

The state of the Greek asylum system, twelve years since *M.S.S.*

RSA & Stiftung PRO ASYL Submission to the Committee of Ministers of
the Council of Europe in the cases of *M.S.S. v. Belgium and Greece* &
Rahimi v. Greece

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Executive summary & recommendations

Access to asylum

No arrangements are currently in place to ensure access to asylum in mainland Greece. Refugees are prohibited from direct access to the Asylum Service to register a claim. They must first report to a Reception and Identification Centre (RIC). Appointments for registration at the mainland RIC (Malakasa, Diavata) were managed via an online platform from July 2022 to May 2023. Greek authorities do not consider those as “making” of an asylum claim. People awaiting an appointment are arbitrarily arrested and detained for removal.

The Committee should request Greece to detail the specific measures it has introduced or aims to introduce in order to grant access to the asylum procedure on the mainland within the deadlines set out in EU and domestic law.

Remedies against removal orders from the Hellenic Police are inaccessible and ineffective. Only 1.3% of removal orders were appealed last year. Only 2.7% of appeals were granted.

The Committee should urge Greece to take concrete steps to enhance the accessibility and effectiveness of remedies against Hellenic Police removal decisions, and to report on progress achieved.

Greece enforces *de facto* deprivation of liberty throughout the reception and identification process in the RIC and has faced related infringement proceedings from the European Commission for poor transposition of EU law.

The Committee should request Greece to repeal Article 40(a) of the Asylum Code and to report on measures taken to comply with the right to liberty vis-à-vis the “restriction of movement” regime in RIC, in light of the January 2023 infringement procedure launched by the European Commission.

Asylum procedure

The designation of Türkiye as a safe third country under a list enacted in June 2021 has resulted in arbitrary denial of protection and legal limbo for over 10,000 refugees. Greek authorities disregard critical evidence on the Turkish asylum system, including case law of the European Court of Human Rights, and consistently misapply human rights standards.

The Committee should request Greece to report on the exact steps taken to ensure that a thorough assessment of Article 3 risks in Türkiye has been conducted prior to its designation as a safe third country, including of the lack of prospects of readmission.

Appeals Committees dismiss thousands of appeals and issue deportation orders without an assessment on the merits, on the sole ground that refugees do not appear in person or do not submit a camp residence certificate within short deadlines.

The Committee should request information from Greece on how Appeals Committees comply with the principle of *non-refoulement* when dismissing asylum appeals on formal grounds without any assessment on the merits, pursuant to Articles 83(3) and 102(2) of the Asylum Code, and to revisit the provisions concerned.

Reception conditions

The ESTIA housing programme in apartments has been dismantled. Encampment is the only option for asylum seekers. No transportation arrangements are in place to connect remote camps to urban centres. Several camps have no doctor present.

Financial allowances are only available for asylum seekers living in camps. Only one out of four people in the asylum process receives the allowance. The first payment of the allowance takes at least forty days from registration.

The Greek Dublin Unit rejected all incoming Dublin requests from fellow Member States last year. Rejections are based on a standard reply stating that there is no reception capacity.

The Committee should urge Greece to promptly restore alternatives to camp accommodation for vulnerable asylum seekers and to guarantee full availability of health care, transportation and other services in camps, as well as timely granting of financial support to asylum seekers as soon as they enter the asylum process.

Detention conditions

Hundreds of people continue to be detained in police stations for immigration purposes.

The Committee should reiterate the prohibition on use of police stations for immigration detention under Council of Europe standards, and request detailed information from Greece on steps taken to abolish the practice.

Critical gaps in services persist in pre-removal detention centres. Not a single doctor is present in Amygdaleza and Corinth, the two largest centres accounting for nearly 1,000 people. Interpretation is not at all available in Tavros, Drama, Xanthi and Fylakio.

The Committee should request Greece to report on the measures taken to respond to chronic gaps in health care and interpretation services in its pre-removal detention centres.

Introduction

1. Refugee Support Aegean (RSA) and Stiftung PRO ASYL wish to submit to the Committee of Ministers of the Council of Europe (hereafter “the Committee”) an update on selected aspects of the Greek asylum system relevant to the supervision of the execution of the *M.S.S. v. Belgium and Greece* and *Rahimi v. Greece* judgments of the European Court of Human Rights (ECtHR), pursuant to Rule 9.2 of the Rules of the Committee.
2. On 20 June 2023, the Greek government submitted to the Committee of Ministers (hereafter “the Committee”) an Updated Action Plan on the execution of the *M.S.S. / Rahimi* group of cases.¹ Several areas of the Action Plan, however, regrettably do not convey accurate and up-to-date information on the state of the Greek asylum and reception process.
3. The present Rule 9.2. submission follows previous communications by RSA and Stiftung PRO ASYL to the Committee.² It draws predominantly on RSA casework and documentation of current practice in the implementation of the Greek asylum system,³ analysis of official statistics released by Greek authorities,⁴ as well as exchanges thereof with a dedicated Task Force Migration Management set by the European Commission in 2020 to monitor compliance with EU asylum standards in Greece.⁵
4. We recall that supervision of compliance with Articles 3 and 13 of the European Convention on Human Rights (hereafter “the Convention”) in the context of execution of the *M.S.S. v. Belgium and Greece* ruling is inextricably linked to the operation of the European Union (EU) Dublin system, per which Greece is required to take charge of or take back asylum seekers for whom it is deemed responsible under the criteria of the Dublin Regulation.⁶ Reception capacity is particularly relevant to the implementation of the Dublin Regulation, as discussed below.

¹ DH-DD(2023)740.

² DH-DD(2021)521; DH-DD(2020)723.

³ *Inter alia*, Registration of asylum applications in the new mainland RIC in Greece, February 2023, available at: <https://shorturl.at/pvX04>; RSA & HIAS, *The role of the European Commission in the implementation of the EU asylum acquis on the Greek islands*, February 2023, available at: <https://shorturl.at/CFPY5>; RSA et al., *The state of the border procedure on the Greek islands*, September 2022, available at: <https://rb.gy/pgnrrr>; RSA, *Greece arbitrarily deems Turkey a “safe third country” in flagrant violation of rights*, February 2022, available at: <https://rb.gy/b5m23>.

