



Infofiche

Dublin - Griekenland

asielprocedure en opvang van asielzoekers
in Griekenland

Compilatie van bronnen

Inleiding

Met het arrest M.S.S.¹ van het Europees Hof voor de Rechten van de Mens (hierna EHRM) en het arrest N.S.² van het Hof van Justitie werden systematische tekortkomingen vastgesteld in het Griekse asielsysteem die resulteerden in een schending van de fundamentele rechten van asielzoekers. Sindsdien vonden er geen Dublinoverdrachten naar Griekenland meer plaats. Op 8 december 2016 beval de Europese Commissie aan³ vanaf 15 maart 2017 Dublintransfers te hervatten naar Griekenland voor asielzoekers die de buitengrenzen van Griekenland op onwettige wijze hebben overschreden evenals voor asielzoekers waarvoor Griekenland verantwoordelijk is onder de andere criteria van de Dublin III-verordening uitgezonderd asielzoekers die tot een kwetsbare groep behoren (zoals niet-begeleide minderjarigen).

De Europese Commissie voorziet dat de overdracht dient te gebeuren in nauwe samenwerking tussen de betrokken lidstaten en dat in concrete dossiers individuele garanties geboden dienen te worden door de Griekse autoriteiten voor wat betreft opvang en behandeling van het verzoek om internationale bescherming volgens de standaarden uiteengezet in de EU-richtlijnen.

De Griekse autoriteiten spraken hun bezorgdheid uit over de hervatting van Dublintransfers naar Griekenland:

“Despite the significant progress that has been recorded in the conditions of detention, the reception and identification, as well as the asylum procedure, in exceptional, indeed, circumstances, the country remains under extreme migratory pressure. The fragile balance achieved with great difficulty may be considerably disturbed in case of further burden, to the detriment of the rights of international protection applicants. The main reasons for concern are: a) the rapid increase of asylum applications and b) the ineffective operation of emergency relocation scheme, due to inadequate response from other Member-States. Under these circumstances, the country cannot accept transfers of

¹EHRM M.S.S v. Belgium and Greece, 30696/09, 21 January 2011

² HvJ, N.S. (C 411/10) tegen Secretary of State for the Home Department en M.E. (C 493/10), A.S.M., M.T., K.P., E.H. tegen Refugee Applications Commissioner Minister for Justice, Equality and Law Reform, 21 december 2011

³ European Commission, Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation, 8 December 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation_on_the_resumption_of_transfers_to_greece_en.pdf

asylum seekers, as their management would place further pressure on the asylum and reception system, leading to congestion of the centres and to further delays and problems in the processing of applications for international protection and the accommodation of applicants.”⁴

De aanbeveling van de Europese Commissie werd bekritiseerd door belangrijke actoren van het middenveld, waaronder Amnesty International en Human Rights Watch.

Ondanks deze kritiek, hebben verschillende EU-landen (o.a. Duitsland, het Verenigd Koninkrijk, Noorwegen en België) na de aanbeveling van de Europese Commissie⁵, in de loop van de zomer van 2017 besloten om de Dublinprocedure terug te activeren ten aanzien van Griekenland en opnieuw verzoeken te richten aan het land om asielzoekers terug of over te nemen⁶.

In deze infofiche zet NANSEN in samenwerking met studenten van het vak vaardigheden van de UGent de actuele toestand van asielzoekers in Griekenland uiteen aan de hand van verschillende informatiebronnen. De focus wordt gelegd op niet-kwetsbare volwassen asielzoekers die volgens de aanbeveling van de Europese Commissie in aanmerking komen voor een overdracht naar het Griekse vasteland. De situatie van NBM en andere kwetsbare asielzoekers evenals de situatie in de *hotspots* wordt in dit rapport niet besproken.

Ondanks de constante evoluties binnen dit rechtsdomein en in het bijzonder voor wat Griekenland betreft, hebben we gepoogd om de inhoud zo actueel, up-to-date en relevant mogelijk te houden. Aangezien het doel van deze fiche is om voornamelijk door te verwijzen naar verscheidene andere informatiekanalen, hebben we het redactiewerk beperkt gehouden tot korte aanhalingen of quotes uit de geciteerde werken.

Belangrijke opmerking: *de verzameling van informatie in deze infofiche is niet exhaustief. Gelet op de snel wijzigende actualiteit is het voor de praktijkjurist dan ook absoluut aan te raden om verschillende bronnen te gebruiken naast deze fiche.*

⁴ Communication from Greece (15/03/2017) in response to the decision of the CM at its 1222 meeting (March 2015) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications (No.30696/09,8687/08), [http://hudoc.exec.coe.int/eng/{"EXECIdentifier":|"DH-DD\(2017\)324E"}|](http://hudoc.exec.coe.int/eng/{))

⁵ Commission Recommendation of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013.

⁶ A. Makris, "Asylum Seeker Rejected in Germany to be Returned to Greece", 19 October 2017, <http://greece.greekreporter.com/2017/10/19/asylum-seeker-rejected-in-germany-to-be-returned-to-greece/>; BBC, "Germany to resume sending migrants back to Greece", 7 August 2017, <http://www.bbc.com/news/world-europe-40850938>.

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A. Recente wetswijzigingen

L 4375/2016

Met het oog op uitvoering van het akkoord tussen Turkije en de Europese Unie van 18

maart 2016, werd op 3 april een wet “*On the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, provisions on the employment of beneficiaries of international protection and other provisions*” goedgekeurd, ofwel L4375/2016.

L4375/2016 legt onder andere het wettelijk kader vast voor de opvang- en identificatieprocedure waarbinnen de bestaande praktijken binnen de *hotspots* worden geïmplementeerd die in 2015 geïntroduceerd werden door de Europese Commissie in de *European Agenda on Migration*. De Europese Commissie wou daarmee reageren op het groot aantal vluchtelingen dat zowel Griekenland als Italië te verwerken kreeg.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*“The initial objective of the “hotspot approach” was **to assist Italy and Greece by providing comprehensive and targeted operational support**, so that the latter could fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants, channel asylum seekers into asylum procedures, implement the relocation scheme and conduct return operations.”* (p. 24)

Vijf *hotspots* kwamen onder de naam van *First Reception Centres* tot stand op de volgende Oost-Egeïsche eilanden: Lesbos, Chios, Samos, Leros en Kos. In maart 2016 werden de *hotspots de facto* getransformeerd in gesloten centra. Dit was het gevolg van de deal tussen de EU en Turkije, die moest leiden tot het beëindigen van de ‘illegale migratie’ die plaatsvond tussen Turkije en de EU. Naar aanleiding van kritiek op dit systeem door nationale en internationale organisaties werd de vasthouding in gesloten centra vervangen door een systeem van geografische beperking van bewegingsvrijheid.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*“Following criticism by national and international organisations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of people, the practice of blanket detention has largely been abandoned in 2017. It has been **replaced by a practice of systematic geographical restriction**, i.e. an obligation not to leave the island and reside at the hotspot facility, which is imposed indiscriminately to every newly arrived person.”* (p. 25)

L4375/2016 verving de 'First Reception Service' onder L3907/2011 door de 'Receptions and Identification Service', als autonoom agentschap van het Ministerie van Migratiebeleid. 'First Reception Centres' zijn voortaan 'Reception and Identification Centres (R.I.C.)'. Deze opereren op de eilanden in Lesbos, Kos, Samos, Chios en op het vaste land in Fylakio in Orestiada bij de grens Evros.

Communication from Greece (15/03/2017) in response to the decision of the CM at its 1222 meeting March 2015) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications(No.30696/09,8687/08), [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2017\)324E"\]}](http://hudoc.exec.coe.int/eng#{)

"Reception and identification procedures aim in particular at the reception, identification, registration, medical screening and psycho-social support of irregular migrants, their information about their rights and obligations, in particular about the procedure for international protection or the procedure for entering a voluntary return program, the identification of those belonging to vulnerable groups and the referral to the related procedure of those who wish to submit an application for international protection.

Applicants for international protection may stay in the premises of the Reception and Identification Centre for as long as their application processing lasts and for a period of up to twenty-five days from the day of first admission. If upon the expiration of that time limit their applications have still not been processed, the competent Regional Asylum Office shall issue, pursuant to Part 2C, Law 4375/2016 International Protection Applicant Card and restrictions to their liberty shall be lifted, subject to the implementation of Article 46 of said Law, 3 regulating aspects of detention of asylum seekers (Article 14 par.7, Law 4 375/2016)." (p. 8-9)

Een van de opvallende wijzigingen die L 4375/2016 met zich meebracht, was het instellen van een bijzonder grensregime in het geval van de aankomst van grote aantallen asielzoekers aan de Griekse grens. Volgens artikel 60(4) van wet 4375/2016 kunnen de ministeries van Binnenlandse Zaken en Defensie dan uitzonderlijke maatregelen treffen.

Migration in Greece: Recent Developments in 2016 (Prof. Anna Triandafyllidou), <http://www.eliamep.gr/wp-content/uploads/2014/10/2016.pdf>

"These exceptional measures include as AIRE, ECRE report:

- The possibility for police authorities and unarmed soldiers to conduct the registration of asylum applications.*
- The possibility for European Asylum Support Office (EASO) officials and interpreters to assist the Greek authorities in registration and the conduct of interviews.*

- An expedient version of the border procedure which lasts no more than 14 days at first and second instance. This entails a 1-day deadline for asylum seekers to prepare for the interview and a maximum 3-day deadline for lodging an appeal.

*The special border regime is a **worrying development as it curtails access to asylum for those arriving at the EU borders**. The vote of the EU Parliament on July 2016 on the regulation establishing the European Border and Coast Guard Agency (zie supra), laid by Frontex, is an initiative aligned with the idea of special border regimes, and is also indicative of what developments to expect in the future.” (p. 23)*

Met de wet 4375/2016 werd EASO op de eilanden bevoegd voor het afnemen van interviews van asielzoekers, het voorstellen van beslissingen en het beoordelen van kwetsbaarheid. Deze bevoegdheden vallen buiten het mandaat van EASO. Een tweede wetswijziging aan de hand van L4461/2017 geeft EASO de bevoegdheid om in individuele dossiers rapporten op te stellen voor het Comité bevoegd voor de beslissing .

Greece Refugee Rights Initiative, EASO’s Operation on the Greek Hotspots, An overlooked consequence of the EU-Turkey deal, March 2018,
https://www.hias.org/sites/default/files/hias_greece_report_easo.pdf

*“As it will be analysed below, many shortcomings have been identified in relation to EASO’s operation in Greece. **The multifaceted and extensive involvement of EASO in the asylum procedure in Greece results in the Agency going beyond its original mandate** of providing operational support. Additionally, the interviews conducted by the Agency as well as the Opinions drafted are of **questionable quality** and often fail to meet internationally established standards for the conduct of asylum interviews.”*

Wijzigingen aan L4735/2016: L 4399/2016 en L4461/2017

L4735/2016 werd verschillende keren gewijzigd. Een eerste wijziging gebeurde door L 4399/2016. Met deze wijziging werden nieuwe ‘Beroepscomités’ opgericht, bevoegd voor de beoordelingen van alle beroepen tegen beslissingen van de Asieldienst ingediend vanaf 20 juli 2016. Daarnaast werd de samenstelling van deze Beroepscomités gewijzigd. Ook het recht van asielzoekers om gehoord te worden bij een beslissing in hun nadeel werd ingevoerd.

EDAL, Law 4375 On the organization & operation of the Asylum Service, the Appeals Authority, the Reception& Identification Service, the establishment of

the General Secretariat for Reception, the transposition into Greek legislation of Directive 2013/32/EC, 3 april 2016, <http://www.asylumlawdatabase.eu/en/content/en-law-4375-organization-operation-asylum-service-appeals-authority-reception-identification>

*“The **Appeals Committees will now consist of two judges of the Administrative Courts**, appointed by the General Commissioner of the Administrative courts, **and one UNHCR representative**. A representative from a list compiled by the National Commission of Human Rights may take part in the Appeals Committees if UNHCR is unable to appoint a member. In addition, the amendment has **removed Article 62(1) of L 4375/2016, which allowed the appellant to request a personal hearing before the Appeals Committees** at least two days before the appeal. This reinforced the general rule of examinations of appeals sur dossier, previously discussed in the AIDA report on Greece.”*

De Griekse Nationale Commissie voor de Mensenrechten uitte haar bezorgdheden omtrent deze wijziging.

