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COMPLAINT TO THE EUROPEAN COMMISSION CONCERNING INFRINGEMENTS OF EU LAW BY GREECE

**ON BEHALF OF WEMOVE EUROPE AND OXFAM
INTERNATIONAL**

22 SEPTEMBER 2020

Table of Contents

1	INTRODUCTION	3
2	EXECUTIVE SUMMARY	5
3	THE NATIONAL MEASURES IN BREACH OF EU LAW (QUESTION 2.1)	8
	3.1 Introduction	8
	3.2 Greek legislation on asylum	8
	3.3 Measures taken by Greek authorities in violation of EU law	9
4	THE EU LAW IN QUESTION (QUESTION 2.2)	10
5	DETAILED DESCRIPTION OF THE INFRINGEMENTS (QUESTION 2.3)	15
	5.1 Introduction	15
	5.2 Failure to provide access to asylum applications	15
	5.3 Violations of procedural guarantees	20
	5.4 Arbitrary detention of asylum seekers	27
	5.5 Inadequate reception and detention conditions	35
	5.6 Illegal and violent pushbacks	39
6	EU FUNDING RECEIVED BY GREECE (QUESTION 2.4)	46
7	BREACHES EU CHARTER OF FUNDAMENTAL RIGHTS (QUESTION 2.5) ..	47
	7.1 Failure to provide access to asylum applications	47
	7.2 Violations of procedural guarantees	47
	7.3 Arbitrary detention of asylum seekers	48
	7.4 Inadequate reception and detention conditions	48
	7.5 Illegal and violent pushbacks	49
8	PREVIOUS ACTION TAKEN TO SOLVE THE PROBLEM (QUESTION 3)	51
9	SUPPORTING DOCUMENTS AND EVIDENCE (QUESTION 5)	52
	9.1 EU primary and secondary law	52
	9.2 International treaties	52
	9.3 Greek legislation	53
	9.4 CJEU case law	53
	9.5 ECtHR case law	54
	9.6 Other documents (in Greek)	54
	9.7 Documents from EU institutions and agencies	55
	9.8 Documents from international organisations	57
	9.9 Documents from NGOs and other bodies	60
	9.10 News articles	65
	9.11 Literature	67

1 Introduction

- 1.1.1** Countless families have been uprooted by war and strife around the globe. In search of safety, security and a better life, men, women and children have fled their homes in order to escape persecution and serious violence. Many of them have put their hopes on the EU Member States. Some even cross the Mediterranean Sea in overcrowded boats in order to escape their perils, risking their lives in the process. The image of three year old Alan Kurdi's body washing up on the Turkish coast following a failed attempt to reach Greece has been engraved in European memory since September 2015 and is a devastating reminder of the incredible risks people take in order to find sanctuary.
- 1.1.2** In recent years, many refugees have attempted to enter the European Union via the Greek borders, by land and overseas. They were met with barbed wire, tear gas and armed soldiers.¹ In March of this year, at least two people died trying to cross the Greek border, including 42 year old Muhammad Gulzar who was shot in front of his wife at the Greek-Turkish border, likely by Greek security forces.²
- 1.1.3** Numerous reports indicate that those that did manage to cross the border over land or sea were denied their right to seek asylum by the Greek authorities. Instead, reports indicate these individuals were beaten, stripped and forcibly pushed back over the border.³ On 14 August 2020, the New York Times reported on Greece's actions of pushing back asylum seekers on inflatable and overburdened life rafts at sea.⁴ Particularly, according to evidence from three independent watchdogs, two academic researchers and the Turkish Coast Guard, since March 2020, at least 1,072 asylum seekers have been pushed back at sea by Greek officials in at least 31 separate expulsions.⁵
- 1.1.4** The "lucky" ones that survived crossing the Greek border by land or sea and were not subject to harassment and pushbacks continue to encounter hardship in Greece. Instead of being treated in a humane way, they are put away as prisoners. The accommodation provided by the Greek authorities for asylum seekers is insufficient and inadequate. The centres are overcrowded and lacking basic medical supplies. The recent developments in Camp Moria on the island of Lesbos sadly illustrate the untenable situation created by the Greek government. On 9 September 2020, Camp Moria burned down to the ground. Although the

¹ France24 "Migrants face tear gas, violence at Greek-Turkish border", 7 March 2020.

² Spiegel International, "The Killing of a Migrant at the Greek-Turkish Border", 8 May 2020; Forensic Architecture, "The Killing Of Muhammad Gulzar", 8 May 2020.

³ DW, "Migrants accuse Greece of forced deportations", 21 May 2020.

⁴ NYT, "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", 14 August 2020.

⁵ Ibid.

camp had capacity for 3,000 people, its destruction has left almost 13,000 without a shelter and basic needs as food and medical supplies.⁶

- 1.1.5 Moreover, even where asylum seekers are not denied the possibility to claim asylum in the first place, the Greek application process lacks the necessary procedural safeguards to allow for a proper resolution.
- 1.1.6 The situation in Greece is in contravention of the protection asylum seekers are entitled to under EU law and in breach of their fundamental rights. The EU rules for the receipt and processing of asylum applications and for the reception of asylum seekers prior to, pending and following their application process are willfully disregarded. Indeed, the violations of the rights afforded to asylum seekers under EU law, including the EU Charter of Fundamental Rights, are substantial in volume and in breadth and of a systemic and orchestrated nature.
- 1.1.7 These violations are inflicted upon those that are most vulnerable and have already overcome one of the biggest challenges in life: the challenge of leaving everything behind, risking their lives for a journey to the EU and having to patiently wait in deplorable conditions. They do this in the hope that they may finally build their life again. The EU asylum rules are meant to protect those that have already suffered and are in need of protection. It is important that these rules are upheld throughout the EU, no matter the difficult circumstances.
- 1.1.8 Asylum seekers themselves, however, do not have the means to make their voices heard and to invoke their rights under EU law. This is the reason why WeMove Europe and Oxfam, as international human rights organizations, submit this complaint to the Commission. **WeMove Europe and Oxfam call upon the Commission to immediately take action and fulfill its duty to ensure EU law is applied in full by the Greek authorities and that those in need of protection are indeed protected.**

⁶ BBC, "Moria migrants: Fire destroys Greek camp leaving 13,000 without shelter", 9 September 2020.

2 Executive summary

- 2.1.1** This complaint concerns a set of measures by the Greek government, which, taken together, comprise of large scale, systematic and orchestrated violations of EU asylum law that deny asylum seekers in Greece the fundamental rights to which they are entitled under EU law. These national measures concern both the non-conformity of national Greek legislation with EU law and the incorrect application of, or total disregard for, EU law and its implementing legislation by Greek authorities in practice.
- 2.1.2** Greece fails in numerous respects, deliberately, on a drastic scale, in a systemic manner and on an ongoing basis, to comply with the European asylum rules designed to guarantee high standards of protection for refugees, including the fundamental principles of relevant international treaties (the "**EU Asylum Acquis**"). These breaches of EU law take place in various areas, being more specifically: (i) the failure to provide access to asylum applications, (ii) violations of procedural guarantees, (iii) the arbitrary detention of asylum seekers, (iv) inadequate reception and detention conditions, and (v) illegal and violent pushbacks.
- 2.1.3** The infringements by Greece of the EU Asylum Acquis result in serious breaches of fundamental rights guaranteed by the Charter of Fundamental Rights of the EU (the "**EU Charter**"), including the right to asylum, the right to an effective remedy and a fair trial, the right to liberty and security of person, and the right to protection in the event of removal, expulsion or extradition.
- 2.1.4** The infringements described in this complaint can only be effectively resolved through an infringement procedure by the Commission. Not only do asylum seekers lack effective remedies at national level, but the problem does not pertain to one individual's interest. The violations by Greece of the EU Asylum Acquis affect the fundamental rights of tens of thousands of individuals and concern a subject matter of European public interest with important ramifications beyond those at Member State level.
- 2.1.5** The facts and analysis presented in this complaint are supported by a comprehensive and indisputable body of evidence, including legal texts, case law, reports from international organisations, human rights treaty monitoring bodies and non-governmental organisations and news articles and investigative reporting from a large array of news media.
- 2.1.6** We have summarized the main breaches of EU law by Greece in Table 1 below.

Table 1 Overview of main breaches of EU law

Breach	Relevant Greek law*	EU Asylum Acquis	EU Charter
1. Lack of access to asylum applications			
Suspension of asylum applications (and pushbacks)	<ul style="list-style-type: none"> Emergency Legislative Order 	<ul style="list-style-type: none"> Articles 6, 9, 10(3) APD Article 3 Dublin III 	<ul style="list-style-type: none"> Articles 18, 19
Difficult access to the asylum procedure	<ul style="list-style-type: none"> Article 65(7) IPA as amended by Article 6 IPA Amendment 	<ul style="list-style-type: none"> Article 6 APD Article 3 Dublin III 	<ul style="list-style-type: none"> Article 18
2. Violation of procedural guarantees			
Lack of legal assistance	<ul style="list-style-type: none"> Article 71(3) IPA, Article 77(3)(5) and (12b) as amended by Article 10 IPA Amendment Article 69(2) IPA as amended by Article 7 IPA Amendment 	<ul style="list-style-type: none"> Articles 20, 21 APD 	<ul style="list-style-type: none"> Article 47
Lack of interpretation	<ul style="list-style-type: none"> Article 77(3)(5) and (12b) as amended by Article 10 IPA Amendment Article 69(2) IPA as amended by Article 7 IPA Amendment 	<ul style="list-style-type: none"> Article 8, 12 and 15 (3) (c) APD 	<ul style="list-style-type: none"> Article 47
Lack of an effective remedy	<ul style="list-style-type: none"> Article 93 IPA Article 104 IPA as amended by Article 26 IPA Amendment 	<ul style="list-style-type: none"> Article 46 APD Article 31(8) APD 	<ul style="list-style-type: none"> Article 47
Rejecting an application as unfounded by way of implicit withdrawal	<ul style="list-style-type: none"> Article 81 IPA as amended by Article 11 IPA Amendment 	<ul style="list-style-type: none"> Article 28 APD 	<ul style="list-style-type: none"> Article 47
Additional grounds to consider an application as (manifestly) unfounded	<ul style="list-style-type: none"> Article 88 as amended by Article 17 IPA Amendment Article 97 IPA 	<ul style="list-style-type: none"> Articles 31(8), and 32(2) APD 	<ul style="list-style-type: none"> Article 47
Additional grounds for safe third country assessment	<ul style="list-style-type: none"> Article 86(1)(f) IPA 	<ul style="list-style-type: none"> Article 38(2) APD 	<ul style="list-style-type: none"> Articles 19, 47
3. Arbitrary detention of asylum seekers			
Lack of an individual assessment of each detention case	<ul style="list-style-type: none"> Article 46 IPA as amended by Article 3 IPA Amendment 	<ul style="list-style-type: none"> Article 8 RCD 	<ul style="list-style-type: none"> Articles 6, 47

Consideration of alternatives to detention	<ul style="list-style-type: none"> Article 46(3) IPA Article 22(3) Law No. 3907/2011 	<ul style="list-style-type: none"> Article 8(2) RCD 	<ul style="list-style-type: none"> Articles 6, 47
Grounds for detention are misapplied	<ul style="list-style-type: none"> Article 46 IPA Article 18 Law No. 3907/2011 	<ul style="list-style-type: none"> Article 8(3) RCD 	<ul style="list-style-type: none"> Articles 6, 47
Lack of due diligence and delay in administration	<ul style="list-style-type: none"> Article 39 IPA as amended by Article 2 IPA Amendment 	<ul style="list-style-type: none"> Article 9 RCD 	<ul style="list-style-type: none"> Articles 6, 47
Lack of information relating to detention grounds	<ul style="list-style-type: none"> Article 46(6) IPA 	<ul style="list-style-type: none"> Article 9(2) RCD 	<ul style="list-style-type: none"> Articles 6, 47
4. Inadequate reception and detention conditions			
Overcrowding of detention facilities	<ul style="list-style-type: none"> Article 56 IPA 	<ul style="list-style-type: none"> Article 17(2) RCD 	<ul style="list-style-type: none"> Article 4
Providing asylum seekers insufficient access to health care facilities	<ul style="list-style-type: none"> Article 31 IPA 	<ul style="list-style-type: none"> Article 19 RCD 	<ul style="list-style-type: none"> Article 35
Detention facilities do not comply with minimum requirements	<ul style="list-style-type: none"> Article 47 IPA 	<ul style="list-style-type: none"> Article 10 RCD 	<ul style="list-style-type: none"> Article 4
Vulnerable persons are not afforded sufficient protections.	<ul style="list-style-type: none"> Article 48 IPA 	<ul style="list-style-type: none"> Article 11 RCD 	<ul style="list-style-type: none"> Article 4
5. Illegal and violent pushbacks			
Violence against migrants by local authorities upon arrival on Greek territory	N/A	N/A	<ul style="list-style-type: none"> Articles 1, 4
Violation of the principle of non-refoulement	N/A	<ul style="list-style-type: none"> Articles 4 and 5 RD Article 9 APD Article 21 ADQ 	<ul style="list-style-type: none"> Articles 18, 19
Violation of the prohibition of collective expulsion	N/A	N/A	<ul style="list-style-type: none"> Article 19
Violation of the procedural safeguards of the Return Directive	<ul style="list-style-type: none"> Law No. 3907/2011 	<ul style="list-style-type: none"> Articles 12,13, and 14 RD 	<ul style="list-style-type: none"> Articles 47, 48

** Table 1 also includes reference to Greek law where the breaches of EU law results not from incorrect implementation of EU law but by incorrect application of, or total disregard for, implementing legislation by Greek authorities in practice.*

3 The national measures in breach of EU law (question 2.1)

3.1 Introduction

- 3.1.1 This complaint concerns a set of measures of the Greek government, which taken as a whole result in systematic and orchestrated violations of EU law, as a result of which asylum seekers in Greece are denied fundamental human rights enshrined in EU law. These national measures concern: (i) the Greek legislation implementing the EU Asylum Acquis, which is not in conformity with EU law, and (ii) most importantly, the measures taken by Greek authorities denying asylum seekers their fundamental rights in violation of EU law. Each is further detailed below.

3.2 Greek legislation on asylum

- 3.2.1 The Greek legislative framework implementing the EU Asylum Acquis consist of the following laws:

- **Greek Law 4636/2019** on international protection and other provisions (the "IPA");
- **Greek Law 4686/2020** on improvement of immigration legislation, amendment of provisions of laws 4636/2019 (AD 169), 4375/2016 (AD 51), 4251/2014 (AD 80) and other provisions (the "IPA Amendment");
- **Greek Law 4540/2018** on adaptation of Greek legislation to the provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on the requirements for the reception of applicants for international protection (recast, L 180/96 / 29.6.2013) and others provisions - Amendment of Law 4251/2014 (A"80) on the adaptation of Greek legislation to Directive 2014/66/EU of 15 May 2014 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the context of intra-corporate Transfer - Modification of asylum procedures and other provisions;
- **Greek Law 4375/2016** on the organization and operation of the Asylum Service, Appeals Authority, Reception Service and Identification Establishment of a General Reception Secretariat, adaptation of Greek Legislation to the provisions of Directive 2013/32/EU of the European Parliament and of the Council "on common procedures for granting and withdrawing international protection regime (recast) "(L 180 / 29.6.2013), provisions on the work of beneficiaries of international protection and other provisions (the "Asylum law"); and

- **Greek Law 3907/2011** on establishment of an asylum and first reception service, adaptation of Greek legislation to the provisions of Directive 2008/115/EC "on common rules and procedures in the Member States for the return of illegally staying third-country nationals" and other provisions.

3.2.2 The Greek legislative framework has been evolving through the past years, with new legislation significantly amending and often repelling dispositions from previous laws. The last amendments to the framework resulting from the introduction of the IPA and IPA Amendment have been focused on the introduction of harsher punitive measures that have resulted in people being cast out of the asylum procedure. These changes have been repeatedly and heavily criticised by national and international human rights bodies, including the Greek Ombudsman,⁷ the Greek National Commission for Human Rights (GNCHR),⁸ the UN High Commissioner for Refugees (UNHCR)⁹ and numerous civil society organisations.¹⁰ Already before its introduction, the UNCHR raised serious concerns regarding the IPA.¹¹

3.3 Measures taken by Greek authorities in violation of EU law

3.3.1 Besides the legislative non-conformity the Greek authorities have undertaken measures which directly violate EU law and often also incorrectly apply, or disregard completely the IPA (and IPA Amendment) in dealing with people seeking asylum in Greece. These measures are, in short, translated into lack of adequate access to legal assistance or interpretation services to assist asylum seekers in the application process (see Section 5.2), reception and detentions within overcrowded centres (see Section 5.5) and violent pushbacks of individuals whose requests for asylum are not even registered (see Section 5.6). These examples result in a serious situation in Greece in violation of EU law, including fundamental rights protected by the EU Charter, as also further detailed in Sections 5 and 7 below.

⁷ Greek Ombudsman, *Παρατηρήσεις στο σχέδιο νόμου του Υπουργείου Προστασίας του Πολίτη περί διεθνούς προστασίας*, 23 October 2019.

⁸ GNCHR, *Παρατηρήσεις της ΕΕΔΑ στο Σχέδιο Νόμου του Υπουργείου Προστασίας του Πολίτη «Περί Διεθνούς Προστασίας»*, 24 October 2019.

⁹ UNHCR, *"UNHCR urges Greece to strengthen safeguards in draft asylum law"*, 24 October 2019.

