



RSA Submission to the Universal Periodic Review – Greece

Refugee Support Aegean (RSA) is a Greek non-profit organisation focusing on strategic litigation in support of refugees, monitoring the Greek asylum system and human rights, and providing legal, social and humanitarian support in individual cases. RSA offers free legal assistance mainly in Athens, Lesbos and Chios and has a track record of leading cases on refugee rights before national courts and the European Court of Human Rights, as well as research and documentation on asylum seekers and beneficiaries of international protection in Greece. RSA is a partner of Stiftung PRO ASYL.¹

The present submission provides information on the implementation of selected recommendations supported by Greece during the 2nd Universal Periodic Review (UPR) cycle relating to the treatment of refugees and migrants.²

1. Optional Protocol to the Convention on the Rights of the Child

Recommendations 134.2 and 134.3

Greece has not taken steps to ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, despite its commitment to do so in response to 2nd UPR cycle recommendations. Ratification of the Protocol is necessary to ensure that children in Greece have effective access to their rights as enshrined by the Convention, in keeping with the Greek government's decision in November 2019 to set the protection of unaccompanied migrant children as a matter of high priority, including through the designation of a dedicated National Coordinator.³

The communications procedure is of paramount importance in the specific context of migration, in view of persisting severe violations of the human rights of children seeking asylum, many of which are brought before regional human rights mechanisms. In addition to numerous cases brought by children before the European Court of Human Rights (ECtHR),⁴ a collective complaint on the treatment of migrant children is pending before the European Committee of Social Rights (ECSR).⁵

¹ More information available at: <https://www.rsaegean.org>.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Greece*, A/HRC/33/7, 8 July 2016, available at: <https://bit.ly/37ILFaE>.

³ Prime Minister of Greece, 'Παρέμβαση του Πρωθυπουργού Κυριάκου Μητσοτάκη για τη φροντίδα των ασυνόδευτων παιδιών που βρίσκονται στην Ελλάδα με το πρόγραμμα «Κανένα παιδί μόνο»', 24 November 2019, available at: <https://bit.ly/2O0pFeD>.

⁴ ECtHR, *Sh.D. and others v. Greece*, App No 14165/16, Judgment of 13 June 2019, available at: <https://bit.ly/2N7jN3j>; *H.A. v. Greece*, App No 19951/16, Judgment of 28 February 2019, available at: <https://bit.ly/3u8H0Th>; *Kaak v. Greece*, App No 34215/16, Judgment of 3 October 2019, available at: <https://bit.ly/2ZsquQ4>; *M.Y. and others v. Greece*, App No 51980/19, Communicated on 9 October 2020, available at: <https://bit.ly/3u81KKQ>.

⁵ ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, available at: <https://bit.ly/3bhKUjX>.

2. Protection against racist violence and hate crimes (134.37 et seq.)

Recommendations 134.37 et seq.

Safeguards for victims of racist violence in domestic law are not complied with in practice. Migrants and refugees do not benefit from effective legal aid and representation in the course of criminal proceedings. Furthermore, police stations and hospitals largely operate without interpreters and are thus unable to effectively deal with cases of non-Greek speakers. The lack of professional interpretation during police investigations is crucial and can lead to self-incrimination.⁶

Since the 2nd UPR cycle, the Greek government has successively enacted legislation: (a) allowing pending criminal proceedings to lapse in crimes punishable by imprisonment of up to one year; and (b) imposing statute limitation for imprisonment sentences of up to six months set by non-definitive judgments. The above provisions are applicable to crimes committed until 31 March 2016,⁷ subsequently extended to 30 April 2020,⁸ and to imprisonment sentences issued by 3 August 2016,⁹ extended to 27 May 2020.¹⁰ Similar provisions had been enacted in 2012 and 2013.¹¹ Although racially motivated crimes under Article 82A of the Penal Code and Law 927/1979 are specifically excluded from the above provisions,¹² most crimes involving racist bias and racist violence are not treated by prosecution services under these provisions. In practice, most racist crimes are examined as isolated offences under the main crimes applicable on the facts of the individual case e.g. mere insult, bodily injury etc. As such, crimes characterised as such fall under the abovementioned provisions and are never tried and/or sentences are never served.¹³

3. Treatment of refugees and migrants

Recommendations 134.124 et seq.

