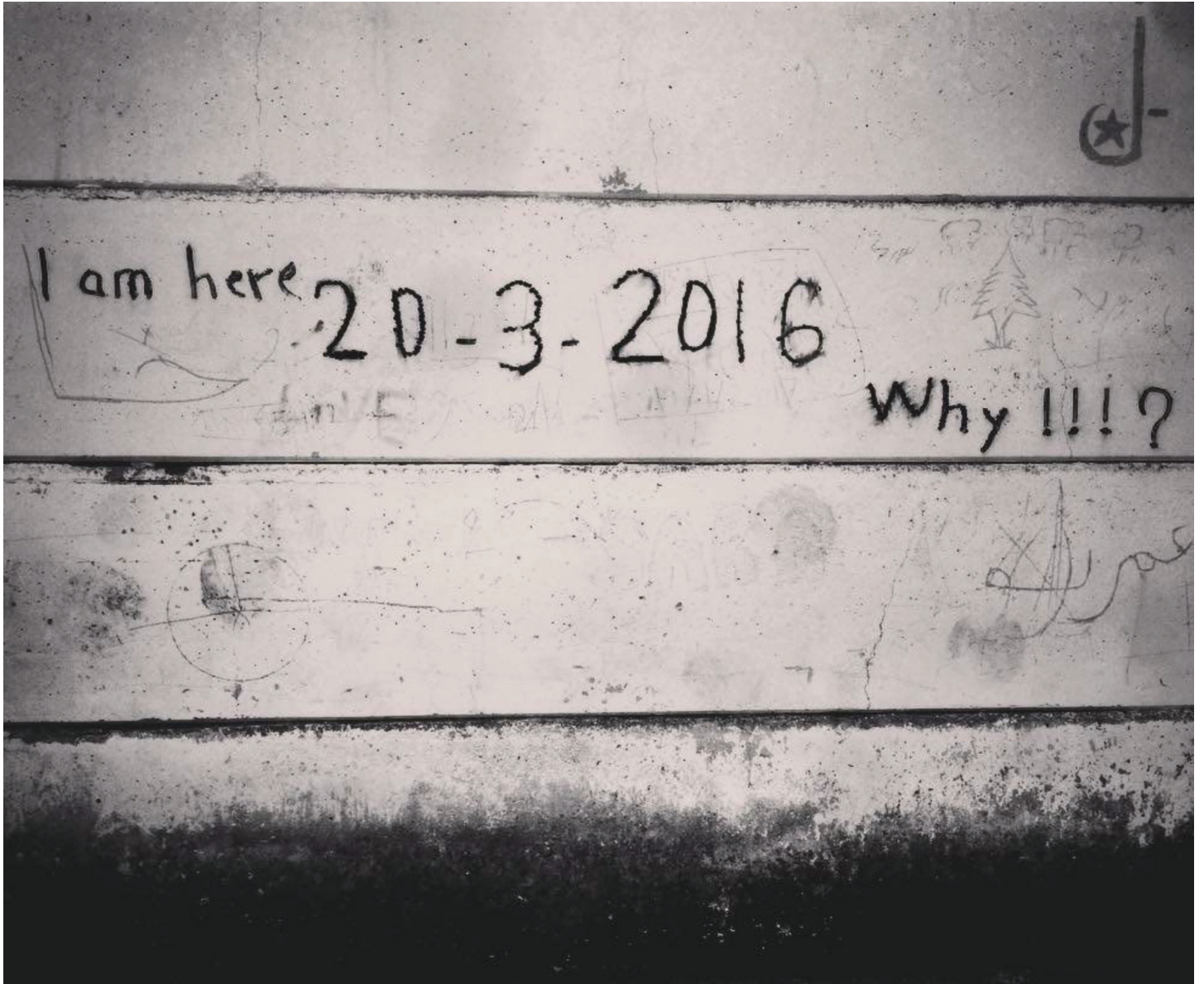


EQUAL RIGHTS BEYOND BORDERS



REPORT

12/19

THE LIVED REALITY OF DETERRENCE MEASURES INHUMANE CAMPS AT EUROPE'S EXTERNAL BORDER

Authors

Emily Cuniffe, Stephanie Pope, Alik Potamianou,
Nicolas Wéry, Catharina Ziebritzki

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I. INTRODUCTION

It is now the third year in which individuals and families in search of protection are forced to live in camps at the external borders of the European Union (EU) as part of the so-called EU ‘Hotspot Approach’.¹ This concerns all asylum seekers who risk their life crossing the Aegean Sea from Turkey to the Greek islands. Three years on from the signing of the EU-Turkey Statement,² and despite urgent calls from NGOs and human rights groups working on the ground, as well as from the Anti-Torture Committee and the Human Rights Commissioner of the Council of Europe, the EU Agency for Fundamental Rights (FRA), the European Parliament, and United Nations High Commissioner for Refugees (UNHCR), the inhumanity of the conditions in those camps persists.³

This report aims at illustrating the daily life of asylum seekers in the EU Hotspot Vial, on the Greek island of Chios. The report describes first the procedures asylum seekers have to go through, and secondly the reception and living conditions in Vial. It further provides a legal assessment of the situation, taking into account Greek, EU and international law. A detailed legal analysis however goes beyond the scope of this report.⁴ The extent of this legal assessment will thus remain to what is necessary to roughly understand the situation in Vial. This report is addressed to the interested public.

While correct that the situation in the EU Hotspots has already been well documented, we are convinced of the importance of shining a light on what we have and are still experiencing during our daily work in Vial. Our findings overall confirm what has been documented so far and highlight that not much has changed in the Hotspots. At the same time, we want to present a detailed situation of Vial in particular, which we believe is relevant considering that the focus of most reports lies on the EU Hotspot Moria in Lesbos, and the EU Hotspot Vathy in Samos. To make it easier for the reader to understand what it means to remain in a camp such as Vial, the report provides illustrative examples of individual cases which we have witnessed during our work as legal counsellors on the island of Chios, excerpts of interviews with persons staying in Vial, and photographs of the camp.⁵

1 In May 2015, the European Commission introduced the EU Hotspot Approach as a means to provide assistance to EU member states geographically located at the EU external border facing a high number of arrivals of migrants. ‘Hotspot’ facilities for initial reception, identification and registration of asylum seekers were hereby created in Italy and Greece, with European agencies being deployed in support of national authorities. See in more detail and from a legal perspective on the EU Hotspot Approach and its implementation in Greece: Catharina Ziebritzki and Robert Nestler, ‘Working Paper. Hotspots at the EU External Border. A Legal Survey’ (2017) MPIL Research Paper No. 17 (publication in German), available online: <https://bit.ly/352ke25> [last accessed: 14 November 2019].

2 The EU-Turkey Statement was published as Press Release on 18 March 2016 and entered into force on 20 March 2016, available online: <https://bit.ly/2NLcATN> [last accessed: 08 October 2019].

3 To give only a few examples: Amnesty International, ‘Greece and EU Must Move Asylum Seekers to Safety’, 6 December 2018, available online: <https://bit.ly/2qV62cd>; Danish Refugee Council, ‘Fundamental Rights and the EU Hotspot Approach’, October 2017, available online: <https://bit.ly/2QksWVg> [last accessed: 12 November 2019]; Human Rights Watch, ‘Greece: Dire Conditions for Asylum Seekers on Lesbos’, 21 November 2018, available online: <https://bit.ly/2O8kzuz> [last accessed: 10 November 2019]; Médecins Sans Frontières, ‘EU-Turkey deal continues cycle of containment and despair’, 18 March 2019, available online: <https://bit.ly/2QfaVYi>, [last accessed: 10 November 2019].

4 In this regard, we refer to other publications by Equal Rights Beyond Borders, available at: <https://www.equal-rights.org/hotspots> [last accessed: 09 November 2019].

5 Out of respect for the persons staying in the inhumane conditions, we refrain from showing pictures which focus on individuals in a recognizable manner.

The report covers the period from September 2018 to September 2019.⁶ The information is based on the daily experiences of lawyers, legal interns and interpreters working with the Equal Rights Beyond Borders office in Chios, as well as research carried out for the purpose of this report – comprising both field research, including qualitative semi-structured interviews with asylum seekers and legal experts from other NGOs in Chios carried out between December 2018 and September 2019, and interviews with lawyers in Izmir carried out in February 2019, as well as desk research.

All information which is not substantiated by a written source is based on the daily experience of the lawyers, legal interns and interpreters working with Equal Rights Beyond Borders in Chios and on interviews conducted for the purpose of this report.

The report is co-authored by Emily Cuncliffe⁷, Alik Potamianou⁸, Stephanie Pope⁹, Nicolas Wéry¹⁰, and Catharina Ziebritzki¹¹.

The report was made possible by the indispensable support, such as with conducting interviews, gathering data and proofreading, provided by numerous staff members, legal interns and interpreters working with Equal Rights Beyond Borders in Chios – in particular Karin Åberg, Ahmad Manabi, Michal Arm-

bruster, Arwa Arrajehi, Yaser Fares, Robert Nestler, Christian Nwaha, Alex Okun, Anne Pertsch, Martin Seyfarth, and Vinzent Vogt.

Last but not least, the report could not have been realized without the efforts and willingness of our interviewees, most of them asylum seekers in Chios, but also lawyers and legal experts working in Chios, whom we would herewith like to thank for their time and openness.

6 References to the 'current situation' refer to the situation in September 2019.

7 Emily Cuncliffe worked with Equal Rights Beyond Borders on Chios as a legal intern from January to March 2019.

8 Alik Potamianou works as a lawyer with Equal Rights Beyond Borders on Chios since May 2019, and previously worked as a lawyer with the Greek Council for Refugees for several years.

9 Stephanie Pope worked with Equal Rights Beyond Borders on Chios as a legal intern from January to March 2019.

10 Nicolas Wéry works with Equal Rights Beyond Borders as legal coordinator of the office in Chios since May 2019.

11 Catharina Ziebritzki is co-founder of Equal Rights Beyond Borders, and worked as legal coordinator of the office in Chios from December 2017 to February 2018 as well as from September to December 2018. Further information on all team members available online: <https://www.equal-rights.org/team>.

II. THE CONTEXT

EU Hotspots and EU-Turkey Deal

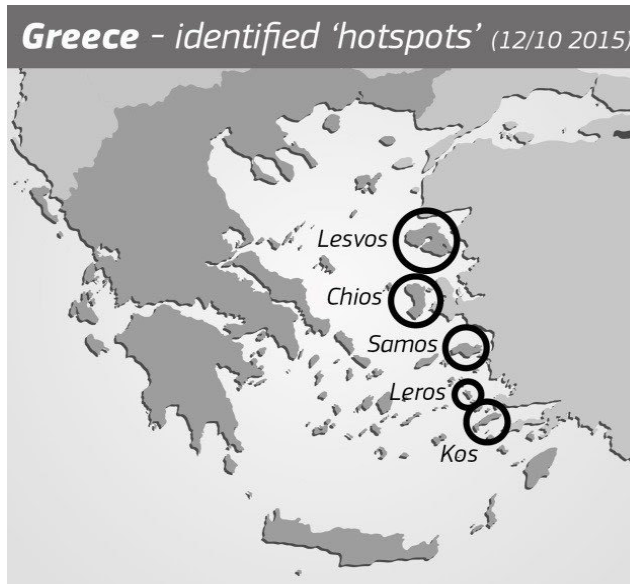


Fig. 2

Map of the EU Hotspots, source: EUR-Lex, <https://bit.ly/34Y1dxJ> [last accessed: 14 November 2019]

Chios hosts one of the five EU Hotspots in Greece, with the four others being located on the islands of Lesvos, Samos, Leros and Kos.¹ After the start of the crisis of the Common European Asylum System due to the relative increase in asylum applications in 2015, and before the practical implementation of the Hotspot Approach in 2016, asylum seekers stayed in different locations in Chios, of which Souda camp is worth mentioning.²

1 Current and detailed information on each EU Hotspot is provided by Refugee Support Aegean, available online: <https://rsaagean.org/en/the-hotspots-experiment/> [last accessed: 13 November 2019].

2 On the dire living conditions in Souda see e.g. Mohamad Alhussein Saoud and Marta Welander, 'Chios at Breaking Point: New Research Finds Humanitarian Support Must be Strengthened, Not Withdrawn', Blogpost of 12 July 2017, available online: <https://bit.ly/34Y1qkv> [last accessed: 09 November 2019]; The Guardian, 28 April 2017, 'Europe's dirty secret: officials on Chios scramble to cope with rising tensions', available online: <https://bit.ly/3747N7A>, [last accessed: 10 November 2019].

At the request of the European Commission, a space for the establishment of an EU Hotspot had to be found by local authorities. The decision was made to create a camp on the site of Vial, a decommissioned aluminium processing facility, and seemed to be the most suitable place on the island – remote, not too small, and with a building to host the administration.



Fig. 3

„Hotspot“ Vial, administrative building, Chios 2016

The EU Hotspot Vial today is a refugee camp with an official capacity of about 1000 people, but which usually hosts between 1000 and 3000 people (see below IV.1). The camp consists of both containers and tents that surround the industrial building. The building itself partly serves as an administrative area and partly as a waste processing facility.³

3 Unlike Moria in Lesvos, Vial does not contain a 'pre-removal section' because applicants are transferred from detention in the police station in Chios to the pre-removal centre in Moria from where deportation to Izmir takes place (see below).

1. EU Hotspots: From relocation to return and containment

The EU Hotspot Approach was put forward by the European Commission in May 2015 in the context of the European Agenda on Migration.⁴ Initially, there was no precise legal definition or legal framework regulating the Hotspot Approach. The reformed Frontex Regulation of 2016 provides a first legal definition of ‘Hotspot’ as ‘an area in which the host Member State, the Commission, relevant Union agencies, and participating Member States, cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders’.⁵



Fig. 4

EU Hotspot Vial, sign referring to the authorities in charge of the camp and the EU funding, own photograph, 2016

Greek Asylum Law 4375/2016 implements the Asylum Procedures Directive⁶ and was adopted in April 2016 in the context of a complete reform of Greek asylum system. It is tailor-made to the implementation of the Hotspot Approach on the Aegean islands

and the EU-Turkey Statement and defines EU Hotspots as ‘Reception and Identification Centres’ (RIC).⁷



Fig. 5

EU Hotspot Vial, graffiti referring to the date of entry into force of the EU-Turkey Statement, own photograph, 2017

Originally, EU Hotspots have been conceived as centres in which irregularly arriving asylum seekers could be ‘swiftly identified, registered and fingerprinted’ so that ‘those claiming asylum [could be] immediately channelled into an asylum procedure’.⁸ At the same time, the EU Hotspots were intended as a mechanism to implement the EU Relocation Program, which was meant to alleviate the migratory pressure on Greece and Italy by relocating asylum seekers to other EU member states.⁹

Yet, upon entry into force of the EU-Turkey Statement on 20 March 2016, the purpose of the EU Hotspots was completely overhauled: EU Hotspots were no longer conceived as centres to implement the Relocation Program, but as centres to implement a return policy to Turkey. In the words of the European Commission: ‘the hotspots have been adapted to facilitate swift returns to Turkey from the islands’.¹⁰

This transformation of the EU Hotspots into return

4 The Agenda intended to ‘address immediate challenges’ linked to the refugee crisis and ‘equip the EU with to better manage migration.’ See: European Commission, European Agenda on Migration, COM(2015) 240 final, Annex II concerning the EU Hotspot Approach.

5 Art 2 para. 10 Frontex Regulation 2016/1624.

6 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [hereinafter: Asylum Procedures Directive].

7 Greek Asylum Law 4375/2016, Art. 8, para. 4, lit. a. An official English translation which does not cover recent amendments is available online: <https://www.refworld.org/docid/573ad4cb4.html> [last accessed: 08 November 2019].

8 European Commission (Fn. 15).

9 European Commission (Fn. 15).

10 European Commission, Second Report on the progress made in the implementation of the EU-Turkey Statement, COM(2016) 349 final, p. 6.

centres had major repercussions on both the procedures and the reception conditions in these centres at the EU external border.¹¹ Immediately upon the entry into force of the EU-Turkey Statement, the EU Hotspots were transformed into detention centres. This generated widespread criticism¹² and triggered the UNHCR - a major actor on site - to redefine its role and suspend some of its activities within the Hotspots out of protest.¹³ Due to the critics as well as to practical difficulties to maintain large amounts of individuals detained, the detention scheme was soon replaced by the so-called 'geographical restriction', i.e. an obligation on all asylum seekers arriving on the Greek islands to remain there (see below III.3. for more detail).¹⁴

Even though the return policy cannot practically be implemented 'effectively' because Turkey can in most cases not be considered as 'safe third country' (see below III.2), the EU Hotspots are up to this day still conceived as return centres. The 'asylum procedure' is designed with the aim of return, and the same seems to be true for the reception conditions. In other words, the EU Hotspots' function as sites of containment and as a sorting zone to implement – politically envisaged, but legally not feasible – returns to Turkey.¹⁵

2. Inhumane living conditions – intention or indifference

The inhumane conditions in the EU Hotspots have been highlighted regularly and continuously over the past three years in reports by UN bodies, including UNHCR and OHCHR, by the Council of Europe, by EU institutions, including the European Parliament and the EU Agency for Fundamental Rights, by the Greek Ombudsman, as well as by several NGOs, and by academia.¹⁶

To give only a few examples: in October 2017, as every autumn, urgent warnings regarding the upcoming winter were given by the NGO Refugee Support Aegean: 'Despite repeated warnings from numerous organizations, thousands of refugees will be in danger as weather deteriorates.'¹⁷ In February 2018, UNHCR further emphasized that 'refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands.'¹⁸ In June 2018, the European Parliament came to the conclusion that 'reception conditions remain a concern [...] in particular for vulnerable migrants and asylum seekers'.¹⁹

11 See e.g. Catharina Ziebritzki, 'EU Hotspot Approach and EU-Turkey Statement in Greece: Implementing a return policy? A legal perspective' (2017) JuWiss Blog, 13 December 2017, available online: <https://www.juwiss.de/134-2017/> [last accessed: 05 November 2019].

12 See e.g. Médecins sans Frontières, 'Doctors Without Borders to pull out of 'inhumane' Greek migrant centre', 23 March 2016, available online: <https://bit.ly/2qaFjbG> [last accessed: 12 November 2019]; Human Rights Watch, 'Greece: Refugee "Hotspots" Unsafe, Unsanitary', 19 May 2016, available online: <https://bit.ly/2qfGDKm> [last accessed: 09 November 2019].

13 UNHCR, 'UNHCR redefines role in Greece as EU-Turkey deal comes into effect', 22 March 2016, available online: <https://www.unhcr.org/56f10d049.html> [last accessed: 12 November 2019]; 'UNHCR has till now been supporting the authorities in the so-called "hotspots" on the Greek islands, where refugees and migrants were received, assisted, and registered. Under the new provisions, these sites have now become detention facilities. Accordingly, and in line with our policy on opposing mandatory detention, we have suspended some of our activities at all closed centres on the islands.'