Greek National Commission for Human Rights, GNCHR Report on the Condition of Reception and Asylum System in Greece, 22 december 2017, https://nhri.ohchr.org/EN/News/Documents/GNCHR_Report_Asylum_system_final.pdf

*“In its public statement on 17 July 2016, the GNCHR had expressed its concern and its reflection on the then hastily introduced amendment on the change of the composition of the Independent Appeal Boards, **noting that the proposed changes to Law 4375/2016 coincided with the adoption of positive decisions of the operational, then, Independent Committee (as regards their decision on the admissibility), which, in the context of an individual examination of recourses, ruled that Turkey was not safe third country for the specific applicants**. At the same time, the GNCHR also expressed its concerns regarding the composition of such Recourse Committees, as the provision for the participation of two administrative judges in every three member Recourse Committee raises issues of compatibility with the Constitution.*

*The judgments with Nos. 2347/2017 and 2348/2017 of the plenary session of the Council of State conclude that the Recourse Committees, as introduced and ultimately legislated by the submitted amendment, constitute a judicial body within the meaning of Article 86 par.2 of the Constitution; choosing not to apply its previous firm relevant jurisprudence, according to which **these Committees do not constitute a judicial body, given the fact that they decide administrative recourses against administrative acts without elements***

similar to the performance of judicial task and exercise of competence of a judicial body, such as the publicity of the hearings and the obligation to guarantee adversarial proceedings. In the present case, issues are raised in respect of procedural guarantees as regards the publicity, the adversarial proceedings as well as the applicant's right to be heard, which is significantly limited compared to the Administration's, as his personal presence is now possible only under exceptional circumstances.” (p. 7)

Een tweede wetwijziging aan de hand van L4461/2017 geeft EASO de bevoegdheid om in individuele dossiers rapporten op te stellen voor het Comité bevoegd voor het nemen van de beslissing in beroep .

Greek Council For Refugees, ECRE, CIR, Vluchtelingenwerk Nederland, Strengthening NGO involvement and capacities around EU ‘hotspots’ developments: Update on the implementation of the hotspots in Greece and Italy, 10 October 2016,

http://www.asylumineurope.org/sites/default/files/update_report_gcr.pdf

*According to Art. 101 of L. 4461/017, the Department for Legal Support, Training and Documentation and the EASO could be entrusted to draft case reports, that record the facts of each case, including the main claims of the appellant matched with COI. This report will be presented to the competent Committee for decision. Worryingly, **the said powers almost coincide with the powers of the Committees, who are supposed to be independent bodies.** Staff of the Department for Legal Support, Training and Documentation are ‘administrative’ under control of the Ministry of Migration Policy. Similarly, the EASO staff are under the authority of the European Agency. Therefore, **they do not offer the guarantee of independence, as the members of the Committees are supposed to offer.***

L 4368/2016

Een nieuwe wet die aangenomen werd in 2016 voorziet gratis toegang tot gezondheidszorg voor kwetsbare personen zonder sociale zekerheidsvoorzieningen. Asielzoekers en hun familieleden worden hiertoe gerekend, en hebben bijgevolg recht op publieke gezondheidszorg en farmaceutische behandelingen. Het gaat om artikel 33, L 4368/2016. Desalniettemin blijkt het in praktijk niet makkelijk om de efficiënte werking van de wet te garanderen:

Greek Council for Refugees, ‘Health Care’, SD,

<http://www.asylumineurope.org/reports/country/greece/reception-conditions/health-care>

*“In practice, **administrative barriers have been observed** in some cases with regard to access to the health care system, which mainly concern difficulties in*

the issuance of a Social Security Number (Αριθμός Μητρώου Κοινωνικής Ασφάλισης, AMKA) or the fact that staff in hospitals or health care centres are not always aware of the 2016 law.” (p.136)

*“However, the impact of the financial crisis on the health system and structural deficiencies such as **the lack of adequate cultural mediators aggravate access to health care**, including access to health care for people belonging to vulnerable groups.” (p.180)*

B. Opvang

Opvangmogelijkheden

De relevante bepalingen met betrekking tot opvang uit de herschikte Opvangrichtlijn, werden nog niet omgezet in nationale wetgeving. Accommodatie is een gedeelde verantwoordelijkheid tussen ‘*the National Centre for Social Solidarity (EKKA)*’, UNHCR en verschillende actoren die tijdelijke faciliteiten runnen.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“The recast Reception Conditions Directive has not yet been transposed into national law, with the exception of the Detention provisions, which have been partially transposed by L 4375/2016.474 Therefore, PD 220/2007 transposing Directive 2003/9/EC, laying down minimum standards for the reception of asylum seekers, is still applicable. A draft law on the transposition of the recast Reception Conditions Directive was submitted to public consultation which came to an end on 31 October 2016. No bill had been introduced to the Parliament by March 2018, despite the fact that the Directive should have been transposed into national law by July 2015. Since the transposition deadline has expired, the provisions of the Directive can be relied upon by an individual against the state, in line with established case law of the CJEU.

Since 2016 responsibility for the reception of asylum seekers formally lies with the General Secretariat for Reception under the Ministry of Migration Policy. However, as far as accommodation is concerned, responsibility is still shared between the National Centre for Social Solidarity (EKKA), the UNHCR accommodation scheme, and different actors managing temporary facilities.” (p. 117)

Er bestaan drie soorten van accommodatie voor asielzoekers op het vasteland in Griekenland met beperkte capaciteit zodat een opvangplaats niet voor ieder verzekerd is. Om te beginnen is er het officiële opvangsysteem beheert door EKKA:

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“As of January 2018, a total of 1,530 places were available in 58 reception facilities mainly run by NGOs, of which 1,101 are dedicated to unaccompanied children.⁵⁰⁹ This marks a decrease from 1,896 places available in January 2017.”

“EKKA still remains the only state authority with a referral network for the placement of the applicants.⁵¹⁰ The placement of the asylum seekers to these shelters is not automatic, as a request for placement should be to EKKA, the number of available places remains insufficient and a waiting list exists. This can be particularly problematic for the Reception of Unaccompanied Children.

According to EKKA, the total number of requests for accommodation received in 2017 was 8,461 and corresponded to 12,184 persons. The total number of persons placed in accommodation was 4,286, indicating an acceptance rate of 35.2%. This represents a decrease of about 3% in the acceptance rate compared to 2016” (p. 123)

Vervolgens zijn er de tijdelijke opvangcentra:

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“1. Their legal status remains unclear and different administrative authorities are responsible for their operation in practice.⁵¹³ The only three facilities officially established on the mainland are Elaionas,⁵¹⁴ Schisto and Diavata;⁵¹⁵

2. The vast majority of sites on the mainland operate without official site management;⁵¹⁶

3. Conditions are not suitable for long-term accommodation. Throughout 2017 a number of temporary camps have been closed down, including Elliniko in Athens and Softex in Northern Greece which had been highly criticised due to unsuitable conditions. However, more than a year and a half since people became stranded on the mainland, several of these camps are still in use;

4. There are no available data on these accommodation places. No official statistics have been published since August 2017, while disparities are reported between the data provided by authorities and site management support agents.

According to the latest data published by the Coordination Body for the Management of the Refugee Crisis (Συντονιστικό Όργανο Διαχείρισης Προσφυγικής Κρίσης), as of 1 August 2017, a total 14,281 persons were accommodated in these sites, which counted a total a nominal capacity of 30,746 places.” (p. 123-124)

“Moreover, as discussed in *Types of Accommodation: Temporary Accommodation Centres*, the **legal status** of the vast majority of temporary camps remains **unclear** and there is no clear referral pathway for accommodation in these camps. The vast majority of sites on the mainland operate **without official site management**. As a result, there is no competent authority for the monitoring or evaluation of these facilities or any competent body in place for oversight. **Residents who are not officially registered at the camps due to lack of official management are also deprived of a number of services, including cash assistance** (see *Forms and Levels of Material Reception Conditions*).

The **example** of Skaramagas camp is illustrative. There is no official camp management since April 2017. Thus, many of the asylum seekers residing in this camp have not been officially registered and no official authority is responsible for the distribution of residents to the containers. **Incidents of ‘non-formal’ rent or sale of containers has been reported**, while the lack of official registration deprives those persons of a number of services, including participation in the cash assistance scheme.” (p. 129)

Ten slotte wordt opvang voorzien door UNHCR gericht op bepaalde asielzoekers:

AIDA, Country Report Greece, 2017 update – March 2018,
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“Moreover, a UNHCR accommodation scheme has been in place since November 2015, primarily dedicated to asylum seekers eligible for relocation, and including Dublin family reunification candidates and vulnerable applicants since July 2016.” (p. 122)

“At the end of December 2017, the accommodation scheme was implemented by 15 partners, including seven NGOs and eight municipalities.

Out of a total of 22,595 places as of 28 December 2017, 1,212 places were located on the islands.

Since November 2015, 40,867 individuals have benefitted from the UNHCR accommodation scheme. The programme had created 21,435 places in 3,577 separate facilities spread across 21 cities in Greece by the end of 2017. Over 80% of accommodation units are apartments, followed by buildings (10%) and hotels (2%).

The vast majority of accommodated persons are families with an average size of four people. One in four residents has at least one vulnerability factor making him or her eligible for accommodation under the scheme: serious medical conditions (9%); single parent or caregiver with minor children (5%); woman at risk, including pregnant woman or new mother (4%). The vast majority, 89%, of people in the scheme are Syrian, Afghan, Iraqi, Palestinian or Iranian.” (p. 126-127)

Opvang in opvangcentra is beperkt in tijd, na één jaar worden asielzoekers bijgestaan in het zoeken naar eigen accommodatie.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“Material reception conditions provided in PD 220/2007 include accommodation in reception centres and a financial allowance. Asylum seekers may not stay in reception centres for more than 1 year, after which they are assisted in finding accommodation.” (p.118)

Ondanks het verhogen van de opvangcapaciteit blijft armoede en dakloosheid van asielzoekers een probleem.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“On the mainland, as it comes from the EKKA statistical data only 35.2% of the applicants who have requested accommodation have ultimately been accepted in a place. The rate for single adults without any identified vulnerability is significantly lower (10.7%). Bearing in mind that these persons are not eligible for the UNHCR accommodation scheme, and that there is no clear referral pathway in order to access temporary accommodation facilities which are often isolated, homelessness is a serious risk in their case. Even accommodation in the temporary camps does not exclude the risk of destitution

given the poor conditions and lack of official management prevailing in many of these sites.” (p.133)

Opvangomstandigheden

De opvangomstandigheden variëren naargelang de opvangplaats. In bepaalde centra worden nog steeds ondermaatse levensomstandigheden vastgesteld.

UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017.

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.2

“63. **Serious overcrowding** in reception and identification centres and official and unofficial camps on the mainland, **substandard living conditions**, and a **lack of adequate food, health care and information** have led to anxiety, depression, confusion and frustration among the migrant population both on the mainland and on the islands. Hunger strikes, violent confrontations and threats of self-immolation occur across the country. The Special Rapporteur observed an **overwhelming insecurity**, due to a lack of proper policing within the open reception centres and closed detention facilities. At the time of the visit, the lack of sufficient interpretation and legal services was leading to additional confusion about procedures and migrants’ rights.” (p. 10-11)

Submission UNHCR: Communication from an IGO (UNHCR) (05/05/2017) in the case of M.S.S. v. Belgium and Greece (Application No. 30696/09), [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2017\)584E"\]}](http://hudoc.exec.coe.int/eng#{)

“**Conditions** in accommodation facilities **vary**, and some continue to be considerably below the standards set out by EU and national law. Most of the facilities established on an emergency mode lacked appropriate conditions especially for acceptable living as a second-line facility. This is the case for facilities that are not suitable for human habitation, such as the remaining warehouses in central Macedonia and the remaining informal sites in Attica, which should be immediately closed.”

