



## RSA Submission to the EASO Asylum Report 2021

The information provided by Refugee Support Aegean (RSA) covers main developments in the implementation of the EU asylum *acquis* in Greece.

### Contributions by topic

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#### 1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

##### 1.1. Access to territory

RSA and PRO ASYL compiled in December 2020 a timeline of over 40 reports of main push back incidents at sea in the course of the year,<sup>1</sup> as well as a timeline of official responses and positions taken by representatives of the Greek government, EU institutions and agencies, and human rights monitoring bodies.<sup>2</sup> RSA and other organisations highlighted their concerns to the United Nations Special Rapporteur on the human rights of migrants in February 2021.<sup>3</sup>

In October 2020, the European Court of Human Rights (ECtHR) intervened in a case concerning an individual at risk of *refoulement* at the Evros land border. In *M.K. v. Greece*,<sup>4</sup> relating to a Turkish citizen apprehended in Evros after entering to seek protection on political grounds, the Court granted interim measures to ensure that the applicant would remain on Greek territory until the registration and processing of his asylum application.

##### 1.2. Access to the asylum procedure

###### 1.2.1. Registration in the reception and identification procedure

Frontex has a central role in identity and nationality verification in the reception and identification procedure applied on the Eastern Aegean islands, as the Reception and Identification Service (RIS) lacks the necessary capacity e.g. interpretation services. Per the 2017 Manual of Standard Operating Procedures (SOPs) applicable in the Reception and Identification Centres (RIC), where the person holds a document, a thorough document check shall be conducted.

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<sup>1</sup> RSA, 'Push backs and violations of human rights at sea: a timeline', 29 December 2020, available at: <https://bit.ly/3hajtay>.

<sup>2</sup> RSA, 'Official reactions and positions on push backs: a timeline', 29 December 2020, available at: <https://bit.ly/2WXHhJf>.

<sup>3</sup> RSA et al, 'Joint statement on push back practices in Greece', 15 February 2021, available at: <https://bit.ly/3jRjk0R>.

<sup>4</sup> ECtHR, *M.K. v. Greece*, Application No 43654/20, Order of 5 October 2020.

On the islands, there have been repeated complaints regarding incorrect registration of individuals' personal data by Frontex officials, without recording the applicants' declared details. This is particularly problematic with regard to nationality e.g. through incorrect registration of stateless Bidoons as Iraqi or Kuwaiti nationals. Complaints also relate to wrong registration of children as adults. Frontex officers are reported to systematically register declared minors as adults, without recording their declared age and without referring them to age assessment procedures.<sup>5</sup>

The involvement of Frontex may spill over to subsequent stages in the asylum procedure, whenever a document check is required by the authorities. The RIS and/or Asylum Service enlist the assistance of Frontex Document Experts when doubts arise as to the authenticity of documents carried by persons e.g. to prove their nationality. This is particularly the case when the person's age is disputed and they procure a document to prove it. Such doubts are frequently expressed by the authorities with regard to Afghanistan identity documents (*taskera*) in particular.

The procedure followed by Frontex officers is not regulated by legislation or publicly available guidelines. The Asylum Service withholds the original document and transmits it to Frontex without assigning a reference number (*αριθμό πρωτοκόλλου*) so as to verify that such a submission has been made. Any conclusion of the Frontex expert on the authenticity of documents, which is subsequently relied upon by the authorities, does not take the form of an individual decision and is not made available to the individual, while no record of the document check is kept in the case file of the person. Finally, individuals are not informed by Frontex officials of the possibility to lodge a complaint with the Agency in case they believe that their rights have been infringed in the process.<sup>6</sup>

### 1.2.2. Registration and lodging of the asylum application

Severe obstacles to access to the asylum procedure persisting in previous years have not been resolved. The main, if not sole, channel for an individual to register their intention to seek asylum on the territory involves a request for appointment via a Skype service available for specific hours a week according to available interpretation services. This practice raises crucial data protection and security considerations for individuals seeking protection. It is also persistently ineffective, as asylum seekers continue to face barriers to registration in urban areas. Individuals are still unable to access the Asylum Service via Skype despite several attempts to obtain an appointment.<sup>7</sup> The ineffectiveness of access to the procedure through the Skype service was reiterated by the Greek Ombudsman in January 2021.<sup>8</sup>

Following an amendment to the International Protection Act (IPA)<sup>9</sup> in May 2020, competence for the lodging of asylum applications was extended to the RIS.<sup>10</sup> At the end of 2020, a new RIS asylum registration form was introduced in the RIC of Chios and Evros, where the RIS conducts the lodging of the asylum application in a pilot phase. However, deficiencies have already been identified in the registration pilot due to issues in the coordination between the RIS and the Asylum Service, as well as the lack of competence of the RIS to issue a Temporary Foreigner Insurance and Health Care Number (*Προσωρινός Αριθμός Ασφάλισης και Υγειονομικής Περίθαλψης Αλλοδαπού*, ΠΑΑΥΠΑ) to asylum seekers upon the lodging of the claim. As the project remains in pilot phase and various deficiencies have emerged, the Asylum Service

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<sup>5</sup> RSA et al, *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3p8y24P>.