¹⁰ See *inter alia* Oxfam and GCR, *"Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing"*, 2 July 2020; GCR, *Observation on the draft law on international protection*, 23 October 2019; Amnesty International, *"Το προτεινόμενο σχέδιο νόμου για το άσυλο υποβαθμίζει την προστασίας και τα δικαιώματα των προσφύγων και παραβιάζει τα διεθνή πρότυπα"*, 24 October 2019; RSA *"Comments on the International Protection Bill"*, 21 October 2019; Actionaid Greece et al., *"15 civil society organisations call upon the Government to organise a substantial public consultation prior of voting the draft law on asylum"*, 31 October 2019; Amnesty International et al., *"Joint press conference regarding the draft law on asylum"*, 30 October 2019.

¹¹ UNHCR, *"UNHCR urges Greece to strengthen safeguards in draft asylum law"*, 24 October 2019.

4 The EU law in question (question 2.2)

4.1 Introduction

4.1.1 Article 78 of the Treaty on the Functioning of the European Union ("**TFEU**") requires the EU to develop a European asylum policy in accordance with the rules of the Geneva Convention Relating to the Status of Refugees of 28 July 1951 (the "**1951 Geneva Convention**") and the Protocol of 31 January 1967 relating to the status of refugees (the "**Protocol**") and other relevant treaties. This is reiterated in Article 18 of the EU Charter, which guarantees the right to asylum in line with the 1951 Geneva Convention and the Protocol throughout the EU.

4.1.2 The EU right to asylum has been established through a comprehensive framework of directives and regulations creating a common EU asylum system to guarantee high standards of protection for refugees. The EU Asylum Acquis, read in light of the fundamental principles covered by the 1951 Geneva Convention, the Protocol and the EU Charter, ensures that asylum procedures are fair and effective throughout the EU and based on respect for fundamental human rights.

4.2 EU Charter

4.2.1 In accordance with Article 51(2) EU Charter, the EU Charter applies to the breaches by Greece of EU law outlined in this complaint, as the relevant Greek laws implement the EU Asylum Acquis, and the contested actions committed by the Greek national authorities are a direct violation thereof. The applicability and importance of respect for the fundamental rights enshrined in the EU Charter in the application of the EU Asylum Acquis is also reiterated in the relevant legal instruments themselves.¹²

4.3 EU Asylum Acquis

4.3.1 The Greek asylum procedures are in violation of the fundamental asylum rights guaranteed by the TFEU and the EU Charter, as set out in the EU Asylum Acquis. In particular, the Greek measures violate the (i) Asylum Procedures Directive, (ii) the Qualification Directive, (iii) the Reception Conditions Directive, (iv) the Dublin III Regulation and (v) the Return Directive (each defined below). We summarize each of these directives and the Dublin III Regulation in the below.

¹² Recital 60 APD, Recital 16 AQD, Recital 9 RCD, Recital 24 RD and Recital 39 Dublin III.

Asylum Procedures Directive

4.3.2 The EU directive on common procedures for granting and withdrawing international protection (the "**Asylum Procedures Directive**" or "**APD**")¹³ aims to create a coherent system ensuring that decisions on applications for international protection are taken efficiently and fairly. Key features of the directive include:

- (i) clear rules for lodging applications, making sure that everyone who wishes to request international protection can do so quickly and effectively;
- (ii) a time-limit for the examination of applications (in principle six months at the administrative stage), while providing for the possibility to accelerate for applications that are likely to be unfounded;
- (iii) required training for decision makers and ensuring access to legal assistance;
- (iv) the provision of adequate support to those in need of special guarantees – for example because of their age, disability, illness – including by ensuring that they are granted sufficient time to participate effectively in the procedure;
- (v) extensive protection of unaccompanied minors and victims of torture; and
- (vi) clear rules on appeals in front of courts or tribunals.

Reception Conditions Directive

4.3.3 The EU directive laying down standards for the reception of applicants for international protection (the "**Reception Conditions Directive**" or "**RCD**")¹⁴ ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. Key features of the Reception Conditions Directive include:

- (i) access for applicants to housing, food, clothing, health care, education for minors;
- (ii) attention to vulnerable persons, especially unaccompanied minors and victims of torture. Member States must, *inter alia*, conduct an individual assessment in order to identify the special reception needs of vulnerable persons and to ensure that vulnerable asylum seekers can access medical and psychological support;
- (iii) rules regarding detention of asylum seekers, ensuring and that their fundamental rights are fully respected and that detention measures are only applied as a measure of last resort; and
- (iv) access to employment for asylum seekers, which must be granted within a maximum period of 9 months.

¹³ Directive 2013/32/EU.

¹⁴ Directive 2013/33/EU.

Asylum Qualification Directive

4.3.4 The EU directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection (the "**Asylum Qualification Directive**" or "**AQD**")¹⁵ clarifies the grounds for granting international protection. It also provides for the access to rights and integration measures for beneficiaries of international protection. The Asylum Qualification Directive aims to ensure that people fleeing persecution, wars and torture are treated fairly, in a uniform manner throughout the EU. Key features of the Asylum Qualification Directive include:

- (i) clear grounds for granting and withdrawing international protection;
- (ii) regulating exclusion and cessation grounds;
- (iii) improving the access of beneficiaries of international protection to rights and integration measures, taking into account the specific practical difficulties faced by beneficiaries of international protection; and
- (iv) ensuring that the best interest of the child and other gender-related aspects are taken into account in the assessment of asylum applications, as well as in the implementation of the rules on the content of international protection.

Dublin III

4.3.5 The EU Regulation 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 ("**Dublin III**")¹⁶ contains the rules and process of establishing the Member State responsible for examining asylum applications, and the rules governing the relations between Member States. It also creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises. Key features of Dublin III include:

- (i) an early warning, preparedness and crisis management mechanism, geared to addressing the root dysfunctional causes of national asylum systems or problems stemming from particular pressures;
- (ii) a series of provisions on protection of applicants, such as compulsory personal interview, guarantees for minors (including a detailed description of the factors that should lay at the basis of assessing a child's best interests) and extended possibilities of reunifying them with relatives;

¹⁵ Directive 2011/95/EU.

¹⁶ Regulation (EU) No 604/2013.

- (iii) the possibility for appeals to suspend the execution of the transfer for the period when the appeal is judged, together with the guarantee of the right for a person to remain on the territory pending the decision of a court on the suspension of the transfer pending the appeal;
- (iv) an obligation to ensure legal assistance free of charge upon request;
- (v) a single ground for detention in case of risk of absconding and strict limitation of the duration of detention;
- (vi) an obligation to guarantee right to appeal against a transfer decision; and
- (vii) clear procedures between Member States – e.g. exhaustive and clearer deadlines. The entire Dublin procedure cannot last longer than 11 months to take charge of a person, or 9 months to take him/her back (except for absconding or where the person is imprisoned).

Return Directive

4.3.6 The EU directive on common standards and procedures in Member States for returning illegally staying third-country nationals (the "**Return Directive**" or "**RD**")¹⁷ provides for clear, transparent and fair common rules for the return and removal of the irregularly staying migrant, the use of coercive measures, detention and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned. Key features of the Return Directive include:

- (i) the requirement for a fair and transparent procedure for decisions on the return of irregular migrants;
- (ii) an obligation on Member States to either return irregular migrants or to grant them legal status, thus avoiding situations of "legal limbo";
- (iii) promotion of the principle of voluntary departure by establishing a general rule that a "period for voluntary departure" should normally be granted;
- (iv) provision for persons residing irregularly of a minimum set of basic rights pending their removal, including access to basic health care and education for children;
- (v) a limit on the use of coercive measures in connection with the removal of persons, and ensuring that such measures are not excessive or disproportionate;
- (vi) providing for an entry ban valid throughout the EU for migrants returned by an EU Member State; and
- (vii) limiting the use of detention, binding it to the principle of proportionality and establishing minimum safeguards for detainees.

¹⁷ Directive 2008/115/EC.

4.4 Covid-19 Communication

4.4.1 In order to support Member States during the Covid-19 crisis, the Commission has, with the support of EASO and Frontex, published Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement during the Covid-19 crisis (the "**Covid-19 Communication**")¹⁸, ensuring continuity of asylum procedures and the protection of people's health and fundamental rights in conformity with the EU Charter.

4.4.2 The Covid-19 Communication provides practical advice and identifies tools, including by pointing to emerging best practices in Member States on how to pursue the asylum and return procedures and continue with resettlement-related activities under the current circumstances, given that current legislation does not foresee the specific consequences resulting from a pandemic situation. The Covid-19 Communication also recalls that the fundamental principles must continue to apply, so that access to the asylum procedure continues to the greatest extent possible during the Covid-19 crisis. In particular, all applications for international protection must be registered and processed, even if with certain delays. Emergency and essential treatment of illness, including for Covid-19, must be ensured.

¹⁸ EC, "*Covid-19 Communication*", 16 April 2020.

5 Detailed description of the infringements (question 2.3)

5.1 Introduction

5.1.1 In this Section, we show that Greece fails in numerous respects, on a drastic scale, deliberately, in a systemic manner and on an ongoing basis to comply with the EU rules on asylum. These breaches concern the non-conformity of national Greek legislation with EU law and the incorrect application of, or total disregard for, EU law and its implementing legislation by Greek authorities in practice.

5.1.2 This Section outlines the specific breaches of EU law by subject matter, being the failure to provide access to asylum applications (Section 5.2), violations of procedural guarantees (Section 5.3), arbitrary detention of asylum seekers (Section 5.4), inadequate detention conditions (Section 5.5) and illegal and violent pushbacks (Section 5.6).

5.2 Failure to provide access to asylum applications

Overview of breaches of EU law
EU Asylum Acquis <ul style="list-style-type: none"> Article 3 Dublin III Regulation Article 6 Asylum Procedures Directive
EU Charter <ul style="list-style-type: none"> Article 18 EU Charter

5.2.1 Introduction

5.2.1.1 As set out below, the measures of the Greek authorities render access to the asylum application difficult, if not impossible, in various ways, in breach of the cornerstone requirements of the EU Asylum Acquis.

5.2.1.2 Article 3 Dublin III requires that Member States examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. Accepting asylum applications is a precondition necessary for Member States to be able to give effect to Article 78 TFEU, which requires the EU to develop its asylum policies in accordance with the 1951 Geneva Convention, and to be able to comply with the right to asylum contained in Article 18 EU Charter, as further explained in Section 7.1 below.

5.2.1.3 More specifically, Article 6 APD states that a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, must be

registered within three working days, or at most, 10 working days. Article 6 APD also requires Member States to ensure that authorities likely to receive requests/applications (i.e., police, border guards, immigration authorities and personnel of detention facilities) have the relevant information and necessary level of training which is appropriate to inform applicants as to where and how applications may be lodged. The applicant must have an effective opportunity to lodge the application as soon as possible and only if the applicant does not lodge the application, either through implicit withdrawal or abandonment, can the Member State discontinue the application.

5.2.2 Suspension of applications

5.2.2.1 On 2 March 2020, the Greek government enacted an Emergency Legislative Order (the "**Order**") fully suspending asylum applications from 1 March 2020 onwards. Asylum seekers no longer had the possibility to register an asylum claim. Newly arrived persons were subject to return to their country of origin or transit "without registration".¹⁹

5.2.2.2 The rationale for Greece's suspension of asylum applications provided in the Order is due to an "*extremely urgent and unforeseen necessity to deal with the asymmetric threat against the security of the country that exceeds the justified base of international and union law for the provision of asylum, in combination with the absolute objective weakness of examining the asylum applications within a reasonable time which would result from the illegal mass entry into the country*". This justification is legally baseless. EU law requires Member States to uphold the right to asylum and does not provide a derogation on which a Member State may suspend asylum applications. The Order was accordingly illegal and violated EU law. Greece stated that it had invoked Article 78(3) TFEU on the grounds of an emergency situation. However, provisional measures on the basis of Article 78(3) TFEU cannot be adopted by Member States unilaterally but require a Council decision, which was not adopted.²⁰ Indeed, following the adoption of the Order, the European Commission has also called on the Greek authorities to comply with the EU Asylum Acquis and fundamental rights.²¹

5.2.2.3 The effects of the Order on asylum seekers have been threefold. Firstly, despite expressing the intent to seek asylum, individuals arriving in March 2020 have

¹⁹ Emergency Legislative Order; See also Council of Europe, "*Opinion on the Greek Act of legislative content*", 17 March 2020.

²⁰ See for example Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1523.

²¹ Letter from EC to Oxfam regarding the situation in Greece, 15 April 2020: "*Following the adoption of the measure suspending the registration of asylum applications, the European Commission called on the Greek authorities to comply with fundamental rights and the EU acquis, in particular with regard to the right to access the asylum procedure, the principle of non refoulement, and the rules on detention*"; See also EC Answer to question P-001342/2020, 19 June 2020.

been prosecuted for "illegal entry" at the Penal Court in Orestiada, Evros.²² For example, on 1 March 2020, 17 newly arrived men of Afghan origin were sentenced to 3.5 years of imprisonment and a EUR 10,000 fine for "illegal entry". On 2 March 2020, 30 newly arrived persons were guilty of "illegal entry" and sentenced to 3 to 4 years imprisonment and fines ranging from EUR 5,000 to EUR 10,000. Reports also show that a total of 410 persons were arrested in the Evros region between 29 February and 16 March 2020. Depending on the decision of the Penal Court, they either remain in penal custody or are (administratively) detained in pre-removal detention facilities.²³ Further reports indicate continued practice of convicting persons of irregular entry, particularly in the Courts of Orestiana and Alexandroupolis, with criminal proceedings were also brought against 850 people who reached Lesbos in March, including unaccompanied children, women and vulnerable people.²⁴ Consequently, Greece is in clear breach of Article 6 APD which mandates that Member States must register an individual who wishes to seek asylum. Greece has also violated Article 31(1) 1951 Geneva Convention for Refugees, which provides for the non-penalisation of individuals entering a country illegally. At most, Greek and EU law provide that an asylum applicant entering the country illegally may be examined under the accelerated procedure, but nevertheless must be afforded an examination of its asylum application.²⁵

5.2.2.4 Secondly, numerous reports highlight that hundreds of asylum seekers arriving during March 2020 were pushed back by Greek authorities to Turkey, thus violating Article 3 Dublin III and Article 6(2) APD. We further elaborate on the infringements of EU law in the context of pushbacks in Section 5.6.

5.2.2.5 Thirdly, reports from the Greek Council for Refugees, Human Rights Watch and Oxfam note that not only did newly arrived persons during March not have access to the asylum procedure through prosecution and pushbacks, some were issued a blanket 3-day detention order pending deportation.²⁶ Reports show that 2,927 persons entering Greece in March²⁷ were automatically detained.²⁸ Accounts

²² The Press Project, "Δικαστήριο επέβαλε σε δεκάδες ανθρώπους ποινή φυλάκισης έως 4 χρόνια με την κατηγορία της παράνομης εισόδου στην ελληνική επικράτεια", 3 March 2020; See also Ekathimerini, "Migrants handed jail terms for illegal entry", 29 February 2020; See also Greek Reporter, "Greek police arrest dozens who illegally crossed border at Evros", 3 March 2020.

²³ AIDA Report 2019, p. 52.

²⁴ FRA, "Migration: Key Fundamental Rights Concerns", 27 July 2020; See also HIAS, "Criminal charges pressed against the asylum seekers who arrived in Lesvos in March 2020", 6 July 2020.

²⁵ Article 31(8)(h) APD and Article 83(9)(h) IPA.

²⁶ GCR and Oxfam, "Lesbos Bulletin: Update on the EU "hotspot" Moria, by the Greek Council for Refugees and Oxfam", January - February 2020; See also HRW, "Greece: Nearly 2,000 New Arrivals Detained in Overcrowded, Mainland Camps", 31 March 2020; See also AIDA Report 2019, p. 41-42.

²⁷ UNHCR, "Mediterranean Situation: Greece", last updated on 13 September 2020; Note also that government statistics refer to 9,061 arrivals during the same period: Ministry of Migration and Asylum, "Μηνιαίο Ενημερωτικό Σημείωμα Υπουργείου Μετανάστευσης και Ασύλου (Μάρτιος)", 14 April 2020.

²⁸ RSA, "Rights denied during Greek asylum procedure suspension", April 2020.

refer, *inter alia*, to 100 persons detained in Samos, 250 in Leros, and 450 in Mytilene after being detained on the Rhodes Hellenic Navy vessel.²⁹ While it is unclear if deportations had in fact taken place, issuing a blanket deportation order without consideration on a case by case basis violates Article 10(3) APD which requires Member States to ensure appropriate examination of applications for international protection on an individual basis. A blanket deportation order also seriously risks violating the principle of *non-refoulement* (see Section 5.6 below).

5.2.2.6 The Order ceased to be in force on 1 April 2020, however, as noted above, individuals who arrived in Greece during the month of March are still affected through the enforcement of the Order because they have been either prosecuted, detained or pushed back.³⁰

5.2.2.7 For those who remained detained after the lift of the Order, police authorities gradually recorded their will to apply for asylum, while the registration of the application took place following the re-opening of the Asylum Service on 18 May 2020. However, as set out below, also following the lifting of the Order, Greek authorities continue to infringe the requirement to accept any application for international protection by a third-country national or a stateless person.

5.2.3 Pushbacks

5.2.3.1 Even though the Greek Order suspending asylum applications is no longer in effect, in practice Greek authorities continue to gravely infringe the requirement to accept asylum applications on a daily basis. In practice asylum applicants are not granted the effective opportunity to lodge asylum applications, resorting instead to "pushbacks", thus violating Article 3 Dublin III and Article 6(2) APD and risking violation of the principle of non-refoulement, as enshrined in Article 21 AQD and Article 9 APD (in addition to Article 19(2) EU Charter as discussed in Section 7.5.3). We further elaborate on the infringements of EU law in the context of pushbacks in Section 5.6.