⁴ Notably, RSA, *The Greek asylum procedure in figures in 2022: Analysis of main trends in refugee protection*, March 2023, available at: <https://shorturl.at/eiEJV>; *Immigration detention in 2022: Sharp rise in detention orders, no access to remedies and legal aid in Greece*, April 2023, available at: <https://shorturl.at/cuyAJ>.

⁵ The documents have been made available to RSA by the Directorate-General for Migration and Home Affairs (DG HOME) of the European Commission following requests for public access, notably GESTDEM 2022/2217, 2022/6877 and 2023/1934.

⁶ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 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 [2013] OJ L180/31.

Risks of refoulement on account of systemic deficiencies relating to access to the asylum procedure

Barriers to registering an asylum application – the new framework for access to asylum on the mainland

5. In line with EU law,⁷ the Greek Asylum Code defines “making” (υποβολή), “registration” (καταγραφή) and “lodging” (κατάθεση) of asylum claims as discrete procedural steps. The authorities are required to carry out “basic registration” (απλή καταγραφή) of a claim within 3 working days from the moment of “making” (υποβολή) of an asylum application, and then to proceed to “full registration” (πλήρης καταγραφή) within 15 working days from “basic registration”.⁸ The application is deemed to be lodged from the moment of full registration.⁹ However, the individual benefits from “asylum seeker” status from the moment of “making”, i.e. when the intention to seek asylum is expressed.¹⁰ Constant case law from the Court of Justice of the European Union (CJEU) affirms that the “making” of an asylum application shall not be subject to any “administrative formality”.¹¹
6. Structural deficiencies as identified by the European Court of Human Rights (ECtHR) in the *M.S.S.* ruling¹² persist as regards access to the asylum procedure on the Greek mainland. **As of November 2021, Greece has stopped direct access to its Asylum Service for those who have not previously undergone reception and identification (“screening”) procedures**, per a circular of the Ministry of Migration and Asylum.¹³ Under a new circular issued in August 2022, persons who are present on the mainland and have not previously undergone reception and identification procedures shall only be allowed lodge their asylum applications with the Reception and Identification Service (Υπηρεσία Υποδοχής και Ταυτοποίησης, RIS) at the Reception and Identification Centres (Κέντρα Υποδοχής και Ταυτοποίησης, RIC) of Malakasa and Diavata, near Athens and Thessaloniki respectively.¹⁴ This mirrors the procedure followed for arrivals in the Closed Controlled Access Centres (Κλειστές Ελεγχόμενες Δομές, CCAC) on the Eastern Aegean islands and the RIC at the Evros land border.
7. Appointments for reception and identification procedures and for the lodging of asylum claims at the RIC of Malakasa and Diavata are booked via a special online platform¹⁵ launched by the Ministry in July 2022. However, the authorities **expressly refuse to view the request for a registration appointment via the online platform as “making” of an asylum claim**, even though this act amounts an expression of intention before the designated authority for receiving asylum claims and is the sole means of access to the asylum procedure, in accordance with the Ministry of Migration and

⁷ Article 6 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (“Asylum Procedures Directive”) [2013] OJ L180/60.

⁸ Article 69(2) Asylum Code, L 4939/2022, Gov. Gazette A' 111/10.06.2022.

⁹ Article 69(3) Asylum Code.

¹⁰ Article 69(8) Asylum Code.

¹¹ CJEU, C-823/21 *Commission v Hungary*, 22 June 2023, para 43; C-72/22 PPU *MA*, 30 June 2022, para 80; C-808/18 *Commission v Hungary*, 17 December 2020, para 97; C-36/20 *VL v Ministerio Fiscal*, 25 June 2020, paras 93-94.

¹² *M.S.S. v. Belgium and Greece*, paras 300-301.

¹³ Ministry of Migration and Asylum, Circular 411695/2021, 24 November 2021.

¹⁴ Ministry of Migration and Asylum, Circular 504912/2022, 31 August 2022. Malakasa and Diavata are established as RIC under Article 34 PD 106/2020, Gov. Gazette A' 255/23.12.2020, as amended by Article 3 PD 20/2023, Gov. Gazette A' 43/24.02.2023. The circular only exempts unaccompanied children and persons in criminal or administrative detention from the registration procedure at the RIC of Malakasa and Diavata

¹⁵ Ministry of Migration and Asylum, *Registration appointment application*, available at: <https://bit.ly/3HY6bzQ>.

Asylum circular. Importantly, the appointment receipt automatically generated by the online platform expressly states that said document “does not constitute a statement of intention to apply for asylum, but proof that an appointment has been scheduled to this end”. This practice poses impermissible “administrative formalities” on the right to “make” an asylum application under Articles 3 and 13 of the Convention, as well as corollary EU and domestic law provisions.¹⁶

8. In addition to the European Commission,¹⁷ **at least eight judgments delivered in 2023 by Greek courts reviewing detention have held that the request of an appointment via the online platform constitutes “making” of an asylum claim** and should automatically entail the acquisition of “asylum seeker” status, including the right to remain on Greek territory.¹⁸
9. **The Greek government has taken no actions whatsoever to comply with the above rulings.** On the contrary, it has unsuccessfully attempted to overturn the case law by requesting withdrawal of the first of those judgments at the Administrative Court of Kavala. The request has been dismissed inadmissible by the Court.¹⁹
10. In light of the above, the Greek government’s view that “An application can also be registered through internet” as expressed in para 16 of the Updated Action Plan is regrettably incorrect. At no point has the Greek asylum process foreseen the possibility for applicants themselves to register an application online, as highlighted in previous submissions to the Committee.²⁰
11. The Greek government’s position on the “making” of asylum applications means that people who approach the designated authorities via the online platform in order to lodge an asylum claim are not considered to be “asylum seekers” and are denied the basic guarantees attached to that status, often for prolonged periods of time. In practice, **people holding such registration appointments are regularly arrested, placed in arbitrary pre-removal detention by police authorities and put at risk of arbitrary removal from the territory** even where they demonstrate the receipt of their appointment request at the RIC. In some cases, people have been arrested near the RIC on the very day of their appointment and have been placed in pre-removal detention.²¹
12. Available remedies against removal in such cases fall far short of effective protection against *refoulement*.²² Deportation or return orders issued by the Hellenic Police are amenable to an administrative appeal before the Hellenic Police within five days. The remedy is largely inaccessible, however. **Out of a total of 33,441 return and deportation**

¹⁶ Article 6(1) Asylum Procedures Directive; Article 69(8) Asylum Code.

