



Provisional version

Refugees at risk in Greece

Report¹

Committee on Migration, Refugees and Displaced Persons
Rapporteur: Ms Tineke Strik, Netherlands, Socialist Group

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Contents	Page
A. Draft resolution	3
B. Explanatory memorandum by Ms Strik, rapporteur	5
1. Introduction	5
2. The failings of the Greek asylum system: an old problem	5
3. Closure of the border with “the former Yugoslav Republic of Macedonia”: the cul de sac.....	6
4. The EU-Turkey Agreement: administrative limbo and uncertainty in the Aegean.....	7
5. The situation on the mainland: crisis management by a broken system	9
5.1. The asylum system	9
5.2. Reception capacity	10
5.3. Detention of asylum seekers	11
5.4. Unaccompanied and separated children	12
6. Relocation of refugees: no relief from the pressure on Greece.....	13
7. EU support to Greece	13
8. Conclusions and recommendations.....	14

A. Draft resolution²

1. Europe's panicked response to the refugee and migration crisis is crushing Greece between two brutal realities: the closure by "the former Yugoslav Republic of Macedonia" of its border with Greece and the imposition of the European Union – Turkey Agreement on the Aegean islands. This has blocked 46 000 refugees and migrants in mainland Greece and a further 8 500 on the islands. Greece has been left bearing a grotesquely disproportionate burden simply because of its place on the map; yet in every other respect it is perhaps the least well-placed of all European Union countries to bear this responsibility.
2. The Greek asylum system has long suffered from a series of failings, found by the European Court of Human Rights in 2011 to give rise to violations of the European Convention on Human Rights. Despite the efforts of the Greek authorities and progress in some areas, the underlying structural problems remain largely unresolved today, at a time when the asylum system is being placed under greater strain than ever and the government is confronted by enormous political, administrative and budgetary challenges also in other areas.
3. Much of the responsibility for the current situation falls to the European Union, which has tacitly supported the closure of borders along the Western Balkans route and concluded the 16 March Agreement with Turkey. The European Union has nevertheless until now failed to provide adequate support to Greece or ensure that responsibility is shared equitably amongst its member States. In particular, European Union member States have collectively failed to satisfy the requests for seconded staff to ensure that the Greek asylum system can operate effectively, especially on the Aegean islands where most asylum seekers are detained; and they have collectively failed to respond in any meaningful way to the 2015 agreements on relocation of recognised refugees. Whilst financial support has been forthcoming, money alone will solve nothing without the administrative capability and structural capacity in Greece to spend it effectively.
4. The refugee and migrant crisis in the eastern Mediterranean must be fully accepted as a European and global problem and not only a Greek one. The only effective response will be based on respect for the human rights of refugees and migrants, in accordance with the fundamental values common to the Council of Europe, the European Union and their member States, and on genuine solidarity and the practical sharing of responsibility. There must be grave doubts as to whether the current situation is sustainable, however, with over 10,000 refugees and migrants still at the northern border, the situation on the Aegean islands continuing to deteriorate since the EU-Turkey Agreement, and the asylum system on the mainland remaining dysfunctional.
5. The first victims of the situation in Greece are the refugees and migrants. The Parliamentary Assembly is particularly concerned by the following aspects:
 - 5.1. on the Aegean islands, asylum seekers who have been convicted of no crime are detained in the "hotspots" on dubious legal grounds, in conditions that fall below the standards expected of prisons, in administrative limbo with little information on their situation and complete uncertainty as to their future;
 - 5.2. vulnerable persons, including women and children, are held in the hotspots alongside angry, frustrated young adults, exposed to risks of violence, exploitation and abuse;
 - 5.3. asylum seekers on the Aegean islands are at risk of return to Turkey under the EU-Turkey Agreement of 18 March 2016, despite the fact that such returns appear incompatible with European Union and international law;
 - 5.4. conditions in most of the reception facilities on the mainland, many of which are entirely unsuited to such use, fall far below acceptable standards in such basic areas as overcrowding, shelter, food, sanitation and medical care. Again, many children are forced to endure these conditions;
 - 5.5. thousands of others, again including children, live in informal camps in conditions even more squalid and hazardous than those in the reception centres;

² Draft resolution adopted by the Committee on 3 June 2016.

5.6. refugees and migrants are too often detained as despite policy reforms, the authorities still fail to assess and review the individual necessity and proportionality of detention or to apply alternatives systematically. Conditions in immigration detention centres also remain seriously sub-standard;

5.7. the rights and interests of unaccompanied and separated children (UASC) are not effectively protected due to problems with the age assessment system, the guardianship system, appropriate accommodation capacity and provision of information. Many UASC are detained, purportedly for their own protection, in degrading conditions in police stations clearly unsuited to the purpose;

5.8. it is still far from clear whether the recent extensive reforms of the asylum system will ensure that previously lacking fundamental procedural guarantees are provided when determining asylum applications.

6. The Assembly therefore calls on the Greek authorities to:

6.1. ensure that detention conditions in the hotspots meet international standards, implementing any technical recommendations that may be made by the Committee for the Prevention of Torture in its preliminary observations following its April 2016 visit;

6.2. apply and regularly review the grounds for detention in the hotspots, ensuring their strict compliance with the provisions of the European Convention on Human Rights, and screen all current detainees and new arrivals to ensure that vulnerable persons are accommodated in appropriate facilities;

6.3. promptly release those whose continued detention in the hotspots can no longer be justified;

6.4. ensure that there is sufficient open reception capacity, of appropriate type and quality, available for all non-detained asylum seekers on the islands;

6.5. ensure that the inadmissibility procedure for asylum applications by persons arriving from Turkey is applied in strict compliance with European Union and international law;

6.6. ensure provision on the mainland of sufficient reception places of appropriate type and quality for all asylum seekers, including all those currently occupying informal camps;

6.7. only detain migrants and especially asylum seekers when strictly necessary and proportionate and ensure that immigration detention conditions meet international standards, implementing fully the March 2016 report of the Committee for the Prevention of Torture;

6.8. guarantee the rights and interests of UASC, including by ensuring that the age assessment procedure is properly applied in all contexts, reinforcing the guardianship system with the creation of a support mechanism for prosecutors, providing sufficient, appropriate accommodation places, avoiding all recourse to detention of UASC, and providing them with information and advice on their situation and rights;

6.9. ensure that the reformed asylum system is promptly made fully operational, that the backlog of applications and appeals is rapidly cleared and that new applications are swiftly processed, in full compliance with EU standards and those of the European Convention on Human Rights.