“The **main gaps** currently relate to the **use of facilities designed for other purposes, remote and isolated location** of the facilities, **lack of security and limitations in efficient and appropriate services** to properly respond to the needs of the residents, especially for persons with specific needs and children. These living conditions coupled with a lack of clarity on future prospects over sustainable livelihood have a detrimental impact on asylum seekers’ health and mental health. UNHCR has been advocating for the closure of the facilities which were designed for other purposes and cannot be improved such as the

warehouses in Northern Greece and Elliniko. Elliniko is still operational, while out of the eight warehouses in central Macedonia, only four have been closed down.” (p. 5)

European Parliament, Directorate-General for International Policies, International Protection in Greece, Background information for the LIBE Committee delegation to Greece 22-25 May 2017,
https://www.ecoi.net/en/file/local/1401618/1226_1497249698_ipol-stu-2017-583145-en.pdf

*“As the initially transient refugee flows of 2015 were forced to stay in Greece, reception, both upon arrival and more permanently, became a major issue. At this time, more than 34.000 persons are lodged in various sites and camps on the mainland Greece and around 13.000 (including the hotspots) on the islands. **Their legal status and material conditions, in particular on the mainland, vary significantly.** As a result, **reception conditions remain problematic and an important number of applicants still live in precarious and substandard situations in makeshift or re-arranged camps.**”* (p.9)

Communication from a NGO (Amnesty International) (20/02/2017) in the case of M.S.S. v. Belgium and Greece (Application No. 30696/09) and reply from Greece (03/03/2017), [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2017\)307E"\]}](http://hudoc.exec.coe.int/eng#{)

*“Between 12 and 19 July 2016, **Amnesty International visited 8 camps in Northern Greece:** Nea Kavala, Softex, Oreokastro, Diavata, Vasilika, Thessaloniki port, Sinatex, Langadikia and six camps in Attica region: Elliniko (old airport, baseball stadium and hockey stadium), Ritsona, Malakasa and Skaramagas and identified **very poor conditions** in all of them. In the majority of the camps visited, people were mostly accommodated in tents, converted warehouses or abandoned buildings in conditions not fit for long-term stay. None of the camps were set up with a consideration of the needs of vulnerable groups, such as people with disabilities. Refugees interviewed by Amnesty International spoke of the shortage of medical care, sanitary facilities and clean drinking water.*

Amnesty International visited the camps of Malakasa and Softex again between 16 and 19 December 2016 and the camps of Ritsona, Elliniko, Nea Kavala and Softex between 30 January and 4 February 2017. Despite some improvements, such as the replacement of tents in some of the camps with containers as well as no overcrowding, residents continued to share concerns over conditions, such as insufficient medical services, inadequate hygiene and sanitation, lack of adequate heating and poor food quality.”

“In Softex, Nea Kavala and Malakasa, the containers were very basic with no toilets and showers or kitchen, and those seen by Amnesty International had only a small electric heater to keep them warm. In the Nea Kavala camp, the containers did not have electricity. In Malakasa, asylum-seekers and migrants told Amnesty International that there are frequent electricity cuts.

Asylum-seekers and migrants continue to stay in tents in the Elliniko camp and in part of the Softex camp. In the Baseball stadium which is part of the Elliniko camp, the tents were exposed to the elements such as the rain and cold weather. Three single refugee women travelling with their children told Amnesty International that they did not have any heater in their tents when it snowed in January 2017 and that water entered when it rained. In another part of the Elliniko camp, the old airport terminal, people lived inside summer tents and tried to get extra privacy by dividing the space with blankets.

During the visit in December 2016, and January and February 2017, unhygienic conditions and insufficient number of toilets were observed in the Elliniko camp and refugees and migrants complained about the quality of food provided, while several asylum-seekers and migrants spoke about limited access to water or hot water in Malakasa and Nea Kavala camps.” (p. 10)

Gezondheidszorg

Toegang tot gezondheidszorg is niet gegarandeerd voor asielzoekers. Ook slachtoffers van foltering en getraumatiseerde asielzoekers krijgen niet de gepaste zorgen.

UNHCR, Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May 2017, <http://bit.ly/2BbSrAA>

*“Asylum-seekers who are uninsured and destitute, have, in principle, free access to hospitals and medical care. They have been also included among the “socially vulnerable groups” who have the right to access the public healthcare and medical system of the country, according to the provisions of Art. 33 of Law 4368/2016 and the relevant ministerial decision issued. Moreover, hospitals must accept patients when referred by doctors who provide services at the camp-like accommodation facilities. **In practice, however, asylum seekers do not have access to health services**, as they are required to be holders of ‘Foreigner’s Insured Healthcare Card’, whose issuance is not yet implemented by the Ministry of Health. Also, due to bureaucratic hurdles, asylum seekers do not always hold or experience delays in getting hold of a social security number, which could, alternatively, secure access to health care.” (p.8)*

HHC – Hungarian Helsinki Committee: Unidentified and Unattended; The Response of Eastern EU Member States to the Special Needs of Torture Survivor and Traumatized Asylum Seekers, May 2017,

https://www.ecoi.net/en/file/local/1407070/90_1504851185_2017-05-hhc-unidentified-and-unattended.pdf

*“Greece is an example, where despite **very favourable legislation** on access to health care for **victims of torture/traumatized asylum seekers, the actual enjoyment of this right is seriously obstructed**, mainly due to the lack of funding, resources, administrative barriers and remote location of reception centres.” (p. 40)*

25 NGO’s, Joint report of 25 organizations for cases of violation of asylum seekers’ rights, 3 August 2017, <http://www.hlhr.gr/en/joint-report-25-organizations-cases-violation-asylum-seekers-rights/>

*“According to Greek legislation, asylum seekers have the right of access to the Greek labour market and to hospital and health care. A prerequisite for the full realization of these rights is the possession of AMKA which many times employees from the Citizens’ Service Centre (KEP) **do not provide** even though the applicants meet the legal requirements. This refusal is accompanied by **several excuses** – most of the times unfortunately pre-emptive – which ultimately constitute a denial by the administration to apply existing legislation. Given that these are people who are in extremely difficult circumstances, **the inability to satisfy their fundamental rights and the complete lack of access to health structures or work**, does not only further exacerbates their physical, psychological and economic situation but also **constitutes a straightforward Violation of existing legislation.**”*

C. Procedurele tekortkomingen

Toegang tot de asielprocedure

Ondanks een capaciteitsverhoging van de Asieldienst bestaan er nog steeds obstakels bij de registratie van een verzoek om internationale bescherming en is effectieve toegang tot de asielprocedure niet gegarandeerd. Meer bepaald wordt voor de registratie van een asielaanvraag een op *skype* gebaseerd systeem gehanteerd dat ernstige tekortkomingen vertoont. Hierdoor is het niet gegarandeerd dat asielzoekers snel geregistreerd worden en lopen zij het risico om gearresteerd te worden en in detentie te belanden.

Communication from Greece (15/03/2017) in response to the decision of the CM at its 1222 meeting March 2015) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications(No.30696/09,8687/08), [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2017\)324E"\]}](http://hudoc.exec.coe.int/eng#{)

*“a) During the years 2015-2016, **the number of Regional Asylum Offices (RAOs) and Autonomous Asylum Units (AAUs) was significantly increased.** Actually, right now, seven RAOs (7) and twelve (12) AAUs of the Asylum Service are operating in the Greek territory, in the large urban centres and in the border areas of the country.” (p. 15)*

*“c) In order to facilitate access to the asylum procedure, in parallel with the possibility of personal appearance before the Regional Asylum Offices and Autonomous Asylum Units, Asylum Service give the persons concerned the possibility of determination of date of application registration (appointment) through the **internet application “Skype”.** It is true that the system faces numerous technical problems; however, it has significantly contributed to the facilitation of access to the asylum procedure.” (p. 17)*

AIDA, Country Report Greece, 2017 update – March 2018,
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*“Difficulties with regard to access to the asylum procedure had already been observed since the start of the operation of the Asylum Service in 2013, in particular due to Asylum Service staff shortages and the non-operation of all RAO provided by law. A system for granting appointments for registration of asylum applications through Skype, inaugurated in 2014, did not solve the problem and thus **access to the asylum procedure has remained one of the persistent major issues of concern for the Greek asylum system.***

*Without underestimating the important number of applications lodged in 2017 – 58,661 asylum applications about half of which were lodged at the mainland – **access to asylum on the mainland continued to be problematic and intensified throughout 2017,** considering especially that the number of people wishing to apply for asylum on the mainland remained high.(...)*

*Despite this slight increase, however, **available hours per week to access the Skype line remain limited.** This hinders the access of persons willing to apply for asylum. Consequently, prospective asylum seekers frequently **have to try multiple times, often over a period of several months, before they manage to get through the Skype line and to obtain appointment for the***

registration of their application, all the while facing the danger of a potential arrest and detention by the police.” (p. 36)

“As also noted by the **Greek Ombudsman in January 2018**, following a complaint submitted by GCR on behalf of a number of a family from Iran, a family from Iraq and a woman from Syria who could not gain access to asylum through Skype:

“Due to the large number of applications and the objective technical difficulties of the specific medium, the way that **Skype** is used by [the Asylum] Service, instead of being part of the solution has become **part of the problem of access to asylum**. (Special Report, “Migration flows and refugee protection”, April 2017.) The Independent Authority has reported extensively in the past on the problems of accessing exclusively through Skype and has evaluated this specific practice to be a **restrictive system that seems to be in contrast with the principle of universal, continuous and unobstructed access to the asylum procedure** (Annual Reports 2015, 2016 and 2017.) Since this problem intensifies over time, the **Greek Ombudsman is receiving numerous complaints** concerning the inability of access to asylum despite the repeated efforts to connect with a line in Athens as well as in Thessaloniki.”

Following the pre-registration through Skype, **registration is scheduled within 81 days on average**. GCR has been made aware of cases where the **full registration** of the asylum application **took place more than 6 months after the Skype pre-registration**. This was for example the case of a Syrian woman with three minor children who had been pre-registered in November 2016 and her application was fully registered in June 2017.” (p. 37)

UNHCR, Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May 2017, <http://bit.ly/2BbSrAA>

“The **only option** for those who currently intend to apply for asylum on the **mainland** is to **pre-register** through the AS’s **Skype** system. This process presents **serious deficiencies** due to limited capacity and availability of interpretation but also because applicants cannot always have access to the internet. (...) As things currently stand, the **requirements in EU and national legislation that a claim be “lodged” immediately or as soon as possible after the “making” of an application, are not met.**” (p. 2)

“Due to the **inadequate registration processes and to limited capacity, asylum-seekers on the mainland still face problems of access to asylum, and if not registered, face possible arrest and detention**. This risk is also faced by those who arrive irregularly in a place where they cannot go through

the reception and identification procedures in a RIC where they will be properly registered and have access to asylum. Moreover, new arrivals in the Evros region, including vulnerable individuals and families, despite the law⁶²provision, are detained for several weeks before their transfer to the RIC of Fylakio, due to its limited capacity.” (p. 10)

UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017.