¹⁷ European Commission, *Report of meeting between DG HOME / Secretary General for Reception*, Ares(2022)1307494, 16 November 2022; *Operational Conclusions 11th Steering Committee Meeting for Migration Management*, Ares(2022)7197303, October 2022, 2.

¹⁸ Administrative Court of Athens, AP741/2023, 17 March 2023; AP721/2023, 17 March 2023; Administrative Court of Kavala, AP421/2023, 12 April 2023; AP382/2023, 3 April 2023; AP379/2023, 31 March 2023; AP209/2023, 7 February 2023; AP164/2023, 7 February 2023; Administrative Court of Komotini, AP209/2023, 11 April 2023, available at: <https://shorturl.at/gjBGX>.

¹⁹ Administrative Court of Kavala, AP516/2023, 12 May 2023, available at: <https://shorturl.at/gjBGX>.

²⁰ DH-DD(2021)521, para 9.

²¹ Administrative Court of Corinth, Π1853/2023, 4 May 2023, available at: <https://shorturl.at/gjBGX>.

²² *M.S.S. v. Belgium and Greece*, para 318.

decisions taken in 2022, no more than 450 were appealed (1.3%) according to official data.²³

13. The remedy is also severely ineffective. **Out of 450 appeals lodged with the Hellenic Police against removal orders in 2022, only 12 were granted (2.7%)** according to official figures.²⁴ In cases supported by RSA, Hellenic Police decisions on such appeals appear to be **identical, to lack specific reasoning on submissions** and merely to state that “the foreigner lacks residence documents and the return decision was issued without a departure deadline, according to the provisions of articles 21, 22, 23 of L. 3907/11”. This is the case even for asylum seekers who enjoy a right to remain on Greek territory under EU and domestic law.²⁵
14. The online platform managed by the Ministry of Migration and Asylum has frequently been out of service since its launch in July 2022, given that it does not offer an unlimited number of appointments. When a specific threshold of persons requesting registration at the RIC and Malakasa and Diavata is reached, the platform ‘shuts down’ and does not offer appointments to new requests. An automated message appears on the user’s screen, stating: “No available dates were found for the location you selected” and indicating only the request number, not the person’s details.²⁶ **The platform was unavailable for the first half of April 2023**, as the Ministry of Migration and Asylum had indicated that “From 1st of April until 17 April there will be no new appointments so that the backlog is cleared”.²⁷
15. **The platform has again shut down since early May 2023 to the time of writing** due to a lengthy upgrade of the Asylum Service information system, “Alkyoni”. This upgrade has caused **disruption in all areas of operation of the Asylum Service**, including schedule of interviews, granting of identification documents, submission of appeals, affecting thousands of people in the asylum process.²⁸ We also recall that the Asylum Service was again **unable to grant documents to thousands of applicants for most of 2022** due to technical difficulties in issuing the Provisional Foreigner’s Insurance and Health Care Number (Προσωρινός Αριθμός Ασφάλισης και Υγειονομικής Περίθαλψης Αλλοδαπού, PAAYPΑ) for certain categories of cases.²⁹
16. Even where the online platform operated, it booked appointments for several months later, reaching even up to twelve months in certain cases. These may subsequently be rescheduled by the Ministry of Migration and Asylum depending on availability of capacity.³⁰ Similar issues hinder the booking of appointments for subsequent asylum applications through a separate dedicated online platform.
17. Information shared by the Asylum Service on 6 July 2023 in reply to a letter by legal aid actors suggests that the online platform for initial asylum claims on the mainland has been **phased out altogether**: “As regards the restart of registration of initial applications for international protection on the mainland and specifically in the Malakasa and

²³ RSA, *Immigration detention in 2022*, April 2023, 3-4.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ RSA, *Registration of asylum applications in the new mainland RIC in Greece*, February 2023, 5-6, available at: <https://shorturl.at/pvX04>.

²⁷ European Commission, *TF (Task Force) – GR (Greece) Coordination Meeting Operational Conclusions*, Ares(2022)2924004, 14 March 2023.

²⁸ RSA, ‘The upgrade of the “Alkyoni” system of the Asylum Service leaves processes and people in the air’, 31 May 2023, available at: <https://shorturl.at/zDSV2>.

²⁹ RSA, ‘Refugees without identification documents: The Greek Asylum Service must urgently resolve technical problems’, 27 October 2022, available at: <https://shorturl.at/nrIL>.

³⁰ RSA, *Registration of asylum applications in the new mainland RIC in Greece*, February 2023, 6.

Diavata facilities there will soon be a related announcement by the Registration Authority (RIS)."³¹ **At the time of writing, however, no information has been disclosed by the government – including to the Committee – on arrangements to ensure access to the asylum procedure on the mainland, including for vulnerable persons.** The absence of channels to access asylum procedures in mainland Greece, in conjunction with the persisting practice of systematic informal forced returns, amounts to a serious breach of the right to asylum and of the prohibition of *refoulement*.