7. The Assembly also calls on the European Union, its member States and States participating in the relocation scheme, as appropriate, to:

7.1. respond promptly and fully to the calls for seconded national staff to support the Greek asylum service;

7.2. implement promptly and fully the September 2015 agreements on relocation from Greece;

7.3. be prepared for the possibility of the failure of the current approach with alternative solutions ready in advance, avoiding the pattern of unpreparedness and reflexive crisis management apparent until now.

B. Explanatory memorandum by Ms Strik, rapporteur

1. Introduction

1. Europe's panicked response to the eastern Mediterranean/ western Balkans refugee and migration crisis is crushing Greece between two brutal realities: the closure of its northern border with "the former Yugoslav Republic of Macedonia; and the imposition of the EU-Turkey Agreement at its eastern maritime border with Turkey. A country still in the depths of an economic depression that has lasted since 2008, subject to punishing, externally-imposed austerity measures, has thus since March been saddled by the European Union with an immense responsibility – to care for the tens of thousands of refugees, asylum seekers and migrants who are now blocked in Greece, but whose real hope was to reach the other richer countries of Europe.

2. It is a reflection of the refugees' and migrants' intentions that the vast majority of the one million-plus refugees and migrants who have arrived in Greece by sea since the beginning of 2015 did not remain in the country. Nevertheless, as a result of the coordinated closure of borders along the Western Balkans route, there are now 46,000 refugees and migrants blocked in mainland Greece and a further 8,500 on the islands. Those on the mainland who qualify for international protection will be forced to stay in Greece, whose reception and integration capacity remains seriously insufficient, until relocated to another country participating in the EU's scheme – or until they find a clandestine way to continue their journey north, most probably in the hands of migrant smugglers. Those on the islands are for the most part detained in inadequate conditions, and in all cases subject to the vagaries of the dysfunctional Greek asylum system for assessment of whether or not they will be returned to Turkey. In 2016, 89% of arrivals have been from Syria, Afghanistan or Iraq.

3. In April 2016, the Parliamentary Assembly expressed its concern at the situation in Greece when adopting resolutions on the situation in the western Balkans and the EU-Turkey Agreement.³ The present report is intended to focus specifically on the overall situation of refugees and migrants in Greece: from the Aegean islands where new arrivals are halted and their applications processed in newly-created facilities under new, accelerated procedures; to Athens and the mainland, where the Greek authorities and others are struggling to provide sufficient reception capacity and to implement a whole new asylum system; to the border with "the former Yugoslav Republic of Macedonia", where over 10,000 refugees and migrants remain in the desperate hope of being allowed to continue north.⁴

2. The failings of the Greek asylum system: an old problem

4. In 2011, the European Court of Human Rights ("the Court") issued a judgment against Belgium and Greece concerning the treatment of an Afghan asylum seeker who had entered the EU via Greece, travelled to Belgium, where he claimed asylum, and was returned under the Dublin Regulation to Greece, where he renewed his claim for asylum.⁵ The Court found a series of violations of the European Convention on Human Rights ("the Convention") relating to the applicant's treatment in Greece:

- When returned from Belgium, he had immediately been placed in detention without explanation, in poor conditions, and was subjected to brutality and insults at the hands of the police officers. Taken together, the Court found that such circumstances constituted degrading treatment contrary to Article 3 of the Convention, accentuated by his vulnerability as an asylum-seeker.
- Following his release from detention, the applicant had lived for months in the most abject poverty, with no food and nowhere to live or to wash, in constant fear of being attacked and robbed, and with no prospect of his situation improving. These conditions, for which the Greek authorities were responsible, were sufficiently severe to amount to a violation of Article 3.
- A series of deficiencies in the Greek authorities' examination of the applicant's asylum application, including excessively short deadlines, insufficient capacity within the asylum system, failures to proceed with examination of the application, to maintain contact and to provide information, unavailability of legal assistance and procedural delays before the Supreme Court, along with the risk he faced of being returned directly or indirectly to his country of origin without any serious examination of the merits of his application, amounted to a violation of his right to an effective remedy under Article 13 of the Convention.

³ See Resolution 2108 (2016) on "Human rights of refugees and migrants – the situation in the western Balkans", and Resolution 2109 (2016) on "The situation of refugees and migrants under the EU-Turkey Agreement".

⁴ See the motion for a resolution on "Refugees at risk in Greece", PACE doc. 13975.

⁵ See *M.S.S. v. Belgium & Greece*, App. no. 30696/09, Grand Chamber judgment of 21 January 2011.

5. In the same judgment, the Court also found that Belgium had violated Article 3 of the Convention by returning the applicant to Greece in circumstances where it should have known that detention and reception conditions, and the risk of onward *refoulement* to Afghanistan, would themselves amount to violations of Article 3. As a result, transfers of asylum seekers to Greece under the Dublin system were effectively suspended.

6. The same year, the Court issued judgment in a case concerning treatment by the Greek authorities of an unaccompanied minor Afghan asylum seeker, who on arrival in Lesbos, Greece had initially been detained pending deportation, then placed under the guardianship of a person whom the authorities took to be his cousin, and once released from detention, left to fend for himself.⁶ The Court found a series of violations relating to the authorities' decision to detain without consideration of alternative measures, the decision to appoint the presumed cousin (with whom the applicant almost immediately lost contact) as his guardian, and serious legal and practical shortcomings in the remedy against detention pending removal, all aggravated by the applicant's vulnerability as an unaccompanied minor.