5.2.4 Difficult access to the asylum procedure

5.2.4.1 Access to the asylum procedure in Greece has long proven to be excessively difficult, if not impossible. An individual on the mainland who wishes to seek asylum must make their request known to the Asylum Service, following which they are encouraged to book an appointment with the Asylum Service via Skype to have their claim registered. In practice, accessing Skype and making an appointment for registration is excessively difficult due to the lack of interpretation services and limited capacity of staff. This is a well-known issue and accordingly,

²⁹ Efsyn, "Κράτηση υπό απάνθρωπες συνθήκες", 12 March 2020; See also HRW, "Greece/EU: Allow New Arrivals to Claim Asylum", 10 March 2020; See also Amnesty International, "Caught in a political game", 3 April 2020.

³⁰ See also Sections 5.2.3 and 5.6.

the UN Committee Against Torture's concluding observations of Greece (September 2019) recommended to Greece to "*reinforce the capacity of the Asylum Service to substantively assess all individual applications for asylum or international protection*".³¹

5.2.4.2 The consequences of the difficult access to the asylum procedure are serious. Not only can individuals be waiting for an appointment for months, reports from Greek Refugee Council illustrate numerous cases of applicants being detained over the years following repeated unsuccessful attempts to make an appointment (via Skype) with the Asylum Service, in order to apply for asylum. They were eventually arrested by Greek authorities because of the lack of legal documentation and subsequently detained before implementing the return procedure, despite indicating their intent to seek asylum.³² The lack of legal documentation is due to the fact that individuals did not manage to obtain a Skype appointment or they were not provided with any document proving that he/she had already fixed an appointment with the Asylum Service for registration through Skype. This is a real issue as not being registered leads to the exclusion of access to health care, cash assistance and other protections under the RCD, as well as the risk of being returned to Turkey by Greek authorities where they risk being refouled to persecution and violence.³³

5.2.4.3 A detained asylum applicant faces similar hurdles. The process of applying for asylum in detention centres produces significant unwarranted delays and results in the deprivation of basic procedural guarantees.³⁴ Particularly, the registration backlog in detention centres negatively affects asylum applications of individuals expressing intent to seek asylum.³⁵ Despite expressing the intent to seek asylum, people in a detention centre only have their case registered after a certain period of time. According to official data by the UNHCR, asylum seekers in (pre-removal) detention wait on average up to four months for the registration of their application for international protection, while UNHCR has documented cases of asylum seekers remaining in detention up to eight months before being given an opportunity to register their application.³⁶ Out of the total number of 87,461 applications pending as a whole by the end of 2019, in 71,396 (81.6%) of the

³¹ UN Committee Against Torture, "*Concluding Observations on the seventh periodic report of Greece*", 3 September 2019.

³² GRC, "*Administrative detention in Greece: Findings from the field (2018)*", February 2019.

³³ HR360, "*No End in Sight: the Mistreatment of Asylum Seekers in Greece*", 21 August 2019, p. 11.

³⁴ GDP and GCR, "*Joint Submission on Arbitrary Detention*", October 2019; See also UNHCR, "*Recommendations Concerning the Execution of Judgments by ECtHR in the Cases of M.S.S. v. Belgium and Greece and of Rahimi v. Greece*", 24 May 2019; See also GRC, "*Administrative detention in Greece: Findings from the field (2018)*", February 2019.

³⁵ UNHCR, "*UNHCR observations on the current asylum system in Greece*", December 2014: "*As of October 2014, and according to data of the Hellenic Police, there were approximately 2,000 asylum-seekers in pre-removal detention conditions, waiting for their applications to be registered.*"

³⁶ Ibid.

cases, the personal interview had not yet taken place.³⁷ There are reports that applicants from Iraq, Turkey, Iran, Afghanistan and African countries have interview dates scheduled for 2023 and 2024.³⁸ Given the number of the applications, the backlog of cases pending for prolonged periods is likely to increase.³⁹

5.2.4.4 By failing to register and assess asylum applications in a timely manner for individuals inside and outside detention, Greece gravely violates Article 3 Dublin III and Article 6 APD, which require Member States to register asylum applications States within three working days, or at most, 10 working days.⁴⁰ A large influx of migrants can understandably cause delays in registration. However, such a situation has already been considered and is specifically provided for by Article 6(5) APD which provides that in such circumstances, instead of three working days, registration of the application may take place within 10 working days after the application is made.

5.3 Violations of procedural guarantees

Overview of breaches of EU law
EU Asylum Acquis <ul style="list-style-type: none"> Articles 8, 12, 20, 21, 28 and 46 Asylum Procedures Directive
EU Charter <ul style="list-style-type: none"> Article 47 EU Charter

5.3.1 Introduction

5.3.1.1 Under the current asylum procedure in Greece, individuals are deprived of various minimum standards of procedural guarantees which should be provided to asylum seekers under EU law.

5.3.2 Lack of free legal assistance

5.3.2.1 Articles 20 and 21 APD mandate the provision of free legal assistance to asylum seekers. Member States are obliged to provide free legal assistance and representation in at least the appeals procedures, and in any event, have the duty to ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.⁴¹

³⁷ AIDA Report 2019, p. 19.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Article 65(7) IPA and amended by Article 6 IPA Amendment.

⁴¹ Article 71(3) IPA.

5.3.2.2 Despite EU funding in managing asylum flows, the possibility for asylum applicants to obtain an effective remedy is undermined due to limited access to legal representation. This is due to the severe lack of state-funded legal aid; while NGO capacities are insufficient for the number of individuals requiring assistance.⁴² According to the Asylum Service's statistics, out of a total of 15,378 appeals lodged in 2019, only 5,152 (33%) people benefitted from the state-funded legal aid scheme.⁴³ In practice, especially for those confined in reception and identification centres ("**RICs**"), which have far exceeded their capacity, the Greek authorities fail to provide sufficient professionals to identify and assist those seeking asylum during the appeals stage.⁴⁴

5.3.2.3 The lack of free legal assistance is exacerbated by the very short appeal deadlines and comprehensive formal requirements, including the obligatory content of appeals grounds. These circumstances make it excessively difficult, if not impossible, for individuals without legal assistance to have effective access to justice. In practice, as a result, applicants with no access to legal assistance are at risk of being cast out of the asylum procedure, put through immediate detention and eventually deported.

5.3.2.4 Furthermore, the lack of legal aid is especially concerning following reports that the Asylum Service rejected 11,000 applications during the closure of the Asylum Service *i.e.*, between 1 March 2020-18 May 2020. This is because after the reopening of the Asylum Service, applicants had only 10 days to submit an appeal, the provision of legal aid to the applicants was very limited and the capacity of the Asylum Service to receive the appeal submissions was also limited.⁴⁵ NGOs providing legal aid lodged a complaint with the Greek Ombudsman, as lawyers could not cope with the need for legal assistance following the mass rejection. Asylum applicants were therefore forced to seek alternative measures in order to comply with the 10 day deadline but were fined EUR 150 by Greek authorities for going into town to visit lawyers.⁴⁶

5.3.3 Lack of language interpretation

5.3.3.1 Articles 8 and 12 APD require that applicants receive the services of an interpreter for submitting their case to the competent authorities whenever necessary and that applicants have the right to be informed of the procedure to be followed and their rights and obligations in a language which they understand

⁴² GCR and Oxfam International, "*Diminished, derogated, denied: how the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020: "*Indicatively, there is only one state-funded lawyer on the island of Lesbos, whereas on other islands there are none or also 1 to 2*"; See also HR360, "*No End in Sight: the Mistreatment of Asylum Seekers in Greece*", 21 August 2019, p. 13.

⁴³ AIDA Report 2019, p. 70.

⁴⁴ *Ibid.*, pp. 154-155.

⁴⁵ Oxfam International, "*Massive number of rejections in Greece deny people fair asylum process*", 19 May 2020.

⁴⁶ FRA, "*Migration: Key Fundamental Rights Concerns*", 27 July 2020.

or are reasonably supposed to understand. Furthermore, with respect to personal interviews, Article 15(3)(c) APD mandates that communication shall take place in the language preferred by the applicant, unless there is another language he or she understands and in which he or she is able to communicate clearly.⁴⁷

5.3.3.2 Greece consistently fails to provide sufficient interpretation for asylum applicants.⁴⁸ The provision of an interpreter or documents available in the language of the asylum seekers have been, and continues to be, severely lacking. In many cases, the information provided on the asylum application process is only available in Greek, and there is a lack of translation services.⁴⁹ This constitutes a violation of Articles 8 and 12 APD.

5.3.3.3 The gravity of the lack of translation services is clearly illustrated by the Lesbos Regional Asylum Office's assessment of 28 asylum seekers on 15-20 November 2019, where repeated attempts to find interpretation services for the mother tongue and the language of communication of the asylum seeker proved unsuccessful, and ultimately the applications were rejected. The inability to provide interpretation should not contribute as a basis for the rejection of an asylum application. Not conducting a personal asylum interview due to the inability to provide interpretation is a clear violation of Article 15(3)(c) APD and has been condemned by the Commission: upon being questioned of the compatibility of the Greek decision with EU law, the Commission reiterated Article 15(3)(c) APD and stated its commitment to continue monitoring the implementation of the procedural guarantees of the APD in Greece. We further elaborate on the rejection of these asylum seekers in Section 5.3.5.⁵⁰

5.3.4 Lack of an effective remedy

5.3.4.1 Article 46(1) APD provides that Member States must ensure that applicants have the right to an effective remedy before the national courts against a negative

⁴⁷ Article 77(3)(5)(12b) IPA as amended by Article 10 IPA amendment and Article 69(2) IPA as amended by Article 7 IPA Amendment.

⁴⁸ RESPOND, "Working Paper: Refugee Protection Greece Country Report", 24 January 2020, p. 25-37. See also RSA, "Rejection of 28 asylum seekers from African countries due to the lack of interpreters", 24 November 2019.

⁴⁹ UNHCR, "Recommendations Concerning the Execution of Judgments by ECtHR in the Cases of *M.S.S. v. Belgium and Greece* and of *Rahimi v. Greece*", 24 May 2019: "Persons on the mainland have to wait around 1-2 months to get through a Skype line, depending on the language, while actual full registration takes another 3-4 months on average in two of the main Asylum Offices, Attica and Thessaloniki."; See also AIDA Report 2019, p. 49: "Consequently, prospective asylum seekers frequently have to try multiple times, often over a period of several months, before they manage to get through the Skype line and to obtain appointment for the registration of their application, meanwhile facing the danger of a potential arrest and detention by the police."; See also HR360, "No End in Sight: the Mistreatment of Asylum Seekers in Greece", 21 August 2019, p. 9; See also RSA, "Rejection of 28 asylum seekers from African countries due to the lack of interpreters", 22 November 2019.

⁵⁰ EC Answer to question P-004017/2019, 5 February 2020.

decision. This right is also enshrined in Article 47 EU Charter (further discussed in Section 7.2).

- 5.3.4.2 Due to the lack of legal aid and interpretation services (see paras 5.3.2 and 5.3.3 above), asylum seekers lack access to an effective remedy. As set out below, this is especially the case due to the characteristics of the Greek legal framework for appeals, in particular: (i) the formal requirements in the appeals procedure; (ii) application of accelerated procedures and (iii) the automatic suspensive effect of first instance decisions.

Formal requirements appeals procedure

- 5.3.4.3 Article 93 IPA sets strict requirements regarding the grounds of an appeal to the Greek courts and the forms to be submitted are more often than not in Greek.⁵¹ If these requirements are not met, the appeal is automatically deemed inadmissible and is therefore rejected. Considering the severe lack of legal aid and interpretation services, an effective remedy is hindered right from the start for the large majority of individuals that do not have the legal and language skills to formulate such grounds.

Accelerated and border procedures

- 5.3.4.4 Pursuant to Article 31(8) APD, in well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States are permitted to accelerate the examination of asylum applications, in particular by introducing shorter, but reasonable, time limits for certain procedural steps. Member States may also provide that the application is examined under the border procedure in accordance with Article 43 APD. However, this should be without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for under EU law. Furthermore, if adequate support cannot be provided to an applicant in need of special procedural guarantees in the framework of accelerated or border procedures, such an applicant should be exempted from the procedure. In the event there is a lack of automatic suspensive effect, the applicant should also be provided with additional guarantees with a view to an effective remedy.⁵² This includes, among others, the right to be informed, the right to receive legal aid, the right to an interpreter.⁵³

- 5.3.4.5 The lack of adequate support and procedural guarantees in Greece raise serious concerns about whether individuals subjected to the accelerated or border

⁵¹ Mobile info team, "Appeals against a rejection for asylum in Greece".

⁵² Recital 30 APD.

⁵³ UNHCR, "Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union", 25 July 2018, p. 13.

procedures have effective remedy as provided for under EU law.⁵⁴ Particularly, shorter time limits⁵⁵, combined with the lack of procedural safeguards such as the lack of legal aid and interpretation services (see paras 5.3.2 and 5.3.3 above), make it excessively difficult (if not impossible) for an individual to consult a lawyer and to fully understand their right, obligations, and procedures in place. Additionally, the time pressure put on the Asylum Service for processing accelerated and border applications undermines the quality of first instance asylum decisions, which in turn means that more work is shifted to the appeals stage where procedural guarantees are undermined to a larger extent.⁵⁶

Automatic suspensive effect

5.3.4.6 The IPA does not provide for the automatic suspensive effect of the first instance decision pending an appeal, particularly concerning applications rejected in the accelerated procedure or dismissed as inadmissible under certain grounds⁵⁷. In such cases, applicants could submit an application to the Appeals Committee requesting their stay in the country until the second-instance appeal decision is issued.⁵⁸ However, considering the significant lack of legal aid, submitting the application is excessively difficult for the applicant. This also hinders the effectiveness of the appeal procedure, as individuals can be returned back to their country of origin or a third country before their appeal is heard.⁵⁹

5.3.5 Rejecting an application as unfounded by way of implicit withdrawal

5.3.5.1 Article 28 APD sets out an exhaustive list of grounds which may be considered by the authorities as an implicit withdrawal by the applicant. In this case, Member States can discontinue the examination or reject the application as 'unfounded'.

⁵⁴ AIDA Report 2019, p. 92-94; See also GCR and Oxfam International, "*Diminished, derogated, denied: how the right to asylum in Greece is undermined by the lack of EU responsibility sharing*," 2 July 2020, p. 8.

⁵⁵ For accelerated procedures, according to Article 83(4) IPA and Article 92(1) IPA, the examination of an application under the accelerated procedure must be concluded within 20 days, subject to the possibility of a 10-day exception. The time limit for lodging an appeal is 20 days; For border procedures, according to Article 90(3)(c) IPA, the Asylum Service shall take a first instance decision within 7 days. The deadline for submitting an appeal against a negative decision is 10 days. The examination of an appeal is carried out within 4 days. The appellant is notified within 1 day to appear for a hearing or to submit supplementary evidence. The second instance decision shall be issued within 7 days.

⁵⁶ FRA, "*Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*", 4 March 2019, p. 26.

⁵⁷ Article 104(2) IPA as amended by Article 26 IPA Amendment.

⁵⁸ Article 104 IPA as amended by Article 26 IPA Amendment.

⁵⁹ Case C-181/16, *Gnandi v Belgium*, ECLI:EU:C:2018:465, 19 June 2018: Member States can issue a return decision together with, or right after, a negative decision on an asylum application at first instance, as long as they ensure that all judicial effects of the return decision are suspended during the time allowed to appeal and pending that appeal. Furthermore, during that period, and despite being subjected to a return decision, an asylum applicant must enjoy all the rights under the Reception Conditions Directive. See also ECtHR, *De Souza Ribeiro v France* (no. 22689/07), 13 December 2012.

5.3.5.2 Unless the applicant can demonstrate that their failure was due to circumstances beyond their control, Member States may assume that the applicant has implicitly withdrawn the application when the applicant (i) fails to respond to requests to provide essential information for the assessment of its application; (ii) has not appeared for a personal interview; (iii) has absconded without contacting the authority within reasonable time; or (iv) has not complied with reporting duties or obligations to communicate within reasonable time.

5.3.5.3 Article 81 IPA and its corresponding Article 13 IPA Amendment do not correctly transpose EU law. Particularly, Article 81 IPA does not permit applicants to demonstrate that that his or her failure was due to circumstances beyond his or her control and does not provide a time limit upon which the applicant may contact the competent authority.

5.3.5.4 This is of paramount importance given the recent actions of Greek authorities in Lesbos which rejected 28 asylum applications on the basis that "*the applicant did not attend a personal interview because repeated attempts to find interpretation services in his language of communication failed*".⁶⁰ Had EU law been correctly applied, the applicant should first of all have been given the opportunity of a personal interview in a language the applicant understands (see para. 5.3.3.3 above). However, even if that were not possible, the applicant should have been given a chance to demonstrate that the impossibility of a meaningful interview due to the absence of an interpreter constituted a circumstances beyond their control, justifying their failure to attend the interview. Not giving the applicant a chance to demonstrate that it was due to circumstances beyond his or her control constitutes a violation of Article 28(1)(a) APD. The Commission, upon being questioned of the compatibility of the Greek decision with EU law, already stressed that the APD guarantees that asylum applicants be given the opportunity of a personal interview with certain limited exceptions⁶¹ and stated its commitment to continue monitoring the implementation of the procedural guarantees of the APD in Greece.⁶² The above demonstrates that it is now time for the Commission to undertake action.

