

LEGAL NOTE

**ON THE LEGAL STATUS AND LIVING CONDITIONS OF A SYRIAN
ASYLUM-SEEKER UPON HIS RETURN TO GREECE UNDER THE
DUBLIN REGULATION**

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Content

Introduction	3
I. Regarding the effectiveness of the asylum procedure in Greece	4
a. Application of the »safe third country« concept	4
b. Leading case law by Greece’s Highest Administrative Court considering Turkey a »safe third country«	5
II. On the prospects of the applicant’s appeal before the competent Appeals’ Committee	14
a. Existing case law of the Appeals Committees	14
b. On the annulment and suspension application and relevant case law	17
III. Regarding lack of safeguards/ effective remedy during the readmission procedure	21
IV. Regarding the applicant’s detention/living conditions upon his return to Greece	22
a. Concerns over legislative reforms and impact upon applicant’s detention	24
V. Detention conditions	26
a. Regarding the detention conditions in Kos (Pyli) pre-removal centre	26
b. Regarding the reception conditions in RIC/ Hotspot Kos	27
Imprint	28

Introduction

“Refugee Support Aegean” (RSA) is a Greek NGO and a partner with the PRO ASYL Foundation in Germany. RSA is a non-profit organization based on Chios Island focusing on strategic litigations in support of refugees, monitoring human rights violations as well as providing of legal, social and humanitarian support in individual cases.¹

“PRO ASYL” is an independent voice raised for human rights and refugee protection in Germany and Europe. Its work is financed solely by membership fees, donations and grants from its foundation / from foundations.²

The Legal Note presented by the two organizations is based on an Expert Opinion (dated 29.7.2019) provided by RSA’s lawyer, Ms Marianna Tzeferakou, to the Administrative Court of Munich in relation to a case of a Syrian asylum-seeker whose asylum application was rejected as inadmissible by German authorities on the ground that Greece was found to be responsible for his application according to the Dublin Regulation. The Note provides legal analysis regarding the legal status and the living conditions of the applicant in case of his return to Greece under the Dublin Regulation.

- It presents concerns on the effectiveness of the asylum procedure in Greece in relation to the application of the ‘safe third country’ concept and Turkey;
- the likeliness of the applicant’s claim being rejected at the second and third instance;
- information on the detention and living conditions that the applicant will face upon his return to Greece;
- an analysis of the lack of safeguards/ effective remedy in the event of his readmission to Turkey.

The Legal Note contains updates until the first week of November 2019 to reflect the serious deterioration of reception conditions in the hotspots of the Aegean islands and the recent changes in Greek asylum legislation.

¹ For more information, see <http://www.rsaegean.org>.

² For more information, see <http://www.proasyl.de/>.

I. Regarding the effectiveness of the asylum procedure in Greece

a. Application of the »safe third country« concept

The applicant's claim was found inadmissible at first instance by a Regional Asylum Office in one of the Aegean Islands on the basis that Turkey was a »safe third country« under Article 54 of Law 4375/2016.

Before presenting an assessment of the situation of the asylum-seeker following his return to Greece regarding the further examination of his asylum claim, this Note analyses the problems that exist with the application of the "safe third country" concept by Greece's Courts and asylum bodies up to date.

➤ No set rules of methodology for applying the »safe third country« concept

The »safe third country« concept - based on Article 56 of Law 4375/2016³ and on Article 38 of the Asylum Procedures Directive (recast) 2013/32/EU (APD) - started being applied by the Greek authorities pursuant to the EU-Turkey Statement of 18.3.2016⁴ for those Syrians arriving on the Greek islands of the Aegean, without any prior designation of Turkey as a »safe third country« at the EU and domestic level. In addition, the EU-Turkey Statement does not designate Turkey as a »safe third country«.

Moreover, Article 38 (2 b) of the Asylum Procedural Directive (in the following: APD) states that »rules on the methodology« should be set »by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant«. So far, such rules have never been set by the Greek authorities.

According to recital 43 of APD, »Member States should examine all applications on the substance except (...) whether it can reasonably be assumed that another country would do the examination or provide sufficient protection«. The EU-Turkey Statement cannot substitute the aforementioned lack of methodology regarding the »safe third country« concept or the lack of reasonably efficient information for designating Turkey as a »safe third country«.

