

THE CAMPAIGN FOR THE ACCESS TO ASYLUM IN ATTICA AREA

1. The associations, entities, groups and NGOs¹ co-signing the present report carried out from 17 February 2012 until 7 April 2012 a campaign against the unacceptable situation of denial of access to the asylum system in Greece, focusing on the Attica area, where the vast majority of asylum seekers try to apply for international protection. The longstanding practice followed by the Asylum Department of the Attica Aliens Directorate, the competent authority to receive, register and examine asylum applications in Attica, is to allow submission of a small number of asylum applications and only in the early hours of every Saturday morning.
2. Members of the above-mentioned groups and organizations have been protesting and monitoring at the building of the Attica Aliens Directorate (Petrou Ralli Street) from Friday evening to Saturday morning on 17-2-2012 and 6-4-2012, and from 5:00 a.m. to 7 a.m. on 25-2-2012, 3-3-2012, 10-3-2012, 17-3-2012, 24-3-2012 and 31-3-2012.
3. These two months of systematic presence and monitoring have resulted in important findings² based on personal witnessing and testimonies, most of which have been recorded in audiovisual materials³ illustrating the deplorable situation regarding the access to the asylum procedure in the Attica area. NGOs, groups and reporters have had the opportunity to witness the whole process emanated by the Greek police while “selecting” asylum seekers, waiting under appalling conditions, in order to have their application registered. A representative of the UNHCR Office in Greece was also present in the morning of 10-3-2012⁴.
4. The current report consolidates the findings of the monitoring process from 16-2-2012 to 7-4-2012, presenting also information about the access to the asylum procedure all over Greece and denouncing the violations of international, EU and national law by the Greek authorities with respect to this issue.

¹ See the list of groups and organizations that participate and support the protest campaign for the access to the asylum procedure in Greece at <http://asylum-campaign.blogspot.com/>

² “Joint press release about the protest on 17 and 18/02/2012 on access to the asylum procedure in Greece” (24/02/2012) and “Joint press release about the one month at Petrou Ralli” (15/03/2012), at <http://asylum-campaign.blogspot.com>

³ Available at the website created for the purposes of the campaign: <http://asylum-campaign.blogspot.com>

⁴ See UNHCR OFFICE IN GREECE, *Dozens queue every week in Athens to apply for asylum*, by Ketty Kehayoiyolu, Athens, 23 March 2012, at <http://www.unhcr.org/4f6c8b6a6.html>

A. Observations and findings of the monitoring process

5. Asylum seekers are prohibited from waiting outside the entrance of the Attica Aliens Directorate. They are confined to a side street in the proximity of the building. Depending on the weather conditions a group of ca. 80-200 migrants, mostly men but also some women and minors coming from Africa and Asia, are waiting in line along the street-side. On the night of Friday 17 February 2012 they were **exposed to severe weather conditions, huddled up the one next to the other, shivering from cold and visibly exhausted**. It is noteworthy that during that specific Friday night, the outside temperature was almost as low as 0 C. The migrants who were waiting there informed us that around 50 persons had left earlier, around 18:00, because they could no longer endure the chilling cold.
6. The majority of asylum seekers who wait in line to submit their application start gathering at the sidestreet in the proximity of the Attica Aliens Directorate already from Thursday morning (some of them even from Wednesday), hoping to secure one of the front places in the line and to increase their chance of having their application registered. The police use various practices to disperse the crowd and discourage them from forming waiting lines earlier than Friday evening. In particular, as reported to the participants of the campaign, between Thursday evening and Friday morning the police often chase and push the asylum seekers away, even with the use of force (globs). Members of the asylum campaign witnessed the police practice of dismantling the crowd on Thursday 15-3-2012. As a result, many applicants get discouraged and give up their effort to have their application registered. This was obvious in the morning of Saturday 17-3-2012, when we observed that those still waiting in the line were almost half of those waiting on Thursday night. We were also reported that in the evening of Thursday, 1 March 2012 and Thursday, 5 April, the police resorted to the use of chemicals in order to disperse the asylum seekers who had already gathered.
7. Those waiting in the line - some of them for three days - have no access to toilet, water or food. Asylum seekers cannot move and leave their position because they will lose their place in the queue. The side street where the crowd of asylum seekers is lining is very poorly lit, dirty, with no sanitary facilities, while litter piles between asylum applicants are getting bigger from week to week⁵.
8. Asylum applicants presenting themselves at Attica Aliens Directorate do not necessarily reside in the Attica region, but they may also come from other Greek cities, since, as reported, local police authorities refuse to register

⁵ See photos and video materials at <http://asylum-campaign.blogspot.com/>

asylum applications as they ought to. During our presence in Petrou Ralli we interviewed Syrian and Afghan asylum seekers from Thessaloniki, Patra, Igoumenitsa and Chania, who reported to us that they had come to Attica Aliens Directorate several times in order to apply for asylum.

9. Around 6:00 am on 17-2-2012/25-2-2012/3-3-2012 and 10-3-2012 the police officers “chose” the first 20 applicants waiting in line. On 17-3-2012 they selected the first 17 applicants, on 24-3-2012 and 7-4-2012 they didn’t allow the entrance to the building of Police Directorate to any applicant at all (*see* par. 16 & 17), while on 31-3-2012 the police made the selection of ca. 30-40 applicants earlier than usual, at 4:00 am. It has to be noted that until recently - as it has been reported to us but also during previous monitoring activities⁶ - the police used to choose randomly 20 claims from the queue based on unclear criteria.
10. On the days that the monitoring took place (except for the days of 24-3-2012 and 7-4-2012, *see* par. 16 & 17), once the “selection” was over, the police officers shouted in Greek at the exhausted and disappointed asylum seekers remaining outside the process the phrase: “Go away now, next week”, while clapping their hands rhythmically and pushing back those who were left behind. No explanation or response was provided by the authorities to the remaining asylum seekers, who have no guarantee for their future, facing the possibility to get arrested. No interpreter was present in this process and no information was provided orally or in writing regarding the process of access to asylum.
11. The majority of the asylum seekers waiting informed us that they had already attempted unsuccessfully to submit their application under the same deplorable conditions from 5 to 10 times. Many asylum seekers told us that they had been coming every week for a whole year or even more.
12. On 3-3-2012 a group of women asylum seekers reported to us that they had been waiting since Thursday and had been among the 20 first in the line, but they had lost their place after the police operation to disperse the crowd at that night took place. Out of the approximately 40 women who came in the course of these months of monitoring to submit an application, only a very small number succeeded. It is of particular concern the more vulnerable situation of women asylum seekers, who wait in the line under these deplorable conditions, taking into account sanitary considerations, cultural and gender issues, the fact that they have to wait among a crowd of unknown men and the fear and risk of being harassed.

⁶ AMNESTY INTERNATIONAL LIVEWIRE, *No Access – No Hope*, Article from Amnesty International's autopsy on 28/01/2012, at <http://livewire.amnesty.org/2012/02/09/no-access-no-hope/>

13. During our monitoring, we noticed approximately 10 unaccompanied minors (UAM). Some of them were waiting 2 days and nights in a row, among adults, exposed to bad weather conditions. On 18 February three unaccompanied minors of Afghan origin waiting in the queue were identified by the participants in the campaign. The minors were indicated by the participants in the campaign to the officer in charge as UAM entitled to immediate measures of protection and care. As the officer took the children with him, we assumed that he intended to follow the process set by law and to take the necessary measures to ensure their access to the asylum procedure and their protection. However, the participants of the campaign followed-up the case and were informed by the minors⁷ that they were dismissed by the police officer, without having their applications registered, without any further guidance and/or measure taken to ensure their protection (i.e. inform the Prosecutor for minors, refer to appropriate accommodation facility for minors etc).
14. It has to be noted that on 10-3-2012, when the representative of UNHCR Office in Greece was present, three unaccompanied minors, were picked up by the authorities and were registered as asylum applicants.
15. On Saturday morning 31-3-2012 police authorities completed the “selection” procedure of asylum applicants two hours earlier than usual (at around 4 a.m.) confirming once more that there is no rule “regulating” this process (*see par. 16 & 17*).
16. On Saturday morning 24 March 2012 police authorities refused to register any asylum applications whatsoever; around 6:00 am, when the police authorities started the process of singling out the first 20 from the line, asylum seekers who were waiting behind – some of them for more than two days and nights – started complaining and gathering in the front. As a result of this reaction, the line was dispersed and tension prevailed. Police officers left the applicants and returned inside the building of the Aliens Directorate, while asylum seekers gathered outside the gate of the building. After some time, two persons – apparently working as interpreters at the Asylum Department – appeared, stood inside the yard and started addressing the crowd in Arabic and Urdu. They told the asylum seekers that no asylum application would be registered that day following the incident which had taken place. No police officer from the Asylum Department was present at that time. During the incident one Bangladeshi national lost senses due to overcrowding, while an Afghan asylum seeker was allegedly stubbed by another asylum applicant. Injured asylum applicants were transferred to the hospital following the initiative of the present members of the campaign. Police authorities didn’t take any

⁷ Their data available on file by the Ecumenical Refugee Program.

preventive or protective measures to deter these incidents from taking place⁸. The asylum applicants, deprived of any logical and legal way to access the asylum procedure, remain in despair, facing further discrimination based on physical characteristics, gender, age and ethnic origin.

17. On Friday 6-4-2012, members of the participating groups were monitoring the process from 23:00 till 7:30 in the morning of Saturday 7-4-2012. At the time we reached the place, a queue of about 200 persons had already been formed. Even at that time, there was high tension between a group of applicants of African origin and a group of applicants of mostly Asian origin. In particular, a group of African men were standing next to the first places of the line, filled mainly by African asylum seekers, and were arguing with other asylum seekers (Syrians, Afghans, Iranians, Bangladeshi, Pakistanis, Sudanese and Somalis). The reason of the tension, as witnessed by and reported to us, was complains by asylum seekers that the first places of the queue had been filled by illegitimate means and, in particular, by the use of force by a group of African men who reserved them for applicants having allegedly made a deal with them. It has to be mentioned that these complaints have been reported by asylum seekers to members of the participating groups during the whole period of our monitoring activity. However, it was the first time that we observed a group of men of African origin who were not waiting in the line to apply for asylum arguing with other applicants, threatening and shouting at them to go back to the end of the queue. It is also worth mentioning that many asylum seekers reported to us that they had been waiting since Thursday and that, apart from being dispersed by the police on several occasions, they were also pushed back by force by a group of African men once the queue was finally formed. At around 6:00 am on Saturday 7-4-2012, and as tension was high between a group of African men standing next to the line and a group of applicants of various origins, police cars appeared in order to start the selection procedure. However, while police officers were counting the first applicants of the queue, the tension, as described above, heightened and turned into clashes with a group of African men attacking applicants mainly of Asian origin, who were complaining about the process. Police officers stopped immediately the process of selection and entered the police cars, while the attacks became extremely violent with African men using wooden and plastic sticks against other asylum applicants, focusing mainly on Bangladeshi applicants. Police officers left the scene and the situation became very brutal and out of control. For at least 15 minutes members of our group, blocked on this “battlefield”, without being able to do anything to protect anybody and at risk of being hurt as well, witnessed extremely violent attacks. After a while, when most of the people had left the place, we managed to approach the gate of the Attica Aliens Directorate, where most of the remaining applicants had

⁸ See relevant photos at <http://asylum-campaign.blogspot.com/2012/03/24032012.html> and videos at http://asylum-campaign.blogspot.com/2012/03/24032012_24.html

gathered. In the meanwhile, we observed that attacks were still taking place in the nearby streets, where the chase apparently was still going on. Outside the building of the Attica Aliens Directorate, many applicants were denouncing that they had been severely beaten, while three of them were obviously seriously injured. Two of them, of Afghan origin, were lying on the ground with their heads smashed and bleeding, while the third, of Bangladeshi origin, collapsed after reaching the front gate. It has to be noted that apart from the guards who were standing inside the gate of the Aliens Directorate no other police officer appeared until the time of our departure (7:30 am). The ambulance came and transferred the injured to the hospital, while until we left nobody from the Aliens Directorate intervened or provided any information to the applicants gathered outside the gate. Thus, many question marks are raised about the role of the police which didn't take any preventive measures to secure the integrity of the asylum seekers and allowed the climax of the violence, which caused many injured, while witnessing the incident and leaving without doing anything.

- 18.** Considering the above, there is no doubt that the irrational practice of the authorities of restricting the access to the asylum procedure only to a small number of applicants and only once a week, in a process that takes place before dawn, leaves room for the appearance of arbitrariness and exploitation. This practice undoubtedly leads to situations of high tension and violence that have already cost the physical integrity of many applicants who have been severely injured during this process and it is a matter of time to result again in the loss of human lives.
- 19.** Based on our presence and monitoring at Aliens Directorate for two months and our interviews with the asylum seekers who were waiting to apply, we concluded the following :
- 20.** Access to the asylum procedure is almost impossible in Attica. By no means can qualify as “access to the asylum procedure” the practice of exposing a human being to the ordeal of waiting at the side of a street for 2 to 3 days and nights in a row, under deplorable conditions, so that he/she may have a small chance of having his/her claim registered.
- 21.** The way the police authorities treat asylum seekers and, in particular, the practice of preventing them even from the physical approach and access to the entrance of the building of the Aliens Directorate, the conditions under which they have to wait for days, exposed to any weather conditions and without access to toilet, water and food, the arbitrary manner in which asylum claims are then singled out and registered, the lack of any guidance and information by the authorities, in combination with the way the asylum seekers excluded from the selection are being chased by the police in order to go away,

constitute a **violation of their human dignity and highlights once again the treatment that the competent authorities have in store for "foreigners"**.