3.1. Push backs and collective expulsions

Since early 2020, an increasing number of reports denounce unlawful push backs from Greek soil and Greek territorial waters. Removals from land most often take place shortly after or immediately upon arrival. At sea, reports refer to conduct including: Greek Coast Guard vessel manoeuvres in high-speed near refugee boats; confiscation of fuel and/or destruction of engines; pointing of guns at the individuals on board refugee boats; towing of the boats towards Turkey, leaving people adrift on often unseaworthy and overcrowded dinghies, including life rafts, and putting their lives at risk. In some cases, the reports received referred to the following conduct: ramming of the refugee boats; firing of shots near the refugee boats or in the air. RSA and PRO ASYL compiled in December 2020 a timeline of over 40 reports of main push back incidents at sea in the course of 2020,¹⁴ as well as a timeline of official responses and positions taken by representatives of the Greek government, EU institutions and

⁶ RSA, *Submission to the Committee of Ministers of the Council of Europe in Sakir v. Greece*, July 2020, available at: <https://bit.ly/3s4Ewn7>.

⁷ Article 8 Law 4411/2016, Gov. Gazette A' 142/3.8.2016.

⁸ Article 63 Law 4689/2020, Gov. Gazette A' 103/27.5.2020.

⁹ Article 9 Law 4411/2016.

¹⁰ Article 64 Law 4689/2020.

¹¹ Article 4 Law 4043/2012, Gov. Gazette A' 25/3.2.2012; Article 8(3) Law 4198/2013, Gov. Gazette A' 215/11.10.2013.

¹² Article 63 Law 4689/2020 excludes crimes of Article 82A Penal Code and not Law 927/1979, which in any case is rarely applied by prosecutors and courts in Greece.

¹³ RSA, *Submission to the Committee of Ministers of the Council of Europe in Sakir v. Greece*, July 2020, available at: <https://bit.ly/3s4Ewn7>; Racist Violence Recording Network, *Communication in Sakir v. Greece*, December 2020, available at: <https://bit.ly/2M2c6uH>.

¹⁴ RSA, 'Push backs and violations of human rights at sea: a timeline', 29 December 2020, available at: <https://bit.ly/3hqjtay>.

agencies, and human rights monitoring bodies.¹⁵ RSA and other organisations highlighted their concerns to the United Nations Special Rapporteur on the human rights of migrants in February 2021.¹⁶

3.2. Capacity of the Asylum Service and quality of the asylum procedure Recommendations 134.128, 134.131, 134.133 and 134.145

Access to the asylum procedure

Severe obstacles to access to the asylum procedure persisting in previous years have not been resolved. The predominant channel for an individual to register their application on the territory involves a request for appointment via a Skype service available for specific hours a week according to available interpretation services. This practice raises crucial data protection and security considerations for individuals seeking protection. It is also persistently ineffective, as asylum seekers continue to face barriers to registration in urban areas. Individuals are still unable to access the Asylum Service via Skype despite several attempts to obtain an appointment.¹⁷ The ineffectiveness of access to the procedure through the Skype service was reiterated by the Greek Ombudsman in January 2021.¹⁸

Quality of the asylum procedure

Despite a sharp decrease in arrivals in 2020, consistently highlighted by the Greek Ministry of Migration and Asylum,¹⁹ Greece prolonged the fast-track border procedure applicable in times of “mass arrivals”²⁰ for a fifth consecutive year, until the end of 2021. No justification of the basis for maintaining this exceptional procedure was provided beyond a provision stating “the fact that the conditions set out in Article 90, para 3 are met”.²¹

Serious concerns persist in the implementation of the provisions relating to special procedural guarantees for vulnerable asylum seekers in the fast-track border procedures on the islands. In an illustrative case, a severely traumatised asylum seeker who had been recognised by the RIS as vulnerable was repeatedly summoned to an interview by the Asylum Service in the border procedure. The Asylum Service at no point assessed whether the applicant was in need of special procedural guarantees on account of his health condition, and whether or not adequate support could be provided in his case, despite the prior submission of medical documents from the public hospital, documents attesting the person's inability to follow the demanding process of the asylum interview and recount extremely traumatic experiences, as well as documents highlighting the deterioration of his health condition stemming from the interview process. As a result, his case was not exempted from the border procedure as required by the law, even though the competent authorities were fully aware of the state of his health. The Asylum Service insisted on repeatedly serving new summons for interviews within extremely tight timeframes. On one occasion, the Asylum Service attempted to serve a notification with the applicant inside the ambulance that was called in to urgently transfer him to

¹⁵ RSA, 'Official reactions and positions on push backs: a timeline', 29 December 2020, available at: <https://bit.ly/2WXHhJf>.

