a primary EU law to which the provisions of the Common European Asylum System (CEAS) must conform. The EU asylum acquis is comprised of a number of legal instruments and their interpretation by the CJEU. The most pertinent for this intervention is the recast Reception Conditions Directive (rRCD), which provides for the dignified standard of living and living conditions for asylum applicants.
[270] *MA and Others* v Secretary of State of the Home Department, CJEU, C-648/11, Judgment of 6 June 2013.
[271] Recast Reception Conditions Directive, Article 24(1) and (4).
[272] *Rewe-Zentralfinanz eG et Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland,* CJEU, C-33/76, Judgment of 16 of December 1976, para. 5; Safalero Srl v. Prefetto di Genova, CJEU, C-13/01, Judgment of 11 September 2003, para. 49.
[273] Recast APD Article 25.
[274] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. [Greece ratified the Convention on 5 April 1960.], Article 35.; UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267. [Greece accepted the Protocol on 7 August 1968.], Article 2..

protection action is the principle of the best interests of the child. Effective protection and assistance should be delivered to unaccompanied children in a systematic, comprehensive and integrated manner. (…) Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection. (…) In recognition of the particular vulnerability of unaccompanied children, every effort should be made to ensure that decisions relating to them are taken and implemented without any undue delays."[275]

117. On the basis of the evidence compiled in this collective complaint, including a widespread assessment by a number of authorities and institutions on the matter,[276] ECRE and ICJ submit that Greece has failed to implement any form of best interests assessment and determination procedure for migrant children in the country. Moreover, despite the repeated calls for the implementation of a guardianship framework where every unaccompanied migrant child has a guardian who is professionally trained, has the necessary experience and competence and has been provided with sufficient resources,[277] no such framework is currently in place in Greece. A law on the guardianship system has been pending adoption for several years[278] and has only just been adopted but without the requisite Ministerial Decisions to establish the system[279].

118. A lack of clear rules on how and when to determine the best interests of the child as well as its actual implementation alongside the absence of a functioning guardianship system **constitute significant shortcomings in the provision of special protection of children and of their rights under the Charter as provided for under Articles 31(1), 31(2), 7(10), 16, 17, 11 and 13. Given the vulnerability and particular need for protection of migrant children, the lack of clear standards and procedures for determining their best interests, including accommodation, living conditions, healthcare and education, has a particularly significant impact on their rights. Moreover, for unaccompanied migrant children, the lack of an adequate guardianship system means that their best interests have gone substantially unprotected. The ICJ and ECRE submit that these considerations should inform the Committee's assessment of the violations of Charter rights of migrant children analysed in this complaint.**

[275] See: General Principles, Access to asylum procedures, Para 10.1.
[276] Greek Ombudsman, Migration *Flows and Refugee Protection – Administrative challenges and human rights issues*, April 2017, *op. cit.*, p.28; Greek National Commission for Human Rights, *Report on the condition of reception and asylum system in Greece,* 22 December 2017, p 8; UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, *op.cit*., p 15; UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece, 16 May 2016, available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E
[277] UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, A/HRC/35/25/Add.2, *op.cit*., p. 15.
[278] Greek Ombudsman, *Migration flows and refugee protection Administrative challenges and human rights issues*, April 2017, p 86.
[279] L. 4554/2018, issued on 18 July 2018, Art. 13-32.

V.1 Violation of Article 31(1) and 31(2)

Article 31 - The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
(1) to promote access to housing of an adequate standard;
(2) to prevent and reduce homelessness with a view to its gradual elimination;
[…]

119. This Committee has held that the right to housing is closely connected to the right to life and is crucial for the respect of every person's human dignity.[280]
120. The Committee has defined homeless persons as those who legally do not have at their disposal a dwelling or other form of adequate housing as per Article 31(1). Reducing homelessness under Article 31(2) of the Charter places a positive obligation on contracting States to introduce emergency measures, such as the provision of immediate shelter, which must comprise of enough places[281] and must provide conditions compatible with human dignity,[282] and measures to help persons without a shelter to overcome their difficulties and prevent them from returning to a situation of homelessness.[283] To ensure respect of dignity of persons sheltered, shelters must meet health, safety and hygiene standards.[284]
121. Concerning the right to satisfaction of basic material needs of persons in situations of extreme hardship, on 19 January 2000 the Committee of Ministers of the Council of Europe adopted Recommendation No. R(2000)3 to Member States: (…) "Principle 2: The right to the satisfaction of basic human material needs should contain as a minimum the right to food, clothing, shelter and basic medical care. (…) Principle 4: The exercise of this right should be open to all citizens and foreigners, whatever the latter's' position under national rules on the status of foreigners, and in the manner determined by national authorities." (…).
122. In *DCI v the Netherlands*, this Committee has clarified that "(a)s to living conditions in a shelter, under Article 31§2 (…) they should be such as to enable living in keeping with human dignity."[285] The ECSR referred to the Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing (June 2009) where he asserted that "the starting point to reduce homelessness should be (...) to guarantee that all people, regardless of circumstance, are able to benefit from housing that corresponds with human dignity, the minimum being temporary shelter. The requirement of dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating. The basic requirements of temporary housing include also security of the immediate surroundings. Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met. The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements."

[280] *DCI v. the Netherlands*, *op. cit.*, para. 47.
[281] *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No 39/2006, 5 December 2007, para. 107.
[282] *FEANTSA v. France*, *op. cit*., paras. 108-109.
[283] ECSR, Conclusions 2003, Italy
[284] *DCI v. the Netherlands*, *op. cit.*, para. 62.
[285] *DCI v. the Netherlands*, *op. cit.*, para. 62.; *FEANTSA v. France*, *op. cit*., paras. 108-109.

123. On the basis of the above, the ECSR concluded that "States Parties are required, under Article 31(2) of the Revised Charter, to provide adequate shelter to asylum seeking children and children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children."[286] In this complaint, the Committee importantly held that alternatives to detention should be sought in order to respect the best interests of the child.[287]
124. This Committee has further determined that the right to adequate housing requires contracting States to collect data and undertake an impact review on adequate housing. To illustrate, in *FEANTSA v The Netherlands* the ECSR found that there was a paucity in the provision of data on shelter places and that whilst there had been an acknowledgment that places for vulnerable persons in shelters were lacking, no actions had been taken to remedy the deficiencies. In light of the disparity between the quantitative need for shelters and the actual places in existence the ECSR found the Netherlands to be in breach of Article 31(2).[288]
125. This Committee clarified adequate housing under Article 31(1) as a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law.[289]
126. The definition of 'adequate' housing has been further expanded upon by the ECSR to include an adequate supply of housing for families, an adequate standard of housing, including essential services and a suitable size of housing in relation to the composition of the family in residence. Adequate housing further relates to an obligation on the State to take account of family's needs in framing and implementing housing policies.[290] Moreover, and particularly relevant for this complaint, has been the ECSR's finding that housing must be structurally secure, that it must possess water, heating, waste disposal, sanitation facilities, and electricity and that the temporary supply of shelter does not comply with the obligation on States to provide adequate housing, instead individuals should be furnished with adequate housing within a reasonable period.[291]
127. In *DCI v the Netherlands*, which concerned children unlawfully present on the territory of a state party, the ECSR concluded that lasting housing as secured under Article 31(1) would run counter to the State's aliens policy objective of encouraging persons unlawfully on its territory to return to their country of origin. Therefore, the Committee concluded that such children did not come within the personal scope of Article 31(1). The ICJ and ECRE respectfully submit that the facts giving rise to the decision in *DCI v the Netherlands* differ substantially from the facts raised in the present collective complaint. The factual scope of this complaint relates primarily to migrant children who are lawfully residing in the territory of Greece, having sought asylum and within the regular asylum procedure.
128. In line with international case-law, as cited below, and the principle of progressive realisation of ESC rights, including the full realisation of the right to adequate housing, the ICJ and ECRE submit that the minimum core of Article 31(1), namely adequate housing (minimum standards of housing conditions compatible with the principle of human dignity), should apply to migrant children concerned by this complaint.

[286] *DCI v. the Netherlands*, *op. cit.*, para. 64.
[287] *DCI v. the Netherlands*, *op. cit.*, para. 61.
[288] *FEANTSA v. the Netherlands*, *op. cit.*, paras. 111-114.
[289] Conclusions 2003, Article 31§1, *FEANTSA v. France*, *op. cit.*, para. 76.
[290] *European Roma Rights Center (ERRC) v Greece*, ECSR, Collective Complain No. 15/2003, 8 December 2004, para. 24.
[291] *European Roma Rights Center (ERRC) v Bulgaria*, ECSR, Complaint No. 31/2005, 18 October 2006, para. 34.

129. In its previous decisions, the ECSR has also referred to other international and European law and standards in its elaboration of Article 31(2).[292] The conditions of housing for migrant families have been addressed by the ECtHR in respect of State obligations under Article 3 ECHR. While the Court considers that right to housing and an adequate standard of living, protected under other instruments, are not comprehensively engaged under Article 3,[293] the Court has repeatedly emphasised that the protection provided under the Convention must be practical and effective and the threshold to meet Article 3 is relative, depending on all circumstances of the case. Since the absolute prohibition under Article 3 stems from an individual's innate human dignity, treatment contrary to human dignity on account of certain living conditions for a particular individual or group of individuals can thus give rise to an Article 3 violation.[294]
130. The ECtHR has consistently held that children due to their age and personal situation are amongst the most vulnerable persons in society.[295] Where children are also seeking asylum their extreme vulnerability is compounded[296] given that asylum seekers themselves form part of a vulnerable group.[297] As such they require special protection and humanitarian assistance, whether alone or accompanied by parents.[298] To illustrate, in *Popov v. France*[299] the ECtHR has held that, as part of their positive obligations under Article 3, Contracting States owe a special duty of protection not only to unaccompanied minors but also to minors who are accompanied:
"*[The Court finds that the fact that a minor is accompanied] is not capable of exempting the authorities from their duty to protect children and take appropriate measures as part of their positive obligations under Article 3 of the Convention … and that it is important to bear in mind that the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant. [The EU Reception Conditions Directive] thus treats minors, whether or not they are accompanied, as a category of vulnerable persons particularly requiring the authorities' attention … The Court would, moreover, observe that the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents (…).*"

131. Thus, where children are accompanied by families their vulnerability is not diminished. Rather, the ECtHR has recognised the specific duties and guarantees which are owed to migrant families with children under Article 3 ECHR. In *Tarakhel v. Switzerland*, the ECtHR held that signatory States have positive obligations to take appropriate measures to protect and care for migrant children accompanied with families, namely that the material conditions and the facilities of reception are to be adapted to children's needs, in view of their age, condition of dependency and extreme vulnerability.[300] Failing such adaptation,