14 See in more detail on the geographical restriction below.

15 Cf. European Council on Refugees and Exiles (ECRE),

Asylum Information Database (AIDA), 'National Country Report: Greece', Update March 2019, available online: <http://www.asylumineurope.org/reports/country/greece> [last accessed: 14 November 2019].

16 An overview is provided by Isabelle Majcher, 'The EU Hotspot Approach: Blurred Lines between Restriction on and Deprivation of Liberty (Part 1)', 4 April 2018, available online: <https://bit.ly/2ObejKp> [last accessed: 15 November 2019]; further references also in Catharina Ziebritzki and Robert Nestler (Fn. 1).

17 Refugee Support Aegean, 'Winter has arrived: Thousands left at the mercy of winter in Greek hot-spots', 25 October 2017, available online: <https://bit.ly/2NjgpJf> [last accessed: 13 November 2019].

18 UNHCR, 'Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands', 9 February 2018, available online: <https://bit.ly/2NNUGd0> [last accessed: 13 November 2019].

19 European Parliament, 'Hotspots at EU external borders. State of Play. Briefing', June 2018, available online: <https://bit.ly/2KmVA4h> [last accessed: 10 November 2019].

In the same month, the Anti-Torture Committee of the Council of Europe stated with regard to Moria that ‘conditions of detention remain very poor [...] and might easily amount to inhuman and degrading treatment’.²⁰

In August 2018, UNHCR stressed that the EU Hotspots are still ‘severely overcrowded. This means that thousands of asylum-seekers and migrants, including many children, live in squalid, inadequate and rapidly deteriorating conditions.’²¹ In September 2018, Médecins Sans Frontières stressed the serious gaps in medical services as well as the extreme repercussions of the conditions on the human body and mind: ‘Moria is in a state of emergency. [...] The vast majority of people [we] see are presenting with psychotic symptoms, suicidal thoughts – even attempts at suicide – and are confused. [...] In their island prison on Lesbos, they are forced to live in a context that promotes frequent violence in all its forms – including sexual and gender-based violence that affects children and adults.’²² In October 2018, the Amnesty International Expert for Asylum Policy and Law after her visit to Vial concluded: ‘Deaths are tolerated.’²³

A month later, UNHCR described the situation in the EU Hotspots in Samos and Lesbos as ‘abhorrent’, the situation on the other islands only ‘marginally better’ in terms of overcrowding, and reiterated its call ‘to take urgent steps to address the humanitarian situa-

tion for around 11,000 asylum-seekers on the islands [...]’.²⁴

In short, the fact that living conditions in the EU Hotspots remain inhumane is not only well known, it has become a commonplace. Everybody who wants to know knows what is happening in the camps at the EU external border for three years now. And yet, living conditions have not been improved. Will they ever be improved – and if not, why not? Finding an answer to this question obviously goes beyond the scope of this report. One can however note with Amnesty International’s Secretary General that ‘The [EU Turkey Statement] is the main driver behind the inhumane conditions refugees and migrants face today in Moria and on some other islands in Greece.’²⁵

Refugee Support Aegean similarly stated that ‘the EU-Turkey Statement [...] which is being implemented since March 20th, 2016 aimed to deter and eliminate further new refugee arrivals from the Turkish coast to Europe. While the ‘Deal’ is being advertised as a ‘success’ story in migration control, for protection seekers it is just a new model of systematic repression creating immense human suffering. Since the entry into force of the EU-Turkey Statement, protection seekers suffered from new forms of grave human rights violations that followed these policies.’²⁶

In other words, the inhumane conditions characterizing the EU Hotspots in Greece seem apparently to be central to a policy of deterrence from seeking asylum in Europe, and thereby central to the implementation of the EU-Turkey Statement which pursues the main

20 Council of Europe, ‘Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Greece from 10 to 10 April 2018, CPT/Inf(2018) 20’, June 2018.

21 UNHCR, ‘UNHCR urges Greece to address overcrowded reception centres on Aegean islands’, 31 August 2018, available online: <https://bit.ly/2QdKaUi> [last accessed: 14 November 2019].

22 Médecins Sans Frontières, ‘Moria is in a state of emergency. Open letter by Dr. Alessandro Barberio, clinical psychiatrist, MSF Lesbos project’, September 2018, available online: <https://www.msf.org/moria-state-emergency> [last accessed: 15 November 2019].

23 Amnesty International Germany, ‘Flüchtlingslager auf Chios: Tote werden billigend in Kauf genommen’, Blogpost by Franziska Vilmar, Policy Expert for Asylum Politics and Law, October 2018, available online: <https://bit.ly/34SR85c> [last accessed: 16 November 2019].

24 UNHCR, ‘UNHCR urges Greece to accelerate emergency measures to address conditions on Samos and Lesbos’, 8 November 2018, available online: <https://bit.ly/2O9kZQc> [last accessed: 13 November 2019].

25 Amnesty International, Kumi Naidoo, ‘A scar on the conscience of Europe: Letter to Greek Prime Minister on conditions facing refugees in Greece’, 23 November 2018, available online: <https://bit.ly/2XeY4Hd> [last accessed: 14 November 2019].

26 Refugee Support Aegean, ‘EU Turkey Statement’, available online: <https://rsaegean.org/en/eu-turkey-deal-2/> [last accessed: 14 November 2019]: ‘RSA is on a regular basis documenting and highlighting the impact caused by the intensive implementation of the EU-Turkey deal to the rule of law as well as to the lives of the people that are subject to the deal.’

The following pictures clearly illustrate that nothing has changed within one year:



Fig. 6, 7: Photographs of EU Hotspot Vial, own photographs, winter 2017/18



Fig. 8, 9: EU Hotspot Vial, own photographs, winter 2018/19

objective to ‘end the irregular migration from Turkey to the EU.’²⁷ If one further agrees with the Greek Ombudsman’s statement that ‘the institutions and Member States of the most prosperous and politically developed Union should provide political solutions and respond to the challenges under the terms of the rule of law and the protection of human rights’,²⁸ and if

one similarly agrees that the EU and its Member States are actually able to provide decent living conditions in line with EU law and human rights for about 15,000 people within a timeframe of three years, the only conclusion seems to be that the sub-standard and illegal living conditions are either met with indifference or, worse, politically intended.

²⁷ EU-Turkey Statement (Fn. 2).

²⁸ Greek Ombudsman, ‘Migration Flows and Refugee Protection. Administrative Challenges and Human Rights Issues’, April 2017, available online: <https://bit.ly/32Osq4m> [last accessed: 14 November 2019], p. 93.

3. Multitude of actors – blurring and shifting responsibilities

To attribute the intention or indifference towards the inhumane living conditions to a particular actor is made particularly difficult by the existence of blurred responsibilities, which de facto lead to responsibility-shifting. While – as has been explained above – much speaks in favour of intention, or at least indifference of ‘the political actors’, the question remains who is actually politically and legally responsible. Finding an answer to this question appears as not that evident.



Fig. 10

Leaflet designed by UNHCR, provided in RIC (July 2019)

The EU Hotspots are characterized by a multitude of actors. This is well illustrated by the number of actors which have their offices in containers in the administrative area of Vial: Greek authorities – in particular the Greek Asylum Service (GAS), the First Reception and Identification Service (RIS), the Hellenic Police and the Hellenic Army,²⁹ the refugee education coordinator appointed by the ministry of education, the Hellenic Centre for Disease Control and Prevention (KEELPNO)³⁰; EU agencies – in particular the European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex), the European Agency for Law Enforcement Cooperation (Europol); a representative of the European Commission (COM representative); international organizations – the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC); NGOs – in particular Caritas, Salvamento Marítimo Humanitario (SMH), METAdrasi, and PRAKSIS; and the private security company G4S.³¹

29 See for a list of the ‘actors involved’ in the asylum procedure in a strict sense: ‘Standard Operating Procedures for the implementation of the Border asylum procedures in the context of the EU Turkey Statement 18/03/2016’ (version of 19 July 2019), available online: <https://fragdenstaat.de/a/166838>, p. 7 et seq. which differentiates between ‘staff coordinated by the Asylum Service’, ‘staff seconded from the Hellenic Police to the Asylum Service’, ‘staff seconded from EASO to the Asylum Service’, ‘staff coordinated by EASO’, and ‘EASO experts and interim caseworkers’, and explicitly notes that ‘the roles of the actors involved may differ according to the needs of each [...] operation.’

30 Which is a private entity supervised and funded directly by the Ministry of Health and Social Solidarity, established by Law 2071/91, cf. AIDA country report Greece (Fn. 26) p. 36.

31 See on the latter: Apostolis Fotiadis, ‘While hot-spots become chaotic, EASO calls in G4S for protection’, blogpost of 21 June 2016, available online: <https://bit.ly/2ObiQmV> [last accessed: 14 November 2019].

According to Greek law, RIS is responsible for the management of the EU Hotspots or Reception and Identification Centres.³² RIS is under the authority of the Hellenic Ministry of Migration Policy which has been created in 2016.³³

According to the relevant EU soft law, however, which corresponds to what is implemented in practice, EU Hotspots are managed jointly by the European Commission, EU agencies and Greek authorities.³⁴ Addressing the ensuing legal questions would go far beyond the scope of this report. However, it should be noted that while the legal responsibility for the living conditions in the EU Hotspots – at least at first sight – lies exclusively with Greece, the administrative and political context rather shows that the EU and its member states are responsible for the implementation of the EU Hotspots.

GAS, which is evenly subordinated to the Hellenic Ministry of Migration Policy, is legally responsible for conducting the asylum procedures in the Hotspots and is assisted in this task by EU agencies.³⁵ In practice, the asylum procedures are conducted jointly by EU agencies and Greek authorities. Under the current Operating Plan agreed upon by EASO and Greece, EASO is providing ‘support to the Asylum Service for processing applications for international protection

at first instance falling under the border procedure.’ The Plan further specifies that this support will, inter alia, include registering asylum-seekers, conduct vulnerability and best interest assessments, as well as first instance interview.³⁶

The multitude of actors and the unclear legal framework obviously leads to blurred responsibilities and actors shifting responsibility to one another. This issue has been highlighted for the past three years by reports and academic publications.³⁷ Yet, the statement of the Greek Ombudsman of April 2017 still holds true: ‘The diffusion and overlap of competences [...] renders accountability and [...] attribution of liability quite blurry.’³⁸

Without going into detail, it is important to keep in mind that the question of responsibility, in particular regarding the inhumane living conditions, is further complicated by the following two issues. First, the EU Hotspot Approach shifts legal responsibility for reception conditions to the ‘hosting Member State’ while providing operational support only with regard to the procedures. Second, due to the Hotspot Approach and in line with the traditional ‘territoriality’ of asylum based on the idea of national sovereignty, the responsibility for asylum procedures lies with Greece.

What this means in practice is that the European Commission usually refers to Greece as the Member State ‘hosting’ the EU Hotspot and thus legally responsible for the living conditions. At the same time, the Greek Ministry of Migration and in particular local authorities on the islands usually emphasize that

32 Greek Asylum Law 4375/2016, Art. 8.

33 Note that the English translation of Art. 8 Greek Asylum Law 4375/2016 still refers to the former Ministry of Interior and Administrative Reconstruction.

34 On the level of central cooperation, through the ‘inter-agency coordination meetings’ in which national authorities, the European Commission, and EU agencies participate. Operative cooperation lies with the so-called EU Regional Task Force. Operative implementation of the EU asylum procedures by EU agencies and national authorities. Cf. with further references: Catharina Ziebritzki and Robert Nestler (Fn.1) p. 9 et seq.; Federico Casolari, ‘The EU’s Hotspot Approach to Managing the Migration Crisis: A Blind Spot for International Responsibility?’ in ‘The Italian Yearbook of International Law Volume XXV’ (2017), p. 109, 118 et seq.; Lilian Tsourdi, ‘Bottom-Up Salvation? From Practical Cooperation Towards Joint Implementation Through the European Asylum Support Office’ (2017) 1 European Papers 997 et seq.

35 Greek Asylum Law 4375/2016, Art. 1, 14 para. 6, and 60 para. 4 lit. b.

36 EASO Operating Plan to Greece 2019, agreed upon by EASO and Greece, Valletta Harbour and Athens, 19 December 2019, available online:

<https://www.easo.europa.eu/archive-of-operations> [last accessed: 14 November 2019].

37 See for further references: Catharina Ziebritzki and Robert Nestler (Fn.1) p. 8 et seq.; F. Casolari (Fn. 44).

38 The Greek Ombudsman, ‘Migration Flows and Refugee Protection. Administrative Challenges and Human Rights Issues’, April 2017, available online: <https://bit.ly/2XjcVQT> [last accessed: 14 November 2019].

the Hotspots are an 'EU project' carried out on the Aegean islands simply due to their geographical location at the EU external border with Turkey.

With regard to the conditions in Vial specifically, the European Commission in its answers to our open letters has stated the following: 'Whilst the management of the RICs and providing adequate reception conditions is primarily the responsibility of the Greek authorities, in particular the Reception and Identification Service, we share your concerns about the situation. [...] Urgent actions are required by the Greek Authorities to use the EU funds available and deliver on the ground.'³⁹

Questioned by our organization on the same topic, the mayor of Chios however indicated that: 'The issue is too big to be solved on a local level. The EU must do something. The EU must decide which policy it wants to follow, and then effectively implement it.'⁴⁰

In the same vein, the manager of the refugee camp Kara Tepe in Lesbos expressed what seems to be the general sense of the legally responsible among Greek authorities: 'European member states should act and not refuse to view this as a European issue. [...]

An EU solution is needed [...].'⁴¹ Indeed, the EU Hotspots have been opened on the Aegean islands despite strong local opposition, initially under the responsibility of the Greek Ministry of Defence upon pressure by the EU.⁴² The Greek Ministry of Migration – to which responsibility has been handed over from the Ministry of Defence shortly after the establishment of the EU Hotspots – has stated repeatedly that Greece has been left alone to deal with the migration crisis.⁴³

The result of this blurring and shifting of responsibilities is that nothing changes in practice – and that it is even difficult to clearly identify who is responsible for the persisting inhumane conditions on the ground.

39 European Commission, Letter of 4 November 2018, available online: <https://www.equal-rights.org/hotspots>. Without mentioning an ongoing investigation by the European Anti-Fraud Office (OLAF), regarding alleged irregularities concerning the provision of EU funding for refugees, see on this issue e.g. The Brussels Time, 'OLAF investigates irregularities in EU aid for refugees in Greece', 08 October 2018, available online: <https://bit.ly/374dIPs> [last accessed: 14 November 2019].

40 Maonalos Vournous, Mayor of Chios, in his speech on 16 October 2018 during the 15th European Conference on Asylum held in Chios and Athens, cf. Diakonie Deutschland and Churches' Commission for Migrants in Europe, 'Solidarity First. Reclaiming the Values of Europe', Report on the 15th European Conference on Asylum Law, Chios/Athens 15-20 October 2018, available online: <https://ccme.eu/index.php/downloads/reports/> [last accessed: 10 November 2019], p. 13 et seq.: 'The EU Refugee System from a Local Perspective'.

41 Stavros Miroyannis, manager of the refugee camp Kara Tepe on Lesbos, as quoted by DW News, 18 December 2018: <https://bit.ly/2pgeKkY> [last accessed: 15 November 2019].

42 See e.g. DW News, 16 February 2016, available online: <https://bit.ly/2OavDWT> [last accessed: 14 November 2019].

43 Ekathimerini News 17 March 2019, 'EU calls migrant hotspot conditions in Greece, a shame for Europe,' German paper reports', available online: <https://bit.ly/33MvvDI> [last accessed: 13 November 2019].

III. ASYLUM PROCEDURE

in the EU Hotspot Vial

Upon entry into force of the EU-Turkey Statement, the asylum procedure carried out in the EU Hotspots was adapted to the aim of return.

This was in particular achieved by the application of the ‘safe third country concept’ which allows the rejection of asylum claims as ‘inadmissible’ if Turkey can be considered a ‘safe third country’ for the applicant (1). However, Turkey is not a ‘safe third country’ in general, and is not considered as such by the Greek authorities in most cases (2). The adaptation to the aim of return was further achieved by the imposition of the ‘geographical restriction’ to which asylum seekers are subject during the whole asylum procedure (3). Vulnerable persons are, according to the law, nevertheless excluded from the EU Hotspot procedure i.e. exempt from being returned to Turkey as well as from the geographical restriction. However, vulnerable asylum seekers are in many instances either not identified or identified with considerable delay. Further, even if identified, they are usually transferred to the Greek mainland with delay (4). Lack of information as well as difficulties regarding access to legal aid not only prevent persons staying in Vial from the possibility to make use of their rights but also lead to further distress and frustration (5).

Each section provides the relevant legal framework against which the practical situation is then assessed.

1. The EU Hotspot procedure – not really a ‘fast track’ border procedure

Basic legal framework and context

With the entry into force of the EU-Turkey Statement on 20 March 2016, the procedure conducted in the EU Hotspots was adapted to the aim of return. If one wants to use an ‘asylum procedure’ to implement a return policy, the question becomes how to reject an applicant as quickly as possible. According to EU asylum law, simply put, an asylum claim can be rejected in two ways: by being declared either unfounded – meaning that the person is not in need of international protection –, or inadmissible – meaning that another state should provide international protection to that person.

In order to reject an asylum claim as inadmissible, it is entirely irrelevant whether a person is in need of international protection. In line with the central idea of the EU-Turkey Statement to externalize responsibility to Turkey, the objective of the EU Hotspot procedure is to reject an asylum claim as inadmissible with the argument that Turkey is responsible for examining it. This argument either relies on the fact that Turkey has provided protection in the past or could simply do so in the future. While the first is reflected in EU law by the concept of ‘first country of asylum’,¹ the latter is by the concept of ‘safe third country’.² On 1 April 2016, only a few days after the entry into force of the EU-Turkey Statement, Greek Asylum Law 4375/2016 was adopted. It is tailor-made to the im-

¹ Asylum Procedures Directive, Art. 33.