<sup>6</sup> *Ibid.*

<sup>7</sup> RSA & Stiftung PRO ASYL, *Submission in the M.S.S. and Rahimi cases*, July 2020, para 12, available at: <https://bit.ly/3qa2Fbf>.

<sup>8</sup> Greek Ombudsman, Letter to the Asylum Service, 290565-291571/2367/2021, 15 January 2021.

<sup>9</sup> L 4636/2019.

<sup>10</sup> Article 63(d) IPA, as amended by Article 5 L 4686/2020.

conducts a short registration interview with the individual following the completion of the reception and identification procedure to validate the information.<sup>11</sup>

## **2. Access to information and legal assistance (including counselling and representation)**

The number of lawyers made available through the Asylum Service Registry continues to fall far short of the actual needs of the asylum-seeking population. Legal assistance provided by other actors also remain limited compared to the needs.

In practice, difficulties emerge on all Eastern Aegean islands due to the requirement on applicants to certify the authenticity of their signature before a public authority for the purpose of authorising a legal representative.<sup>12</sup> Relevant authorities e.g. the RIS, the Asylum Service or the Police often invoke arbitrary grounds for refusing to perform that service, however. On Chios, the RIS has refused to certify signatures due to lack of dedicated personnel for the procedure. On other islands, police authorities inside the RIC have refused to provide the service on the ground that they lack seals for the procedure. More recently on Lesbos, police authorities have denied certification of signatures for authorisations written in Greek, given that the applicant did not speak the language.<sup>13</sup>

## **3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**

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## **4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

The implementation of outgoing Dublin procedures, mainly focused on the family provisions of the Dublin III Regulation, was affected by the following issues in 2020:

- Significant delays in the processing of “take charge” requests, particularly on the mainland, owed to obstacles to access to the asylum procedure. These difficulties have been exacerbated by the COVID-19 pandemic e.g. through cancellation of registration appointments, namely in the Regional Asylum Office of Piraeus;
- Repercussions of incorrect registration of asylum seekers' personal details as stated above – including age – on the submission of “take charge” requests for reunification with relatives;
- Lack of reception conditions and prolonged detention of asylum seekers pending family reunification procedures, even after the acceptance of “take charge” requests by the receiving Member State;
- Lack of cooperation on the part of other Dublin Units, including by disputing valid documentation;
- Delays in the transfer of asylum seekers from the islands to the mainland and risk of expiry of the six-month transfer deadline under the Regulation. Since December 2020, the deadline has expired in some cases. Transfers of applicants for whom “take charge” requests have been accepted have stopped since December 2020.

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<sup>11</sup> RSA et al, *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3p8y24P>.

<sup>12</sup> Article 71(1) IPA.

<sup>13</sup> RSA et al, *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3p8y24P>.

## 5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

### 5.1. Border procedures

Despite a sharp decrease in arrivals in 2020, consistently highlighted by the Ministry of Migration and Asylum,<sup>14</sup> Greece prolonged the fast-track border procedure applicable in times of “mass arrivals”<sup>15</sup> for a fifth consecutive year, until the end of 2021. No justification of the basis for maintaining this exceptional procedure was provided beyond a provision stating “the fact that the conditions set out in Article 90, para 3 are met”.<sup>16</sup>

#### 5.1.1. Scope of border procedures

With the enactment of Article 90(1) IPA, providing that the border procedure may be applied for the assessment of either the admissibility or the merits of applications where the grounds for applying the accelerated procedure are met, Greek legislation was brought in line with Article 43(1) of the Asylum Procedures Directive.<sup>17</sup>

Despite the legislative change, however, neither the Asylum Service nor EASO have complied with the requirements of the Directive. Throughout 2020, the fast-track border procedure on the islands continued to be systematically applied in applications examined on their merits in cases which do not fall within the scope of the accelerated procedure. Similarly, the Appeals Committees have refrained from scrutinising compliance of first instance decisions with said requirements.

#### 5.1.2. Exemption of persons in need of special procedural guarantees

Serious concerns persist in the implementation of the provisions relating to special procedural guarantees for applicants in the fast-track border procedures on the islands. In an illustrative case documented by RSA, MSF and PRO ASYL, a severely traumatised asylum seeker who had been recognised by the RIS as vulnerable was repeatedly summoned to an interview by the Asylum Service in the border procedure. The Asylum Service at no point assessed whether the applicant was in need of special procedural guarantees on account of his health condition, and whether or not adequate support could be provided in his case, despite the prior submission of medical documents from the public hospital, documents attesting the person's inability to follow the demanding process of the asylum interview and recount extremely traumatic experiences, as well as documents highlighting the deterioration of his health condition stemming from the interview process. As a result, his case was not exempted from the border procedure as required by the law, even though the competent authorities were fully aware of the state of his health.<sup>18</sup>

Importantly, and despite having suffered several incidents in the presence of asylum officers, the Asylum Service insisted on repeatedly serving new summons for interviews within extremely tight timeframes. On one occasion, the Asylum Service attempted to serve a notification with the applicant inside the ambulance that was called in to urgently transfer him to the hospital. The patient's mental condition has been significantly impacted as a result of these multiple traumatic events.