Blanket deprivation of liberty during reception and identification procedures

18. The regime of “restriction on freedom of movement” under Article 40(a) of the Asylum Code, cited in para 8 of the Updated Action Plan relating to persons undergoing reception and identification procedures in the RIC or CCAC, amounts to **de facto deprivation of liberty insofar as it entails a prohibition on leaving the premises of the facility.** It is applied automatically and indiscriminately to all persons channelled into reception and identification procedures, subject to no necessity and proportionality test or to an assessment of alternatives to detention. The regime is thereby contrary to Article 5(1) of the Convention and corollary provisions of EU law, namely the Reception Conditions Directive.
19. It is for those reasons that **the European Commission initiated infringement proceedings against Greece in January 2023** for incorrectly transposing the Reception Conditions Directive.³² Greece has taken no steps to bring the above legislation and practice in line with the right to liberty.³³
20. Whereas Article 40(a) of the Asylum Code foresees a maximum 25-day duration of “restriction” within the premises of the RIC, the actual duration of deprivation of liberty varies, as the speed of reception and identification procedures depends on the number of arrivals and registration capacity. For instance, reception and identification procedures on the island of Kos currently take several days to weeks *inter alia* due to the absence of a permanent doctor in the CCAC.³⁴ As for the mainland, several cases such as survivors of shipwrecks have been held in the RIC of Malakasa for periods exceeding 25 days.³⁵ Living conditions in the RIC and CCAC are described further below.

Blanket fee for second subsequent applications

21. In September 2021, Greece enacted rules under which **the “making” of second or further subsequent applications is only permitted upon payment of a 100 € fee per person.**³⁶ The fee has been applied without exception since the entry into force of the rules, affecting 1,187 asylum applications in the course of 2022 – each application may

³¹ Asylum Service, *Πρόσβαση σε συνθήκες υποδοχής και αναβάθμισης του συστήματος Αλκυόνη – προβλήματα*, 344706/2023, 6 July 2023.

³² INFR(2022)2156. See European Commission, ‘January Infringements package: key decisions’, INF/23/142, 26 January 2023, available at: <https://bit.ly/3RdzL8n>.

³³ On the contrary, it has signalled its intention to maintain the rules in their current form: Ministry of Migration and Asylum, Reply to parliamentary question, 156113/2023, 16 March 2023, available at: <https://shorturl.at/IKQXY>.

³⁴ European Commission, Email: Visit to Kos and Leros, Ares(2023)3795420, 13 January 2023; RSA & HIAS, *The role of the European Commission in the implementation of the EU asylum acquis on the Greek islands*, February 2023, para 48, available at: <https://shorturl.at/CFPY5>.

³⁵ RSA, *Registration of asylum applications in the new mainland RIC in Greece*, February 2023, 10.

³⁶ Article 94(10) Asylum Code, as inserted by Article 23 L 4825/2021, Gov. Gazette A' 157/04.09.2021; JMD 472687/2021, Gov. Gazette B' 6246/27.12.2021.

concern more than one applicant.³⁷ **This includes cases of persons whose initial claims have arbitrarily been dismissed based on the safe third country concept** and for whom a subsequent claim is the only means of re-accessing the asylum process, as discussed below.³⁸

22. In light of the above rules, access to the asylum process is not “free of charge” for all asylum seekers, as inaccurately put forward in para 16 of the Updated Action Plan.
23. The European Commission has expressed the view that “the unconditional application of a EUR 100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure”.³⁹ It has also “signalled that the fee introduced for second subsequent applications was not supported”⁴⁰ and has since “reiterated its concerns on the introduction of the fee at political level”.⁴¹ Greece nevertheless has “No plans by [the Ministry of Migration and Asylum] to abolish the fee currently applicable for the submission of second and further subsequent asylum applications, even for inadmissible cases”⁴² of persons whose claims are arbitrarily dismissed on safe third country grounds.
24. Secondary legislation – Joint Ministerial Decision (JMD) 472687/2021 – regulating specific issues regarding the subsequent applications’ fee has been challenged before the Greek Council of State (Συμβούλιο της Επικρατείας) by a number of civil society organisations. The case, initially set for hearing in June 2022, has been postponed five times and is currently scheduled to be heard in October 2023.

Risks of refoulement in the asylum process

25. The Greek government correctly submits in para 17 of the Updated Action Plan that about two out of three asylum applications processed on the merits by the Asylum Service are accepted. In its official regular reporting on the asylum process, however, the Ministry of Migration and Asylum refers to “34% positive decisions, 40% negative”.⁴³ These figures are attributed to the **broad use of so-called inadmissibility grounds such as the safe third country concept, which lead to the rejection of asylum claims and to the issuance of removal orders without any assessment of the cases on the merits.**
26. It is worth recalling that Greek law requires asylum authorities – Asylum Service at first instance, 21 Independent Appeals Committees (Ανεξάρτητες Επιτροπές Προσφυγών, IAC) at second instance – to order removal when dismissing an asylum application, including in inadmissibility decisions on safe third country grounds.⁴⁴ Amendments to asylum legislation passed in September 2021 have **repealed the express duty on asylum authorities to examine the applicability of the principle of non-refoulement and**

³⁷ RSA, *The Greek asylum procedure in figures in 2022: Analysis of main trends in refugee protection*, March 2023.

³⁸ RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 25-26; RSA, *Greece arbitrarily deems Turkey a “safe third country” in flagrant violation of rights*, February 2022, 8-9.

³⁹ European Commission, Reply to written question E-5103/2021, 25 January 2022.

⁴⁰ European Commission, *Task Force Migration Management Mission Report – Mission to Athens 25-27 October 2021*, Ares(2021)6697895, 29 October 2021, 1.

⁴¹ European Commission, *Task Force Migration Management Mission Report – Greece – Jan/Feb 2022*, Ares(2022)1024324, 11 February 2022, 3.

⁴² European Commission, *Task Force Migration Management Mission Report – Athens – January 2023*, Ares(2023)3018530, January 2023, 3.

⁴³ Ministry of Migration and Asylum, ‘Μείωση 52% στους διαμένοντες στην Επικράτεια για τον Απρίλιο του 2023 σε σχέση με πέρυσι’, 22 May 2023, available at: <https://shorturl.at/fgqIT>.

⁴⁴ Articles 87(8) and 100(10) Asylum Code.

to issue an “attestation of non-removal on humanitarian grounds” (βεβαίωση περί μη απομάκρυνσης για λόγους ανθρωπιστικούς) where removal would contravene Article 3 of the Convention.⁴⁵ As a result, the Asylum Service and the Appeals Authority do not refrain from issuing a return decision where removal would amount to *refoulement*.