³ With the last reform of the asylum legislation in Greece (that will enter into force on 01.01.2020), Article 56 has been replaced by Article 86 of Law 4636/2019 available at: <https://bit.ly/34fKMvQ> f; On RSA's concerns on the new provision see <https://bit.ly/2LLo9t1>.

⁴ See <https://bit.ly/38pfMNg>.

This omission of legislation has resulted in an arbitrary and superficial examination and assessment of the »safe third country concept« by the European Asylum Support Office (EASO) and the Greek authorities.⁵

b. Leading case law by Greece's Highest Administrative Court considering Turkey a »safe third country«

On 22.9.2017, the Plenary of Greece's Highest Administrative Court (Council of State) ruled against the annulment applications submitted by two Syrian male asylum-seekers challenging the negative decisions by one of Greece's Asylum Appeals Committees that considered Turkey a »safe third country« for the applicants (Decision No 2347/2017 and Decision No 2348/2017)⁶.

➤ **Council of State rulings a significant step backwards in refugee protection**

The Council of State rulings are a significant step backwards in jurisprudence and international standards of refugee protection. They have shaped the Greek courts' jurisprudence so far and strengthened the decisions of the Appeals Committees that continue to designate Turkey as a »safe third country« for Syrian applicants. Lastly, they left a bitter sense of frustration towards justice and the rule of law.

More specifically, the Council of State scandalously confirmed that the general diplomatic assurances provided by the Turkish authorities in the context of the EU-Turkey Statement constitute sufficient elements for the Greek authorities to decide on whether to apply the principle of *non-refoulement* without any further scrutiny regarding the real situation in Turkey such as gaps in legislation, lack of procedural guarantees and the general situation of human rights violations and political insecurity.

The Council of State also proceeded to interpret the notion of »international protection« as defined in the Geneva Convention of 1951 - the basic requirement for a country to be considered as safe according to the EU legislation - and concluded that the ratification of the Convention is *not* required for the above criterion to be met.

It also considered that the temporary protection status in the case of mass influx of Syrian refugees into Turkey is comparable to refugee status, despite the fact that it can be lifted at any time without

⁵ Law 4375/2016 provided for EASO's involvement in the border procedure. In the recast, Article 77 paras. 1 and 2 of Law 4636/2019 allow for the possibility of the conduct of admissibility interviews by EASO and in particularly exceptional circumstances by Greek police or Army officers. On concerns over the recent reforms tasking police or army to conduct admissibility interviews see <https://bit.ly/2q1QtEU>.

⁶ Joint decisions 2347/2017 and 2348/2017, Council of State, 22 September 2017, available at <https://bit.ly/36npJZM>.

ensuring individual access to asylum procedures or to at least an appeal against *refoulement* and without guaranteeing a series of other rights.⁷

Furthermore, the Council of State failed to examine the detention and reception conditions in case of the applicants' return to Turkey according to the obligations deriving from Article 3 of the European Convention of Human Rights (ECHR) and Article 4 of EU Charter of Fundamental Rights (CFR).

Attention should be paid to the Dissenting Opinion of the Court's Vice President Mr Rammos and Counsellor Mr Matzouranis, concluding that Turkey cannot be considered as a »safe third country« according to the APD⁸.

RSA and PRO ASYL would like to stress, that the two applicants had exceptionally submitted annulment applications directly before the Council of State, and not - as it is the usual practice - before the competent Administrative Court of Appeal. The applicants challenged the procedure for the designation of the judges-members of the Appeals Committees and the legality of the procedure for the adoption of the Regulation of the Appeals Authority. They also requested the Council of State to examine - given their relevance to their applications of annulment challenging points of law and procedure - the applications for the annulment of the second instance decisions rejecting the applicants' asylum appeals.⁹ The 4th Section of the Council of State decided to examine both requests and in its judgments referred the cases to the Plenary because of their importance.¹⁰

An RSA lawyer represented one of the two applicants in both hearings in one of the cases.