² Asylum Procedures Directive, Art. 38.

plementation of the EU-Turkey Statement in the EU Hotspots, and therefore encapsulates the concepts of first country of asylum and safe third country.³

The EU Hotspot procedure is supposed to be conducted in the form of a so-called ‘fast-track border procedure.’⁴ The relevant administrative guidelines are laid down in the so-called ‘Standard Operating Procedures for the implementation of the Border asylum procedures in the context of the EU Turkey Statement 18/03/2016’, which is a non-public and non-binding internal document.⁵

Characteristic of the procedure is that it provides for restricted procedural guarantees and questionable shortened delays, and allows for enhanced support of EASO to GAS. The entire procedure is supposed to be conducted within 28 days.⁶ An asylum seeker should only be provided one day to prepare for his first instance interview and seek legal assistance.⁷ As will be explained below, the vast majority of these interviews are moreover conducted by EASO personnel. First instance decisions should further be issued the day following the interview.⁸ In case of a rejection of the asylum claim at first instance, either as inadmissible or as ineligible, an appeal can be lodged within five working days before the Appeals’ Authority.⁹ In case of a rejection by the Appeals’ Authority, a so-called action for annulment can be brought before an Administrative Court.¹⁰

In line with the political aim of rejecting an asylum claim as quickly as possible, different ‘workflows’ have been established depending on the nationality of the applicant.¹¹ For Syrians, an admissibility interview is first conducted by EASO. Based on this interview,

EASO issues a legal opinion¹² – usually coming to the conclusion that Turkey is a ‘safe third country’, and that therefore the claim can be rejected as inadmissible. Based on this legal opinion and without ever having seen the applicant, GAS then issues the decision concerning the admissibility of the claim. In almost all cases, GAS follows the legal opinion of EASO. If the claim is considered admissible, an eligibility interview is subsequently conducted by GAS on the Greek mainland. The same procedure applies in essence for applicants of countries of origin with an EU average recognition rate above 25%. However, the admissibility and the eligibility interview are usually conducted as one so-called ‘merged interview’. These interviews are conducted by EASO. For applicants originating from countries with an EU average recognition rate below 25% percent, because the chances of a rejection as ineligible are quite high, there is ‘no need’ to conduct the admissibility procedure from the political perspective of the return policy. Therefore, these persons directly undergo an eligibility interview which is conducted by GAS.¹³

While GAS is legally responsible, in practice GAS and EASO are ‘jointly processing’ asylum claims in the EU Hotspots. EASO is conducting interviews both regarding the admissibility and eligibility of the claim for international protection as well as vulnerability assessments (see below III.4). EASO issues legal opinions based on which GAS issues decisions without ever having seen the applicant in many cases. This practice constitutes a clear violation of Art. 2 para. 6 of EASO’s founding Regulation which provides that EASO ‘shall have no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection.’ This clear overstepping of EASO’s mandate in the EU Hotspots has repeatedly been criticized. In April 2017 already, a complaint had been submitted to the European Ombudsman by the European Center for Constitutional and Human Rights. Later in 2017, a report of the Danish Refugee Council similarly concluded

3 Greek Asylum Law 4375/2016, Art. 55 and 56.

4 Greek Asylum Law 4375/2016, Art. 60.

5 The version of July 2019 is available online: <https://fragdenstaat.de/a/166838> [last accessed: 14 November 2019], cf. Fn. 40, hereinafter referred to as ‘SOP Border Procedure in the context of the EU Turkey Statement’.

6 Greek Asylum Law 4375/2016, Art. 60 para. 2.

7 Greek Asylum Law 4375/2016, Art. 60 para. 2 lit c.

8 Greek Asylum Law 4375/2016, Art. 60 para. 3 lit d.

9 Greek Asylum Law 4375/2016, Art. 61 para. 1 lit d.

10 Greek Asylum Law 4375/2016, Art. 64.

11 SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59) p. 18 et seq., p. 23 et seq.

12 SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59), p. 30 et seq.

13 Cf. Catharina Ziebritzki and Robert Nestler (Fn.1) p. 28 et seq.

that EASO's active role in individual applications clearly goes beyond its mandate.¹⁴ The European Ombudsman however, despite recognising 'genuine concerns' over EASO's involvement in as well as the quality and procedural fairness of the fast-track border procedure, closed the inquiry in July 2018, and, after a request for review, confirmed her decision in April 2019.¹⁵

Practical implementation

Overall, the length of the procedure exceeds the legally foreseen time limits and depends, among other things, on the country of origin of the applicant. The procedure encapsulated in Art. 60 para. 4 of the Greek Asylum Law 4375/2016 is in practice only 'partially' conducted in the form of a 'fast-track border procedure'. The time limit for the administration - 28 days for the whole procedure from registration to decision on appeal - is in practice utopian, and not respected. By contrast, the restricted time limits for the applicants - for instance 24hrs to prepare for their interview or five days for the submission of an appeal - as well as the exemption of vulnerable cases and persons having the right to family reunification under the Dublin III Regulation are applied in practice. It is nevertheless legally untenable to only 'partially' apply Art. 60 para. 4 of Greek Asylum Law 4375/2016, i.e. applying some aspects while ignoring the time limits for the authorities.

Upon arrival on the shores of Chios and disembarka-

tion from the boat, persons arriving from the Turkish coasts are transferred to Vial directly by bus. The whole procedure is implemented in the administrative area of the EU Hotspot.

First, persons are 'pre-registered' by the Hellenic Police which is in this regard supported by Frontex. This means that personal data such as name, date of birth, family status and country of origin are 'pre-registered' directly after a perilous boat crossing. Obviously, not everybody is in a condition to give detailed and correct information in this situation, in particular given that the purpose of the 'pre-registration' is not clear to the newly arrived, given a lack of explanation and sometimes interpretation. Misspelled names, mistakes in the date of birth or even mistakes regarding the country of origin often occur. Yet, except for the nationality, it is later onwards impossible for applicants to correct the data of the pre-registration without an original identity document.¹⁶ During 'pre-registration' persons are given a date for their 'registration' with GAS, i.e. the so-called official lodging of the asylum application.¹⁷

Second, the official registration with GAS usually takes place a few weeks after arrival. The timeframe depends on number of arrivals, country of origin, availability of interpreters, and capacity of GAS staff. Upon completion of registration, persons are given the date for their interview with EASO. This date is however rarely accurate and applicants will see their interview being postponed in the vast majority of cases. If an applicant is considered vulnerable before his or her interview takes place, he or she will be excluded from the fast-track border procedure, referred to the

14 Danish Refugee Council, 'Fundamental Rights and the EU Hotspot Approach', October 2017, available online: <https://bit.ly/2NN5mPp> [last accessed: 14 November 2019].

15 European Ombudsman, Decision in case 735/2017/MDC on the European Asylum Support Office's (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews, available online: <https://www.ombudsman.europa.eu/en/decision/en/98711>. See also European Center for Constitutional and Human Rights, 'Greek hotspots: Complaint against European Asylum Support Office to the EU Ombudsperson', available online: <https://bit.ly/2qWFS91> [last accessed: 14 November 2019].

16 Greek Asylum Law 4375/2016, Art. 43 para. 3 and 4.

17 Therefore, from a legal perspective that the 'pre-registration' already constitutes the 'lodging' of the asylum application in the sense of Art. 20 para. 2 Dublin III Regulation, cf. European Court of Justice, judgement of 26 July 2017, C-670/16, *Mengesteab*, para. 75 et seq. In practice, this has the problematic consequence that the deadlines in the context of the Dublin III family reunion procedure already start as from this date. Applicants are however usually not aware of these deadlines, and not always informed about those during the 'pre-registration'.

standard procedure and directly have an interview with GAS (see below III.4).

Third, an initial interview has to take place. As of September 2019, those interviews are scheduled to take place after approximately five months. A medical screening has however to be conducted in the meantime, otherwise EASO will refuse to interview the applicant. Due to a strike of doctors protesting against the conditions in Vial end 2018, medical screenings were on hold for three weeks and numerous asylum seekers have consequently seen their interview being postponed for several months. The lack of medical staff remains a major issue in Vial (see below IV.4) and it seems that medical screenings are, at the time of writing, scheduled up to 10 months after arrival. In other words, if those screenings are not being preponed thanks to an increase in capacity, applicants who have not been found vulnerable will see their interview being postponed until after this period.

Until July 2019, the initial interview with EASO could be limited to a vulnerability assessment. After that in-

terview, the person could have to attend a subsequent first instance interview regarding admissibility and/or eligibility. Since July 2019, initial interviews are not limited to a vulnerability assessment anymore and admissibility and/or eligibility are dealt with during this first interview. GAS would then have the possibility to conduct another interview in cases of vulnerable individuals, should information regarding an applicant's eligibility be lacking to take a decision.

Once the first instance interview has been conducted, a first instance decision will have to be issued by GAS. This may take a few weeks in the best case to several months in most instances. It is unclear what exactly influences the length of a decision, although country of origin and staff capacity do likely play a role in that aspect. In case of a negative decision, an appeal can be lodged within five days. The Appeals Committees usually decide the case after another five to six months on average.

Furthermore, the multi-language environment and shortcomings in interpretation additionally compli-

The complexity of the procedure becomes apparent when looking at the following flowchart provided by the Greek Asylum Service to explain the procedure:

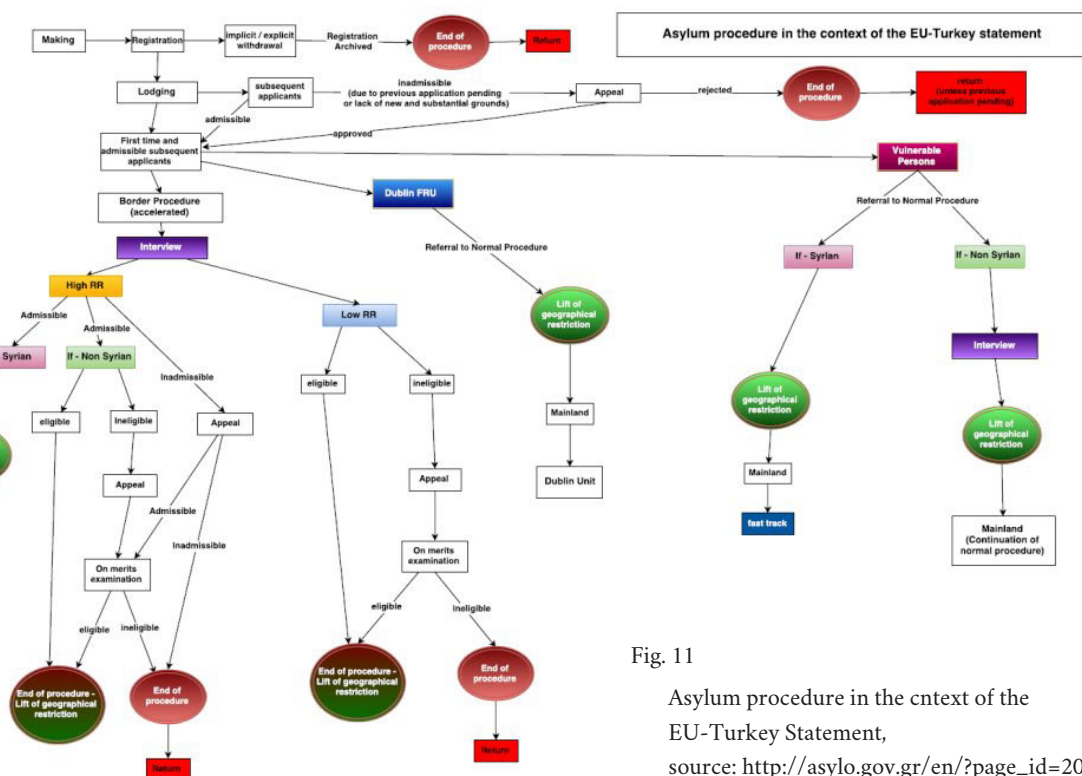


Fig. 11

Asylum procedure in the context of the EU-Turkey Statement,
source: http://asylo.gov.gr/en/?page_id=2074

cate the procedure. The official language of the asylum service is obviously Greek. However, EASO works in English – regardless of the country of origin of its currently deployed officers. Hence, GAS works in English and Greek – depending on the procedure, and the recipient of a certain document and/or decision. In addition, and more importantly, the asylum interview is conducted with the support of interpreters. These interpreters are sometimes hired by EASO directly, sometimes by other companies who then sub-contract to EASO, GAS and other actors. In cases of staff shortage, GAS and EASO work with NGO interpreters. Some languages are only available via phone, sometimes two interpreters have to be used (e.g. a first interpreter will translate from French to English and the second one then from English to Greek), female interpreters are rarely available, and

the quality of interpretation varies widely.

As will become clear in this report, the 'hotspot procedure' can be described as 'Kafkaesque' due to the complexity and flexibility of the legal and administrative framework and the often-differing practical implementation. Not only are asylum seekers themselves confused by nearly all aspects of the procedure, but experienced Greek asylum lawyers confirm that the procedure is not foreseeable and depends heavily on individual circumstances, the responsible caseworker, and opaque administrative guidelines which – similarly to the legal framework – are frequently amended. To put it in the words of an experienced Greek asylum lawyer working on the island of Chios: 'Every procedure [in the EU Hotspot] is different.' Legal certainty is something else.



Fig 12, 13

EU Hotspot Vial, own photographs, July 2019

Case examples, testimonies and impressions

On the length to obtain an interview, a Congolese man testified: 'I am here with my family: my wife and my two children who are four and one year old. We have been staying here since January without having an interview. Seven months it took. I didn't understand. It was not good. I have a family but they just leave us like that. The interview finally took place in August. I hope I will not have to wait too long for the result.' Another man from DRC found himself in a similar situation: 'I find the procedure really strange. The date they gave me for my interview was postponed. It has now been eight months since I am here and I haven't had an interview. It's going to be nine months next week. They said I will have an interview with GAS in September. I don't know why it will be with GAS and not EASO but I heard it's a good thing.'

Regarding the short time to prepare for an interview and seek legal aid, Equal Rights has met several asylum seekers who were speaking very particular languages (e.g. Bambara or Fula) being notified having an interview less than 24hrs before

An Afghan family has been waiting for a disproportionate amount of time for the result of their first instance interview. The father stated: 'We have been waiting for our result for ten and a half months with my wife and three children.'

I really don't feel good, because waiting is the hardest thing in the world. I am worried about the decision because it takes so long and hope it will still be positive. I went to the authorities several times but am always told to simply wait. Because we have been living in Vial for so long, we became sick both psychologically and physically because hygiene and the situation in Vial are awful. We asked UNHCR to be housed outside Vial considering we had been there for so long but they refused. We had to take a house in the city and are paying for it with our own money.'

2. Turkey – not a 'safe third country'

Basic legal framework and context

As has been explained, the central idea of the EU Hotspot procedure is to reject a claim for international protection as inadmissible and send the asylum seeker back to Turkey with the argument that Turkey is a 'first country of asylum' or a 'safe third country'.¹⁸ However: This does not work in practice because Turkey can – in the opinion of the responsible Greek authorities at least for the vast majority of applicants – not be considered a 'first country of asylum' or a 'safe third country'.

According to the law, a country 'shall be considered to be a *first country of asylum* for an applicant provided that he/she will be re-admitted to that country, if the applicant has been recognized as refugee in that country and can still enjoy of that protection or enjoys other effective protection in that country, including benefiting from the principle of non-refoulement.'¹⁹

The practically more important concept is the one of a 'safe third country'. Simply put, a country can be considered as 'safe third country' if that country would provide protection upon return of the applicant. This requires that the third country respects the principle of refoulement under both refugee and human rights law and that the applicant can apply for international protection and receive protection. In the words of Greek Asylum Law 4375/2016, Art. 56: 'A country shall be considered as a safe third country for a specific applicant when all the following criteria are fulfilled: the applicant's life and liberty are not threatened for reasons of race, religion, nationality membership of a particular social group or political opinion; this coun-

18 This must be seen in the broader context of the aim of the EU Turkey Statement to create a 'protection space' in Turkey. Considerable financial support is provided by the EU for this purpose.

19 Greek Asylum Law 4375/2016, Art. 55; Asylum Procedures Directive, Art. 35.

try respects the principle of non-refoulement, in accordance with the Refugee Convention;²⁰ the applicant is in no risk of suffering serious harm [...] [i.e. death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to a civilian's life in situations of armed conflict, cf. Art. 15 Qualification Directive]; the country prohibits the removal of an applicant to a country where he/she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law; the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Refugee Convention; and the applicant has a connection with that country under which it would be reasonable for the applicant to move to it.²¹ Importantly, it must be examined 'for each individual case and applicant separately' whether Turkey fulfils these criteria.

The question whether Turkey can be considered as a 'safe third country' has been disputed since the entry into force of the EU-Turkey Statement. Examining this question in detail goes beyond the scope of this report. However, a few aspects are helpful in order to get a clearer idea about the main issues. First, the legal interpretation of the concept is disputed. In particular, the term 'protection in accordance with the Refugee Convention' and the 'connection criterion' are subject to legal debate. Second, the factual situation in Turkey is disputed. In particular, it is subject to debate which sources are credible – while the Greek Council of State in its judgement of September 2017 relied on information provided by Turkish diplomats in letters to the European Commission,²² much more speaks in

favour of relying on independent research carried out by journalists, NGOs and scholars.²³

It should be kept in mind that Turkey currently 'hosts' about 4 million refugees out of which 3.6 million of Syrian origin.²⁴ Turkey is thus currently the country hosting the largest number of refugees registered by UNHCR world-wide. Turkey has only ratified the 1951 Refugee Convention with regard to refugees from Europe. With regard to the 4 million refugees staying in Turkey, it is thus not bound by the Refugee Convention. In 2013, Turkey has adopted the 'Law on Foreigners and International Protection' – its first asylum law. In 2014, Turkey has adopted the 'Temporary Protection Regulation'. The Turkish legal regime thus differentiates between 'temporary protection' for persons of Syrian nationality, and 'international protection' for persons of all other nationalities.²⁵

In the context of the state of emergency which was announced in the aftermath of the attempted coup of July 2016, several emergency decrees have been adopted. In particular, the possibility to detain and deport foreigners for reasons of 'public order' was introduced by an emergency decree and incorporated into the relevant law.²⁶ In practice, this extremely broad provision leads to arbitrary arrest and detention. Push-backs at the Eastern border are as regularly carried out by Turkish authorities as pull-backs on the Western border, and instances of so-called 'forced voluntary return' are not seldom²⁷. Recently, deporta-

20 1951 Convention and 1967 Protocol Relating to the Status of Refugees [hereinafter referred to as: *Geneva Convention*].

21 See also Asylum Procedures Directive, Art. 38.

22 Clara Anne Bünger and Robert Nestler, 'From first reception center to pre-removal facilities – Supreme Administrative Court of Greece decides that Turkey is a safe third country', 13 December 2017, available online: <https://www.juwiss.de/135-2017/>; Rainer Hofmann and Adela Schmidt, 'Ist die Türkei für Antragsteller ein sicherer Drittstaat? – Das Urteil des Hellenischen Staatsrats vom 22.9.2017' (2018) 38 Zeitschrift für Ausländerrecht und Ausländerpolitik, p. 1 et seq.

23 Such as in particular: Orcun Ulusoy and Hemme Battjes, 'Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement' (2017) Migration Law Series VU Amsterdam.