[292] *DCI v. the Netherlands, op.cit*, para. 34; CEC v. the Netherlands, *op. cit.,* para. 38.
[293] *Chapman v. the United Kingdom*, ECtHR, Application, No. 27238/95, Judgment of 18 January 2001, para. 99. *Müslim v. Turkey*, ECtHR, Application No. 53566/99, Judgment of 26 April 2005, para. 85.
[294] *M.S.S. v. Belgium and Greece*, ECtHR, Application No. 30696/09, Judgment of 21 January 2011, paras. 252 and 253.
[295] *Rahimi v.* Greece. *op. cit.,* para. 87.
[296] *Mubilanzila Mayeka and Kaniki Mitunga v.* Belgium*, op. cit*., para. 55; *Popov v. France*, ECtHR, *op. cit*., para. 91; *Tarakhel v. Switzerland,* ECtHR, Application No. 29217/12,, Judgment of 4 November 2014, para. 99.
[297] *M.S.S. v. Belgium and Greece*, *op. cit.,* para. 232.
[298] *Popov v. France*, *op. cit*., para. 91.
[299] *Popov v. France*, *op. cit*., para. 91
[300] The European Court found that "there would be a violation of Article 3 of the Convention if the applicants were to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be

the conditions can give rise to an Article 3 breach. To illustrate, overcrowded accommodation without any privacy, insalubrious or even violent conditions and separation of the family unit generates a situation of stress and anxiety, with particularly traumatic consequences for accompanied children. Moreover, a lack of State provided family housing, food and sanitary utensils has been held by the Court to violate the positive obligations under Article 3 for migrant families.[301]

132. The ECtHR has found that where families are held in detention, conditions in closed centres for accompanied children have generated feelings of fear, inferiority and have had a deleterious and nefarious effect on their development,[302] regardless of the length of time that they have spent in detention.[303] As a result of their specific and inherent vulnerability, the Court has emphasised that the effects of detention on children, both accompanied and unaccompanied, and the conditions in which they are held in can amount to a breach of Article 3 ECHR even where there might be no breach for similarly situated adults, such as their parents.[304] Furthermore, the ECtHR has found that even where facilities have been adapted to children's specific needs, the "constraints inherent in a place of detention" can amount to a violation of Article 3 over a period of several days.[305]
133. The ECtHR has issued several judgments against Greece where it found violations of Article 3 of the Convention due to the failure of national authorities to provide asylum seekers with adequate living conditions. In the landmark case of *M.S.S. v. Belgium and Greece*, the European Court found that Greece had violated Article 3 because the State failed to fulfil the obligations under the RCD as transposed into national law and because "the Greek authorities have not had due regard to the applicant's vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs."[306] As compared to the requirement to prevent homelessness by Article 31(2) European Social Charter, the threshold for violation for Article 3 ECHR is much higher and requires destitution and circumstances that amount to inhuman or degrading treatment.

Obligations to Provide Housing under UN Human Rights Treaties

134. Aspects of the right to adequate housing and shelter are protected under a number of international human rights Treaties, including the UN CRC Articles 3, 24 and 27 and by Article 11 CESRC, Article 5(e)(iii) CERD, Article 43 CMW, Article 28 CRPD.
135. The right to adequate housing is specifically protected by the International Covenant on Economic, Social and Cultural Rights under Article 11(1) which guarantees an adequate standard of living, adequate food, clothing and housing for individuals and their families. Moreover, Article 10 of the Covenant guarantees protection of the family and, as such, obliges States to assist the unit, especially whilst the family is responsible for the care and

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taken charge of in a manner adapted to the age of the children and that the family would be kept together." *Tarakhel v. Switzerland, op. cit,* paras. 99 and 119-122.

[301] *V.M. and Others v Belgium*, ECtHR, Application No. 60125/11, Judgment of 17 November 2016, paras. 158 and 162.

[302] *Affaire Kanagaratnam Et Autres c. Belgique*, ECtHR, Application No. 15297/09, Judgment of 13 December, para. 67.

[303] *S.F. and others v. Bulgaria*, ECtHR, Application No. 8138/16, Judgment of 7 December 2017, para. 84.

[304] *Muskhadyhizeva and Others v. Belgium*, ECtHR, Application No. 41442/07, Judgment of 19 January 2010; Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, op. cit*.

[305] *R.M. and Others v. France*, ECtHR, Application No. 33201/11, Judgment of 12 July 2016, paras. 72-76; *A.B. and Others v. France*, ECtHR, Application No. 11593/12, Judgment of 12 July 2016, paras. 111-15; *A.M. and Others v. France*, ECtHR, Application No. 24587/12, Judgment of 12 July 2016, paras. 48-53; *R.K. and Others v. France*, ECtHR, Application No. 68264/14, Judgment of 12 July 2016, paras. 68-72; and *R.C. and V.C. v. France*, ECtHR, Application No. 76491/14, Judgment of 12 July 2016, paras. 36-40.

[306] *M.S.S. v. Belgium and Greece*, *op. cit.,* para. 263. See more, *F.H. v. Greece*, ECtHR, Application No. 78456/11, Judgment of 31 July 2014; *Al.K. v. Greece*, ECtHR, Application No. 63542/11, Judgment of 11 March 2015; *S.D. v. Greece*, ECtHR, Application No. 53541/07, Judgment of 11 June 2009; *Amadou v. Greece*, ECtHR, Application No 37991/11, Judgment of 4 February 2016 and *S.G. v. Greece*, Application No 46558/12, Judgment of 18 May 2017.

education of children. The CESCR has affirmed that Article 11 encompasses the right to adequate housing and the right to live somewhere in security, peace and dignity. States are obliged to respect, protect and fulfill these rights.[307] Compliance with the obligations under Article 11 will be measured by reference to the availability of services, materials, facilities and infrastructure, the habitability of the housing and its accessibility. Thus, in respect of families, States must ensure that the housing has sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage and refuge disposal.[308]

136. The quality of housing forms part of the substance of what can be considered adequate housing. The CESCR has previously described that the right to housing should be seen as the right to live somewhere in security, peace and dignity. […] "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities all at a reasonable cost."[309] The CESCR has also previously highlighted that compliance with ICESCR Article 11 entails that: "Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as (…) children, (…) should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups."[310]

137. The CESCR has repeatedly expressed the concern of migrants being housed in substandard conditions, sometimes in geographically segregated areas.[311] Its concerns were echoed in this regard by the Committee on the Elimination of Racial Discrimination which, in its general recommendation No. 30 (2004) on discrimination against non-citizens, urged States parties to "remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in … housing" (para. 29) and to "guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices" (para. 32).

138. The Principles on migrants in vulnerable situations[312] set out that states have to guarantee migrants' access to shelter: "Shelter facilities should be adequate to meet migrants' needs, including the right to privacy, and should protect them from threats to their safety.[313] Migrants should be entitled to carry out necessary improvements, including to temporary shelters and informal camps. National housing action plans should take migrants into account, regardless of their status."[314] The Principles further stipulate that states should

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[307] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2. para. 1, of the Covenant), 14 December 1990, E/1991/23. Available at: http://www.refworld.org/docid/4538838e10.html

[308] UN Committee on Economic, Social and Cultural Rights, *General Comment No, 4: The right to adequate housing* (Art. 11(1) of the Covenant), 13 December 1991, *op. cit*., para. 8(b).)

[309] *Ibid*., para. 7.

[310] *Ibid*., para. 8(e).

[311] UN Committee on Economic, Social and Cultural Rights, *Duties of States Towards Refugees and migrants*, 13 March 2017, E/C.12/2017/1, para. 14. Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPlF1vfPMJbFePxX56jVyNBwivepPdlEe4%2BUb4qsdJhuBDpCRSOwCXPjZ7VN7SXN0oRoXkZhCuB9Z73iyU35LZveUjX0d7u .

[312] UN Office of the High Commissioner for Human Rights and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations,* Principle 13, Guideline 2, p. 49. Available at: https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf

[313] The Commission on Human Settlements defines adequate shelter as "adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost" See also General Assembly resolution 46/163, "Global Strategy for Shelter to the Year 2000"; report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living on migration and the right to adequate housing (A/65/261); report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living on the elements of a general framework of disaster response based on the right to adequate housing (A/66/270);

[314] UN Committee on Economic, Social and Cultural Rights, *General Comment No, 4.: The right to adequate housing* (Art. 11(1) of the Covenant), 13 December 1991, *op. cit*., para.12.; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*, 8 December 1995, E/1996/22, *op. cit.,* para.32(2), available at:

provide separate housing for women and men in reception facilities (except where families want to stay together), safe and culturally-appropriate spaces for women where they can rest and receive information and other services, and women- only mother/baby areas.[315]

139. The UN Committee on the Rights of the Child has highlighted similar obligations in respect of the UN CRC: "States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in Article 27 (2) of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."[316] The UN CRC together with UN CMW stated in November 2017 that "(s)tates should ensure that children in the context of international migration have a standard of living adequate for their physical, mental, spiritual and moral development, as provided in Article 27.3 of the UN CRC. States, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."[317] Furthermore, the Committees insisted that "(s)tates should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents, including persons with disabilities, pregnant women and breastfeeding mothers. States should ensure that residential facilities do not restrict children's day-to-day movements unnecessarily, including *de facto* restriction of movement."[318]

The Right to Adequate Housing under EU Law

140. The EU Charter states in its Article 1 that "Human dignity is inviolable. It must be respected and protected." Article 34.3 further states that the EU "recognises and respects the right to social and housing assistance" (…) in order to combat social exclusion and poverty.

141. In respect of reception conditions under the 2003/9 Reception Conditions Directive, the CJEU has held that material conditions, including housing, food and clothing must be provided from the moment an asylum seeker applies for asylum[319] and that regardless of what form the material conditions may take, they must be sufficient to ensure asylum applicants dignity, both in terms of their living standards and their health, that such

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http://www.refworld.org/docid/4538838f11.html; UN Committee on Economic, Social and Cultural Rights, Duties of States Towards Refugees and migrants, 13 March 2017, E/C.12/2017/1, *op. cit.,* para.14; New Urban Agenda, paras 31, 21 and 48.

[315] OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, op. cit.,* Principle 11, Guideline 3, p. 45.; UN Committee on the Elimination of Discrimination against Women, General recommendation No. 32, The gender-related dimension of refugee status, asylum, nationality and statelessness of women, 5 November 2014,45. CEDAW/C/GC/32, para. 34., available at: http://www.refworld.org/docid/4538838f11.html; See more, UN-Women, Closing the Gender Gap in Humanitarian Action; Women's Refugee Commission, "Protecting and empowering women and girls in situations of mass displacement", Global Migration Group multi-stakeholder meeting in preparation for the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants; Beijing Platform for Action, para 125 (h) and (i); UN-Women, Gender Assessment of the Refugee and Migration Crisis in Serbia and FYR Macedonia.

[316] UN Committee on the Rights of the Child (CRC), General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, September 2005, CRC/GC/2005/61, *op. cit.,* para. 44.

[317] UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the rights of All Migrant Workers and Members of Their Family and No. 23 (2017) of the Committee on the Rights of the Child on the State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, *op. cit*., para 49.

[318] *Ibid*., para. 50.