7. The Committee of Ministers continues to supervise execution by Greece of both of these judgments,⁷ a clear indication that the authorities have yet to resolve the structural problems underlying the various violations. A persistent cause of both these structural problems and the delay in addressing them has been the administrative inefficiency of the Greek State. One of the reasons given by the Greek authorities in October 2015 for their failure to put in place an expected number of reception places was the restructuring of the entire immigration policy.⁸ The fact that an entirely new asylum law (No. 4375/2016, adopted in order to allow implementation of the EU-Turkey Agreement) was adopted in early April may well add to the confusion and generate further delays in achieving the practical results required by the Court's judgments (see further below).

8. In recent months, the EU has nevertheless repeatedly raised the possibility of resuming Dublin transfers to Greece,⁹ despite the fact that the authorities have still clearly not made sufficient progress in addressing issues concerning especially reception capacity and the protection of unaccompanied minors, issues that have been aggravated by the current crisis.

3. Closure of the border with “the former Yugoslav Republic of Macedonia”: the *cul de sac*

9. On 9 March 2016, countries along the Western Balkans route from “the former Yugoslav Republic of Macedonia” north closed their borders to refugees and migrants hoping to transit the country.¹⁰ Although some countries declared that they would continue to admit certain persons, for example those with Schengen visas or intending to submit asylum applications in that country, the authorities of “the former Yugoslav Republic of Macedonia” took a categorical approach, with the police announcing that the border was “completely” closed. Indeed, the country's interior ministry has reported zero new arrivals since 9 March.¹¹ As a result, with few exceptions, every refugee or migrant who has crossed the Aegean from Turkey to the Greek islands since then has remained in Greece. It should be recalled that the decisions to close borders were clearly co-ordinated between the States involved but that Greece, although directly concerned, was neither consulted nor informed in advance.

10. At the border itself, the police of “the former Yugoslav Republic of Macedonia” have enforced border control by force, most notoriously in early May, when tear gas, rubber bullets and batons were used to force refugees and migrants back from the razor-wire fence. Eidomeni, on the border, has become infamous worldwide as a place of misery. By mid-May, there were over 9,400 people at Eidomeni, and over 1,000 more at the nearby EKO gas station, living in lawless squalor in informal tented encampments, desperately hoping

⁶ See *Rahimi v. Greece*, App. no. 8687/08, judgment of 5 April 2011.

⁷ Most recently at its “human rights” (‘CM/DH’) meeting in December 2015. The next examination is scheduled for December 2016.

⁸ See doc. DH-DD(2015)1134, “Communication from the authorities concerning the M.S.S. and Rahimi groups of cases against Greece”, 29/10/15.

⁹ See e.g. “Back to Schengen – A Roadmap”, European Commission, COM(2016) 120 final, 4/03/16.

¹⁰ For further details of the implementation of progressively more restrictive border controls during previous weeks, see the PACE report on “Human rights of refugees and migrants – the situation in the Western Balkans”, doc. 14013, 04 April 2016 (covering the situation up to mid-March).

¹¹ There have continued to be arrivals reported in Serbia, Hungary and Austria; presumably these either entered via a country other than “the former Yugoslav Republic of Macedonia”, most likely Bulgaria, or crossed it without coming to the attention of the authorities, possibly using the services of migrant smugglers.

that the border would reopen.¹² 4,000 children,¹³ many of them unaccompanied minors hoping to join relatives in other European countries, are amongst the camps' inhabitants, exposed to violence, abuse and exploitation.¹⁴ The Greek authorities have for some time expressed the intention of closing the informal camps and move their occupants to shelter elsewhere in Greece, but have so far failed to do so.

11. Another consequence of the closure of the borders is an increase in migrant smuggling. Indeed, when I visited the western Balkans in November 2015, the authorities themselves told me that one of the advantages of the policy then in place of allowing entry and transit was that refugees and migrants were not forced into the hands of migrant smugglers. It is not surprising, therefore, that migrant smugglers are indeed now widely active in the informal camps at Eidomeni.¹⁵

4. The EU-Turkey Agreement: administrative limbo and uncertainty in the Aegean

12. At the opposite end of Greece, refugees and migrants continue to arrive on the Aegean islands, although in much smaller numbers than before the EU-Turkey Agreement took effect on 20 March – on average, under 170 per day (and only 32 from 10-16 May), as opposed to over 3 250 between 1 October 2015 and 19 March 2016. Despite the fact that all refugees and migrants who had arrived on the islands before 20 March were transferred to the mainland, there are now over 8 500 on the islands, which have capacity (in detention and reception facilities) for only 7 450.

13. Five of the islands – Lesbos, Chios, Samos, Leros and Kos – have “hotspots”, or “reception and identification centres” as they are known under Greek law. The hotspots are now all closed facilities, in effect detention centres for the majority of asylum seekers on the islands. Despite the February 2015 reforms to Greece’s immigration detention policy and the provisions of Law 4375/2016 whereby vulnerable persons should be excluded from the detained procedure, it has been reported that on Lesbos, for example, new arrivals are not systematically screened for vulnerability, such that “people with serious health problems, single parents alone with large numbers of small children, women and men at risk of sexual and gender based violence and other vulnerable groups frequently went unnoticed and left without the specialised care they may be in need of... There were neither guidelines to identify them nor standard operating procedures on what to do once identified available to the Frontex guest officers and Greek police officers.”¹⁶ Overall, hundreds of children have been detained in the hotspots in inappropriate, poor conditions, at risk of abuse.¹⁷

14. Similarly, there is no indication that detention conditions in the hotspots have improved since the Assembly adopted Resolution 2109 (2016). Indeed, since then, the number of refugees and migrants on the islands has increased from just under 7 900 to 8 500, with no increase in capacity.