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.2

*“73. In order to improve access to the different procedures, the Asylum Service inaugurated a new system to make appointments by registration through Skype. The Special Rapporteur observed some **serious flaws in the Skype-based system, such as limited time slots allocated for specific languages. The system fails to take into account the insufficient computer skills of applicants and the lack of access to equipment or access to the Internet,** especially for those in open centres on the Greek mainland. In order to help address those weaknesses, the Asylum Service is cooperating with NGOs that provide assistance to asylum seekers.*

*74. The **Special Rapporteur is seriously concerned about obstructions in accessing international protection** and observes that the **lack of an effective and quick registration system puts migrants at risk of arrest, detention and deportation.** At the time of the visit, no free legal aid system was in place for Greece, and NGOs providing legal assistance had only limited capacity. He notes that in mid-2016, a free legal aid system had been put in place by UNHCR and NGOs with funding provided by the European Union.” (p. 12)*

Human Rights Watch, World Report 2018 - European Union, January 2018,

<https://www.ecoi.net/en/document/1422356.html>

*“Despite progress, **access to asylum remained difficult and subject to delay** while there were particular concerns with **low refugee recognition rates on the islands.**”*

Kwaliteit en duur reguliere asielpcedure

De korte termijntewerkstelling van ongeveer de helft van het personeel van de Asieldienst gekoppeld aan preciaire werkomstandigheden kan problemen creëren in de activiteiten van deze dienst. Ondanks de verbeterde kwaliteit van genomen beslissingen wordt vastgesteld dat het nieuw aangeworven personeel dikwijls onervaren en onvoldoende opgeleid is voor de behandeling van asioldossiers.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*“The **short term working status** of almost half of the total number of the employees of the Asylum Service staff, coupled with the **precarious working environment** for employees, **may create problems in the operation of the Asylum Service**. For example, on 1 and 2 November 2017, the Asylum Service fixedterm employees went on a **48-hour nationwide strike** due to payment delays and the termination of about 100 fixed-term contracts at the end of 2017. In addition, between 5 and 21 March 2018, fixedterm staff have stopped providing their services as they have remained unpaid for a period exceeding three months.” (p. 33)*

*“A number of meetings with external partners working with vulnerable persons also took place in 2017. However, as all Asylum Service caseworkers are entitled to conduct interviews with all categories of applicants, including vulnerable persons, **vulnerable cases may not be handled by staff specifically trained in interviewing vulnerable persons**. As the Asylum Service notes, effort is made so that these cases are handled by specially trained caseworkers.” (p. 34)*

Greek Council for Refugees, Country Report: Greece, February 2018, <http://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/regular-procedure>

*“In spite of improvements in the quality of first instance decisions, maintaining and further improving the procedure remains a concern. **New and sometimes inexperienced and insufficiently trained staff** hired to respond to the emergency have been an issue. Ongoing pressures in the admissibility, relocation, Dublin, and regular procedures to shorten processing times, are another concern. The quality and legal departments of the Asylum Service have had to primarily focus on managing the border procedures on the islands and the large training needs of new staff. The support provided by EASO mostly in the relocation and admissibility procedures, but also in terms of training and country-of-origin (COI) material, is valuable, but **more support is needed to address the multiple and increased needs of the Asylum Service.**”*

FRA, Periodic data collection on the migration situation in the EU, May Highlights 1 March-30 April 2018, <http://fra.europa.eu/en/publication/2018/migration-overviews-march-2018>

*“In **Greece**, the NGO Aitima urged authorities to ensure the full operation of the Regional Asylum Offices by providing sufficient and qualified staff as well as adequate funding, to keep EASO’s activities within the confines of its mandate, to respect the deadlines for Dublin transfers, and to provide free legal aid to all*

asylum applicants, including during the second instance judicial review of their case.”

Door een plotse stijging van verzoeken om internationale bescherming, in het bijzonder in 2016, staat het Griekse asielsysteem opnieuw zwaar onder druk. Dit heeft een impact op de wachttijd voor registratie, de duur van de asielprocedure, procedurele waarborgen en op de kwaliteit van het onderzoek en beslissingen.

Communication from Greece (15/03/2017) in response to the decision of the CM at its 1222 meeting March 2015) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications (No.30696/09,8687/08), [http://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2017\)324E"\]}](http://hudoc.exec.coe.int/eng#{)

*“In parallel, the same information reflects the **new challenges and hardships** that our country encounters under the current conditions. The **radical and sudden increase** of the submitted **applications for international protection**, especially during 2016, mostly resulting from the unprecedented increase in the migration flows and the “pre-registration” procedure, has **exerted tremendous pressure on the asylum system**. Inevitably and for objective purposes, **sometimes long periods, exceeding the prescribed ones, pass until the full registration of the massively submitted applications for international protection; also, a great deal of time is required for processing the applications**, despite the ongoing efforts of the Greek authorities to accelerate the procedures by remarkably increasing the Asylum Service staff and establishing new and faster procedures.” (p. 30)*

UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 april 2017.

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.2

*“The **intake of asylum seekers by Greece in 2016 was one of the highest in Europe**. At the time of the visit, the Asylum Service was not in a position to cope with the 50,000 applications for asylum, family reunification and relocation in one go, which posed **problems in regard to access to international protection and regularizing the stay of asylum seekers**.” (p. 11)*

UNHCR, Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May, <http://bit.ly/2BbSrAA>

“In 2016, the AS had to respond simultaneously to three demanding processes: the “border procedures”; the relocation scheme; and the pre-registration

exercise on the mainland. These have affected access to procedures, effective procedural safeguards, timely processing, quality of procedures and the treatment of vulnerable persons, particularly unaccompanied children. The processing of cases eligible under the EU relocation scheme to other EU member States (12,900 outgoing requests in 2016), and of family reunion cases pursuant to the Dublin Regulation (4,886 outgoing take charge requests in 2016) compounded the delays incurred by the ‘mainstream’ system. UNHCR estimates that significant delays will be incurred as a result and that the processing of applications at first instance may in some cases last up to two years. The lack of capacity to fully process asylum claims within a reasonable timeframe may in turn impact the quality of the adjudicatory process, and likely contribute to rising tensions in many of the reception sites, lead to further onward movement, and prevent the timely implementation of durable solutions.” (p. 2)

Greek Council for Refugees, Country Report: Greece, February 2018, <http://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/regular-procedure>

*“An important number of applications has been pending for a period exceeding 6 months, while in the majority of these cases the Personal Interview has not taken place yet. As highlighted by UNHCR in May 2017: “Despite undeniable improvements, there is a significant number of pending cases... and **first instance examination for some applicants could last up to two years.** While processing times may vary depending on location, some of those asylum-seekers who currently lodge their applications in the largest regional asylum office (Attica), may have their interview scheduled for as late as autumn 2018.”*

AITIMA, Press Release, Greece: Persisting problems in the asylum procedure, 16 April 2018, <http://www.aitima.gr/images/pdf/pressrelease16.04.2018.pdf>

“There are long delays in the 1st instance examination of the asylum applications, given that:

- the asylum interviews are scheduled after one year since the applicants’ registration and, in the case of postponement, even if this is the responsibility of the Asylum Service, the new appointment is scheduled after one more year*
- the Asylum Service’s decisions are issued with long delays as well”*

AIDA, Country Report Greece, 2017 update – March 2018, http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“GCR is aware of a number of first instance cases where the assessment of the asylum claims and/or the decisions delivered raise issues of concern.

Among others, these concern the use of outdated COI. This was for example the case concerning an Afghan applicant for whom, in the context of examining the conditions for subsidiary protection, the security situation in the capital of Afghanistan was assessed based on COI dating back to 2013. In the same case, the assessment of the overall security situation in Afghanistan was wrongly based on COI referring to the area of Kashmir in Pakistan, dating back to 2012. The application was lodged at the end of 2016 and the decision was issued in September 2017.” (p. 42)

Effectief rechtsmiddel

Er bestaan drie soorten procedures in beroep afhankelijk van wanneer het beroep werd ingediend. Voor de beroepen ingediend na 21 juli 2016 zijn de *Independent Appeals Committees* (ressortierend onder de *Appeals Authority*) de bevoegde organen. De Griekse Nationale Commissie voor de Mensenrechten, uitte haar bezorgdheden over de creatie van het onafhankelijk beroepscomité en haar statuut.

Greek National Commission for Human Rights, GNCHR Report on the Condition of Reception and Asylum System in Greece, 22 December 2017, https://nhri.ohchr.org/EN/News/Documents/GNCHR_Report_Asylum_system_final.pdf

*“ In its public statement on 17 July 2016, the **GNCHR had expressed its concern and its reflection on the then hastily introduced amendment on the change of the composition of the Independent Appeal Boards**, noting that the proposed changes to Law 4375/2016 **coincided with the adoption of positive decisions of the operational, then, Independent Committee** (as regards their decision on the admissibility), which, in the context of an individual examination of recourses, ruled that Turkey was not safe third country for the specific applicants. At the same time, the GNCHR also expressed its **concerns regarding the composition of such Recourse Committees**, as the provision for the **participation of two administrative judges** in every three member Recourse Committee **raises issues of compatibility with the Constitution**.*

*The judgments with Nos. 2347/2017 and 2348/2017 of the plenary session of the **Council of State conclude that the Recourse Committees**, as introduced and ultimately legislated by the submitted amendment, **constitute a judicial body** within the meaning of Article 86 par.2 of the Constitution; choosing not to apply its previous firm relevant jurisprudence, according to which these*

Committees do not constitute a judicial body, given the fact that they decide administrative recourses against administrative acts without elements similar to the performance of judicial task and exercise of competence of a judicial body, such as the publicity of the hearings and the obligation to guarantee adversarial proceedings. In the present case, **issues are raised in respect of procedural guarantees as regards the publicity, the adversarial proceedings as well as the applicant's right to be heard, which is significantly limited compared to the Administration's, as his personal presence is now possible only under exceptional circumstances.**" (p. 7)

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*"The launch of the operation of the Independent Appeals Committees after L 4399/2016 has led to **a significant drop in the second instance recognition rate of international protection**, which has been highly criticised by a number of actors, including the Athens Bar Association. As already mentioned, there has been a glaring discrepancy between appeal recognition rates under the Appeals Committees following L 4399/2016 and the outcome of the second instance procedure of the previous years. (...) In 2017, despite a slight increase in recognition rates, these **remain significantly low compared to rates prior to L 4399/2016** and to average EU28 second instance rates, **which may underline a failure to provide an effective remedy under Articles 3 and 13 ECHR**. Out of the total in-merit decisions issued in 2017, the international protection rate was 2.83% (1.84% granted refugee status, 0.99% subsidiary protection), 3.54% referred the case for humanitarian protection, and 93.63% were negative."* (p. 47)

*"An applicant may lodge an appeal before the Appeals Authority against the decision rejecting the application for international protection as unfounded under the regular procedure, as well as against the part of the decision that grants subsidiary protection for the part rejecting refugee status, within 30 days from the notification of the decision. (...) According to the law, the Appeals Committee must reach a decision on the appeal within 3 months when the regular procedure is applied. **In practice, however, processing times are significantly longer and far beyond the 3-month deadline** in some cases. A total of 4,368 appeals were pending at the end of 2017."* (p. 47)

Juridische bijstand

Het Griekse systeem van juridische bijstand aan asielzoekers is niet conform EU-richtlijnen. Juridische bijstand is in de praktijk zo goed als onbestaande. Er is geen

juridische bijstand voor asielzoekers voorhanden tijdens de eerste fase van de asielprocedure (registratie, behandeling van het verzoek om internationale bescherming door de Asieldienst). Tijdens de beroepsprocedure wordt in theorie wel voorzien in juridische bijstand maar uit de praktijk blijkt dat deze niet beschikbaar is.

UNHCR, Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May 2017, <http://bit.ly/2BbSrAA>

“Legal aid, according to Law 4375/2016 is now available free of charge at second instance (provided since July 2016 by UNHCR, through implementing partners until the State assumes its responsibility as set in the law) but not at first instance, where there are increased needs and only a limited number of services is provided through some specialized NGOs.” (p. 3)

European Parliament, Directorate-General for International Policies, International Protection in Greece, Background information for the LIBE Committee delegation to Greece 22-25 May 2017, https://www.ecoi.net/en/file/local/1401618/1226_1497249698_ipol-stu-2017-583145-en.pdf

“Free legal aid: *In September 2016, Ministerial Decision 12205/2016 determined the provision of free legal aid in appeals procedures. Law 4375/2016 provides for free legal assistance in appeal procedures before the Appeals Authority but the terms and conditions for this were to be determined by Ministerial Decision. The said Ministerial Decision provides, among others, that the Asylum Service should establish and manage a registry with lawyers, accredited with the Service to provide free legal assistance and sets time limits for the request of such assistance by appellants. According to the Decision, lawyers are remunerated with a fixed fee of €80 per appeal. Funding will come from AMIF. As of May 2017, no free legal aid was in place in practice under the auspices of the Greek authorities for appeal procedures. The Asylum Service has opened a call for expression of interest for lawyers to register with the above mentioned registry whose deadline has been prolonged. 68 At this moment, **Greek authorities still do not comply with their obligation under national legislation and the recast Asylum Procedures Directive.**” (p.21)*

ECRE, ECRE/ELENA Legal Note on Access to Legal Aid in Europe, November 2017, <https://www.ecre.org/wp-content/uploads/2017/11/Legal-Note-2.pdf>

“Yet, in many European countries (CY, DE, EL, HU, IT, MT, PL, RS) asylum applicants generally do not have access to legal aid at first instance in practice.