22. The competent authorities take no measures to ease the physical and mental exhaustion of the asylum seekers, who are subjected to inhuman and degrading torment in order to apply. Instead they **follow specific practices, such as dispersing the queue of asylum seekers, intimidating them and chasing them way, in order to discourage them from returning and trying to submit their asylum application.**
23. This irrational practice established by the authorities, i.e. restricting the access to the asylum procedure only to a small number of applicants and only once a week, in a process that takes place before dawn, **leaves room for the appearance of arbitrariness, violence and exploitation, towards which the police remain indifferent contrary to their role and in breach of their obligations.** This practice undoubtedly leads to situations of high tension and violence that have already cost the physical integrity of many applicants who have been severely injured during this process and it is a matter of time to result again in the loss of human lives, as the police abstain from taking any preventive measures to secure the asylum seekers' integrity.
24. Under the above-mentioned conditions, vulnerable groups (women, minors etc.) are exposed to extra risks and are finally subjected to additional hardship, taking into consideration their particular situation and needs. In particular, with respect to the UAM it should be stressed that the authorities refrain from their obligations, which are clearly set by law, and take no measures whatsoever to identify the minors among the asylum seekers waiting in the queue and to ensure their protection and their access to the asylum procedure, "leaving them alone to survive"⁹.
25. Barring access to the asylum procedure results in putting at risk the life and freedom of those seeking international protection, deprives them of their rights and devalues their dignity. They may be arrested, detained, deported or 'refouled' at any moment and they are excluded from exercising their rights. In the end, they remain hidden, hunted and held hostage to this wider "discouragement" policy.
26. The procedure under which asylum applications are being registered and examined at first instance still remains within the mandate of the police authorities, contrary to the new legal framework establishing a new Asylum Service. According to the new law, asylum ceases to fall within the sphere of

⁹ HUMAN RIGHTS WATCH, *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008, at <http://www.hrw.org/reports/2008/12/22/left-survive>.

competence of the police. However, the new Asylum Service is still on the paper although it should have been functioning since January 2012. The competence of the police over asylum actually constitutes one of the systemic factors of the failure to establish a fair and efficient asylum procedure in Greece.

B. Access to Asylum in Greece/Access to Asylum in the Attica area

I. Background Information

27. The problematic situation as concerns the access to the asylum procedure does not constitute a new practice in Greece; neither is it a result of a temporary administrative malfunction or of the current economic crisis. It is **a systematic longstanding practice taking place for more than 10 years**, which deprives persons entitled to international protection of their rights and puts their life and freedom in jeopardy breaching international, EU and national law.
28. The longstanding deficiencies of asylum system in Greece have been widely criticized and reported by **national¹⁰ and international¹¹ bodies and**

¹⁰ See, e.g., GREEK OMBUDSMAN, *Special Report: Protection of Persons Applying for Political Asylum in Greece: Problems in Interpretation and Practice*, Athens, February 2007, in Greek at <http://www.synigoros.gr/?i=foreigner.el.prosbasi-asylo.50319>; GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS, *Observations regarding Asylum Procedure and Implementation of the Relevant Legislation*, Athens, 17 January 2008, at http://www.nchr.gr/category.php?category_id=233&page=2; GREEK OMBUDSMAN, *Procedure suspension regarding the intake of asylum requests by the Asylum Department of the Foreign Citizens Directorate of Attica*, Athens, 27 October 2008, an intervention by the Greek Ombudsman on the occasion of the suspension of operation of the Attica's Central Asylum Department from September to late October 2008, at <http://www.synigoros.gr/?i=foreigner.el.prosbasi-asylo.50263>. In a recent report, the Ombudsman repeated its serious concerns on the asylum system in Greece: "With regard to the asylum procedure, the Ombudsman finds that the difficulties and problems persist in acutely. These problems are especially targeted at practices relating to the limited and selective registration of asylum applications, the excessive delay in taking the interview, the improper operation of the Asylum Committee, the delay in updates or replacements of specific forms and finally the inadequate staffing of the department. See GREEK OMBUDSMAN, *Findings after the 16.11.2010 visit in situ of the Ombudsman to the Attica Aliens Police Directorate in Petrou Ralli*, Athens, 25 January 2011, p.2, in Greek at http://www.synigoros.gr/resources/8957_2_eggrafostp.pdf.

¹¹ See, e.g., EUROPEAN PARLIAMENT, *Report from the LIBE Committee Delegation on the Visit to Greece (Samos and Athens)*, Brussels, 2 July 2007, PV\675423EN.doc; COUNCIL OF EUROPE, *Report by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to Greece 8-10 December 2008*, Strasbourg, 4 February 2009, CommDH(2009)6, at <https://wcd.coe.int/>; EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, *ECRI Report on Greece (fourth monitoring cycle)*, 15 September 2009, CRI(2009)31, at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-ENG.pdf>; UNHCR, *Observations on Greece as a country of asylum*, December 2009, p.6-7, at <http://www.unhcr.gr/fileadmin/Greece/General/Greece/Observations2009EN.pdf>; UNHCR, *Asylum Situation in Greece including for Dublin II transferees*, 31 January 2011, at <http://www.unhcr.org/refworld/pdfid/4d76103e2.pdf>; UNHCR, *The situation of refugees in Greece, Observations and proposals*, 16 June 2011, at <http://www.unhcr.gr/fileadmin>.

organizations and NGOs¹². These deficiencies could be summoned as follows:

- access to the asylum procedure, which results in serious risks of arbitrary arrest, detention and deportation or forcible return of asylum seekers
- no screening mechanism/identification of vulnerable groups (i.e. unaccompanied minors, victims of torture, victims of trafficking etc.)
- serious malfunctions, deficiencies and lack of procedural safeguards with respect to the examination of asylum applications at first instance (e.g. inadequate interpretation, lack of information, lack of legal aid, lack of specialized personnel, excessive and arbitrary examination of applications under the so-called “accelerated procedure” etc.)
- lack of reception conditions and access to the enjoyment of social rights, affecting seriously the most vulnerable groups
- long-lasting examination period
- low recognition rate

29. As mentioned above, the problematic access to the asylum procedure constitutes all over the years a key element of the asylum system deficiencies and results in serious risks to the life, freedom and dignity of refugees.¹³ “[...]”

¹² See, e.g., PRO ASYL & THE GROUP OF LAWYERS FOR THE RIGHTS OF MIGRANTS AND REFUGEES, *The truth may be bitter but it must be told: The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard*, October 2007, at http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Kampagnen/Stoppt_das_Sterben/Griechenland_bericht_Engl_01.pdf; NORWEGIAN ORGANIZATION FOR ASYLUM SEEKERS (NOAS), THE NORWEGIAN HELSINKI COMMITTEE (NHC) & GREEK HELSINKI MONITOR (CHM), *A Gamble with the Right to Asylum in Europe: Greek Asylum Policy and the Dublin II Regulation*, Oslo & Athens, 9 April 2008, at <http://noas.org/file.php?id=53>; PRO ASYL, *The situation in Greece is out of control: Research into the situation of asylum seekers in Greece*, October 2008, at http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Asyl_in_Europa/Griechenland/Out_of_control_Eng_END.pdf; HUMAN RIGHTS WATCH, *Stuck in a Revolving Door: Iraqis and other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, 26 November 2008, at <http://www.hrw.org/reports/2008/11/26/stuck-revolving-door-0>; HUMAN RIGHTS WATCH, supra note 9; NCS, NOAS & AITIMA, *Out the Back Door: The Dublin II Regulation and illegal deportations from Greece*, Oslo & Athens, October 2009, at http://www.aitima.gr/aitima_files/Out%20the%20Back%20Door.pdf; DUTCH COUNCIL FOR REFUGEES, FINNISH REFUGEE ADVICE CENTRE, PRO ASYL & REFUGEE AND MIGRANT JUSTICE, *Complaint against Greece to the Commission of the European Communities concerning failure to comply with Community Law*, Amsterdam, 10 November 2009, at http://www.proasyl.de/fileadmin/fm-dam/q_PUBLIKATIONEN/Beschwerde_gegen_Griechenland_10.11.2009.pdf; AMNESTY INTERNATIONAL, *The Dublin II Trap: Transfers of Asylum Seekers to Greece*, 22 March 2010, at <http://www.amnesty.org/en/library/info/EUR25/001/2010>; AMNESTY INTERNATIONAL, *Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions*, 27 July 2010, at <http://www.amnesty.org/en/library/asset/EUR25/002/2010/en/07291fb2-dcb8-4393-9f13-2d2487368310/eur250022010en.pdf>.

¹³ See, e.g., GREEK OMBUDSMAN, *Annual Report 2007, Summary*, p. 20-21, at <http://www.synigoros.gr/resources/docs/en2007.pdf>, where the Ombudsman noticed that “[...] deportation decisions are issued before the asylum claim has been filed; temporary detainment after the claim has been filed and until this is examined at first instance; the three-month period of detention is exhausted even in cases of unattainable deportation, mainly in border areas.” In 2006, the

*persons, who need international protection due to the peculiarities of the situation in Greece, are denied even the access to asylum procedures. The distressing "queues" at the competent police authority of the Attica Aliens Directorate in Petrou Ralli, the lack of information, interpretation, or legal aid, are sides of the same problem and part of a larger set of structural failures."*¹⁴

- 30.** The ongoing shortcomings of Greek asylum system regarding access to the asylum process have been especially reported and criticized by international bodies, organizations and jurisprudence of international courts for more than a decade. Serious concerns have been raised by competent bodies urging *"the Greek authorities to address this long-standing issue and ensure that access to the asylum procedure is guaranteed"*¹⁵.
- 31.** On 15 April 2008 the UNHCR *concerned that asylum-seekers continue to remain effectively in limbo, unable to exercise their rights, for prolonged periods of time*, advised EU Member States to refrain from returning asylum seekers to Greece under the 'Dublin Regulation'¹⁶.
- 32.** It has to be highlighted that Greek authorities, instead of complying with their legal obligations concerning access to the asylum procedure, had decided at that time to proceed with absolute suspension of the reception of asylum applications at Petrou Ralli from September 2008 to October 2008, which led to the injury of several asylum seekers and the death of one Pakistani national under unclear conditions¹⁷ right after the "reopening" of the process¹⁸.

Ombudsman portrayed access to asylum as the most crucial aspect of asylum system deficiencies. See GREEK OMBUDSMAN, *Annual Report 2006*, p. 83-84, in Greek at http://www.synigoros.gr/resources/docs/2_annual_06_plires.pdf.

¹⁴ GREEK OMBUDSMAN, *Findings after the 16.11.2010 visit in situ of the Ombudsman to the Attica Aliens Police Directorate in Petrou Ralli*, supra note 10.

¹⁵ UNHCR, supra note 4: "[...] *The ritual on Petrou Ralli Street has been taking place every week for several years, but UNHCR and other humanitarian groups have been raising their concerns about the treatment of the asylum-seekers, believing they should all have unhindered access to the asylum procedure. [...] When UNHCR visited Petrou Ralli Street one recent Saturday morning, people from several sub-Saharan countries, including Burundi, Cameroon, Ethiopia, Ghana, Rwanda and Senegal as well as nationals of Iraq and Syria, were waiting in line, hoping that this would be their week.*"

¹⁶ UNHCR, *UNHCR Position on the Return of Asylum-Seekers to Greece under the 'Dublin Regulation'*, 15 April 2008, p. 8, at <http://www.unhcr.org/refworld/docid/4805bde42.html>.

¹⁷ See COUNCIL OF EUROPE, supra note 11, p. 10, where it is noted "[...] *the Commissioner was disturbed by the serious public disorder that was created on 26 October 2008, widely reported subsequently in the press, in front of the premises of the above Asylum Department where approximately 3.000 aliens were reportedly queuing in order to submit an asylum application. The public disorder led to police intervention, the death of one and the injury of a number of other asylum seekers. During his visit the Commissioner was informed by the Group of Lawyers for Migrants and Refugees that at weekends asylum seekers continue to queue up en masse in front of the above Asylum Department waiting for a 'ticket' for an appointment in order to lodge an asylum application. It was*

33. This situation has become so grave¹⁹ that the European Court of Human Rights in its recent judgment in the case of *M.S.S. v. Belgium and Greece*²⁰ has brought a new wave of deportation halts to Greece under the Dublin Regulation²¹, in practice a change in “*the way we apply the Dublin system*” at EU level²².
34. The Court of Justice of the European Union, in the case of *N.S. v. Secretary of State for the Home Department* concerning returns of third-country nationals from the U.K. and Ireland to Greece under the Dublin II Regulation, ruled on

also reported that on occasion policemen arbitrarily provide ‘tickets’ to certain persons who are in the queues.” See also PRO ASYL, The situation in Greece is out of control: Research into the situation of asylum seekers in Greece, supra note 12; HUMAN RIGHTS WATCH, Stuck in a Revolving Door, supra note 12; AMNESTY INTERNATIONAL, The Dublin II Trap, p. 17, supra note 12. The report of Amnesty International is based on fact-finding visits and interviews during the period of September 2008 till October 2009 and stresses that “these problems, including long waiting times and difficulties in gaining access to the Attica Police Headquarters building, [...] present a significant administrative barrier to accessing the asylum system, and in some cases have posed significant dangers to the physical integrity of asylum-seekers who have to queue for many hours outside Petrou Ralli”.

¹⁸ It should be noted that in January 2009 a Bangladeshi asylum-seeker was also found dead near the Attica Aliens Directorate, while according to witness statements both deaths had been preceded by episodes of turmoil in front of the gate to which the police responded by the use of force. See the question filed in the framework of parliamentary control by the MP Thalia Dragona to the Minister of Interior, *Another asylum-seeker dead near the Attica Aliens Directorate*, 9 January 2009, in Greek at <http://www.pasok.gr/portal/resource/contentObject/id/5638c0c8-ae4e-4ce9-89c8-9c485e297f78>; GROUP OF LAWYERS FOR THE RIGHTS OF MIGRANTS AND REFUGEES, *Ad hoc visit to the Aliens Directorate*, 23 January 2009, at <http://omadadikigorwnenglish.blogspot.com/2009/07/ad-hoc-visit-to-aliens-directorate.html>; AMNESTY INTERNATIONAL, *The Dublin II Trap*, p. 17, supra note 12. In March 2009, a third asylum-seeker, of Pakistani origin, who had been in coma for three months after having tried to lodge his asylum application at Petrou Ralli, also died. See the question filed by the MP Photis Kouvelis to the Minister of Interior, *Deaths of asylum seekers in similar circumstances in the Votanicos Stream near the Attica Aliens Directorate*, 26 March 2009, in Greek at <http://www.diavotrio.net/diavat/news.php?extend.4024>; ELEFTHERTYPIA, *Returning to Petrou Ralli*, 27 September 2009, in Greek at <http://www.enet.gr/?i=news.el.article&id=85897>.