RSA and PRO ASYL would like to note the Council of State's Plenary rulings in the aforementioned cases regarding Turkey as a »safe third country« remain until today the only leading domestic case-law on the matter. Since their publication, no other case regarding the admissibility of an asylum claim case based on Article 38 APD or on the interpretation of the notion of a »safe third country« or about Turkey has been examined or decided by the Council of State.

RSA and PRO ASYL are aware of only one appeal submitted before the Council of State - represented by an RSA lawyer - against a decision by an Administrative Court of Appeal rejecting an annulment application by a Syrian asylum-seeker. The application is still pending for examination of

⁷ RSA, »Manipulating the »safe third country« concept as a way to deter refugees flows – a blow to the rule of law«, available at: <https://bit.ly/38LOBEK>; see also »A critical review of the judgments 2347/2017 and 2348/2017 by the plenary of the Council of State, Group of Lawyers for the rights of refugees and migrants«, Athens, available at: <https://bit.ly/2M36zAV>.

⁸ See <https://bit.ly/2PROHIR>.

⁹ Article 34 para. 1 of Law 1968/1991.

¹⁰ Council of State Judgment No. 446/2017.

its admissibility and no hearing has taken place so far.¹¹ In this exceptional case, the applicant complains about the lack of set rules of methodology regarding the »safe third country« concept as well as that his membership to a minority group was not properly assessed.

RSA and PRO ASYL would like to stress that the submission of an appeal before the Council of State is allowed only when specific arguments are included in the application. In particular, it needs to be established that there is no relevant jurisprudence of the Council of State; or that the challenged decision contravenes the jurisprudence of the Council of State or another High Court or another irrevocable administrative court decision.¹² Subsequently, appeals that present arguments concerning legal issues relating to the interpretation of rules that have already been decided by the Council of State are rejected as inadmissible. According to the Council of State, the arguments that should be invoked for the admissibility of an appeal - according to the above mentioned provision - are arguments that refer in a specific way to a ruled legal issue, which relates to the interpretation of the rules applied by the appealed decision and not only to the correct or not subsumption of the facts of the case to the applicable rule.¹³

Also, Article 61 of PD 18/1989 provides that the deadline for the lodging of an appeal does not result in the suspension of the decision. Neither has the filing of the suspension application an automatic suspensive effect. Therefore, this legal remedy is not considered as effective.

➤ **No reference of preliminary question regarding the notion of »in accordance with the Geneva Convention« under Article 38 of APD**

In the above-mentioned cases, the applicants via their lawyers had requested before the Council of State that a reference for a preliminary ruling should be submitted before the Court of Justice of the European Union (CJEU) by the national Court, regarding the notion of »in accordance with the Geneva Convention« under Article 38 of APD.

In support of their application, the applicants submitted the following before the Council of State:

- (a) the legal opinion of Professor Cathryn Costello on whether Turkey may be regarded as a »safe third country« under the applicable EU legal provisions on these matters, in light of the binding legal safeguards under international and EU refugee and human rights law;
- (b) statements of well-known Law Professors (Professor Guy Goodwin Gill; Associate Professor Francesco Maiani; Professor Steven Peers; Professor Thomas Spijkerboer; Professor Triadafyllidou; and Professor Marjoleine Zieck) about the need of a preliminary question;

¹¹ No of Appeal 1686/2018.

¹² Presidential Decree 18/1989 as amended by Law 3900/2010.

¹³ See i.e. Council of State Judgment No. 4328/2012.

- (c) case law regarding the notion of »safe third country« and Turkey; and
- (d) case law of other European Countries.

Furthermore the applicants stressed that in its March 2016 paper, the UN Refugee Agency (UNHCR) held the opinion that the provision of Article 38(1)(e) APD »means that access to refugee status and to the rights of the 1951 Convention must be ensured in law, including ratification of the 1951 Convention and/or the 1967 Protocol, and in practice« and took a clear position on the issue of preliminary reference by stating that »...of the meaning of Article 38(1)(e) APD among Member States, the appropriate course of action would be for a national court (potentially from Greece) to submit a request for a preliminary ruling to the CJEU on the interpretation of this Article«. ¹⁴

However, the Council of State with a limited majority of 13 to 12 judges, decided not to submit a preliminary reference to the CJEU. It is striking that the majority imposed in its opinion, that the European provisions are clear, without providing any justification, despite the fact that the mere existence of a minority of 12 judges clearly highlighted that the interpretation of the aforementioned provisions was by no means obvious beyond any reasonable doubt, as required by the CJEU.