(...) In a number of European countries (EL, HU, RS), legal aid is generally not provided at second instance in practice.(...)

In EL, a legal aid scheme has been recently introduced. However, the information available indicates that the number of lawyers currently part of the scheme is totally insufficient. Moreover, under the Greek Ministerial Decision legal aid is provided under EU funding, which has raised concerns about the financial sustainability of the scheme. Prior to the entry into force of the legal aid scheme, only NGOs provided free legal assistance.” (p. 5)

*“Access to legal aid for asylum applicants in **detention** is essential to protect them from arbitrary detention. It is also crucial since persons in detention often face more obstacles when applying for asylum.⁵⁵ In some countries (CY, EL, ES, SK, UK), a substantial number of detainees do not have access to legal aid in practice. (...) In practice, detained asylum applicants quite often do not have effective access to legal aid to review a decision to detain in a considerable number of countries (BG, CH, CY, DE, EL, HU, PL, UK), while in others, practical challenges include insufficient time to initiate appeal proceedings (AT, ES, SE).” (p. 9)*

Legal Aid Actors Task Force, Legal Aid (Individual Legal representation in Asylum/Refugee Context) for Migrants, Asylum Seekers and Refugees in Greece: Challenges and Barriers, January 2018,

<https://drc.ngo/media/4240248/legal-aid-gaps.pdf>

“However, in reality, provision of legal aid is patchy due to numerous administrative, legislative and practical obstacles. Applicants are most often left to navigate the complicated asylum system themselves often without sufficient information, with linguistic barriers whilst facing multiple other adversities as they try to rebuild their lives in their new surroundings and realise the right to seek asylum, security, health care, education and employment. In the evolving and constantly changing Greek asylum procedures legal assistance is necessary not only in the process of examination of asylum claims but also to ensure respect of rights connected to basic needs. The following observations are drawn from the experience of organisations assisting asylum seekers on the ground.”

“Appeal before the Appeals Committees: since the procedure is, in principle, in writing, legal aid provision is required in order to submit necessary documents that will include the reasons for appealing the negative decision and the shortcomings of the procedure (memo, additional evidence, medical records etc). Although there is a state run legal aid scheme, currently it does not cover the needs, as only 23 lawyers were recruited by the Asylum Service to provide

legal services to 17.633 asylum seekers who have challenged the first instance decisions since 2016.”

Toegang tot voldoende informatie/NGO's

Toegang tot informatie blijft een probleem omwille van een complexe asielprocedure, constante wijzigingen in wetgeving en praktijk evenals bureaucratische obstakels. Asielzoekers zijn veelal op zichzelf aangewezen en beschikken niet over de nodige informatie.

AIDA, Country Report Greece, 2017 update – March 2018,
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*“A number of actors are engaged in information provision concerning the asylum procedure. However, **due to the complexity of the procedure and constantly changing legislation and practice, as well as bureaucratic hurdles, access to comprehensible information remains a matter of concern.** Given that legal aid is provided by law only for appeal procedures and only remains limited in practice (see Regular Procedure: Legal Assistance), **applicants often have to navigate the complex asylum system on their own, without sufficient information.***

*A recent cross-sectional survey of Syrian nationals conducted in eight locations found that: “[A] **very low proportion of participants reported having had access to information on legal assistance, between 9.6% (Samos) and 30.1% (Katsikas).** (...)*

*Participants interviewed in the qualitative study said that the lack of guidance and information on asylum procedures **increased their feelings of uncertainty about the future, which was taking a toll on their mental and psychosocial well-being.**” The language barrier also constitutes a persisting challenge. A study conducted in 11 sites in April 2017 demonstrated that “refugees and migrants in Greece **do not always receive information in a language or format they can understand.** This phenomenon creates serious language and communication barriers, which can generate feelings of insecurity and have detrimental effects on people’s lives.” (p. 114)*

D. Detentie

Risico op detentie

Door de gebrekkige toegang tot de asielprocedure omwille van obstakels en vertraging bij de registratie van de asielaanvraag lopen asielzoekers het risico om in detentie te belanden.

AIDA Country Report Greece, March 2017,

<http://www.asylumineurope.org/reports/country/greece>

*“The launch of the implementation of the EU-Turkey statement has had an important impact on detention, resulting in **a significant toughening** of the practices applied in the field. For example, a policy of mandatory (blanket) detention of all newly arrived third-country nationals was put in place for the implementation of the EU-Turkey statement, followed by **the imposition of an obligation to remain on the island**, known as “geographical restriction”. To this end, it should be mentioned that out of a total number of 21,566 detention orders issued in 2016, as many as 18,114 detention orders (84%) were issued after the 20 March 2016.”* (p. 118)

*“At the end of 2016, approximately **2,000 persons remained in detention in pre-removal facilities in the mainland**, excluding persons detained on the islands and in others facilities in the mainland such as police stations. At the same time, as announced by the Ministry of Migration Policy on 28 December 2016, and described in the Joint Action Plan on the implementation of the EU-Turkey Statement on 8 December 2016, the construction of new detention centres on the island, **in order to increase detention capacity**, is planned to take place with EU support “as soon as possible”.*” (p. 119)

*“As mentioned in General, a policy of **automatic de facto detention** is applied after the entry into force of the EU-Turkey statement. More precisely, people arriving after the implementation of the statement are subject to a 3-day restriction on their “freedom of movement”, as described by law, within the premises of the Reception and Identification Centres (RIC), which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed. Taking into consideration that people are not allowed to leave the RIC, **the so-called restriction of movement is tantamount to a de facto detention measure of all newly arrived persons.**”* (p. 131)

UNHCR, Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May 2017, <http://bit.ly/2BbSrAA>

*“Due to the **inadequate registration processes and to limited capacity, asylum-seekers on the mainland still face problems of access to asylum, and if not registered, face possible arrest and detention.** This risk is also faced by those who arrive irregularly in a place where they cannot go through*

the reception and identification procedures in a RIC where they will be properly registered and have access to asylum. Moreover, new arrivals in the Evros region, including vulnerable individuals and families, despite the law⁶² provision, are detained for several weeks before their transfer to the RIC of Fylakio, due to its limited capacity.” (p. 10)

UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017.
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.2

*“74. The **Special Rapporteur is seriously concerned about obstructions in accessing international protection** and observes that the **lack of an effective and quick registration system puts migrants at risk of arrest, detention and deportation**. At the time of the visit, no free legal aid system was in place for Greece, and NGOs providing legal assistance had only limited capacity. He notes that in mid-2016, a free legal aid system had been put in place by UNHCR and NGOs with funding provided by the European Union.” (p. 12)*

FRA, Periodic data collection on the migration situation in the EU, May Highlights 1 March-30 April 2018, <http://fra.europa.eu/en/publication/2018/migration-overviews-march-2018>

*“Immigration and asylum-related detention continued to grow in **Greece**. According to the data of the Hellenic Police Headquarters, 8,230 people were detained at the end of the reporting period, of which 2,701 were asylum seekers.”*

Detentiecondities

Detentieomstandigheden voor derdelanders, waaronder asielzoekers, zijn onaanpast en voldoen niet aan de basis mensenrechtenstandaarden.

AIDA, Country Report Greece, 2017 update – March 2018,
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“The law sets out certain special guarantees on detention conditions for asylum seekers. Notably, detainees must be provided with necessary medical care, and their right to legal representation should be guaranteed. In any event, according to the law, “difficulties in ensuring decent living conditions... shall be taken into account when deciding to detain or to prolong detention.”

However, as it has been consistently reported by a range of actors, **detention conditions for third-country nationals, including asylum seekers, do not meet the basic standards in Greece.**

The Decision adopted by the Council of Europe Committee of Ministers in June 2017 within the framework of the execution of the *M.S.S. v. Belgium and Greece* judgment invited the Greek authorities “to improve conditions of detention in all detention facilities where irregular migrants and asylum seekers are detained, including by providing adequate health-care services.”

In September 2017 the CPT issued its report (“2016 report”) regarding its visits to Greece in April and July 2016. As stated by the CPT: “Regrettably, the findings of the July 2016 visit indicate that the situation of foreign nationals deprived of their liberty under aliens’ legislation has not improved.” These findings also demonstrate the fact that recommendations made by monitoring bodies and international organisations are not properly implemented.” (p. 161)

“GCR regularly visits the **Tavros** (Petrou Ralli), **Amygdaleza**, **Corinth**, **Paranesti** (Drama) and **Xanthi** pre-removal facilities and detention facilities on the islands depending on needs and availability of resources. According to GCR findings, as corroborated by national and international bodies, **conditions in pre-removal detention facilities remain substandard and are not in line with national and international law.** This stresses a structural and long-lasting failure of the Greek authorities to guarantee adequate detention conditions in line with international standards and their legal obligations.” (p. 161)

“The CPT has long criticised the detention conditions in pre-removal detention facilities. As underlined in the CPT 2015 report, issued in 2016, the Greek authorities have failed to implement the CPT recommendations put forward in its 2013 report. In the same report, the CPT stated that the conditions at **Petrou Ralli** remained totally inadequate for holding irregular migrants for prolonged periods, and the made recommendations to remedy the poor material conditions and lack of activities. In its 2016 report, the CPT noted that the “findings of the July 2016 visit indicate that the situation has not improved.” It should be noted that the *Tavros* (Petrou Ralli) pre-removal facility is still in use.

Moreover, structural problems related to the functioning of pre-removal facilities raised by the CPT persist. The situation has not improved since the 2015 CPT report where it was noted:

“In sum, the concept for the operation of pre-departure centres still remains based on a security approach with detainees treated in many respects as criminal suspects... The centres are not staffed by properly trained officers, present within the accommodation areas, interacting with detained irregular migrants and taking a proactive role to resolve potential problems. Further, no activities are offered and material conditions are generally poor. In addition, the

lack of any healthcare staff represents a public health risk in addition to jeopardising the health of individual detained persons.”

*In addition, in February 2017, GCR found that the amount of living space in **Corinth** is less than 3m² per person and that people are accommodated in dormitories each measuring 35m², with six sets of bunk beds for 12 persons. Families with children and unaccompanied children have been detained throughout 2017 in **Amygdaleza**, a security facility without any specialised infrastructure to address the needs of families with children and unaccompanied children. In December 2017, GCR found that, men, women and a single-parent families with minor children in **Kos** pre-removal centre were detained together in the same section, despite the fact that authorities have to “ensure that women are detained in an area separately from men”.” (p. 162)*

UNHCR, Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May 2017, <http://bit.ly/2BbSrAA>

*“Both asylum seekers and persons in view of their removal should, in principle, be detained only in the pre- removal detention centers, however, **detention takes place also in detention facilities of police stations**. Although there have been some improvements in the material conditions in comparison to the police stations, there is still a lack of proper maintenance. Moreover, although there have been standard operating procedures developed for the operation of the pre-removal detention centers, and mainly in Paranesti (Drama) and Xanthi have some good practices, in all pre-removal detention centers **provision of services of psychosocial support, medical care and legal assistance were discontinued in June 2015**. Moreover, from UNHCR’s observations during monitoring visits, **provision of information to all detainees in pre-removal detention facilities in a language that they understand continues to be deficient** due to the lack of interpreters and translation of the administrative decisions in a language they understand. **Despite the fact that access to open air and courtyards has improved in most facilities, recreation and leisure activities are still limited. Insufficient heating and cooling in some of these detention centers also affects their health.***

*As stated above, a high number of third-country nationals, including asylum seekers, mainly on the islands, **continue to be held in detention facilities operated by the police directorates and in police stations, which are totally inappropriate for immigration detention**. According to UNHCR’s observations, many **lack outdoor facilities and there is usually a lack of ventilation and natural light**. The conditions in these facilities are subject to **constant deterioration due to overcrowding, insufficient maintenance and lack of refurbishment**. In combination with the **very bad hygiene conditions***

and **lack of medical services**, these facilities provide an environment which constitutes a **risk to the physical and mental health of detainees.**” (p. 11)

The Greek Ombudsman, Migration Flows and Refugee Protection: Administrative Challenges and Human Rights Issues, April 2017, <https://www.synigoros.gr/?i=human-rights.en.recentinterventions.434107>

“The detention sites vary, from Pre-removal Centers (Detention Centers), arranged into mass detention dormitories (e.g. Tavros, Corinth) or wings with the installation of containers, (e.g. Amygdaleza), to police station cells, which are the most inappropriate spaces from the aspect of standards. It must also be noted that the Reception and Identification Centers (hotspots) are in principle spaces designated for 25-day detention (Law 4375/2016). There are detainees of different speeds in the Detention Centers, depending on the reason of their detention.” (p. 57)

“The living conditions of the detainees vary depending on the sites. The usual shortcomings are identified in cleanliness, heating, quality and quantity of food and personal hygiene products. Open air exercise (as well as entertainment activities) is very short in certain Pre-removal Centers and non-existent in police station cells. At the hotspots there are also structural problems (sewerage, etc.), while a general matter is the lack of security in their interior.” (p. 58)

Council of Europe & European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report on treatment of prisoners based on visit carried out from 13 to 18 April and 19 to 25 July 2016 (reception and identification centres; children of foreign nationality deprived of their liberty; adults in immigration detention; treatment of criminal suspects detained by police), Executive Summary, 26 September 2017, <https://rm.coe.int/pdf/168074f90d>

Detentiecentrum, Thessaloniki.