- There are currently over 4 200 refugees and migrants on **Lesbos**, which has capacity for 3 500. More than 3 000 are detained in the Moria hotspot. A further 800-1 000 are in the open camp at Kara Tepe, which is run by the local authority. Others, especially vulnerable persons, are in the Pipka Lesbos open facility run by volunteers, although it is reported to be under threat of closure.
- There are currently over 2 270 refugees and migrants on **Chios**, which has capacity for 1 100. Over 1 000 are detained in the VIAL hotspot. Around 1 000 more are in the open camp at Souda. There are also other open facilities at Dipethe and Tabakika, somewhat improvised in order to receive the overflow from VIAL and Souda.
- There are currently over 1,000 refugees and migrants on **Samos**, which has capacity for 850; 522 on **Leros**, which has capacity for 1 000; and 351 on **Kos**, which has capacity for 1 000.¹⁸

¹² See UNHCR, “Daily map indicating capacity and occupancy (Governmental figures)”, UNHCR, 17/5/16.

¹³ See UNICEF, “Regional Humanitarian Situation Report # 11”, 4/5/16.

¹⁴ See e.g. “The refugee children of Idomeni: alone, far from home but clinging to hope”, The Guardian, 8/5/16.

¹⁵ See e.g. “Idomeni: Europe’s first favela”, Deutsche Welle, 8/4/16; “Smugglers Prey on Migrants Desperate to Find Back Doors to Europe”, New York Times, 11/3/16.

¹⁶ See “Trapped in Greece: An avoidable refugee crisis”, Amnesty International, April 2016 (hereafter “Amnesty – Trapped in Greece”).

¹⁷ See e.g. “Conditions rapidly deteriorating for children detained in Moria camp on Lesbos”, Save the Children, 3/4/16, “An estimated 75% of child refugees stranded alone in Greece do not have safe place to stay, warns Save the Children”, 16/4/16.

¹⁸ See “Daily map indicating capacity and occupancy (Governmental figures)”, UNHCR, 17 May 2016.

15. Detention conditions have led to unrest in the hotspots: after the 21 April mass breakout from the VIAL hotspot on Chios, there was a further outbreak of violent protest in Moria, Lesbos on 27 April, with riot police entering the camp to restore order, using tear gas and injuring several detainees. This outbreak was apparently provoked by claims that a detained child had been beaten by police.¹⁹ A further indication of conditions in the hotspots can be seen in the numerous online videos showing maggot-infested food given to detainees.²⁰ In April, the Committee for the Prevention of Torture visited the hotspots, following which it announced that it would submit its preliminary observations to the Greek authorities shortly in writing.²¹ I look forward to publication of these observations and urge the Greek authorities to implement any technical recommendations promptly and in full.

16. As noted in PACE Resolution 2109 (2016) on “the situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016”, “detention of asylum seekers in the “hotspots” on the Aegean islands may be incompatible with the requirements of [the Convention], due notably to procedural failures undermining the legal grounds for detention and inadequate detention conditions”. The legal concerns have only been exacerbated by the passage of time, as whether detaining a person whilst examining their asylum application (the case for most detainees) or pending their removal, the authorities are required to act with due expedition, absent which detention becomes incompatible with the Convention. It should be noted, however, that some 1 100 people are reported to have been released from detention following expiration of the 25-day limit under Greek law.²² It is unclear whether this includes all of those who have reached the time-limit. Those released remain confined to the islands, even though there is inadequate alternative accommodation capacity, and UNHCR has recognised their resulting vulnerability to traffickers.²³

17. Despite the fact that the EU-Turkey Agreement has now been in force for more than a month, that the great majority of detainees have claimed asylum and that many of them have been in detention for weeks, the Greek asylum system is still far from operational in the hotspots. This is at least partly due to the EU’s failure to provide the promised support. On 19 March, EASO had called for other EU member States to contribute 400 asylum officers and 400 interpreters, and on 4 April had called for a further 72 asylum officers. By 4 May, only 63 asylum officers and 67 interpreters had actually been deployed, and the extent to which they were operational in their new surroundings was unclear: the European Commission estimated that the asylum system on the Greek islands “has the capacity to conduct around 50 interviews per day”.²⁴ This would imply that the 25-day detention deadline would expire before the asylum procedure had been completed for almost everyone currently in detention, and that they would then have to be released even if no alternative accommodation is available. One should also recall that capacity does not necessarily equal actual productivity; and note that the Commission does not indicate how many decisions are being issued following those interviews, how many appeals against refusal are being heard or whether procedural deadlines are being respected. The situation is perhaps well illustrated by the fact that one group of refugees even attempted to swim from Chios back to Turkey, having given up hope that their cases would be examined.²⁵

18. The shortcomings of the Greek asylum system, especially on the islands, risk being acutely exposed when applying provision of the new Law 4375/2016 allowing return of asylum seekers to Turkey as a “safe third country” or “first country of asylum”. Assembly Resolution 2109 found, on legal grounds that remain valid, that returns of asylum seekers of any nationality to Turkey as a “safe third country” are contrary to EU and/ or international law, and that returns of Syrian asylum seekers to Turkey as a “first country of asylum” may be contrary to EU and/ or international law. Since then, it has been reported that Syrians sent back to Turkey, including a pregnant woman, have been detained for weeks in a remote camp, without access to lawyers or specialised medical care, and that those returned “face arbitrary detention, an inscrutably asylum process, and substandard living conditions”.²⁶ This only reinforces the Assembly’s concerns about the possible fate of

¹⁹ See e.g. “Police deploy tear gas as refugees chanting ‘freedom’ spark riot in Lesbos migrant camp after rumours an officer had struck a child”, Daily Mail, 27/04/16.

²⁰ See e.g. “The Chios Hilton: inside the refugee camp that makes prison look like a five-star hotel”, The Independent, 22/4/16.

²¹ See “Council of Europe anti-torture Committee visits “hotspots” in Greece”, 20/4/16.

²² I hope to be able to clarify during my visit to Greece issues relating to the capacity, nature and current occupancy levels of the various facilities on the Aegean islands.

²³ See “Migrants freed from Greek detention, trapped in limbo on islands”, Reuters, 9/5/16.

²⁴ See “Implementing the EY-Turkey Agreement – Questions and Answers”, European Commission, 4/5/16.

²⁵ See “Desperate to Leave Greece Refugees Try to Swim Back to Turkey”, Greek Reporter, 10/5/16.