In particular, the Council of State concluded that »the meaning of the provisions of Article 38 of the Directive 2013/32/EU is sufficiently clear and there is no doubt with regard to the validity or interpretation of an act adopted by EU institutions and therefore there is no reason for submitting a request for preliminary ruling to the CJEU in accordance with Article 267 TFEU«. ¹⁵

However, the dissenting opinion of two Vice Presidents and 10 Counselors (including a Vice Counselor) - who voted in favor of submitting a request for a preliminary question – considered that there were reasonable doubts as to the interpretation of Article 38 APD. ¹⁶ The dissenting judges also held that »the fact that there is a reasonable doubt in respect of the interpretation of these issues is demonstrated by the dissenting opinions of one Vice President and one Counselor in relation to those and the fact that 12 members with casting vote in the Court acknowledged the existence of these doubts and were in favor of submitting a request for preliminary ruling to CJEU under Article 267(3)TFEU...«. ¹⁷

RSA and PRO ASYL would like to confirm that there are other cases where RSA lawyers requested in writing from the Appeals Administrative Court of Piraeus to submit a reference for a preliminary

¹⁴ "Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation" in: Tackling the Migration Crisis under the safe third country and first country of asylum concept, available at: <https://bit.ly/2slYpwa>.

¹⁵ Joint decisions 2347/2017 and 2348/2017, para. 63.

¹⁶ Joint decisions 2347/2017 and 2348/2017, para. 63.

¹⁷ Joint decisions 2347/2017 and 2348/2017, para. 63

ruling regarding the interpretation of Article 38 of APD. However, the request was fully ignored.¹⁸ Taken that Article 267 TFEU (obligation of the national Court of last instance to submit a request for preliminary ruling when a party requests it) and national legislation (PD 18/1989, which foresees a right to appeal under conditions against the judgments of the Administrative Court of Appeal) there is no obligation by law for the Piraeus Administrative Court of Appeal to send a preliminary question when a party requests it.

In another case represented by an RSA lawyer, the written request for preliminary ruling was rejected by the Appeals Administrative Court of Piraeus (Judgment A939/21.12.2017) as »there is no reasonable doubt regarding the meaning of Article 38 of Directive 2013/32/ EU«. ¹⁹In his dissenting opinion, one of the judges took the view that there is a need to submit a reference for a preliminary ruling to CJEU.

On the basis of the above, RSA and PRO ASYL confirm that since 2016 there has been no reference to CJEU regarding the interpretation of Article 38 of APD by the competent courts (i.e. the Administrative Court of Appeals or the Council of State).

RSA and PRO ASYL argue that there is the need for a common and fair application of European law in accordance with obligations deriving from the Geneva Convention, EU Treaties and the CFR.

➤ **Blocking of information regarding the real situation of Syrians in Turkey**

RSA and PRO ASYL would like to stress that access to recent information regarding the situation of refugees in Turkey is very much restricted especially after the attempt of the coup d'état in the country.

➤ **Limited reports**

Following the attempted coup in Turkey, national NGOs working on refugee rights in the country have reduced or cancelled their visibility and public outputs.

RSA and PROASYL can confirm that one of the organization's lawyers spoke with colleagues in Turkey who expressed their fear about speaking publicly about violations committed by the Turkish authorities against Syrian refugees. Further, Taner Kılıç, a prominent asylum lawyer, Honorary Chair of Amnesty International Turkey and co-founder of the NGO Mülteci-Der was arrested, charged and detained under anti-terror legislation without solid evidence against him. Human rights defenders,

¹⁸ Decision A460/ May 2017 of Piraeus Administrative Court of Appeal; also, A 697/2018 (on file with RSA).