*“At Thessaloniki, immediate steps should be taken to ensure inter alia that every person detained is provided with a clean mattress and bedding, that all cells are disinfested, and that, for public health reasons, medical screening is carried out upon admission. The **indifferent attitude of staff towards detainees at this facility should be addressed** by putting in place a new robust management. At Petrou Ralli, action is required to address the state of the **filthy, stuffy and infested cells** and to improve the poor provision of health-care services. Further, at neither of these two facilities nor at the Athens airport holding facilities were detainees offered at least one hour of outdoor exercise every day.*

*There is also a need to ensure all detainees who do not speak Greek are **informed about their situation in a language they understand.*** (p. 2)

Politiebureau,

Drapetzona.

*“As for Drapetzona Police Station, the **dungeon-like** living conditions were squalid and detainees were never offered access to fresh air. The CPT considers that holding people in such conditions could be considered as **inhuman and degrading** as well as representing a public health risk. The Greek authorities are requested to take this police station definitively out of service.”* (p. 6)

*“In particular, at Thessaloniki Special holding facility for irregular migrants, which is located on the floor above the Metagogon (Transfer) Centre, foreign nationals continued to be held in unsanitary and poor conditions for up to four months or more. At the time of the July visit, 108 foreign nationals were being detained in cramped conditions for deportation purposes in eight of the nine holding cells of the facility. Cells were **not equipped with beds, plinths or any chairs and detainees were forced to spend all day lying on filthy, infested mattresses on the floor** while the blankets provided were also dirty, worn and flea-infested. Many of the showers and toilets inside the cells were dilapidated and insalubrious. Detainees were not provided with any outdoor exercise and were **denied access to their personal belongings.** Further, the **heat and humidity** in the cells were extreme as the air-conditioning was almost never switched on.”* (p. 32)

Wettelijke waarborgen in detentie

L 4375/2016 introduceerde een automatische juridische herziening voor de detentiemaatregel en de verlenging ervan. In de praktijk worden verschillende tekortkomingen vastgesteld in het wettelijk kader. Er is een gebrek aan juridische ondersteuning voor asielzoekers en de administratieve rechtbanken die het hoger beroep voorzien, kampen met een overlast aan werk.

AIDA, Country Report Greece, 2017 update – March 2018,

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

*“As stated by UNHCR in relation to the ex officio judicial review of the detention order, “in practice, asylum-seekers **do not have effective access to this review** due to a lack of interpretation, legal assistance and limited capacity of the Administrative Courts. Moreover in addition to concerns expressed in previous years as to the effectiveness of this procedure, it should be noted that the statistical data on the outcome of ex officio judicial scrutiny are **highly***

problematic and illustrate the rudimentary and ineffective way in which this judicial review takes place. According to the available data regarding detention orders for asylum seekers examined by the Administrative Court of Athens, **there has not been a single case where the ex officio review did not approve the detention measure imposed.**" (p. 165)

"Apart from the automatic judicial review procedure, asylum seekers may challenge detention through "objections against detention" before the Administrative Court, which **is the only legal remedy provided by national legislation to this end.** Objections against detention are not examined by a court composition but solely by the President of the Administrative Court, whose decision is non-appealable. However, in practice the **ability of detained persons to challenge their detention is severely restricted** by the fact that "migrants in pre-removal detention centres are often unaware of their legal status and do not know about the possibility of challenging their detention", the lack of interpreters and translation of the administrative decisions in a language they understand and the lack of free Legal Assistance for Review of Detention." (p. 166)

Council of Europe & European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report on treatment of prisoners based on visit carried out from 13 to 18 April and 19 to 25 July 2016 (reception and identification centres; children of foreign nationality deprived of their liberty; adults in immigration detention; treatment of criminal suspects detained by police), 26 September 2017,
https://www.ecoi.net/en/file/local/1410326/1226_1506424669_168074f85d.pdf

"The CPT notes that, at the time of the April visit, a number of foreign nationals had been held in the centres beyond the 25-day-limit provided for in Greek law; a fact acknowledged by high-ranking officials in both centres. Further, none of the detainees interviewed (with the exception of those unaccompanied children who were held at the Moria Centre under the authority of the First Reception Service) had been provided with an official administrative document authorising their initial or prolonged deprivation of liberty. Several detainees also claimed that they had **actually arrived** at the Moria or at the VIAL Centre on 18 or 19 March, **before the European Union-Turkey Statement** was applied, **but that they were only registered by the authorities after 20 March 2016.** This situation raises serious questions about the legality of their continued detention." (p. 16)

"At the time of the April visit, detained persons were generally **not provided with any (reliable) information about their rights** and their situation by the Greek authorities (e.g. information leaflets in various languages explaining the reasons for their deprivation of liberty, the asylum procedure and their rights,

*including the right to challenge their deprivation of liberty and the right to lodge complaints). (...) In addition, there was a major gap in terms of legal protection; **legal aid was generally unavailable in practice and access to a lawyer proved difficult.** (...) The CPT's delegation also found evidence that several foreign nationals who had been held at the VIAL Centre shortly before the April visit and had recently been readmitted to Turkey had been taken from the centre without having had the opportunity to take their personal belongings (including their mobile phones). The CPT recommends that the Greek authorities ensure that procedures be put in place to ensure that persons readmitted to Turkey can take all their personal belongings with them.” (p. 17)*

UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 april 2017.
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.2

*“49. Detainees have the right to appeal and submit objections against their detention, as provided in article 76 of Law 3386/2005. However, legal aid in immigration detention facilities provided by non-governmental organizations (NGOs) is scarce due to funding shortages. Moreover, migrants in pre-removal detention centres are often **unaware of their legal status and do not know about the possibility of challenging their detention.***

*50. Contact with the outside world is difficult for some detained migrants. Cell phones are confiscated and access to a phone is not guaranteed for those who do not have money to pay for calls themselves. This **prevents detainees from obtaining information or evidence to substantiate their claims.** Situations of anxiety, post-traumatic stress disorder or trauma may also make it difficult for detainees to understand their rights, thus in fact preventing them from making effective use of existing review mechanisms. As there is no reason for preventing migrants from communicating with family, friends, lawyers, consular services or any other person, prohibiting cell phones can have a profound effect on their mental health and is utterly unnecessary. The practice should be abolished.” (p. 8)*

UNHCR, Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, mei 2017, <http://bit.ly/2BbSrAA>

“Although detention of asylum seekers cannot exceed in total a period of three months, maximum detention time limits are considered in practice from the moment of the lodging of the application, and the time that the asylum-seeker is detained prior to the lodging is not taken into consideration. Thus, asylum-seekers may be detained for a total period exceeding three months. Moreover, while an ex officio judicial review of the detention order has been provided for

the first time , in practice, asylum-seekers do not have effective access to this review due to a lack of interpretation, legal assistance and limited capacity of the Administrative Courts.” (p. 10)

The Greek Ombudsman, Migration Flows and Refugee Protection: Administrative Challenges and Human Rights Issues, April 2017, <https://www.synigoros.gr/?i=human-rights.en.recentinterventions.434107>

“It should be noted that in every detention site, the detainees were deprived of basic interpretation services. The lack of providing adequate and consistent information to the detainees, in a language they understand, on the legal basis, development of the detention process and their rights is one of the biggest problems in each detention facility. At the same time, it is a basic infringement of the fundamental rights of the detainees and a factor of legal uncertainty, which causes a chain reaction both for them and the detention services.” (p. 58)

Politiegeweld

Verschillende incidenten van politiegeweld tegen asielzoekers werden gerapporteerd.

Council of Europe & European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report on treatment of prisoners based on visit carried out from 13 to 18 April and 19 to 25 July 2016 (reception and identification centres; children of foreign nationality deprived of their liberty; adults in immigration detention; treatment of criminal suspects detained by police), 26 September 2017, https://www.ecoi.net/en/file/local/1410326/1226_1506424669_168074f85d.pdf

Detentiecentrum, Thessaloniki.

*“In particular, at Thessaloniki Special holding facility, several persons alleged that they had been **slapped in the face** and had **received punches and/or kicks** to various parts of the body, including to the head, by police officers responsible for their care. Some detainees were ill-treated inside or just outside the cell in which they were held in full view of other detainees, while others claimed that they were beaten in the unoccupied auxiliary cell located at the entrance of the corridor. On one occasion, five police officers, some of whom were apparently wearing steel capped boots, entered one of the cells and allegedly punched and **kicked all persons detained there for having asked that the air-conditioning be turned on.** Several detainees in the establishment claimed that they were physically ill-treated for merely having requested for information on their situation or to be provided with either water, a mattress, a blanket or medication. (p. 30)*

AIDA, Country Report Greece, 2017 update – March 2018,
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

Politiebureau, Samos.

*“As found by a MSF survey on Samos, close to a quarter (23.1%) of people surveyed had experienced violence in Greece. Half of those cases of violence were described as **beatings**, 45% of which had been **committed by the police or army.**” (p.130)*

Amnesty International, Public Statement: “Greece: Authorities must investigate allegations of excessive use of force and ill-treatment of asylum-seekers in Lesbos”, 28 July 2017,
<https://www.amnesty.org/download/Documents/EUR2568452017ENGLISH.pdf>

Detentiecentra, Moria, Lesbos.

*“The asylum-seekers interviewed reported that during the police operation to apprehend people who were clashing with police, police used **excessive force** and on one occasion **discharged chemical irritants inside a container where asylum-seekers were accommodated.**”*

Politiebureau, Mytilene.

*“On 22 and 23 July, Amnesty International interviewed 10 asylum-seekers detained in the Mytilene police station. Many of those interviewed said that upon their arrival at the police station, police placed plastic handcuffs on them and **pulled them very tight causing them severe pain.** They also described how they had to sit on the floor of the police station for between five and six hours with their handcuffed hands behind their back, which added to their pain. Some of them showed Amnesty International visible marks around their wrists which they said were linked to having been tightly handcuffed, and said that during the time that they remained handcuffed and sat on the floor, they were not offered any food or water and they were not allowed to go to the toilet. Some **described beatings by police that may amount to torture.**”*

Doctors Without Borders, Greece: Inaction Amounts to Abuse of Refugees, 12 augustus 2015,
<https://www.doctorswithoutborders.org/article/greece-inaction-amounts-abuse-refugees>

Detentiecentrum, Kos.

“MSF is very worried about how the situation is evolving in Kos,” says Brice de le Vingne, MSF director of operations. “What was previously a situation of state

*inaction is now one of state abuse, with **police using increasingly heavy-handed force against these vulnerable people**. The great majority of people arriving here are refugees fleeing war in Syria and Afghanistan. The Kos authorities have clearly stated that **they have no intention of improving the situation for these people**, as they believe that this would constitute a ‘pull factor’.”*

Toegang tot medische zorg in detentie

Het CPT stelde tijdens haar bezoeken aan detentiecentra in Griekenland vast dat gezondheidszorg onvoldoende is en dat psychologische zorgverstrekking afwezig is.