²⁶ See “Syrians returned to Turkey under EU deal ‘have had no access to lawyers’”, The Guardian, 16/5/16.

asylum seekers returned to Turkey, further undermining the lawfulness of such returns. In this respect, one should note that despite efforts by the European Commission to persuade the Greek authorities that EU law requirements for returns to Turkey are satisfied,²⁷ a Greek asylum appeals committee on Lesbos has found that the temporary protection that would be available in Turkey to one Syrian appellant did not offer rights equivalent to those guaranteed by the 1951 Refugee Convention.²⁸

19. Although the EU-Turkey Agreement has led to a reduction – although far from a complete cessation – of arrivals from Turkey, so far none of the 8,600 who arrived after 20 March has been returned.²⁹ 386 people who arrived before 20 March have been returned: the European Commission claims that these are “irregular migrants not in need of international protection”, but other sources report that they included Afghans, Iranians and Palestinians who had been unable to access the asylum system in Greece before being returned.³⁰

20. Given the inability of the Greek authorities and the EU to put in place adequate reception and accommodation facilities or a functioning asylum system on the islands, the fact that more people continue to arrive than to leave will only make an already appalling situation even worse.

5. The situation on the mainland: crisis management by a broken system

5.1. The asylum system

21. Greece has long struggled with a defective asylum system. Many fundamental problems persist, including inadequate provision of information to asylum seekers; persistent obstacles to accessing the asylum procedure; long delays in the asylum procedure, including a persistent backlog of applications; the capacity of the asylum service, including failure to open planned regional offices and under-staffing; persistent delays in clearing the backlog of appeals under previous procedures; and the structure and rules of procedure of the Appeals Authority and its Appeals Committees.³¹

22. In order to create a basis in domestic law for implementation of the EU-Turkey Agreement – in particular, accelerated asylum procedures for detained applicants and returns to Turkey – the Greek parliament adopted Law 4375/2016 under urgent procedure on Friday 1 April. The new law, which for the most part entered into force on 4 April, contains provisions on institutional matters, including establishment of an Asylum Service and a Reception and Identification Service within the Ministry of the Interior and Administrative Reconstruction, and of an autonomous Appeals Authority within the Ministry, directly dependent on the Minister. Other significant reforms include the following:

- 7,800 of the 18,500 persons with pending asylum applications will automatically be eligible for a residence permit on humanitarian grounds;
- Further transposition of relevant EU directives into Greek law, relating *inter alia* to:
 - o Provision of free legal aid for hearings before the Appeals Authority, as required under the Asylum Procedures Directive;

²⁷ See the letter from Mr Matthias Ruete, Director General, Directorate-General, Migration and Home Affairs, European Commission, to Mr Vasileios Papadopoulos, Secretary-General, General Secretariat for Population and Social Cohesion, 5/5/16; also “Next Operational Steps in EU-Turkey Cooperation in the Field of Migration”, Communication from the European Commission, COM(2016) 166 final, 16/3/16.

²⁸ See e.g. “Migrant deal at risk as Turkey deemed unsafe by Greek court”, Ekathimerini, 20/5/16; the same article notes that the Lesbos appeals committee has granted asylum in 100 of the 174 applications by Syrians that it has so far examined. It has also been reported that the Greek authorities have rejected only about 30% of claims processed so far in the hotspots: see “Greece Struggles to Return Migrants Under EU-Turkey Deal”, Wall Street Journal, 19/5/16.

²⁹ One of the main provisions of the EU-Turkey Agreement is that all those arriving after 20 March and found not to be in need of international protection will be returned to Turkey. For further details, see the Assembly’s report, PACE doc. 14028.

³⁰ See e.g. “What Merkel, Tusk and Timmermans should have seen during their visit to Turkey”, Report from GUE/NGL Delegation to Turkey, May 2016; “EU/ Greece: First Turkey Deportations Riddled With Abuse”, Human Rights Watch, 19/04/16; “Turkey” ‘Safe Country’ Sham Revealed as Dozens of Afghans Forcibly Returned Hours after EU Refugee Deal”, Amnesty International, 23 March 2016.

³¹ See “Greece as a Country of Asylum – UNHCR’s Recommendations”, 6 April 2015 (hereafter “Greece – UNHCR’s Recommendations”); “5th Joint Submission of the ICJ and ECRE to the Committee of Ministers in the case of *M.S.S. v. Belgium and Greece* and related cases”, March 2016 (hereafter “ICJ and ECRE 5th Joint Submission”).

- Aligning possible grounds for detention with the Reception Conditions Directive;
- Revising domestic implementation of the concepts of “first country of asylum” and “safe third country” in the inadmissibility procedure (necessary for returns to Turkey);
- Revising the accelerated border procedure, allowing its application also in hotspots;
- The appeals procedure, with slightly improved time limits but an apparent gap in the provision of remedies against removal with automatic suspensive effect.³²

23. One of the issues underlying the violations found in the *M.S.S.* judgment was failures by the Greek asylum system properly to apply Greek law. It is to be hoped that the new Law 4375/2016, which transposes complex provisions of EU law, including on fundamental issues like detention, asylum procedures and returns, will be properly applied by the various bodies responsible. It is also to be hoped that adequate resources, including trained personnel, are made available to allow the new system to function properly. All legal and administrative reforms necessarily take time and resources to be effective: the new law alone will not resolve the chronic structural and resource problems.