[319] *Cimade and GISTI v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration Reference* CJEU, C-179/11, Judgment of 27 September 2012, [ECLI:EU:C:2012:594], para. 39.

conditions ensure their subsistence and that the family unit is guaranteed.[320] State authorities implementing these conditions must comply with the above standards, as a very minimum, and no derogation from these standards is permitted even where the reception network is saturated.[321]

142. In respect of unaccompanied minors accommodation, the RCD requires that from the moment they are admitted to the territory until the moment they are obliged to leave the particular Member State, they shall be placed either with adult relatives, with a foster family, in accommodation centres with special provisions for minors or in other accommodation suitable for minors.[322] Furthermore, any changes of residence must be limited to a minimum.[323]

Protection of the Child and Detention under International Human Rights Law

143. Special measures of protection and assistance in view of the child's status are guaranteed under Article 10(3) of the ICESCR, which ensures protection from economic and social exploitation and Article 24 of the ICCPR from which the Human Rights Committee has derived both positive obligations on States to promote the development of the child's personality and enjoyment of rights under the Covenant as well as an obligation to prevent them from being subject to acts of violence, cruel and inhuman treatment or exploitation.[324]
144. Under Article 9 of the ICCPR, which incorporates the right to liberty and freedom from arbitrary detention, the Human Rights Committee in its General Comment No. 35 has affirmed that children should never be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors.[325]
145. The UN Committee on the Rights of the Child has made it clear that under the CRC detention of children for the purposes of immigration control is never in their best interests and is not justifiable. The Committee has affirmed that the second sentence of Art 37 (b) CRC, permitting detention of children as a measure of last resort, is not applicable in immigration proceedings, as unauthorised entry or stay in a country should not constitute a criminal offence and cannot have the same consequences as a criminal offence.[326]
146. In light of the obligation to respect, protect and fulfil the best interest of the child, numerous international authorities, including the Inter-American Court of Human

[320] Saciri and Others v. Federaal agentschap voor de opvang van asielzoekers, CJEU, C-79/13, Judgment of 27 February 2014, [ECLI:EU:C:2014:103], para. 45. The CJEU will soon provide its judgment on a preliminary reference from the Labour Court of Brussels on the conditions which are to be provided to asylum applicants where material conditions are reduced or withdrawn under Article 20 RCD and whether a withdrawal of material conditions (either definitively or temporary) can ever be permissible for children, especially those who are unaccompanied, Haqbin v. Belgium, CJEU, C-233/18.
[321] Saciri and Others *op. cit.,* paras. 49-50.
[322] Article 24(2) recast Reception Conditions Directive,
[323] Article 24(2) recast Reception Conditions Directive,.
[324] HRC General comment no 17: Article 24. UN Human Rights Committee (HRC), CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, available at: http://www.refworld.org/docid/45139b464.html
[325] *D. and E. and their two children v. Australia*, HRC, Communication No. 1050/2002, CCPR/C/87/D/1050/2002, 9 August 2006, para. 7.2; UN Human Rights Committee, Concluding observations on the third periodic report of the Czech Republic, 22 August 2013, CCPR/C/CZE/CO/3, para. 17. (Annex 10), available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqYZbsssGdWEvN0SYW6jwU%2bSnlGcE7KqgN%2f9T0YUwGPEQxWpMZeAqykpqHzoqoHU0wBCWwoOOrSadzlpaZ9Mr4Oz21tkQoH2brDAoWjWs0n8).
[326] UN Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and No. 23 (2017) of the Committee on the Rights of the Child on the State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, *op. cit*., para,10.

Rights,[327] the UN Special Rapporteur on the human rights of migrants,[328] the Parliamentary Assembly of the Council of Europe,[329] the European Parliament Committee on Civil Liberties, Justice and Home Affairs,[330] the UN Human Rights Council's Working Group on Arbitrary Detention[331] and UNHCR[332] have also all held that administrative detention of a child for immigration purposes can never be understood as a measure that responds to the child's best interest.

147. For its part, the ECtHR has highlighted the particularly nefarious consequences of administratively detaining children under Article 5(1) ECHR[333] and the positive obligations under the Article to take appropriate measures to protect the liberty of persons, especially vulnerable persons.[334]

148. Moreover, under the ECtHR's jurisprudence, the detention of migrant children, both accompanied and unaccompanied, has attracted the protection of Article 8 ECHR. As such, the ECtHR has found that States are obliged to take all the necessary steps to limit the detention of families accompanied by children so as to effectively preserve the right to family life.[335] Subjecting accompanied children to living conditions typical of a custodial institution has, therefore, been regarded by the Court as a disproportionate interference with the effective exercise of their family life.[336]

149. The ECtHR has also underlined the various procedural safeguards that need to be satisfied in order to render a deprivation of liberty lawful under Article 5(1) ECHR. It stressed that detention must be based on one of the grounds specified in Article 5 (1) ECHR; where the proposed detention concerns children, the child's best interests must be taken into account as a primary consideration and as such before a decision on the detention of children is considered or taken there must be an assessment of the proportionality of the detention for the child; whether there are any alternatives prior to authorising his or her detention and whether it is, thus, a measure of last resort. Where a formalised assessment of the child's specific needs is not undertaken and reflected in a relevant decision any imposition of detention will be arbitrary for the purposes of Article 5(1) ECHR.[337]

150. If, following adherence to these strict procedural guarantees under the ECHR, a child is still detained they must be informed promptly of the genuine reasons for their deprivation of liberty.[338] They must be explained, in simple, non-technical language that the child can

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[327] Inter-American Court of Human Rights, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, 19 August 2014, para 157, available at: http://www.refworld.org/cases,IACRTHR,54129c854.html

[328] UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece, 16 May 2016, *op. cit.*.

[329] Council of Europe Parliamentary Assembly, Resolution 2020 (2014), The alternatives to immigration detention of children, 3 October 2014 (36th Sitting); Council of Europe Parliamentary Assembly, Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum, 28 April 2005.

[330] European Parliament Committee on Civil Liberties, Justice and Home Affairs, Ref. IP/C/LIBE/IC/2006-181, Ref. 12/2007, December 2007 p. 22.

[331] UN Human Rights Council, Report of the Working Group on Arbitrary Detention, 15 January 2010, U.N. Doc. A/HRC/13/30, pp. 24-25 and 58-61, available at: https://undocs.org/A/HRC/13/30; UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, para. 11, available at: http://www.refworld.org/docid/5a903b514.html.

[332] UNHCR, UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, p. 2., available at: http://www.refworld.org/docid/5885c2434.html. In UNHCR's view,"[R]eferences to the application of Art.37(b), "exceptional circumstances / measure of last resort", are not appropriate for cases of detention of any child for immigration related purposes.

[333] Rahimi v. Greece, *op. cit.*, para. 86.

[334] Stanev v Bulgaria, ECtHR, Application No. 36760/06, Judgment of 12 January 2012, para. 120.

[335] *Popov* v. *France, op. cit.,* para..147; *Bistieva and Others* v. Poland, ECtHR, Application No. 75157/14, Judgment of 10 April 2018, para.85.

[336] See, Bistieva and Others v. Poland, *op. cit*.; A.B. and Others v. France, *op. cit.*, para. 145; R.K. and Others v. France, *op. cit*., para. 106; A.M. and Others v. France, *op. cit.,* para. 86; and R.C. and V.C. v. France, *op. cit.,* para. 72.

[337] Analogous case law concerning Article 3 ECHR has required a prior and separate best-interest assessment for children before the imposition of detention: Muskhadyhizeva and Others v. Belgium*, op. cit.*; *Mubilanzila Mayeka and Kaniki Mitunga*, *op. cit.*, paras. 81 and 83; Popov v. France, *op. cit.*; *Affaire Kanagaratnam Et Autres c. Belgique*, *op. cit*.; *Neulinger and Shuruk v. Switzerland*, *op. cit.*.

[338] *Abdolkhani and Karimnia v. Turkey*, ECtHR, Application No. 30471/08, 22 September 2009, para. 136: Saadi v. United Kingdom, ECtHR, Application No. 13229/03, Judgment of 29 January 2008, para. 84.

understand, the legal, factual grounds, the reasons for their detention, and the process available for reviewing or challenging the decision to detain. For the information to be accessible, it must be presented in a form that takes account of the child's maturity and level of education.[339] This will necessarily require the appointment of a competent guardian prior to any action affecting children, the provision of legal advice or assistance from a legal representative and translation.[340]

151. Where unaccompanied children have been detained by contracting States to the ECHR, the ECtHR has found violations of both Articles 3 and 5. In *Mayeka and Mitunga v. Belgium*, the Court held that the detention of a five-year-old unaccompanied child for nearly two months in a closed centre for adults constituted treatment contrary to Article 3 ECHR as well as a violation of Art.5 ECHR.[341] In *Rahimi v. Greece*, the Court held that the detention of a 15-year-old unaccompanied minor in an overcrowded detention centre for adults, with 'deplorable' hygiene standards, no contact with the outside world and no possibility of fresh air or leisure, even though it was only for two days, constituted a violation of Article 3 ECHR.[342]

Conclusions

152. Article 31(2) of the Charter concerning the prevention and reduction of homelessness is central to the material situation of the migrant children concerned by the present complaint. The ECSR has defined homeless persons as those who legally do not have at their disposal a dwelling or other form of adequate housing in accordance with Article 31(1). The reduction of homelessness is reliant on States introducing emergency measures such as the provision of immediate shelter which must comprise sufficient places to meet demand[343] and must provide conditions compatible with human dignity.[344] This requires standards of safety, health and hygiene to be met and basic amenities such as clean water, sufficient lighting and heating to be provided.[345] Importantly, where persons are **housed in reception camps and temporary shelters that do not satisfy the standards of human dignity, there will be a violation of Article 31(2).** The ECSR has also underlined that given the nature of immediate or temporary shelters, a more permanent structure of adequate housing is to be given to homeless persons within a reasonable period.[346] In respect of prevention, there is an onus on States to prevent vulnerable people from becoming homeless and an obligation on States to establish a policy for all disadvantaged groups to ensure access to housing.[347]

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[339] Vakhitov and Others v. Russia, ECtHR, Application Nos. 18232/11, 42945/11, 31596/14, Judgment of 31 January 2017, para. 60; Nasrulloyev v. Russia, ECtHR, Application No. 656/06, Judgment of 11 October 2007, para. 77; Chahal v. United Kingdom, ECtHR, Application No. 22414/93, Judgment of 15 November 1996, para. 118; Abdolkhani and Karimnia v. Turkey, *op. cit.*, paras.131-135; Amuur v. France, ECtHR, Application No. 19776/92, Judgment of 25 June 1996, para. 42; Soldatenko v. Ukraine, ECtHR, Application No. 2440/07, Judgment of 23 October 2008.

[340] Rahimi v. Greece, *op. cit.*, paras. 120-121; UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Art. 40.; UN Committee on the Rights of the Child (CRC), General comment No. 12: The right of the child to be heard, 20 July 2009, CRC/C/GC/12, para. 60. available at: http://www.refworld.org/docid/4ae562c52.html; UN Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, *op.cit.,* para.25.; CPT, Immigration detention, March 2017, CPT/Inf(2017)3, *op. cit.,* p. 9.; UN High Commissioner for Refugee, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternative Detention, 2012, Guideline 9.2 on the appointment of the independent and qualified guardian and legal adviser, para 56. available at: http://www.refworld.org/docid/503489533b8.html.

[341] *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, op. cit.*

[342] *Rahimi v. Greece, op. cit*.

[343] *FEANTSA v. France*, *op. cit*., para. 107.

[344] *FEANTSA v. France*, *op. cit*., paras. 108-109.

[345] *DCI v. the Netherlands*, *op. cit.*, para. 62.

[346] ECSR, Conclusions 2003, Italy, p. 345.

[347] ECSR, Conclusions 2005, Lithuania, p. 409.