Council of Europe & European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report on treatment of prisoners based on visit carried out from 13 to 18 April and 19 to 25 July 2016 (reception and identification centres; children of foreign nationality deprived of their liberty; adults in immigration detention; treatment of criminal suspects detained by police), 26 september 2017, https://www.ecoi.net/en/file/local/1410326/1226_1506424669_168074f85d.pdf

*“At the time of the April visit, the CPT’s delegation observed an **absence of the Greek State in providing health-care services and consequently an over-reliance on NGOs for the delivery of health-care services, which were insufficient for the needs of the detainee population in both centres visited**, and a complete lack of coordination in the provision of such services, with poor communication and information sharing between the independently working health-care providers. No individual health-care records were kept, with the consequence that it was impossible to verify whether a request for medical assistance had been acted upon. The provision of health care was only reactive, due to the lack of staffing and the lack of specialised health-care staff, including dentists. Further, at the VIAL Centre, the amount of medication available was entirely insufficient, in particular for the health-care needs of children, and basic medical equipment was missing.” (p. 15)*

*Another issue was **the lack of provision of psycho-social and mental health-care services** at both centres; given the profile of their population and the traumatic experiences that many of them have lived through, it is essential to put in place self-harm and **suicide prevention measures**. More generally, the lack of information and the prevailing uncertainty and anxiety about the future compounded their stress. (p. 32)*

E. Gezinshereniging

Verschillende obstakels staan gezinshereniging voor erkende vluchtelingen in de weg.

AIDA, Country Report Greece, 2017 update – March 2018,
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf

“Refugees who apply for family reunification face serious obstacles which render the effective exercise of the right to family reunification impossible in practice. Lengthy procedures, administrative obstacles as regards the issuance of visas even in cases where the application for family reunification has been accepted, the requirement of documents which are difficult to obtain by refugees, and lack of information on the possibility of family reunification, the three-month deadline and the available remedies are reported among others.”
(p. 175)

F. Xenofobieklimaat en integratiemoeilijkheden

Verschillende incidenten van racisme en geweld tegen asielzoekers werden gemeld.

UN Human Rights Council: Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017,
<http://www.refworld.org/docid/593a8b8e4.html>

*“Following his visit, he received worrying news about **increases in racist and xenophobic attacks against migrants**, exacerbated by the economic crisis in Greece, and he urges Greek authorities to decisively implement the sectoral policies on interculturalism and on combating discrimination, xenophobia and racism.”* (p. 14)

Human Rights Watch, World Report 2018 - European Union, januari 2018,
<https://www.ecoi.net/en/document/1422356.html>

“Far-right groups regularly attacked asylum seekers on the island of Chios. In April, two men were convicted for racially-aggravated crimes over the incidents.”

Amnesty International, Annual report 2017/18 (covering 2017), 22 februari 2018,
<http://www.ecoi.net/en/document/1425399.html>

*“Numerous late-motivated attacks were reported during the year. Between August 2016 and the end of 2017, over 50 attacks reportedly took place in the town of Aspropyrgos where **groups of young locals attacked migrant workers from Pakistan**. In June, representatives of national NGOs filed a complaint and authorities launched a criminal investigation. In October, police arrested three young men suspected of being linked to one of the violent attacks.”*

Amnesty International, A Blueprint For Despair: Human Rights Impact Of the EU-Turkey Deal, februari 2017, http://www.amnesty.eu/content/assets/Reports/EU-Turkey_Deal_Briefing_Formatted_Final_P4840-3.pdf

*“According to interviews conducted with journalists, refugees, activists and volunteers by Amnesty International, a group of suspected **members of the far-right threw large rocks and flares into the Souda camp** from the residential area that is situated above the camp. A large tent caught fire. Prior to the attack some refugees had reportedly been harassed by a group of locals in the Chios town center and the locals followed them to the camp. Subsequently, some refugees from the camp had broken into a fireworks shop and started throwing fireworks in the area around the camp. Due to the fire and flying rocks, many camp residents including families with children, had to flee the camp and the majority had to spend several nights outside without shelter. When they returned to the camp, they found that **their clothes, papers, and possessions had been destroyed in the burning tents.**” (p. 24)*

Anna Triandafyllidou, Migration in Greece: Recent Developments in 2016, <http://www.eliamep.gr/wp-content/uploads/2014/10/2016.pdf>

*“Some recent developments as presented in the press show **orchestrated reactions of parents’ associations against the presence of refugee children in their children’s schools** . Three similar incidents occurred within a few days. Furthermore a persecution action after claims of ‘hazing’ in refugees took place at Omonoia Police Department. The courts’ intervention was caused by complaints of **humiliating behavior towards underage refugees** by policemen at that specific Police Department. (...) Tensions between locals and stranded refugees is increasing on the islands. An opinion based article describes the situation and criticizes the European policies and responsibilities . Finally shocking details of **the rape of a 16-year-old Pakistani** by four teenagers of the same nationality derive as a sad side effect of the situation mentioned above. The incident took place in the hot spot of Moria, where minor and unaccompanied refugees are hosted.” (p. 29)*

G. Rechtspraak

Europees Hof van de Rechten van de Mens

EHRM M.S.S v. Belgium and Greece, 30696/09, 21 januari 2011, <http://hudoc.echr.coe.int/eng?i=001-103050>

*“The Court notes first of all that the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum-seekers. **The situation is exacerbated by the transfers of asylum-seekers by other member States in application of the Dublin Regulation.** The Court does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. It is particularly aware of the difficulties involved in the reception of migrants and asylum-seekers on their arrival at major international airports and of the disproportionate number of asylum-seekers when compared to the capacities of some of those States. **However, having regard to the absolute character of Article 3, that cannot absolve a State of its obligations under that provision.**”*

*“In the light of the above and in view of the obligations incumbent on the Greek authorities under the Reception Directive (see paragraph 84 above), the Court considers that the Greek authorities have not had due regard to the applicant’s vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. **The Court considers that the applicant has been the victim of humiliating treatment** showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, **have attained the level of severity required to fall within the scope of Article 3 of the Convention.** It follows that, through the fault of the authorities, the applicant has found himself in a situation **incompatible with Article 3 of the Convention.** Accordingly, there has been a violation of that provision.”*

*“In the light of the above, the preliminary objections raised by the Greek Government (see paragraph 283 above) cannot be accepted and the Court finds that there has been **a violation of Article 13 of the Convention taken in conjunction with Article 3 because of the deficiencies in the Greek authorities’ examination of the applicant’s asylum request and the risk he***

faces of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy.”

“The Court concludes that, under the Dublin Regulation, the Belgian authorities could have refrained from transferring the applicant if they had considered that the receiving country, namely Greece, was not fulfilling its obligations under the Convention. Consequently, the Court considers that the impugned measure taken by the Belgian authorities did not strictly fall within Belgium’s international legal obligations. Accordingly, the presumption of equivalent protection does not apply in this case.”

“Having regard to the above considerations, the Court finds that the applicant’s transfer by Belgium to Greece gave rise to a violation of Article 3 of the Convention.”

EHRM J.R. and Others v. Greece, 22696/16, 25 January 2018,
[https://hudoc.echr.coe.int/eng#{"itemid":\["001-180319"\]}](https://hudoc.echr.coe.int/eng#{)

“The Court found in particular that the applicants had been deprived of their liberty for their first month in the centre, until 21 April 2016 when it became a semi-open centre. The Court was nevertheless of the view that the one-month period of detention, whose aim had been to guarantee the possibility of removing the applicants under the EU-Turkey Declaration, was not arbitrary and could not be regarded as “unlawful” within the meaning of Article 5 § 1 (f). However, the applicants had not been appropriately informed about the reasons for their arrest or the remedies available in order to challenge that detention.”

EHRM S.G. v. Greece, n° 46558/12, 18 May 2017,
<https://hudoc.echr.coe.int/eng?i=001-173502>

“36. La Cour rappelle qu’elle s’est déjà penchée sur les conditions d’existence en Grèce de demandeurs d’asile, livrés à eux-mêmes et vivant de longs mois dans une situation de dénuement extrême, dans l’arrêt M.S.S. c. Belgique et Grèce (précité). Dans cet arrêt (ibidem, § 263), la Cour s’est prononcée ainsi : « (...) compte tenu des obligations reposant sur les autorités grecques en vertu de la directive européenne Accueil (...), la Cour est d’avis qu’elles n’ont pas dûment tenu compte de la vulnérabilité du requérant comme demandeur d’asile et doivent être tenues pour responsables, en raison de leur passivité, des conditions dans lesquelles il s’est trouvé pendant des mois, vivant dans la rue, sans ressources, sans accès à des sanitaires, ne disposant d’aucun moyen de subvenir à ses besoins essentiels. La Cour estime que le requérant a été victime d’un traitement humiliant témoignant d’un

manque de respect pour sa dignité et que cette situation a, sans aucun doute, suscité chez lui des sentiments de peur, d'angoisse ou d'infériorité propres à conduire au désespoir. Elle considère que de telles conditions d'existence, combinées avec l'incertitude prolongée dans laquelle il est resté et l'absence totale de perspective de voir sa situation s'améliorer, **ont atteint le seuil de gravité requis par l'article 3 de la Convention.** »

37. La Cour **estime que ces considérations sont également pertinentes dans les circonstances de la présente espèce.**”

EHRM B.A.C. v. Greece, n° 11981/15, 13 October 2016,
<http://hudoc.echr.coe.int/eng?i=001-167806>

“46. Accordingly, the Court holds that in the circumstances of the present case the competent authorities **failed in their positive obligation under Article 8 of the Convention to establish an effective and accessible procedure to protect the right to private life** by means of appropriate regulations to guarantee that the applicant's asylum request is examined within a reasonable time in order to ensure that his situation of insecurity is as short-lived as possible (see also paragraph 37 above). There has therefore been a violation of Article 8.”

EHRM Sakir v. Greece, n° 48475/09, 24 March 2016,
<http://hudoc.echr.coe.int/eng?i=001-161541> &
<https://strasbourgobservers.com/2016/04/06/sakir-v-greece-racist-violence-against-an-undocumented-migrant/>

“In addition to overcrowding and bad material conditions overall, the finding of a violation on account of the conditions of detention in the police station was based upon lack of appropriate attention to the applicant's medical condition. Indeed, upon his release he was wearing the same blood-stained clothes he had worn upon his arrest. He had not been offered clean clothes, nor had he been given the opportunity to shower or take care of his wounds. The finding of **a procedural violation of article 3 ECHR is based on shortcomings with respect to the gathering of evidence and several other flagrant shortcomings.** The most interesting part of the Court's reasoning is where it states (in paras 70-72) that the context in which the facts took place is of particular relevance. The Court refers to the above-mentioned reports on patterns of racist violence in Athens, finding that they concur on two central issues. One, **since 2009 there has been a clear rise in incidents of racist violence, following the same pattern and taking place in the same areas.** Two, the reports document serious **shortcomings in the police response** to such incidents, both in their interventions at the time of the incidents, and in their subsequent investigations.”

Belgische rechtspraak

Raad voor Vreemdelingenbetwistingen, nr. 205104, 8 June 2018, http://www.rvv-cce.be/sites/default/files/arr/a205104.an_.pdf

In dit arrest heeft de Raad de vordering tot schorsing van een overdrachtsbesluit van een asielzoeker naar Griekenland verworpen. De Raad stelt enerzijds vast dat er nog steeds problemen bestaan inzake de asielprocedure en de opvangomstandigheden in Griekenland, maar dat er actueel geen sprake meer is van systeemfouten die elke overdracht van een asielzoeker naar dit land verhinderen. De Raad stelt vast dat telkens moet worden overgegaan tot een individueel onderzoek overeenkomstig de voorwaarden die werden vastgelegd door de Europese Commissie in haar aanbeveling van 8 december 2016.