24. A recent illustration of the asylum system’s weaknesses is the announcement on 14 May that a “pre-registration exercise for international protection” for those in open facilities on the mainland who had arrived in Greece before 20 March would “begin in the next few weeks... and take several weeks to conclude”. This exercise would be “the first step to apply for international protection in Greece” and “could eventually” lead to examination of an application, or Dublin transfer or relocation to another country. At the end of the exercise, each individual will be issued with an “asylum seeker card”. This strongly suggests that a significant number of pre-20 March arrivals have still not even been “pre-registered” and are without documents, and that this process will only be a very preliminary stage of the asylum procedure. One wonders how and why a potentially large number of people could have been transferred from the islands to the mainland without such basic processing having taken place. Furthermore, the vague, even non-committal language suggests that even the Greek authorities themselves lack confidence in their capacity to complete the process.³³

5.2. Reception capacity

25. The Greek army has made considerable efforts to create new reception capacity around the country, with many new facilities opened in the past three months. Even quantitatively, however, their capacity is insufficient: 34,650 putative places for 45,985 occupants. This is significantly below the total of 50,000 places (including 30,000 in reception centres and 20,000 in rent-subsidised accommodation, to be made available in collaboration with UNHCR) to which Greece committed itself at the Western Balkans Route Leaders’ Meeting on 25 October 2015. The legal status and actual nature of many supposed reception facilities is unclear, as is the question of which agency has administrative responsibility for their operation. It has also been claimed that many places considered by the European Commission to be open accommodation are in fact detention. ECRE has concluded that “Persons applying for international protection in Greece therefore run risks of homelessness and destitution”, contrary to Greece’s obligations under Article 3 of the Convention and the Court’s judgment in *M.S.S.*³⁴

26. The quality of reception capacity is also inadequate for longer-term reception. Most of the new facilities were intended to be temporary (UNHCR describes them as “emergency reception sites”), and many of the longer-standing ones were originally intended as transit centres. The Special Representative of the Secretary General of the Council of Europe on Migration and Refugees, Tomas Bocek, who visited Greece in March, found, for example, that at Elliniko I, a former Olympic Games facility to the south of Athens “1,500 people were accommodated in overcrowded conditions in a building and tents... Only their basic needs were covered: food, hygiene products, blankets and sleeping bags... I saw several people sleeping on the floor covered with blankets. The effects of overcrowding, in terms of hygiene, were palpable. Very few staff were present... It

³² See further PACE Resolution 2109 (2016); also “Greece: Asylum Reform in the Wake of the EU-Turkey Deal”, Asylum Information Database, 4/4/16.

³³ See “Joint press release: The registration of asylum seekers residing in open reception facilities in the mainland will begin in the next few weeks”, Hellenic Republic Asylum Service/ UNHCR/ EASO, 14/5/16.

³⁴ See “ICJ and ECRE 5th Joint Submission”.

would appear that the Eliniko camp is clearly inadequate for long-term stays, especially given the number of persons present there today.” Similarly, he found that conditions at Nea Kavala, north of Thessaloniki, were also “sub-standard and have to be significantly improved. The Greek authorities need help to ensure that people do not sleep in tents in the mud and that they do not have to burn plastic waste to keep warm.”³⁵

27. There has been violent protest also in facilities on the mainland. On 10 May, for example, up to a thousand occupants of Elliniko went on hunger strike in protest at the “subhuman conditions”, including the quality of the food, and the perceived preferential treatment given to Syrians.³⁶

28. Alongside the official reception centres, there are also several informal camps, notably at Piraeus port in Athens. Despite the huge decrease, following the EU-Turkey Agreement, in the number of arrivals of refugees and migrants at the port from the Aegean islands, in mid-May there were still over 1,400 people camping at Piraeus.³⁷ It was reported that in March, “refugees and migrants, including many families with small children and babies, pregnant women, people with disabilities and elderly, [were] enduring squalid reception conditions... Refugees and migrants were resting and sleeping on the floor of the terminals with nothing other than a fleece blanket or in small tents inside a cold warehouse and outside the premises at the mercy of the cold temperatures at night. Facilities were insufficient with 4 to 6 showers without hot water in one of the terminals and only 8 to 10 chemical toilets per terminal.”³⁸ The government intends to transfer the occupants by mid-June to an accommodation centre at Skaramangas (established in April and defined by UNHCR as an “emergency reception site”).³⁹ Victoria Square in central Athens may no longer be a significant informal camp but is still used as an unofficial meeting place, and MSF has set up a clinic nearby. Migrant smugglers are reported to be particularly active in these informal sites.⁴⁰

5.3. Detention of asylum seekers

29. In February 2015, the Greek government reformed the policy on immigration detention, to make greater use of alternatives, create more open reception facilities, decrease the maximum duration of detention to six months, gradually release those detained for long periods and immediately release vulnerable persons and asylum seekers.⁴¹ Civil society organisations monitoring detention nevertheless continue to express concerns, reflected also in the UNHCR’s Recommendations. These relate notably to failure to individually assess the necessity and proportionality of detention for asylum seekers or to apply alternatives systematically; detention of persons identified as qualifying for international protection; detention of persons with serious health problems; over-reliance on certain grounds for detention; apparent failure to review the necessity and appropriateness of detention orders at regular interviews; and apparent failure to take into account the existence of appropriate detention facilities and the conditions in available detention facilities when imposing and reviewing detention orders.⁴²

30. Conditions of immigration detention on the mainland remain inadequate, five years after the *M.S.S.* judgment. Although not specifically limited to detention of asylum seekers, one report notes inadequate health care, lack of support by specialised staff (such as psychologists), inadequate food, inadequate heating, inadequate provision of recreational or educational activities, inadequate provision of clothes, shoes and personal hygiene items, lack of information and interpretation services and lack of free legal aid.⁴³ The CPT

³⁵ See “Report of the fact-finding mission by Ambassador Tomas Bocek, Special Representative of the Secretary General on migration and refugees, to Greece and “the former Yugoslav Republic of Macedonia”, 7-11 March 2016”, 26/4/16, doc. SG/Inf(2016)18; also e.g. “Amnesty – Trapped in Greece”.

³⁶ See “1,000 Refugees on Hunger Strike Against Subhuman Conditions at Elliniko Camp”, Greek Reporter, 10/5/16; “Tensions high at Greece’s migrant, refugee camps”, Ekathimerini, 10/5/16.

³⁷ See “Refugees, migrants at Piraeus port reach 1,407”, Ekathimerini, 13/5/16.

³⁸ See “Amnesty – Trapped in Greece”.

³⁹ See “Migration Min. Mouzalas: Makeshift Refugee Camp at Piraeus Port Must be Evacuated by Mid-June”, Greek Reporter, 13/5/16.