153. Moreover, States are obliged to provide for the resources and procedures to facilitate full exercise of the rights guaranteed by the Charter, pursuant to Articles 31 (and 17).[348] This Committee previously underlined that where the implementation of the rights proves highly complex and costly, States parties must endeavour to achieve the aims of the Charter according to a reasonable timetable, securing measurable progress and making optimum use for such resources as can be mustered.[349] The available quality and quantity of shelters available to the migrant children concerned in this complaint do not fulfil these requirements of the Charter. As described in sections IV.1 and IV.2 above, there is a systematic lack of capacity of shelters available to accommodate migrant children, and the basic needs of children are manifestly not being met. There is lack of access to food, water, clothing, sufficient space, privacy, security and access to health care for migrant children in Greece. All these circumstances result in migrant children being forced to live in conditions that fail to meet the standard of human dignity.
154. In addition, the resort to detention of migrant children is a direct consequence of the shortage of reception for migrant children in Greece, resulting in a violation of a number of human rights legal obligations and standards prohibiting the detention of children in the context of migration.
155. **The ICJ and ECRE submit that the Greek State has failed to fulfil its obligation to prevent homelessness and provide shelter for migrant children in conditions compatible with human dignity under Article 31(1) and 31(2) Revised European Social Charter.** In particular:
    a. **Migrant children (accompanied and unaccompanied) in the Greek islands** are systematically exposed to inadequate, inappropriate and an insufficient number of reception places. Due to the lack of age-appropriate reception places on the islands, children are living for prolonged periods in overcrowded conditions in the RIC facilities in makeshift shelters or small tents which lack insulation or heating, or are, even more shockingly, sleeping outside the RIC on the ground. Across the board, migrant children are facing a lack of privacy and security, often sharing shelters/tents/sleeping areas with unrelated adults, with no security guards during the night, and poorly lit shower and toilet areas. Cases of sexual and gender based violence are reported on a regular basis in all reception places on the Greek islands and riots, fights and drug-selling are regularly present. Migrant children live in places with highly substandard and insufficient sanitation. There is a lack of access to food and water and a lack of access to sufficient clothing and health care. These unhygienic, stressful and dangerous living conditions severely impact upon migrant children's physical and mental health and has led to reported cases of illness, self-harm and attempted suicide.
    b. **Unaccompanied children on the Greek mainland** systematically face an insufficient number of reception places. Two out of three unaccompanied children are deprived of an age appropriate reception place. A significant number of unaccompanied migrant children are homeless, living in the streets and public parks whilst others are living in sub-standard conditions in hotels or open accommodation centres, not suited to accommodating migrant children. A number of unaccompanied migrant children also face deprivation of their liberty when being detained *inter alia* under the pretext of "protective custody" in police stations and pre-removal centres, often in overcrowded spaces, as a result of the lack of

[348] See, *DCI v Belgium*, *op cit.*, para.70; *International Movement ATD Fourth World v. France*, ECSR, Complaint No 33/2006, 5 December 2007, para 61.
[349] *DCI v Belgium*, *op. cit.,* para. 71.

reception places for them. Due to the shortages of age-appropriate accommodation facilities children living on the streets, detention and/or in inadequate conditions, become victims of violence, sexual exploitation and harassment, resulting in psychological illnesses, self-harm and suicide attempts.

156. **These situations demonstrate a failure on the part of the Greek authorities to ensure the effective exercise of the right to housing by migrant children, including to ensure housing of an adequate quality, and to prevent homelessness. Greece is, therefore, in violation of Article 31(1) and 31(2) of the Charter.**

V.2 Violation of Article 17

Article 17 - The right of children and young persons to social, legal and economic protection

Part II: With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

(1a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

(b) to protect children and young persons against negligence, violence or exploitation;

(c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

157. Article 17 obliges states to ensure children have social, legal and economic protection, to enable them to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities. Children must be protected against negligence, violence or exploitation (Article 17(1)(b)) and States must provide protection and special aid for children deprived of their family's support (Article 17(1)(c)).
158. Children and young persons are individual rights holders under Article 17 of the Charter. Indeed, Article 17 encompasses a broad set of rights for children and young persons as well as concomitant obligations on States requiring them to undertake measures to ensure a child's right to grow up in an environment which encourages their full development, not only of their physical and mental capacities but also of their personality. The overarching nature of Article 17 is such since it integrates rights which are guaranteed by the UN CRC and is interpreted in light of this instrument.[350]
159. The ECSR has derived from Article 17 positive obligations on States to provide to children and young persons suitable and sufficient accommodation, basic care and assistance, including medical and psychological assistance.[351] In the case of migrant children, diminished availability or an entire absence of this care under Article 17(1)(a) due to oversaturation in the reception network or due to a child's migration status has not only been found by the ECSR to violate Article 17(1)(a) but has also been found to have severe repercussions on the effectiveness of Articles 17(1)(b) and (c). As the ECSR has held in the Defence for Children International complaints respectively against Belgium and the Netherlands, where the appropriate measures to guarantee children's care and assistance are not provided, this consequently poses a serious threat to their most basic rights, namely their right to life, to psychological and physical integrity and respect for human dignity relevant to both sub Articles.[352] A pre-requisite, then, to satisfying 17(1) is the provision of housing, care and assistance for children which is appropriate to their age and the

[350] Conclusions XV-2, Statement of Interpretation on Article 17, p. 26.
[351] *DCI v Belgium*, *op. cit.,* para. 38; *World Organisation against Torture (OMCT) v. Ireland*, ECSR, Complaint No. 18/2003, 7 December 2004, paras. 61-63.
[352] *DCI v Belgium*, *op. cit.,* para. 82; *DCI v. the Netherlands*, *op. cit.*, paras. 70-71.

dangers to which they are exposed because of it.[353] The ECSR has determined that such material needs must be provided immediately to children so that their needs can be listed in a child support plan detailing both medical and psychological care where relevant.[354] In this respect, the ECSR has previously relied upon UNHCR observations which have highlighted the urgency with which children should be placed in appropriate reception structures and the rigour and detail with which an assessment of a child's needs must be undertaken. As has also been underlined by the UNHCR and cited by the ECSR, the effectiveness of the right to asylum is often predicated upon such timely provision of qualitative conditions.[355]

160. In respect of certain accommodation which has been provided by contracting States to foreign minors, the Committee has been clear in stating that hotels, for any period of time, are not appropriate for unaccompanied minors and their placement in such temporary accommodation will give rise to a violation of Article 17. Such accommodation neither allows for support by properly trained personnel nor for basic services, education and social services to be furnished. In sum, hotels do not constitute an area of protection which is appropriate for a minor's age; simply put, they are not designed to accommodate children.[356]

161. Moreover, where unaccompanied migrant children have been detained this Committee has cited from international documents to find that detention is not in the best interests of the child, that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof and that, ultimately, unaccompanied children should not be detained.[357]

162. Alongside the immediate furnishing of adequate material resources for children, the ECSR have also identified under Article 17 a duty on States to provide procedures which are suitable for them, which are conducted rapidly but with the same procedural guarantees as that afforded to adults.[358]

163. Certain standards for child welfare institutions have also been elaborated upon by the ECSR under Article 17. The ECSR has held that the effective exercise of Article 17 is contingent on the "establishment or maintenance of appropriate institutions or services which must ensure children within their care the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as their special protection and assistance."[359] The standard of care provided in the said institutions must provide children with "a life of human dignity, of conditions promoting their growth, physically, mentally and socially and the conditions where a child is placed must be of such a size as to resemble the home environment." The ECSR has underscored the importance for States to provide an adequate supervision of the child welfare system and relevant institutions and has asked States to provide adequate information on arrangements such as guardianship and the protection of homeless children within their respective States.[360] In *EUROCEF v. France* the ECSR honed in on the guarantees provided to assure a minor's welfare through the speedy appointment of a guardian who would, amongst other duties, ensure that a lawyer is appointed for the child and that certain of their procedural rights are effectuated.[361]

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[353] *EUROCEF v. France*, *op. cit.*, para.97.
[354] *DCI v Belgium*, *op cit.*, para.80.
[355] *Ibid*.
[356] *EUROCEF v. France*, *op. cit.*, para.92.
[357] *Ibid.,* para. 99.
[358] Conclusions XV-2 – Statement of interpretation – Article 17.
[359] Conclusions XV-2 – Statement of interpretation – Article 17.
[360] Conclusions I – Statement of interpretation – Article 17.
[361] *EUROCEF v. France*, *op. cit.*, para.99.

164. Article 17 must be read consistently with States' obligations under the UN CRC, a number of which are applicable in the present complaint, as necessary to safeguard the child's well-being and development. In its Preamble, the Convention recognises that children, owing to their age and dependency, require special safeguards and care, including appropriate legal protection. In this respect, the UN Committee on the Rights of the Child has held that children must be appropriately protected and assisted, recognising that their lack of skills, maturity and access to resources makes them more reliant on the authorities for the protection of their rights.[362] The particular vulnerability of child asylum seekers is furthermore recognised by Article 22 UN CRC. A recent joint comment of the UN Committee on the Rights of the Child and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has made it clear that migrant children should be "treated first and foremost as children" and should be regarded as "individual rights holders", unaffected by their parents' or guardians' migration status.[363] In the asylum sphere, this necessarily means that States have a duty to duly support children ensuring their effective access to the asylum procedure. Moreover, Article 3(1) UN CRC establishes the best interests of the child as the primary consideration in all actions concerning children. Assessment and determination of the best interests of the child requires States to ensure the child's protection and care in terms of their safety, well-being, development, material, physical, educational and emotional needs. The obligation extends to protection from harm and vigilance as to risks which are intrinsically linked to the context of child migration as well as the proactive realisation of a child's well-being, integrity and development.

165. Under EU law, Articles 21 to 23 RCD obliges Member States to provide specifically designed reception for those with special reception needs/vulnerable persons, namely children, the elderly and single parents with minor children. In order for these needs to be practically assured, vulnerable persons must be identified, assessed for special reception needs and provided with support and regular monitoring to satisfy these needs. Under Article 24 RCD children are specifically entitled to a standard of living adequate for the child's physical, mental spiritual, moral and social development and their best interests must be a primary consideration when actions relating to children are undertaken pursuant to the Directive. With this in mind, the Directive provides for children to have access to leisure activities, including play and recreational activities appropriate to their age within accommodation centres as well as to open-air activities.[364]

166. Where persons with special reception needs are detained Member States are obliged to provide support and regularly monitor their situation with a specific accent on their physical and mental health. The Directive implicitly recognises that detention is not suitable for minors since their detention should only be used as a last resort, where other less coercive alternative measures cannot effectively be applied, it should be imposed for as short a time as possible and all efforts should be made to release a child and place him/her in accommodation which is suitable for the child.[365] If, and after having considered these procedural requirements and the best interests of the child, a child is detained they must have "the possibility to engage in leisure activities, including play and

[362] UN Committee on the Rights of the Child, *General Comment No. 7. (2005): Implementing Child Rights in Early Childhood*, 20 September 2006, CRC/C/GC/7/Rev.1, para. 13., available at: http://www.refworld.org/docid/460bc5a62.html

[363] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, *op. cit.*, para. 15.

[364] Article 23(3) RCD.