*“4.3.5.4. (...) Pour sa part, le Conseil considère qu’il ressort des informations qui lui sont communiquées par les parties que des **défaillances existent encore en Grèce à certains niveaux dans la procédure d’asile.***

*Toutefois, il constate également que le **taux de reconnaissance** en première instance **était de 46%** en 2017 (voir point 4.3.3. ci-dessus), ce qui constitue une indication que les demandeurs ont une réelle chance de voir leur demande être couronnée de succès. Il constate, par ailleurs, que ni la partie requérante, ni aucune des sources auxquelles le Conseil a pu avoir accès ne met en doute la **qualité de l’examen des demandes de protection internationale** par l’autorité grecque compétente en première instance. Par ailleurs, les **délais moyens de traitement** des demandes ne semblent pas trahir une défaillance systémique, même s’il est possible qu’ils dépassent, en fait, les six mois comme l’indique le rapport AIDA cité par la partie requérante. Enfin, des **Commissions de recours** ont été instituées et leur nombre a été augmenté en 2017 et rien n’indique que leur fonctionnement serait défaillant. La circonstance qu’elles ont développé une jurisprudence plus sévère au cours des derniers mois ne suffit, à cet égard, pas à démontrer qu’elles manqueraient d’indépendance ou n’offriraient pas les garanties d’un recours effectif au sens des dispositions pertinentes du droit de l’Union européenne et de l’article 13 de la CEDH. Le Conseil estime donc que la critique de la partie requérante ne semble pas sérieuse en ce qu’elle porte sur une défaillance systémique de l’actuelle procédure d’asile en Grèce.*

*En ce qui concerne les **conditions d’accueil**, des critiques sont adressées au fonctionnement des centres d’accueil. Les sources dont fait état la partie requérante portent principalement sur les conditions d’accueil dans les îles grecques. Des problèmes semblent cependant également exister dans certains centres sur le continent. Toutefois, il ne peut être conclu des informations figurant dans ces sources que ces problèmes concernent tous les centres, et en particulier les centres ouverts officiels. Il ne peut donc être conclu, sur la seule base de ces informations générales, que les conditions d’accueil des*

demandeurs de protection internationale en Grèce présenteraient des défaillances systémiques telles que tout transfert vers ce pays serait incompatible avec l'article 4 de la Charte des droits fondamentaux de l'Union européenne ou de l'article 3 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales (ci-après appelée la CEDH).

Il convient donc de procéder à un **examen au cas par cas** de chaque décision de transfert. Tel est d'ailleurs le sens de la recommandation de la Commission européenne citée par la partie défenderesse : obtenir des **garanties individuelles** afin d'encadrer le transfert de certains demandeurs d'asile sur la base du Règlement « Dublin III », de manière à ce que le transfert puisse s'opérer en conformité avec les normes pertinentes du droit de l'Union européenne et de la CEDH.”

“4.3.9. La partie requérante soutient que les assurances ainsi données par la Grèce « ne sont valables que s'il y a un **système de surveillance** présent, que (sic) peut confirmer la vraisemblance des données au terrain » (requête p. 8), évoquant pour appuyer son propos un arrêt Ben Khemais/Italie de la Cour EDH du 24 février 2009, et plus précisément son paragraphe 61.

Il y a lieu de relever sur ce point que l'arrêt Ben Khemais/Italie, évoqué par la partie requérante, est relatif à un cas tout à fait différent du cas d'espèce dans la mesure où la Cour EDH s'y est prononcée à l'égard d'un étranger condamné par l'Italie et la Tunisie qui avait fait l'objet d'une décision d'expulsion vers la Tunisie. La Cour y indiquait également « qu'il n'est pas établi que l'avocat général à la direction générale des services judiciaires était compétent pour donner ces assurances au nom de l'Etat ». En l'espèce, les assurances données par la Grèce proviennent du département « Dublin » du Service Asile du Ministère grec de la politique de migration, et la partie requérante ne soutient pas que ce service ne serait pas compétent pour engager l'Etat grec sur les assurances individualisées qu'il a données concernant l'accès à l'information relative à la procédure d'asile ainsi que sur son hébergement dans un centre d'accueil à Athènes.

La partie requérante n'explique au demeurant nullement en quoi cet arrêt imposerait un « système de surveillance », ce que la lecture des paragraphes 60 et 61 de celui-ci ne fait pas davantage apparaître.

Rien ne permet donc à ce stade de mettre en doute, a priori, les garanties données par la Grèce, telles qu'elles ressortent de la lecture combinée des deux courriers cités ci-dessus.”

4.3.10. (...) Le Conseil constate, pour sa part, que l'extrait cité par la partie requérante du rapport AIDA, relatif à la durée de la procédure en première instance, n'entre pas en contradiction directe avec la décision attaquée qui évoque le même délai moyen de six mois, la partie défenderesse ayant repris à cet égard logiquement l'information qui lui a été donnée par les autorités

grecques. **Il ressort des garanties données par ces dernières que la partie requérante sera informée quant à la procédure à suivre et quant à l'obligation de se présenter dans les cinq jours de son arrivée au Bureau régional d'asile d'Alimos pour y diligenter la procédure adéquate. Il se comprend de cette garantie que l'intéressé n'aura pas à souffrir d'un retard dans l'enregistrement de sa demande. En toute hypothèse, la circonstance que, selon le rapport AIDA cité par la partie requérante, le délai est en fait souvent plus long si l'on prend en considération notamment le délai entre le pré-enregistrement et l'enregistrement, n'est pas en soi de nature à entraîner une violation de l'article 3 de la CEDH, laquelle nécessite un minimum de gravité. (...)**"

"Le Conseil observe qu'il ressort du rapport AIDA, « update 2017 », cité par la partie requérante, que de septembre 2017 à décembre 2017, 941 personnes ont eu accès à **l'assistance juridique gratuite** organisée par les autorités grecques. Il relève, en outre, que selon ce même rapport, une assistance juridique est également accordée par l'UNHCR dans le cadre d'un mémorandum de coopération avec le Ministère grec de la politique de migration ; 3.600 personnes ont bénéficié de cette assistance en 2017 (p. 53). Au vu de ces informations, la partie requérante ne démontre pas que les problèmes qu'elle signale dans la mise en pratique de l'assistance juridique atteignent un niveau de gravité tel qu'elle ne pourrait y avoir accès.

En toute hypothèse, il convient de relever que la partie requérante ne soutient pas qu'elle est démunie de moyens financiers et qu'elle devrait faire appel à une assistance juridique gratuite.(...)"

"Le Conseil relève, à ce sujet, que les autorités grecques ont donné **des garanties** que la partie requérante sera **hébergée** dans le « Open Hospitality Center of Refugees in Eleonas » (Athènes) dont l'adresse exacte est précisée.(...)"

Les assurances données par la Grèce à la partie défenderesse sont de nature à exclure toute crainte d'absence d'enregistrement adéquat, d'absence d'attribution d'une place en centre d'hébergement ou de pratiques informelles quant à ce, telles que celles que relève la partie requérante dans sa pièce 6 (rapport AIDA). Ces assurances sont également de nature à exclure le risque de troubles psychologiques spécifiques, liés notamment à l'incertitude quant à l'accès à un logement, tel que mentionné dans la pièce 10 jointe à la requête (article de Human Rights Watch).

Le Conseil observe, en outre, que le centre dans lequel la partie requérante sera hébergée est l'un des trois centres officiellement créés sur le continent et qu'il s'agit d'un centre ouvert. Ce centre est géré officiellement (« official site management ») et de nombreuses places y sont libres (rapport AIDA, « update 2017 », p. 124-125). La partie requérante ne démontre pas que ses critiques s'appliqueraient à ce centre spécifique. (...)"

“f) La critique de la partie requérante concernant le risque d’une **détention arbitraire** repose sur des exemples de personnes qui auraient fait l’objet d’une telle détention en vue de leur éloignement. Dans la mesure où la partie requérante sera accueillie dans un centre ouvert, rien n’autorise à considérer qu’elle pourrait faire l’objet d’une détention tant que sa procédure d’asile est en cours. A cet égard, les développements de la partie requérante dénonçant les conditions de détention en Grèce sont inopérants. Il en va de même des informations qu’elle produit à cet égard.

Si la critique vise une détention faisant suite à un éventuel rejet de la demande de protection internationale, elle repose sur une base purement hypothétique.

g) Enfin, la partie requérante reproche également à la partie défenderesse de n’avoir pas vérifié si elle pourra profiter des **garanties minimales** prévues par les « article[s] 20 – 35 de la directive 2011/95/UE, du parlement Européen et du conseil du 13 décembre 2011 » **dans l’hypothèse où elle obtiendrait une protection internationale en Grèce.**

Il convient tout d’abord de relever que cette critique manque en droit si elle vise l’application de l’article 3.2. du Règlement « Dublin III ». En effet, les éventuelles défaillances systémiques visées dans cette disposition ne concernent que le déroulement de la procédure d’asile et les conditions d’accueil des demandeurs.

Ensuite, dans la mesure où une violation de l’article 3 de la CEDH est , le Conseil observe que la crainte de la partie requérante repose sur une suite d’hypothèses et de considérations générales. Il ne peut pas être conclu sur une telle base qu’elle encourrait un risque réel et avéré de subir les traitements proscrits par cet article.”

Buitenlandse rechtspraak

EDAL, Germany: Administrative Court of Düsseldorf rules against a Dublin transfer to Greece based on serious shortcomings in the Greek asylum system, 26 October 2017, <http://www.asylumlawdatabase.eu/en/content/germany-administrative-court-düsseldorf-rules-against-dublin-transfer-greece-based-serious>

« On 26 October 2017, the Administrative Court of Düsseldorf ruled in case 12 L 4591/17 A, which concerned the Dublin transfer of an asylum seeker from Germany to Greece. Greece had accepted the take-charge request on 8 August 2017. The judge granted suspensive effect to an appeal against the transfer decision.

The Administrative Court of Düsseldorf found that there are substantial grounds for believing that systemic flaws in the asylum procedure and reception conditions in Greece could put the applicant in risk of being subjected to inhuman or degrading treatment, in violation of Article 4 of the Charter of Fundamental Rights of the European Union. The Court referred to the ECtHR

ruling in M.S.S. v. Greece and Belgium and the fact that transfers of asylum seekers to Greece under the Dublin III Regulation have not been allowed since 2011. Since then, it was not clear that the systemic shortcomings in the asylum procedure and reception conditions in Greece have been remedied. The Court also referred to the European Commission recommendation to resumption transfers to Greece, which, despite its purpose, also point to the continuation of serious short-comings in the Greek asylum system. It also referred to a letter sent by Greece to the European Commission in November 2016, in which concerns are raised about the capacity of the Greek asylum system to cope with the resumption of Dublin transfers. The Court raised particular concerns about the facilities on the islands and the hotspots, which cannot be considered to be up to standard in terms of sanitary facilities and access to basic services such as health care, especially for vulnerable groups.”

EDAL, Czech Republic : Regional Court of Prague rules that the detention of a Syrian national in view of his Dublin transfer to Greece was unlawful, 3 januari 2018, <http://www.asylumlawdatabase.eu/en/content/czech-republic-regional-court-prague-rules-detention-syrian-national-view-his-dublin>

“The Regional Court of Prague has recently published its decision in case 44A 46/2017, which concerns an appeal against the detention of a Syrian national who had previously lodged an asylum application in Greece. The applicant was detained on grounds of his irregular stay in the Czech Republic and the high risk of absconding since he had claimed that Germany, where his mother and sister lived, was his final country of destination. The detention order was for an initial period of 40 days, which the authorities believed would be enough to allow his transfer to Greece on the application of the Dublin III Regulation. The applicant challenged the lawfulness of his detention before the Regional Court of Prague, mostly due to the lack of assessment by the national authorities on whether there were systematic deficiencies in the Greek asylum system.

The Regional Court of Prague ruled that the national authorities had erred in generally referring to the European Commission’s Recommendation on the resumption of transfers to Greece in December 2016, since a correct interpretation of that Recommendation requires the authorities to proceed with a transfer only where a detailed investigation has been carried out to ascertain that the applicant will be treated in accordance with the Reception Conditions Directive and the recast Asylum Procedures Directive in Greece. The Regional Court also highlighted that the authorities’ decision took place one year after the European Commission’s Recommendation, which indicates that the authorities had failed to take into account more up-to-date information on the situation in that country. Pointing to current Czech and international media reports, as well as to statements from the Greek Minister for Migration Policy, describing un-

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