¹⁹ A similar case was represented by a lawyer of the Greek Council for Refugees (A411/2019).

even UNHCR's implementing partner, the Association for Solidarity with Asylum Seekers and Migrants (SGDD-ASAM), Mülteci-Der and Refugee Rights in Turkey have been targeted by Turkish authorities.

Orçun Ulusoy, Faculty of Law Vrije Universiteit Amsterdam, states that »In the light of these developments, civil society organisations working in the refugee rights field reduced their visibility in the public to avoid further problems. Interviewed NGO members and staff during the field research indicated that they felt under threat and informed that several NGOs cancelled or postponed their public activities including publishing any critical report on the situation of the migrants, asylum seekers and refugees in Turkey«. ²⁰

➤ **Non-disclosure of information by EASO**

Dated 15 June 2016, EASO released a document titled »Country Information Pack, the Asylum System in Turkey«, which has never been published (!). RSA has requested EASO to get access to the full version of its redacted report (2016/ 2017), but the request was denied as EASO assessed that »the disclosure of the non-redacted documents could seriously undermine the protection of privacy and integrity of individuals (in particular it could lead to identifying non-public resources) and international relations with third country as well as the protection of the decision-making process«. ²¹

➤ **Lack of public criticism by UNCHR**

RSA and PRO ASYL have published a Legal Note criticizing UNCHR as it has avoided to publish all its information regarding the real situation of Syrians refugees in Turkey and to criticize publicly the insufficient protection that refugees including Syrians enjoy in Turkey in law and in practice. ²² The Note also drew attention to the detrimental effect of the Agency's delays in providing updated information on the situation in Turkey in view of the fact that evidence presented in UNHCR's initial letters has been used to pave the way for forcible returns of asylum-seekers to Turkey under the EU-Turkey statement. Questions were also raised in relation to UNHCR's failure to communicate to the competent Greek authorities its incapability of effectively monitoring readmissions of Syrians refugees given that it has never enjoyed unrestricted access to detained refugees in Turkey.

Attention should be drawn also to recent media information regarding forced removals of Syrian refugees to Syria. ²³

²⁰ See Response dated 02.11.2017, answers of the expert Orçun Ulusoy.

²¹ See <https://bit.ly/36vBixY>.

²² See <https://bit.ly/36vBixY>.

²³ See <https://bit.ly/2LN41GR>; <https://reut.rs/2YDv8tc>; <https://wapo.st/2t3ooJd> and <https://bit.ly/35iQ5vO>.

➤ **About the particular case**

Taking into account the documents of the applicant's asylum file, the EASO interviewer failed to conduct a thorough examination of the case, by failing to ask important questions-indicators regarding the existing safeguards in Turkey against *refoulement*; or for accessing rights and legal remedies; or regarding the living conditions of the applicant. **As no specific rules are laid in national legislation or by EASO concerning the methodology (as Article 38(2b) APD) by which the competent authorities and EASO interviewers satisfy themselves that the »safe third country« concept must be applied to a particular country or an applicant, it is until now unclear under which criteria the interviewers were satisfied that Turkey is a »safe third country« and concluded their interview with him.**

Furthermore, the EASO experts in the applicant's case failed to examine thoroughly the reasons of him fleeing Syria and to identify the individual characteristics, necessary for a fair examination even of the admissibility grounds and for establishing vulnerability or a violation of Article 3 ECHR. The EASO interview is of great importance, as it is the only interview with the applicant in the asylum procedure. Both the Asylum Service and Appeals Committee did not have any direct contact with the applicant for the purpose of verifying the information provided or for asking further questions. Based on this interview, the Asylum Service and later the Appeals Committee found the applicant's claim inadmissible and Turkey a »safe third country« for him.