¹⁹ “[...] Access to the Directorate is not guaranteed in practice, even when the Dublin transferees present themselves with the police referral note. Like all other asylum-seekers, they depend on the arbitrary selection that is made by security guards at the entrance to the Directorate’s premises”. UNHCR’s oral intervention by Volker Türk at the European Court of Human Rights, Hearing of the case *M.S.S. v. Belgium and Greece*, Strasbourg, 1 September 2010, at www.unhcr.org/4c7fc44c9.html.

²⁰ ECtHR, Case of *M.S.S. v. Belgium & Greece* (application no.30696/09), Grand Chamber, 21 January 2011.

²¹ EUROPEAN COUNCIL ON REFUGEES AND EXILES, Weekly Bulletin, 18 March 2011, p.4, at <http://www.ecre.org/media/news/weekly-bulletin.html>. See also the recent letter that the Commissioner for Human Rights of the Council of Europe addressed to the Swiss authorities urging them to stop sending asylum seekers back to Greece, CommHR/SB/sf 022-2012, Strasbourg, 12 March 2012, at <https://wcd.coe.int/ViewDoc.jsp?id=1926283>

²² ECRE Interview with Deputy Permanent Secretary at the Danish Ministry of Justice: “*The MSS ruling has changed the way we apply the Dublin system*”, Brussels, 16 March 2012, at <http://www.google.gr/url>.

21 December 2011 that “to ensure compliance by the European Union and its Member States with their obligations concerning the protection of the fundamental rights of asylum seekers, the Member States, including the national courts, may not transfer an asylum seeker to the ‘Member State responsible’ within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter”²³. In particular, in the case of Greece, the Court noted that “the extent of the infringement of fundamental rights described in [the judgment of the ECtHR in the case of *M.S.S. v. Belgium & Greece*] shows that there existed in Greece, at the time of the transfer of the applicant *M.S.S.*, a systemic deficiency in the asylum procedure and in the reception conditions of asylum seekers”²⁴. It has to be stressed, that a year on since the *M.S.S.* Judgment, Greece continues to violate asylum-seekers’ human rights²⁵.

35. It should also be noted that the vast majority of the asylum applications in Greece are registered and processed in Athens and, in particular, at the Attica Aliens Directorate at Petrou Ralli. “In practice, it appears difficult to lodge an asylum claim outside Athens, owing to various factors. The difficulty of filing claims outside the capital is reflected in the fact that 90% of asylum applications are lodged in Athens, at the Attica Aliens’ Immigration Directorate of the Police (“Petrou Ralli”) [...] Even at the Asylum Department at “Petrou Ralli” in Athens, registration of claims is difficult, as the system lacks capacity to meet the demand. Applications are received on only one day per week. At present, around 20 claims are registered in one day, although up to 2,000 persons may be queuing to apply for asylum. Persons seeking to apply for asylum may be obliged to return repeatedly over several months before having the opportunity to register. No standard prioritization system applies. Registration staff are police personnel who lack training for

²³ Court of Justice of the European Union, Grand Chamber Judgment in Joined Cases C-411/10 and C-493/10, 21 December 2011, par. 94, at <http://curia.europa.eu/>

²⁴ *Ibid*, par. 89.

²⁵ AMNESTY INTERNATIONAL, Public Statement, *A year on since the M.S.S. Judgment Greece continues to violate asylum-seekers’ human rights*, EUR 25/002/2012, 26 January 2012, at <http://www.amnesty.org/>; INTERNATIONAL COMMISSION OF JURISTS (ICJ) AND EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE), *Joint Submission to the Committee of Ministers of the Council of Europe in the case of M.S.S. v. Belgium and Greece*, May 2012, at <http://www.ecre.org/component/content/article/64-elena-publications/280-joint-submission-of-the-international-commission-of-jurists-and-of-the-european-council-on-refugees-and-refugees-and-exiles-to-the-committee-of-ministers-of-the-council-of-europe-in-the-case-of-mss-v-belgium-a-greece-application-no-3069609.html>.

this specialized function, and are insufficient in number”²⁶.

- 36.** This practice of hindering the access to the asylum procedure was officially confirmed recently by the reply of the competent authority at the Asylum Department of the Attica Aliens Directorate to the NGO “Aitima”, acting on behalf of 25 asylum seekers, who were denied access to the asylum procedure. In particular, the Director of the Asylum Department stated that “[...] *you can refer the interested aliens to our Service on a daily basis from Monday to Friday and from 7:30 a.m. to 12:00 a.m. on the condition they fall under the category of vulnerable groups. If they don't fall under the above groups, the interested aliens may appear before our Service every Saturday and around 6:00 a.m. in order to submit asylum application following a priority order.*”²⁷ It is worth mentioning that one of the 25 asylum seekers who were denied access to the asylum process was later on arrested by the Greek police.²⁸
- 37.** The problematic access to the asylum procedure was also confirmed by a visit in situ of Amnesty International at Petrou Ralli on 28 January 2012²⁹. The practice of choosing only 20 applicants, regardless of the number of people waiting under unacceptable conditions to lodge their asylum application, was reported once again. The vast majority of asylum seekers are left exposed to the risk of being arrested, detained, deported and refouled.
- 38.** The problems regarding access to the asylum system do not characterize only the procedure in the Attica area. Entry and access to the asylum procedure at the Greek border areas has also been highly problematic all over the years³⁰.

²⁶ UNHCR, *Observations on Greece as a country of asylum*, supra note 11, p.6-7. See also COUNCIL OF EUROPE, supra note 11, p. 10, where it is stated that “[...] *The Commissioner has been informed that the Central Police Asylum Department at Petrou Ralli Street, Athens in 2008 had only 11 qualified Asylum Officers, even though the above Department receives in fact 94% of all asylum applications lodged in Greece. It has also been reported that even the small number of asylum applications received in Thessaloniki are forwarded to Athens for examination.*”

²⁷ ATTICA ALIENS DIRECTORATE, DEPARTMENT OF POLITICAL ASYLUM, Document No. 7010/1/351-β'/22-1-2012, official reply to NGO “Aitima”. On 12 January 2012, the NGO “Aitima” accompanied to the Asylum Department of the Attica Aliens Directorate 25 asylum seekers who wanted to submit their applications after the organization had resorted a number of times to all responsible authorities in order to ensure unhindered access to the asylum procedure (Attica Aliens Directorate, Headquarters of Greek Police, Minister of Citizen's Protection). The Asylum Department refused to register the applications supported by the NGO Aitima and provided the above-mentioned reply. This practice of the Department of Political Asylum was officially reaffirmed in a case of an asylum seeker who was refused immediate access to the asylum procedure on 27 May 2012 (Document No. 5401/1/63-β'/25-5-2012).

²⁸ Information on the case available on file by the NGO “Aitima”.

²⁹ Amnesty International, supra note 6.

³⁰ See, e.g., GREEK OMBUDSMAN, *Report of in situ visit in the detention centers for migrants in the Evros region on 29-31 May 2007*, 12 June 2007, in Greek at http://www.synigoros.gr/resources/_autopsia_evros_29_01.pdf; GREEK OMBUDSMAN, *Report of in situ*

Migrants entering Greece irregularly are arrested and detained in a standardized way without any consideration of their individual protection needs and assessment of their particular situation, accused of illegal entry and provided with deportation orders issued against them. Within this context, persons in need of international protection are denied any information, hearing and protection and any access to the asylum procedure, being at risk, quite often, of being refouled, deported or forcibly returned. *“Upon arrival, refugees are systematically detained, registered and their fingerprints are taken. However, due to the great number of new arrivals every day and the lack of staff, and in particular of interpreters, an adequate registration and documentation is often not possible. [...] Many refugees are not informed of the procedures for seeking protection or have claimed that it is not possible for them to make their protection claim heard due to the lack of interpreters. [...] While in principle all police authorities should accept asylum applications, [...] the respective police authorities often reject the responsibility for accepting and forwarding asylum applications and tell the applicants to go to the main directorates responsible for the processing of asylum claims. Thus, detained asylum-seekers often have to wait for their release until they can make a claim. The responsible directorates were said to lack the capacities to deal with the many asylum applications in the country [...] [T]he main authority in Attica, Petrou Ralli, was so severely understaffed that it had at times accepted asylum claims on only one day of the week and then was not*

visit in the detention center for migrants in the island of Samos on 22-24 May 2007, 13 June 2007, in Greek at http://www.synigoros.gr/resources/_autopsia_samo_29_01.pdf; GREEK OMBUDSMAN, *Report of in situ visit in the island of Lesbos on 18-19 June 2007*, 18 July 2007, in Greek at http://www.synigoros.gr/resources/_autopsia_lesvos_29_01.pdf, where it is highlighted at p.3 that “there is a serious deficiency in providing information (to possible asylum applicants), which doesn’t ensure access to asylum for foreigners interested in being identified as political refugees”; GREEK OMBUDSMAN, *Report of in situ visit in the detention centers for migrants in the Evros and Rodopi regions on 25-30 June 2007*, 29 October 2007, in Greek at http://www.synigoros.gr/resources/_autopsia_thraki_29_01.pdf; PRO ASYL & THE GROUP OF LAWYERS FOR THE RIGHTS OF MIGRANTS AND REFUGEES, supra note 12; NATIONAL COMMISSION FOR HUMAN RIGHTS, *Decision on the Situation of Aliens Trying to Enter Greece via the Aegean and the Practices of the Greek Coast Guard*, 10 April 2008, at http://www.nchr.gr/category.php?category_id=233&page=2; EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), *Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner*, Austria, 2011, at http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf; NATIONAL COMMISSION FOR HUMAN RIGHTS AND GREEK OMBUDSMAN, *Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centers for migrants in the Evros region*, Athens, 30 June 2011, at http://www.nchr.gr/media/keimena_agglika/Evros_2011.pdf. It is noted in this recent report, p. 6, it is noted: “Regarding the access to the asylum procedure, there is still a serious problem in terms of proper information of the arrested aliens on their rights and the possibility of seeking asylum, due to the lack of adequate numbers of interpreters. It is worth noting that despite the entry into force of P.D. 114/2010, which has introduced significant improvements in the asylum process, there are still few requests for international protection registered at entry points. According to figures issued by the competent Police Headquarters of Orestiada since the implementation of this Decree (note: from 22.11.2010 to 30.03.2011), only 46 requests have been registered.”

able to register more than around 20 applications.”³¹

- 39.** Special reference should be made to the unaccompanied minors, who constitute one of the most vulnerable groups within the asylum system in Greece.³² Due to the lack of any screening mechanisms, there is no efficient identification of minors, who are, in practice, subjected to the same treatment as adults. “[...] *unaccompanied children who want to apply for asylum in Greece face serious obstacles in gaining access to asylum procedure [...] As a result, children are often not given an opportunity to fully explain their reasons for coming to Greece, which significantly reduces their chance of being granted refugee status. Indeed, the reality of the system is that their chances are close to zero. [...] Unaccompanied children are among the approximately 1,000 persons who queue on Sunday mornings to submit their asylum applications at the Petrou Ralli police station in Athens, the facility where 94 percent of Greece’s asylum applications are processed.*”³³
- 40.** UAM who are apprehended without legal documents at border areas and/or within the country and are registered as minors are held in detention facilities under inadequate or even degrading conditions until a place at a reception centre for UAM is found. Due to the lack of sufficient specialized reception centres for minors, children may be detained for a period of up to three months in detention facilities, while the minors have no access to information, guidance and legal representation and, therefore, in most cases, no access to the asylum procedure³⁴.
- 41.** Following the international outcry regarding access to the asylum procedure in Greece, the then newly elected government announced at the beginning of

³¹ UN HUMAN RIGHTS COUNCIL, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, 21 April 2011, A/HRC/16/52/Add.4, summary, par.58-59, at <http://www.unhcr.org/refworld/docid/4e6082e72.html>. [Emphasis added]. See also NATIONAL COMMISSION FOR HUMAN RIGHTS & GREEK OMBUDSMAN, *Findings of the in situ visit undertaken by the National Commission of Human Rights and the Greek Ombudsman in detention centers for migrants in the Evros region*, *ibid.*

³² UNHCR, *Observations on Greece as a country of asylum*, supra note 11, p. 14: “[...] *there are serious legislative and administrative shortcomings as regard for unaccompanied and separated asylum-seeking children, and consideration of the child’s best interest is not assured. Access to asylum procedures for unaccompanied and separated children is seriously hampered by the fact that the temporary guardian does not establish direct contact with the child and often does not provide support and advice.*”

³³ HUMAN RIGHTS WATCH, supra note 9, p.42.

³⁴ See, e.g., NATIONAL COMMISSION FOR HUMAN RIGHTS, *Recommendations Regarding Unaccompanied Minors*, Athens, 15 February 2007, in Greek at http://www.nchr.gr/media/gnwmateuseis_eeda/Site_version2/paidia/unaccompanied_minors15022007.pdf; EUROPEAN PARLIAMENT, supra note 11; UNHCR, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, at <http://www.unhcr.org/refworld/docid/48abd557d.html>; HUMAN RIGHTS WATCH, supra note 9.

2010 a series of promising initiatives in order to overhaul the refugee protection system in Greece. The key element was the decision to disconnect asylum from the competence of the police. This led to the adoption of L. 3907/2011, which announced the establishment of a new Asylum Service consisting of civil personnel and set for its functioning at the beginning of 2012. Meanwhile, the so called “provisional” P.D. 114/2010 was adopted in order to restore the administrative appeals’ procedure, providing certain procedural safeguards (participation of UNHCR in the process, participation of two non-public servants in the three-member Appeals’ Boards). However, according to the P.D., the competence to receive and examine applications at first instance remained within the police. The new Law 3907/2011 aimed to address international protection issues in compliance with international and EU standards. Despite the initial expectations and promises, no progress has been made in practice until today towards implementation of these measures, since the operation of the new Asylum Service has been postponed.³⁵ In the meantime, Greek authorities have let the existing asylum system totally deteriorate, depriving it of vital material and human resources. In conclusion, “[...] a year after the adoption of new rules and procedures for asylum and other forms of international protection (i.e. L. 3907/2011), none of the services under the law has started working, despite increased needs and serious problems [...] the extension of existing situation exposes the country internationally.”³⁶

42. In conclusion, asylum seekers, who are denied in practice access to the asylum procedure and international protection, are exposed to a serious risk of being arrested, detained under inhuman conditions³⁷, deported and/or refouled³⁸.