Arbitrary use of the safe third country concept

27. Since the last decision of the Committee on the *M.S.S. / Rahimi* group, **Greece has significantly expanded the use of the safe third country concept** as a ground for dismissing asylum applications without an assessment on the merits.⁴⁶ Under a national list of safe third countries adopted in June 2021, Greece has designated Türkiye as a safe third country for asylum seekers originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh.⁴⁷ As a result, the safe third country concept is now applied vis-à-vis Türkiye to nationals of the above countries throughout the entire national territory. The absence of any reference to this legislative and policy development is a regrettable omission of the Updated Action Plan.
28. The national list of safe third countries has had severe impact on the Greek asylum process. **The Asylum Service has dismissed more than 10,000 asylum applications based on the list:** 5,922 in 2021, 3,601 in 2022 and 1,134 in the first five months of 2023. At second instance, the IAC have applied the list and dismissed 2,747 appeals in 2022 and 755 in the first five months of 2023.⁴⁸
29. **No thorough assessment prior to adoption of safe third country list:** Contrary to its obligations stemming from Article 3 of the Convention,⁴⁹ **Greece has failed to carry out a thorough assessment of the state of the Turkish asylum system** prior to designating Türkiye as a safe third country. The national list of safe third countries is based on an unpublished opinion of the Director of the Asylum Service, the contents of which are limited to a collation of extracts from various sources on the international and temporary protection system in Türkiye. In fact, several of the sources cited provide evidence of systemic non-compliance on the part of with Türkiye the *non-refoulement* principle, including condemnation thereof by the ECtHR in *Akkad v. Türkiye*,⁵⁰ lack of access to international and temporary protection procedures, and general rule of law backsliding.⁵¹ The Asylum Service refuses to make the aforementioned opinion available to asylum seekers whose claims are assessed on safe third country grounds, citing a lack of sufficient interest to access the document. Such a refusal breaches Greece's obligation to allow individuals to challenge the application of the national list in their particular case.⁵²

⁴⁵ Articles 73(3) and 110(4) Asylum Code. The amendments were introduced by Article 20 L 4825/2021, Gov. Gazette A' 157/04.09.2021.

⁴⁶ For discussion of previous practice, see DH-DD(2020)723, paras 29-34.

⁴⁷ JMD 42799/2021, Gov. Gazette B' 2425/07.06.2021, as amended by JMD 548568/2021, Gov. Gazette B' 5949/16.12.2021, and maintained in force by JMD 734214/2022, Gov. Gazette B' 6250/12.12.2022. The list includes Albania and North Macedonia.

⁴⁸ RSA, *The Greek asylum procedure in figures in 2021*, March 2022, 4; *The Greek asylum procedure in figures in 2022*, March 2023, 9, 16; Ministry of Migration and Asylum, *Statistics*, April 2023.

⁴⁹ *Ilias & Ahmed v. Hungary* App No 47287/15, 21 November 2019, para 134.

⁵⁰ App No 1557/19, 21 June 2022.

⁵¹ RSA et al., 'European Commission dispels Greece's designation of Türkiye as a "safe third country" for refugees – Repeal the national list of safe third countries', 1 November 2022, available at: <https://bit.ly/3PEQxwt>.

⁵² Article 38(2)(c) Asylum Procedures Directive; Article 91(2) Asylum Code. See also European Commission, Reply to written question E-3532/2021, 4 October 2021, available at: <https://shorturl.at/crtvD>.

30. Greek asylum authorities **consistently misapply the case law of the ECtHR on Article 3 of the Convention when adjudicating the safe third country concept** in individual asylum cases. Errors in law include the following:⁵³

25.1. IAC severely misinterpret the *Mohammadi v. Austria*⁵⁴ ruling of the Court and attribute the following *ratio* thereto: "It has been held that the designation of a country as safe may be maintained even despite the applicant's invoking of contrary conclusions of reports by international organisations."⁵⁵ Yet, not only does the aforementioned ruling concern the Dublin system and not the application of the safe third country concept beyond the EU, but in no way does such a reasoning stem from the Court's judgment

25.2. The Asylum Service and IAC apply a **stricter standard of proof on non-refoulement than the "real risk" test set by ECtHR case law** on Article 3.⁵⁶ They therefore dismiss asylum applications even where applicants demonstrate a real risk of being subjected to *refoulement* upon return to Türkiye. Cases are dismissed, for instance, on the ground that the evidence submitted does not provide "grounds to believe that every person returned to that country is exposed to a risk of being removed to a country where they will face torture or inhuman or degrading treatment"⁵⁷ or does not amount to "official confirmation of mass push backs"⁵⁸ or "does not have the nature of a structural problem".⁵⁹

31. **Lack of prospect of readmission to Türkiye:** Furthermore, Greece pursues the application of the safe third country in the face of a **demonstrable and officially admitted lack of prospect of readmission to Türkiye** from 2020 to present, in contravention of EU and domestic law.⁶⁰ In light of this, the Greek Council of State referred preliminary questions to the CJEU in February 2023 on the legality of designation of a safe third country under those circumstances.⁶¹

32. The policy has thereby left **thousands of people seeking protection in legal limbo, deprived of access to asylum procedures and to reception conditions** for protracted periods of time. Asylum seekers rejected on safe third country grounds, however, continue to be either summarily detained for the purpose of readmission to Türkiye in contravention of Article 5(1)(f) of the Convention, or are ordered "voluntary departure"

⁵³ For analysis, Minos Mouzourakis, 'Μέτρο απόδειξης στην εφαρμογή της «ασφαλούς τρίτης χώρας» ως λόγου απαραδέκτου των αιτήσεων ασύλου' (2022) Εφαρμογές Δημοσίου Δικαίου Ι/2022, 52-57.

⁵⁴ App No 71932/12, 3 July 2014.

⁵⁵ 16th IAC, 394674/2022, 7 July 2022; 11th IAC, 67923/2022, 7 February 2022; 21st IAC, 467020/2021, 20 December 2021; 8th IAC, 458313/2021, 15 December 2021. The decisions erroneously refer to *Mohammadi v. Austria* as a CJEU ruling.