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<sup>14</sup> See e.g. Ministry of Migration and Asylum, *Ετήσιο ενημερωτικό σημείωμα 2020*, January 2021, available at: <https://bit.ly/3aNx0Gα>.

<sup>15</sup> Article 90(3) IPA.

<sup>16</sup> Recital 11 Joint Ministerial Decision 15996/2020, Gov. Gazette B' 5948/31.12.2020.

<sup>17</sup> The previous provision, Article 60(1) L 4375/2016, was incompatible with the Directive.

<sup>18</sup> RSA, MSF and PRO ASYL, 'Border procedures on the Greek islands violate asylum seekers' right to special procedural guarantees', 15 February 2021, available at: <https://bit.ly/3rPS6um>.

In dereliction of constant case law from higher courts,<sup>19</sup> Appeals Committees have continued to dismiss appeals against failure of the Asylum Service to exempt applicants from the fast-track border procedure due to the absence of adequate support to meet their special procedural needs, on the ground that no procedural damage has been established. In one such case, to support its reasoning, the Appeals Committee held that the applicant was ultimately able to obtain legal representation and to lodge an appeal against the first instance rejection of his claim within the deadline.<sup>20</sup>

Even upon a decision lifting the applicant's geographical restriction, the individual's transfer out of the islands can take several months. The RIS often outsources responsibility for transfers to other bodies such as UN agencies, without ensuring the necessary coordination. For example, in cases concerning applicants on Lesbos (including one for whom the ECtHR had granted interim measures requiring the authorities to ensure appropriate living conditions), the RIS stated that it had referred the person to UNHCR for his transfer to the mainland and was thereby not in a position to know when he would be transferred.<sup>21</sup>

Furthermore, the RIS has sought the assistance of NGOs operating in Moria to identify asylum seekers to be transferred out of the camp earlier in 2020, advising them to send referrals to the Vulnerability Focal Point of the RIC. However, the RIS does not provide information as to which categories were eligible for the lifting of the restriction and does not follow up to NGOs' referrals. More recent requests have also failed to yield clarifications on the applicable criteria for transfers to the mainland.<sup>22</sup>

## 5.2. Admissibility procedures ("safe third country" concept)

The Asylum Service and the Appeals Committees have largely continued to refrain from taking into consideration up-to-date, reliable sources of information concerning risks of inhuman or degrading treatment and *refoulement* facing individuals in Turkey.<sup>23</sup> Even where reliable reports on risks of non-compliance by Turkey with the principle of *non-refoulement* are cited in decisions, Committees have not engaged with available evidence in their legal analysis of the applicability of the safety criteria of the "safe third country" concept and the risks of exposure of individuals to ill-treatment.<sup>24</sup> In a number of decisions issued this year, the Appeals Committees cited the aforementioned letters and selected provisions of Turkish legislation as reliable evidence of compliance by Turkey with the principle of *non-refoulement*.<sup>25</sup>

At the same time, several decisions of Appeals Committees have rejected the applicability of the "safe third country" concept vis-à-vis Turkey, due to Turkey's involvement in the creation

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<sup>19</sup> Administrative Court of Appeal of Piraeus, Decision 106/2020; Decision 558/2018; Decision 642/2018; Decision 563/2018.

<sup>20</sup> 4<sup>th</sup> Independent Appeals Committee, Decision 12645/2020, 21 July 2020: Information provided by RSA, 4 January 2021.

<sup>21</sup> RSA & Stiftung PRO ASYL, *Submission in M.S.S. v. Belgium and Greece and Rahimi v. Greece*, July 2020, para 10. See ECtHR, *M.A. v. Greece*, App No 18179/20, Order of 5 May 2020, and *E.F. v. Greece*, App No 16127/20. The cases were communicated under *A.R. and others v. Greece*, App No 5984/19, Communicated 4 January 2021.

<sup>22</sup> RSA et al, *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3p8y24P>.

<sup>23</sup> See e.g. 6<sup>th</sup> Appeals Committee, Decision 25449/2019, 20 January 2020; 6<sup>th</sup> Appeals Committee, Decision 2411/2019, 28 February 2020; 17<sup>th</sup> Appeals Committee, Decision 3576/2020, 10 March 2020, para 12; 13<sup>th</sup> Appeals Committee, Decision 2727/2020, 9 April 2020; 14<sup>th</sup> Appeals Committee, Decision 4334/2020, 9 April 2020.