⁴⁰ See “Revealed: Migrants ‘offered €10,000 all-inclusive travel packages’ from Greece into central Europe despite border closures”, Daily Mail, 20/4/16.

⁴¹ See the CPT report on its visit to Greece of 14-23 April 2015, doc. CPT/Inf (2016) 4

⁴² See e.g. “Monitoring Immigration Detention: Quarterly Report December 2015 – March 2016”, AITIMA, March 2016; “ICJ and ECRE 5th Joint Submission”; “Greece – UNHCR’s Recommendations”; also CPT/Inf (2016) 4.

⁴³ AITIMA, op. cit.

has issued a detailed report on appalling conditions in several immigration detention centres, concluding of one that “conditions of detention remained totally inadequate for holding irregular migrants for prolonged periods.”⁴⁴

5.4. Unaccompanied and separated children

31. On 6 April, UNICEF reported that there were over 22,000 refugee and migrant children in Greece, around 40% of the total refugee and migrant population.⁴⁵ Around 2,000 of these are unaccompanied and separated children (UASC) asylum seekers.⁴⁶ The Greek asylum system remains unable to ensure effective protection of UASC, with many of the problems that were identified five years ago in the *Rahimi* judgment still present.

32. Problems start already at the stage of age determination. The Special Representative of the Secretary General, Tomas Bocek, reported that “Although the age-assessment procedure does not seem to be problematic *per se*, there are implementation issues... Moreover, there do not seem to be any effective means of appealing against the outcome of the assessment.”⁴⁷ Likewise, AITIMA has reported that “the age assessment procedure provided for the First Reception Centers is not applied in a large scale, resulting in many minors being registered inaccurately as adults which has a direct impact on the care they receive”.⁴⁸

33. The guardianship system also fails to fulfil its role. Public prosecutors are supposed to appoint a permanent guardian, until which time they are provisionally responsible for ensuring the child’s interests and welfare. In practice, prosecutors lack the capacity to discharge this crucial function. UNHCR has repeatedly called for the creation of a support mechanism for prosecutors in this respect.⁴⁹

34. There is a desperate shortage of appropriate accommodation for UASC. In mid-April, it was estimated that 75% of the 2,000 unaccompanied and separated child asylum seekers were without a safe place to stay, with only 477 shelter spaces nationwide, all of which had been occupied for weeks. As a result, new arrivals had nowhere to stay and were either sleeping rough in “volatile” informal camps or were held for long periods in detention centres and police cells. “This puts vulnerable and often traumatised children at risk of abuse, exploitation by people traffickers, disease and psychological stress.”⁵⁰

35. Across Greece, UASC are often detained “for their own protection” in police stations, sometimes for lengthy periods “in conditions akin to solitary confinement”.⁵¹ Amnesty International has reported on six UASC held under “protective custody” at Evzoni police station near Eidomeni, in “very poor conditions including lack of natural light, lack of heating and hot water”, with mouse infestation and a blocked toilet in the detention area giving off an “unbearable odour”; there was no interpretation available and the police were dependent on NGOs to provide information to the child detainees.⁵²

36. On account of their age and inexperience, UASC are in particular need of assistance with asylum procedures. In addition to the failure of the guardianship system, however, UASC are not even provided with necessary information, whether they reside in hotspots, child-friendly shelters or informal camps. As the Special Representative of the Secretary General has noted, this is a matter of concern also because UASC should be prime beneficiaries of the relocation schemes, yet are unaware of their rights and the applicable procedures.⁵³

⁴⁴ See doc. CPT/Inf (2016) 4.

⁴⁵ See “UNICEF urges full hearings for refugee and migrant children stranded in Greece”, 6/4/16; “New EU-Turkey agreement on refugee and migrants could leave children at risk: UNICEF”, 22/3/16.

⁴⁶ See “An estimated 75% of child refugees stranded alone in Greece do not have a safe place to stay, warns Save the Children”, 16/4/16.

⁴⁷ See doc. SG/Inf(2016)18.

⁴⁸ AITIMA, *op. cit.*

⁴⁹ See “Submission by the UNHCR for the OHCHR’s Compilation Report – Universal Periodic Review: 2nd Cycle, 25th Session, Greece”, UNHCR, September 2015; “Greece – UNHCR’s Recommendations”.

⁵⁰ See “An estimated 75% of child refugees stranded alone in Greece do not have a safe place to stay, warns Save the Children”, 16/4/16.

⁵¹ See doc. CPT/Inf (2016) 4.

⁵² See “Amnesty – Trapped in Greece”.

⁵³ See doc. SG/Inf(2016)18.

6. Relocation of refugees: no relief from the pressure on Greece

37. In September 2015, the EU, with the UK opting out but Schengen associates Liechtenstein, Norway and Switzerland opting in, agreed to relocate a total 50,400 refugees from Greece by September 2017. Actual relocation depends on various factors, including expressions of interest by refugees, their willingness to accept the places offered to them, the efficiency and good faith of national authorities in both Greece and receiving States when administering the process, but above all on the number of pledges made by receiving States.

38. It has been reported that many refugees who had expressed an interest in relocation have declined places made available to them, apparently for fear of being permanently separated from their families.⁵⁴ The European Commission has noted administrative problems such as States' incorrect use of preferences, lengthy response times, obstructive security checks, unjustified rejections and lack of pre-departure information to refugees (who as a result withdraw from the process).⁵⁵

39. There are also some arguably irrational aspects to the system, such as the fact that as of mid-March, persons from Costa Rica, Saint Vincent and the Grenadines (a group of tiny islands in the Caribbean) and the Maldives (amongst others, including Syria and Iraq) qualified for relocation, but those from, for example, Yemen or Afghanistan did not. This is because whether or not a particular nationality qualifies depends on whether the EU average recognition rate for asylum seekers of that nationality is at least 75%. A further problem is unpredictability: as recognition rates change over time, so a particular nationality may qualify or cease to qualify; Yemenis, for example, ceased to qualify.