⁵⁶ *Ilias & Ahmed v. Hungary*, para 126 and cited case law. See also CJEU, Case C-163/17 *Jawo*, 19 March 2019, para 87 and cited case law.

⁵⁷ 4th IAC, 79499/2023, 8 February 2023; 18th IAC, 672919/2022, 11 November 2022; 16th IAC, 394674/2022, 7 July 2022; 19th IAC, 73459/2022, 8 February 2022; 7th IAC, 378505/2021, 11 November 2021; 9th IAC, 288224/2021, 4 October 2021; 7th IAC, 249386/2021, 16 September 2021; 7th IAC, 249361, 16 September 2021; 18th IAC, 165176/2021, 3 August 2021; 18th IAC, 165163/2021, 3 August 2021.

⁵⁸ 3rd IAC, 17613/2020, 14 September 2020; 13th IAC, 6722/2020, 9 April 2020; 17th IAC, 3576/2020, 10 March 2020.

⁵⁹ 6th IAC, 5892/2020, 27 May 2020.

⁶⁰ Article 38(4) Asylum Procedures Directive; Article 91(5) Asylum Code.

⁶¹ Council of State, 177/2023, 3 February 2023, para 41, available at: <https://shorturl.at/gjBGX>. See also Case C-134/23 pending before the Court of Justice of the European Union (CJEU).

within a deadline of up to 30 days. However, rejected asylum seekers cannot voluntarily depart in order to return to their country of origin due to risks of *refoulement*, and lack legal documents to enter and stay in another country. Therefore, the decision of voluntary departure is contrary to Article 3 of the Convention, to the extent that asylum seekers' fear of return to their country of origin has never been assessed by the Greek authorities.⁶²

Rejection of asylum appeals on formal grounds – failure to appear in person or to submit a residence certificate

33. As a rule, asylum appeals are examined by the IAC in a written procedure without a hearing of the appellant.⁶³ Oral hearings are ordered extremely rarely – less than 3% of appeals processed in 2022 involved an oral hearing.⁶⁴
34. Asylum seekers appealing a first instance asylum decision are required either to appear before the IAC in person for the examination of their appeal or to submit a certificate of residence in a camp no later than the eve of the examination of the appeal. Such a certificate of residence in reception facility must be dated no earlier than three days prior to the examination of the appeal, whereas a certificate of residence in a RIC must be dated no earlier than two days prior to the examination of the appeal. The above rule imposes an entirely formal requirement on asylum seekers with no bearing on the assessment of the case, given that the overwhelming majority of asylum appeals are examined *sur dossier* without a hearing.
35. Where the appellant does not appear in person or does not submit a residence certificate within the above timeframes, their appeal shall be dismissed as manifestly unfounded.⁶⁵ The provisions of the Asylum Code thereby **allow IAC to rely on purely formal grounds to dismiss otherwise admissible – and likely well-founded – asylum appeals without at all pronouncing themselves on the merits** of the case. Here too, negative decisions are accompanied by a removal order,⁶⁶ and thereby engage the principle of *non-refoulement* under Article 3 of the Convention.
36. IAC have applied the above rule increasingly strictly in practice. The number of **appeals dismissed on grounds of failure to appear in person or to submit a residence certificate in due time almost tripled from 532 in 2021 to 1,818 in 2022**.⁶⁷ Another 761 have been dismissed in the first five months of 2023 alone, according to official data. IAC have demonstrated excessive formalism in enforcing the rule and have dismissed appeals even in cases of persons who submitted a residence certificate on the day of examination of their appeal rather than the eve,⁶⁸ or a certificate dated four days prior to examination instead of three.⁶⁹

⁶² RSA & HIAS, *The role of the European Commission in the implementation of the EU asylum acquis on the Greek islands*, February 2023, para 37.

⁶³ Article 102(1) Asylum Code.

⁶⁴ 494 cases out of a total of 17,317 decisions: RSA, *The Greek asylum procedure in figures in 2022*, March 2023, 14.

⁶⁵ Article 102(2) Asylum Code. Note that the appeal may also be dismissed as implicitly withdrawn on the same grounds under Article 83(3) Asylum Code.

⁶⁶ Article 100(10) Asylum Code.

⁶⁷ RSA, *The Greek asylum procedure in figures in 2021*, March 2022, 6; *The Greek asylum procedure in figures in 2022*, March 2023, 14.

⁶⁸ Administrative Court of Athens, 940/2023, 31 May 2023, available at: <https://shorturl.at/gjBGX>.

⁶⁹ Administrative Court of Thessaloniki, 370/2023, 8 May 2023, available at: <https://shorturl.at/gjBGX>.

Reception conditions for asylum seekers

37. Greece has **further reduced its reception capacity and eliminated alternatives to camp accommodation since the last decision of the Committee** on the *M.S.S. / Rahimi* group of cases, contrary to the assurances provided by the Greek government to the Committee.⁷⁰ The government has completely phased out decentralised accommodation in rented apartments under the ESTIA programme and in hotels under the FILOXENIA programme, and has shut down camps such as Kara Tepe on Lesbos and Skaramangas and Elaionas in Attica.⁷¹
38. We note that the Updated Action Plan submitted by the government in June 2023 fails to communicate the capacity of the country's reception system. Such information is not included in the statistical reports released by the Ministry of Migration and Asylum.
39. In any event, in its exchanges with the European Commission, the Ministry has “flagged the **difference between the sites’ nominal vs actual capacity** and underlined the lack of items such as mattresses, beds, and general issues of facility management before the actual capacity reaches the nominal capacity”. The Ministry has committed to “analyse the situation concerning the actual capacity of the mainland camps”.⁷²
40. These developments should also be read in the broader context of the Dublin Regulation and in conjunction with the manner in which Greece treats incoming requests from fellow Member States and Schengen Associated States.
41. According to Eurostat statistics, **Greece rejected all incoming Dublin requests it received in the course of 2022**. In 2021, it only accepted 20 and rejected 6,582 requests.⁷³ Due to this, the European Commission has “expressed concerns at the very low level of accepted requests under the Dublin Regulation and that rejections of incoming Dublin requests are based on a **standard reply from RIS which states that the reception system cannot host the person**.”⁷⁴

Closure of ESTIA & elimination of alternatives to camps

42. The Greek government **completely closed down the ESTIA programme of decentralised accommodation of asylum seekers in rented apartments** at the end of 2022, in a move officially presented “yet another commitment to reduce the impact of the migration crisis on local communities”.⁷⁵ The observations made by the Greek government in para 12 of the Updated Action Plan are therefore factually incorrect.
43. The Greek government has given assurances to the European Commission on plans “to keep some 500 places (under a new call) for vulnerable persons”.⁷⁶ These are reported to be established under a new EU-funded project called “Stiriksi”, according to

⁷⁰ DH-DD(2021)363, para 10.