24 UNHCR, 'Operational Update', June 2019, available online: <https://bit.ly/2qenEzT> [last accessed: 14 November 2019].

25 See on the Turkish legal framework: European Council on Refugees and Exiles (ECRE), Asylum Information Database (AIDA), 'National Country Report: Turkey', Update March 2019, available online: <https://www.asylumineurope.org/reports/country/turkey>; Meltem Ineli-Ciger, 'Protecting Syrians in Turkey: A Legal Analysis' (2017) 29 International Journal of Refugee Law, p. 555 et seq.

26 In particular, emergency decree No. 676 of October 2016, available online: <http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>.

27 Washington Post, 'Turkey has deported hundreds of Syrian

tions of Syrians to their home country, are carried out at large scale, as has been well documented.²⁸

Partly due to high number of refugees in Turkey, there are difficulties with registration, difficulties with access to any kind of services such as medical care or education. Discrimination on the labour market is part of daily life leading to exploitation in many cases. Access to legal remedies is practically often not possible due to a lack of information or financial resources. Pressure on NGOs, lawyers and scholars working on refugee rights is rising continuously since 2016 to an extent leading to self-censorship or even cessation of activities.²⁹

Practical implementation

While neither Greece nor the European Commission have officially recognized the above-mentioned facts as established by independent reports, the responsible Greek authorities in most cases still come to the conclusion that Turkey cannot be considered as 'safe third country'. While GAS in many cases decides that Turkey can be considered as 'safe', especially with regard to Syrian applicants, many of these decisions are overturned by the Appeals Committees.³⁰ According to our experience, this administrative practice has not substantially changed after an amendment of the composition of the Appeals Committees in June 2016.

In September 2017, the Greek Council of State has found in two individual cases that Turkey could be considered as safe for the concerned persons, all of Syrian nationality.³¹ The Council of State refused by a majority of thirteen to twelve judges to refer a preliminary question to the European Court of Justice on the interpretation of the 'safe third country' concept – which is a question of EU secondary law as the concept is established by Art. 38 Asylum Procedures Directive. The judgement was thus made despite the disagreement on the definition of the 'safe third country' concept among judges and the concerns raised by one judge for the human rights situation in Turkey.³² The judgements by the Council of State is however not binding upon GAS and the Appeals Committees. Every case must be assessed individually.³³ The Appeals Committees in many cases decide that Turkey cannot be considered as 'safe' for the concerned applicant.³⁴

Indeed, the number of returns from the Aegean islands to Turkey since March 2016 amounts to only

migrants, advocates and refugees say', 22 July 2019, available online: <https://wapo.st/2NMVoh1> [last accessed: 14 November 2019]; Human Rights Watch, 'Turkey Forcibly Returning Syrians to Danger', July 2019, available online: <https://bit.ly/2plXJWK>; The New Humanitarian, 'An Open Secret: Refugee pushbacks across the Turkey-Greece border', 8 October 2019, available online: <https://bit.ly/2CGQoUD> [both links last accessed: 14 November 2019].

28 The New Humanitarian, 'For Syrians in Istanbul, fears rise as deportations begin', 23 July 2019, available online: <https://bit.ly/2KjfpzM> [last accessed: 15 November 2019]; The Guardian, 'It's not legal: UN stands by as Turkey departs vulnerable Syrians', 23 August 2019, available online: <https://bit.ly/32NcVtF> [last accessed: 15 November 2019].

29 Human Rights Watch, 'Turkey: State of Emergency Ends, but Not Repression. New System Expands President's Power', Januar 2019, available online: <https://bit.ly/375RUOf> [last accessed: 15 November 2019]; Council of Europe, Commissioner for Human Rights, 'Country Visit: Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders', July 2019, available online: <https://bit.ly/374mgAI> [last accessed: 15 November 2019]; ECRE, Turkey: Lawyers Arbitrarily Detained in Izmir Removal Centre, 31 May 2019, abrufbar unter: <https://bit.ly/2QkGQGL> [last accessed: 15 November 2019].

30 Surprisingly, it is difficult to obtain reliable data on the number of successful appeals against inadmissibility decisions in the border procedure. However, cf. AIDA country report Greece (Fn. 26), p. 50 et seq.

31 Asylum in Europe, 'Greece: The Ruling of the Council of State on the Asylum Procedure Post-EU Turkey Deal', 4 Oct 2017, available online at: <https://bit.ly/374mCY4> [last accessed: 15 November 2019], accessed 12 March 2019.

32 AIDA country report Greece (Fn. 26), p.156.

33 Greek Asylum Law 4375/2016, Art. 56 para. 2.

34 Cf. Fn. 86 and Fn. 87.

about 2,400 persons.³⁵ In addition, about 3,400 persons have returned ‘voluntarily’ from the EU Hotspots directly – forming part of a total of 17,000 ‘voluntary returns’ from Greece in general.³⁶ The numbers provided by the European Commission differ from those provided by UNHCR.³⁷ According to UNHCR data, as of 30 June 2019, the total number of men, children and women deported from Greece to Turkey in the framework of the EU Turkey Statement amounts to 1885 persons. Of those returned to Turkey, 45% did not intend to apply for asylum in Greece, withdrew their will to apply for asylum, or withdrew their asylum application. A further 41% received negative decisions at second instance. Of the Syrians returned to Turkey, only 38 individuals were returned to Turkey on the basis that their asylum applications were found to be inadmissible at second instance. For non-Syrian nationals from countries with a high recognition rate, no individual had been found to be inadmissible.³⁸

The EU-Turkey Statement has been widely criticized as a violation of international and EU law.³⁹ Yet, cases

taken to the EU General Court contesting the legality of the EU Turkey Statement were rejected by the Court as inadmissible. The Court stated that ‘the EU Turkey Statement cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union’ and that ‘the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States’.⁴⁰ As the appeals to the European Court of Justice were not successful, these cases went unheard.⁴¹

To conclude, the EU-Turkey Statement aims at ending irregular migration from Turkey to the EU. The return policy cannot effectively be implemented due to international, EU and Greek asylum law. What has worked effectively is the reduction of the numbers of arrivals. As regularly emphasized and understood as ‘success’ by EU institutions, the EU-Turkey Statement reduced the numbers of spontaneous arrivals immediately, effectively, and sustainably.⁴² This is *inter alia* ‘achieved’ through the forcible prevention of border-crossings by the Turkish coastguard,⁴³ a practice

35 European Commission, Factsheet ‘EU-Turkey Statement. Three years on’, March 2019, available online: <https://bit.ly/2qR2IPD> [last accessed: 15 November 2019].

36 Cf. Fn. 92, IOM, ‘Nearly 17,000 migrants returned voluntarily from Greece in the past 3 years’, 8 September 2019, available online: <https://www.iom.int/news/nearly-17000-migrants-returned-voluntarily-greece-past-3-years>.

37 European Commission, Operational implementation of the EU-Turkey Statement as of 5 December 2018, available online at: <https://bit.ly/2jjPFQr> 8 Feb 2019

38 UNHCR, ‘Returns from Greece to Turkey’, 30 June 2019, available online: <https://data2.unhcr.org/en/documents/download/70127>.

39 UNHCR, Note on Legal Considerations for Cooperation between the European Union and Turkey on the Return of Asylum Seekers and Migrants, 10 March 2016, available online: <https://bit.ly/2qb29zW> [last accessed: 15 November 2019]; Maybritt Jill Alpes, Sevda Tunaboğlu, and Ilse Van Liempt, ‘Human rights violations by design: EU-Turkey statement prioritises returns from Greece over access to asylum (2017) 29 Migration Policy Brief’, available online: <https://cadmus.eui.eu/handle/1814/48904>; Enzo Cannizzaro, ‘Denialism as the Supreme Expression of Realism. A Quick Comment on NF v. European Council’ (2017) 2 European Papers, 1 European Forum, available online: <https://bit.ly/2rBKDoT> [last accessed: 15 November 2019], p. 251. See however Daniel Thym, ‘Why the EU-Turkey Deal

is Legal and a Step in the Right Direction’, 9 March 2019, Verfassungsblog, available online: <http://verfassungsblog.de/why-the-eu-turkey-deal-is-legal-and-a-step-in-the-right-direction/>.

40 General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 NF, NG and NM v. European Council, Order of 28 February 2017, press release available at: <http://bit.ly/2lWZPrr>.

41 European Court of Justice, order of 12 Sept 2018, Joined Cases C-208/17 P to C-210/17 P, NF and Others v European Council.

42 European Commission, Factsheet ‘EU-Turkey Statement. Three years on’, March 2019, available online: https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information_en.

43 Cf. European Commission, Sixth Report on the Progress made in the implementation of the EU-Turkey Statement, 13 July 2017, COM(2017) 323 final, p 4: ‘On its side, the Turkish Coast Guard has continued active patrolling and prevention of departures from Turkey.’ [emphasis added]. See for more detailed documentation: Alarmphone, ‘Aegean Regional Analysis’, June 2019, available online: <https://alarmphone.org/en/2019/06/28/alarm-phone-aegean-report/>; Conaction Conference, 2nd to 3rd October 2017, Berlin, Germany, Documentation for Participants, available online: <https://cutt.ly/eeizqan>, p. 6 et seq.; Sarobmed, ‘Refugee Rescue: Pull back by Turkish Coast Guard in Hellenic waters’, available

which is in violation of international human rights law.⁴⁴ The result is that the EU Hotspots are transformed into return centres functioning as sites of containment and deterrence.

3. Geographical restriction and lack of housing – a de facto obligation to stay in the camp

Basic legal framework and context

Immediately upon the entry into force of the EU-Turkey Statement, applicants for international protection were detained for twenty-eight days upon arrival in the EU Hotspots. This systematic detention policy was in violation of the human right to liberty as laid down in Art. 5 para. 1 of the European Convention on Human Rights (ECHR), at least because the indiscriminate detention was not proportionate.⁴⁵ In its *J.R. & Others v Greece* judgment, the European Court of Human Rights (ECtHR) however did not find a violation of Art. 5 para. 1 ECHR, but only of para. 2 of that provision i.e. the obligation to inform about the reasons for arrest. The proportionality of the detention scheme was only shortly addressed by the ECtHR and not reviewed in detail.⁴⁶

In May 2017, the policy of general detention was replaced by the general imposition of a geographical re-

striction. The geographical restriction is based on Art. 41 lit. 2 sub. iii of the Greek Asylum Law 4375/2016 in conjunction with the relevant administrative decision. The latter was annulled by the Greek Council of State on 17 April 2018 due to procedural flaws. A new administrative decision was soon adopted on 20 April 2018. This latter constitutes the legal basis of the imposition of the geographical restriction since. Technically, the geographical restriction is a restriction of the freedom of movement to the respective island. The legality of the geographical restriction is doubtful in light of Art. 7 para. 2 Reception Conditions Directive⁴⁷ and Art. 31 para. 2 of the Refugee Convention.⁴⁸

Practical implementation

In practice, the geographical restriction amounts to a residence requirement. For the vast majority of persons who are subject to the restriction of movement to the island of Chios, there is no other option than staying in Vial.

Apart from financial constraints and landlords' reluctance to rent, asylum seekers' access to material reception conditions, i.e. food, medical and other services, are conditional upon their residence in Vial. Moreover, any kind of information on stages of individuals' procedures e.g. changes of dates of interviews as well as calls for notifications about a decision, is only announced in the EU Hotspot, namely on a paper pinned to a board next to the 'info point' which is updated regularly. Failure to comply with a notification date may be considered as an implicit withdrawal of application.⁴⁹ In sum, despite the lack of an explicit prohibition of applicants renting private property outside the camp, the legal-administrative framework and

online: <https://bit.ly/2KosPV0> [last accessed: 14 November 2019].

44 Nora Markard, 'The Rights to Leave by Sea: Legal Limits on EU Migration Control by Third Countries' (2016) 27 *The European Journal of International Law* 3, p. 591 et seq.

45 Catharina Ziebritzki and Robert Nestler (Fn.1), p. 34 et seq.; Maria Pichou, 'Reception or Detention Centres? The detention of migrants and the EU 'Hotspot' Approach in light of the European Convention on Human Rights (2016) 99 *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*, p. 114 et seq.

46 ECtHR – *J.R. and others v. Greece* (application no. 22696/16) [Articles 3, 5(1), 5(2), 34 ECHR], 25 January 2018, summary available here: <https://bit.ly/32HSJJH> [last accessed: 14 November 2019].

47 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [hereinafter: *Reception Conditions Directive*].

48 Catharina Ziebritzki and Robert Nestler, 'Implementation of the EU-Turkey Statement: EU Hotspots and restriction of asylum seekers' freedom of movement', 22 June 2018, *eumigrationlawblog*, available online: <https://bit.ly/36YB7fX> [last accessed: 14 November 2019].

49 Greek Asylum Law 4375/2016, Art. 47 para. 2 and 3.



Fig 14, 15

Extracts from a video provided to Equal Rights by an asylum seeker in which the Turkish coastguard turns around a boat of persons trying to reach the Greek islands in order to apply for asylum, aiming at destabilizing the boat, March 2019

practical implementation of the EU Hotspot scheme amounts to just that.

In practice, the only opportunity to leave the camp is to be assigned an apartment through the ‘accommodation scheme’.⁵⁰ This scheme is administered by UNHCR and financed by the EU Commission through the Asylum, Migration and Integration Fund. The capacity of this scheme has been reduced and currently amounts to 279 places in Chios.⁵¹ Considering the living conditions in Vial – which are detailed below (see IV.) – it could be argued that every single person staying in the camp is simply in urgent need of accommodation. The eligibility criterion applied by UNHCR is that a person must be ‘very vulnerable’. There is no

written definition of this criterion, and UNHCR staff on the island is not able or willing to explain this nebulous criterion in more detail. It seems that most is left to the discretion of the UNHCR staff in charge of implementing the accommodation scheme. Cases are identified by UNHCR and can be referred to them by state authorities and NGOs. Most cases are obviously not considered ‘very vulnerable’. Even if a person or a family is considered eligible and thus ‘put on the housing list’, the waiting time for an apartment still usually amounts to a few months. In practice, a negligent proportion of persons benefit from the ‘accommodation scheme’, due to a seemingly chronic backlog in processing of accommodation referrals and shortage of appropriate infrastructure.

⁵⁰ UNHCR, ‘ESTIA (Emergency Support to Integration and Accommodation) – A new chapter in the lives of refugees in Greece’, available online: <http://estia.unhcr.gr/en/home/> [last accessed: 14 November 2019].

⁵¹ UNHCR, ‘Greece Accommodation Update’, July 2019, available online: <https://bit.ly/34XDOWr> [last accessed: 14 November 2019].



Fig 16, 17

EU Hotspot Vial, own photographs, July 2019

Case examples, testimonies and impressions

A single woman from DRC expresses the difficulty to be accommodated outside Vial: 'I am here on my own with my son, who was born in Turkey. He is only six months old. Life is too difficult for me and my child in Vial. I am living in a container with five other persons. Because of the heat, they always want to blast the A/C. I cannot prevent them from doing so, but my son gets feverish because of that. I then have to give him paracetamol on a regular basis. Hygiene in Vial is very bad as well. The toilets for instance are in a horrible state. My son cannot grow up like that. I asked UNHCR to be transferred to a flat outside the camp a few months ago, but they always tell me to wait. They never say how long it can take and I have nowhere else to go.'⁵²

A man evenly from DRC reported to find himself in an odd situation: 'Me and my wife we got separated on our way out of Congo. My wife and children arrived in Greece a year before me. They were then transferred to Athens. I asked to join my family when I arrived, but I was not allowed to go to Athens. That's what I don't understand. I've been in Chios for eight months but cannot go to Athens. I am obliged to stay in Chios. My wife can move but she cannot come here.

I don't want her to live in Vial. With the children it's not a good thing. My family visited me only once since I am here. The boat cost them some 80 euros. I could not welcome them in Vial when they visited, because there was simply no space. I asked UNHCR for some help to welcome them or some place to stay with them just for a few days but they refused. Here in Vial I feel like in prison. When I left Congo I was in prison, it's the same here, I'm in prison on Chios.'⁵³

With regard to the high risk of sexual and gender based violence in the camp and the lack of capacity of the UNHCR accommodation scheme even in those cases, we refer to below (IV.4).

⁵² Interview with a female applicant from DRC, conducted in September 2019.

⁵³ Interview with a male applicant from DRC, conducted in August 2019.

4. Vulnerable groups – legal exemption and lack of implementation

Basic legal framework and context

Vulnerable individuals as well as persons eligible for family reunification under the ‘Dublin III Regulation’ i.e. persons who have close family members in other EU member states⁵⁴ are exempted from the fast-track border procedure.⁵⁵ They are further excluded from the geographical restriction on the island of Chios and are not subject to readmission to Turkey under the EU-Turkey Statement. The ‘Dublin III family reunion’ is not further dealt with in this report,⁵⁶ which focuses on the issues arising with regard to vulnerability.

According to Greek asylum law, a vulnerable groups shall be considered: unaccompanied minors; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks; and victims of human trafficking.⁵⁷ The identification of a vulnerability leads to the exemption from the fast-track border procedure at any stage of the procedure.

Under Greek Law, RIS and GAS are responsible for

identifying vulnerable persons.⁵⁸ Even though under the EASO Regulation, the competence of EASO regarding the identification of vulnerable cases is limited to training activities for the national asylum service with regard to issues related to the handling of asylum applications from and reception conditions for vulnerable persons,⁵⁹ according to the current Operating Plan, EASO ‘vulnerability experts’ shall provide ‘support [including] vulnerability assessments’.⁶⁰

The ‘recognition’ of a person as vulnerable takes place by way of a vulnerability decision through a so-called ‘referral to the regular procedure’ which entails an exemption from the geographical restriction which further means in practice that people can, and since October 2019 should, be transferred to the mainland.

Practical implementation

In practice, two main issues arise with regard to the ‘vulnerability exemption’. First, vulnerability assessments face significant delays and are sometimes inadequate due to a lack of medical services for asylum seekers staying in Vial (see below IV.3). The overall lack of medical services in Vial is extremely alarming and, in combination with the fact that EASO will not interview any applicant without prior medical assessment, causes further delays in the whole asylum procedure. Second, even asylum seekers who are ‘recognized’ as vulnerable are usually only transferred to the mainland months after the referral to the regular procedure. These circumstances result in a large majority of confused vulnerable applicants spending prolonged periods under extremely distressing conditions on the island while waiting to be transferred.

The vulnerability assessment obviously slightly differs depending on the nature of the vulnerability. In case of vulnerability based on any medical conditions – as in most cases – the vulnerability assessment depends on a medical report. This concerns both physical and

54 Under EU Regulation No 604/2013 (‘the Dublin III Regulation’), persons who apply for asylum in a EU country could under certain conditions be reunited with their family in a different EU country who would then process their application.

55 Greek Asylum Law 4375/2016, Art. 60 para. 4 lit. 4.

56 But see in more detail: Equal Rights Beyond Borders (under the former name of ‘refugee law clinics abroad’), Family Reunion in Germany under the Dublin III Regulation, February 2018, available online: <https://bit.ly/3775nFd> [last accessed: 14 November 2019].