¹⁶ RSA et al, 'Joint statement on push back practices in Greece', 15 February 2021, available at: <https://bit.ly/3jRjk0R>.

¹⁷ RSA & Stiftung PRO ASYL, *Submission in the M.S.S. and Rahimi cases*, July 2020, available at: <https://bit.ly/3qa2Fbf>.

¹⁸ Greek Ombudsman, Letter to the Asylum Service, 290565-291571/2367/2021, 15 January 2021.

¹⁹ See e.g. Ministry of Migration and Asylum, *Ετήσιο ενημερωτικό σημείωμα 2020*, January 2021, available at: <https://bit.ly/3aNx0Ga>.

²⁰ Article 90(3) Law 4636/2019, Gov. Gazette A' 169/1.11.2019.

²¹ Recital 11 Joint Ministerial Decision 15996/2020, Gov. Gazette B' 5948/31.12.2020.

the hospital. The patient's mental condition has been significantly impacted as a result of these multiple traumatic events.²²

As regards the rejection of asylum applications without an assessment of their merits, based on the "safe third country" concept, Greek asylum authorities have largely continued to refrain from taking into consideration up-to-date, reliable sources of information concerning risks of inhuman or degrading treatment and *refoulement* facing individuals in Turkey. Even where reliable reports on risks of non-compliance by Turkey with the principle of *non-refoulement* are cited in decisions, Committees have not engaged with available evidence in their legal analysis of the applicability of the safety criteria of the "safe third country" concept and the risks of exposure of individuals to ill-treatment. In a number of decisions issued this year, the Appeals Committees cited the aforementioned letters and selected provisions of Turkish legislation as reliable evidence of compliance by Turkey with the principle of *non-refoulement*.²³

3.3. Living conditions for asylum seekers and refugees Recommendations 134.129 et seq.

In 2020, Greece stated before the Committee of Ministers of the Council of Europe that recent legislation "sets the pathway for a more efficient restructuring of open accommodation structures and the increase of their capacity" and that "[f]urther action for better management and development of existing structures, as well as increase in capacity, is constantly on the relevant authorities' agenda." These statements are in direct contradiction with the declared commitment on the part of the Ministry of Migration and Asylum to sharply reduce accommodation capacity by abolishing 55 facilities by the end of 2020,²⁴ as well as to "abolish the use of apartments and hotels in cities for the accommodation of refugees".²⁵ The Council of Europe has urged Greece to clarify its intention to reduce reception capacity.

Furthermore, living conditions in Reception and Identification Centres (RIC) on the Eastern Aegean islands are consistently documented, including by human rights bodies, as critical and incompatible with human dignity. Conditions are particularly dire for unaccompanied children, pregnant women, victims of torture, elderly persons and persons suffering from serious and often incurable medical conditions. In this regard, the European Court of Human Rights has granted interim measures under Rule 39 of the Rules of Court in at least ten cases concerning substandard conditions on the islands. The Court has ordered the authorities to "guarantee for the applicants an accommodation with reception conditions which are compatible with Article 3 of the Convention and the applicants' health state" on account of their specific needs e.g. medical condition, age.²⁶ Several cases have recently been communicated by the Court in relation to the compatibility of living conditions on Lesbos, Chios, Samos

²² RSA, MSF and PRO ASYL, 'Border procedures on the Greek islands violate asylum seekers' right to special procedural guarantees', 15 February 2021, available at: <https://bit.ly/3rPS6um>.

²³ RSA & Stiftung PRO ASYL, *Submission in the M.S.S. and Rahimi cases*, July 2020, available at: <https://bit.ly/3qa2Fbf>.

²⁴ Naftemporiki, 'N. Μηττάρακης: Μείωση των δομών από 93 σε 38 το 2020', 25 April 2020, available at: <https://bit.ly/3fKxe27>.

²⁵ Ministry of Migration and Asylum, 'Δημιουργούμε 20.000 νέες θέσεις φιλοξενίας στην ενδοχώρα', 26 February 2020, available at: <https://bit.ly/3fceyIT>; 'Φρένο στις ροές - ασφάλεια στις δομές', 3 May 2020, available at: <https://bit.ly/3c2XC5u>.