5.3.6 IPA sets additional categories or conditions in violation of EU law

5.3.7 Finally, the IPA, in several instances, has included additional categories or conditions that diminish the possibility of asylum applicants to be granted asylum, despite the exhaustive grounds provided in EU legislation. Three of such cases are identified below.

⁶⁰ EC Answer to question P-004017/2019, 5 February 2020.

⁶¹ The exceptions are laid down in Article 14 APD. The lack of interpretation services does not fall within the exceptions of the APD.

⁶² EC Answer to question P-004017/2019, 5 February 2020.

Grounds for implicit withdrawal resulting in discontinuation or rejection of application

5.3.7.1 As mentioned above, Article 28 APD sets out an exhaustive list of grounds which may be considered by Member States as an implicit withdrawal by the applicant. Article 81(f)-(h) IPA and Article 11(2) and (3) IPA Amendment on tacit withdrawal introduced broad additional grounds which can fall under implicit withdrawals. Particularly, Article 81(f)-(h) IPA provides that an application can also be considered implicitly withdrawn if the applicant does not appear to renew its application, the applicant does not cooperate with authorities and the applicant does not comply with a transfer decision. Furthermore, Article 11(2) and (3) IPA Amendment provides that an application can be considered implicitly withdrawn if the applicant does not comply with procedural conditions of the Appeals Authority and does not communicate or cooperate with the authorities. These broad additional grounds obviously contradict the exhaustive list set out in Article 28 APD.

Grounds for an application to be considered manifestly unfounded

5.3.7.2 Article 32(2) APD sets out that in cases of unfounded applications in which any of the circumstances in Article 31(8) APD apply, Member States may also consider an application to be manifestly unfounded.

5.3.7.3 The list in Article 31(8) APD is transposed into Article 88(2) IPA. However, Article 97(2) IPA and Article 17(1) IPA Amendment added additional grounds in order to consider an application as manifestly unfounded as per Article 88(2) IPA. These are grounds beyond Article 32(2) APD. Particularly, Article 97(2) IPA makes it possible for an application to be considered as manifestly unfounded if the applicant does not attend the appeal proceedings or does not issue a certificate. Article 17(1) IPA Amendment⁶³ further extends the possibility to consider an application as manifestly unfounded if the applicant has grossly infringed his duty to work with national authorities. Again, these additional grounds to consider an application unfounded are in violation of Article 31(8) APD.

Grounds for consideration of a safe third country

5.3.7.4 Article 38(2)(a) APD sets out that the application of the safe third country concept shall be subject to rules laid down in national law, including rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go back to that third country.

5.3.7.5 Article 86(1)(f) IPA transposes the above and provides that transit through a third country may be considered as such a "connection" in conjunction with specific

⁶³ Article 88 IPA as amended by Article 17(1) IPA Amendment.

circumstances, on the basis of which it would be reasonable for that person to go back to that third country. The compatibility of a similar provision, in Hungary, with Article 38(2) APD was already rejected by the Court of Justice of the EU ("CJEU") which ruled that "*the transit of the applicant from a third country cannot constitute as such a valid ground in order to be considered that the applicant could reasonably return in this country*".⁶⁴

5.3.7.6 Moreover, Article 38(2)(b) APD provides that the application of the safe third country concept shall be subject to rules laid down in national law, including rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe.

5.3.7.7 Contrary to the above, Greek law does not foresee the methodology to be followed by the authorities in order to assess whether a country qualifies as a "safe third country" for an individual applicant.⁶⁵

5.4 Arbitrary detention of asylum seekers

Overview of breaches of EU law

EU Asylum Acquis

- Articles 8(1), 8(2), 8(3), 9(1), 9(2), 9(4), 9(5) and 9(6) Reception Conditions Directive

EU Charter

- Articles 6 and 47 EU Charter

5.4.1 Introduction

5.4.1.1 The EU Asylum Acquis has made the detention of asylum applicants subject to strict legal requirements.⁶⁶ After all, arbitrary detention is universally prohibited under international law⁶⁷ and, specifically in the context of the application of EU law, prohibited by the right to liberty and security of person that is enshrined in Article 6 EU Charter, as further outlined in Section 7.3.

⁶⁴ Case C-564/18, *L.H. v Bevándorlási és Menekültügyi Hivatal (Office for Immigration and Asylum)*, ECLI:EU:C:2020:218, 19 March 2020.

⁶⁵ AIDA, "Annex I – Transposition of the CEAS in National Legislation".

⁶⁶ Articles 8-9 RCD, Article 26 APD and Articles 15-18 RCD.

⁶⁷ This is customary international law as well as recognized in all major international and regional instruments for the promotion and protection of human rights. These include Article 9 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Article 6 of the African Charter of Human and Peoples' Rights (African Charter), Article 7(1) of the American Convention on Human Rights (American Convention), Article 14 of the Arab Charter on Human Rights (Arab Charter), and Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

5.4.1.2 Under Article 8 RCD, the detention of asylum seekers should be the exception rather than the rule and is only to be used as a measure of last resort. Consequently, the RCD (i) requires for each asylum seeker an individual assessment of the need for detention, (ii) sets out an exhaustive list of circumstances in which an asylum seeker may be detained, and (iii) details the guarantees that are afforded to asylum seekers during such detention.

5.4.1.3 There is evidence showing multiple, repeated infractions by Greece on all of these points. In other words, detention orders are made without requisite individual assessments, detention is being used in circumstances not permitted by the RCD and such detention routinely disregards the necessary guarantees. The result is not just multiple and ongoing breaches of the RCD, but also infringements of Articles 6 and 47 EU Charter.

5.4.2 Lack of a comprehensive individualised procedure for each detention case

5.4.2.1 The circumstances and requirements permitting detention of an asylum seeker are contained in Article 8 RCD. Article 8(1) RCD prohibits a Member State from holding persons in detention for the sole reason of being an asylum seeker, while Article 8(2) RCD mandates that detention be only be ordered based on an individual assessment, i.e. with due regard and knowledge of the asylum applicant's individual circumstances, and with reference to the lawful detention grounds laid out in national legislation implementing Article 8(3) RCD (see Section 5.4.4 below).

5.4.2.2 In practice, this is disregarded, especially in the context of the IPA's gradual erosion of safeguards surrounding refugee rights in general and detention in particular.⁶⁸ Reports demonstrate that Greek authorities - *inter alia* in Lesbos, Kos⁶⁹ and Chios⁷⁰ - have been systematically resorting to automatic detention upon arrival, with no individual assessment. Asylum seekers continue to be detained by default, in breach of Articles 8(1) and 8(2) RCD.

5.4.3 Alternatives to detention are neither examined nor applied

5.4.3.1 Article 8(2) RCD also requires that, following such individual assessment, Member States may only detain an asylum applicant if other less coercive alternative measures cannot be effectively applied. This echoes Article 31 of the

⁶⁸ Oxfam and GCR, "*Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020, p. 2 and 3.

⁶⁹ This especially applies to asylum applicants originating from countries with a low recognition rate (below 25% in Lesbos and below 33% in Kos). See GCR, "*Issues related to Immigration Detention: Join Submission to the Working Group on Arbitrary Detention in Preparation for its Mission to Greece in December 2019*", p. 6.

⁷⁰ HR360, "*No End in Sight: the Mistreatment of Asylum Seekers in Greece*", 21 August 2019, p. 6.

1951 Geneva Convention in requiring that detention occur only when necessary and provided no other alternatives can be applied effectively.

5.4.3.2 Despite Greek law formally including an obligation to examine and apply alternatives before resorting to detention,⁷¹ the law operates in such a manner as to undermine the function of any alternative measures. Article 39(1) IPA mandates that newly arrived persons "*shall be directly led, under the responsibility of the police or port authorities [...] to a Reception and Identification Centre*". Upon arrival at the RIC, Article 39(4) IPA imposes on the newly arrived persons a prohibition to leave the RIC. This measure is imposed automatically, without an individual assessment,⁷² and constitutes a *de facto* detention measure, albeit not classified as such under Greek law. Greek law as it currently stands thus incentivises the automatic detainment of prospective asylum applicants with no regard to alternatives, in breach of Article 8(2) RCD.

5.4.3.3 Article 46(4) IPA has also abolished the requirement of obtaining a recommendation of the Asylum Service prior to detaining an asylum seeker (as opposed to obtaining information as required under previous legislation).⁷³ As the Asylum Service is the only authority in a position to assess the necessity of detention based on the specific elements of the application and in view of the statutory grounds for detention, aside from weakening the individual assessment safeguard (see Section 5.4.2 above), this generally makes it easier for individuals to end up in detention as opposed to other non-custodial alternatives.⁷⁴

5.4.3.4 The UNHCR also noted in May 2019 that "*there is no consideration of alternative measures to detention*".⁷⁵

⁷¹ Article 46(3) IPA and Article 22(3) L 3907/2011 which lay out a non-exhaustive list of alternatives to detention of both third-country nationals under removal procedures and asylum seekers such as reporting duties, surrendering documents, financial guarantees.

⁷² AIDA Report 2019, p. 186; See also The Greens/EFA, "*The EU-Turkey Statement and the Greek Hotspots*", June 2018, p. 16.

⁷³ The prior Asylum Law provisions provided that detention of an asylum seeker could only be imposed following a prior relevant recommendation of the Asylum Service, with the exception of detention based on public order grounds (which could be ordered directly by the Police Director).

⁷⁴ GCR, "*The announcements of the Greek Authorities are contrary to Greek and international law on refugees*", 21 November 2019; See also UNHCR, "*UNHCR's Intervention at the hearing for actors to the Standing Committee of Public Administration, Public Order and Justice of the Hellenic Parliament regarding the Draft Law on the Improvement of Migration Legislation*", 9 May 2020: "*the combination of reduced procedural safeguards with provisions related to the detention of asylum seekers and to the detention of those under forced return procedures, compromises the credibility of the system and is of high concern to UNHCR. The current Draft Law further extends the practice of detention, which is essentially turned into the rule while it should be the exception, both for asylum seekers and those under return. For the latter it should be noted that they may not have had an effective access to the asylum process or may have gone through an asylum process with reduced procedural safeguards*".

⁷⁵ AIDA Report 2019, p. 187. A general call for the end of unlawful detentions by States was reiterated by the UNHCR: UNHCR, "*UNHCR stresses urgent need for States to end unlawful detention of refugees and asylum-seekers, amidst COVID-19 pandemic*", 24 July 2020.

5.4.4 The grounds for detention set out in Article 8(3) RCD are misapplied

5.4.4.1 Article 8(3) RCD contains an exhaustive list of six grounds upon which a Member State may resort to detention of an asylum seeker. Amongst these six grounds are: (a) in order to determine or verify his or her identity or nationality, (b) in order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant, and (c) when protection of national security or public order so require. This list is exhaustive, meaning, for example, that a person cannot be held in detention on the ground that there is not sufficient accommodation available in humanitarian reception centres.⁷⁶

5.4.4.2 As set out below, there is evidence that the grounds upon which Greece relies are routinely misapplied.

Risk of absconding

5.4.4.3 Further, as stated in Article 8(3)(b) RCD, detention can be allowed when necessary to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding.

5.4.4.4 As noted in para. 5.4.2 above, Greek authorities do not perform any form of individual assessment to support such a finding.

5.4.4.5 Moreover, the manner in which Article 8(3)(b) RCD has been transposed into Greek law unlawfully conflates it with another separate ground for detention. With respect to what constitutes a *risk of absconding* under this ground, Greek law refers to the definition of this concept in the context of pre-removal detention, which contains a *non-exhaustive, indicative* list of objective criteria, for authorities to base themselves on.⁷⁷ The use of objective criteria in this manner is expressly permitted in relation to pre-removal detention under Article 8(3)(d) RCD, but not in relation to Article 8(3)(b) which relates to pre-application detention. It has been repeatedly held that each ground listed in Article 8(3) RCD "*meets a specific need and is self-standing*".⁷⁸ In other words, the grounds must be applied without relying on another. Additionally, the grounds as to what constitutes a risk of

⁷⁶ Case C-36/20 PPU, *Ministerio Fiscal*, ECLI:EU:C:2020:495, paras 106-107.

⁷⁷ Article 18(g) Law 3901/2011: These include: if the individual does not comply with an obligation of voluntary departure; has explicitly declared that he or she will not comply with the return decision; is in possession of forged documents; has provided false information to the authorities; has been convicted of a criminal offence or is undergoing prosecution, or there are serious indications that he or she has or will commit a criminal offence; does not possess travel documents or other identity documents; has previously absconded; and does not comply with an entry ban.

⁷⁸ Case C-601/15 PPU, *J. N. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2016:84, para. 59; Case C-18/16, *K. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2017:680, para. 42.

absconding must be *exhaustively* laid down in national law, as required by Article 8 RCD. The incorrect transposition into Greek law therefore falls foul of this.

Public order

5.4.4.6 As stated in Article 8(3)(e) RCD, detention can be justified where public order so requires. A restriction under grounds of public order, such as detention, must be proportional as well as effective to achieve the legitimate aim sought out. With respect to detention, this entails an assessment of whether "*the applicant's individual conduct represents a genuine, present and sufficiently serious threat*".⁷⁹

5.4.4.7 In practice, detention on ground of public order is over-invoked and under-justified.⁸⁰ For example, authorities routinely invoke public order based on prior prosecution for a minor offence (whether or not conviction has ensued).⁸¹ In a case supported by the GCR in 2019, a Bangladeshi citizen had been detained for 6 months in a police station detention just for selling small objects on the street without permission.⁸²

5.4.4.8 Detention on public order grounds has also been ordered for reasons of irregular entry into the territory, *i.e.* essentially on account of being an asylum seeker – in express violation of Article 8(1) RCD.⁸³ In the wake of the flow of detainees as a result of Order of 2 March 2020, the administrative court of Athens ruled that mass detention was justified on grounds of public order, under the "*extraordinarily urgent and unforeseeable need to respond to an asymmetrical threat to the security of the country which supersedes the underlying international and EU law rules on the asylum procedure*".⁸⁴ As EU law provides no ground to supersede EU Asylum Acquis in this manner, the Greek court's judgment too constitutes a state measure in clear violation of EU law.

⁷⁹ Case C-601/15 PPU, *J. N. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2016:84, paras 65-67; See also *e.g.*, Council of State, Decisions 427/2009, 1127/2009 and 2414/2008, which highlight that a mere reference to a criminal conviction does not suffice for the determination of a threat to national security or public order.

⁸⁰ This ground is routinely invoked to account for detentions in RICs and PRDCs. The AIDA report 2019 mentions this as an endemic issue spanning the years, also in reference to Greek Ombudsman, "*Return of third-country nationals*", Special Report 2018, p. 17.

⁸¹ AIDA Report 2019, p. 184.

⁸² Administrative Court of Athens, Decision AP 528/2019: In this particular instance, the Administrative Court of Athens accepted the objections against this case and released the Bangladeshi citizen.

⁸³ AIDA Report 2019, p. 184; Article 8(1) RCD also implements Article 31 of the 1951 Geneva Convention.

⁸⁴ Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020, para. 4; See also RSA, "*Rights denied during Greek asylum procedure suspension*", April 2020, p. 7.

5.4.5 The application procedure is not carried out with due diligence and thus detention is prolonged due to delays in administration

5.4.5.1 Article 9(1) RCD mandates that an applicant be detained for as short as possible. The well-entrenched obligation to keep detention length to a minimum has been reiterated by human rights treaty monitoring bodies.⁸⁵ Furthermore, under Article 9(1) RCD, administrative procedures related to detention shall be executed with due diligence, and "*delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention*".

5.4.5.2 The CJEU has further confirmed that while the RCD does not lay down a maximum duration limit, detention should be terminated as soon as it is no longer necessary or proportionate, with authorities acting with all due diligence.⁸⁶

5.4.5.3 However, as mentioned by Greek Council for Refugees, the due diligence obligation has been routinely disregarded, irrespective of the type of detention of asylum seekers. Detention is often prolonged precisely due to delays in administration, which can last for several additional months.⁸⁷

5.4.5.4 The IPA has significantly extended the maximum duration limit of detention of asylum seekers when compared to its previous asylum law (from three months to 18 months).⁸⁸ As also flagged by Amnesty, this regulatory change increases the risk of protracted detention and works as a disincentive vis-à-vis the obligation in Article 9(1) RCD to keep detention short and, to this end, to conduct the application procedure with due diligence.⁸⁹

5.4.5.5 Another factor causing prolonged detention is that the duration of the detention starts running from the date of application for asylum, rather than the date of detention, which leads to unduly long detention slipping under the radar.⁹⁰

⁸⁵ Both the UN Human Rights Committee (HRC) and the Committee Against Torture (CAT) thus urged Greece to ensure that immigration detention is ordered for the shortest time-period possible; See AIDA Report 2019, p. 193.

⁸⁶ Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS*, ECLI:EU:C:2020:367, paras 264-265.

⁸⁷ GCR, "*Administrative detention in Greece: Findings from the field (2018)*", p. 4; See also: HR360, "*No End in Sight: the Mistreatment of Asylum Seekers in Greece*", 21 August 2019, p. 6; See also AIDA Report 2019, p. 193.

⁸⁸ Article 46(5) IPA entails that applicants can be detained in increments of 50 days, which can be prolonged successively, up to 18 months. The prior Asylum Law provisions provided that asylum applicants could be detained up to 3 months. The 18 month period does not include the detention period in view of removal. As a result, a third country national within the asylum system may reach up to 36 months in detention.