<sup>24</sup> See e.g. 6<sup>th</sup> Appeals Committee, Decision 2411/2019, 28 February 2020, paras 11, 14 and 15; 13<sup>th</sup> Appeals Committee, Decision 2727/2020, 9 April 2020, para 19; 6<sup>th</sup> Appeals Committee, Decision 5892/2020, 27 May 2020, paras 12 and 15.

<sup>25</sup> 13<sup>th</sup> Appeals Committee, Decision 2727/2020, 9 April 2020, para 19; 16<sup>th</sup> Appeals Committee, Decision 19219/2019, 15 May 2020, para 16.

of a precarious security situation in Syria. In some cases, the Committees have deemed that the criterion set out in Article 38(1)(e) of the Asylum Procedures Directive was not met,<sup>26</sup> while others concluded that the connection criterion between the applicant and Turkey was not fulfilled.<sup>27</sup>

**6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions – housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

The majority of the asylum-seeking population in Greece lives in squalid conditions of encampment, exposed to a lack of basic infrastructure, extreme weather conditions, and insecurity. The ECtHR granted interim measures in April 2020 in a case concerning several vulnerable individuals in the RIC of Moria, to ensure their immediate placement in appropriate reception conditions.<sup>28</sup> The ECtHR also granted interim measures at the end of September 2020 in a case relating to two asylum seekers previously recognised as vulnerable, who were placed in the new camp in Kara Tepe, with a view to safeguarding their life and limb and ensuring their access to appropriate reception conditions on the mainland.<sup>29</sup>

The Greek government proceeded with the closure of alternative accommodation structures on the islands. On Lesbos, the PIKPA facility was evacuated at the end of October 2020, in violation of an ongoing interim measures procedure before the ECtHR.<sup>30</sup>

**7. Detention of applicants for international protection (including detention capacity – increase/decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

**7.1. Administrative practice**

On Kos, since January 2020, all new arrivals except persons evidently falling under vulnerability categories are immediately detained in the pre-removal detention centre. In previous years, this practice was applied to groups subject to the “low recognition rate” detention scheme, i.e. persons from countries subject to a rate below 33% and single adults from Syria. The majority of applicants have only undergone rudimentary registration in the RIC prior to being placed in detention. However, applicants arriving from islands other than Kos and Rhodes e.g. Symi, Megisti are immediately directed to the pre-removal detention centre, without undergoing reception and identification procedures in the RIC.<sup>31</sup>

Victims of torture have been placed in detention on the islands, even in cases such as *M.A. v. Greece*, where, despite an order of interim measures set by the ECtHR on 6 May 2020 to guarantee the applicant living conditions compliant with Article 3 ECHR, “having regard to his state of health and to provide the applicant with adequate healthcare compatible with his

<sup>26</sup> 10<sup>th</sup> Appeals Committee, Decision 12540/2020, para 4.

<sup>27</sup> 4<sup>th</sup> Appeals Committee, Decision 4038/2020, 16 March 2020; 3441/2020, 16 March 2020; Appeals Committee, Decision 28217/2020, 17 December 2020; 20<sup>th</sup> Appeals Committee, Decision 29118/2020, 19 January 2021.

<sup>28</sup> ECtHR, *E.I. v. Greece*, Application No 16080/20, Order of 16 April 2020. See further RSA, ‘Evacuation of overcrowded island camps a legal imperative’, 21 April 2020, available at: <https://bit.ly/3fbQdDi>.

<sup>29</sup> ECtHR, *S.A. and O.A. v. Greece*, Application No 40124/20, Order of 24 September 2020. See further RSA, ‘European Court of Human Rights orders Greece to safeguard asylum seekers’ life and limb on Lesbos’, 24 September 2020, available at: <https://bit.ly/36RYpF2>.

<sup>30</sup> RSA, ‘Forcible evacuation of PIKPA in contempt of Strasbourg proceedings: The timeline of a flagrant violation of legality’, 3 December 2020, available at: <https://bit.ly/3hrI8MW>.

<sup>31</sup> *Ibid.*



state of health”,<sup>32</sup> the person was kept in the RIC of Moria for one more month and was subsequently placed in detention.

Even for applicants whose transfer to another EU Member State is pending pursuant to the family unity provisions of the Dublin Regulation, authorities have prolonged detention – upheld by courts – due to a risk of absconding.<sup>33</sup>

Specifically during the suspension of the asylum procedure in March 2020, the emergency decree triggered a policy of blanket detention. Deprivation of liberty has been imposed arbitrarily and in clear dereliction of legal standards in these cases. The Lesbos Police Directorate issued uniform “deportation decisions based on readmission procedures to Turkey”, none of which established the exceptional grounds required under national law for the imposition of detention or contained any individualised assessment.<sup>34</sup>