³⁵ In February 2012, the Minister of Citizen’s Protection at the time announced the postponement of the operation of the new Asylum Service, which was planned to start on 26.01.2012, until June 2012. See STANDING COMMITTEE ON PUBLIC ADMINISTRATION, PUBLIC ORDER AND JUSTICE OF THE GREEK PARLIAMENT, 22 February 2012, at <http://www.hcg.gr/node/2252>

³⁶ GREEK OMBUDSMAN, *Asylum procedure: The problems are accentuated as long as the new services do not operate*, Athens, 8 February 2012, in Greek at <http://www.synigoros.gr/>

³⁷ International and national bodies have systematically expressed their concern on the deplorable material and sanitary conditions in police stations, prisons and other holding facilities, considering them not in conformity with international standards. See, e.g., COUNCIL OF EUROPE, supra note 11; EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT), *Report on Greece*, based on their visit to Greece from 19-27 January 2011, CPT/Inf (2012) 1, 10 January 2012, at <http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.pdf>; AMNESTY INTERNATIONAL, supra note 25; ICJ & ECRE, supra note 25; UN COMMITTEE AGAINST TORTURE, *Concluding Observations – Greece*, CAT/C/GRC/CO/5-6, 7 May – 1 June 2012, at <http://www2.ohchr.org/english/bodies/cat/cats48.htm>. In numerous cases, the detention conditions in Greek migrant detention centers have been found by the ECtHR in breach of Article 3 of the ECHR (inhuman and degrading treatment). See ECtHR, Case of S.D. v. Greece (application no. 53541/07), 11 June 2009; Case of Tabesh v. Greece (application no. 8256/07), 26 November 2009; Case of A.A. v. Greece (application no. 12186/08), 22 July 2010; Case of M.S.S. v. Belgium & Greece, supra note 20, Case of Rahimi v. Greece (application no. 8687/08), 5 April 2011; Case of R.U. v. Greece (application no. 2237/08), 7 June 2011.

This risk had become even more immediate under the current political climate in the country due to the national elections³⁹. The Greek government in March 2012 announced and started implementing a crackdown against “illegal migrants” consisting of: a) the creation of 30 migrant detention centers over the next two years, with the first one having already started to operate in the week before the May 6th national elections in the Attica area (Amygdaleza) and b) major “sweep” operations in the center of Athens “aiming at tackling illegal migration and criminality”⁴⁰. As UNHCR Greece Press Review of 3 April 2012 reiterates, in the first days of the major police “sweep” operation in the center of Athens, police have taken approximately 2,000 migrants into custody, of which 420 were arrested, while in total 1,161 persons have been detained for being undocumented⁴¹. c) A new legislative provision introducing health status as ground for detention of migrants and asylum seekers⁴². The Minister of Citizen Protection and the Minister of Health described “the problem posed by a burgeoning population of undocumented migrants in central Athens as a ticking time bomb for public health”⁴³. This policy officially launched by the Greek authorities raises serious concerns as regards human rights of migrants and asylum seekers and leaves room for highly discriminatory and arbitrary practices. *“These deeply alarming measures specifically target the most vulnerable people based on discriminatory criteria ...The Greek authorities must withdraw such measures immediately, which will only exacerbate the stigmatization of migrants and asylum-seekers in the*

³⁸ Greece implements “forced return procedures, including through means of direct deportation and application of its readmission agreement with Turkey [...]. [P]ersons who are subjected to forced return do not enjoy effective procedural guarantees to access legal remedies or access to the asylum procedure and [...] they do not have free legal aid or effective information provided through interpretation services.” UN COMMITTEE AGAINST TORTURE, *ibid*. See also COUNCIL OF EUROPE, *supra* note 11; CPT, *ibid*; AMNESTY INTERNATIONAL, *supra* note 25; ICJ & ECRE, *supra* note 25; ECtHR, Case of M.S.S. v. Belgium & Greece, par. 359, *supra* note 20 and Case of R.U. v. Greece, *ibid*.

³⁹ National elections in Greece took place on 6 May 2012. A new election date has been announced for 17 June 2012 as no government has been formed following the election results of 6 May.

⁴⁰ See, e.g., TO VIMA, M. Chrisohoides: Sweep operation so that Athens takes a breath, 20 March 2012, in Greek at <http://www.tovima.gr/politics/article/?aid=449471>; TA NEA, Chrisohoides announced sweep operation in the centre of Athens, 20 March 2012, in Greek at <http://www.tanea.gr/ellada/article/?aid=4704268>; TA NEA, Legislation is to get enacted about the migrant detention centers, 31 March 2012, in Greek at <http://www.tanea.gr/ellada/article/?aid=4707436>.

⁴¹ UNHCR GREECE Press Review: 31 March -3 April 2012.

⁴² See Art.59 of Law 4075/2012 (Official Gazette N.89, Volume A’, 11 April 2012).

⁴³ See KATHIMERINI, “Bomb for public health due to migration” report Loverdos-Chrisohoides, 1 April 2012, in Greek at http://portal.kathimerini.gr/4dcgi/_w_articles_kathbreak_1_01/04/2012_435808; TO ETHNOS, Press conference of Chrisohoides-Loverdos: Health checks on all migrants, in Greek at <http://www.ethnos.gr/article.asp?catid=22768&subid=2&pubid=63638394>.

country.”⁴⁴

43. Within this context, access to the asylum procedure is crucial for the persons in need of international protection. The “asylum campaign” which was launched by the associations, entities, groups and NGOs co-signing the present report aims at demonstrating and making public the unacceptable situation of denial of access to the asylum system in Greece, focusing on the Attica area, where the vast majority of asylum seekers try to apply for international protection. The findings of the report derive from our presence in situ from 17 February 2012 until 7 April 2012. The situation continues to be as problematic as reported, while recent violent incidents outside the Asylum Department of the Attica Aliens Directorate illustrate once again that asylum seekers do risk their freedom and physical integrity while trying to gain protection in Greece⁴⁵.

II. Legal Framework

44. The Greek state is responsible to fulfill its obligations towards persons in need of international protection under international, EU and national law.
45. Specifically, Greece has ratified the Geneva Convention of 28 July 1951 relating to the Status of Refugees⁴⁶ and the New York Protocol of 31 January 1967⁴⁷. Other protective provisions are set forth in a number of international conventions, to which Greece is a contracting Party, and, in particular, in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR)⁴⁸, the International Covenant on Civil and Political Rights of 1966 (ICCPR)⁴⁹, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (UNCAT)⁵⁰ and the Convention on the Rights of the Child of 1989⁵¹.

⁴⁴ AMNESTY INTERNATIONAL, *Greece plans sweep of migrants and asylum-seekers*, 2 April 2012, at <http://www.amnesty.org/en/news/greece-plans-sweep-migrants-and-asylum-seekers-2012-04-02>.

⁴⁵ See, e.g., TO ETHNOS, *Incidents with aliens-Three police officers injured*, 25 May 2012, in Greek at <http://www.ethnos.gr/article.asp?catid=22768&subid=2&pubid=63661986>.

⁴⁶ Legislative Decree N. 3989/1959 (Official Gazette N. 201, Volume A', 26.9.1959)

⁴⁷ Coercion Act 389/1968 (Official Gazette N. 125, Volume A', 4.6.1968).

⁴⁸ Greece ratified the European Convention on Human Rights in 1974. See Legislative Decree 53/1974 (Official Gazette N. 256, Volume A', 20.9.1974).

⁴⁹ Greece ratified the International Convention on Civil and Political Rights in 1997. See Law 2462/1997 (Official Gazette N. 25, Volume A', 26.2.1997).

⁵⁰ Greece ratified the UNCAT in 1988. See Law 1782/1988 (Official Gazette N. 116, Volume A', 3.3.1988)

46. It has to be noted that by virtue of Article 28 par. 1 of the Greek Constitution all the above-mentioned international instruments, as well as the generally recognised rules of international law, supersede any contrary domestic legislation⁵².
47. Greece is a Member State of the European Union and is bound by the EU Treaties as well as the legislation enacted by the EU institutions. The Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights), which has the same legal value as the Treaties⁵³, guarantees the right to asylum⁵⁴. EU is vested with competencies in the area of asylum⁵⁵ and a common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.
48. It is worth mentioning the most important EU legislative acts that have been adopted towards the establishment of a Common European Asylum System and, in particular,:
- Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for comparison of fingerprints for the effective application of the Dublin Convention (L 316/15.12.2000),
 - Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (L 50/25.2.2003) (*Dublin II*),
 - Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in

⁵¹ Greece ratified the Convention on the rights of the child in 1992. See Law 2101/1992 (Official Gazette N. 192, Volume A', 2.12.1992).

⁵² Article 28 par. 1 of the Greek Constitution: "*The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. [...]*".

⁵³ See Art.6 of the TEU.

⁵⁴ See Art.18 (right to asylum).

⁵⁵ See Art.3 par. 2 of the Treaty on European Union (TEU); Art.67 par. 2 and Chapter 2 (Policies on Border Checks, Asylum and Immigration) of the Treaty on the Functioning of the European Union (TFEU).

receiving such persons and bearing the consequences thereof (L 212/7.8.2001),

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (L 31/6.2.2003) (*Reception Directive*),

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005) (*Procedures Directive*), and

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (L 304/30.9.2004) (*Qualification Directive*)⁵⁶.

49. At national level, specific legislation defines the rights of persons in need of international protection, and, in particular,:

- Law 3907/2011 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of the provisions of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third-country nationals” and other provisions (Official Gazette N. 7, Volume A’, 26.01.2011). Law 3907/2011 is expected to constitute the “asylum act”. As mentioned above, the law establishing a new Asylum Service out of the competence of the police and providing for safeguards as concerns the examination of the asylum application, although in force, has not been implemented yet⁵⁷.

- Presidential Decree (P.D.) 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005) [Official Gazette N. 195, Volume A’, 25.11.2010]. The P.D. 114/2010 is the legislation in force regulating the asylum procedure in Greece. It sets that the competence to receive asylum applications and examine them at first instance lies within the police.

⁵⁶ Directive 2004/83/EC recasted by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (L 337/20.12.2011), which shall be transposed into the national law of the Member States bound by it by 21 December 2013.

⁵⁷ See above par. 41 and footnote 35.

- Presidential Decree (P.D.) 96/2008 “Adjusting Greek legislation to the provisions of Directive 2004/83/EC of the Council of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection for other reasons (L 304/30.09.2004)” [Official Gazette N. 152, Volume A’, 30.07.2008].
- Presidential Decree (P.D.) 220/2007 on the transposition into the Greek legislation of Council Directive 2003/9/EC of January 27, 2003 laying down minimum standards for the reception of asylum seekers (L 31/6.2.2003) [Official Gazette N. 251, Volume A’, 13.11.2007].
- Presidential Decree (P.D.) 80/2006 “Adjusting Greek legislation to the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (L 212/7.8.2001)” [Official Gazette N. 82, Volume A’, 14.4.2006].

50. Finally, it should be noted that the Greek Constitution guarantees for all individuals the full respect and protection of the values of the human being (Art.2), the absolute protection of any person’s life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs (Art.5 par. 2) and the inviolability of personal liberty (Art.5 par. 3).

C. Violations of International, EU and National Law by the Greek State

I. Violation of the right to seek asylum

a) Substantive right

51. The right to seek and enjoy asylum is enshrined in the Universal Declaration of Human Rights of 1948⁵⁸. The right to asylum though is not provided explicitly in the 1951 Geneva Convention. Nevertheless, the principle of non-refoulement (Art.33 par. 1) imposes on the Contracting States the obligation not to “*expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*” This constitutes a “*cardinal protection principle [...] to which no reservations are permitted. In many ways, the principle is the logical complement to the right to seek asylum recognized in the Universal Declaration of Human Rights. It has come to be considered a rule of customary international law binding on all States. [...] It encompasses any*

⁵⁸ Art.14 par. 1 of the Universal Declaration of Human Rights: “*Everyone has the right to seek and to enjoy in other countries asylum from persecution*”.

*measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect refoulement, whether of an individual seeking asylum or in situations of mass influx.”*⁵⁹

52. Article 18 of the EU Charter of Fundamental Rights (right to asylum) provides that “*the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community*”. It is of high importance that within the European Union’s legal order the right encompasses not only the procedural right to apply for asylum but also the right to be granted asylum when the applicant meets the criteria of the 1951 Geneva Convention. Furthermore, the ‘Procedures Directive’ provides that “*Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf*” (Art.6 par. 2) and that “*Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority*” (Art.6 par. 5)⁶⁰. Furthermore, it provides that “*Member States shall ensure that all applicants for asylum [...] shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations [...]. They shall be informed of the time-frame, as*

⁵⁹ UNHCR, *Note on international protection*, 13 September 2001, par. 16, at <http://www.unhcr.org/refworld/docid/3bb1c6cc4.html>.

⁶⁰ The content of the Member States’ obligation has been illustrated by the European Commission in its initial Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, COM(2000) 578 final, Brussels, 20 September 2000, p. 11-12, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0578:FIN:EN:PDF>: “*Asylum applicants should have access to the asylum procedure as soon as possible. Rules on asylum procedures do not make sense if persons who wish protection from a Member State effectively fail to gain access to its asylum procedure or are left stranded in the territory of the Member State for an unnecessarily long time because authorities do not recognise these requests as asylum applications. Any statement signaling a person’s wish to obtain protection from persecution, or any manifestation or expression of the person indicating that he fears to be returned to his country, should therefore be treated as an application for asylum. While Member States may require persons who arrive at the border or in the territory of a Member State and wish to ask for protection from that Member State to lodge (officially file) their asylum application at a specific location or with a specific authority, once a person has made known his request, the relevant authorities that have been addressed are bound to make arrangements to enable this person to reach the appropriate place within a reasonable time (“effective opportunity to lodge their application as soon as possible”). Thus, any authority that is likely to be addressed by these persons at the border or in the territory of a Member State, should have instructions to be able to further subsequent implementation of this obligation. To this end, Member States should provide these authorities with instructions that make clear what they should and should not do when encountering persons who wish to ask for protection, and in particular, which authorities they should contact to take the matter in hand.”*

well as the means at their disposal for fulfilling the obligation to submit the elements relevant to their case [...] This information shall be given in time to enable them to exercise the rights guaranteed in this [...]” (Art.10 par. 1 (a)). Furthermore, *“they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary [...]*” (Art.10 par. 1 (b)).