⁸⁹ Amnesty International, "*Greece: Proposed Bill on Asylum Downgrades EU and International Law Standards on Refugees Protection*", 24 October 2019, p. 2: According to Amnesty International, the extension of the maximum detention period, coupled with the separate counting of pre-removal and asylum detention would lead to "*asylum seekers risk[ing] to find themselves in detention in Greece for protracted periods of time and with more limited remedies, in clear violation of international standards whereby asylum seekers should not, as a rule, be detained*." (emphasis added by attorneys)

⁹⁰ AIDA Report 2019, p. 193.

5.4.5.6 Protracted detention also flies under the radar in the context of detention prior to transfer to RICs. In line with its purpose of identification pending transfer to mainland Greece, the IPA provides that stays in RICs must be brief (5 days, with a possibility to extend to 25, if the procedure is not finalized).⁹¹ In practice, delays have been reported both in the processing of information, leading to individuals staying well beyond the 25 day-maximum in RICs, as well *prior* to their transfer to RICs such as in, *inter alia*, the case of transfers to Fylakio RIC, which have led to groups of individuals routinely held in detention without legal basis for up to one month pending transfer.⁹² The latter form of detention lacks any kind of legal basis. A visible and well documented example is that of the 450 individuals detained on the Rhodes Hellenic Navy vessel (see para. 5.2.2.5 above).

5.4.6 Lack of information on the reasons for detention

5.4.6.1 Article 9(2) RCD mandates that detention of applicants be ordered in writing by judicial or administrative authorities, specifying reasons in fact and in law. Article 9(4) RCD further mandates that detainees be informed in writing, in a language they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5.4.6.2 Nevertheless, it has been reported that asylum seekers are being detained with information being available, if at all, only in Greek.⁹³ Accounts also show that authorities have refused to translate and explain detention orders.⁹⁴ As confirmed by interviews conducted by Amnesty with 15 asylum applicants, there is an explicit practice of detaining applicants with no understandable information on the reasons behind their detention, no glimpse of how long they will be detained, no access to legal aid (see Section 5.4.7 below) nor any opportunity to claim asylum.⁹⁵ This is true *inter alia* in Lesbos, Leros and Kos.⁹⁶ Further accounts show that on the island of Samos, asylum seekers held in detention at Vathy Police Station have been detained under these very same circumstances.⁹⁷

⁹¹ Article 39(4) IPA.

⁹² AIDA Report 2019, p. 185; See also UNHCR, "*Recommendations Concerning the Execution of Judgments by ECtHR in the Cases of M.S.S. v. Belgium and Greece and of Rahimi v. Greece*", 24 May 2019, p. 4.

⁹³ See *inter alia* Oxfam and GCR, "*Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020, p. 10.

⁹⁴ RSA, "*Rights denied during Greek asylum procedure suspension*, April 2020", p. 6.

⁹⁵ Amnesty International, "*Caught in a political game*", 3 April 2020, p. 8.

⁹⁶ *Ibid*, p. 14.

⁹⁷ HR360, "*No End in Sight: the Mistreatment of Asylum Seekers in Greece*", 21 August 2019, p. 9, based on information provided by Elpida Home and Equal Rights beyond Borders. On the lack of justification of the reasons behind detention in a language that asylum seekers can understand, see also Oxfam and GCR, "*Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020, p. 10.

5.4.7 Lack of judicial review and legal aid

5.4.7.1 Article 9(5) RCD requires that detention is reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available. In addition, Article 9(6) RCD mandates that applicants shall have access to free legal assistance and representation in preparing for the judicial review of their detention order.

5.4.7.2 As already highlighted throughout previous years,⁹⁸ and contrary to Article 9(5) RCD,⁹⁹ the *ex officio* periodic judicial review of the detention decision of asylum seekers is not effective.¹⁰⁰ Statistics show that cases where the *ex officio* judicial review leads to detention orders almost always being approved:¹⁰¹

Ex officio review of detention by the Administrative Court of Athens: 2019		
	under asylum provisions (Article 46 L 4375/2016)	under pre-removal provisions (Article 30 L 3907/2011)
Detention orders transmitted	599	84
Approval of detention order	593	71
No approval of detention order	3	0
Abstention from decision*	3	13

Source: Administrative Court of Athens, Information provided on 26 February 2020. * "Abstention from decision" in L 4375/2016 cases concerns detention orders transmitted after the expiry of the time limit. For L 3907/2011 cases, according to its interpretation of the law, the Court examines the lawfulness of detention only if detention is prolonged beyond 6 months. Therefore, if detention is prolonged after an initial 3 months up to 6 months, the Court abstains from issuing a decision.

5.4.7.3 As mentioned above, the applicant may also request judicial review of their detention, through the *objections* procedure, before the President of the Administrative Court. Among others, the ECtHR has criticised this procedure for being ineffective¹⁰² and inaccessible given that detention orders tend to be standardised and only available in Greek (see Section 5.4.6).¹⁰³

5.4.7.4 This absence of effective judicial review also contravenes the right to an effective remedy guaranteed by Article 47 EU Charter as further discussed in Section 7.3.¹⁰⁴

⁹⁸ UNHRC, "Report on the human rights of migrants, Addendum: Mission to Greece", 18 April 2013, para. 57.

⁹⁹ Article 46(5)(b) IPA.

¹⁰⁰ AIDA Report 2019, p. 201.

¹⁰¹ Ibid.

¹⁰² See e.g. ECtHR, *Rahimi v. Greece* (no. 8687/08), 5 April 2011; See also ECtHR, *R.U. v Greece* (no. 2237/08), 7 June 2011; See also ECtHR, *C.D. and Others v Greece* (nos. 33441/10, 33468/10 and 33476/10), 19 March 2014 and ECtHR, *Kaak and Others v Greece* (no. 34215/16), 3 October 2019, paras 119-125. The same issues remain systemic.

¹⁰³ ECtHR, *O.S.A. v Greece*, (no. 39065/16), 21 March 2019.

¹⁰⁴ Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS*, ECLI:EU:C:2020:367, paras 290-291.

5.4.7.5 As further set out above in para. 5.3.2, accounts also show that asylum seekers lack the requisite access to legal aid, contrary to Article 9(6) RCD.

5.4.7.6 Aid groups, *inter alia* Equal Rights Beyond Borders, report that detained individuals are routinely unable to access a lawyer.¹⁰⁵ Furthermore, even when access is ostensibly granted, in practice the communication between detainees and their lawyers is hindered and not private, with accounts mentioning policemen which had violated detainee rights supervising the detainee's contact with a lawyer.¹⁰⁶

5.4.7.7 This is all the more the case in recent months, with the Order having led to the proliferation of informal detention centres, *inter alia*, a 'black site' at Poros, where asylum seekers do not only lack recourse to legal aid and judicial review, but are detained outside of a legal framework altogether.¹⁰⁷

5.5 Inadequate reception and detention conditions

Overview of breaches of EU law

EU Asylum Acquis

- Articles 10, 11, 17 and 19 Reception Conditions Directive

EU Charter

- Articles 1 and 35 EU Charter

5.5.1 Introduction

5.5.1.1 At the outset, it is important to note that asylum applicants are housed in various types of facilities in Greece, namely:

- (i) RICs or "EU hotspots": these facilities were established pursuant to the EU hotspot approach, in which Greek and EU authorities were to concentrate asylum seeker registration efforts;
- (ii) police stations: asylum applicants can be held in police stations, called "special holding facilities". These are located in the premises of the Aliens Police Directorate in Thessaloniki and Athens airport;¹⁰⁸ and

¹⁰⁵ HR360, "No End in Sight: the Mistreatment of Asylum Seekers in Greece", 21 August 2019, p. 8.

¹⁰⁶ Ibid.

¹⁰⁷ NYT, "We are like animals: Inside Greece's Secret Site for Migrants", 10 March 2020.

¹⁰⁸ In 2019, reports show that 212 asylum applicants were detained in such a manner. However, transit zone detentions, for example at the airport, also sometimes do not register the individuals arriving and are sent back to the country they arrived from. It is therefore possible that potential asylum applicants detained in those areas are unaccounted for. See the statistics provided by AIDA Report 2019, p. 194-195; See also GDP, *Greece Immigration Detention Profile*.

- (iii) pre-removal facilities: these facilities were established third-country nationals under the return procedure, but are also used to detain asylum seekers not subject to the return procedure.¹⁰⁹

5.5.1.2 The conditions in all the forms of facilities fall short of the corresponding EU law requirements. The RCD stipulates the conditions in which asylum applicants are to be received or detained. This covers topics such as the nature of the accommodation, access to healthcare, visitors and special rules afforded to the more vulnerable. In these respects, Greece has failed to live up to the minimum standards set out in the RCD.

5.5.1.3 The number and range of the facilities along with the differing legal standards for reception and detention and of asylum seekers makes it impossible to elaborate on all infringements within each specific detention centre. Thus, for the sake of practicability, this section provides an overview of the types of infringements that take place with reference to examples. It is not an exhaustive list.

5.5.2 Overcrowding

5.5.2.1 Article 17(2) RCD stipulates that asylum applicants are entitled to "*an adequate standard of living [...] which guarantees their subsistence and protects their physical and mental health*". This standard of living is to be afforded to all asylum applicants regardless of whether they have been detained or not. The conditions to which asylum applicants are subjected in the various centres fall short of this standard, is in part due to overcrowding.¹¹⁰

5.5.2.2 For example, RICs are severely overcrowded. To illustrate, the five major EU hotspots have a capacity of 6,095 places, while the occupancy as of 10 September was 23,575.¹¹¹ This entails an occupancy rate of 386% - and in simple terms, almost four individuals per one single bed. Table 2 below provides a detailed breakdown of the occupancy level in the RICs as of 9 September 2020:¹¹²

¹⁰⁹ At the end of 2019, Greece operated 8 pre-removal facilities, with a capacity of 4,683 places. An additional pre-detention facility has been put in place in February 2020 on Samos. See the statistics provided by AIDA Report 2019, p. 194-195.

¹¹⁰ In cases of overcrowding, Greece could provide asylum seekers access to general public assistance systems, see: Case C-79/13, *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri*, ECLI:EU:C:2014:103, 27 February 2014, para. 51.

¹¹¹ National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 31 December 2019.

¹¹² National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 9 September 2020.

Table 2: Breakdown of occupancy levels in RICs

EU hotspot	Capacity	Occupancy
Lesbos	2757	12767
Chios	1014	3603
Samos	648	4791
Leros	860	1026
Kos	816	1388

5.5.2.3 The result of this overcrowding is shortages in the provision of social services, lack of security as well as the aggravation of the mental health of the asylum seekers.¹¹³ Pursuant to Article 17(9) RCD, Member States are afforded some leniency where their housing capacities have been temporarily exhausted. However, even when such leniency is given the accommodation provided to asylum applicants must "*in any event cover basic needs*". This is evidently not the case for those being kept in the various facilities, resulting in sub-optimal conditions in contrast to the EU standards.

5.5.2.4 Similar issues of overcrowding have been reporting in relation to detention facilities. Reports indicate that over 450 asylum seekers were detained on a military vessel, with most having to sleep on the floor and children not receiving sufficient food.¹¹⁴

5.5.3 Lack of possibility to receive visitors

5.5.3.1 Article 18 (2)(c) RCD mandates that asylum seekers should be able to receive visits from the UNHCR, legal advisors, counsellors, and other NGO representatives. Asylum seekers that have been detained are afforded similar rights under Article 10(4) RCD.

5.5.3.2 Many asylum seekers detained in Greece in practice are unable to be reached by these parties. While this was already an issue in the past,¹¹⁵ the situation has deteriorated since the coronavirus pandemic. News coverage highlight that the lockdown of RICs have left all asylum applicants within these RICs locked in, without schools not access to visitors, including members of NGOs.¹¹⁶ Similarly, detained asylum seekers have not always been able to receive visits from family members and NGOs.¹¹⁷ This was also the case prior to any coronavirus related restrictions were imposed.

¹¹³ UNHCR, "*Recommendations Concerning the Execution of Judgments by ECtHR in the Cases of M.S.S. v. Belgium and Greece and of Rahimi v. Greece*", 24 May 2019, p. 4 and 5; See also AIDA Report 2019, p. 154 onwards.

¹¹⁴ HRW, "*Greece/EU: Allow new arrivals to claim asylum*", 10 March 2020.

¹¹⁵ AIDA Report 2018, p. 170.

¹¹⁶ HRW, "*Greece: Move Asylum Seekers, Migrants to Safety*", 24 March 2020.

¹¹⁷ AIDA Report 2019, p. 200.

5.5.4 Insufficient access to health care

- 5.5.4.1 Under Article 19 RCD, asylum applicants are entitled to receive health care for both physical and mental illnesses. This requirement is twofold. First, all asylum seekers should at least receive "*emergency healthcare and essential treatment of illness*", while there should be "*necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed*".
- 5.5.4.2 Generally speaking, all reception and detention facilities are severely understaffed, lacking the necessary medical and psychosocial personnel to treat even emergency cases, let alone to tend to the needs of vulnerable people.¹¹⁸ A shortage of medical personnel has been a long-standing issue with number of doctors and nurses further declining in 2019 to the point of a total of four doctors available in detention centres.¹¹⁹ In fact, medical care was withdrawn in certain facilities from July 2019 onward. For example, prior to its destruction in the fire of 8 September 2020, the Moria camp no longer provided medical care, depriving children with chronic illnesses without assistance.¹²⁰ That such a situation does not comport with the object, intent and wording of Article 19 RCD is clear.
- 5.5.4.3 Since the Covid-19 crisis, the situation has deteriorated further. For example, in the Malakassa camp there has been evidence of no Covid-19 precautions taking place.¹²¹ The risks in this regard in facilities that are overcrowded and lack medical facilities is obvious.

5.5.5 Insufficient protection for vulnerable persons

- 5.5.5.1 Vulnerable persons such as minors, the sick and elderly are afforded additional protection under Articles 21-25 RCD. In addition, when vulnerable persons are detained, Article 11(1) RCD requires Member States to take the health of the vulnerable person as its "*primary concern*", meaning the Member State must offer the person adequate support. In addition, Article 11(2) RCD stipulates that the detention of minors should be as short as possible and that, during detention, minors should be able to engage in leisure activities.
- 5.5.5.2 However, since the IPA's amendments in May 2020, the processing of asylum applications of vulnerable persons is no longer prioritized, while they are also no

¹¹⁸ Oxfam and GCR, "*Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020, p. 3.

¹¹⁹ AIDA Report 2018, p. 167; See also AIDA Report 2019, p. 198; See also Oxfam and GCR, "*Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020, p. 11.

¹²⁰ MSF, "*Greece denies medical care to severely sick refugee children*", 23 January 2020.

¹²¹ HRW, "*Greece: Nearly 2,000 arrivals detained in overcrowded mainland camps*", 31 March 2020.

longer exempted from the short timeframes and diminished safeguards of fast-track border procedures.¹²²

5.5.5.3 Furthermore, although Article 48(2) IPA mandates that the detention of minors should be a last resort measure and be carried out separately from adults, in practice, minors have been routinely de facto detained at pre-removal centres and police stations for a significant. Unaccompanied children are detained either on the basis of the pre-removal or asylum detention provisions, or on the basis of the provisions concerning "*protective custody*". The latter is subject to no maximum time limit. This results in automatic placement of unaccompanied asylum-seeking children under protective custody in police facilities, without taking into consideration the best interests of the child. As recently as mid-June 2020, 229 unaccompanied children remained in administrative detention nationwide.¹²³ The automatic placement of unaccompanied asylum-seeking children under protective custody in police facilities, without taking into consideration the best interests of the child, violates the RCD.¹²⁴

5.5.5.4 The situation is exacerbated by the lack of lack of staff and facilities (see Section 5.5.4). These shortages mean that the health of vulnerable persons is not sufficiently protected. Clearly, from these above it appears that their health is not the "primary concern" of the Greek authorities as required by the RCD as it has been subordinated to other interests.

5.6 Illegal and violent pushbacks

Overview of breaches of EU law
<p>EU Asylum Acquis</p> <ul style="list-style-type: none"> Article 21 Asylum Qualification Directive Articles 6, 8, 9, 35, 38 Asylum Procedures Directive Article 4 Return Directive <p>EU Charter</p> <ul style="list-style-type: none"> Articles 1, 4, 18, 19 EU Charter

5.6.1 Introduction

5.6.1.1 Through so-called "pushbacks", Greek authorities force asylum seekers back over a land or sea border – generally immediately after they crossed it – without consideration of their individual circumstances and without any possibility to apply for asylum or to put forward arguments against the measures taken. This

¹²² Oxfam and GCR, "*Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*", 2 July 2020, p. 6.

¹²³ Ibid.

¹²⁴ This also violates the UN Convention on the Rights of the Child.

section first provides an overview of the reported pushbacks by Greek authorities, and then outlines the grave violations of EU law that such pushbacks constitute.

5.6.2 Evidence of pushbacks on land and at sea

5.6.2.1 Greece has been mistreating and illegally returning thousands of protection seekers to Turkey for years.¹²⁵ In recent months, not only has the Greek government dramatically increased the number of pushbacks, but also has intensified the level of violence against those seeking protection. On 10 June 2020, the International Organization for Migration asked Greece to investigate reports of migrants being arbitrarily arrested in Greece and pushed back to Turkey.¹²⁶ Likewise, on 12 June 2020¹²⁷ and 21 August 2020,¹²⁸ the UNHCR urged Greece to investigate multiple reports of pushbacks by Greek authorities at the country's sea and land borders, returning migrants and asylum seekers to Turkey after they had reached Greek territory or territorial waters.