[365] Article 11(2) RCD.

recreational activities appropriate to their age,"[366] Moreover, families in detention must be provided with separate accommodation guaranteeing adequate privacy.[367]

Conclusions

167. **The ICJ and ECRE submit that Greece has and is systematically failing to provide migrant children with the social and economic protection that they are entitled to by virtue of Article 17 of the Charter. Notably, Greece has failed to furnish accompanied migrant children with the special care and assistance they require and unaccompanied migrant children with the protection and special aid that they need, *inter alia*, by not providing sufficient and adequate services to ensure their care and to protect them from negligence, violence and exploitation**. In particular:
    a. **Migrant children (accompanied and unaccompanied) on the Greek islands** systematically face an insufficient number of reception places and live in RIC facilities in conditions incompatible with human dignity (see violations of Article 31(1) and 31(2)). Families with children and unaccompanied minors are living for prolonged periods of time in situations where privacy and security are not assured. Numerous cases of sexual and gender based violence even against very small children are documented. Migrant children are constantly faced with an environment where riots, fights and drug-selling are prevalent. Moreover, the unhygienic and stressful living conditions, including violence and exploitation, severely impact migrant children's physical and mental health. In addition, the lack of an effective guardianship system deprives unaccompanied migrant children of access to appropriate guardianship and, thus, adequate protection, access to information, legal advice and psychological care.
    b. **Unaccompanied migrant children on the Greek mainland** systematically face an insufficient number of reception places and live in conditions incompatible with human dignity (see violations of 31(1) and 31(2)). A number of unaccompanied migrant children are homeless, living in the streets and public parks and/or are exposed to precarious conditions. Unaccompanied migrant children living in the streets or in precarious situations may not be able to meet even their most basic needs (for example food) and become victims of violence, sexual exploitation and harassment, resulting in psychological illnesses, self-harming and suicide attempts. Due to shortages in the reception capacity for unaccompanied migrant children, a number of them also face deprivation of their liberty under the guise of "protective custody" in police stations, often in overcrowded spaces. In addition, due to the deficient guardianship system in Greece, children do not have access to adequate protection, access to information, legal advice or psychological care and are not protected against violence and exploitation.

168. **The migrant children referred to in this complaint are placed in situations where there is an entire absence of appropriate social, legal and economic protection. These conditions eradicate any possibility that their personalities and physical and mental capacities can be fully developed. The factual evidence presented, in fact, demonstrates that the opposite is the case. As a result migrant children are not protected against violence and exploitation and Greece is, therefore, in violation of Article 17 of the Charter.**

[366] Article 11(2) RCD.
[367] Article 11(4) RCD.

V.3 Violation of Article 16

Article 16 – The right of the family to social, legal and economic protection

Part I: The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

Part II: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

169. Under Article 16 States are obliged to ensure the full development of families by means of social and family benefits and housing provisions. As such Article 16 provides for a right to housing as a means to secure the social, legal and economic protection of the family unit.[368] It follows that without housing, the protection of the family, including the well-being and full development of the child as a member of the family, cannot be safeguarded.[369] In addition, the ECSR has itself observed that Article 16 underpins the enjoyment of certain fundamental rights, notably the preservation of human dignity and health.[370] There is, therefore, an important degree of overlap between the right to housing under Article 16 and other rights under the Charter. Indeed, the ECSR has held that a lack of housing for the family unit is entirely synonymous with an increased threat to a child's health and physical integrity under Article 11 of the Charter. [371]
170. The ECSR's statements of interpretation and jurisprudence on Article 16 demonstrates that the right to housing for the family goes beyond the mere entitlement to a house and also encompasses a set of rights which relate to the provision of living conditions necessary to give the family its full scope and meaningful enjoyment of family life.[372] In this regard, the ECSR has interpreted the right to housing to be a right to adequate housing in order to protect family life.
171. From the above reading, a dual set of obligations on States under Article 16 and the right to family housing arises. The first relates to the substantive provision of adequate housing and the second to a more procedural assessment of housing. In respect of the first, this Committee has found States to be at odds with their undertakings under Article 16 where family housing has been insufficient or not accessible, where housing has been territorially segregated and the living environment has been unhealthy due to, *inter alia*, sewage invasions, contaminated water, dampness, a lack of access to services and, more generally, inadequate measures to ensure public health standards.[373] Moreover, where the ECSR has deliberated upon adequate family housing in temporary encampments they have found a violation of Article 16 where appropriate sites for temporary encampment have not been selected with diligence, where there has been a reluctance to provide appropriate

[368] ERRC v. Bulgaria (2006), *op. cit*, para. 9.
[369] European Roma and Travellers Forum (ERTF) v. Czech Republic, ECSR, Complaint No.104/2014, 17 May 2016, para. 70.
[370] *DCI v. Belgium*, *op. cit.,* 2011 para. 135
[371] *DCI v. Belgium*, *op. cit.,* paras.. 135 and 117.
[372] ECSR Conclusions I – Statement of interpretation – Article 16; ERRC v. Bulgaria (2006), *op. cit*., para. 61.
[373] International Federation of Human Rights (FIDH) *v.* Ireland, ECSR, ECSR, Complaint No. 110/2014, 17 March 2015, para. 119.

infrastructure at these sites and where there is a risk of deprivation of liberty where conditions at temporary encampments are not met.[374]

172. In respect of the procedural obligations under Article 16, the ECSR has held that adequate family housing relies on States maintaining meaningful statistics on needs, resources and results, undertaking regular reviews of the impact of strategies adopted, establishing a timetable of objectives which are met and not indefinitely prolonged, and paying close attention to the impact of policies on persons concerned, with particular attention being paid to the most vulnerable persons.[375] This group includes, among others, children, regardless of their status and whether accompanied or unaccompanied; families (including forcibly displaced), the elderly and refugees. Therefore, in order to give full effect to the rights under the Charter and effectively protect the family unit, States are required to undertake a qualitative evaluation of family housing needs, resources, actions, measurable progress and remaining gaps on a regular basis. The data collection and evaluation listed above requires a positive intervention by the State, be it legal and/or practical, to effectively and meaningfully protect the family unit;[376] State transparency in the collection and dissemination of data;[377] accountability of the State under the Charter regardless of whether local or regional authorities or professional organisations are exercising a particular function[378] and a financing consistent with a maximum use of available resources even where "the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve."[379] The consequences of delays in the provision of these elements or, indeed, not providing these elements at all, are particularly grave where the concerned population has heightened vulnerabilities, such as displaced families.[380]

173. In addition to the ECSR jurisprudence, other international instruments and authorities have elaborated on the right to family housing. The right to an adequate standard of living for children is recognised and guaranteed by Article 27 of the UN CRC. "Adequate" is defined in relation to the child's physical, mental, spiritual, moral and social development and under Article 27(3) of the Convention, States are obliged to assist the family unit to implement this right and provide material assistance, including nutrition, clothing and housing where necessary. In its recent joint general comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child held that "States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents[….] States should ensure that residential facilities do not restrict children's day-to-day movements unnecessarily, including de facto restriction of movement."[381]

174. In addition, the UN Committee on the Rights of the Child has recognised that protecting children's rights is largely dependent on the necessary support being provided to the person responsible for them. As such the Committee has determined that Article 5 UN

[374] These requirements have been taken from ERRC v. Greece (2004), *op. cit.,* para. 46. In respect of the latter the ERRC advanced that the individuals of the Roma community could be deprived of the liberty if they violated a Joint Ministerial Decision which governed the establishment and conditions in temporary encampments for itinerant Roma. The Committee subsequently found these conditions to be extremely strict and, coupled with additional factors, found Roma to have an insufficient supply of appropriate camping sites and Greece to be in violation of its obligations under Article 16.

[375] International Federation of Human Rights (FIDH) v. Ireland, *op. cit.*, para. 109.

[376] *ERRC v. Bulgaria* (2006), *op. cit*., para. 35

[377] Saw this somewhere but still looking for reference!

[378] *ERRC v. Greece* (2004), *op. cit.,* para. 29.

[379] Autism-Europe v. France, ECSR, Complaint No. 13/2002, 4 November 2003, para. 53.

[380] Centre on Housing Rights and Evictions (COHRE) v. Croatia, ECSR, Complaint No. 52/2008, 22 June 2010, para 84.

[381] Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

CRC recognises primary caregivers as the "major conduit through which young children are able to realize their rights."[382] The Committee has emphasised the interdependencies between parents and children, with children's rights being largely conditional on the adequacy of the support provided to this category.[383]

175. Official data, as listed in sections IV.1.1.b. and IV.1.2., confirms that the shortage in appropriate reception facilities for migrant children is an endemic and long-standing problem of the Greek reception framework and one which continues to be met with a minimal response. The lack of reception places for migrants renders any access to accommodation for migrant children void and nullifies the protection of the family unity as guaranteed by the legal, economic, medical and social protection measures in Articles 16 and 31(2).

176. The data included in this complaint shows that RICs are accommodating over double, and in October 2018 nearly triple, of their actual capacity. The infrastructure, let alone the regular review of accommodation, needed to protect the family unit simply does not exist on the Greek islands. The Greek government has failed to take sufficient measures to guarantee migrant children the care and assistance that they need within the family unit so as to ensure the family's full development.

177. **The Greek government's response to the conditions in RICs on the Greek islands has remained stagnant, despite such conditions existing there for a number of years. As a result, the Greek government has not taken the necessary and appropriate measures to guarantee the migrant children in question the care and assistance they need and to protect them and their families. Greece is failing to provide housing as a means of securing the social, legal and economic protection of the family unit, in order to safeguard the well-being and full development of the child as a member of the family.** Greece is, therefore, in violation of Article 16 of the Charter. In particular:
Accompanied migrant children on the islands are deprived of adequate housing due to the insufficient number of reception places and the insalubrious, unhygienic and dangerous conditions, which ensue as a result. Minimal sanitation services, blocked sewage systems, overflowing waste containers, rationing of food and water and non-separated gender areas demonstrate a failure to provide protection at the very core of Article 16. Moreover, no review of accommodation, including statistical data, leading to improvement of accommodation seems to have been undertaken by the Greek government given the stagnation of reception capacity and the lack of disaggregated and transparent data on accompanied migrant children residing in the RICs. Families with migrant children are living for months on the Greek islands without privacy, safety or security leading to regular cases of sexual and gender based violence even against very small children.

178. **Migrant children and their families concerned lack access to appropriate social, legal and economic protection to ensure their full development. Greece is therefore in violation of Article 16 of the Charter.**

[382] UN Committee on the Rights of the Child, General Comment No. 7. (2005): Implementing Child Rights in Early Childhood, 20 September 2006, *op. cit.,* para 16.
[383] *Ibid*.