53. In compliance with the ‘Procedures Directive’, P.D. 114/2010 provides that *“any alien or stateless person has the right to apply for international protection. The competent authorities to receive an application shall ensure that each adult is able to exercise the right to apply for international protection on condition that s/he appears in person before the said authorities [...]*” (Art.6 par. 1), while stipulating that *“the Central Authority shall ensure that the authorities likely to be addressed by applicants for international protection are informed about the competent authorities and the procedure to follow for making an application for international protection [...]*” (Art.6 par. 5). In addition, the P.D. 114/2010 guarantees in Art.8 par. 1 (a) and (b) the right of the applicants to be informed on the procedure to be followed and on their rights and obligations, according to the relevant provisions of the ‘Procedures Directive’.

54. As noted above⁶¹, the competent authority to receive asylum applications in Athens is exclusively the Asylum Department of the Attica Aliens Directorate at “Petrou Ralli”. However, in spite of the fact that Greece has ratified all relevant international legal instruments and has incorporated the pertinent EU legislation in its legal framework, access to the asylum procedure is almost impossible in the Attica area. As the ECtHR has stated *“the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection [...]*”⁶². *“[F]or a number of years the UNHCR and the Council of Europe Commissioner for Human Rights as well as many international non-governmental organisations have revealed repeatedly and consistently that Greece’s legislation is not being applied in practice [...]*”⁶³. Thus, the systematic practice of registering only a limited number of claims in one day per week, and sometimes none⁶⁴, after having exposed the applicants to the ordeal of waiting at the side of a street for two to three days and nights in a row⁶⁵, under deplorable conditions and at risk of their physical integrity⁶⁶,

⁶¹ See above par. 1.

⁶² See ECtHR, Case of M.S.S. v. Belgium & Greece, supra note 20, par. 353.

⁶³ Ibid, par. 300.

⁶⁴ See above par. 16 & 17.

⁶⁵ See above par. 6 & 7.

so that they may have a small chance of having their claim registered, cannot qualify as “access to the asylum procedure. The remaining asylum seekers, who are left out of the process, have no guarantee for their future, and no explanation or response to their claims is provided by the authorities. No interpreter is present during this process and no information is provided orally or in writing by the authorities regarding the process of access to asylum⁶⁷. The ECtHR stated that “*the lack of access to information is a major obstacle in accessing asylum procedure [...]*”⁶⁸ and reiterated “*the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints*”⁶⁹. It should be noted that due to this systematic practice followed by the competent Greek authorities, which has been reported by many international and national bodies⁷⁰, persons seeking to apply for asylum may be obliged to return repeatedly over several months before having the opportunity to lodge their application⁷¹, while many give up trying accepting the fact that there is no access to the asylum procedure in the Attica area.

55. Therefore, Greece is in blatant violation of Art.14 par. 1 of the Universal Declaration of Human Rights, Art.33 par. 1 of the 1951 Geneva Convention, Art.18 of the EU Charter of Fundamental Rights, Art.6 & Art.10 par. 1 (a) & (b) of the ‘Procedures Directive’ and Art.6 & Art.8 par. 1 (a) & (b) of P.D. 114/2010.

b) Lack of an effective remedy

56. Article 47 of the EU Charter of Fundamental Rights (right to an effective remedy and to a fair trial) provides that “[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously

⁶⁶ See above par. 6, 16 & 17.

⁶⁷ See above par. 10.

⁶⁸ See ECtHR, Case of M.S.S. v. Greece, par. 304, supra note 20 and Case of Hirsi Jamaa and Others v. Italy (application no. 27765/09), 23 February 2012, par. 204.

⁶⁹ *Ibid.*

⁷⁰ See above B. Access to Asylum in Greece – I. Background Information. See in particular above par. 29-34, where extended reference is made to numerous national and international reports. See also ECtHR, Case of M.S.S. v. Belgium & Greece, supra note 20, par. 160 & 300-301.

⁷¹ See above par. 11

established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice". Article 41 of the EU Charter of Fundamental Rights (Right to good administration) provides that "1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. 2. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language". Article 39 of the 'Procedures Directive' provides for an effective remedy against decisions related to the asylum procedure. However, the right to an effective remedy under the 'Procedures Directive' concerns only decisions taken after an asylum application has been lodged, since the right to apply for asylum and the obligation of the Member States to receive and register asylum applications are unequivocally stated in Article 6. Therefore, although the 'Procedures Directive' imposes on the Member States the obligation to provide to persons wishing to apply for asylum an effective opportunity to lodge their application as soon as possible⁷², it does not guarantee the right to an effective remedy against the infringement of that obligation and the denial of a Member State to receive and register asylum applications. Nevertheless, Article 47 of the EU Charter of Fundamental Rights encompasses the right to an effective remedy against violations of any right guaranteed by the law of the Union and, therefore, of the right to apply for asylum, which is guaranteed by EU law under the above-mentioned provisions.

57. The practice of the Greek administrative authorities of barring access to the asylum procedure and refraining from their obligation to receive and register asylum applications constitutes, as concluded above⁷³, a blatant violation of the right to seek asylum and results in putting at risk asylum seekers, meaning people presenting "an arguable claim for protection"⁷⁴. This practice of the Greek Authorities does not constitute under Greek administrative law an administrative decision *stricto sensu*, but it is considered to be a material act of

⁷² See EUROPEAN COMMISSION, *supra* note 60.

⁷³ See *above* par. 53-54.

⁷⁴ See ECtHR, Case of Hirsi Jamaa and Others v. Italy, *supra* note 68, par. 197.

the Greek administration, and, therefore, it is not subjected to review before a judicial organ⁷⁵. The competence of the courts to examine the legality of acts, including material ones, of the Greek authorities in order to provide compensation to the persons who have suffered injury due to illegal acts of the Greek State, cannot lead to the vindication of the right which has been violated contrary to the law but only to the payment of damages⁷⁶. However, even this judicial means, which, as stated above, cannot substantiate the right which has been infringed, is not accessible to asylum seekers, since its exercise is complicated requiring written form and legal representation as well as financial costs. It has to be noted that access to legal aid is not provided, according to Greek law, in state liability cases. Legal aid in administrative proceedings is limited to specifically mentioned cases and granted under strict conditions⁷⁷. Consequently, there are no available judicial means to raise the incompatibility of the denial of access to the asylum procedure by the Greek State with its EU and national law obligations in order to have the right to apply for asylum substantiated by a Greek tribunal.

- 58.** Therefore, Greece is in violation of **Art.47 & Art.41 of the EU Charter of Fundamental Rights**, in conjunction with **Art.18 of the EU Charter of Fundamental Rights** and **Art.6 & Art.10 par. 1 (a) & (b) of the ‘Procedures Directive’**, under the light also of Art.13 of the ECHR, in conjunction with Art.3 of the ECHR, which will be elaborated in the following paragraphs⁷⁸.

II. Violation of the right to seek asylum - The principle of non refoulement

a) Substantive right

- 59.** As noted above, the principle of non-refoulement, guaranteed in the 1951 Geneva Convention (Art.33 par. 1), constitutes the cornerstone of the refugee protection. The principle is also embodied in several human rights instruments. Art.5 of the Universal Declaration of Human Rights provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Art.3 of the ECHR and Art.7 of the ICCPR reiterate

⁷⁵ See EPAMINONDA P. SPILIOPOYLO, *Administrative Law, Volume 2*, Nomiki Vivliothiki ed., 2011, par. 475 & 598. See also Hellenic Council of State (Symvoulío tis Epikratias), Judgment 3634/2003.

⁷⁶ See Art.105 of Coercion Act 2783/1941. See also EPAMINONDA P. SPILIOPOYLO, par. 612, *ibid*.

⁷⁷ See Law 3226/2004 (Official Gazette N. 24, Volume A’, 4.2.2004).

⁷⁸ See ECtHR, Case of Abdolkahani and Karimnia v. Turkey (application no. 30471/08), 22 September 2009, par. 113, which dealt with prevention of asylum seekers from lodging an asylum claim and from challenging their deportation and where the Court concluded that “the lack of any response by the national authorities regarding the applicants’ allegations amounted to a lack of the ‘rigorous scrutiny’ that is required by Article 13 of the Convention [...]”.

that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, while Art.3 par. 1 of the UNCAT provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

60. Art.78 par. 1 of the TFEU states that “[t]he Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties”. The EU Charter of Fundamental Rights declares that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Art.4), while according to Art.19 “[c]ollective expulsions are prohibited” (par. 1) and “[n]o one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (par. 2). Furthermore, the principle of non-refoulement is explicitly reaffirmed in all pertinent EU legislative acts⁷⁹. In particular, the ‘Qualification Directive’ clearly embodies the principle, stating that “Member States shall respect the principle of non-refoulement in accordance with their international obligations” (Art.21 par. 1)⁸⁰. The ‘Procedures Directive’ provides for the right of the asylum applicants to remain in the Member State pending the examination of the application (Art.7), while the principle of non-refoulement should be respected even in cases of implicit withdrawal or abandonment of the asylum application (Art.20 par. 2 subpara. 3). In addition, according to the ‘Procedures Directive’, Member States, in order to apply the concept of ‘first country of asylum’ and ‘the safe third country concept’, shall examine that the principle of non-refoulement is respected⁸¹.

61. Art.21 par. 1 of P.D. 96/2008, transposing the ‘Qualification Directive’ into domestic law, reiterates the principle of non-refoulement as worded in Art.21 par. 1 of the Directive. Art.5 par. 1 of P.D. 114/2010 states that “[a]pplicants are allowed to remain in the country until the administrative procedure for the examination of their application is concluded and they shall not be removed,

⁷⁹ See par. 2 of the Preamble of the Dublin II Regulation; Art.3 par. 2 & Art.6 par. 2 of the Council Directive 2002/55/EC; par. 2 of the Preamble of the Reception Directive; par. 2 of the Preamble, Art.7, Art.20 par. 2 subpara. 3, Art.26 par. b, Art 27 par. 1 and Art 30 par. 2 of the Procedures Directive; par. 2 of the Preamble and Art.21 par. 1 of the Qualification Directive.

⁸⁰ See also Art.14 par. 6 of the Qualification Directive.

⁸¹ See Art.26 par. b, Art.27 par. 1 and Art.30 par. 2 of the Procedures Directive.

in any way”, while par. 2 (a) of the same article provides that “[...] *No applicant shall be extradited before a final decision on the application is taken, if he/she claims fear of persecution in the requesting State*”. In addition, according to Art.19 par. 2 and Art.20 par. 1 (b) of the same P.D., the Greek authorities shall examine the compliance with the principle of non-refoulement when applying the concept of ‘first country of asylum’ and ‘the safe third country concept’. It has to be noted that the principle of non-refoulement is reaffirmed also by Law 3386/2005⁸², which regulates, as amended, the entry, residence and social integration of third-country nationals in the Hellenic territory. Finally, Chapter C of Law 3907/2011, which incorporated Directive 2008/115/EC (Return Directive) in its legal order, provides that Greece, when applying the return procedures, shall abide by the principle of non refoulement.⁸³

62. The ECtHR has established, in several cases of applicants of international protection claiming breaches of Art.3 of the ECHR, an extensive jurisprudence setting the applicable criteria. Although according to the Court the right “*to political asylum is not contained in either the Convention or its Protocols*”⁸⁴, “*expulsion, extradition or any other measure to remove an alien may give rise to an issue under Article 3, and hence engage the responsibility of the expelling State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.*”⁸⁵ In such cases the claim “*must be imperatively subject to close scrutiny by a national authority*”⁸⁶. The liability of the Contracting States under Art.3 may incur “*by reason of [their] having taken action*”⁸⁷ or by reason of their inaction and/or indifference⁸⁸ “*which has as a direct*

⁸² Art.79 par. 1 (d) of Law 3386/2005 on entry, residence and social integration of third-country nationals in the Hellenic territory (Official Gazette No. 212, Volume A’, 23.8.2005).

⁸³ See Art.20 & 24 par. 1.

⁸⁴ See, e.g., ECtHR, Case of Vilvarajah and Others v. the United Kingdom (application no. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87), 30 October 2001 and Case of Ahmed v. Austria (application no. 25964/94), 17 December 1996.

⁸⁵ ECtHR, Case of Hirsi Jamaa and Others v. Italy, supra note 68, par. 114. See also ECtHR Case of Vilvarajah and Others v. the UK, par. 103, *ibid.*; Case of Ahmed v. Austria, *ibid.*; Case of H.L.R. v. France (application no. 24573/1994), 29 April 1997, par. 34; Case of Jabari v. Turkey (application no. 40035/98), 11 July 2000, par. 38 and Case of Salah Sheekh v. the Netherlands (application no. 1948/04), 11 January 2007, par. 135.

⁸⁶ ECtHR, Case of Shamayev and Others v. Georgia and Russia (application no. 36378/02), 12 April 2005, par. 448.

⁸⁷ ECtHR, Case of Hirsi Jamaa and Others v. Italy, par. 115, supra note 68.

⁸⁸ See ECtHR, Case of Abdolkahani and Karimnia v. Turkey, par. 113, supra note 78; Case of Rahimi v. Greece, par. 92, supra note 37.

*consequence the exposure of an individual to the risk of proscribed ill-treatment.”*⁸⁹

63. Barring access to the asylum procedure in the Attica area results in putting in jeopardy the life and freedom of those seeking international protection, meaning those presenting “an arguable claim for protection”⁹⁰ and deprives them of their rights. Deprived of their right to apply for asylum, persons in need of international protection remain outside the protective realm of the asylum procedure and, consequently, are treated by the authorities not as potential asylum seekers but as irregular migrants. Thus, people in need of international protection face real risk of getting arrested and detained as irregular migrants⁹¹, without any risk assessment or an individual hearing and examination of their case in practice, and, subsequently, deported or ‘refouled’ at any moment. This risk has heightened during this period, taking into account the prevailing political context and the focus on tackling “illegal immigration” with measures such as ‘sweep’ operations and introduction of new grounds for detention and deportation of aliens⁹². It has also to be noted that in the case of *M.S.S. v. Belgium & Greece*, the ECtHR endorsed the documentation provided by third-party interveners and stated in various reports that regularly denounced “forced returns by Greece to high-risk countries”⁹³. Therefore, the risks asylum seekers face are real, probable and individual⁹⁴, while the situation more than a year after the ECtHR decision in the case of *M.S.S. v. Belgium & Greece* has not improved at all in this regard⁹⁵.