On 31.03.2019, RSA filed a complaint to EASO about the omissions in the conduct of interviews in cases of other Syrians. According to EASO's response, the complaint is still pending.²⁴

RSA and PRO ASYL would like also to stress that even in the case that the applicant had failed to describe the risks he would face in Turkey, the competent authorities should have investigated on their own initiative both circumstances presenting »a well-known general risk« in relation to which »information [...] is freely ascertainable from a wide number of sources« but also »facts relating to a specific individual that could expose him to a risk of ill treatment in breach of [Art.2 and 3 ECHR]«. ²⁵ It is exclusively upon the competent Greek authorities to prove that Turkey is a »safe third country«, meaning - among others- that the applicant will not face any violation contrary to Article 3 of the ECHR in case of his return. Therefore the Greek authorities in the applicant's case should have carried out a risk assessment on their own initiative, including the risk of chain *refoulement*²⁶ and in light of the particular circumstances of the case, given that the applicant has never had legal

²⁴ EASO/ED/2019/234/17.4.2019.

²⁵ FG v. Sweden. Application no. 43611/11, ECtHR, Judgment of 23 March 2016.

²⁶ M.S.S. v. Belgium and Greece, Application no.30696/09 [GC], ECtHR, Judgment of 21 January 2011, §115.

counseling or aid in order to support his claim, to go beyond the evidence provided by the applicant and to use diverse sources of current information in order to gain a clearer understanding of the situation in the receiving country.²⁷

The European Court of Human Rights (ECtHR) has reaffirmed that the fact that an applicant might fail to describe the risks faced does not exempt the sending country from complying with its positive obligations under Article 3 of the ECHR. It is the responsibility of the removing State to ensure respect for the principle of *non-refoulement*.²⁸

In the particular case, the Greek Asylum Service found Turkey as a »safe third country« based basically on outdated diplomatic assurances provided by the Turkish authorities and on correspondence by the European Commission.

The two organizations would like to stress that the so-called diplomatic assurances were generic and not specialized and the Greek authorities did not pay great attention to material originating from other reliable and objective sources.²⁹ Public reports of well-known and credible international NGOs such as Amnesty International and Human Rights Watch (HRW) were fully ignored. Basic findings of UNHCR letters, documents from the Council of Europe or ECRE were also ignored. Furthermore, the credibility and the context in which such assurances are given by the Turkish authorities were not assessed at all.

Especially in countries such as Turkey, where conditions rapidly change and there is a high number of people in need of protection, inadequate reception conditions and deficiencies in the asylum system, general assurances cannot be relied upon at all and a full Convention-compliant assessment must be carried out, with the required "anxious scrutiny", to determine whether Turkey can be considered as systemically or systematically a "safe third country".³⁰

Moreover, the first instance decision did not examine the amendment of national law and of the obligations deriving from Article 3 ECHR. The ECtHR (similar to the CJEU) concluded that the mere

²⁷ *Hirsi Jamaa and Others v. Italy* (GC), Application no 27765/09, ECtHR, Judgment of 23 February 2012, §157.

²⁸ *Sharifi and Others v. Italy and Greece*, Application no 16643/09, ECtHR, Judgment of 21 October 2014, §232, reminiscent of the principles of *M.S.S. v. Belgium and Greece* and *Hirsi Jamaa and Others*, §§338-343 and 146-148 respectively.

²⁹ See for example *Salah Sheekh*, Application no. 1948/04, ECtHR, Judgment of 11 January 2007, §136; *Garabayev v. Russia*, Application no. 38411/02, ECtHR, Judgment 7 June 2007, §74.

³⁰ See Third-Party Intervention by AIRE Centre, ICJ, DCR, and ECRE on *JB v Greece*, Application no 54796/16, available at: <https://bit.ly/2YI5gML>.

ratification of the Convention by Member States cannot result in the application of a conclusive presumption that states observe the Convention.³¹

It should be stressed that a proper assessment of the applicant's case should have been based both in law and in practice and should have been examined pursuant the obligations deriving from Article 3 ECHR and more specifically if there is a risk of direct or indirect *refoulement* to Syria from Turkey; if there are effective legal safeguards against removal in accordance to Articles 3 and 13 ECHR as well as the detention and reception conditions upon his return to Turkey.³²

➤ **Cases before the European Court of Human Rights regarding a breach of Article 3 ECHR**

In 2016, RSA lawyers brought a case before the ECtHR on behalf of a Syrian refugee belonging to the Armenian Christian minority. The applicant's asylum claim was rejected as inadmissible by the competent Greek asylum authorities on the basis that Turkey was considered a »safe third country for him« (JB v Greece, Application no 54796/16).