⁷¹ DH-DD(2021)521, para 32.

⁷² European Commission, *Operational Conclusions 11th Steering Committee Meeting for Migration Management*, Ares(2022)7197303, October 2022, 3.

⁷³ Eurostat, migr_dubdi; migr_dubdedaci.

⁷⁴ European Commission, *Task Force Migration Management Mission Report – Greece – Jan/Feb 2022*, Ares(2022)1024324, 11 February 2022, 3.

⁷⁵ Ministry of Migration and Asylum, ‘Ολοκληρώθηκε το πρόγραμμα φιλοξενίας αιτούντων άσυλο σε αστικά διαμερίσματα «ΕΣΤΙΑ»’, 4 January 2023, available at: <https://shorturl.at/byA46>.

⁷⁶ European Commission, *Task Force Migration Management Mission Report – Athens/Lesvos*, Ares(2022)8851878, December 2022, 3.

exchanges between the government and the European Commission in 2023.⁷⁷ No call had been announced or launched by the time of writing, however.

44. Accordingly, **camps managed by the RIS are the sole form of accommodation** offered by Greece to asylum seekers. This is confirmed by official statistics cited in para 11 of the Updated Action Plan, corresponding to the total number of persons hosted in the country's reception system.
45. As highlighted in previous submissions to the Committee, the Greek government has made the financial allowance granted to asylum seekers conditional upon residence in one of the above camps. **Persons outside the country's camp system are therefore ineligible for financial support** throughout their asylum process.⁷⁸

Living conditions in camps

46. The RIS manages the following camps: (i) 3 Reception and Identification Centres (Κέντρα Υποδοχής και Ταυτοποίησης, RIC) in Fylakio, Malakasa and Diavata; (ii) 5 Closed Controlled Access Centres (Κλειστές Ελεγχόμενες Δομές, CCAC) in Lesbos, Chios, Samos, Leros and Kos; and (iii) 25 Controlled Access Temporary Reception Facilities for asylum seekers (Ελεγχόμενες Δομές Προσωρινής Φιλοξενίας αιτούντων άσυλο), including Ritsona, Schisto, Thiva, Corinth, Thermopyles, Katsikas, Alexandria, and Lagadikia.⁷⁹
47. The European Ombudsman has recently expressed concerns about infrastructure and surveillance applied in the EU-funded CCAC operating on the islands: "In addition to the external barbed wire fencing, extensive surveillance systems are used as well. The external fencing and surveillance infrastructure do not create a physical environment conducive to wellbeing and are, rather, reminiscent of detention facilities. The external and internal fences may also have negative health (including mental health) consequences on vulnerable migrants and those who have fled difficult circumstances. It is questionable how respect for human dignity and protection of the best interests of the child and of vulnerable individuals can be ensured if residents are forced to stay in such an environment."⁸⁰
48. **Isolation and lack of transportation arrangements:** In addition, "all structures are located outside urban fabric and/or in remote areas, where access is very difficult, contributing to their further isolation".⁸¹ Following the phasing out of site management support formerly provided by the International Organisation for Migration (IOM) in mainland camps, no transportation services are provided to asylum seekers, even for required hours-long travel to attend asylum interviews.⁸² No new arrangements for transportation services were known to have been concluded by April 2023.⁸³

⁷⁷ European Commission, *TF (Task Force) – GR (Greece) Coordination Meeting Operational Conclusions*, Ares(2022)2924004, 14 March 2023.

⁷⁸ DH-DD(2021)521, para 34.

⁷⁹ Articles 33-34 PD 106/2020, Gov. Gazette A' 255/23.12.2020, as last amended by PD 20/2023, Gov. Gazette A' 43/24.02.2023.

⁸⁰ European Ombudsman, Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece, 7 June 2023, para 48, available at: <https://shorturl.at/swCV8>.

⁸¹ RSA, 'What is happening today in the refugee structures on the Aegean islands', 3 May 2023, available at: <https://rb.gy/mxcp2>.

⁸² RSA, 'Refugee women in the offside: Greece encampment policy and services takeover lead to isolation and deny protection', 21 March 2023, available at: <https://tinyurl.com/3dej5j3w>.

⁸³ European Commission, *Conclusions of the Meeting with Sec Gen Logothetis – 07.04.2023*, Ares(2023)2923660, 10 April 2023.

49. **Lack of medical personnel:** No doctor is permanently present in several of the camps, including Samos, Chios and Kos. The European Commission highlights this gap as “huge issue”⁸⁴ and “always an issue”.⁸⁵
50. **Lack of interpreters:** The RIS has no interpreters in the camps managed throughout Greece. Contractual arrangements with NGO Metadrasi on deployment of interpreters to the camps are yet to be concluded.⁸⁶

Financial allowance

51. The provision of a financial allowance (“cash assistance”) forms part of the reception conditions guaranteed by the Asylum Code to asylum seekers as soon as they “make” their application.
52. The financial allowance (“cash assistance”) programme has been **handed over by UNHCR to the Greek government** since October 2021,⁸⁷ contrary to the government’s submissions in para 13 of the Updated Action Plan. **The handover process was marred by significant delays and resulted in an estimated 36,000 people not receiving the financial allowance** by the end of 2021.⁸⁸
53. Serious delays persist in the grant of the allowance in practice. The RIS updates its list of cash assistance beneficiaries every month, and a new entry onto the list needs at least 15 days to be recorded in the system. In practice, **the first payment of the allowance takes place at least forty days** following the registration of the asylum claim, without retroactive payment of arrears. If the person has their asylum application approved or rejected in the meantime, they never receive the financial allowance.⁸⁹
54. Ministry of Migration and Asylum data for May 2023 refer to 5,120 recipients of cash assistance,⁹⁰ corresponding to no more than 26.5% of the total number of pending asylum claims (19,311). Official figures therefore demonstrate that **only one in four people in the asylum process receives the financial allowance**.