64. Greece is in obvious violation of **Art.5 of the Universal Declaration of Human Rights, Art.33 par. 1 of the 1951 Geneva Convention, Art.3 of the ECHR, Art.7 of the ICCPR, Art.3 par. 1 of the UNCAT, Art.4 & Art.19 of the EU Charter of Fundamental Rights, Art.21 par. 1 of the ‘Qualification Directive’, Art.7 of the ‘Procedures Directive’, Art.21 par. 1 of P.D. 96/2008, Art.5 par. 1 of P.D. 114/2010, Art.79 par. 1 (d) of Law 3386/2005 and Art.20 of Law 3907/2011.**

⁸⁹ ECtHR, Case of *Hirsi Jamaa and Others v. Italy*, par. 115, supra note 68.

⁹⁰ See above par. 56.

⁹¹ As an indicative example, see above par. 36.

⁹² See above par. 42.

⁹³ ECtHR, Case of *M.S.S. v. Belgium & Greece*, supra note 20, par. 314.

⁹⁴ See *ibid.*, par. 359.

⁹⁵ See above par. 42 and footnotes 38-45.

b) Lack of an effective remedy

65. As mentioned above⁹⁶, the EU Charter of Fundamental Rights provides for the right to an effective remedy to everyone whose rights and freedoms guaranteed by the law of the Union are violated. Furthermore, Art.13 of the ECHR provides that *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”*, while Article 2 par. 3 of the ICCPR states that *“Each State Party to the present Covenant undertakes (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”*

66. It has to be noted that the EU Charter of Fundamental Rights provides specifically for access to an independent and impartial tribunal⁹⁷ and therefore extensive protection. EU law requires effective judicial scrutiny of the decisions of national authorities taken pursuant to the applicable provisions of EU law.⁹⁸ Furthermore, according to Art.52 par. 3 of the EU Charter of Fundamental Rights *“[i]n so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.”* Therefore, violations of Art.3 of the ECHR, as well as of Art.4 & 19 of the EU Charter of Fundamental Rights, shall be examined under the light of the relevant jurisprudence of the ECtHR.

67. As concluded above⁹⁹, Greek authorities violate the principle of non-refoulement. With regard to this violation, the ECtHR has elaborated a set of criteria in order to determine whether the available remedies under domestic law constitute “effective remedy”. In this respect, a remedy: has to provide a

⁹⁶ See above par. 56.

⁹⁷ See KATHRYN COSTELLO, *“The European asylum procedure directive in legal context”*, Research paper no. 134, UNHCR, November 2006, p. 23.

⁹⁸ Case C-222/84 Johnston (1986), ECR 1651, par. 18.

⁹⁹ See above par. 64.

careful scrutiny by a national authority, an independent and rigorous examination in substance of any complaint that there are reasons to believe that treatment contrary to Art.3 had been inflicted, and the complaint has to be examined with particular speed. The remedy must be available in practice as well as in law and it also has to be of automatic suspensive effect. Moreover, the complainant shall have effective access to the relevant procedures.¹⁰⁰

68. Being an irregular immigrant in Greece constitutes in practice a sufficient reason for administrative expulsion and detention¹⁰¹. Remedies against deportation decisions against irregular migrants are provided by Law 3386/2005, as amended, and by general provisions of the Administrative Code Procedure. Before the issuing of a deportation decision (Law 3386/2005 Art.76 par. 2), the third-country national is given the time limit of 48 hours to lodge objections (Greek Constitution, Art.20 par. 2). The right to lodge an administrative appeal against administrative expulsion is provided by Law 3386/2005 (Art.77). This appeal has an automatic suspensive effect of the expulsion order. Expulsion decisions are subjected to judicial review before the competent administrative courts.¹⁰² The appeal against the expulsion decision before the courts does not automatically suspend the deportation. A decision on the suspension of the expulsion order has to be taken by the court. Furthermore, access to free legal aid is conditional and presupposes that an action for annulment has already been lodged against the expulsion decision before the competent court and that the submitted action for annulment has not been found, according to the judge's opinion, to be manifestly inadmissible or ill-founded¹⁰³. Lack of procedural safeguards characterizes the full range of asylum and deportation proceedings in Greece. “[...] [P]ersons who are subjected to forced return do not enjoy effective procedural guarantees to access legal remedies or access to the asylum procedure and [...] they do not have free legal aid or effective information provided through interpretation services. Consequently, they are not able to effectively appeal against orders of deportation and/or consequent detention. [...] [T]hese individuals are at a heightened risk of refoulement, including chain refoulement.”¹⁰⁴ In conclusion,

¹⁰⁰ See, e.g., ECTHR, Case of Chahal v. UK (application no. 22414/93), 15 November 1996; Case of Çakici v. Turkey (application no. 23657/94), 3 July 1999, par. 112; Case of Jabari v. Turkey (application no. 40035/98), 11 July 2000; Case of Čonka v. Belgium (application no. 51564/1999), 5 February 2002; Case of Gebremedhin v. France (application no. 25389/05), 26 April 2007; Case of M.S.S. v. Belgium & Greece, supra note 20 and Case of R.U. v. Greece, supra note 37.

¹⁰¹ See Art.76 of Law 3386/2005. See also par. 42.

¹⁰² See Art.15 of Law 3068/2002 (Official Gazette N. 274, Volume A', 14.11.2002).

¹⁰³ See Art.28 par. 4 of Law 3907/2011. Similar provisions regulating the remedies against return decisions before a Court, are set in article 33 par. 2 and 4 par 68

¹⁰⁴ UN COMMITTEE AGAINST TORTURE, supra note 37.

asylum seekers, who are denied in practice access to the asylum procedure and international protection, are exposed to a serious risk of being arrested, deported and/or being refouled¹⁰⁵.

69. UNHCR stated before the ECtHR in the hearing of the case of *M.S.S. v. Belgium and Greece* that “[...] *the Greek asylum system does not, at present, adequately protect asylum seekers [...] against return to territories where there is a risk of persecution or serious harm*”¹⁰⁶ as, among other reasons, “[...] *in the context of the expulsion procedure, the right to appeal against a deportation order, although provided for by law, is ineffective in the absence of legal aid. The appeal process consists exclusively of a written procedure with strict deadlines and without automatic suspensive effect at the judicial level. As a result, there is also no effective remedy outside the asylum procedure against a deportation order. The individual is therefore potentially subject to removal at any time*”¹⁰⁷. Considering the above, ECtHR concluded that Greece violates Art.3 and 13 of ECHR due to the fact that Greece’s asylum legislation is not being applied in practice and that the asylum procedure is marked by such major structural deficiencies that asylum seekers have very little chance of having their applications and their complaints under the Convention seriously examined under the Greek authorities¹⁰⁸. The Court pointed out that the remedies available in Greek legal order could not be regarded as effective with regard either to deportation or to the asylum proceedings.

70. Therefore, Greece is in breach of **Art.47 of the EU Charter of Fundamental Rights**, in conjunction with **Art.4 & Art.19 of the EU Charter of Fundamental Rights**, **Art.21 par. 1 of the ‘Qualification Directive’** and **Art.7 of the ‘Procedures Directive’**; **Art.13 of the ECHR**, in conjunction with **Art.3 of the ECHR**; and **Art.2 par. 3 of the ICCPR**, in conjunction with **Art.7 of the ICCPR**.

III. Violation of the right to human dignity and of the right not to be subjected to inhuman or degrading treatment

a) Substantive right

71. The right to human dignity and the prohibition of inhuman or degrading treatment is a fundamental human right enshrined in a number of international

¹⁰⁵ See also par. 42 and footnote 38.

¹⁰⁶ UNHCR’s oral intervention by Volker Türk at the European Court of Human Rights, Hearing of the case *M.S.S. v. Belgium and Greece*, p. 2, supra note 19.

¹⁰⁷ *Ibid*, par. 3.

¹⁰⁸ See *M.S.S. v. Belgium & Greece*, supra note 20. See also *R.U. v. Greece*, supra note 37.

and regional human rights documents. The Universal Declaration of Human Rights stipulates that “*All human beings are born free and equal in dignity and rights*” (Art.1), while Art.5 prohibits inhuman or degrading treatment. Furthermore, the prohibition of inhuman or degrading treatment is stipulated in the International Covenant on Civil and Political Rights (Art.7) and in the European Convention on Human Rights (Art.3). The International Convention on the Rights of the Child provides that State Parties “*shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status*” (Art.2 par. 1) and that they “*shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members*” (Art.2 par. 2). Furthermore, the principle of the ‘best interest of the child’, guaranteed in Art.3 par. 1, shall govern all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Finally, State Parties “*shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*” (Art.22 par. 1).

72. The EU Charter of Fundamental Rights also declares that human dignity is inviolable and it must be respected and protected (Art.1) and prohibits inhuman or degrading treatment (Art.4) as well. Furthermore, the Charter stipulates that “*Children shall have the right to such protection and care as is necessary for their well-being [...]*” (Art.24 par. 1) and that “*in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration*” (Art.24 par. 2).
73. The ‘Reception Directive’ imposes on Member States the obligation to “*take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence [...]*” (Art.17 par. 1). It provides specifically that “*the best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors*” (Art.18 par. 1) and that “*Member States shall ensure access to rehabilitation services for*

minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed” (Art.18 par. 2). Furthermore, according to the same Directive, Member States “shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation” (Art.19 par. 1). Finally, “Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages [...]” (Art.20). Article 17 of the ‘Procedures Directive’ provides specific guarantees for unaccompanied minors and in particular sets that the authorities shall “as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application” and “shall ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview” (Art.17 par. 1 (a), (b)).

74. The P.D. 220/2007, in Art.17, provides for special treatment to applicants belonging to vulnerable groups, as defined in the relevant article of the ‘Reception Directive’. Furthermore, it reiterates the primacy of “the best interests of the child” (Art.18 par. 1) and provides specifically that “*as far as unaccompanied minors are concerned, the competent authorities shall take the appropriate measures to ensure the minor’s necessary representation. To this purpose, they shall inform the Public Prosecutor for Minors or, in the absence of this latter, the territorially competent First Instance Public Prosecutor, who shall act as a provisional guardian and shall take the necessary steps in view of the appointment of a guardian for the minor*” (Art.19 par. 1). Furthermore, according to Art.19 par. 2 (a) “[w]hen an unaccompanied minor lodges an asylum application, the authorities competent to receive and examine it shall take immediately the following measures: They shall ensure that the accommodation needs of the child are covered by placing him/her with adult relatives, with a foster-family, in Accommodation Centers with special provisions for minors, or in other accommodation suitable for minors and that this form of accommodation shall protect it from the risk of trafficking or exploitation [...]”. The obligation of guardianship and legal representation is extended to all unaccompanied minors, regardless of their status as asylum seekers or not, following relevant interpretation and Opinion issued by the Council of State¹⁰⁹. Finally, it provides also for the guardianship and legal

¹⁰⁹ Opinion of the Council of State no. 204/2007, issued by the 1st Summer Break Section on the proceedings on the draft Presidential Decree “Reception of asylum seekers”.

representation of all unaccompanied minors when applying for asylum (Art.12).

75. According to settled case-law, the ECtHR in considering whether treatment is ‘degrading’ within the meaning of Article 3, it has regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3.¹¹⁰ The Court has ruled that situations, which, through the fault, inaction or indifference of the authorities, provoke in a person feelings of fear, anguish or inferiority capable of inducing desperation, combined with prolonged uncertainty and lack of any prospect of the improvement of the situation, attain the level of severity required to fall within scope of Art.3 of the Convention.¹¹¹ In particular, as concerns unaccompanied minors, the ECtHR considered that they come “*within the class of highly vulnerable members of society*” and the authorities are required to take adequate measures to provide them with care and protection¹¹². The Court ruled that Greece violated Article 3 of the ECHR, since, due to the Greek authorities’ indifference and inaction, profound anxiety and concern were experienced by the unaccompanied minor, who was left to fend for himself.¹¹³

76. The way the Greek authorities treat asylum seekers and, in particular, the practice of preventing them even from the physical approach and access to the entrance of the building of the Aliens Directorate¹¹⁴, the prolonged uncertainty asylum seekers experience due to the fact that they have to try, for long lasting periods (in some cases even more than a year), to register their applications¹¹⁵, the conditions under which they have to wait for days¹¹⁶, exposed to any weather conditions¹¹⁷ and without access to toilet, water and food¹¹⁸, the

¹¹⁰ See, e.g., ECtHR, Case of Yankov v. Bulgaria (application no. 39084/97), 21 December 2003; Case of Peers v. Greece (application no. 28524/95), 19 April 2001 and Case of Kalashnikov v. Russia (application no. 47095/99), 15 July 2002, See also EUROPEAN COMMISSION ON HUMAN RIGHTS, Case of Giama v. Belgium (application no. 7612/1976), 15 December 1977.

¹¹¹ ECtHR, Case of M.S.S. v. Belgium & Greece, supra note 20, par. 263-264 and Case of Rahimi v. Greece, supra note 37.