5.6.2.2 There is ample evidence proving the systematic pattern of brutal pushbacks by Greek officers in the Aegean sea and at the Greek-Turkish land border. Alarming, it is repeatedly documented by multiple sources that third country nationals are often:¹²⁹

- (i) arbitrarily detained for periods ranging from several hours to several days, without access to the outside world and without any food or water;
- (ii) not officially registered by the competent authorities and therefore not provided with an opportunity to request international protection nor to challenge their illegal removal; and
- (iii) assaulted, sexually assaulted, robbed of their belongings, including ID cards and passports, stripped of their clothes, and thereafter pushed back to Turkey in life-threatening situations.

5.6.2.3 Over the past few months, the approach of the Greek authorities in keeping migrants and asylum seekers from entering or remaining on Greek soil has

¹²⁵ Pro Asyl, *"Pushed Back - Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border"*, November 2013.

¹²⁶ IOM, *"IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey"*, 10 June 2020.

¹²⁷ UNHCR, *"UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey"*, 12 June 2020.

¹²⁸ UNHCR, *"UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers"*, 21 August 2020.

¹²⁹ NYT, *"Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea"*, 14 August 2020; See also HRW, *"Greece: Investigate Pushbacks, Collective Expulsions"*, 16 July 2020; See also HRW, *"Greece: Violence Against Asylum Seekers at Border"*, 17 March 2020.

become increasingly aggressive.¹³⁰ Pushbacks across the Greek-Turkish border have increased in rate and violence since the Turkish government's announcement on 27 February 2020 that it would no longer stop asylum seekers and migrants from leaving Turkey to reach the European Union. Since then, the brutality of Greek officers has even led to the death of (at least) one person, a Syrian asylum seeker, on 4 March 2020.¹³¹

5.6.2.4 Reports show that Greek law enforcement officers or unidentified men in black or commando-like uniforms, working in close coordination with uniformed authorities, have intercepted hundreds of people seeking protection in the Aegean sea and have violently pushed them back to Turkish waters. One account mentions that, between March and August 2020, at least 1,072 asylum seekers, including infants and children, have been dropped at sea by Greek officials in at least 31 separate expulsions.¹³²

5.6.2.5 First-hand testimonials corroborate such reports. Those seeking protection and safety have found themselves in distress in the Aegean Sea after being violently attacked by the Greek coastguard and masked men.¹³³ In addition to the mere illegality of pushbacks, there are reports of gun threats, thefts and other acts of violence.¹³⁴ Once intercepted by Greek officers, migrants are forced to board on inflatable and often overburdened life rafts, or left on boats with disabled engines, to drift at the border between Turkish and Greek waters until being spotted and rescued by the Turkish coastguard.¹³⁵

5.6.2.6 Furthermore, in the cases where asylum seekers eventually reach land, Greek law enforcement officers apprehend individuals within hours or days after their arrival, detaining them and forcing them to hand over their identification documents. These individuals are detained by the officers until transferred to rafts at the Turkish maritime border. Despite they request for asylum, these individuals are not registered and thereby completely denied their right to seek asylum.¹³⁶ These accounts, personal and horrific in nature, depict a larger and

¹³⁰ NYT, "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", 14 August 2020; See also HRW, "Greece: Investigate Pushbacks, Collective Expulsions", 16 July 2020; See also Aegean Boat Report, "Pushback's after arriving on Lesbos!", 31 August 2020; See also Just Security, "Tents at Sea: How Greek Officials Use Rescue Equipment for Illegal Deportations", 22 May 2020.

¹³¹ Spiegel International, "The Killing of a Migrant at the Greek-Turkish Border", 8 May 2020; See also Forensic Architecture, "The Killing Of Muhammad Gulzar", 8 May 2020.

¹³² NYT, "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", 14 August 2020.

¹³³ Alarmphone, "Push Backs: the new old Routine in the Aegean Sea", 14 May 2020.

¹³⁴ Ibid.

¹³⁵ NYT, "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", 14 August 2020; See also HRW, "Greece: Investigate Pushbacks, Collective Expulsions", 16 July 2020; See also Turkish Coast Guard Command, "30 Irregular Migrants Were Rescued off the Coast of Izmir", 14 May 2020.

¹³⁶ NYT, "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", 14 August 2020; See also WSJ, "Greek Police Are Rounding Up Asylum Seekers and Forcing Them into Turkey, Migrants Say", 20 May 2020.

systemic picture. Furthermore, some accounts show that individuals are told by the police that they will be transferred to another camp or that they will be brought to a centre to register their application for asylum, only to be sent out at sea.¹³⁷ Media and NGOs, including BBC and Human Rights Watch, documented that the Greek authorities round up migrants in Greece and secretly expel them to Turkey without legal recourse.¹³⁸ According to Human Rights Watch, the interviewees described 38 deportation incidents, which took place only within the space of 10 days, involving almost 4,000 people.¹³⁹

5.6.2.7 Furthermore, Greek law enforcement recently started carrying out collective expulsions from deep inside the mainland, even though some possessed documents allowing them to be in Greece.¹⁴⁰ Six victims interviewed by Human Rights Watch stated that Greek police officers rounded up people in the Diavata camp for asylum seekers in Thessaloniki, which is located 400 kilometres from the land border with Turkey.¹⁴¹ These individuals were taken to an unofficial detention site close to the Greek-Turkish border and detained there without food, sometimes for more than a day. These individuals were also beaten with wooden or metal rods. Furthermore, all of those interviewed said the Greek security forces stripped them of their clothes, leaving them with the bare minimum of clothing and deprived them of their possessions, including personal identification documents, before pushing them back to Turkey.

5.6.2.8 In all cases, reports show that the Greek authorities are acting with impunity, committing acts of brutal violence, theft and other actions that are beyond any possible justification which could bring legitimacy to the behaviour. On the other hand, there is no evidence that Greece is acting in a way to prevent such actions, or penalizing such behaviour.¹⁴²

5.6.3 Violation of the right to asylum

5.6.3.1 The right to asylum and the corresponding duty of Member States to accept asylum applications, as set out in Article 3 Dublin III, Article 6 APD and Article 18

¹³⁷ NYT, "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", 14 August 2020; See also Turkish Coast Guard Command, "23 Irregular Migrants Were Rescued off the Coast of Mugla", 28 July 2020; See also HRW, "Greece: Investigate Pushbacks, Collective Expulsions", 16 July 2020; See also Bellingcat, "Samos And The Anatomy Of A Maritime Push-Back", 20 May 2020; See also Just Security, "Tents at Sea: How Greek Officials Use Rescue Equipment for Illegal Deportations", 22 May 2020.

¹³⁸ HRW, "Greece: Violence Against Asylum Seekers at Border", 17 March 2020; See also Alarmphone, "Push Backs: the new old Routine in the Aegean Sea", 14 May 2020; See also Aegean Boat Report, "Pushback's after arriving on Lesbos", 31 August 2020; See also DW, "Migrants accuse Greece of forced deportations", 21 May 2020; See also BBC, "Has Greece become more hostile to migrants?", 31 August 2020.

¹³⁹ HRW, "Greece: Violence Against Asylum Seekers at Border", 17 March 2020.

¹⁴⁰ Border Violence, "Press Release: Collective Expulsion from Greek Centres", 5 May 2020; See also HRW, "Greece: Violence Against Asylum Seekers at Border", 17 March 2020.

¹⁴¹ HRW, "Greece: Investigate Pushbacks, Collective Expulsions", 16 July 2020.

¹⁴² InfoMigrants, "Greece: Rights watchdogs report spike in violent push-backs on border with Turkey", 11 May 2020.

of the EU Charter (see Section 7.5) are applicable from the moment an individual arrives at the Greek border, including territorial waters and transit zones, regardless of the legality of the entry.¹⁴³

5.6.3.2 The systematic pushbacks carried out by Greek authorities, as described in Section 5.6.2 above, deny asylum seekers the possibility to make an asylum application by simply pushing them back without due process and with violence. Accordingly, such acts constitute a flagrant violation of the abovementioned fundamental provisions of the EU Asylum Acquis. This violation is also recognised by the Commission,¹⁴⁴ by the UN Working Group on Arbitrary Detention (UNWGAD),¹⁴⁵ by the UN Human Rights Office,¹⁴⁶ and by the UNHRC.¹⁴⁷

5.6.4 Violation of the principle of non-refoulement

5.6.4.1 The systematic pushbacks carried out by Greek authorities, as described in Section 5.6.2 above, also violate the principle of non-refoulement. This principle guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment or another irreparable harm. It prohibits States from transferring or removing individuals from their jurisdiction when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including torture, ill-treatment or other serious human rights violations. Accordingly, States should put in place mechanisms and allocate resources to ensure that all asylum seekers are able to make their cases for protection, and that their cases are assessed individually and with due process.¹⁴⁸

5.6.4.2 The principle of non-refoulement is enshrined in Article 21 AQD and Article 9 APD (in addition to Article 19(2) EU Charter discussed in Section 7.5.3), which permits extradition of persons "*only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect refoulement*". In

¹⁴³ Individuals who wish to seek asylum in the EU are primarily nationals of countries requiring a visa to enter the EU. As these individuals often do not qualify for an ordinary visa, they may have to cross the border in an irregular manner. Article 3(1) Dublin Regulation.

¹⁴⁴ EURACTIV, "*EU warns refugee push-backs are illegal*", 19 November 2013. The spokesperson of European Commission, Michele Cercone, stated: "*Push-backs are simply not allowed. They are not in line with EU and international obligations. Member states cannot, shall not and should not carry out any push-back*".

¹⁴⁵ UN Working Group on Arbitrary Detention, "*Preliminary Findings from its visit to Greece (2 - 13 December 2019)*".

¹⁴⁶ UNHCR, "*Greece: Rights violations against asylum seekers at Turkey-Greece border must stop*", 23 March 2020; Felipe González Morales, UN Special Rapporteur on the human rights of migrants, stated "*I am very concerned about the reported pushbacks of asylum seekers and migrants, which constitutes a violation of the prohibition of collective expulsions and the principle of non-refoulement*".

¹⁴⁷ UNHCR, "*UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey*", 12 June 2020.

¹⁴⁸ The mere ratification of international treaties is not enough; Member States must make a factual assessment: Joined Cases C-411/10 and C-493/10, *N. S. v Secretary of State for the Home Department*, ECLI:EU:C:2011:865, 21 December 2011, paras 103-104.

addition, Article 4 RD requires that the principle of non-refoulement be respected even when returning illegally staying third country nationals. Also, the principle of non-refoulement applies not only on a state's territory, but also at a state's borders, and on the high seas.¹⁴⁹

5.6.4.3 Under the EU-Turkey Agreement, Greece can use two legal concepts to return asylum seekers to Turkey without examining their asylum claims on their merits. The first is the "first country of asylum" concept, under which asylum seekers can be returned to a country if they already have accessible and sufficient protection there, as defined in Article 35 APD. The second is the "safe third country" concept under which asylum seekers can be returned to a country where they could have requested and received refugee status, as specified in Article 38 APD.

5.6.4.4 In this regard, it is of utmost importance to note that when a State is considering applying the "first country of asylum" or "safe third country" concept, according to UNHCR, *"the individual asylum-seeker must have an opportunity within the procedure to be heard, and to rebut the presumption that she or he will be protected and afforded the relevant standards of treatment, in a previous State based on his or her circumstances."*¹⁵⁰ However, as explained in Section 5.6.2, Greek authorities do not provide pushback victims with such opportunity, thereby violating the principle of non-refoulement.

5.6.4.5 Furthermore, the principle of non-refoulement involves both direct return to a country where the person would be in danger, and removal to third countries where there is a risk of indirect refoulement to such countries.¹⁵¹ For this reason, the pushbacks by Greek authorities constitute a violation of the principle of non-refoulement because of the serious risk that asylum seekers face after being pushed back to Turkey: the risk of chain-refoulement, *i.e.* not only being pushed back to Turkey but also further afield into their countries of origin.¹⁵² Many of these countries are active warzones or areas where asylum seekers face the renewed threat of persecution, torture and even death at the hands of the state or terrorist groups. This is particularly relevant given the deportations from Turkey to Syria.¹⁵³ For instance, it was reported that Turkey has deported

¹⁴⁹ UNHCR, "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol", 26 January 2007.

¹⁵⁰ UNHCR, "Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept", 23 March 2016.

¹⁵¹ ECtHR, *M.S.S. v Belgium and Greece* (no. 30696/09), 21 January 2011.

¹⁵² See S. Saliba, *Non-Refoulement, Push-Backs And The EU Response To Irregular Migration*, 13 May 2015.

¹⁵³ Amnesty International, "Sent to a War Zone: Turkey's Illegal Deportations of Syrian Refugees", 30 October 2019; See also HRW, "Turkey: Syrians Being Deported to Danger - Authorities Use Violence, Threats, Detention to Coerce Returns", 24 October 2019; See also Mobile Info Team, "Illegal Pushback in Evros", November 2019.

hundreds of Syrians from its cities, exposing those forcibly returned from Greece to the risk of onward refoulement to Syria.¹⁵⁴

5.6.5 Violation of the prohibition of collective expulsion

5.6.5.1 Pushbacks by Greek authorities also constitute a violation of the prohibition of collective expulsions. The EU Asylum Acquis (as well as Article 19(1) EU Charter, see Section 7.5.3) prevents collective expulsions by requiring the individual examination of each asylum applicant (see Section 5.3 above). An expulsion is characterised as "collective" when there is no reasonable and objective examination of the particular case of each individual within the group. The size of the group expelled is not relevant: even two persons may be sufficient to form a group.¹⁵⁵

5.6.5.2 All non-nationals enjoy protection from collective expulsion, including those with irregular status. Also, the prohibition on collective expulsion applies to the whole territory of the State concerned, including its territorial waters.¹⁵⁶ Therefore, measures taken by Greece at high seas, which aim at preventing migrants from reaching its borders or pushing them back to Turkey, must be in compliance with the prohibition of collective expulsions. In other words, Greece must provide migrants and asylum seekers with the opportunity to put forward their arguments militating against their expulsion to the competent authorities on an individual basis.

5.6.5.3 The systematic pushbacks carried out by Greek authorities, as described in Section 5.6.2 above, violate this prohibition. Greek authorities forcibly compel pushback victims to leave the country and deny them an individualized examination of all arguments. As the procedures set forth in Article 38 APD and Article 12 RD are evidently not followed, it is difficult to argue how Greek authorities are not acting in contravention of EU law and of Article 19 EU Charter.

¹⁵⁴ HRW, "*Turkey: Syrians Being Deported to Danger*", 24 October 2019.

¹⁵⁵ ECtHR, *N.D. and N.T. v Spain* (nos. 8675/15 and 8697/15), 13 February 2020, paras 193-194 and 202-203.

¹⁵⁶ ECtHR, *Hirsi Jamaa and Others v Italy* (no. 27765/09), 23 February 2012, paras 74-75, 180-181 and 183-186.

6 EU funding received by Greece (question 2.4)

6.1.1 Greece receives EU funding relating to the subject of the complaint. In fact, Greece has been allocated EUR 2.67 billion from the EU budget for the period of 2015-2020. Out of this amount, EUR 624.4 million was allocated to the Greek government to fund the national asylum program on the long term, while EUR 380 million was allocated to the Greek authorities as emergency assistance. The rest of the money allocated was or will be distributed to international organisations as further emergency assistance.¹⁵⁷ The purpose of these funds include (i) managing migration flows, including in the fields of asylum, integration, legal migration and return; (ii) internal security/external border protection; and (iii) assistance for exceptional circumstances, such as in the current instance given the large humanitarian needs.¹⁵⁸

6.1.2 It should be noted that Greece has also come under scrutiny for fraud and corruption relating to EU funding. It was reported in 2018 that the European Anti-Fraud Office (OLAF) was investigating the Greek government over potential misuse of refugee funding.¹⁵⁹ The investigation was still ongoing as of April 2020.¹⁶⁰ These allegations are disconcerting to say the least, particularly in view of the ongoing violations of EU law by the Greek authorities.

¹⁵⁷ EC, "*Managing Migration: EU Financial Support to Greece*", July 2020

¹⁵⁸ EC, "*Progress Report on the Implementation of the European Agenda on Migration*", 16 October 2019

¹⁵⁹ Politico, "*EU watchdog probes possible misuse of refugee funds in Greece*", 25 September 2018.

¹⁶⁰ EC Answer to question E-000447/2020, 15 April 2020.

7 Breaches EU Charter of Fundamental Rights (question 2.5)

7.1 Failure to provide access to asylum applications

EU Charter articles: Article 18 (Right to asylum)

7.1.1 Article 18 EU Charter contains the right to asylum. This provision is based on Article 78 TFEU, which states that the EU Asylum Acquis must comply with the 1951 Geneva Convention.¹⁶¹ When implementing the EU Asylum Acquis, Greek authorities must respect Article 18 EU Charter and is thus under the obligation to guarantee the right to asylum, which requires it to provide asylum seekers with access to the asylum application procedure.¹⁶²

7.1.2 As explained in Section 5.2, Greek authorities fail to provide adequate access to the asylum procedure and therefore also evidently fail to guarantee this right.

7.2 Violations of procedural guarantees

EU Charter articles: Article 47 (Right to an effective remedy and to a fair trial)

7.2.1 Article 47 EU Charter contains the right to an effective remedy, within a reasonable timeframe and before an independent and impartial tribunal.