## 7.2. Conditions of detention

In addition to general substandard detention conditions, the provision of health care in pre-removal detention centres is marred by extremely severe shortages, amid the COVID-19 pandemic. At the end of 2020, there was only one doctor for a total of 877 detainees in Corinth, one for 380 in Kos and one for 359 in Paranesti. No psychiatrists are available in Corinth, Paranesti and Xanthi. Paranesti has no interpreters, while Kos and Xanthi only have one interpreter each.<sup>35</sup>

## 7.3. Judicial review of detention<sup>36</sup>

Administrative Court decisions have upheld detention orders which exceeded the exhaustive detention grounds under Greek legislation, in particular in the cases of persons arbitrarily detained with a view to removal, despite their asylum seeker status and corollary right to remain on Greek territory. Administrative Courts have upheld pre-removal detention orders imposed on asylum seekers for reasons such as the violation of a geographical restriction or the use of false documents, despite there being no such grounds for depriving asylum seekers of their liberty in domestic legislation.<sup>37</sup>

Moreover, during the period of effect of the March 2020 suspension of access to the asylum procedure, domestic case law made a highly objectionable interpretation of the legal status of the decree and its effect on Greece's obligations to guarantee access to asylum under EU and international law.<sup>38</sup> The Administrative Court of Athens did not examine whether the deprivation of liberty of the applicants satisfied the criteria and conditions set by the IPA. It erroneously failed to engage with the applicants' status as “asylum seekers” and thereby examined the lawfulness of the detention orders solely through the prism of return legislation, despite acknowledging that they had expressed the intention to seek international protection; an act triggering the applicability of their right to remain and related entitlements.<sup>39</sup>

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<sup>32</sup> ECtHR, *M.A. v. Greece*, App No 18179/20, Order of 6 May 2020.

<sup>33</sup> Administrative Court of Rhodes, Decision AP464/2020, 17 July 2020.

<sup>34</sup> RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 6, available at: <https://bit.ly/2lUswN7>. See Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020.

<sup>35</sup> RSA, 'Συνέχιση της κράτησης παρά τις κατάφωρες ελλείψεις στην υγειονομική κάλυψη των ΠΡΟ.ΚΕ.Κ.Α. εν μέσω πανδημίας', 14 January 2021, available at: <https://bit.ly/3a3Xcgx>.

<sup>36</sup> RSA & Stiftung PRO ASYL, *Submission in S.D. v. Greece*, October 2020, available at: <https://bit.ly/2LC6KWE>.

<sup>37</sup> Administrative Court of Athens, Decision AP867/2020, 16 July 2020.

<sup>38</sup> RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 6, available at: <https://bit.ly/2lUswN7>. See Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020.

<sup>39</sup> Administrative Court of Athens, Decisions 356/2020 and 357/2020, 3 April 2020.

Despite constraints to carrying out readmissions to Turkey since March 2020 being known to the Greek authorities at the time, the rulings of the Administrative Court of Athens concerning pre-removal detention during the period of effect of the suspension of the asylum procedure made no assessment of clear obstacles to a reasonable prospect of the individuals' removal to Turkey.<sup>40</sup> Failure of Administrative Courts to engage with the reasonable prospect test is reflected in subsequent case law dismissing objections against detention,<sup>41</sup> even in decisions accepting objections.<sup>42</sup> In an example of cases where courts have engaged with the reasonable prospect of removal, on the basis of explicit evidence of the suspension of readmissions to Turkey, the Administrative Court of Mytilene nevertheless upheld detention on 5 June 2020 on the ground that "despite the suspension of readmissions by the Turkish authorities, such a temporary suspension may be lifted at any time in the near future".<sup>43</sup>

In addition, the case law of Administrative Courts in 2020 has failed to take into account potent risks to the well-being of individuals on account of the COVID-19 pandemic. Courts have dismissed alleged risks of exposure to inappropriate detention conditions and of contracting COVID-19 in detention as unsubstantiated,<sup>44</sup> without any assessment whatsoever of the conditions prevailing in pre-removal centres and their preparedness to prevent the spread of the COVID-19 pandemic. In other cases, courts have entirely disregarded the appellant's submissions relating to COVID-19 risks in detention.<sup>45</sup>

## **8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management)**

Since October 2020, the Asylum Service has implemented remote interviews for asylum seekers residing on Lesbos, partly due to the COVID-19 pandemic and to the destruction of the RIC of Moria. Several interviews are carried out remotely via videoconference in the Regional Asylum Office premises in Pagani. Lawyers accompanying applicants have identified several issues related to the quality and confidentiality of interviews. Due to limitations in technical infrastructure and the lack of sound isolation in the interview rooms used in Pagani, the voice of the interpreter could simultaneously be heard throughout the interview from the computer speakers and from the next room, where they were physically present. This created echoes and posed severe problems in terms of ability of the parties to communicate clearly. Moreover, given the aforementioned lack of sound isolation and technical difficulties, conversations from one interview could be heard by parties involved in a different interview.<sup>46</sup>

## **9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)**

### **9.1. Administrative appeal**

Following the entry into force of the IPA, several categories of appeals have been deprived of automatic suspensive effect under Article 104(2) IPA. Accordingly, applicants are required to

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<sup>40</sup> Administrative Court of Athens, Decisions 356/2020 and 357/2020, 3 April 2020; Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020.