¹¹² Case of Rahimi v. Greece, par. 87, *ibid.*

¹¹³ Case of Rahimi v. Greece, par. 87 & 92, *ibid.*

¹¹⁴ See above par. 5

¹¹⁵ See above par. 11

¹¹⁶ See above par. 6

¹¹⁷ See above par. 5

arbitrary manner in which asylum claims are then singled out and registered¹¹⁹, the lack of any guidance and information by the authorities, in combination with the way the asylum seekers excluded from the selection are being chased by the police in order to go away¹²⁰, constitute a **violation of their human dignity** and amount to **degrading treatment *per se***. The high tension, stress and anxiety, as well as actual violence stemming either from the police¹²¹ or from other applicants¹²², experienced by asylum seekers while waiting to lodge their application and which, in many cases, have led to the physical injury of applicants, **render the waiting procedure intolerable for the applicants and amount to inhuman treatment**. Women asylum seekers are even more vulnerable to this hardship, which amounts to inhuman and degrading treatment; they have to wait in the line under these deplorable conditions, among a crowd of unknown men, experiencing fear and risk of being harassed¹²³. Unaccompanied minors are also exposed to extra risks and are finally subjected to additional hardship, which reaches the threshold of severity to be regarded as inhuman and degrading treatment due to their extremely vulnerable situation. The authorities refrain from their obligations, which are clearly set by law, and take no measures whatsoever to identify the minors among the asylum seekers waiting in the queue or to assume responsibility for the identified minors and to ensure their protection and access to the asylum procedure¹²⁴. The remaining asylum seekers who are left out of the process have no guarantees for their future and no explanation or response to their claims is provided by the authorities. No interpreter is present during this process and no information is provided orally or in writing by the authorities regarding the process of access to asylum¹²⁵. The competent authorities take no measures to ease the physical and mental exhaustion and anguish of the asylum seekers, who are subjected to inhuman and degrading torment in order to apply. Instead, they follow specific practices, such as intimidating them and chasing them away, even with the use of violence in

¹¹⁸ See above par. 7

¹¹⁹ See above par. 9

¹²⁰ See above par. 10

¹²¹ See above par. 6 and 18

¹²² See above par. 17

¹²³ See above par. 12 and 24

¹²⁴ See above par. 13 and 24. See also ECtHR Case of Rahimi v. Greece, supra note 37.

¹²⁵ See above par. 10 & 54-55.

several occasions, in order to discourage them from returning and trying to submit their asylum application¹²⁶.

77. Consequently, Greece is in violation of Art.1 & Art.5 of the Universal Declaration of Human Rights, Art.7 of the ICCPR, Art.3 of the ECHR, Art.1, Art.4 & Art.24 par. 1 & 2 of the EU Charter of Fundamental Rights, Art.17, Art.18 par. 1 & Art.19 of the ‘Reception Directive’, Art.17 par. 1 (a) & (b) of the ‘Procedures Directive’, Art.17, Art.18 & Art.19 of the Presidential Decree 220/2007 and Art.12 par. 1 of the Presidential Decree 114/2010.

b) Lack of an effective remedy

78. The practice of the Greek administrative authorities of barring access to the asylum procedure and subjecting asylum seekers to inhuman or degrading treatment in order to apply is considered to be a material act of the Greek administration, and, therefore, as mentioned above, it is not subjected to review before a judicial organ¹²⁷. Consequently, there are no available judicial means to raise the incompatibility of the inhuman and degrading treatment asylum seekers face with Greece’s international, EU and national legal obligations.

79. Therefore, Greece is in violation of **Art.2 par. 3 of the ICCPR**, in conjunction with **Art.7 of the ICCPR; Art.13 of the ECHR**, in conjunction with **Art.3 of the ECHR**; and **Art.47 of the EU Charter of Fundamental Rights**, in conjunction with **Art.1, Art.4 & Art.24 par. 1 & 2 of the EU Charter of Fundamental Rights, Art.17, Art.18 par. 1 & Art.19 of the ‘Reception Directive’ and Art.17 par. 1 (a) & (b) of the ‘Procedures Directive’.**

IV. Violation of the right to seek asylum – Violation of the right to liberty and security of person - Violation of the right to human dignity and of the right not to be subjected to inhuman or degrading treatment

a) Substantive right

80. The right to liberty and security of person is guaranteed in Art.3 of the Universal Declaration of Human Rights. Article 9 of the ICCPR provides that *“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of*

¹²⁶ See above par. 6.

¹²⁷ See above par. 56.

arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. [...]”. The 1951 Geneva Convention stipulates in Art.31 that “*1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [...] enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country [...]*.” Art.5 of the ECHR also declares the right to liberty and security of person and imposes certain obligations on the Contracting Parties with regard to this right.¹²⁸

81. The EU Charter of Fundamental Rights guarantees the right to liberty and security of person as well (Art.6), while the ‘Procedures Directive’ provides that “[...] *Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum*” (Art.18 par. 1). In addition, Art.15 of the ‘Return Directive’ sets the criteria for the detention of third-country nationals who are the subject of return procedures (par. 1) and provides for specific safeguards for the issuance, justification and notification of the detention decision, as well as for speedy judicial review (par. 2), while Art.16 imposes minimum standards for detention conditions. Furthermore Art.17 regulates the detention of minors and families.

¹²⁸ Article 5 of the ECHR: “*1. Everyone has the right to liberty and security of person. 2. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) The lawful detention of a person after conviction by a competent court; (b) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants; (f) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 3. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him. 4. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 5. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. 6. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*”

82. Law 3907/2011 transposes in Art.30 and Art.31 the above-mentioned provisions of the ‘Return Directive’ and complements the legislation in force, and in particular Law 3385/2006, which regulates the “entry, residence and social integration of third-country nationals in the Hellenic Territory”. Art.13 par. 1 of P.D. 114/2010 states that “[a] *third-country national or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she entered and remains illegally in the country*”, while asylum seekers can only be kept in detention by way of exception (par. 2). The same P.D. regulates the issuance of the detention decision with regard to asylum applicants, sets the time limits, the available remedies and provides for certain procedural guarantees (Art 13 par. 3, 4, 5 & 6). Furthermore the P.D. regulates the detention for minors and families (Art.32).

83. Although, asylum seekers can only be kept in detention by way of exception (Art.13 of P.D. 114/2010), in practice, asylum seekers and persons in need of international protection are not identified as such and are treated by the authorities as irregular immigrants¹²⁹. Asylum seekers who apply for international protection while in detention shall remain in detention according to conditions set by P.D. 114/2010¹³⁰. The Law 3386/2005¹³¹ allows for the detention of irregular immigrants pending their deportation if; (a) “he/she has been irrevocably sentenced to a freedom-depriving sentence of at least one year or, irrespective of sentence” for specific crimes¹³² and/or (b) he/she has

¹²⁹ See COUNCIL OF EUROPE, supra note 11, UNHCR, *The situation of refugees in Greece, Observations and proposals*, p. 5, supra note 11 and UN HUMAN RIGHTS COUNCIL, supra note 31. See also above par. 38.

¹³⁰ Art.13 par. 1 & 2 of P.D. 114/2012: “*A third-country national or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she entered and remains illegally in the country. A person who applies for international protection while in detention shall remain in detention if the conditions of paragraph 2 below are fulfilled.*

2. The detention of applicants in an appropriate space is exceptionally allowed when alternative measures cannot be applied for one of the following reasons:

a. the applicant does not possess or has destroyed his/her travel documents and it is necessary to determine the identity, the circumstances of entry and real information on his/her of origin, in particular in the case of mass illegal entries of applicants.

b. the applicant is a danger for national security or public order, the reasons being detailed in the detention order.

c. detention is considered necessary for the speedy and effective completion of the application”, see supra par. 49.

¹³¹ Art.1 par.76 of Law 3386/2005, see supra note 82.

¹³² Art.1(a) par.76 of Law 3386/2005 foresees that administrative expulsion of an alien shall be allowed when: “*He/she has been irrevocably sentenced to a freedom-depriving sentence of at least one year or, irrespective of sentence, for crimes against the regime or treason, drug-related crimes, money laundering, international financial crimes, crimes with the use of high technology, currency-related crimes, resistance, child abduction, crimes against sexual freedom and economic exploitation of sexual life, theft, fraud, misappropriation, extortion, usury, violation of the law on intermediaries, forgery, false statement, slander, smuggling, crimes relating to weapons, antiquities, forwarding of illegal*

infringed the provisions of the Law 3386/2005, (c) “is considered to be a suspect for absconding or dangerous for public order ...” and/or (d) according to a newest legislative amendment of the Law if his or her “presence in the Greek territory represents a danger to public health because *he or she* suffers from an infectious disease or belongs to groups vulnerable to infectious diseases especially due to the situation of public health in the country of origin or due to the use of intravenous illegal substances or due to the fact that *he or she* exercises prostitution or [...] due to the fact that *he or she* lives under conditions not complying with the standard rules of health¹³³. The notification of the deportation decision is not required for the detention to take place (Art. 76 par. 3). The foreigner “should be informed about the reasons of his detention in a language *he or she* understands” (Art.76 par. 3). The detention takes place upon decision of the competent police authority, which decides at 1st Instance for the expulsion (Art.76 par. 2). The maximum period of detention may not exceed six months (Law 3907/2011, Art.30 par. 5, Law 3386/2005, Art.76 par. 3) but can be extended “*for a limited period not exceeding twelve months, in cases where, regardless of all reasonable efforts by the competent authorities, the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries* (Law 3907, Art.30 par. 6, Law 3386/2005, Art.76 par. 3). Detention is provided by law as a measure of last resort (explicitly in Law 3907/2011, art 30 par.1, as way of an exception in Law 3386, Art.76 par.2).

84. Irregular immigrants pending their deportation are detained in the premises of the police authority responsible for their deportation. Until the completion of their expulsion, they remain in special holding premises, which are founded upon decision of the Ministers of Interior, Economy and Finances, Health and Social Solidarity. In the same decision the terms and conditions for the operation of these premises are determined (Law 3386/2005, Art.81). Art.31 of Law 3907/2011 contains similar provisions setting minimum standards for detention conditions.

85. In practice, being an irregular immigrant in Greece constitutes *per se* - as documented above¹³⁴ - a sufficient reason for apprehension and subsequent detention pending deportation. Although detention is foreseen by law as a measure of last resort (Art. 30 par. 1 of Law 3907/2011), in most of the cases, the competent authorities decide automatically for the detention of an irregular immigrant pending his/her deportation. Detention decisions are issued with

immigrants in the country or facilitation of their transport or forwarding or provision of accommodation thereto for hiding, and provided that his/her expulsion was not ordered by the court;”

¹³³ Art.59 par. 2 of Law 4075/2012, see supra note 42.

¹³⁴ See above par. 68.

standardized justification and without taking into consideration other factors, such as the situation in the country of origin, protection issues, age, vulnerability or other factors¹³⁵. Although provided by law, detainees do not have access to information as concerns their status, their rights in detention and the possibilities to challenge their expulsion and deportation¹³⁶. “*Asylum-seekers and irregular migrants in Greece are detained as a matter of course, rather than as a last resort. The government is failing to abide by its international obligations to ensure that detention is a measure of last resort which should only be imposed if other alternative measures are not possible, and only when it can be justified in each individual case.*”¹³⁷

86. In a number of cases involving asylum seekers and/or persons in need of international protection ECtHR has found Greece liable for violations of Art.5 par. 1 of ECHR considering that their detention was unlawful.¹³⁸ The Court concluded that whereas detention should remain a measure of last resort, the Greek authorities had been using it systematically for purposes of dissuasion. The Court also noted that Art.5 par.1 did not only require that any deprivation of liberty should comply with domestic law, but also that it should be consistent with the protection of the individual against arbitrariness.¹³⁹ The Court also ruled that, as concerns asylum seekers, Greek Authorities had failed to take their status into account. Therefore, their detention with a view to expulsion had in fact no legal basis in Greek Law, since asylum seekers whose applications were pending could not be deported and therefore their detention had been unlawful¹⁴⁰. Furthermore, considering detention in case of an unaccompanied minor by the Greek Authorities, the Court ruled that to avoid being branded as arbitrary, detention had to be carried out in good faith; the automatic application of the national legislation regulating expulsion and subsequent detention did not appear compatible with the need to give

¹³⁵ See CPT (2012), p. 6, supra note 37, COUNCIL OF EUROPE, p.4, supra note 11, UNHCR, *The situation of refugees in Greece, Observations and proposals*, p. 5, supra note 11. See also UNHCR *Statements in Joint Submission of the ICG and ECRE* (2011), p.4-5, supra note 25.

¹³⁶ Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section II.

¹³⁷ AMNESTY INTERNATIONAL, *Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions*, p.42, supra note 12.

¹³⁸ See ECtHR, Case of S.D. v. Greece, Case of Tabesh v. Greece, Case of A.A. v. Greece, Case of Rahimi v. Greece, Case of R.U. v. Greece, supra note 37.

¹³⁹ See Case of A.A. v. Greece, supra note 37.

¹⁴⁰ See ECtHR, Case of S.D. v. Greece, Case of A.A. v. Greece, Case of R.U. v. Greece, supra note 37.

paramount consideration to the child's best interests and therefore his detention was unlawful.¹⁴¹

87. Regarding detention conditions, irregular immigrants in Greece are detained in several establishments, such as detention centres, border guard stations and "special holding facilities" for irregular immigrants¹⁴². As common standards are not applied, conditions of detention of irregular immigrants vary significantly between different establishments and locations. Most of these establishments constitute ad hoc solutions for the detention of irregular immigrants and do not meet the minimum human rights standards for a six months detention. The relevant infrastructures are lacking appropriate hygienic facilities. Access to work activities, sports or even yarding is out of question in this type of establishments. The number of detainees confined in these establishments overpass in most of the cases their capacity and renders the detention intolerable¹⁴³.

88. Detention conditions in these facilities have been severely criticized during the last years by international and national bodies¹⁴⁴ reporting serious breaches of fundamental human rights. In a recent report on Greece the UN Committee against Torture expresses its concern "*at the current detention policy applied to asylum-seekers and migrants in an irregular situation, including reports that asylum-seekers at border locations are routinely subject to long periods of administrative detention. The length of detention, in combination with the deplorable conditions of detention, amounts to inhuman or degrading treatment and constitutes a serious hindrance for asylum-seekers to apply for asylum. Furthermore, the Committee is seriously concerned at the appalling conditions in the detention facilities, including regular police and border guard stations throughout the country, and particularly in the Evros region, in terms of severe overcrowding, insufficient staff levels, lack of basic supplies, as well as inadequate medical, psychological, social and legal support*".¹⁴⁵ Furthermore the Committee expresses its particular concern that "*unaccompanied or separated asylum-seeking minors are often not properly registered and are systematically detained, often in mixed immigration*

¹⁴¹ See ECtHR, Case of Rahimi v. Greece, supra note 37.

¹⁴² CPT - News Flash / Council of Europe, Anti-torture Committee visits Greece, 23-29/9/2008, at: <http://www.cpt.coe.int/documents/grc/2005-09-15-eng.htm>. A delegation visited 25 different establishments for detention of irregular immigrants in border as well as urban areas. See also CPT (2012), p. 6, supra note 37.