57 Greek Asylum Law 8 Law 4375/2016, Art. 14 para. 8. Defined in more detail in the SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59), p. 4 et seq, p. 11 et seq., p. 13 et seq.

58 Greek Asylum Law 4375/2016, Art. 8 para. 2 lit. a, Art. 51 para. 6 lit. a, and Art. 60 para. 4 lit. f.

59 EASO Regulation, Art. 6 para. 4, and Art. 14.

60 EASO Operating Plan to Greece 2019 (Fn. 46), p. 14.

psychological health. In case of vulnerability based on minor age, an age assessment is required. Only medical reports and age assessment reports provided by Greek state services – i.e. KEELPNO operating in Vial or the local hospital – are accepted as ‘proof’ for any kind of vulnerability. Medical reports provided by doctors working for international NGOs on the island, be they of registered in Greece or abroad, are not accepted as sufficient ‘proof’. Reports from private Greek doctors are further not given the same ‘probative value’ either. Due to the lack of medical services (see below III.3), providing the sufficient proof for a vulnerability assessment thus becomes extremely difficult in practice.

The vulnerability assessment can be carried out by different actors and at different stages in the procedure.⁶¹ The initial stage in which the vulnerability could be assessed, is during preregistration.⁶² This however hardly ever happens due to the lack of resources and time during preregistration – however, in some cases, not even obvious vulnerabilities such as e.g. blindness or amputated legs have been taken into account already at this stage. The next stage in which vulnerability then should be assessed is during the ‘official registration’ with GAS in the context of which a standard medical screening should take place.⁶³ This standard medical assessment, which is supposed to take place prior to the interview, mainly entails the filling in of a so-called ‘Foreigners Medical Card’ form by KEELPNO in which the medical issues stated by the applicant are written down. The physical assessment of the applicant is minimal. In addition, despite requests, many asylum seekers are unable to be assessed by a psychologist due to an extreme shortage of staff in this regard – even though it is legally required that a ‘psychosocial support unit shall refer persons belonging to vulnerable groups to the competent social support and pro-

tection institution.’⁶⁴ As the position of the KEELPNO doctor in Vial has been vacant for a few months as from August 2018 and is vacant since August 2019 again, interviews are currently postponed until an unknown time in the future when the position would be filled again. This obviously prolongs the unnecessary suffering that applicants are subjected to in Vial. These delays go to the detriment of the very purpose of the deployment of the EASO asylum support team – namely, to support the national administration and accelerate the asylum procedure⁶⁵ – and undermine the standards foreseen by the Asylum Procedures Directive.

If vulnerability is not recognized based on the minimal information stated in the ‘Foreigners Medical Card’ but if the responsible caseworker of EASO, based on the interview itself, comes to the conclusion that there is a need for further medical assessment,⁶⁶ the caseworker could theoretically refer the applicant to KEELPNO. However, this is not always possible, as the position of the KEELPNO doctor has for instance been vacant as from August 2018 for a few months, and is vacant again since August 2019. Practically, no referral to KEELPNO can be made, and hence the asylum procedure is in those instances somehow ‘paused’ until the vacant position would be filled. The only possibility left is that the applicant tries to get access to medical services which are able to write a medical report which will be recognized, i.e. through a referral from GAS to the local hospital or by consulting a private doctor. The latter option is problematic considering the costs of a private consultation, language barriers, and the lack of consideration of GAS for reports by private practitioners. Access to the local hospital is evenly problematic. It is indeed difficult for asylum seekers to obtain a timely appointment when approaching the hospital. A social security number (‘AMKA’ number) is further required to do so, and the

61 Cf. SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59), p. 39, Appendix 2: ‘Flowchart: Vulnerability’.

62 Cf. SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59), p. 11.

63 Cf. SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59), p. 13.

64 Greek Asylum Law 4375/2016, Art. 14 para. 8.

65 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, Art. 2.

66 Cf. SOP Border Procedure in the context of the EU Turkey Statement (Fn. 59) p. 25 et seq.

issuance of these has been frozen since July 2019 (see below IV.3). The ‘official’ way for asylum seekers to get an appointment at the hospital is through referral by KEELPNO – however, this is also difficult because appointments are often scheduled a few weeks, sometimes even months after the person has requested to get an appointment.

Victims of torture in particular face serious difficulties in being recognized as such, and therefore as vulnerable. The reason is that the staff permanently available in Vial does not conduct so-called ‘torture assessments’ having no expertise to do so, despite Greek law requiring the medical staff to be trained on such assessments.⁶⁷ In some cases, the responsible GAS or EASO caseworker would, simply based on the statement of the applicant during the interview, come to the conclusion that the person is a victim of torture. In most cases however, victims of torture are only recognized as such if they can provide a ‘certificate of an assessment as victim of torture’. This ‘certificate’ is only provided by the Greek NGO METAdrasi which has a mobile unit consisting of lawyers and psychologists who conduct ‘victim of torture assessments’. However, this mobile unit due to lack of funding and a shortage of staff is not very regularly present in Chios, but rather passes by every few months. As a result, victims of torture are not being recognized quickly enough, and in some cases, they are not being recognized at all.

Similar difficulties arise with regard to the recognition as vulnerable of asylum seekers who have suffered serious forms of psychological, physical or sexual violence or exploitation. These cases are not always identified for different reasons such as the lack of female interpreters and caseworkers, the lack of psychologists, and a lack of awareness among applicants that such incidents should be mentioned during the interview (see below IV.5).

In case of an age assessment, the procedure is similarly cumbersome: Several issues arise because of wrongly registered data during the registration (see above). If

an applicant claims to be a minor during registration and if there are doubts regarding the claimed age, the asylum seeker is referred to the local hospital for an age assessment. Ministerial Decision 92490/2013 establishes that an examination by a paediatrician should first occur. If not conclusive, the applicant should then consult the psychological staff of KEELPNO. As last resort, an x-ray analysis of the person’s wrist or jawbone can be conducted. In practice, individuals in Chios whose age is being doubted are directly being sent to the local hospital for an x-ray analysis. Besides that the technique is intrusive, its accuracy to determine a person’s age is further scientifically debated. If an applicant is age assessed as an adult, he or she can theoretically appeal that decision to RIC within ten days. In practice, it seems however that those appeals are rarely examined.

Considering the abovementioned practical issues, finding an applicant vulnerable usually requires several months, and in some cases – in particular those where vulnerability is based on non-purely-physical issues – vulnerable applicants are not recognized as such at all. This in particular seems to concern asylum seekers who attempt suicide or self-harm. These cases are only very rarely recognized as vulnerable because GAS argues that the recognition of such cases as vulnerable would lead to largescale suicide attempts or incidents of self-harming, and therefore requires a very high standard of proof regarding the psychological state of the applicant i.e. an extensive medical report which is usually not available. Even though this assumption is not far-fetched – there have been e.g. numerous incidents of serious self-harming among unaccompanied minors, possibly for this reason – the argument of GAS goes to the detriment of the vulnerability assessment and leads to unreasonably high standard of proof.

In addition, the vast majority of asylum seekers who are declared vulnerable will have to remain in the camp for a few months before being actually transferred to the mainland. While the geographical restriction does not apply to those persons and they can theoretically travel to the mainland at their own ex-

67 Greek Asylum Law 4375/2016, Art. 11 para. 10.

penses, they will however in practice have to wait for their case to be ‘officially transferred’. The reason is that the ‘official transfer’ is a pre-condition for being assigned a place in a camp or in UNHCR accommodation on the mainland. If a person nevertheless decides to travel at his or her own expenses before, he or she further faces the risk of being excluded from the cash assistance system, as it is assumed that the person can afford living conditions and expenses autonomously.

Responsibility to carry out official transfers lies with RIS together with the Ministry of Migration, and UNHCR has hereby an assisting role. RIS is responsible for sending lists of vulnerable asylum seekers to the Ministry of Migration which will then match the applicants from all islands with the reception capacity on the mainland. According to information by RIS, this matching exercise depends on the nationality of the applicant as well as on the seriousness of the vulnerability and waiting time of the applicant. In practice, it cannot be understood from the perspective of the applicants staying on the island neither from the perspective of their lawyers, why a certain person is ‘called for the transfer’ a few months or weeks earlier than another one.

A major problem is the lack of capacity in the reception facilities on the Greek mainland. As about 60,000 applicants are staying on the Greek mainland, the reception facilities – in practice mostly camps, some of which are not better in terms of living conditions than the EU Hotspots – are almost fully occupied.⁶⁸

Therefore, ‘official transfers’ sometimes take place every few weeks, sometimes only every few months –

depending on movements in the reception facilities on the Greek mainland. Police surveys conducted at Vial confirm this situation. In May 2018 for example, 470 of the at that time 1,468 individuals staying in the camp were found to not be subject to the geographical restriction as they were entitled to hold a refugee status or to be recognised as vulnerable, yet remained trapped in the EU Hotspot due to an alleged ‘lack of space’ at mainland facilities.⁶⁹ During autumn 2018/19 no transfers took place during a period of about three months. It was not before mid-December 2018 that transfers were slowly resumed due to rising criticism over the lack of winterization in Vial camp.⁷⁰

Due to all these practical issues, the majority of persons who have been recognized vulnerable still have to wait a few weeks to a few months before their transfer to the Greek mainland effectively takes place.

⁶⁸ UNHCR, ‘Greece’, available online:

<https://www.unhcr.org/greece.html>; IOM, UNHCR et al, ‘Protection Monitoring Tool. Open Reception Facilities (sites) in the Mainland’, September 2019, available online: <https://bit.ly/2TdBoHA>., Refugee Support Aegean, ‘Reception Crisis in Greece: The malignancy of Attica’s refugee camps’, August 2018, available online: <https://rsaegean.org/en/reception-crisis-in-greece/>; Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018, available online: <https://bit.ly/32IVwC7> [all links last accessed: 15 November 2019].

⁶⁹ Ekathimerini News, ‘Police conduct survey at Vial hotspot on Chios’, 23 May 2018, available online: <https://bit.ly/32M-zUF8> [last accessed: 14 November 2019].

⁷⁰ According to UNHCR, 255 individuals were transferred to the mainland in December 2018, <https://bit.ly/2q3wlNE> [last accessed: 14 November 2019].



Fig 18, 19

EU Hotspot Vial, own photographs, December 2018

Case examples, testimonies and impressions

Equal Rights has been in contact with numerous clients who were in the possession of medical reports attesting severe mental health issues which they had submitted to GAS. Those clients were however still subjected to geographical restriction and therefore not recognized vulnerable.

Regarding the time it takes to be transferred, a woman from Syria stated: 'I arrived with my husband in December 2018. It is now September 2019. I have problems with my spine making it difficult for me to walk but there is no suitable medical treatment in Chios for me the doctor said. For my husband it is worse. He needs specific surgery for his eye otherwise there is a risk that he will become blind. We have to be transferred to the mainland but months have elapsed since we were declared vulnerable.'⁷¹

⁷¹ Interview with a female applicant from Syria, conducted in September 2019.

5. Lack of access to information and legal aid

Basic legal framework and context

According to Greek law, applicants 'shall be informed, in a language which they understand, on the procedure to be followed, their rights and obligations [...]'.⁷² In addition, 'applicants, following a relevant request [...] shall be provided with legal and procedural information free of charge on the procedure concerning their case.'⁷³ EU law provides further that 'Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.'⁷⁴ In case of a negative decision on an ap-

⁷² Greek Asylum Law 4375/2016, Art. 41 para. 1 lit. a. See also Asylum Procedures Directive, Art. 12.

⁷³ Greek Asylum Law 4375/2016, Art. 44 para. 2.

⁷⁴ Reception Conditions Directive, Art. 5 para. 1 lit 2.

plication at first instance, ‘applicants, following a relevant request, shall be provided with a specific updating on the reasons for such decision and the possibility to appeal against it.’⁷⁵

In addition, applicants have a right to free legal aid in procedures before the Appeals Authority ‘under the terms and conditions set out in the [relevant] ministerial decision.’⁷⁶ Similarly, in case of an application in front of a Court, asylum seekers can receive free legal assistance ‘under the conditions set out in [Greek] Law 3226/2004.’⁷⁷ This assistance is in practice hardly ever granted, as most applicants cannot afford a Court procedure. Whether these provisions are in line with the requirements of the Asylum Procedures Directive will not be further discussed here.

It should further be noted that an applicant must be informed prior to his interview of the date on which the interview will take place and shall be given ‘a reasonable amount of time in order to sufficiently prepare and to consult a legal or other counsellor.’⁷⁸ In the fast-track border procedure this ‘reasonable amount of time’ is limited to a single day.⁷⁹

Practical implementation

In practice, the persons staying in Vial face widespread uncertainty and are left largely to ‘navigate the complex asylum system on their own, without sufficient information’.⁸⁰ The complete lack of information creates an environment of rumours, fear and insecurity.

The one place where applicants are supposed to access any information in Vial is the so-called ‘info point’ or ‘kiosk’ – a container with a barred window. The metal grid has been installed after an attempted knife attack

of an applicant who had been told bad news at the info point. Through this barred window, staff of EASO, GAS or UNHCR – depending on the shift – are supposed to give information to applicants for international protection on their individual asylum procedure. This is also the supposed way for applicants to submit any information relevant to their asylum procedure. Urgent information – such as e.g. interview dates, or calls for notification about decisions – are displayed on a single ‘info board’ next to the ‘kiosk’.

On a daily basis, applicants are forced to crowd in the mud and cold in winter and killing heat in summer from the early morning for hours, having to shout to catch the staff’s attention in an attempt to receive information on their case or gain access to the administrative area for interviews. Still, applicants are often sent away without getting the information they ask for. This lack of access to information in particular concerns applicants who are physically not strong enough to push and shout in front in the info point. However, access to information is usually possible if a legal counsellor – or any other person who is in the eyes of the staff ‘not-applicant-like-looking’ – accompanies the applicant to the info point. In case of such an accompaniment, it is usually possible to get the required information. This was however not the point of establishing an ‘info point’.

Having gone through this wholly unnecessary ordeal, persons however often receive confusing, contradictory and sometimes even wrong information, not least due to the multiplicity of actors involved and the unclear division of their responsibilities. Moreover, sudden changes to individuals’ procedures are left unexplained. Documents submitted by an applicant through the info point in many cases never reach the relevant casefile which creates further confusion as the applicant, duly having submitted the documents, usually rightfully assumes that the submitted information is taken into account by the administration. Information which is only given orally is simply not taken into account at all.

Needless to say that it is practically impossible to give

⁷⁵ Greek Asylum Law 4375/2016, Art. 44 para. 2.

⁷⁶ Greek Asylum Law 4375/2016, Art. 44 para. 3.

⁷⁷ Greek Asylum Law 4375/2016, Art. 44 para. 3.

⁷⁸ Greek Asylum Law 4375/2016, Art. 52 para. 5.

⁷⁹ Greek Asylum Law 4375/2016, Ar. 60 para. 4, lit c.

⁸⁰ Greek Council for Refugees, ‘Provision of Information on the Procedure’, available online: <https://bit.ly/2qPecTE> [last accessed: 14 November 2019].

or ask for any private information regarding the asylum procedure concerning e.g. certain sexual orientation or certain diseases without risking to be harassed in the camp. However, the info point is the only official way to e.g. submit information regarding any kind of disease, or to ask for female interpreter which has to be explained by referring to experience of an SGBV incident. It is obvious that applicants in these cases prefer to not even attempt to give or ask for information in order to not risk their physical and/or psychological integrity in the camp (see below IV.4).

The constant lack of translators exacerbates these circumstances. In winter 2018/19 for instance, EASO lacked an interpreter for Lingala, the first language of the vast majority of persons originating from DRC. As a result, the interviews of all concerned persons were simply ‘cancelled until further notice’ which was announced on the ‘info board’ without giving any further explanation. Such information without any explanation obviously, after having waited for months in the dire camp during winter counting the days until the date of the interview, leads to further anxiety, rumours, confusion and obvious frustration among the applicants.

Concerning legal aid, the situation for the applicants staying in Vial is as follows. In the first instance procedure i.e. before a decision on the claim has been issued by GAS, access to legal information and legal aid depends on the ability of the applicant for international protection to inform him- or herself and to get access to a legal aid actor present on the island. The main of these actors are: The Greek Council for Refugees, which has reduced its programme from previously two to now only one lawyer in Chios; METAdrasi which has a team of between three and five lawyers in Chios; Refugee Support Aegean, which is present with one lawyer in Chios; Advocates Abroad which are present irregularly with one or two foreign legal counsellors at a time; and Equal Rights Beyond Borders, which are present with three to four foreign legal counsellors and one Greek lawyer. All of the mentioned actors provide legal assistance in the first

instance procedure according to their respective capacity.

In the second instance procedure i.e. after an appeal has been lodged and before a second decision has been issued by the Appeals Committees, legal aid is provided by the Greek lawyers of the mentioned actors, again, depending on capacity and on the chances of success of the Appeal which is assessed by the NGO lawyers individually. In addition, since the end of 2017, there is one so-called ‘registry lawyer’ who is financed directly by the Greek state, and who takes up a maximum of 17 appeals per month, independently of the chances of success. In practice, the first 17 appeals per month are referred to the ‘registry lawyer’, unless the concerned applicant already has a lawyer representing him or her in the first instance procedure. In light of the lack of legal assistance, asylum seekers have sometimes turned towards ‘private’ lawyers in Chios which they then pay. The latter have oftentimes no experience in asylum law.



Fig 20, 21, 22

EU Hotspot Vial, own photographs, December 2018

Case examples, testimonies and impressions

Equal Rights frequently spoke to applicants who felt that their statements had not been adequately or accurately translated by interpreters, or subsequently misunderstood and wrongly recorded by caseworkers.

On the short delay to prepare for an interview and consult a lawyer, a 24-years old Congolese woman said: '[EASO] called me on the phone to come for an interview on the very same day. They did not announce my interview the Friday before as it should be, because they made a mistake in calling my number. I was not in Vial, but in the city centre when they called me.

When I finally arrived, I went inside the interview room, but because there was a lack of time to conduct the interview, they told me to come back three days later. I fortunately managed to see my lawyer who informed me about the asylum procedure in the meantime.'⁸¹

In a similar vein, Equal Rights met a man from Ghana who approached the info point in the morning asking for information about his file and was told to come for an interview in the afternoon. The interview of that person had not been announced beforehand and Equal Rights was not able to inform the person about the asylum procedure given the shorth notice.