<sup>41</sup> Administrative Court of Athens, Decision 867/2020, 16 July 2020.

<sup>42</sup> Administrative Court of Mytilene, Decision AP73/2020, 20 March 2020.

<sup>43</sup> Administrative Court of Mytilene, Decision AP117/2020, 5 June 2020, para 4.

<sup>44</sup> Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020, para 4; Decision 867/2020, 16 July 2020, para 5; Administrative Court of Rhodes, Decision AP464/2020, 17 July 2020, para 4(c).

<sup>45</sup> Administrative Court of Mytilene, Decision AP117/2020, 5 June 2020, para 4.

<sup>46</sup> RSA, 'The conduct of (remote) asylum interviews on Lesbos', 8 December 2020, available at: <https://bit.ly/2WUY2VB>.



lodge a separate request for suspensive effect pending the completion of the second instance procedure.

However, the practice of Appeals Committees in the course of 2020 confirms that the requirement of a separate request for suspensive effect under Article 104(2) IPA amounts to a superfluous procedural step, as Committees end up dismissing requests for suspensive effect as having no object (*ἀνευ αντικειμένου*), after having issued a positive or negative decision on the merits of the appeal.<sup>47</sup>

Since the entry into force of the IPA, appellants face additional formalities in the exercise of their right to a remedy. Domestic law sets out an obligation to provide a certificate of residence, even for applicants who are subject to a geographical restriction, no earlier than two days prior to the examination of the appeal.<sup>48</sup> In cases where such a certificate has not been submitted, Appeals Committees have dismissed appeals as inadmissible.

Following a reform adopted in May 2020, all appeals lodged on the islands are examined by the Committees in single-judge format.<sup>49</sup>

## 9.2. Judicial review

In October 2020, the Council of State triggered its pilot procedure upon referral of three cases from the Administrative Court of Athens, with a view to adjudicating on the constitutionality of the reform brought by the IPA on the competence of Administrative Courts to judicially review decisions of the Appeals Committees, given that Committees are largely composed by higher-court judges. In light of this, the structure of the Greek judicial review system raises suspicions of partiality. Pending the outcome of the case, the examination of applications for annulment at the Court has been suspended. The cases were heard by the Council of State on 5 February 2021.<sup>50</sup>

In two applications for suspensive effect (*αίτηση αναστολής*) pending the outcome of judicial review (*αίτηση ακύρωσης*), concerning a single-parent family and a victim of torture respectively, the Administrative Court granted appellants the right to remain on the territory pending the outcome of judicial review, on the ground that, taking into account their psychological state, they ran a risk of difficultly repairable harm upon removal to Turkey.<sup>51</sup>

## 10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

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## 11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

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<sup>47</sup> See e.g. 4<sup>th</sup> Appeals Committee, Decision 12645/2020, 21 July 2020; 6<sup>th</sup> Appeals Committee, Decision 5692/2020, 28 February 2020; 10<sup>th</sup> Appeals Committee, Decision 7465/2020, 24 April 2020; 13<sup>th</sup> Appeals Committee, Decision 2727/2020, 9 April 2020; 19<sup>th</sup> Appeals Committee, 19883/2020, 11 August 2020. See further RSA, *Comments on the amended Commission proposal for an Asylum Procedures Regulation*, October 2020, 10, available at: <https://bit.ly/3pMUvGe>.

<sup>48</sup> Article 78(3) IPA, as amended by Article 11(2) L 4686/2020.

<sup>49</sup> Article 5(7) L 4375/2016, as amended by Article 30(2) L 4686/2020.

<sup>50</sup> RSA, 'The Council of State pilot procedure on judicial review in the asylum procedure', 1 February 2021, available at: <https://bit.ly/36Zs53S>.

<sup>51</sup> Administrative Court of Athens, Decision 405/2020, 30 September 2020; Decision 438/2020, 14 October 2020.

### 11.1. Victims of torture or other forms of violence<sup>52</sup>

Victims of torture are systematically not identified as such, as certification pursuant to Article 61(1) IPA does not take place. Certification of victims of torture is impossible in the country in practice, given that public health authorities do not have the processes and capacity in place to carry out certification. NGOs have contacted public health institutions on the islands on various occasions to inquire whether they certify victims of torture in accordance with the Istanbul Protocol, victims of rape or other serious form of violence, as well as whether hospital staff is appropriately trained for such a certification and whether the victims are able to receive the necessary care for their rehabilitation. The following replies have been provided by authorities:

- Lesvos: In response to requests *inter alia* by RSA, HIAS and METAdrasi in the course of 2020, the "Vostanio" General Hospital of Mytilene has stated that it does not operate a specialised service for the certification of victims of torture. The hospital referred the applicants to the Northern Aegean Forensic Service (ιατροδικαστική υπηρεσία). Said authority, however, has stated that it solely conducts examinations upon order from police authorities or the prosecutor.