7.2.2 As indicated in Section 5.3, for numerous reasons, Greek law and Greek authorities fail to provide an effective remedy against negative decisions on asylum applications. For example, access for asylum seekers in Greece to legal representation in a language they can understand is severely hindered, if not unavailable. This is contravention to the right to an effective remedy and results in an infringement of Article 47 EU Charter.¹⁶³ This also follows from *M.S.S v Belgium and Greece*, in which the European Court of Human Rights ("ECtHR") found a violation of Article 13 ECHR, which corresponds to Article 47 EU Charter, because the applicant was unable to truly benefit from the asylum procedure as the applicant could not pay for a lawyer, had not received any information on the organisations offering legal advice and assistance in Greece, and did not have access to legal aid given the shortage of legal aid practitioners.¹⁶⁴ The ECtHR has also previously ruled that Article 13 ECHR had been violated because the applicant did not have the time and opportunity to appeal the expulsion or extradition decision before its enforcement.¹⁶⁵

¹⁶¹ Explanations to the Charter.

¹⁶² See also: UNHRC, "UNHCR public statement in relation to *Zuheyr Freyeh Halaf v. the Bulgarian State Agency for Refugees pending before the Court of Justice of the European Union*", August 2012, para. 2.2.9.

¹⁶³ Joined Cases C-411/10 and C-493/10, *N. S. v Secretary of State for the Home Department*, ECLI:EU:C:2011:865, 21 December 2011, para. 115.

¹⁶⁴ ECtHR, *M.S.S. v Belgium and Greece* (no. 30696/09), 21 January 2011, para. 319.

¹⁶⁵ ECtHR, *Shamayev and others v Georgia and Russia* (no. 36378/02), 12 April 2005, para 460.

7.3 Arbitrary detention of asylum seekers

EU Charter articles: Article 6 (Right to liberty and security of person); Article 47 (Right to an effective remedy and a fair trial)

7.3.1 Under Article 6 EU Charter, an individual's right to liberty and the security of person is protected. It has been recognised that detention imposed under Article 8 RCD is a "*limitation on the exercise of the right to liberty entrenched in Article 6 of the Charter*".¹⁶⁶ Such limitation is subject to the principle of proportionality. In this regard, the CJEU has noted that Article 8 RCD is "*subject to compliance with a series of conditions whose aim is to create a strictly circumscribed framework*",¹⁶⁷ such conditions being those enshrined in Articles 8 and 9 RCD. Indeed compliance with the strict rules of the RCD is why the infringement on the right to liberty and security of the person is deemed proportionate.

7.3.2 In this instance, however, the safeguards in Articles 8 and 9 RCD are repeatedly negated by the Greek government, as set out in Section 5.4 above. As a result, the failure to comply with the RCD also results in numerous infringements of Article 6 EU Charter. Indeed, the ECHR has recently found that, in a case of 49 asylum applicants which had been detained in two detention camps in Greece in 2016, Greece had been in violation of Article 5(4) ECHR, which corresponds to Article 6 EU Charter.¹⁶⁸

7.3.3 Furthermore, the facts outlined in the paragraphs referred to above also demonstrate that detained individuals do not have access to an effective remedy against detention, which is in contravention to Article 47 EU Charter.

7.4 Inadequate reception and detention conditions

EU Charter articles: Article 1 (Human dignity); Article 35 (Healthcare)

7.4.1 Article 1 EU Charter enshrines the inviolable right to respect and protection of human dignity. The abysmal living conditions in the RICs, in violation of the RCD, as set out in Section 5.5, also result in an infringement of Article 1 EU Charter.¹⁶⁹

7.4.2 Article 35 EU Charter guarantees the right to healthcare. As indicated in Section 5.5.4, for years now the minimum healthcare requirements set forth in Article 19

¹⁶⁶ Case C-601/15 *PPU, J. N. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2016:84, 15 February 2016, para. 49; See also Case C-18/16, *K. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2017:680, 14 September 2017, para. 33.

¹⁶⁷ Case C-601/15 *PPU, J. N. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2016:84, 15 February 2016, para. 57; See also Case C-18/16, *K. v Staatssecretaris van Veiligheid en Justitie*, ECLI:EU:C:2017:680, 14 September 2017, para. 41.

¹⁶⁸ ECtHR, *Kaak and Others v Greece* (no. 34215/16), 3 October 2019, paras 119-125.

¹⁶⁹ Case C-179/11, *Cimade and GISTI v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, ECLI:EU:C:2012:594, 27 September 2012, para. 56.

RCD have not been met within Greek RICs,¹⁷⁰ and the situation has worsened since the Covid-19 crisis.¹⁷¹ This is a violation of both Articles 1 and 35 EU Charter.

7.4.3 While there is currently no case law on the application of Article 35 EU Charter in the case of asylum seekers, rulings of the CJEU with respect to the importance of non-discrimination and equality of the application of the Charter's social rights in the cases of more vulnerable populations, such as asylum seekers, should apply.¹⁷² In short, the right to healthcare should guarantee that Member States, including Greece, implement a system that ensures the provision of health services as guaranteed by EU law. Such a systemic and flagrant deprivation of healthcare, in addition to the abysmal living conditions existing in the RICs, are not acceptable and far from the expected guarantees of the EU Charter.

7.5 Illegal and violent pushbacks

EU Charter articles: Article 1 (Human dignity); Article 4 (Prohibition of torture and inhuman or degrading treatment or punishment); Article 18 (Right to asylum); Article 19 (Protection in the event of removal, expulsion or extradition)

7.5.1 Violation of the right to human dignity and degrading treatment

7.5.2 As mentioned above, Article 1 EU Charter enshrines the inviolable right to respect and protection of human dignity. Article 4 EU Charter prohibits torture and inhuman or degrading treatment or punishment. These EU Charter rights are considered as absolute and cannot be subject to limitations.¹⁷³

7.5.2.1 As also set out in Section 5.6.2, testimonies by pushback victims provide a consistent picture of how Greek border forces detain, assault, sexually assault, rob, and strip asylum seekers and migrants, then forced them back to Turkey.¹⁷⁴ The authorities involved in the violent acts are carrying out duties implementing the EU Asylum Acquis. Such conducts therefore falls within the scope of the EU Charter, and these actions are serious violations of its Article 1 and 4 EU Charter. This violence does not equate to an adequate implementation of the APD, and is

¹⁷⁰ UNHCR, "Vulnerable asylum-seekers struggle to access medical care on overcrowded Greek islands", 21 February 2020.

¹⁷¹ Eye on Global Health, "Ensuring the right to health and dignity to all during COVID-19? A focus on asylum seekers in Moria, Greece", 8 May 2020.

¹⁷² T. K. Hervey and J. V. McHale, *European Union Health Law Themes and Implications*, November 2015, pp 156-183; See also Case C-571/10, *Servet Kamberaj v Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others*, ECLI:EU:C:2012:233, 24 April 2012, para. 80.

¹⁷³ Case C-534/16, *Finančné riaditeľstvo Slovenskej republiky v BB construct s.r.o.*, ECLI:EU:C:2017:820, 26 October 2017, para. 38; Explanations to the Charter.

¹⁷⁴ Amnesty International, "Caught in a political game", 3 April 2020; See also Border Violence, "Press Release: Collective Expulsion from Greek Centres", 5 May 2020; See also HRW, "Greece: Violence Against Asylum Seekers at Border", 17 March 2020; See also HRW, "Greece: Investigate Pushbacks, Collective Expulsions", 16 July 2020.

in contravention to its spirit and principles. In addition, it appears that these violations are also systemic,¹⁷⁵ and there is no evidence that Greece is upholding a system where perpetrators of such acts within the authorities in question are being sanctioned for their behaviour.¹⁷⁶ Consequently, Greece is failing to protect the fundamental rights enshrined in Article 1 and 4 EU Charter.

7.5.3 Violations to the right to asylum and the prohibition of mass expulsion

7.5.4 First, pushbacks effectively deprive asylum seekers of their right to asylum, under Article 18 EU Charter. We refer to Section 7.1 with respect to the scope and application of that article, which includes the right to an effective remedy and a proper assessment of the asylum application. Needless to say that if someone is arrested while at sea and immediately sent back to Turkey, it is difficult to see how an adequate assessment has been performed.¹⁷⁷

7.5.5 In addition, Article 19(1) EU Charter explicitly prohibits collective expulsions. The term "expulsion" refers to any forcible removal of a foreigner from the territory, irrespective of the lawfulness and length of stay, the location of apprehension, and the person's status or conduct.¹⁷⁸ Article 19(2) EU Charter also prohibits the removal of individuals *"to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment"*. Again, and as explained in Section 5.6.4, it is clear that the Greek authorities fail to make this assessment when collectively sending back asylum seekers across borders.

¹⁷⁵ Ibid.

¹⁷⁶ InfoMigrants, "Greece: Rights watchdogs report spike in violent push-backs on border with Turkey", 11 May 2020: "Alexandra Bogos, advocacy officer with the Mobile Info Team, told InfoMigrants they were concerned about the "leeway afforded for these push-backs from the inner mainland to take place." Bogos said they reached out to police departments after they learned about the arrests, but police felt "unencumbered" and continued transporting the people to the Greek-Turkish border. "On one occasion, we reached out and asked specifically for information about one individual. The answer was: 'He does not appear in our system'," Bogos said."

¹⁷⁷ A simple ratification of international treaties is not enough, Member States must make a factual assessment: Joined Cases C-411/10 and C-493/10, *N. S. v Secretary of State for the Home Department*, ECLI:EU:C:2011:865, 21 December 2011, paras 103-104.

¹⁷⁸ ECtHR, *N.D. and N.T. v Spain* (nos. 8675/15 and 8697/15), 13 February 2020, para. 185.

8 Previous action taken to solve the problem (question 3)

- 8.1.1** While action before national Greek courts and the ECtHR has been taken or is being taken, these actions do not and cannot provide an effective solution to the infringements of EU law described in this complaint. The infringements of EU law described in this complaint can only be effectively resolved by an infringement procedure by the Commission.
- 8.1.2** First, the problem does not pertain to one individual's interest but concerns a large-scale systematic and orchestrated violation by Greece of the EU Asylum Acquis, affecting the fundamental rights of thousands of individuals. Actions of individuals before Greek authorities and courts can only resolve the interests of the individuals involved. Only the Commission can resolve the systematic nature of the failure by Greece to comply with EU law.
- 8.1.3** Second, even for individuals the infringements of EU law are not amenable to effective resolution within the Greek courts. As noted *inter alia* in Sections 5.3.4 and 7.2, one of the key breaches of the EU Asylum Acquis by Greek authorities is precisely the lack of an effective legal remedy at national level, *i.e.* proper access to judicial review and legal representation.
- 8.1.4** Third, the subject matter of the EU Asylum Acquis in particular is a matter of public interest with important ramifications beyond those at Member State level. It is therefore in the interest of all Member States that each of them observe EU law in its processing of asylum applications and treatment of applicants. This is also confirmed by the fact that the Commission has, in recent years, opened several infringement procedures against Member States concerning the EU Asylum Acquis.¹⁷⁹ This applies *a fortiori* in the case of Greece, a Member State which due to its geographical location has a key role to play in managing the asylum crisis.

¹⁷⁹

A number of these were recently upheld by the CJEU (Joined Case C-715/17, C-718/17 and C-719/17, *Commission v Poland and Others*, ECLI:EU:C:2019:257), or are currently pending (Case C-808/18, *Commission v Hungary*).

9 Supporting documents and evidence (question 5)

9.1 EU primary and secondary law

No.	Name	Short version
1.	The Treaty on European Union	TEU
2.	The Treaty on the Functioning of the European Union	TFEU
3.	The Charter of Fundamental Rights of the European Union	EU Charter
4.	Directive 2008/115/EC of the European Parliament and of the Council of 16 December Directive 2013/32/EU 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals	Return Directive / RD
5.	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted	Asylum Qualification Directive / AQD
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	Asylum Procedures Directive / APD
7.	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection	Reception Conditions Directive / RCD
8.	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	Dublin III Regulation / Dublin III

9.2 International treaties

No.	Name	Short version
1.	The African Charter of Human and Peoples' Rights	African Charter
2.	The American Convention on Human Rights	American Convention
3.	The Arab Charter on Human Rights	Arab Charter
4.	The European Convention for the Protection of Human Rights and Fundamental Freedoms	ECHR
5.	The United Nations Convention on the Rights of the Child	UN Convention on the Rights of the Child
6.	The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights	UN Declaration of Human Rights
7.	The Convention Relating to the Status of Refugees of 28 July 1951	1951 Geneva Convention

9.3 Greek legislation

No.	Name	Short version
1.	Law 3907/2011 on establishment of an Asylum and First Reception Service, adaptation of Greek legislation to the provisions of Directive 2008/115/EC "on common rules and procedures in the Member States for the return of illegally staying third-country nationals" and other provisions, 26 January 2011	L 3907/2011
2.	Law 4375/2016 on the organization and operation of the Asylum Service, Appeals Authority, Reception Service and Identification Establishment of a General Reception Secretariat, adaptation of Greek Legislation to the provisions of Directive 2013/32 / EU of the European Parliament and of the Council "on common procedures for granting and withdrawing international protection regime (recast) "(L 180 / 29.6.2013), provisions on the work of beneficiaries of international protection and other provisions, 3 April 2016	Asylum law
3.	Law 4540/2018 on adaptation of Greek legislation to the provisions of Directive 2013/33 / EU of the European Parliament and of the Council of 26 June 2013 on the requirements for the reception of applicants for international protection (recast, L 180/96 / 29.6.2013) and others provisions, 22 May 2018	L 4540/2018
4.	Law 4636/2019 on International Protection and other provisions, 1 November 2019	IPA
5.	Law 4686/2020 on improvement of immigration legislation, amendment of provisions of laws 4636/2019 (AD 169), 4375/2016 (AD 51), 4251/2014 (AD 80) and other provisions, 12 May 2020	IPA Amendment
6.	Ministry of Migration & Asylum, Emergency Legislative Order, 2 March 2020	Emergency Legislative Order

9.4 CJEU case law

No.	Name	Short version
1.	Joined Cases C-411/10 and C-493/10, <i>N. S. v Secretary of State for the Home Department</i> , ECLI:EU:C:2011:865, 21 December 2011	N/A
2.	Case C-571/10, <i>Servet Kamberaj v Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others</i> , ECLI:EU:C:2012:233, 24 April 2012	N/A
3.	Case C-179/11, <i>Cimade and GISTI v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration</i> , ECLI:EU:C:2012:594, 27 September 2012	N/A
4.	Case C-79/13, <i>Federaal agentschap voor de opvang van asielzoekers v Selver Saciri</i> , ECLI:EU:C:2014:103, 27 February 2014	N/A
5.	Case C-166/13, <i>Sophie Mukarubega v Préfet de police and Préfet de la Seine-Saint-Denis</i> , ECLI:EU:C:2014:2336, 5 November 2014	N/A
6.	Case C-601/15 PPU, <i>J. N. v Staatssecretaris van Veiligheid en Justitie</i> , ECLI:EU:C:2016:84, 15 February 2016	N/A
7.	Case C-18/16, <i>K. v Staatssecretaris van Veiligheid en Justitie</i> , ECLI:EU:C:2017:680, 14 September 2017	N/A

8.	Case C-534/16, <i>Finančné riaditeľstvo Slovenskej republiky v BB construct s.r.o.</i> , ECLI:EU:C:2017:820, 26 October 2017	N/A
9.	Case C-181/16, <i>Gnandi v Belgium</i> , ECLI:EU:C:2018:465, 19 June 2018	N/A
10.	Joined Cases C-717/17, C-718/17 and C-719/17, <i>Commission v Poland and Others</i> , ECLI:EU:C:2019:257, 2 April 2020	N/A
11.	Case C-564/18, <i>L.H. v Bevándorlási és Menekültügyi Hivatal (Office for Immigration and Asylum)</i> , ECLI:EU:C:2020:218, 19 March 2020.	N/A
12.	Case C-808/18, <i>Commission v Hungary</i> , pending	N/A
13.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság</i> , ECLI:EU:C:2020:367, 14 May 2020	N/A
14.	Case C-36/20 PPU, <i>Ministerio Fiscal v VL</i> , ECLI:EU:C:2020:495, 25 June 2020	N/A

9.5 ECtHR case law

No.	Name	Short version
1.	ECtHR, <i>Shamayev and Others v Georgia and Russia</i> (no. 36378/02), 12 April 2005	N/A
2.	ECtHR, <i>M.S.S. v Belgium and Greece</i> (no. 30696/09), 21 January 2011	N/A
3.	ECtHR, <i>Rahimi v Greece</i> (no. 8687/08), 5 April 2011	N/A
4.	ECtHR, <i>R.U. v Greece</i> (no. 2237/08), 7 June 2011	N/A
5.	ECtHR, <i>Hirsi Jamaa and Others v Italy</i> (no. 27765/09), 23 February 2012	N/A
6.	ECtHR, <i>C.D. and Others v Greece</i> (nos. 33441/10, 33468/10 and 33476/10), 19 March 2014	N/A
7.	ECtHR, <i>A.M. v France</i> (no. 56324/13), 12 July 2016	N/A
8.	ECtHR, <i>O.S.A. v Greece</i> (no. 39065/16), 21 March 2019	N/A
9.	ECtHR, <i>Kaak and Others v Greece</i> (no. 34215/16), 3 October 2019	N/A
10.	ECtHR, <i>N.D. and N.T. v Spain</i> (nos. 8675/15 and 8697/15), 13 February 2020	N/A