A man from Cameroon spoke about the difficulties of obtaining information on his case: 'Going to the info point is never something good. It is stressful, there are too many people who shout and push. I cannot imagine being a woman in those instances. When I had to renew my [asylum registration] card last time, I went with my lawyer who had to go to GAS that day. I managed to obtain my new card on my own though that day, but I am sure it would have helped for him to be there.'⁸²

81 Interview with a female applicant from DRC, conducted in September 2019.

82 Interview with a male applicant from Cameroun, conducted in September 2019.

IV. RECEPTION CONDITIONS

in the EU Hotspot Vial

Reception conditions in the EU Hotspot Vial fall short of all legal standards. The camp is characterized in particular by a lack of shelter (1), a lack of adequate sanitary facilities (2), a lack of medical treatment despite widespread physical and mental health issues (3), a lack of security leading to sexual and gender-based violence on a daily basis (4), and a lack of access to education (5). At the same time, there is a lack of financial support and it is almost impossible for applications to access the labour market (6). Detentions conditions in the police station are sub-standard and persons staying in Vial are in some instances subject to arbitrary imprisonment (7).

In addition to the already inhumane conditions in the camp itself, the life of the persons applying for asylum at the EU external border is made even more difficult and the political disregard for any human needs of these persons is made even more clear by the remoteness of the camp.¹ For more than three years, numerous independent reports have highlighted that the ‘reception’ conditions in the EU Hotspots are alarming. Regarding the EU Hotspot Vial, these concerns have been raised several times by Equal Rights and other NGOs in joint letters to the European Commission.²

1. Lack of (adequate) shelter including for vulnerable groups and unaccompanied minors

Basic legal framework and context

Concerning the legal framework regarding shelter in the context of EU Hotspots, it does unfortunately seem necessary to start with Art. 3 ECHR: ‘No one shall be subject to [...] inhuman or degrading treatment [...]’. This basic standard is reiterated in Art. 4 EU Charter of Fundamental Rights as well as in Art. 7 of the Greek Constitution. A comprehensive analysis of the scope of the prohibition of inhuman or degrading treatment with regard to living conditions for asylum seekers obviously goes beyond the scope of this report. However, it should be kept in mind that the ECtHR has repeatedly affirmed that states are under an obligation to provide basic services and that a situation of extreme poverty can amount to a violation of Art. 3 ECHR.³ While a situation of extreme poverty is marked by ignorance or negligence from the state, the camp Vial is actually actively established by the state in cooperation with the EU as the place designated for persons who apply for international protection at the EU external border. It does thus not seem far-fetched to argue that the infrastructure of the camp in combination with the legal framework of the EU Hotspot procedure including the geographical restriction amount to an active measure of the state. Yet, as has been mentioned above, the ECtHR has so far come to the conclusion that reception conditions in the EU

1 Cf. Melina Antonakaki, Bernd Kasperek and Georgios Maniatis, ‘Counting heads and channeling bodies. the hotspot centre Vial in Chios, Greece’, June 2019, available online: <https://bit.ly/34ZPz5j> [last accessed: 12 November 2019].

2 All letters and responses from November 2017 to January 2019 are available here: <https://www.equal-rights.org/hotspots>.

3 See *Budina v Russia*, Application No. 45603/05, 18 June 2009, available online: <https://hudoc.echr.coe.int/eng?i=002-1453>; *M.S.S v Belgium*, Application No. 30696/09, 21 January 2011, available online: <https://bit.ly/2QiQz0h> [both links last accessed: 14 November 2019].

Hotspots did not amount to a violation of Art. 3 ECHR, and did not consider the argument suggested here.⁴

EU law provides that ‘Member States shall ensure that material reception conditions are available to applicants [...] [and] provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.’⁵ The EU Hotspot Vial provides for the opposite: an environment which severely affects the physical and mental health of applicants – as has been reported by numerous independent reports for more than three years now (see below IV.3).

The legal standards are specified in more detail in EU law – in particular Art. 18 et seq. Reception Conditions Directive –, which was transposed into Greek Law 4540/2018.

The ‘specific situation of vulnerable persons’ must be taken into account with regard to all aspects of reception conditions.⁶ In particular, ‘gender and age-specific concerns and the situation of vulnerable persons’ must be considered when providing accommodation.⁷ Regarding unaccompanied minors, Greek law provides that they should be placed in centres adapted for their special needs for the duration of their application procedure, or until they are placed with a foster family or in supervised lodgings.⁸

The reality is far from these legal standards in every possible regard – to an extent that it is not even possible to cover all aspects in this report. In the following, the attempt is to give an overview.

Practical implementation

On Chios, the vast majority of applicants for international protection have to stay in the camp of Vial. The majority of inhabitants of Vial are housed in tents and containers that surround the central administration building. Containers obviously offer better shelter

against weather conditions, in particular since most of the containers have a heating and/or A/C system. However, containers are overcrowded – up to three families share one – which means that it is not unusual for a family to have little personal space – according to our experience, currently about between 4 and 8 m² is the space usually available for about three to four persons (family or group of singles) –, and privacy simply does not exist in Vial. Throughout winter months, with heavy rains and low temperatures, the flimsy tents and crowded containers provide little reprieve from weather conditions. In summer, temperatures in the containers and camp exceed 30 degrees, creating difficulties in particular for younger children and elderly persons.

Whereas Vial has an official capacity of 1,014 persons, the total population of the camp as of September 2019 exceeds 3,300.⁹ In case of new arrivals surpassing the maximum capacity, asylum seekers are being told to look for a tent until a space in a container becomes available. While UNHCR has deployed some tents in the camp, those are evenly overcrowded, obliging numerous individuals to buy a camping tent to reside in. Needless to say that those people are even more exposed to weather conditions.

Due to the fact that one part of the ‘administrative building’ is used as waste processing plant, the camp is often covered in a stench of waste. The water running down the hill when it rains is certainly not clean, and might even be contaminated. Quite apart from the fact that processing waste in a refugee camp is a gesture of deep disrespect, the possible effect of the waste processing plant on the health of persons staying in this camp seems to be disregarded.

Vulnerable persons, including unaccompanied minors,¹⁰ are staying in Vial under the same conditions as

4 Cf. Fn. 103.

5 Reception Conditions Directive, Art. 17.

6 Reception Conditions Directive, Art. 21 et seq.

7 Reception Conditions Directive, Art. 18 para. 3, Greek Law 4540/2018, Art. 18.

8 Greek Law 4540/2018, Art. 22.

9 Hellenic Ministry of Citizen Protection, ‘National situational picture regarding the islands at Eastern Aegean sea’, 18 September 2019, available online at: <https://bit.ly/350rmfd> [last accessed: 14 November 2019].

10 See for more detail on the situation of unaccompanied minors in Greece: Equal Rights Beyond Borders, ‘Unbegleitete minderjährige Flüchtlinge in Griechenland’ (publication in German), July 2019, published by the Federal Association of Unaccompanied Minor Refugees (BumF), available online:

everybody else. Vulnerable applicants are not provided with the shelter and accommodation as is required by law.¹¹ While UNHCR run an Accommodation Scheme on Chios for individuals considered to be ‘very vulnerable’, spaces in this accommodation is limited and the waiting lists are long (see above).

While some unaccompanied minors are accommodated in Chios town – a special shelter with 18 places is available for minors in Chios – approximately 110 unaccompanied and separated children were living in Vial as of September 2019. According to an NGO working with minors in Vial, the situation is the most challenging since early 2017.¹²

Unaccompanied boys above the age of 15 years are supposed to stay in the so-called ‘safe zone’, which is a group of containers fenced off from the rest of the camp. To put it in the words of the staff of the above-mentioned NGO: ‘The ‘safe zone’ is not safe.’¹³ A general lack of supervision of the area indeed leads to the frequent presence of unauthorized adults in the zone.

Female unaccompanied minors and male unaccompanied minors under the age of 15 years, as well as persons who are considered by RIS to be ‘under acute risk’¹⁴ are staying inside the ‘administrative building’ overnight. This means that they are staying in a space with wooden boxes – next to the then closed containers which are used as offices during the day. The ‘wooden boxes place’ is neither warm nor closed, it is certainly not private or safe, it does not have beds, although blankets are usually provided. Even so, it is considered to be the ‘safest’ place within Vial because the police is present at the entrance of the building. Persons allowed to stay in this place overnight must however leave it early in the morning – namely before the administration starts working at 8 am. It is

obvious that even though the ‘wooden boxes place’ is considered to be slightly safer than the camp itself, the space is not only not in line with legal standards, it is a degrading ‘accommodation’ for the most vulnerable, and cannot be named a personal space.

As of December 2018, the ‘safe zone’ started to become supervised by IOM staff and Greek police. Consequently, the director of Vial decided to transfer all girls and boys under 15 to the ‘safe zone’, not allowing them to stay overnight in the administrative building anymore. Yet, it is reported that unauthorized adults still regularly enter the zone, whereas children’s movements in and out of the area are apparently not genuinely monitored. With the increase in arrivals during the summer of 2019, the ‘safe zone’ was full and the more vulnerable cases were allowed to temporarily remain in the administrative building again.

The inhumane conditions in Vial are exacerbated through the remoteness of the camp. Vial is located about 8 km from Chios town and is not accessible by public transport. Busses from UNHCR are running a few times a day – however, a place in the bus is only given to persons who have a specific appointment in Chios town, such as e.g. an appointment at the local hospital.

UNHCR stopped operating those busses in February 2019. A taxi from Vial to Chios costs about 10 euros, which is obviously a significant amount given that each person receives a monthly allowance of 90 euro per month (see below IV.5).

<https://www.equal-rights.org/post/report-on-unaccompanied-minor-refugees-published>.

11 Greek Asylum Law 4375/2016, Art. 14 para. 8.

12 Interview with two employees of an NGO that works with minors on Chios, conducted in December 2018 and September 2019.

13 Ibid.

14 Which is not a clear-cut category and there is no clearly defined procedure for identifying such applicants.



Fig 23, 24, 25

EU Hotspot Vial, tents in which asylum seekers reside, own photographs, December 2018 and July 2019



Fig 26

EU Hotspot Vial, 'safe zone', own photograph, September 2019

Case examples, testimonies and impressions

One Eritrean man who currently lives in a tent in Vial described the inadequacy of the conditions: 'I received my tent from a friend and not from UNHCR. The tent provides only space for one person and there is no light inside. Don't expect light. If it is hot, it is not possible to sleep properly inside due to the heat. And when it rains, water...runs inside the tent. Besides the coldness, a big problem in the winter is that the tent is always wet.'¹⁵

Similarly, another interviewee addressed the inadequacy of accommodation: 'I have to emphasize again the importance of closing the camp or at least not having tents in Vial: they're unhygienic, crawling with bugs and rodents. In addition to all this, it is very cold.'¹⁶

One man interviewed for this report described the difficulties faced by his cousin: 'My cousin was pregnant when we arrived. They put us in a tent for 15 days until they moved us into a caravan. Our tent was on a hill. It was raining and slippery, I fell trying to protect my cousin from slipping on our way to the bathroom.'¹⁷

In another interview, a Syrian man described the situation of an Iraqi woman: 'She has cancer and can't move her leg. They put her in a tent. How is she supposed to get up, get to the bathroom? She told me that she couldn't sleep because it's too low (on the floor).'¹⁸

One unaccompanied minor interviewed by Equal Rights in November 2018 described his experience in the 'safe zone' of Vial: 'I did not have any mattress beneath me, just one sleeping back for each of us, no cover or pillow. We did not have a heating in this caravan, there was air conditioning, but for all air conditioners in the caravan we had just one remote control and the remote control was with the police. So, when the police officers on shift were nice, we stayed in a warm place. When the police officers on shift were ugly, and they mostly were, it was cold. So, in winter, most of the time it was cold... Nobody informed us why we were staying in the camp and other minors in the shelter, in a house in the city. We thought that this was because we are the bad ones. From what we understood from the NGOs around in the camp it was because we are considered drug addicts or criminals.'¹⁹

Another unaccompanied child tells us about his experience: 'When I arrived in Chios in May 2017 I was put in a caravan in the safe zone. I stayed there until January 2018. When the arrivals increased we were up to thirteen in the caravan, all boys. We didn't have mattresses or pillow, just sleeping bags. There also was no heating in the caravan, just A/C. No one informed us why we were sleeping there and why other were living in the city. We thought we were the bad ones. From what we understood, it was because they thought we were drug addicts or criminals.'²⁰

A man from DRC testifies: 'When I arrived in Vial, I was surprised to see that there was no place to sleep. I arrived during the cold period in winter, police just gave me some blankets and they told us to find a place to stay. I had to build a tent for myself with some blankets to sleep. I stayed like this for two months before UNHCR provided me with a tent. We are a lot in that tent, 8 to 9 persons, and don't have electricity. There's no bed. You just put your blanket on the ground and sleep on it. That's where I am staying up to this day.'²¹

15 Interview with a male Eritrean applicant, conducted in December 2018.

16 Interview with a male, LGBT, Syrian applicant, conducted in December 2018.

17 Interview with male Syrian applicant, conducted in December 2018.

18 Interview with a male, LGBT, Syrian applicant, conducted in December 2018.

19 Interview with an unaccompanied minor who previously resided in Vial and now lives in Germany, conducted in November 2018.

20 Interview with an unaccompanied child applicant from Syria, conducted in December 2017. Full interview available online here: <https://bit.ly/2NKwtKU> [last accessed: 12 November 2019].

21 Interview with a male applicant from DRC, conducted in August 2019.

2. Lack of adequate sanitary facilities

Basic legal framework and context

Neither EU law nor Greek law specify the requirements regarding sanitary facilities. However, both EU law and Greek law require reception conditions providing ‘an adequate standard of living for applicants’ which ‘protect their physical and mental health’.²² This obviously implies adequate sanitary facilities.

Practical implementation

In Vial, sanitary facilities are wholly inadequate to meet the basic reception needs of applicants and ensure a dignified standard of living.

Bathroom facilities are severely limited, with only 36 showers and 53 toilets working as of September 2018.²³ As a reminder, more than 3,000 persons currently live in Vial. These toilets are moreover poorly maintained, the sewer mechanism is considered as insufficient, and in some sections of the camp, toilets overflow into the surrounding area.

Further, the sections have varying times for electricity and water supply, both of which are limited and tightly controlled. Due to the overpopulation, many asylum seekers have hence reported being simply unable to take a shower for days. Needless to say that those unsanitary and unhygienic conditions are conducive to the spread of disease.

In particular women and girls, applicants who identify as LGBTI, and victims of sexual and gender-based violence, consistently and continuously report fear of going to the bathrooms and showers because of the

risk of sexual harassment. One NGO in Chios, the Athena Women’s Centre, provides a bathroom with one shower for women and girls only. This service is extremely important – but it is obvious that it is entirely insufficient to compensate the failure of the state to provide adequate sanitary facilities.



Fig 27, 28, 29

EU Hotspots Vial, Bathrooms in one section of the camp, photographs by Iskandar Nicola, December 2018 and September 2019

²² Reception Conditions Directive, Art. 17(2); Greek Law 4540/2018, Art. 17(1).

²³ UNHCR, ‘Greece - Site Profiles’, September 2018, available online at: <https://data2.unhcr.org/en/documents/download/66038> [last accessed: 12 November 2019].

Case examples, testimonies and impressions

One Eritrean man interviewed for this report described the inadequacy of sanitary facilities: 'In my block there are no decent showers, no toilets and bathroom and no hot water. Often not even running water or electricity. For sanitary reasons I need to go to the other blocks. Mostly, I defecate outside. The sanitary facilities are not cleaned regularly by the personnel of UNHCR. We have to clean it ourselves.'²⁴

An Afghani woman interviewed stated that the showers and toilets 'were the worst part' about Vial: 'First of all, they were so dirty. I don't know why, but in the night time, they cut off the water. We had no water in the night time. The bathroom in the morning... you can't even imagine how dirty it was. Also, there were not enough bathrooms and toilets....and they do not fix them.'²⁵

3. Lack of medical treatment despite widespread physical and mental health issues

Basic legal framework and context

Under EU law, 'Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders' – regarding vulnerable applicants, 'Member States shall provide necessary medical or other assistance [...] including appropriate mental health care where needed'.²⁶ These provisions are transposed in Art. 17 of Greek Law 4540/2018.

Furthermore, under Greek Law, all migrants, including applicants for international protection, have a

right to free access to public health facilities.²⁷

Practical implementation

The lack of medical services in Vial is critical. While the current medical facilities in Vial are inadequate to treat a population of individuals that has recently fled war and travelled long distances to arrive to Greece, the reception conditions in which these persons are forced to stay further actively worsens their physical and mental health. Health issues partly caused by the camp are in turn not being dealt with in most cases. Quite apart from the fact that this leads to a systemic failure to identify vulnerable applicants for international protection (see above III.4), the physical and mental health of applicants is at risk.

All this has been highlighted by independent reports for more than three years now. A recent research study conducted on the health situation of migrants in Greece stated that, 'as refugees stayed for prolonged periods in the camps, many stakeholders observed an increasing frequency of mental health disorders, including symptoms of depression, anxiety and post-traumatic stress disorder among some refugees'.²⁸ The research went on to state that the service providers they interviewed, 'reported an association between the lengthy and uncertain asylum process and poor living conditions and the decline in mental health among refugees'.²⁹ The European Commission for Human Rights during a recent visit to the Greek islands, again decried the lack of medical attention and the consequences this is having on the physical and mental health of applicants.³⁰ However, medical services have not substantially been improved until today.

To the contrary, medical services in Vial have even been reduced since mid-2018. The camp as of September 2019 only possesses two permanent doctors, who

²⁴ Interview with a male Eritrean applicant, conducted in December 2018.

²⁵ Interview with a female, Afghani applicant, conducted in December 2018.

²⁶ Reception Conditions Directive, Art. 19.

²⁷ Greek Law 4368/2016, Art. 33.

²⁸ Ibid., p 5.

²⁹ Ibid.,

³⁰ Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018 (Fn. 121).

are assisted by nurses, social workers, and psychologists. One doctor is working for KEELPNO and is solely responsible to conduct the medical screenings which are required by EASO to interview applicants. The second one is the doctor of the Hellenic army who follows up with patients with chronic illnesses and deals with emergencies. He is normally available for two to three hours every weekday in the morning and can refer cases to Chios General Hospital if needed. There are no doctors available at night or during weekends. At these times, the 'on call' medical assistance is an ambulance from the hospital. Nonetheless, those interviewed for this report and seen through our legal service, report that the ambulance is selective in what it responds to, with emergencies often going ignored.

Considering the pressure under which those doctors, as well as the medical staff, have to operate, it is not unusual for the positions to remain vacant. This was for instance the case in August 2018 for numerous weeks, and, as of September 2019, there has not been a doctor in Vial since August 2019. Medical staff also went on strike for three weeks end 2018 to protest against their working conditions.

In light of this situation, NGOs have fortunately jumped in. MSF has for instance provided both medical and psychological support on the island. As of August 2019, the organization is however in search of a new doctor. SMH, an NGO from the Basque region, provides medical support to persons in Vial every afternoon of the week. Their staff comprises two doctors, nurses, and interpreters, which are competent for first aid and primary health care. The official camp administration is not providing SMH with medicine or medical equipment. Needless to say that the members of the organization are under huge pressure since a few months, considering they are currently the only ones providing medical assistance in Vial.