Regarding the other islands, in response to written requests by METAdrasi lawyers:

- The "Skylitsio" General Hospital of Chios responded that it does not operate a specialised service for the certification of victims of torture;
- The General Hospital of Samos did not provide information on certification and rehabilitation of victims of torture, albeit stating that it applies the practices and guidelines on handling sexual and gender-based violence inside RIC;
- The General Hospital of Leros responded that persons are referred to a forensic examination at the nearest hospital that carries out such examinations. In any case, the medical and nursing staff of the General Hospital of Leros would treat anyone who needs medical help;
- The General Hospital of Kos stated that the Dodecanese Forensic Service of Kos is able to certify torture and other serious forms of sexual or physical violence only upon order from the prosecutor. According to the Forensic Service, however, the outcome of such an examination is not reliable where a relatively long lapse of time and where offences have been committed in an unknown place.

As regards the provision of special procedural guarantees to victims of torture and other forms of violence, cf. Section on the Border Procedure.<sup>53</sup>

### 11.2. Age assessment<sup>54</sup>

Age assessment practice falls far short of legislative standards. Many alleged minors report arbitrary age assessments, conducted in dereliction of legal provisions. Starting from their first registration in the RIC, minors have claimed their minority but have not been considered credible and have been met with mistrust from interpreters and authorities. Several alleged minors have reported that they were not informed of the age assessment process or its consequences; they were only called to the facilities of EODY inside Moria on Lesvos.

Furthermore, severe capacity shortages in medical staff on the islands result in prolonged delays in the conduct of age assessments. In one case on Samos, the Asylum Service referred an alleged minor to the General Hospital of Samos to undergo the examination in December

<sup>52</sup> RSA et al, *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3p8y24P>.

<sup>53</sup> RSA, MSF and PRO ASYL, 'Border procedures on the Greek islands violate asylum seekers' right to special procedural guarantees', 15 February 2021, available at: <https://bit.ly/3rPS6um>.

<sup>54</sup> RSA et al, *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3p8y24P>.

2019. The applicant's lawyer was informed in October 2020 that the examination had not taken place until now because the General Hospital of Samos could only examine 8 persons and the Asylum Service had decided to give priority to minors who had submitted a family reunification request under the Dublin Regulation. Moreover, the General Hospital of Samos informed the lawyer that it had never received a request by the Asylum Service concerning her client.

Individuals are not treated as minors during the age assessment procedure. On all islands, the Public Prosecutor does not appoint a guardian for the person, while alleged minors are excluded from safe zones in the RIC. Accordingly, on islands such as Kos, alleged minors remain in the pre-removal detention centre for prolonged periods pending the outcome of the process.

## **12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)**

### **12.1. Residence permit<sup>55</sup>**

The issuance of residence permits in 2020 was subject to serious delays reaching several months. The abolition of the Ministry of Migration Policy and transfer of competences to the Ministry of Citizen Protection in July 2019, followed by the subsequent re-establishment of the Ministry of Migration and Asylum in January 2020, created an institutional gap vis-à-vis responsibility for handling applications for issuance and renewal of residence permits, while the Hellenic Police only regained competence to examine such applications following a July 2020 legislative amendment.<sup>56</sup> In cases known to RSA, beneficiaries were informed by the authorities that they had to re-submit their applications for residence permits after said amendment.

This gap has resulted in a substantial backlog of pending applications.<sup>57</sup> The Greek Ombudsman has reported cases of beneficiaries of international protection whose applications have been pending for over a year. These delays have resulted *inter alia* in barriers to accessing social benefits and health care and in loss of employment.<sup>58</sup> RSA follows different cases of beneficiaries in the Attica region who have been waiting for the issuance and/or renewal of their residence permit for over 6 months from their application, and in some cases one year. In the meantime, the persons cannot access their rights as status holders and, if they hold an expired permit or hold no documentation at all, cannot certify their signature so as to authorise a legal representative.

### **12.2. Housing<sup>59</sup>**

Since the summer of 2020, thousands of beneficiaries of international protection have ended up homeless after being informed that they had to exit their accommodation places in the reception system. People have been exposed to destitution and have slept rough in Victoria Square and other parts of Athens. Following several forcible removal operations, the Police has transported them to refugee camps (e.g. Malakasa, Elaionas, Skaramangas, Thiva) and even

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<sup>55</sup> RSA & Stiftung PRO ASYL, *Third party intervention in Asaad v. the Netherlands*, 24 February 2021, forthcoming.

<sup>56</sup> Article 15 L 4703/2020, Gov. Gazette A' 131/10.07.2020.

<sup>57</sup> Directorate of the Hellenic Police, 'Ανανέωση αδειών διαμονής δικαιούχων διεθνούς προστασίας', Reply to the Greek Ombudsman, 32774/2020, 14 July 2020, available at: <https://bit.ly/2Ksl5UI>.