9.6 Other documents (in Greek)

No.	Name	Short version
1.	Administrative Court of Athens, Decision AP 528/2019	N/A
2.	Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020	N/A
3.	Council of State, Decisions 427/2009, 1127/2009 and 2414/2008	N/A
4.	Efsyn, "Κράτηση υπό απάνθρωπες συνθήκες", 12 March 2020, available in Greek at: https://bit.ly/3biRTlc	Efsyn, "Κράτηση υπό απάνθρωπες συνθήκες", 12 March 2020

5.	Ministry of Migration and Asylum, "Μηνιαίο Ενημερωτικό Σημείωμα Υπουργείου Μετανάστευσης και Ασύλου (Μάρτιος)", 14 April 2020, available in Greek at: https://bit.ly/2RKSj2n	Ministry of Migration and Asylum, "Μηνιαίο Ενημερωτικό Σημείωμα Υπουργείου Μετανάστευσης και Ασύλου (Μάρτιος)", 14 April 2020
6.	National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 31 December 2019, https://bit.ly/2vWqyAr	National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 31 December 2019
7.	National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 9 September 2020, https://bit.ly/35Rye2e	National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 9 September 2020
8.	The Greek Council for Refugees, "Observation on the draft law on international protection", 23 October 2019, available at: https://bit.ly/3clFluD	GCR, "Observation on the draft law on international protection", 23 October 2019
9.	The Greek Ombudsman, "Παρατηρήσεις στο σχέδιο νόμου του Υπουργείου Προστασίας του Πολίτη περί διεθνούς προστασίας", 23 October 2019, available in Greek at: https://bit.ly/2LAXCCH .	Greek Ombudsman, "Παρατηρήσεις στο σχέδιο νόμου του Υπουργείου Προστασίας του Πολίτη περί διεθνούς προστασίας", 23 October 2019
10.	The Greek National Commission for Human Rights, "Παρατηρήσεις της ΕΕΔΑ στο Σχέδιο Νόμου του Υπουργείου Προστασίας του Πολίτη «Περί Διεθνούς Προστασίας», 24 October 2019, available in Greek at: https://bit.ly/3clUBYa	GNCHR, "Παρατηρήσεις της ΕΕΔΑ στο Σχέδιο Νόμου του Υπουργείου Προστασίας του Πολίτη «Περί Διεθνούς Προστασίας», 24 October 2019

9.7 Documents from EU institutions and agencies

No.	Name	Short version
1.	European Commission, "Communication from the Commission COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement", (C(2020) 2516), 16 April 2020	EC, "Covid-19 Communication", 16 April 2020

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| <p>2. European Commission, "<i>Communication from the Commission to the European Parliament, the European Council and the Council - Progress Report on the Implementation of the European Agenda on Migration</i>", (COM(2019) 481), 16 October 2019,</p> | <p>EC, "<i>Progress Report on the Implementation of the European Agenda on Migration</i>", 16 October 2019</p> |
| <p>3. Explanations relating to the Charter of Fundamental Rights, OJ EU 2007 C 303/17</p> | <p>Explanations to the EU Charter</p> |
| <p>4. European Commission, Answer to question P-004017/2019, 5 February 2020, https://bit.ly/3hMRqjY</p> | <p>EC Answer to question P-004017/2019, 5 February 2020</p> |
| <p>5. European Commission, Answer to question E-000447/2020, 15 April 2020, https://www.europarl.europa.eu/doceo/document/E-9-2020-000447-ASW_EN.html</p> | <p>EC Answer to question E-000447/2020, 15 April 2020.</p> |
| <p>6. European Commission, Answer to question P-001342/2020, 19 June 2020, https://bit.ly/2FKp5Oh</p> | <p>EC Answer to question P-001342/2020, 19 June 2020</p> |
| <p>7. Letter from European Commission to Oxfam regarding the situation in Greece, Ref. Ares(2020)2055405, 15 April 2020</p> | <p>Letter from EC to Oxfam regarding the situation in Greece, 15 April 2020</p> |
| <p>8. European Commission, "<i>Managing Migration: EU Financial Support to Greece</i>", July 2020, https://bit.ly/2Razbdu</p> | <p>EC, "<i>Managing Migration: EU Financial Support to Greece</i>", July 2020</p> |
| <p>9. European Parliament, "<i>Investigate alleged pushbacks of asylum seekers at the Greek-Turkish border, MEPs demand</i>", 6 July 2020, https://bit.ly/35p1b5B</p> | <p>EP, "<i>Investigate alleged pushbacks of asylum seekers at the Greek-Turkish border, MEPs demand</i>", 6 July 2020</p> |
| <p>10. European Anti-Fraud Office (OLAF), <i>Annual OLAF's reports 2017-2019</i>, https://bit.ly/3k3kNjG</p> | <p>OLAF, Annual Reports 2017-2019, (Report)</p> |
| <p>11. The EU Agency for Fundamental Rights (FRA), "<i>Migration: Key Fundamental Rights Concerns - Quarterly Bulletin 3 (April-June 2020)</i>", 27 July 2020, https://bit.ly/2GLISND</p> | <p>FRA, "<i>Migration: Key Fundamental Rights Concerns</i>", 27 July 2020</p> |
| <p>12. The EU Agency for Fundamental Rights (FRA), "<i>Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy</i>", 4 March 2019, https://bit.ly/35OjLnS</p> | <p>FRA, "<i>Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy</i>", 4 March 2019</p> |
| <p>13. The Greens/European Free Alliance in the European Parliament (Greens/EFA), "<i>The EU-Turkey Statement and the Greek Hotspots</i>", June 2018, https://bit.ly/3mbrody</p> | <p>The Greens/EFA, "<i>The EU-Turkey Statement and the Greek Hotspots</i>", June 2018</p> |

9.8 Documents from international organisations

No.	Name	Short version
1.	Council of Europe, " <i>Opinion on the Greek Act of legislative content from 2 March 2020 on the suspension of the submission of asylum applications</i> ", 17 March 2020, https://bit.ly/3c9vAWG	Council of Europe, " <i>Opinion on the Greek Act of legislative content</i> ", 17 March 2020
2.	The International Organization for Migration, " <i>IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey</i> ", 10 June 2020, https://bit.ly/3k2LrsX	IOM, " <i>IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey</i> ", 10 June 2020
3.	The United Nations High Commissioner for Refugees (UNHCR), " <i>Recommendations by the Office of the United Nations High Commissioner for Refugees Concerning the Execution of Judgments by the European Court of Human Rights in the Cases of M.S.S. v. Belgium (no. 30696/09, Grand Chamber judgment of 21 January 2011) and Greece and of Rahimi v. Greece (no. 8687/08, Chamber judgment of 05 April 2011)</i> ", 24 May 2019, https://bit.ly/3k5abAN	UNHCR, " <i>Recommendations Concerning the Execution of Judgments by ECtHR in the Cases of M.S.S. v. Belgium and Greece and of Rahimi v. Greece</i> ", 24 May 2019
4.	The United Nations High Commissioner for Refugees, " <i>Legal considerations on the return of asylum seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept</i> ", 23 March 2016, https://bit.ly/3hqlySI	UNHCR, " <i>Legal considerations on the return of asylum seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation</i> ", 23 March 2016
5.	The United Nations High Commissioner for Refugees, " <i>Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol</i> ", 26 January 2007, https://bit.ly/3bKMoF	UNHCR, " <i>Advisory Opinion on the Extraterritorial Application of Non-Refoulement</i> ", 26 January 2007
6.	The United Nations High Commissioner for Human Rights, " <i>Greece: Rights violations against asylum seekers at Turkey-Greece border must stop</i> ", 23 March 2020, https://bit.ly/3id6ubL	UNHCR, " <i>Greece: Rights violations against asylum seekers at Turkey-Greece border must stop</i> ", 23 March 2020
7.	The United Nations High Commissioner for Refugees, " <i>UNHCR Statement on the right to asylum, UNHCR's supervisory responsibility and the duty of States to cooperate with UNHCR in the exercise of its supervisory responsibility</i> ", August 2012, https://bit.ly/3k3mQUU	UNHCR, " <i>UNHCR Statement on the right to asylum, UNHCR's supervisory responsibility and the duty of States to</i>

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| <p>8. The United Nation High Commissioner for Refugees, "<i>UNHCR stresses urgent need for States to end unlawful detention of refugees and asylum seekers, amidst COVID-19 pandemic</i>", 24 July 2020, https://www.unhcr.org/news/press/2020/7/5f1569344/unhcr-stresses-urgent-need-states-end-unlawful-detention-refugees-asylum.html</p> <p>9. The United Nation High Commissioner for Refugees, "<i>Vulnerable asylum seekers struggle to access medical care on overcrowded Greek islands</i>", 21 February 2020, https://bit.ly/2DSz1EI</p> <p>10. The United Nations High Commissioner for Refugees (UNHCR), "<i>Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union</i>", 25 July 2018, https://bit.ly/3m7S0fw</p> <p>11. The United Nations High Commissioner for Refugees (UNHCR), "<i>Greece as a Country of Asylum - UNHCR observations on the current asylum system in Greece</i>," December 2014, https://bit.ly/32hoEUa</p> <p>12. The United Nations High Commissioner for Refugees (UNHCR), "<i>Mediterranean Situation: Greece</i>," (last updated: 13 September 2020), https://bit.ly/33joGKn</p> <p>13. The United Nations High Commissioner for Refugees, "<i>UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey</i>", 12 June 2020, https://bit.ly/3k4aJXB</p> <p>14. The United Nations High Commissioner for Refugees, "<i>UNHCR urges Greece to strengthen safeguards in draft asylum law</i>", 24 October 2019, https://bit.ly/32ggE61</p> | <p><i>cooperate with UNHCR in the exercise of its supervisory responsibility</i>", August 2012</p> <p>UNHCR, "<i>UNHCR stresses urgent need for States to end unlawful detention of refugees and asylum seekers, amidst COVID-19 pandemic</i>", 24 July 2020</p> <p>UNHCR, "<i>Vulnerable asylum seekers struggle to access medical care on overcrowded Greek islands</i>", 21 February 2020</p> <p>UNHCR, "<i>Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union</i>", 25 July 2018</p> <p>UNHCR, "<i>UNHCR observations on the current asylum system in Greece</i>," December 2014</p> <p>UNHCR, "<i>Mediterranean Situation: Greece</i>", last updated on 13 September 2020</p> <p>UNHCR, "<i>UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey</i>", 12 June 2020</p> <p>UNHCR, "<i>UNHCR urges Greece to strengthen safeguards in draft asylum law</i>", 24 October 2019</p> |
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| <p>15. The United Nations High Commissioner for Refugees, "<i>UNHCR's Intervention at the hearing for actors to the Standing Committee of Public Administration, Public Order and Justice of the Hellenic Parliament regarding the Draft Law on the Improvement of Migration Legislation</i>", 9 May 2020, https://bit.ly/2Zom2C9</p> | <p>UNHCR, "<i>UNHCR's Intervention at the hearing for actors to the Standing Committee of Public Administration, Public Order and Justice of the Hellenic Parliament regarding the Draft Law on the Improvement of Migration Legislation</i>", 9 May 2020</p> |
| <p>16. The United Nation High Commissioner for Refugees, "<i>UNHCR concerned by pushback reports, calls for protection of refugees and asylum seekers</i>", 21 August 2020, https://bit.ly/33EEYOr</p> | <p>UNHCR, "<i>UNHCR concerned by pushback reports, calls for protection of refugees and asylum seekers</i>", 21 August 2020</p> |
| <p>17. The United Nations Human Rights Council (UNHRC), "<i>Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece</i>", 18 April 2013, https://bit.ly/2RdpB9M</p> | <p>UNHRC, "<i>Report on the human rights of migrants, Addendum: Mission to Greece</i>", 18 April 2013</p> |
| <p>18. The United Nations Human Rights Council (UNHRC), "<i>Public statement in relation to Zuheyr Freyeh Halaf v. the Bulgarian State Agency for Refugees pending before the Court of Justice of the European Union</i>", August 2012</p> | <p>UNHRC, "<i>Public statement in relation to Zuheyr Freyeh Halaf v. the Bulgarian State Agency for Refugees pending before the Court of Justice of the European Union</i>", August 2012.</p> |
| <p>19. The United Nations Working Group on Arbitrary Detention, "<i>Preliminary Findings from its visit to Greece (2 - 13 December 2019)</i>", https://bit.ly/3hivVHE</p> | <p>UN Working Group on Arbitrary Detention, "<i>Preliminary Findings from its visit to Greece (2 - 13 December 2019)</i>".</p> |
| <p>20. The United Nations Committee Against Torture, "<i>Concluding Observations on the seventh periodic report of Greece</i>", 3 September 2019, CAT/C/GRC/CO/7, available at: https://bit.ly/2wKiqPm .</p> | <p>UN Committee Against Torture, "<i>Concluding Observations on the seventh periodic report of Greece</i>", 3 September 2019</p> |

9.9 Documents from NGOs and other bodies

No.	Name	Short version
1.	Actionaid Greece et al., "15 civil society organisations call upon the Government to organise a substantial public consultation prior of voting the draft law on asylum", 31 October 2019, https://bit.ly/2Zf4tFe	Actionaid Greece et al., "15 civil society organisations call upon the Government to organise a substantial public consultation prior of voting the draft law on asylum", 31 October 2019
2.	Aegean Boat Report, "Pushback's after arriving on Lesbos!", 31 August 2020, https://bit.ly/33hmGCp	Aegean Boat Report, "Pushback's after arriving on Lesbos!", 31 August 2020
3.	Alarmphone, "Push Backs: the new old Routine in the Aegean Sea", 14 May 2020, https://bit.ly/2ZpYaya	Alarmphone, "Push Backs: the new old Routine in the Aegean Sea", 14 May 2020
4.	Amnesty International et al., "Joint press conference regarding the draft law on asylum", 30 October 2019, https://bit.ly/3bDUgVr	Amnesty International et al., "Joint press conference regarding the draft law on asylum", 30 October 2019
5.	Amnesty International, "Το προτεινόμενο σχέδιο νόμου για το άσυλο υποβαθμίζει την προστασίας και τα δικαιώματα των προσφύγων και παραβιάζει τα διεθνή πρότυπα", 24 October 2019, https://bit.ly/3dWduqV (in Greek)	Amnesty International, "Το προτεινόμενο σχέδιο νόμου για το άσυλο υποβαθμίζει την προστασίας και τα δικαιώματα των προσφύγων και παραβιάζει τα διεθνή πρότυπα", 24 October 2019
6.	Amnesty International, "Caught in a political game: Asylum seekers and migrants on the Greece/Turkey border pay the price for Europe's failures," 3 April 2020, https://bit.ly/2VrJc8U	Amnesty International, "Caught in a political game," 3 April 2020
7.	Amnesty International, "Greece: Proposed Bill on Asylum Downgrades EU and International Law Standards on Refugees' Protection", 24 October 2019, https://bit.ly/3hIF0zo	Amnesty International, "Greece: Proposed Bill on Asylum Downgrades EU and International Law Standards on Refugees' Protection," 24 October 2019

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| <p>8. Amnesty International, "<i>Sent to a War Zone: Turkey's Illegal Deportations of Syrian Refugees</i>", 30 October 2019, https://bit.ly/3hhkdNm</p> | <p>Amnesty International, "<i>Sent to a War Zone: Turkey's Illegal Deportations of Syrian Refugees</i>", 30 October 2019</p> |
| <p>9. Border Violence Monitoring Network et al., "<i>Press Release: Collective Expulsion from Greek Centres</i>", 5 May 2020, https://bit.ly/3jXkeb8</p> | <p>Border Violence, "<i>Press Release: Collective Expulsion from Greek Centres</i>", 5 May 2020</p> |
| <p>10. Doctors Without Borders, "<i>Greece denies medical care to severely sick refugee children</i>", 23 January 2020, https://bit.ly/32j7cih</p> | <p>Doctors Without Borders, "<i>Greece denies medical care to severely sick refugee children</i>", 23 January 2020</p> |
| <p>11. Eye on Global Health, "<i>Ensuring the right to health and dignity to all during COVID-19? A focus on asylum seekers in Moria, Greece</i>", 8 May 2020, https://bit.ly/3bKJdvc</p> | <p>Eye on Global Health, "<i>Ensuring the right to health and dignity to all during COVID-19? A focus on asylum seekers in Moria, Greece</i>", 8 May 2020</p> |
| <p>12. Forensic Architecture, "<i>The Killing Of Muhammad Gulzar</i>", 8 May 2020, https://bit.ly/2DN8HM9</p> | <p>Forensic Architecture, "<i>The Killing Of Muhammad Gulzar</i>", 8 May 2020</p> |
| <p>13. Human Rights Watch, "<i>Greece/EU: Allow new arrivals to claim asylum</i>", 10 March 2020, https://www.hrw.org/ko/node/339367</p> | <p>HRW, "<i>Greece/EU: Allow new arrivals to claim asylum</i>", 10 March 2020</p> |
| <p>14. Human Rights Watch, "<i>Greece: Investigate Pushbacks, Collective Expulsions - EU Should Press Athens to Halt Abuses</i>", 16 July 2020, https://bit.ly/33hyQeM</p> | <p>HRW, "<i>Greece: Investigate Pushbacks, Collective Expulsions</i>", 16 July 2020</p> |
| <p>15. Human Rights Watch, "<i>Greece: Move Asylum Seekers, Migrants to Safety - Immediate Hotspot Decongestion Needed to Address COVID-19</i>", 24 March 2020, https://bit.ly/2ZoLuYa</p> | <p>HRW, "<i>Greece: Move Asylum Seekers, Migrants to Safety</i>", 24 March 2020</p> |
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