With regard to psychological support, KEELPNO did not have psychologists and social workers available from for an entire month in August 2019. As mentioned above, MSF has a few psychologists, while the International Rescue Committee (IRC) also provides psychological support to asylum seekers. IRC are lo-

cated in Chios town, but are organizing themselves to pick up patients from Vial by car. Their services are not available on a walk-in basis, but partner organizations have to send referrals to them. Confronted with an always increasing number of people requesting psychological assistance, IRC unfortunately stopped receiving mental health referrals in July 2019 up to this day. For a population of now over 3,000 persons, arriving from war-torn and traumatizing situations and staying in conditions which actively affect human health in a negative manner, this limited access to psychological support is not only wholly inadequate, it is truly alarming.

Numerous people hence find themselves obliged to turn towards private psychologist or psychiatrists, which in turn are of course not affordable for everyone. Moreover, while psychological problems are supposedly a ground for someone to be declared vulnerable³¹ and hence both be referred to the regular procedure and being able to leave Vial, the possibility for people to obtain medical certificates proving their condition is extremely limited. GAS has further admitted to give less importance to medical certificates issued by private medical practitioners when evaluating an applicant's vulnerability, this in gross violation of the Greek Code of Medical Ethics, whose Art. 5 stipulates that for any lawful use medical certificates issued by private and public practitioners have the same legal validity. Equal Rights has further met several clients who were simply refused to submit their medical certificates issued by private doctors to the info point.

The right of applicants for international protection to access public healthcare services is seriously restricted in practice. Regarding the local hospital, there are two ways of access: either through referral by KEELPNO or directly by the applicant him- or herself. However, applicants are faced with serious difficulties in both ways. Most of the issues have already been described above (see III.4).

In addition, applicants for international protection are faced with racial discrimination. During a few months at the end of 2018, the local hospital provided

31 Greek Law 4375/2016, Art. 14.

for two waiting lines – one for Greek citizens, and one for applicants for international protection. The effect of these two lines amounting to racial discrimination was shown by the experience that in practice, any person who according to the opinion of the staff of the hospital ‘looked like a refugee’ i.e. in particular any persons who has non-white skin-color, is upon arrival in the hospital asked to wait in the ‘line for refugees’. Only if the person then insisted and presented his or her identity card showing that he or she is not an applicant for international protection but e.g. an EU citizen, he or she was allowed to wait in the line for Greek citizens. According to the experience of Equal Rights, there seemed to be differences between the two lines both concerning the waiting duration as well as the quality of the medical service provided by the local hospital.

This practice of two lines has been abandoned in the meanwhile. Currently, applicants for international protection can only access medical treatment in the hospital upon referral from Vial. The only exception is an obvious medical urgency, in the case of which an asylum seeker can directly approach the hospital.

Since July 2018, asylum seekers are moreover unable to issue a social security number (‘AMKA’ number) through which they can consult doctors and obtain medication at an affordable price. The new government which took office in July 2018 has indeed decided to freeze the issuance of AMKA numbers for asy-

lum seekers.³²

Access to private doctors on the island is difficult for applicants for international protection for the reasons listed above (see III.4).

In particular, applicants for international protection face difficulties in seeing a specialist. This is partly so because the local hospital in Chios has limited capacity and therefore cannot cover all kind of issues. In many cases, specialists are only available on the Greek mainland. However, the geographical restriction is lifted only in cases of severe medical emergencies. Otherwise, the person has to wait for the finalization of the procedure on the island until he or she is able to see a specialist who can provide the required treatment. In particular, access to the psychiatrist in the local hospital – who is the only psychiatrist on the island – is extremely difficult for applicants of international protection because the psychiatrist in numerous cases refuses to give appointments to applicants, even in cases in which the person has been referred to the psychiatrist by KEELPNO in Vial.

To conclude: Applicants staying in Vial are left with inadequate medical attention for a considerable amount of time – usually at least a few months – which leads to a dangerous medical limbo.

³² This ‘freezing’ is based on the revocation by the health minister of a previous circular on the guidelines to obtain an AMKA for asylum seekers.



Fig 30

EU Hotspot Vial, own photograph, December 2018

Case examples, testimonies and impressions

A woman from DRC testified: 'I am a single woman here in Chios and have a baby who is two months old. I would like to vaccinate him, something very basic. Yet, I am not able to do so because I don't have an AMKA number. I went to the authorities and they told me that I could not get an AMKA number because the law had changed. I don't know what to do. I just hope my baby won't get sick.'³³

One man interviewed stated the following when asked about access to medical attention: 'Normally, I will need to go to the info point and they will say there is no doctor except a nurse. This means that in other words they won't help you. They will only give you an advice without a decent diagnosis. If someone has diarrhoea, he needs special treatment and medicine. I have a friend with diarrhoea and I went 6 times with him to get an appointment and the doctor couldn't give him any medication, only advice without treatment.'³⁴

One Iranian man interviewed described how, unable to obtain an appointment with a psychologist in Vial, he had to see a private psychologist: 'I went to a private psychologist twelve times. I paid for that myself. I also went to private psychiatrist.'³⁵

Another man from DRC describes the process to see a doctor: 'If you are sick, you have to go to the info point. This means that you have to in front of everyone to talk about your sickness. Sometimes a sickness can be secret. For instance, if someone is HIV positive. But you have to tell the man at the window what you suffer from in front of 50-100 people. Some people are ashamed of that and then will just say something else. On the other hand, sometimes you have to make things worse so that you will be able to see someone. I did it once personally. I had severe backpain because I have been sleeping on the ground for months. But if you say that they will simply give you painkillers. So, I said that I had a problem with my testicles so I could see a doctor. It was strange to say this in front of everyone. Why does a sick man has to suffer to see a doctor? This bothers me.'³⁶

An unaccompanied minor from Syria stated in December 2018: 'The situation in the camp was very stressful. [...] This is why many minors were using drugs. In the beginning without knowing, other refugees gave it to them, take this pill to be calm. After some time, they get used to it, and many take it on a daily basis. So, what they take is Marihuana, or Lyrica, Bobli, Xanax, or Tramadol, and other medication for epilepsy. Many of the minors also had razors, to cut themselves. This was also because many asked to see a psychologist but were denied. The procedure to see psychologist was this for minors: You cut yourself. After this, you are transferred to the hospital, to get stitches. Then, the police comes and puts you in jail for two or three days. After this, you can see a psychologist and they make many promises about transferring you and getting you out of the camp. But this does usually not happen, it is promises. There was one famous incident were all the minors got on the roofs of the containers, they demanded to be transferred or to get out of the camp. The police was very brutal with them, and then, they cut themselves. I have heard about some sexual exploitation of minors by other refugees in the camp. But not among the minors, I didn't hear anything like this. We could not talk to anybody else, no social worker, nobody. Many times we were given wrong information by the people from NGOs, about transfer dates or something like this. And promises.'³⁷ Concerning the access to medical services, the same unaccompanied minor stated: 'Whatever sickness you have, they will give you Panadol, pain killer. For everything, headache, fever, cancer, Panadol. There was no procedure to go to the hospital or see a doctor. The procedure was: Wait until the minor was close to die, then put him in a police bus to take him to the hospital. When you arrive to the hospital, they will treat you at some point. But it is very difficult alone. Sometimes, volunteers from an independent NGO would accompany us to the hospital, they always ended up fighting with the hospital so that we can see a doctor. It was very difficult. Of course, the Greek people would always be treated first, after the refugees, no matter how bad the condition would be. In the hospital, there is two different lines, one for refugees and one for Greek people. Some Greek people would feel disgusted by refugees, they avoid sitting next to refugees, and sometimes they even leave the room.'³⁸

33 Interview with a female applicant from DRC, conducted in September 2019.

34 Interview with a male applicant from Eritrea, conducted in December 2018.

35 Interview with a male applicant from Iran, conducted in January 2019.

36 Interview with a male applicant from DRC, conducted in August 2019.

gust 2019.

37 Interview with an unaccompanied child applicant from Syria, conducted in December 2017. Full interview available online: <https://bit.ly/34XJg2n> [last accessed: 12 November 2019].

38 Ibid.

4. *Lack of security and extremely high risk of sexual and gender-based violence*

Basic legal framework and context

Both EU and Greek law require the state to provide safeguards against incidents of violence, in particular against incidents of sexual and gender-based violence – and at the same time requires the state to adequately deal with such incidents should they occur despite the safeguards. Art. 18 para. 4 of the Reception Conditions Directive for instance reads: ‘Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres [...]’ This provision has been transposed into Art. 18(2) of Greek Law 4540/2018.

Furthermore, Member States shall ‘take into account the specific situation of vulnerable persons such as [...] persons who have been subjected to [...] rape or other serious forms of psychological, physical or sexual violence [...]’ by ensuring that they ‘receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.’³⁹

Practical implementation

None of these provisions is implemented. To the contrary: the conditions in the camp create an environment which increases violence in all its forms, and the persons affected by this violence do usually not receive the necessary protection and treatment.

Sexual and gender-based violence, in particular, is part of the daily life in Vial. The level of violence and the lack of security in the camp is, objectively speaking, alarming. Even though persons of all ages and

genders are affected, women and girls, persons who identify as LGBTI as well as children are in particular affected.

As has been reported for more than three years now,⁴⁰ ‘sexual harassment and violence in the reception centres [EU Hotspots], including against men, continue[s] to be a major risk’.⁴¹ The repeated calls for change – including through joint open letters – have been left entirely unheard. In fact, the number of SGBV incidents in Vial seems to be increasing since mid-2018.⁴² Moreover, the opaque system of governance characterizing the EU Hotspot Approach creates a situation where actors continuously defer to one another (see above II.3) in a cynical bid to rid themselves of responsibility for violence and abuse in the camp. The result is a complete lack of accountability and apparent lawlessness in a camp where sexual harassment has become part of everyday life, leaving those most vulnerable without protection or safeguarding.

³⁹ Reception Conditions Directive, Art. 22 and 25; Greek Law 4540/2018, Art. 20.

⁴⁰ The Guardian, 17 June 2017, ‘Abandoned and abused: the forgotten Syrian refugee children in a Greek island detention camp’, available online: <https://bit.ly/370F7MN> [last accessed: 12 November 2019].

⁴¹ <https://bit.ly/2KjIKVw> [last accessed: 12 November 2019].

⁴² no empirical evidence, based on experience of Equal Rights legal counsellors.



Fig 31, 32

EU Hotspot Vial, own photographs, December 2018

Case examples, testimonies and impressions

An unaccompanied minor from Syria stated in December 2018: ‘Once, three adults from Afghanistan stormed into the safe zone for the minors, they beat us up. They were doing this under drugs, they were drunk and accidentally hit a minor who was walking around in the camp, and then they started fighting. The minor understood that they were drunk, so he returned to the minors zone. They followed him and stormed our place. We went to complain to the police, but nothing happened.’⁴³

The risk and fear of SGBV is currently so prevalent in Vial that female residents are often forced into the decision to relieve themselves next to their own container or tent in order to avoid the danger of walking to the toilet after dark.⁴⁴

LGBTIQ* individuals often hide their sexual identity in Vial. Those ‘exposed’ by other residents are con-

fronted with a high risk of severe violence by other camp residents. LGBTIQ* applicants reported police violence as well. In one case, a couple was bribed by another camp resident, who threatened to ‘spread the word’ about their sexual identity. Accommodation outside the camp was not available in the vast majority of those cases: Even an openly gay applicant, who was frequently beaten up by other residents, was only accommodated outside Vial upon intervention of the Greek Ombudsman.

Single women are at high risk of sexual harassment and sexual abuse in the camp. Even though single women are per definition eligible for the accommodation scheme managed by UNHCR, most of them are in fact not accommodated outside the camp due to capacity reasons. Equal Rights handled several cases of single women in the camp for whom, despite them having experienced sexual violence in the camp already, no alternative solution for accommodation could be found through the UNHCR program. In some cases, the concerned women were only accommodated outside the camp after having survived severe sexual violence by male residents, even though UNHCR had been made aware of the high risk of SGBV prior to that incident.

⁴³ Interview with an unaccompanied child applicant from Syria, conducted in December 2017. Full interview available online here: <https://bit.ly/2ph3HrJ> [last accessed: 14 November 2019].

⁴⁴ Due to the very nature of SGBV incidents, the following is based rather on summaries of the experience of Equal Rights staff working in Chios than on direct quotes from interviews.

5. *Lack of adequate financial support and lack of access to labour market*

Basic legal framework and context

Article 15 of the Reception Conditions Directive stipulates that Member States shall provide asylum seekers with an effective access to the labour market at the latest nine months after lodging an application for international protection. Greek Law in turn provides a more favourable standard, stating that asylum seekers who have completed registration and are in possession of an asylum seeker's card shall have access to salaried employment.⁴⁵

With regard to financial assistance, Art. 17(5) of the Reception Conditions Directive provides for the possibility for Member States to grant asylum seekers with financial allowances. The Greek authorities as such have not directly make use of this possibility. However, the European Commission has been funding the so-called 'ESTIA' programme through which asylum seekers in Greece are able to receive a monthly cash allowance. This programme is being implemented by UNHCR in close cooperation with the Greek Ministry of Migration Policy.⁴⁶

Practical implementation

It is overall extremely rare to find an asylum seeker on Chios who has managed to secure employment. Several reasons explain this situation.

Strongly hit by the 2008 economic crisis, unemployment in Greece still reaches 19,3% in 2019⁴⁷ and the

figures are evenly high in Chios with available statistics of end 2017 showing an unemployment rate of 25,19%.⁴⁸ Language constitutes an obvious additional barrier, with very few asylum seekers speaking Greek and/or a language that an employer in Chios would understand. Another practical hurdle is the location of the camp, 8km from the centre. Most people in Vialdo further not project themselves living on Chios, and are constantly seeking ways to be declared vulnerable and leave the island. The fast-track border procedure moreover having been conceived to either send vulnerable applicants to the mainland, deport people back to Turkey, or deal with asylum cases swiftly, active measures to help asylum seekers to integrate and find employment in Chios are rare to non-existent. Due to the mentioned lack of information (see above III.5.), most asylum seekers are not even aware that they have the right to work.

Administrative obstacles to the right of work also exist. In order to work, Greek law requires a person to have both a tax registration number ('AFM' number) and a social security number ('AMKA' number), as well as an unemployment card, delivered by the Hellenic Manpower Employment Organization ('OAED'). Since the election of Prime Minister Mitsotakis in July 2019, obtaining these documents has become increasingly difficult.

With regard to the AFM number, delivered by the tax office and incidentally required to rent a place or open a bank account, applicants cannot issue them without justification anymore. In other words, if an asylum seeker wants to obtain an AFM number, he needs a document from his future employer stating the intention of the latter to hire him or her. For the AMKA number, as stated above, the new government has simply decided to stop issuing them for asylum seekers.⁴⁹

For applicants who arrived after July 2019, it is in-

⁴⁵ Greek Law 4375/2016, Art. 71.

⁴⁶ See in that regard Greek Ministry Decision 6382/19 on the establishment of an implementation framework for the ESTIA, available online at: <https://www.refworld.org/pdfid/5d47df274.pdf>.

⁴⁷ OECD, 'Selected indicators for Greece', first quarter of 2019, available online at:

<https://data.oecd.org/unemp/unemployment-rate.htm> [last accessed: 14 November 2019].

⁴⁸ EURES, 'Greece – Voreio Aigaio', July 2019, available online at: <https://bit.ly/2NJUd1J> [last accessed: 14 November 2019].

⁴⁹ This "freezing" is based on the revocation by the health minister of a previous circular on the guidelines to obtain an AMKA for asylum seekers.



Fig 33

EU Hotspot Vial, people queuing for food distribution, own photograph, July 2019

deed simply not possible to issue an AMKA number anymore from the City Hall for now, and therefore to find employment. The unemployment card is perhaps the easiest document to obtain on Chios. Applicants must go to Vial's info point who will issue them a document with which they should obtain their card from the OAED office, situated in Lefkonía, about 6km from Vial.

With those difficulties to access the labour market, asylum seekers in Vial have to rely on their own means as well as on the monthly allowance they are provided. This allowance amounts to €90 for a single adult up to a maximum of €330 for families of seven members and more living in Vial.

For persons who UNHCR accommodated outside the camp and who have to additionally buy food, the allowance varies from €150 to €550. Comparing these amounts with the average monthly wage in Greece which is €2010,75⁵⁰ and the Greek minimum wage of €758,33⁵¹ helps understand in which situation asylum seekers find themselves.

50 OECD, 'Data – average wages', 2018, available online at: <https://data.oecd.org/earnwage/average-wages.htm> [last accessed: 14 November 2019].

51 Eurostat, 'Monthly minimum wage, bi-annual data', 29 July 2019, available online at: <https://bit.ly/2O532Sw> [last accessed: 14 November 2019].

Case examples, testimonies and impressions

A man from Cameroon testified on how difficult it is to survive with the monthly allowance: 'I am living outside Vial and receive €150 a month. I have to cover all costs with that and some months this is not possible. I have to pay for food, transport, household products, medication, sometimes clothes, furniture to study because I try to take English classes here, and so on. I live far away from Chios, some 5 or 6 km from town. There is a small supermarket where I live but prices are really expensive. To go to town, the bus costs €1,80 back and forth, so €3,60. In addition, my grandfather passed away this month and in our culture every family member has to pay a contribution for the funerals. They are pressuring me to do so and call me like five times a day. I have had to skip several meals over the past weeks for me to try to put some money on the side. When I am out of money towards the end of the month, I ask other people from Vial to lend me money which I then reimburse at the beginning of the next month. This is not a good system of course. I didn't try to work. I didn't know it was possible and I have never seen any asylum seeker being able to get a job in Chios.'⁵²

A Congolese man living in Vial states: 'Me I don't eat the food from Vial out of religious belief. I'm Rastafari and can only eat natural food normally. I have to organize myself with the money they give me, €90 per month, to try to eat. I usually simply don't eat lunch to save money. I don't have work. I don't speak Greek or English. I'm creative. I sometimes make sandals out of tires that I then try to sell for a few euros.'⁵³

⁵² Interview with a male applicant from Cameroon, conducted in September 2019.

⁵³ Interview with a female applicant from DRC, conducted in August 2019.



Fig 34

EU Hotspot Vial, an improvised tent, own photograph, December 2018

6. Lack of access to education for minors

Basic legal framework and context

According to EU law, 'Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals [...]. Such education may be provided in accommodation centres. Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority. Access to the education system shall not be postponed for more than three months from the date on which the application for international was lodged [...]. Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participa-

tion in the education system [...]. Where access to the education system [...] is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.’⁵⁴

This obligation has been transposed in Art. 13 of Greek Law 4540/2018. RIS is further responsible for developing and processing adequate access to education systems.⁵⁵

Practical implementation

Despite the legislation, important obstacles remain in practice for children to access education in Greece.