V.4 Violation of Article 7(10)

Article 7 - The right of children and young persons to protection

Part I. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

[…]

Part II. (10) to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

179. Article 7(10) of the Charter guarantees children and young persons special protection against the physical and moral hazards to which they are exposed. The ECSR has had particular regard, in this context, to all forms of abuse and, as such, has underscored States' obligations to protect children against abuse, including sexual exploitation, child prostitution, trafficking of children and domestic exploitation, such as enforced begging and pick pocketing. Additionally, the ECSR requires States to take specific measures to prohibit and combat such forms of abuse and prevent and assist street children.
180. The ECSR has held that where necessary and appropriate measures are not guaranteed to children, *inter alia*, the non-provision of accommodation due to a lack of reception, the placement of children in hotels or in detention,[384] there are consequences for the physical and moral safety of children. Thus, the inability to provide reception arrangements or measures to ensure the special protection of children is characteristic of an incapacity to care for children and triggers liability under Article 7(10). To illustrate, in *DCI v Belgium* the State was found to have been in dereliction of its obligations under Article 7(10) since sufficient housing had not been provided to children. According to this Committee, there was thus inaction on the part of Belgium to prevent children living on the streets; a passivity, which amounted to a failure to take appropriate measures to protect children against exceptionally dangerous conditions. Whilst the applicants in the complaint had not provided data to clearly show the cause and effect of a lack of accommodation and the concomitant risk to the children's safety in the particular case at hand, the ECSR found the deficiencies in accommodation and thus care and protection of children to be linked inherently to the risk of exploitation, thereby constituting a serious threat to the enjoyment of their rights under the Charter.
181. Indeed, this Committee has previously referred to the guiding principles on extreme poverty and human rights, prepared by the Special Rapporteur on extreme poverty and human rights, and adopted by the United Nations Human Rights Council on 27 September 2012,[385] stating:

> *"§32. Given that most of those living in poverty are children and that poverty in childhood is a root cause of poverty in adulthood, children's rights must be accorded priority. Even short periods of deprivation and exclusion can dramatically and irreversibly harm a child's right to survival and development. To eradicate poverty, States must take immediate action to combat childhood poverty."*
>
> *"§34. Poverty renders children, in particular girls, vulnerable to exploitation, neglect and abuse. States must respect and promote the rights of children living in poverty,*

[384] EUROCEF v. France, *op. cit.*, paras. 99-100.

[385] UN Office of the High Commissioner for Human Rights, *Guiding Principles on Extreme Poverty and Human Rights*, 2012, available at: https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf, See more, UN Human Rights Council, Resolution 21/11, Guiding Principles on Extreme Poverty and Human Rights, A/HRC/RES/21/11.

including by strengthening and allocating the necessary resources to child protection strategies and programmes, with a particular focus on marginalized children, such as street children, child soldiers, children with disabilities, victims of trafficking, child heads of households and children living in care institutions, all of whom are at a heightened risk of exploitation and abuse."

182. For its part, the Committee on the Rights of the Child when clarifying States' obligations under Article 6 UN CRC concerning a child's right to life, survival and development, has highlighted the link between unaccompanied and separated children and the risks of exploitation, particularly trafficking, sexual or labour exploitation, neglect or other forms of violence that they are confronted with. Moreover, the Committee has recently expanded on Article 6 and underlined that obstacles that children may face in "gaining access to education, adequate housing, sufficient safe food and water or health service" all fall within the scope of Article 6 and can all deleteriously affect the physical, mental, spiritual, moral and social development of children. The UN Committee, therefore, has emphasised that Article 6 requires States to be particularly vigilant in respect of unaccompanied children and has, in part and to that end, indicated that States must prioritise their registration and promptly appoint guardians or advisors.
183. The correlation between a lack of accommodation as well as supervision and care of children and the resultant heighted risk of exposing them to physical and moral dangers has also been underscored by the ECtHR, in the context Article 3. In *Rahimi v Greece*, the Court determined that Greece had violated the applicant's Article 3 rights, since upon his release from detention, the applicant was entirely abandoned and left to his own devices. Whilst the prosecutor had been informed of his existence, he had not been provided with a guardian, he was not directed to or given State accommodation and had, therefore, not been provided with any follow-up or supervision. The Court held that the State's negligence in framing and providing care for the child led to physical and mental harm, as noted by a civil society organisation which later cared for the child, sufficient to reach the threshold of an Article 3 violation.[386] Alongside the lack of accommodation and protection of children in the form of guardians, supervision and protection, the Court has also established links between children in detention and the moral and physical hazards present in such institutions.

Conclusion

184. Pursuant to Art 7(10), States have undertaken to protect children against all forms of exploitation.[387] The ECSR previously stated that in order to comply with this provision, children should not be exposed to serious impairments of their rights to life, health and psychological and physical integrity.
185. As the above has demonstrated, reception capacity of RICs on the Greek islands is absolutely insufficient and, as a consequence, conditions in these facilities do not meet adequate standards for protection of the life, health and psychological and physical integrity of accompanied or unaccompanied migrant children. Thus, migrant children are exposed to very serious physical and moral hazards, which can consist of abuse, exploitation and sexual harassment. Equally long-standing shortages in age-appropriate facilities for unaccompanied migrant children in mainland Greece lead to children living on the street or in precarious conditions where their physical and moral integrity is

[386] *Rahimi v. Greece*, *op. cit.,* paras. 58 and 87-94.
[387] *DCI v Belgium*, *op cit.*, para. 94.

threatened.[388] Notably, they are exposed to extreme poverty, violence and even trafficking[389] and sexual exploitation.

186. **ECRE and ICJ submit that the Greek Government has not taken the necessary measures to guarantee special protection to migrant children, thereby causing a serious threat to their life, psychological and physical integrity and to their human dignity, in violation of Article 7(10).** In particular:
    a. **Migrant children (accompanied and unaccompanied) on the Greek islands** are living for prolonged periods of time in situations of overcrowding which lack privacy and security. Migrant children are not protected against violence, exploitation and moral hazards, which are rife in the RICs. As a direct consequence of the inappropriate and over-crowded conditions on the RICs which lack the requisite security, supervision and separation from unrelated adults, migrant children witness riots, fights and drug-selling on the islands and are victims of sexual and gender based violence and abuse. This results in psychological illnesses, self-harming and suicide attempts by children. Moreover, the lack of an effective guardianship system, deprives unaccompanied migrant children of access to appropriate guardianship, adequate protection, access to information, legal advice or psychological care.
    b. **Unaccompanied migrant children on the Greek mainland** face being homeless, living in the streets and public parks, living in sub-standard conditions in precarious accommodation and/or risk being placed into detention on account of the shortage of suitable accommodation for them. Children living in a street-situation or under a precarious situation may not be not able to meet even their most basic needs (for example food) and become victims of violence, sexual exploitation and harassment, resulting in psychological illnesses, self-harming and suicide attempts. Due to the consistent lack of reception capacity for unaccompanied migrant children, a number of them also face deprivation of their liberty on grounds of "protective custody" in police stations, pre-removal centres or RICs, often in overcrowded and mixed gender spaces. In addition, through the deficient guardianship system, children do not have access to adequate protection, access to information, legal advice or psychological care and are not protected against violence and exploitation.

187. **The migrant children and young persons concerned in this complaint lack access to special protection against the physical and moral hazards to which they are exposed. Greece is therefore in violation of Article 7(10) of the Charter.**

[388] *EUROCEF v. France*, *op.cit.*, para. 137.
[389] "The increase in unaccompanied child migrants in Greece has increased the number of children susceptible to exploitation. Some public officials have been investigated for suspected involvement in human trafficking. Unaccompanied children, primarily from Afghanistan, engage in survival sex and are vulnerable to trafficking." United States of America, Department of State, *2018 Trafficking in Persons Report - Greece*, 28 June 2018, *op. cit.* p. 203."

V.5 Violation of Articles 11(1) and 11(3)

Article 11 – The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:
1.to remove as far as possible the causes of ill-health; (…)
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

188. The right to protection of health under Article 11 of the Charter is underpinned by the preservation of human dignity. The protection of health as well as the provision of facilities and expertise and the actions and responses of the State must, therefore, all be compatible with human dignity.[390] As such, there are positive and negative obligations on States to secure the Article's effective exercise. In substance, Article 11 pertains to both physical and mental well-being and corresponds to the definition of health in the Constitution of the World Health Organization.[391] The ECSR has extrapolated several standards of health and services which must be met under Article 11. First, the population must have the best possible state of health; second, there must be medical and health systems which ensure that appropriate numbers of medical and para-medical practitioners are available, that there is adequate equipment to meet a State's main health problems and that there is proper medical care for the whole population.[392] Moreover, under Article 11(3) there are specific obligations on States to control epidemics and provide the means of combatting epidemic and endemic diseases.[393]
189. Preventative care is also an important component of Article 11, with the ECSR paying particular attention to preventative policies in the field of mental health.[394] It has also underlined that where there are avoidable health risks, namely those that can be controlled by human action, health systems must respond appropriately.[395]
190. Article 11 also includes procedural rights, with the ECSR underlining that the effectiveness of the right to protection of health is predicated on actual access to health care for all. The ECSR has, in the past, paid particular attention to restrictions on Article 11 which would impede disadvantaged and vulnerable groups exercising their right to health care.[396] Since the whole population has a right to access health care, a strict interpretation is applied by this Committee. The ECSR has placed an accent on assessing the conditions for every person with specific attention being paid to vulnerable populations, emergency situations and to disparities between urban and rural areas. In respect of children, the ECSR accepted in *DCI v Belgium* that under Article 11(3) there is a direct correlation between the absence of reception facilities, housing or foster homes for children (and where applicable their families) and the increased threats to their health and physical integrity as a result of being forced onto the streets and being left to fend for themselves. Indeed "a minimum

[390] Conclusions 2005, Romania, pp. 600-601.
[391] Conclusions 2005 – Statement of interpretation – Article 11.
[392] Conclusions I – Statement of interpretation – Article 11.
[393] Conclusions I – Statement of interpretation – Article 11.
[394] Conclusions 2005 – Statement of interpretation – Article 11.
[395] Conclusions XV-2, Denmark, pp. 126-129.
[396] Conclusions XVII-2001; International Federation of Human Rights (FIDH) v. Ireland, *op. cit.*, para. 140.

prerequisite for attempting to remove the causes of ill health among these minors is providing them with housing and foster homes."[397]

191. Under its Article 24, the UN CRC safeguards the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States are obliged to ensure the provision of necessary medical assistance and health care to all children with emphasis placed on the development of primary health care as well as the enforcement of measures which combat disease and malnutrition. Moreover, under Article 39 States are required to take appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of inhumane treatment, abuse, torture, neglect, exploitation or armed conflicts.
192. Similar to the ECSR, the UN Committee on the Rights of the Child has affirmed that access to health care must be ensured at an equal footing to unaccompanied or separated children as compared to national children of the respective State. Additionally States must take into account and be aware of the double form of trauma that unaccompanied children have experienced, first on account of the separation from family members and second, the country conditions and or/journeys they have taken, exposing them to varying degrees of loss, violence and disruption.[398] A special sensitivity and attention to their severe emotional distress, urgent health needs, requisite care and rehabilitation is thus required of signatory States to the Convention.[399]
193. Health under the UN CRC covers both physical, mental and social well-being and as explained below requires that the child's best interests are at the centre of all decisions affecting their health and development, which includes attention being paid to the "allocation of resources, and development and implementation of policies and interventions underlying the determinants of their health."[400]
194. Under the Convention, children are entitled to both qualitative and quantitative health services, including prevention, promotion of treatment, rehabilitation and palliative care services. The services must be functional, they must be subject to a monitoring and evaluation in order to identify problems in delivery, infrastructure, finance, and human resources, they must be sufficient in quantity, especially for under-served and hard to reach populations, they must also be within the physical reach of all sections of the child population and acceptable to all in relation to equal provision and treatment, affordability and information accessibility.[401]
195. The Committee on the Rights of the Child links the qualitative elements of the right to housing specifically to the right to health. In its General Comment No. 15 it stated that "[a]dequate housing that includes non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene are core requirements to a healthy upbringing and development."[402]
196. The UN CRC directs States to ensure access to essential health services for the child and his or her family, including pre- and post-natal care for mothers. The Convention links these goals with ensuring access to child-friendly information about preventive and health-