<sup>58</sup> Greek Ombudsman, 'Ανανέωση αδειών διαμονής δικαιούχων διεθνούς προστασίας', 28 May 2020, available at: <https://bit.ly/3nqhKUT>.

<sup>59</sup> RSA & Stiftung PRO ASYL, *Third party intervention in Asaad v. the Netherlands*, February 2021, forthcoming.

to detention facilities (Amygdaleza), where they have remained as unregistered residents. Living conditions for unregistered residents in Attica camps, many of them severely overcrowded,<sup>60</sup> involve serious material deprivation: people slept on the floor and were excluded from the entitlements afforded to asylum seekers.<sup>61</sup>

Risks of homelessness among persons granted international protection remain high at the time of writing. It is worth highlighting that as many as 13,187 people faced impending exit from the country's reception system at the end of 2020 due to the conclusion of their asylum procedure.<sup>62</sup> In recent months, persons residing in ESTIA accommodation have been served complaints (εξώδικα) by the organisations operating apartments, threatening them with legal action if they fail to vacate the premises.

Alongside persons currently exiting the reception system, beneficiaries who have gone through the HELIOS programme are yet again at risk of homelessness after their rental subsidies come to an end. As mentioned above, as many as 3,342 beneficiaries have ceased receiving the subsidies. In several cases followed by RSA, these persons are unable to continue renting property and end up homeless, while many resort to returning to camps as unregistered residents.<sup>63</sup>

Additionally, RSA is monitoring cases of beneficiaries returned from other countries in recent months, who currently sleep rough in Athens or have moved to camps as unregistered residents. A beneficiary returned from Germany in August 2020 has been sleeping rough in Athens for seven months. Another returned from Germany in January 2021 has secretly moved back into a refugee camp as an unregistered resident in precarious conditions, and was informed by the camp management in February 2021 that she was not allowed to stay in the camp.

### **13. Return of former applicants for international protection**

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### **14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)**

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### **15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)**

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### **16. National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))**

Relevant jurisprudence has been cited according to topic throughout this submission.

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<sup>60</sup> The occupancy rate is currently 127% in Elaionas and 101% in Malakasa and Schisto: IOM, *SMS Factsheet*, December 2020, available at: <https://bit.ly/3cUviW1>.

<sup>61</sup> RSA, 'Recognised but unprotected: The situation of refugees in Victoria Square', 3 August 2020, available at: <https://bit.ly/3p34Cow>.

<sup>62</sup> Ministry of Migration and Asylum, Reply to parliamentary question by SYRIZA, 581/2020, 8 January 2021, 1.

<sup>63</sup> See also Alterthess, 'Άστεγοι... των προγραμμάτων στέγασης', 3 February 2021, available at: <https://bit.ly/3qgUoCF>.

## 17. Other important developments in 2020

### 17.1. Transparency and accuracy of asylum statistics

The Asylum Service has stopped publishing monthly statistical data from the end of February 2020, without any justification. The statistical reports of the Asylum Service provided detailed monthly figures on the number of applications registered by Regional Asylum Office and Autonomous Asylum Unit, the number and type of decisions taken (refugee status, subsidiary protection, rejection on the merits, inadmissibility by specific ground, withdrawal), recognition rates for key nationalities, as well as extensive information on the implementation of outgoing and incoming Dublin procedures. In addition, transparency and publication obligations imposed by Greek law on administrative bodies such as the Appeals Authority remain 'dead letter' to date. The Appeals Authority has never published quarterly activity reports pursuant to Article 4(3) L 4375/2016, in which it should include statistics on appeals lodged, the percentage of cases processed in written and oral procedures, processing times of appeals, recognition rates, applications for annulment lodged against Appeals Committee decisions, applications for legal aid and beneficiaries of legal aid.<sup>64</sup>

Data released by the Ministry of Migration and Asylum on the functioning of the Greek asylum system often present substantial disparities from the statistics supplied to Eurostat. For instance, according to statistics released in a Ministry of Migration and Asylum information note, the percentage of "positive decisions" was at 34% during the third quarter of 2020, whereas data provided to Eurostat pointed to a first instance recognition rate to 53.5% for that quarter.<sup>65</sup>

## References and sources

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**18. Please provide links to references and sources and/or upload the related material in PDF format**

**19. Feedback or suggestions about the process or format for submissions to the EASO Asylum Report**

## Contact details

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**I accept the provisions of the EASO [Legal and Privacy Statements](#)**

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<sup>64</sup> RSA, 'Asylum statistics for 2020 should be published and unpacked', 15 July 2020, available at: <https://bit.ly/2MRAOOJ>.

<sup>65</sup> RSA, 'Asylum statistics for the first three quarters of 2020: High recognition rates, increase in subsidiary protection grants', 9 December 2020, available at: <https://bit.ly/2Z43Woq>.