¹⁴³ See COUNCIL OF EUROPE, *Report by Thomas Hammarberg*, p. 6-7, supra note 11, where extensive reference to relevant reports of international bodies.

¹⁴⁴ See above, par. 42, note 47.

¹⁴⁵ UN COMMITTEE AGAINST TORTURE, par. 20, supra note 37.

facilities with adults. The Committee is also concerned that the transitional Presidential Decree 114/2010 did not introduce a statutory prohibition regarding the detention of these minors and that the limited number of special reception centres for unaccompanied minors contributes to their prolonged detention”¹⁴⁶.

89. The ECtHR in numerous cases involving asylum seekers/irregular migrants has found Greece in breach of Article 3 of the ECHR¹⁴⁷, considering that conditions in detention facilities for migrants amounted to inhuman and degrading treatment.

90. In conclusion, asylum seekers deprived of their right to seek asylum are exposed to unlawful detention and to detention conditions amounting to inhuman and degrading treatment.

91. Consequently, Greece is in violation of **Art.1 & Art.5 of the Universal Declaration of Human Rights, Art.7 & Art.9 of the ICCPR, Art.3 & Art.5 par. 1 (d) of the ECHR, Art.1, Art.4, Art.6 & Art.24 par. 1 & 2 of the EU Charter of Fundamental Rights, Art.18 of the ‘Procedures Directive’, Art.13 of the Presidential Decree 114/2010, Art.15, Art.16 and Art.17 of the “Return Directive” and Art.30, Art.31 & Art.32. of Law 3907/2011.**

b) Lack of an effective remedy

92. Article 9 of the ICCPR provides that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful [par.4] and “*Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation*” (par.5). Art.13 of the ECHR also provides for the right to an effective remedy before a national authority for everyone whose rights freedoms as set for in the Convention are violated. Art.5 par. 4 of the ECHR stipulates: “*Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*”

93. The European Charter of Fundamental Rights in Art. 47, as mentioned above, explicitly provides for the right to an effective remedy before a tribunal. The ‘Procedures Directive’ foresees: “*Where an applicant for asylum is held in*

¹⁴⁶ Ibid, par. 22.

¹⁴⁷ See ECtHR, Case of Dougoz v. Greece; Case of S.D. v. Greece; Case of Tabesh v. Greece; Case of A.A. v. Greece; Case of Rahimi v. Greece; Case of R.U. v. Greece, supra note 37 and Case of M.S.S. v. Belgium & Greece, supra note 20.

detention, Member States shall ensure that there is a possibility of speedy judicial review.” (Art.18 par. 2), while the “Return Directive” stipulates: “In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority” (Art.15 par.3).

- 94.** P.D. 114/2010 foresees: *“Applicants detained according to the above paragraphs are allowed to appeal and submit objections against their detention according to article 76 paragraph 3 of law 3386/2005.” (Art.13 par. 5), while Law 3907/2011 reiterates Art.76 par. 3 of Law 3386/2005, which provides the right of third country nationals who are in detention to “raise objections to the detention order or to its extension before the President or the first-instance administrative court or the judge of this court appointed by the former, which is territorially competent for the Region where s/he is detained”.*
- 95.** According to Law 3907/2011 *“In any case the conditions of detention shall be reviewed automatically, every three months, by the institution that issued the detention order. In case of an extension of the detention, the relevant orders are forwarded to the President – or to the judge appointed by him - of the first-instance administrative Court of paragraph 2, who shall rule on the legality of the detention and shall issue immediately his/her decision, summarize it in written form as a relevant record and forward it immediately to the competent police authority.” (Art.30 par. 3 of Law 3907/2011), while “When it becomes manifest that there no longer exists a reasonable prospect of removal, for legal or other considerations, or the conditions laid down in paragraph 1 no longer exist, detention ceases and the third-country national shall be released immediately.” (Art.30 par. 4 of Law 3907/2011).*
- 96.** Although a sort of judicial review is provided for by the law as a possibility of an irregular migrant/asylum seeker to *“express objections against the decision for her/his detention before the president or the judge of the court of first instance... in the region of his detention” (Art. 76 par. 3 of Law 3386/2005), this remedy can not be considered as effective according to international and EU standards. Law 3386/2005 regulating objections against detention does not provide for a direct review of the lawfulness of the detention of an alien being held with a view to expulsion. It only provides for a limited review of the grounds justifying detention (risk of absconding, threat to public order etc). Furthermore, a number of factors render the exercise of the right of judicial review in case of detention ineffective: the detention conditions, the absence of free legal aid during administrative proceedings and proceedings before*

administrative courts¹⁴⁸, the lack of trained and qualified personnel and interpreters, the absence of social assistance and adequate information.¹⁴⁹ Moreover, the process before the court requires written form, legal representation and expenses. The provisions of the Law 3907/2012 (Art.30 par. 3) introducing an automatic judicial review on the legality of detention, regulate only the cases of extension of detention and not the detention *per se*.¹⁵⁰

97. ECtHR has convicted Greece for breaching Art.5 par. 4 of ECHR in a well established case law considering that Greek Law does not permit for a direct review of the lawfulness of the detention of an alien being held with a view to expulsion.¹⁵¹ The Court noted the inadequacies of Greek law regarding the effectiveness of judicial review of detention with a view to expulsion and concluded that they did not meet the requirements of Art.5 par. 4. In particular, the Court pointed out that neither section 76 of Law no. 3386/2005, nor an application to the Minister of Public Order for judicial review of a deportation order, nor indeed an interim order deferring enforcement of the removal measure gave the court power to examine the lawfulness and appropriateness of a decision to maintain a person in detention with a view to his or her expulsion.¹⁵²

98. As presented above, detention conditions of asylum seekers/irregular migrants in Greece amount to inhuman and degrading treatment¹⁵³. As concerns detention conditions, the law does not explicitly provide for any judicial review. The Law 3907/2011 (Art.30 par. 3) provides for a review by the same administrative body (police authority) that issued the detention order.

99. In order to determine whether the available remedies under domestic law constitute “effective remedy”, ECtHR, as presented above¹⁵⁴, has elaborated a set of criteria. While examining violations of Art. 3 as regards detention

¹⁴⁸ According to the Law 3226/2004, legal aid is provided in criminal and civil proceeding and is designated in principle to cover the needs of legally residing, low income aliens.

¹⁴⁹ See above supra note 139.

¹⁵⁰ As for the ineffectiveness of the remedies against return decisions before a Court, provided in Law 3907/2011 (Art.33 par. 2 and 4), see above par. 68.

¹⁵¹ See ECtHR, Case of S.D. v. Greece; Case of Tabesh v. Greece; Case of A.A. v. Greece; Case of Rahimi v. Greece; Case of R.U. v. Greece, supra note 37.

¹⁵² See in particular Case of R.U. v. Greece and also see Case of S.D. v. Greece; Case of Tabesh v. Greece; Case of A.A. v. Greece; Case of Rahimi v. Greece, supra note 37.

¹⁵³ See above par. 87-89.

¹⁵⁴ See above par. 67.

conditions amounting to inhuman and degrading treatment, ECtHR has noted that the courts in Greece are not empowered to examine living conditions in administrative detention and to order the release of a detainee on those grounds. The Court thus ruled that there are no remedies enabling detainees to complain against their conditions of detention and therefore Greece violated Art.13 in conjunction to Art.3 of the ECHR (inhuman and degrading treatment)¹⁵⁵. The Court also ruled that the remedies provided by the police authorities did not represent an authority satisfying the requirements of impartiality and objectivity necessary to make the remedy effective.

100. Asylum seekers/people in need of international protection are exposed in Greece to unlawful detention under conditions amounting to inhuman and degrading treatment without any effective remedy to challenge either the lawfulness of their detention or the conditions of their detention.

101. Therefore, **Greece** is in violation of **Art.2 par. 3 of the ICCPR**, in conjunction with **Art.7 and Art.9 par. 1, 2 &4 of the ICCPR; Art.13 of the ECHR**, in conjunction with **Art.3 of the ECHR; Art.47 of the EU Charter of Fundamental Rights**, in conjunction with **Art.1, Art.4, Art.6 & Art.24 par. 1 & 2 of the EU Charter of Fundamental Rights; Art.18 of the ‘Procedures Directive’ and Art.15, Art.16 & Art.17 of the “Return Directive”**.

V. Violation of the right to human dignity and of the right not to be subjected to inhuman or degrading treatment / Deprivation of persons in need of international protection of their rights attached to the status of asylum applicant

a) Substantive right

102. The living conditions are closely related to the rights to human dignity and to the right not to be subjected to inhuman or degrading treatment, as enshrined by the international and EU legal instruments and as presented above.¹⁵⁶

103. The ‘Reception Directive’ sets that Member States shall provide asylum seekers with proper documentation (Art.6), and shall guarantee their right to residence and freedom of movement within their territory (Art.7). Access to information on their rights and obligations is also provided by the Directive (Art.5). Certain reception conditions (including material ones) are attached to the status of asylum seekers: accommodation, food and clothing, sufficient to protect the asylum seeker from extreme need (Art.13), access of

¹⁵⁵ See Case of R.U. v. Greece; Case of Rahimi v. Greece, supra note 37.

¹⁵⁶ See above par. 71-72.

minors to education (Art.10), access to health care (Art.15), access to the labor market (Art.11), protection of family unity (Art.8) etc. The right of the applicants to remain in the country is also guaranteed by the ‘Procedures Directive’ (Art.7).

104. Greece, after having been found by the Court of Justice of the European Communities (now the Court of Justice of the European Union) to be in breach of EU law by failing to transpose the Reception Directive (C-72/06), issued the Presidential Decree (P.D.) 220/2007. The P.D. 220/2007 provides for a set of measures granted to asylum applicants in accordance with the ‘Reception Directive’ and in particular: asylum applicants are provided with a special identity card that allows them to stay in the Greek territory while the asylum application is being examined (Art.5), accommodation arrangements should be made when an applicant is unable to find lodging or has not adequate financial means to cover the needs of his/her private accommodation (Art.6), asylum seekers are granted the right to immediate access to the labor market (Art.10) and access to health care (Art.14), the competent authorities shall take adequate measures in order to ensure that material reception conditions are available to asylum seekers (Art.12), special measures are provided for persons with special needs (Chapter C, Art.17-20) etc. The P.D. 114/2010 also provides for the right of the asylum seekers to remain in the country (Art.5 par. 1) and their right to be granted a special individual document (asylum seekers card) (Art.8 par. 1 (d)).

105. However, the precondition for an alien to fall within the ambit of the ‘Reception Directive’ and the P.D. 220/2007 is to have the status of asylum applicant, i.e. to have made an application for asylum in respect of which a final decision has not yet been taken¹⁵⁷. And although it is beyond doubt that Greece does not meet its obligations under EU law and does not comply with its own legislation by failing to provide accommodation and, in general, decent material conditions to asylum seekers in need¹⁵⁸, by refusing to register asylum claims makes for persons in need of international protection even the prospect of availing themselves of these rights and providing for their essential needs totally impossible.

106. Thus, Greece, by not providing for unimpeded access to the asylum procedure and by refusing to register asylum claims deprives right from the outset people in need of their rights under the ‘Reception Directive’ and the P.D. 220/2007 and deprives asylum seekers of their right to human dignity and

¹⁵⁷ See the definition of “applicant” or “asylum seeker” in the Reception Directive and in the P.D. 220/2007.

¹⁵⁸ See, e.g., ECtHR, Case of M.S.S. v. Belgium and Greece, supra note 20 and Case of Rahimi v. Greece, supra note 37.

their right not to be subjected to inhuman or degrading treatment. Furthermore, the indifference of Greek authorities to the particular state of insecurity and vulnerability in which these people live in the country, denied of even the prospect of having their essential needs met and having to endure deplorable conditions, engage the State's liability.

107. Therefore, Greece is in breach of **Art.1 & Art.5 of the Universal Declaration of Human Rights, Art.7 of the ICCPR, Art.3 of the ECHR, Art.1, Art.4 & Art.24 par. 1 & 2 of the EU Charter of Fundamental Rights, the 'Reception Directive' and Art.7 of the 'Procedures Directive',** as well as of **P.D. 220/2007 and Art.5 par. 1 & Art.8 par. 1 (d) of the P.D. 114/2010.**

b) Lack of an effective remedy

108. As mentioned above¹⁵⁹, at Greek national level, asylum seekers deprived of the rights that they would potentially enjoy if they had access to the asylum procedure have no remedy before a national body that would enable them to have their complaint examined. Remedies provided in Art.21 of the 'Reception Directive' to the asylum seekers in order to vindicate their rights concerning reception/material conditions presuppose that an asylum application has been officially lodged and registered. Therefore, these remedies are not accessible to persons seeking protection but not having been registered yet as such.

109. Greece is in violation of **Article 2 par. 3 of the ICCPR, in conjunction with Art.7 of the ICCPR; Article 13 of the ECHR, in conjunction with Art.3 of the ECHR; and Art.47 of the EU Charter of Fundamental Rights, in conjunction with Art.1, Art.4 & Art.24 par. 1 & 2 of the EU Charter of Fundamental Rights, the 'Reception Directive' and Art.7 of the 'Procedures Directive'.**



The present document is a complaint denouncing the unlawful practices of the Greek authorities depriving people in need of international protection from their right to seek asylum, exposing them to the risk of refoulment and unlawful detention under inhuman and degrading conditions, imposing them appalling living conditions while violating the substance of the human dignity.

We call all competent international and EU bodies to take immediately all necessary measures in order to put an end to these violations.

¹⁵⁹ See above par. 56 and 78.

Aitima

Arsis Association for the social support of Youth

Association of Afghans united in Greece

Greek Council for Refugees

Greek Helsinki Monitor

Greek Forum of Refugees

Group of Lawyers for the Rights of Migrants and Refugees

Integration Centre for Migrant Workers-Ecumenical Refugee Program

Medical Intervention “Medin”

Network for Children’s Rights

Network of Social Support to immigrants and Refugees

Solidarity Committee for refugees Chios, “Lathra”

Society for the care of Minors

Movement for Human Rights - Solidarity with Refugees - Samos