[397] *DCI v. the Netherlands*, *op. cit.*, para.117.
[398] UN Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, September 2005, CRC/GC/2005/61, *op. cit.*
[399] Joint general comment No. 4 (2017) of the Committee on the Protection of the rights of All Migrant Workers and Members of Their Family and No. 23 (2017) of the Committee on the Rights of the Child on the State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return, 16 November 2017, *op. cit*.
[400] UN Committee on the Rights of the Child, *General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health* (Art. 24), 17 April 2013, CRC/C/GC/15. Available at: http://www.refworld.org/docid/51ef9e134.html
[401] *Ibid*.
[402] *Ibid*., para.49.

promoting behaviour and support to families and communities in implementing these practices.[403] In all policies and programmes aimed at guaranteeing the right to health of children and adolescents their best interests shall be a primary consideration.[404]

197. Similarly, the ICESCR under Article 12 requires States to provide equality of opportunity for people to enjoy the highest attainable level of health. The UN CESCR has underscored that Article 12 requires the provision of timely and appropriate health care as well as the furnishing of underlying determinants of health, namely access to safe and potable water, adequate sanitation, adequate supply of safe food, nutrition and housing and healthy environmental conditions. States are obliged to respect, protect and fulfill these rights.[405]

198. The obligations that the CESCR describes in relation to children extend to preventive as well as reactive medical care since children need to be able to develop. A reactive approach with only emergency medical care is not sufficient.

199. The CESCR in its General Comment No 14 affirms that minimum essential levels of healthcare rights must be guaranteed, including essential primary health care. These core obligations include at least the following obligations:

    (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
    (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
    (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
    (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
    (e) To ensure equitable distribution of all health facilities, goods and services."[406]

200. For its part, whilst the ECtHR has declined to recognise that the ECHR guarantees *per se* a right of access to medical treatment or an obligation to provide a particular standard of medical service,[407] it has consistently noted that the assessment of ill-treatment under Article 3 ECHR is relative and depends on numerous factors including the duration of treatment and its physical or mental effects, the age and health of the victim.[408] Moreover, in the context of detention, States are required to adequately secure detainees health and well-being.[409] As such, in *Rahimi v Greece*, the Court took note of a CPT report documenting the Committee's visit to detention centres in Greece and the entire absence of hygiene, medical care, physical activities, and overcrowding in these centres. The Court subsequently found that the applicant, an unaccompanied child, had been held in conditions which entirely failed to meet hygiene and infrastructure standards and which subsequently had violated his human dignity as protected by Article 3 ECHR.

201. European Union Member States have specific obligations under the RCD in respect of health care for international protection applicants. There is an implicit acknowledgment under Article 17 of the Directive that the conditions of accommodation are linked with an individual's physical and mental health. As such, the accommodation provided by Member States must protect their health. In terms of the care, which is required to be provided by States, this must include, at the very least, emergency care and essential treatment of

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[403] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the Highest Attainable Standard of Health* (Art. 12), 11 August 2000, Un.Doc. E/C.12/2000/4, para. 22, available at: http://www.refworld.org/pdfid/4538838d0.pdf
[404] Ibid., para. 24.
[405] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3.: The Nature of States Parties' Obligations* (Art. 2. para. 1, of the Covenant), 14 December 1990, *op. cit.*
[406] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the Highest Attainable Standard of Health* (Art. 12), 11 August 2000, *op. cit.,* para. 43.
[407] Wasilewski v. Poland, ECtHR, Application No. 32734/96, Judgment of 21 December 2000.
[408] *Kudła v. Poland,* ECtHR, Application No. 30210/96, Judgment of 26 October 2000, para. 91.
[409] *Ibid*., para.94; *Ramirez Sanchez v. France*, ECtHR, Application No. 59450/00, Judgment of 4 July 2006, para.119.

illnesses and of serious mental disorders. Moreover, for children, Member States are obliged to provide access to rehabilitation services where they have been subjected to abuse and inhuman treatment and they are required to develop appropriate mental health care and provide qualified counselling when needed.

Conclusion

202. The minimum pre-requisite of furnishing shelter to remove the causes of ill-health under Article 11(1) and (3) is not being met for migrant children in Greece. The absence of shelter and resultant deleterious living conditions has been documented as a trigger and/or amplifier of physical and mental ill-health and disease amongst migrant children. These conditions are exacerbated by the lack of vulnerability and best interests of the child assessment and a lack of access to primary, preventative and in some cases, emergency health care, including psychological support.
203. **Notwithstanding the widespread condemnation of these severe deficiencies by the Greek Ombudsman and other international bodies, Greece continues to violate Articles 11(1) and 11(3) in respect of migrant children.** In particular:
    a. **Migrant children (accompanied and unaccompanied) in the Greek islands** are faced with a shortage of reception places and, thus, live in conditions incompatible with human dignity (see violations of Articles 31(1) and 31(2)). The delays in identifying medical and vulnerability issues are extremely long, leaving vulnerable children to live in situations of squalor, insecurity and violence, which only leads to the deterioration of their physical and mental health. There is a limited provision of primary, paediatric and preventative healthcare and psychological care and an insufficient number of medical personnel, both in the RICs and also in hospitals. Hospitals being understaffed subject migrant children to long waiting times. The most commonly treated illnesses directly originate from the deplorable living conditions to which migrant children are exposed. Medical actors have further noted the re-occurrence of ill-health or diseases on account of continued exposure to such living conditions. The mental health deterioration of many unaccompanied migrant children, often already traumatised by their past experiences, is aggravated by the conditions on the islands leading to self-harm, panic attacks and suicide attempts.
    b. **Unaccompanied migrant children on the Greek mainland,** as evidenced above, systematically face conditions of precariousness due to the shortage in age-appropriate accommodation. Where children are placed in police stations or pre-removal centres there are reported shortages of medical staff and health care supplies. The hazardous conditions which unaccompanied migrant children face, whether on the streets, in detention or in inappropriate housing arrangements leads to severe physical and mental health illnesses, including depression, anxiety, self-harm, panic attacks and suicide attempts by children. There is a clear correlation between the reception conditions of these children and their deteriorated physical and mental health well-being.

204. **Greece systematically fails to take steps to facilitate access to health care and services, to address the causes of ill-health and to prevent diseases and the worsening of illnesses amongst the population of migrant children. Greece is therefore in violation of Article 11(1) and 11(3) of the European Social Charter.**

V.6 Violation of Article 13

Article 13 – The right to social and medical assistance

Part I: Anyone without adequate resources has the right to social and medical assistance
Part II: (1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

(2) to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

(3) to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

(4) to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

206. Article 13 of the Charter constitutes a right for individuals in need to be accorded assistance. The ECSR has interpreted such assistance to cover persons (including foreign nationals and regardless of their status) in an immediate state of need or in a precarious situation and to be directed to the provision of accommodation, food, emergency medical care and clothing.[410] Indeed, this assistance goes to the heart of preventing a violation of the dignity of human beings by leaving them to live in a situation of poverty and social exclusion.[411] As such, the ECSR has noted that where a complaint concerns migrants who may not have regular status Article 13(1) will be assessed and State compliance with the provision of adequate social assistance will be evaluated under that sub Article.
207. In *EUROCEF v. France*, the ECSR held that "the obligation to provide emergency social and medical assistance is not respected in cases when minors are left in a situation of wandering and living on the streets."[412] In this Decision, the Committee noted the delays of the French local authorities to undertake social assessments and requested "local authorities to integrate these minors without delay into the mainstream child protection system and to muster the medical, social, educational and legal resources needed for the full protection of unaccompanied minors' fundamental rights".[413]
208. In *Conference of European Churches v the Netherlands*,[414] the ECSR held that there can be no justification to the halting or denial of emergency shelter, food, water and clothing to persons with irregular status, and whom are inevitably in a precarious situation, since this would leave them at risk of serious irreparable harm to their life and human dignity. In this respect, the ECSR took note of the individuals' safety and the weather conditions that a person would be subjected to if basic subsistence in the form of shelter were not provided.

[410] FEANTSA v the Netherlands, ECSR, Complaint No. 86/2012, 2 July 2014
[411] International Movement ATD Fourth World v. France*, op. cit.,* para.163.
[412] *EUROCEF v. France*, *op. cit.*, para. 163.
[413] *Ibid*, para 165.
[414] CEC v. The Netherlands, *op. cit.*

209. It is notable that in its recent Conclusions on health, social security and social protection in Greece,[415] the ECSR noted that Greece had not demonstrated that all persons in irregular situations could benefit from emergency social and medical assistance in Greece and that according to its decision in *CEC v the Netherlands* there are less onerous means to manage persons who are on the territory irregularly than by simply denying them such assistance, the primary one being to furnish necessary emergency assistance to them. The ECSR deferred its conclusion on this point along with a deferral on the position of foreign nationals lawfully in the territory and their access to emergency social and medical assistance.

210. In its previous decisions, the ECSR has also referred to other international and European law and standards in its elaboration of Article 13.[416] The ECSR has highlighted the interpretation given by the CECSR concerning the right to live in security, peace and dignity and the essential core obligations of the right to access to health facilities, the minimum essential food, basic shelter and essential drugs,[417] and the best interests of the child principle and rights stemming from the UN CRC. It has also referenced the ECtHR's case law in *M.S.S. v Belgium and Greece*[418] and the CJEU's case law in *Saciri and GISTI*.[419] In both cases the respective Courts acknowledged the basic and essential provision of social assistance in the form of housing, food and clothing under the ECHR and the RCD, a pre-requisite to ensuring a migrant's human dignity.

Conclusion

211. Despite widespread criticism from civil society, the Greek Ombudsman and other international bodies, Greece is violating **Article 13** as a result of poor housing conditions and lack of access to shelter and facilities, a lack of vulnerability assessment of persons in need of special care and protection, the identification of these needs and the actual implementation of the care required to address them. In particular:

    a. **Migrant children on the Greek islands** live in a situation of poverty on account of the insufficient number of reception places and, as a result, live in conditions incompatible with human dignity. The basic provision of shelter, food, access to health services and facilities are all at a premium meaning that migrant children are either deprived or face severe delays in receiving this minimum care. Unaccompanied migrant children do not have access to adequate protection, access to information, legal advice or psychological care and are not protected against violence and exploitation due to the defunct guardianship system in Greece. Shortcomings in identifying medical and vulnerability issues means that migrant children are not integrated into a child-welfare infrastructure, their needs are left unaddressed and they are left in situations of squalor, insecurity and violence, which only serves to worsen their physical and mental health. The medical, social, educational and legal resources needed to comply with Article 13 and to protect

[415] European Committee of Social Rights, Conclusions of the ECSR XXI-2 of 2017 on Greece relating to the thematic group "Health, social security and social protection", March 2018, available here: https://www.coe.int/en/web/turin-european-social-charter/-/the-european-committee-of-social-rights-publishes-its-conclusions-xxi-2-2017-in-respect-of-greece-iceland-and-luxembourg

[416] See, CEC v. the Netherlands, *op. cit.,* paras.113-115.