Protection of unaccompanied children

55. The Special Secretariat for Protection of Unaccompanied Minors (*Ειδική Γραμματεία Προστασίας Ασυνόδευτων Ανηλίκων*) referred to in para 25 of the Updated Action Plan was abolished in June 2023. Its services have been transferred to a newly established General Secretariat for Vulnerable Citizens and Institutional Protection (*Γενική Γραμματεία Ευάλωτων Πολιτών και Θεσμικής Προστασίας*).⁹¹

⁸⁴ Al Jazeera, ‘EU details violations at Greece’s ‘model’ refugee camps’, 11 May 2023, available at: <https://tinyurl.com/29xdpxbr>, citing Commission documents.

⁸⁵ European Commission, Email: Visit to Kos and Leros, Ares(2023)3795420, 13 January 2023.

⁸⁶ European Commission, *Conclusions of the Meeting with Sec Gen Logothetis – 07.04.2023*, Ares(2023)2923660, 10 April 2023.

⁸⁷ UNHCR, ‘UNHCR hands over the management of the cash assistance programme for asylum seekers in Greece to the Greek Government’, 30 September 2021, available at: <https://tinyurl.com/2xv7e7ar>.

⁸⁸ RSA, ‘Refugees in Greece experience third month of humanitarian crisis and hunger’, 23 December 2021, available at: <https://tinyurl.com/4cywhhtw>.

⁸⁹ RSA, ‘What is happening today in the refugee structures on the Aegean islands’, 3 May 2023.

⁹⁰ Ministry of Migration and Asylum, *Factsheet Μάιος 2023: Πρόγραμμα «Χρηματικό βοήθημα σε αιτούντες διεθνή προστασία»*, available at: <https://tinyurl.com/bd52cpsu>.

⁹¹ Article 6 PD 77/2023, Gov. Gazette A’ 130/27.06.2023.

Guardianship

56. Despite the adoption of L 4960/2022 as referred to in para 30 of the Updated Action Plan, **the guardianship system for unaccompanied children has not been implemented to date**. In March 2023, the Special Secretary for Protection of Unaccompanied Children informed the European Commission of a “significant setback in our planning with guardianship”, since the direct contract awarded by the Ministry of Migration and Asylum to specific organisations was deemed unlawful by the Court of Auditors (Ελεγκτικό Συνέδριο). This means that guardianship of unaccompanied children continues to lie with the territorially competent Public Prosecutor.⁹²

Reception of unaccompanied children

57. In the last months, Greece faced a substantial “shortage of capacity in UAM shelters... acknowledged by all involved actors”.⁹³ The European Commission stated that “the situation is becoming alarming” in January 2023,⁹⁴ though more recent exchanges in April 2023 mention that capacity has been freed up.⁹⁵

Detention conditions

58. Greece continues to use detain people in police stations under conditions far below Article 3 ECHR standards, despite renewed recommendations to cease the practice *inter alia* from the Council of the European Union.⁹⁶ At the end of 2022, **316 people were held in police stations throughout the country on immigration grounds**.⁹⁷
59. As for pre-removal detention centres, the **Council of the European Union has urged Greece to “ensure that material detention conditions and the detention regime, particularly in Tavros, Amygdaleza and Kos, always comply with the fundamental rights standards** and reflects the nature of the deprivation of liberty, by ensuring sufficient time outside the cell, adequate furniture and hygienic conditions, the possibility to access open-air space and by providing for recreational activities”.⁹⁸ The European Commission has more recently noted that the Drama pre-removal centre “main facility has not been renovated”.⁹⁹ These observations would give reason to doubt the views

⁹² European Commission, Exchange of Emails between the Head of the Task Force Migration Management and the Special Secretary for Protection of Unaccompanied Children, Ares(2023)1838411, March 2023.

⁹³ European Commission, *Task Force Migration Management Mission Report – Athens/Lesvos*, Ares(2022)8851878, December 2022, 2.

⁹⁴ European Commission, *Key takeaways from Meeting with Mr Logothetis*, Ares(2023)2923244, 11 January 2023.

⁹⁵ European Commission, *Conclusions of the Meeting with Sec Gen Logothetis – 07.04.2023*, Ares(2023)2923660, 10 April 2023.

⁹⁶ Council of the European Union, *Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of return*, 13662/21, 10 November 2021, para 7.

⁹⁷ RSA, *Immigration detention in 2022: Sharp rise in detention orders, no access to remedies and legal aid in Greece*, April 2023, 6.

⁹⁸ Council of the European Union, *Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of return*, 13662/21, 10 November 2021, para 9.

⁹⁹ European Commission, *Field visit to the Greek – Turkish land borders (21-24 March 2023)*, Ares(2023)2924332, 30 March 2023, 3.

expressed in para 21 of the Updated Action Plan relating to “adequate standards for long-term detention”.

60. Furthermore, pre-removal detention centres are marred by critical gaps in health care and support to detained people, as corroborated by the official data provided in para 23 of the Updated Action Plan. The Greek government confirms, for example, that:

- **Not a single doctor is present in either Amygdaleza or Corinth, the two largest pre-removal centres** which at the end of April 2023 accounted for 950 and 655 detainees respectively. Of those, 227 and 418 respectively were asylum seekers. No doctor is present in Xanthi, where 189 people were held at that point.
- **Interpretation is not at all available in Tavros, Drama, Xanthi and Fylakio**, and is grossly insufficient to cover the needs of the detained population in Amygdaleza and Corinth.



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