These obstacles can have significant impact on their long-term development and future. While under Greek law, enrolment in school is compulsory for all children aged between 6 and 15, the figures for asylum-seeking children demonstrate a widespread lack of attendance. During the 2017-2018 school year only an estimated 6500 to 7000 out of the 20,000 asylum-seeking and refugee children in Greece were formally enrolled in education.⁵⁶

Greece has implemented two key programmes within public schools for asylum-seeking children. The first of those programmes is a morning ‘integration’ program (ZEP/Zones of Educational Priorities) and the second is an afternoon ‘reception’ programme (DYEP) to support children who have little to no formal previous education. In 2016, these programmes were formally introduced to the Greek islands.⁵⁷ Nonetheless, it is on the islands in particular that these programmes have been limited in scope. Pursuing to Human Rights Watch, the only children who had been enrolled in lo-

cal schools on the islands had done so with the support of NGOs.⁵⁸

In Chios, minor applicants for international protection or children of applicants for international protection did not have access to the public school until autumn 2018. During the first two and a half years after the entry into force of the EU-Turkey Statement, the only possibility for children to attend any kind of education was the school set up by the NGO ‘Action for Education’. However, due to limited capacity of that NGO, most children were only able to attend school a few days per week; and depending on the numbers of persons staying in Vial, the waiting list would be longer or shorter with waiting times of between a few days to a few weeks.

In autumn 2018, a measure introduced to integrate asylum-seeking children into the educational system was met with protests from local parents. A group of over 1000 parents signed a petition against the inclusion of children of applicants for international protection into the public school. While some parents retracted their support for the petition due to later xenophobic and politically driven language used within certain parent committees, the petition resulted in delays to the integration of these children into the educational system.⁵⁹ The measure was nevertheless implemented so that as from autumn 2018, children staying in Vial at least officially have the possibility to attend the public school in Chios. However, a significant obstacle to accessing education in practice is the requirement for vaccinations in order to enrol children to the public school. Again, medical certificates issued by NGOs are not accepted, and as the position of the KEELPNO doctor is vacant, most children are not able to provide the medical certificate required – and therefore not allowed to enrol.⁶⁰

Precise figures or statistics on the number of asy-

54 Reception Conditions Directive, Art. 14.

55 Greek Law 4375/2016, Art. 27 para. 2, lit b, sublit cc.

56 Refugee Support Aegean, ‘Majority of refugee children in the Aegean Islands Hot Spots are excluded from education’, 18 February 2018, available online at: <https://bit.ly/2QkWJgy> [last accessed: 14 November 2019].

57 Human Rights Watch, ‘Without Education They Lose Their Future’: Denial of Education to Child Asylum Seekers on the Greek Islands’, July 2018.

58 Ibid.

59 Diakonie Deutschland and Churches’ Commission for Migrants in Europe, ‘Solidarity First. Reclaiming the Values of Europe’, Report on the 15th European Conference on Asylum Law, Chios/Athens 15 -20 October 2018 (Fn. 50), p. 16.

60 Interview with two employees of an NGO that works with minors on Chios, conducted December 2018.

lum-seeking children who attended and attend school in Chios seem difficult to obtain. An August 2019 report by UNHCR states that more than three quarters of the children in the EU Hotspots do not attend school.⁶¹ What can be said is that during the school-year 2018-2019, the enrolment system for children between six and fourteen was working relatively well, with effective transportation provided from Vial to schools. As stated above, the main hurdle was vaccination. Children from fifteen to eighteen were however apparently not encouraged to join school. The fact that school is not compulsory for children over fifteen might be a reason for this. The educational program provided for that category consists solely of a vocational training taught mainly in Greek with no suitable accompanying structure for the needs of asylum-seeking children. No transportation was further organized for those children who registered for the program. As a reminder, Vial is located about 8 km from Chios centre and the nearest bus station is located 30min walking from the camp.

For the abovementioned reasons, non-formal education still plays a significant role in Chios. UNHCR and the European Commission are funding a space next to Vial for the purpose of education for minors. Currently, classes are run every morning by 'METAdrasi for children from six to fourteen, and jointly by METAdrasi and Action for Education in the afternoon for children from fifteen to eighteen. About 80 children were enrolled in those programmes during the 2018-2019 schoolyear.

As for the 2019-2020 schoolyear, all actors were on hold as of September 2019, waiting for announcements from the new government. Enrolments started, but three obstacles prevent the education programmes to operate for now. The absence of a refugee education coordinator appointed by the government who is kept accountable and should act as a point of contact between NGOs, the EU Hotspot, and the formal education system is the first one. The last coordinator indeed resigned in August 2019. A second problem is

the absence of a vaccination campaign for children in Vial, which has not yet been scheduled by KEELPNO. Lastly, suitable educational staff has not yet been assigned either.

If those issues are not quickly addressed, children would have to turn to the non-formal education system. This would however have grave consequence, as in no way do the NGOs have the required staff capacity and premises to fill the potential gap in education.

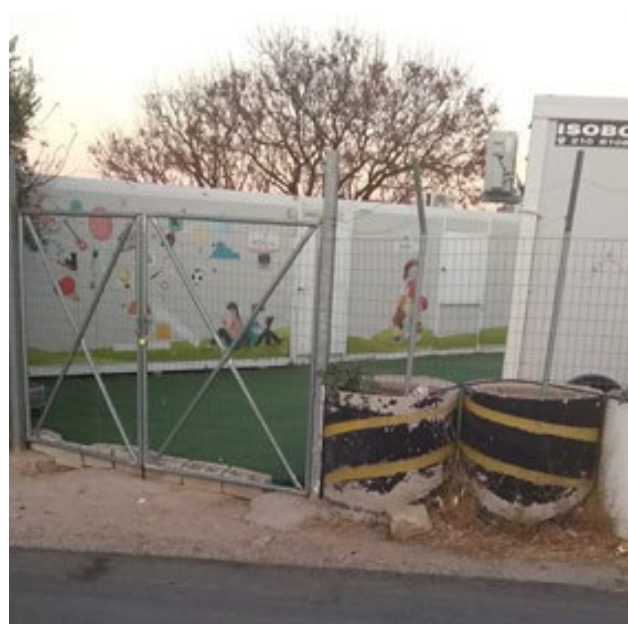


Fig 35, 36

Non-formal education premises next to Vial, own photographs, September 2019

⁶¹ UNHCR, 'Stepping up: Refugee Crisis in Action', August 2019, at 20, available online: <https://bit.ly/373JTcl> [last accessed: 14 November 2019].

Case examples, testimonies and impressions

A woman from DRC with five children exemplifies the situation on her own: 'My children are between four and twelve years old. Four of them are going to the school next to the camp. I want to send them to a better school in town but they tell me that they have to be vaccinated. I don't know when this will be. It's difficult to get information in Vial, they always tell you to come back. I was told that maybe in November I would be able to send my kids to school but that is far away and the schoolyear will already have started.'⁶²

An unaccompanied child who resided in Vial between May 2017 and November 2018 further tells us about his experience: 'I was going to school more than others, two days a week, plus one other day in a center organized by an independent NGO. As there are so many minors, not everybody can go every day. I was only allowed to go for two days a week. The other days, I had to stay in the camp because I did not have any means to leave the camp which is far from the city. The bus is organized by the NGO, and it is only to go to school. For the general UNHCR bus, there was no special arrangement for minors. So, you can only get a place in the bus if you are physically very strong in order to push. As I am not, I had to stay in Vial on the days that I did not go to school.'⁶³

A single woman from DRC with two children has faced different problems in the past: 'I was told that it would be possible for me to put my children in public school and was directed towards a certain school but it is too far away from the place where we live [the client was accommodated outside Vial] and no transportation is organized. I just hope to be able to leave the island and then put my children in school.'⁶⁴

⁶² Interview with a female applicant from DRC, conducted in September 2019.

⁶³ Interview with an unaccompanied child applicant from Syria, conducted in December 2017. Full interview available online here: <https://bit.ly/2NPJ0wJ>.

⁶⁴ Interview with a female applicant from DRC, conducted in September 2019.

7. Sub-standard detention conditions, arbitrary imprisonment and incidents of police violence

Basic legal framework and context

Upon arrival of a third-country national in Greece, police issue them a deportation decision under Greek laws 3907/2011 and 3386/2005. This decision is then suspended by lodging an application for international protection.

An asylum seeker can subsequently only be detained in 'exceptional circumstances' and as a last resort, if other administrative measures prove to be unsuitable.⁶⁵ Yet, according to the Greek Refugee Council and AITIMA, the detention of non-citizens is 'excessively and unjustifiably relied on by the authorities' in Greece.⁶⁶

⁶⁵ Greek Law 3907/2011, Art. 46. See also Reception Conditions Directive, Recital 20.

⁶⁶ Global Detention Project, "Immigration Detention in Greece," January 2018, <https://bit.ly/2CECjXV> [last accessed: 14 November 2019].

Practical implementation

In Chios, there are usually about five to 25 applicants held in detention at the police station.⁶⁷ The current capacity of the police station is nineteen, however, according to two Greek lawyers from NGOs on the island, the facility is frequently overcrowded. Those detained for administrative purposes are held alongside individuals detained for criminal reasons.

Detention conditions are sub-standard and not in line with legal requirements.⁶⁸ The police station has one main cell of about 30m² in which all detainees are locked in together, and one cell of about 6m² in which e.g. minor female applicants are detained. The ‘detention space’ in the police station is made for short-term imprisonment. The cell is dark, detainees usually are not let outside regularly. Further, there is no private space in which lawyers can give legal advice to their clients – lawyers must talk to their clients either inside the cell, or in the floor of the police station where police officers as well as persons attending the police station for other reasons are passing by.

Most of the applicants in the Chios police station are detained for administrative purposes. Unaccompanied minors may also be detained in what is called ‘protective custody’ – however, this practice is currently not applied anymore in Chios. In some instances, minors have are detained in the police station in the same cell and under the same conditions as adults.

In some instances, applicants for international protection are detained in an arbitrary manner for alleged criminal or administrative reasons which cannot always be identified by the responsible lawyer.

Police regularly proceeds to mass and arguably arbitrary

arrests of applicants following fights that erupt in Vial. Major fights have for instance taken place at night between communities in June and in September 2019. Asylum seekers involved in the fight of June were condemned by summary trial to prison sentences exceeding two years.

An emerging practice on Chios has also been to detain asylum seekers arriving from the mainland applying for asylum on Chios for several days. The reasons behind these arrests are difficult to understand, and in numerous cases lack a legal basis. Deterrence from coming to Chios – where the procedure, although not respecting legal deadlines, is nevertheless quicker than on the Greek mainland – seems to be the policy rationale, but is surely not a legal justification for detention.

Most of the applicants in the Chios police station are however detained for the purpose of removal. Upon a second instance negative decision which is not appealed against to an administrative Court, the applicant is detained in the Chios police station for a time of about a few days to a few weeks. Subsequently, the person is transferred to the ‘pre-removal section’ in Lesvos i.e. the detention centre in the EU Hotspot Moria, from where deportation to Izmir takes place (see above II.1 and 2).

Police violence perpetrated against camp residents – along with a complete lack of police protection when needed – is moreover frequent and ubiquitous.

⁶⁷ Ministry of Digital Policy, Telecommunications and Information, ‘National Situational Picture Regarding the Islands at Eastern Aegean Sea (07/03/2019)’, 7 March 2019, available online at: <https://bit.ly/2qTerNk> [last accessed: 13 November 2019].

⁶⁸ Interview with Greek Lawyer for an NGO on Chios, conducted in December 2018: ‘With regard to conditions in detention, one lawyer stated: ‘It is really dark inside and the cells were made for short term detention – for a few hours. Though most people are detained for several months.’



Fig 37, 38

EU Hotspot Vial, own photographs, December 2018

Case examples, testimonies and impressions

Describing his unwarranted arrest by police in Vial, a Yazidi man from Iraq stated: 'Three days ago, we passed by a fight on our way to our tents. The officers arrested me, handcuffed me and hit me... We had nothing to do with what was going on and we still received a beating. They took me inside the police station in Vial. I was telling them 'I'm sick, I'm sick. I need some air please give me some space'. All they did was continue to make fun of me and crowd me even more. They took me to interrogation, there I told them 'I will report you to UNHCR tomorrow'. The female officer said, 'I will take your Khartia and accuse you of hindering a police investigation if you report us'. They let me go after an hour of threats if I were to complain about this incident. I didn't have the guts to complain afterwards.'⁶⁹

A second lawyer interviewed stated that those detained in the police station 'don't have the possibility to go outside for a break. Some say there were able to go out once a week.'⁷⁰

An Iranian interviewee similarly explained, 'Sometimes the police beat refugees to the ground when there is a fight. They beat up everybody who is outside their caravan. They also come inside the caravans. You can't go to the police for problems because they don't really help. But we are refugees, we need help. We have a lot of problems. But when we ask for help in VIAL, no one helps.'⁷¹

Further, SGBV incidents are not always handled properly in the police station. In one instance, the female SGBV survivor wanted to report that she had been raped. The female interpreter provided by Equal Rights for this purpose was sent away by the responsible police officer, and replaced by male interpreters provided by the police, while a male police officer recorded the criminal complaint. He shouted at the woman, accused her of lying and threatened her, alleging that her lying would negatively affect her asylum procedure. After the medical examination was completed, the police brought the woman back to the camp. Frequently, applicants and also interpreters reported to Equal Rights that they had been affected by severe violence from the responsible officers in the police station in Chios.

⁶⁹ Interview with a male applicant from Iraq, conducted in autumn 2018.

⁷⁰ Interview with Greek Lawyer for an NGO on Chios, conducted in December 2018.

⁷¹ Interview with a male applicant from Iran, conducted in autumn 2018.

V. CONCLUSION

The aim to which the EU Hotspots were adapted upon entry into force of the EU-Turkey Statement – swift return to Turkey as ‘safe third country’ – cannot be achieved due to legal guarantees prohibiting return to the ‘non-safe’ country which Turkey is in fact. This means that the EU Hotspots are functioning as sites of containment and deterrence.

Although, according to the law, vulnerable groups shall be exempted from the geographical restriction, in practice the majority of vulnerable persons are not identified due to a lack of medical staff and other services, as well as unduly restrictive practice during asylum interviews. Even if vulnerable persons are identified as such, they are usually transferred to the mainland with massive delays due to a lack of capacity in the camps on the Greek mainland. This means that vulnerable groups are forced to stay in the EU Hotspot Vial in the same sub-standard conditions as everybody else.

Three years after the entry into force of the EU-Turkey Statement, reception conditions in the EU Hotspot Vial remain inhumane and far from complying with any requirements of EU or Greek law. The geographical restriction imposed on asylum seekers and legally obliging them to stay on the island of Chios amounts to a de facto obligation to stay in the containers or tents in the EU Hotspot Vial. The camp is still severely overcrowded. The most basic legal standards are still not met regarding shelter, sanitary facilities, medical treatment, security, and education. All this has severe repercussions on the physical and mental health of asylum seekers living in the Vial

What remains from the EU Hotspot Approach on the Greek Aegean islands? Inhumane camps at the EU external border causing continued and extreme human suffering in breach of basic legal standards. The situation has been broadly documented for the past three and a half years. And still, the situation remains the same. This leads us to the conclusion the inhumane living conditions are either intended, or at least effec-

tively met with indifference by the relevant political actors.

Who is responsible for the violation of the rights of thousands of asylum seekers? The answer to this question is not that simple. We come to the conclusion that from a political perspective, responsibility lies with the EU and its Member States. Finding an answer to the question of legal responsibility goes beyond the scope of this report.

What do the EU and its member states learn from the ‘hotspot experiment’?¹ Apparently, not much. In June 2018, the European Council came to the conclusion: ‘Since 2015 a number of measures have been put in place to achieve the effective control of the EU’s external borders. As a result, the number of detected illegal border crossings into the EU has been brought down by 95% from its peak in October 2015 [...] The European Council is determined to continue and reinforce this policy to prevent a return to the uncontrolled flows of 2015 and to further stem illegal migration on all existing and emerging routes. [...] As regards the Eastern Mediterranean Route, additional efforts are needed to fully implement the EU-Turkey Statement, prevent new crossings from Turkey and bring the flows to a halt.’²

1 Refugee Support Aegean (Fn. 12).

2 European Council, Conclusions, 28 to 29 June 2019, available online: <https://bit.ly/2OeSzUD> [last accessed: 14 November 2019]; European Commission, Factsheet ‘Migration: Regional Disembarkation Arrangements’, available online: https://europa.eu/rapid/press-release_IP-18-4629_en.htm. Furthermore, the European Council and the European Commission have even proposed to establish similar centres in third countries – the envisaged so-called ‘regional disembarkation platforms’.

In the same vein, several member states governments, in particular the German government, have repeatedly made clear their will to implement the EU-Turkey Statement and the EU Hotspot Approach.³

Instead of addressing the human rights violations at the EU external border, the focus of the EU political actors as well as of the member states clearly lies on the aim of reducing numbers of ‘irregular arrivals’. The EU Hotspots in Greece unequivocally show that such a policy of containment and return is only possible at the cost of gross violations of EU and national law as well as basic human rights. We therefore come to the conclusion that human rights as well as the rule of law dictate a fundamental shift in Europe’s asylum policy.

3 Aljazeera News, ‘EU calls on Turkey to speed up readmission of irregular migrants. Greece, Germany and the European Commission urge Turkey to fully implement its migration agreement with the EU’, 4 October 2019, available online: <https://bit.ly/34ZV6cg>; Hürriyet Daily News, ‘EU to discuss Turkey’s needs on refugee issue: Merkel’, 30 August 2019, available online: <https://bit.ly/2KmmbOQ> [all links last accessed: 15 November 2019].

EQUAL RIGHTS

Beyond Borders

is a non-governmental and non-profit organization, working for the rights of asylum seekers. Equal Rights Beyond Borders is registered in Berlin and Athens and has offices in Berlin, Athens and Chios. All offices work in close cooperation with partners in Greece, Germany and at EU level. In Athens and Chios, we offer free legal aid and representation in asylum procedures, detention and related issues. Both offices are specialized on family reunification procedures. In Berlin, we focus on research, advocacy and strategic litigation on further related illegal administrative practices in Germany. Equal Rights Beyond Borders conducts extensive litigation on the right to family reunion in the Dublin System, as well as in cases of illegal returns to Greece, before German administrative courts.

The work of the Equal Rights Beyond Borders Legal Team and our advocacy for asylum seekers and their human rights would not be possible without our supporters. For our legal aid project on Chios we want to thank in particular:



Evangelische Kirche Deutschland /
Protestant Church Germany



Brot für die Welt /
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UNO Flüchtlingshilfe /
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