[417] Article 11 ICESCR, GC 12 and 4 in CEC v the Netherlands, paras 35-38. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 11; Committee on Economic, Social and Cultural Rights, General Comment No, 4., The right to adequate housing (Art. 11(1) of the Covenant), 13 December 1991, *op. cit*., paras. 6-7.; UN Committee on Economic, Social and Cultural Rights, General Comment no. 12, The right to adequate food (Art. 11), 12 May 1999, E/C.12/1999/5, paras. 4 and 15. Article 11 ICESCR, GC 12 and 4 in CEC v the Netherlands, paras 35-38.

[418] FEANTSA v the Netherlands, *op. cit.,* para. 27.

[419] CEC v. the Netherlands, *op. cit.,* paras..46-47; FEANTSA v the Netherlands, *op. cit.,* paras. 42-43.

migrant children do not exist on the islands due to a limited provision of primary and preventative healthcare and psychological care and insufficient medical personnel.

b. **Unaccompanied migrant children on the Greek mainland** are left to wander on the streets, are placed in detention or in inappropriate housing arrangements which are not tailored to their age, whilst waiting for age appropriate accomodation. On account of these conditions, there is a limited provision of primary healthcare and psychological care, including barriers to physical access medical personnel and care. Unaccompanied migrant children do not have an assigned guardian on account of the ineffective system for guardianship in Greece. As a result unaccompanied migrant children do not have access to adequate protection, access to information, legal advice or psychological care and are not protected against violence and exploitation.

212. **Due to its failure to provide material, social and medical assistance necessary for migrant children, which includes an effective guardianship, medical or psychological care, and provision of shelter and other basic needs, Greece is in violation of Article 13 of the Charter.**

V.7 Violation of Article 17(2) (Education)

Article 17 –The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed: (…)

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

213. Articles 17(1) and 17(2) encompass the right of every child to primary and secondary education free of charge. The education system must be both accessible and effective which subsequently requires a functioning system of primary and secondary education and an adequate number of schools fairly distributed over a geographical area. In the provision of education, the ECSR has emphasised that special attention is paid to children from minorities, children seeking asylum and children deprived of their liberty so as to ensure their equal access to education. As such States are obliged to take measures to encourage school attendance and reduce the rate of absenteeism.[420] Moreover, the ECSR has underscored that the implementation of the right must be done in a manner which is actual and effective and which hinges upon an environment allowing for its enjoyment, *inter alia*, through stable accommodation of relatives and families in a reasonable standard of housing, ease of access to educational establishments in terms of both transport and proximity and a protective legal framework and security.[421]
214. Article 28 of the UN CRC obliges states to progressively make primary education compulsory and available to all, make secondary education available and accessible to every child and take appropriate measures such as introducing free education and offering free assistance in case of need. Moreover, States are required to take measures to encourage regular attendance at schools and reduce drop-out rates. The UN Committee on the Rights of the Child has stated that States should ensure access to education during all phases of the displacement cycle and that every unaccompanied and separated child should have full access to education in the country that they have entered without any discrimination.[422] The education must be of a qualitative standard with well-trained teachers, in a child-friendly environment and relates to early childhood education, non-formal or informal education and related activities free of charge.[423] In order to ensure equality of treatment in accessing education, States, where necessary, should put in place additional language education and staff and should avoid any disruption to the child's education during migration-related procedures.[424]
215. The right to education at a primary level and available and accessible at the secondary level is furthermore safeguarded under Article 13 ICESCR which requires States to

[420] Conclusions 2005, Bulgaria, pp. 42-43.
[421] *European Roma and Travellers Forum (*ERTF*)* v. France, ECSR, Complaint No. 119/2015, 5 December 2017, para. 73.
[422] UN Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, op.cit.,* para 41.
[423] UN Committee on the Rights of the Child, *General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration, op.cit.,* para.79.
[424] Joint general comment No. 4 (2017) of the Committee on the Protection of the rights of All Migrant Workers and Members of Their Family and No. 23 (2017) of the Committee on the Rights of the Child on the State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, *op. cit*.

implement education with a view to fully developing an individual's personality and sense of dignity as well as to actively pursue the development of a system of schools and continuously improve the material conditions of teaching staff.

216. Under the CESCR some elements of the right to education may be achieved through progressive realisation, there are other aspects of the right that must be realised with immediate effect, including that the right be implemented without discrimination of any kind.[425] Given the importance of education it is of equal importance that every individual, regardless of race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status has equal access to education, irrespective of financial possibilities, or the choice of a carer or the government.[426]
217. The right to education is also safeguarded under Protocol 1 Article 2 of the ECHR which relates to both elementary schooling,[427] secondary education[428] and higher education.[429] Amongst other aspects, the right covers a right of access to educational institutions and calls for signatory States to regulate such access, tailoring it to the needs and resources of the community and of individuals. Within the remit of Article 2 Protocol 1, the ECtHR has held that in view of certain groups' vulnerability, States are required to pay particular attention to their needs, facilitating the enrolment of children within the group even where requisite administrative documents are missing.[430]
218. Under Article 14 of the RCD, Member States are obliged to ensure children access to the education system under similar conditions as their own nationals until, where relevant, a removal decision is actually enforced. There can be no more than a three-month delay from the moment an asylum application is made until access to education is provided and preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system.

Conclusion

219. Access to education for minor children of applicants and children seeking international protection under similar conditions as Greek nationals is provided under Article 13 L. 4540/2018. This access is guaranteed as long as there is no pending enforceable removal measure against them or their parents. Whilst legislation provides for a right to educational access a study conducted in 2017 on children's access and participation rates in formal and informal education classes for children living in selected accommodation and shelters in Greece showed that only 58% of assessed children attend educational activities, whilst 41% did not attend any type of education. Out of the 58% only 22% attended formal education. In a later assessment, specifically in respect of unaccompanied migrant children, only 44% were found to be enrolled in schools whilst 56% were not.
220. Access to education for migrant children is particularly lacking on the islands. Out of the 29,718 persons arriving to the islands (of which at least 5,300 children and 2,500 children of school age (5-17 years old)), only 300-400 children were reported to have been enrolled at public schools at the end of October 2017. Moreover, by February 2018 no afternoon preparatory classes operated in the Northern Aegean (for more details see section IV.4

[425] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education* (Article 13 of the Covenant), 8 December 1999, E/C.12/1999/10, paras. 43-45, para 52.
[426] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 11: Plans of Action for Primary Education* (Art. 14 of the Covenant), 10 May 1999, E/1992/23.
[427] *Sulak v. Turkey*, ECtHR, Application no. 24515/94, Decision on Admissibility 17 January 1996.
[428] *Cyprus v. Turkey*, ECtHR, Application No. 25781/94, Judgment of 12 May 2014, para. 278.
[429] *Leyla Şahin v. Turkey*, ECtHR, Application No. 44774/98, Judgment of 10 November 2005, para. 141.
[430] *Sampanis and Others v. Greece*, ECtHR, Application No. 32526/05, Judgment of 5 June 2008, para. 86.

above).[431] Some of the other migrant children in the Greek islands attend informal education implemented by NGOs, but that sometimes only amounts to four hours of classes per week.

221. The serious disparity between numbers of arrivals to the islands and the numbers of children attending schools demonstrates that Greece has not complied with obligations under Articles 17(1) and (2) of the Charter which safeguards the right of **every** child to primary and secondary education free of charge. Moreover, the right is predicated on the establishment of certain conditions, *inter alia*, stable accommodation, a reasonable standard of housing and preparatory classes. In view of the conditions detailed above the framework for the realisation of Article 17(2) is simply not in place and the effectiveness of the right can, therefore, not be assured. In particular, more than 85% of all migrant children (both accompanied and unaccompanied) in the Greek islands do not attend primary or secondary education. Indeed, this is a clear breach of other international and European legislative instruments since migrant children are manifestly not assured access to education on a similar standard to that of Greek nationals. The lack of an effective guardianship system furthers aggravates access to education for unaccompanied children, as they are lacking information, guidance and support to facilitate their access to education.

222. **Greece systematically fails to provide migrant children on the Greek islands with access to free primary and secondary education and to encourage regular attendance at schools. Greece is therefore in violation of Article 17(2) European Social Charter.**

[431] AIDA, *Country Report on Greece 2017*, *op. cit.*

Part VI. Conclusions

223. This collective complaint has demonstrated the serious systemic flaws in Greek law, policy and practice which deprive unaccompanied migrant children in Greece (both on the mainland and islands) and accompanied migrant children on the Greek islands of rights to housing, health, social and medical assistance, education and social, legal and economic protection, contrary to the obligations of Greece under the European Social Charter.

224. For these reasons, the ICJ and ECRE ask the European Committee of Social Rights to find violations of the following Articles of the revised European Social Charter in respect of the migrant children concerned:
    - A violation of Article 31(1) and 31(2) of the revised European Social Charter (the right to housing);
    - A violation of Article 17(1) of the revised European Social Charter (the right of children and young persons to social, legal and economic protection);
    - A violation of Article 16 of the revised European Social Charter (the right of the family to social, legal and economic protection);
    - A violation of Article 7(10) of the revised European Social Charter (the right of children and young persons to protection);
    - A violation of Article 11(1) and 11(3) of the revised European Social Charter (the right to protection of health);
    - A violation of Article 13 of the revised European Social Charter (the right to social and medical assistance);
    - A violation of Article 17(2) of the revised European Social Charter (the right to education).

225. The interveners further submit that, pending the resolution of this complaint, Greece should take urgent measures, in accordance with Rule 36 "Immediate measures" of the Rules of the ECSR.[432] The ICJ and ECRE respectfully submit that it is necessary to adopt the immediate measures in order to avoid the risk of a serious irreparable injury and to ensure the effective respect for the rights recognised in the European Social Charter. Particularly in the case of migrant children, who find themselves in a vulnerable situation, remaining even for a short period of time in the conditions described in this complaint, would result in irreparable harm and injury and would have a detrimental and non-reversible impact on their development. In order to ensure that in respect of all migrant children concerned by this complaint, migrant children should immediately be:
    - Removed from overcrowded RIC facilities on the Greek Islands and have access to appropriate accommodation facilities and care;
    - Provided with adequate housing of sufficient quality (that is secure, not overcrowded, with sufficient sanitation);
    - Provided with sufficient food and water;
    - Provided with adequate medical assistance, including mental health/psychological care and a healthy living environment;
    - Provided with access to free primary and secondary education;
    - For unaccompanied migrant children, provided with a guardian who effectively protects their interests;
    - Provided with an assessment of the child's best interests and their vulnerability before any decision or measure is taken concerning them;

[432] Rules including the most most recent amendments adopted by the Committee on 26 January 2018

- In the case of unaccompanied migrant children, removed from detention in police stations, pre-removal centres and RICs where they are detained for the purposes of their "protective custody" and ensure their immediate access to age-appropriate shelters;
- In the case of unaccompanied migrant children, have immediate access to age-appropriate shelters;

226. The ICJ and ECRE also ask the Committee to invite the Committee of Ministers to recommend that Greece pay the sum of 10.000 euros (provisional estimate) to the complainant by way of costs. A detailed budget will be supplied to the Committee in due course.

Brussels and Athens, 23 November 2018

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