40. Nevertheless, the number one reason given by the European Commission for the scheme's shortcomings is the "insufficient and limited number of formal pledges". On 16 March, the Commission, whilst noting improved responses in early March, stated that "The unsatisfactory level of implementation of is due to a variety of factors, including the lack of political will of Member States to deliver in a full and timely manner on their legal obligations to relocate." On 12 April, the Commission noted that only a further 46 had been relocated, and that "relocation efforts were made by only a few... States".⁵⁶ By 2 May, only a further 99 refugees had been relocated. The Commission had set an interim target of 20,000 by mid-May,⁵⁷ by 18 May, however, only 909 refugees had actually been relocated – less than 5% of the interim target, and less than 2% of the agreed total.⁵⁸

41. In March, the European Commission recalled that the relocation agreements were "emergency measures intended to relieve the significant asylum pressure on Greece and Italy. Given that these pressures are acute, in particular in Greece, the need for stepped-up action becomes all the more compelling." In April, it urged States "to increase dramatically their efforts to reply to the urgent humanitarian situation in Greece". In May, it argued that "Greece is facing a humanitarian crisis that requires quick and full implementation of the [relocation decisions]". The Commission estimates that between 35,000 to 40,000 persons now in Greece would be eligible for relocation.⁵⁹ This is a tiny figure compared with the number who arrived via the Western Balkans route last year. The failure so far to achieve relocation of even 1,000 refugees is frankly shameful and suggests a cynical, short-sighted attitude on the part of many participating States to the plight of the refugees and migrants in Greece and to the travails of the Greek people and authorities.

7. EU support to Greece

42. The EU has promised to provide extensive support to Greece, in the form of both financial aid and personnel, in order to reform its asylum system, administer the hotspots and deal with the internal consequences of closure of the northern border. European Commission President Juncker has appointed an official to coordinate this support. As noted above, the actual response to the calls for seconded asylum officers and interpreters has so fallen far below requirements. This is also the case in other areas: on 19 March, Frontex called for 1,500 escort officers and 50 return officers; by 4 May, only 292 escort officers and 21

⁵⁴ See "Refugees in Greece refuse to relocate across EU", Financial Times, 16/5/16.

⁵⁵ See European Commission, "First report on relocation and resettlement", 16/3/16, COM(2016) 165 final, and "Second report on relocation and resettlement", 12/4/16, COM(2016) 222 final.

⁵⁶ See COM(2016) 165 final and COM(2016) 222 final.

⁵⁷ See "Implementing the EY-Turkey Agreement – Questions and Answers", European Commission, 4/5/16.

⁵⁸ See European Commission, "Third report on relocation and resettlement", 18/5/16, COM(2016) 360 final.

⁵⁹ See COM(2016) 165 final, COM(2016) 222 final and COM(2016) 360 final.

return officers had actually been deployed. Likewise, EASO's calls for experts, including for relocation, have consistently not been met by a satisfactory response.

43. Financial assistance has been more forthcoming: the EU should finance the estimated €280 million cost of implementing the EU-Turkey Agreement; €267 million emergency assistance funding has been earmarked for Greece for 2016, available to both the authorities and international organisations; €83 million to improve living conditions, with funding available to UNHCR, the International Federation of the Red Cross and six international NGOs; all on top of €509 million under multiannual national programmes. Of course, money alone will solve nothing without the administrative capability and structural capacity in Greece to spend it effectively.

8. Conclusions and recommendations

44. Greece is bearing a grotesquely disproportionate responsibility for responding to the refugee and migration crisis in the eastern Mediterranean and western Balkans, simply because of its place on the map. Yet in every other respect it is perhaps the least well-placed of all EU countries to bear this responsibility, on account of prolonged economic depression, budgetary austerity, and resulting administrative chaos and social unrest, which exacerbate long-standing failures of its asylum system. The European Union, supposedly based on solidarity, co-operation and respect for human rights and the rule of law, has failed to provide adequate support or to ensure that responsibility is shared more equitably amongst the other member States. And many European States – both EU members and not – have acted out of cynical self-interest, adding to Greece's burden or failing to take action to alleviate it.

45. The first victims of this disgraceful state of affairs are the refugees who find themselves blocked in a country that is unable to ensure even basic levels of protection, depriving thousands of people of their fundamental human dignity – people who have already lost everything to conflict and persecution. On the Aegean islands, refugees who have committed no crime are locked up in conditions worse than prison, in a soul-destroying state of administrative limbo, not knowing what is happening to them or what will be their future. Vulnerable persons, including children, are held alongside angry, frustrated young men, at risk of violence, exploitation and abuse. On the mainland, substandard reception centres are filled to overflowing with refugees waiting to be processed by an asylum system that struggles with even basic preliminary formalities. Thousands of others, including many children, do not benefit from even the minimal structures and stability of official sites, instead living in the appalling filth and confusion of informal camps. Children are imprisoned in police cells for want of appropriate shelter. Despite the impressive generosity and commitment shown by Greek volunteers and civil society organisations throughout the country, Greece has so far been unable to provide for the refugees' and migrants' most basic needs.

46. There is little sign of these problems being solved. More than two months after "the former Yugoslav Republic of Macedonia" closed its border, there are still 10,000 refugees and migrants at Eidomeni, agitated by false rumours that the border will reopen and increasingly susceptible to the lure of migrant smugglers. Two months after the EU-Turkey Agreement, the hotspots are still detaining thousands of people in sub-standard conditions, thousands more are in inadequate reception facilities or without proper shelter, there is still no fully operational asylum system on the islands, and there is uncertainty about the fate of the asylum seekers who are confined there. And more than five years after the Court's judgments in *M.S.S.* and *Rahimi*, the Greek asylum system on the mainland is still unable to ensure reliable status determination procedures, sufficient reception capacity, adequate detention conditions or basic protection for vulnerable persons including children.

47. In the attached preliminary draft resolution, I therefore propose a series of recommendations to the Greek authorities, to the EU and its member States, and to States participating in the EU's relocation scheme, intended to ensure respect for the fundamental rights of refugees and migrants, support for the Greek authorities and society in their efforts to respond to the current challenges, and reinforce solidarity between European countries in response to what must be accepted as being a European and not only a Greek problem.