²⁶ ECtHR, *E.I. and others v. Greece*, App No 16080/20, Order of 16 April 2020; *M.A. v. Greece*, App No 18179/20, Order of 5 May 2020. See further RSA, 'Evacuation of overcrowded island camps a legal imperative', 21 April 2020, available at: <https://bit.ly/3h4XsgS>; ECtHR, *S.A. and O.A. v. Greece*, App No 40124/20, Order of 24 September 2020. See RSA, 'European Court of Human Rights orders Greece to safeguard asylum seekers' life and limb on Lesbos', 24 September 2020, available at: <https://bit.ly/3bb5vqg>.

and Kos with the prohibition on inhuman and degrading treatment.²⁷

Following the destruction of the RIC of Moria on 8-9 September 2020, RSA triggered on 14 September 2020 the UN Special Procedures through a submission to the Special Rapporteurs on shelter, the right to food, the right to water and sanitation, the right to health, as well as the Working Group on Arbitrary Detention (WGAD), on behalf of eight asylum seekers formerly residing in Moria, denouncing their exposure to inhuman and degrading treatment and the arbitrary restriction and deprivation of their liberty.²⁸

Conditions are also dire in reception facilities on the mainland such as “New Malakasa”, where hundreds of people have remained in tents without sufficient access to electricity and water under harsh weather conditions.²⁹

As regards persons who are granted international protection, since the summer of 2020, thousands of beneficiaries of international protection have ended up homeless after being informed that they had to exit their accommodation places in the reception system. People have been exposed to destitution and have slept rough in Victoria Square and other parts of Athens. Following several forcible removal operations, the Police has transported them to refugee camps (e.g. Malakasa, Elaionas, Skaramangas, Thiva) and even to detention facilities (Amygdaleza), where they have remained as unregistered residents. Living conditions for unregistered residents in Attica camps, many of them severely overcrowded,³⁰ involve serious material deprivation: people slept on the floor and were excluded from the entitlements afforded to asylum seekers.³¹

Risks of homelessness among persons granted international protection remain high at the time of writing. It is worth highlighting that as many as 13,187 people faced impending exit from the country's reception system at the end of 2020 due to the conclusion of their asylum procedure.³²

3.4. Guardianship of unaccompanied children Recommendations 134.152, 134.154

The dedicated legal framework on guardianship of unaccompanied children, Law 4554/2018, has still not been implemented to date. Unaccompanied children applying for asylum in Greece are still not appointed a guardian by the authorities and remain under nominal guardianship of the territorially competent Public Prosecutor for prolonged periods. In one case represented by RSA before the European Court of Human Rights, two unaccompanied children confined in Malakasa remained without effective guardianship despite specific questions to the authorities from the Strasbourg Court as to when a guardian would be appointed to them.³³ Children undergoing age assessment or wrongly registered as adults are also

²⁷ ECtHR, *A.R. and others v. Greece*, App No 59841/19, Communicated on 4 January 2021, available at: <https://bit.ly/2NDaA2A>.

²⁸ RSA, ‘Lesvos-Moria nightmare for thousands of refugees’, 17 September 2020, available at: <https://bit.ly/3rKxcNK>.

²⁹ RSA, ‘New Malakasa: Inhuman subsistence, nine months on’, 17 December 2020, available at: <https://bit.ly/3bebJFT>.

³⁰ The occupancy rate is currently 127% in Elaionas and 101% in Malakasa and Schisto: International Organisation for Migration (IOM), *SMS Factsheet*, December 2020, available at: <https://bit.ly/3cUviW1>.

³¹ RSA, ‘Recognised but unprotected: The situation of refugees in Victoria Square’, 3 August 2020, available at: <https://bit.ly/3p34Cow>.

³² Ministry of Migration and Asylum, Reply to parliamentary question by SYRIZA, 581/2020, 8 January 2021, 1.

³³ ECtHR, *R.H. & R.A. v. Greece*, App No 15463/20, joined in *M.Y. v. Greece* cited above. See further RSA, ‘Two children transferred out of Malakasa, protection still denied to many’, 11 May 2020, available at: <https://bit.ly/3dgXX4k>.

deprived of guardianship.

Under the above circumstances, children are legally unable to request and obtain legal representation, and to be heard before authorities and courts. This deprives them of the ability to exercise their rights in Greece, i.e. asylum and social rights, and potential rights to family reunification procedures pending in other states.³⁴

³⁴ RSA & Stiftung PRO ASYL, *Submission in the M.S.S. and Rahimi cases*, July 2020, available at: <https://bit.ly/3qa2Fbf>.