On 18.5.2017, the ECtHR communicated to the Greek authorities the following questions that shall be investigated:

- (a) If the procedure followed in the case of J.B. was in accordance with Article 3 ECHR in conjunction with Article 13 ECHR (right to an effective remedy);
- (b) if, in the event of his return to Turkey, the conditions of detention and reception (living and residing) constitute degrading treatment according to Article 3 ECHR, particularly in relation to his ethnic origin, religion and his state of health; and
- (c) if his detention in the police station of Mytilini for approximately one and a half month constituted a violation of Article 3 of the ECHR.

The applicant has already filed his observations regarding the aforementioned questions and his lawyers submitted on his behalf reports by the UN Special Rapporteur on the rights of migrants and the UN Rapporteur on torture as well as a legal expert opinion of Orçun Ulusoy. The later collected credible information regarding the situation of Syrian refugees in Turkey (i.e. lack of effective protection and safeguards against *refoulement* both in law and in practice; de facto detention; and humiliating living conditions. The Court's decision is still pending.

³¹ See CJEU, N. S. (C-411/10) v. Secretary of State for the Home Department and M. E. and others (C-493/10) paras. 99-105; ECtHR, MSS v Greece and Belgium, Sharifi and others v Italy and Greece.

³² See MSS v Belgium and Greece; Sharifi v Italy and Greece; Tarakhel v Switzerland, ECtHR, Application no. 29217/12, Judgment of 4 November 2014; Mohamed Hussein and Others v. the Netherlands and Italy, Application no. 27725/10, Admissibility Decision of 2 April 2013.

II. On the prospects of the applicant's appeal before the competent Appeals' Committee

According to the applicant's file, he has lodged an appeal before the competent Appeals' Committee. The appeal has been filed by himself without legal assistance. Therefore, the reasoning of the appeal consists of one sentence which states »I confirm what I have already stated before the Asylum Service during the lodging of my application and during the interview«.

No additional information or any evidence of vulnerability or any other statement or memorandum written by a Greek lawyer regarding the applicant's case has been submitted before the Committee. It is obvious that the applicant was not provided with legal assistance. Because of the lack of legal assistance, he was not able to write in Greek language a completed appeal or/and a memorandum complaining about the rejection of his asylum claim as inadmissible and supporting his arguments. It is also obvious that he has not even been informed about the reasoning of the rejection, let alone to argue on such a complicated concept such as that of the »safe third country«.

The case of the applicant has been already examined in June by an Appeals Committee in Athens and there is a pending final decision to be issued. Following a communication with the Committee's Secretariat, RSA and PRO ASYL confirm that the decision is still pending, but the decisions of other cases, which have been examined on the same date by the same Appeals Committee, have been already issued. Therefore, a final decision could be issued at any day.

Taking into account the existing case law of the Appeals Committees as well as the special circumstances of the case, there is no doubt that the final decision will find his claim inadmissible and Turkey a »safe third country« for him.

a. Existing case law of the Appeals Committees

As far as the two organizations are aware, **second instance decisions issued by the Appeals Committees for Syrian applicants systematically uphold the first instance inadmissibility decisions**, if no vulnerability is identified.

According to the Greek Council for Refugees (GCR) in 2018 »(t)he Independent Appeals Committees issued 78 decisions dismissing applications by Syrian nationals as inadmissible based on the safe third country concept. As far as GCR is aware, there have been only two cases of Syrian families of Kurdish origin, originating from Afrin area, in which the Appeals Committee ruled that Turkey cannot be considered as a safe third country for said Syrian applicants due to the non-fulfillment of

the connection criteria». ³³ Indicatively on 29.7.2019, GCR has sent to RSA some recent decisions of the Appeals Committees upon request.

RSA and PRO ASYL had access to the files of 12 decisions of the Appeals Committees. In all decisions, the Appeals Committee rejected the appeals of the applicants and found that Turkey is a »safe third country« based on similar argumentation that is in accordance with the leading case law of the Council of State.

In brief, their argumentation is based on the general diplomatic assurances given by the Turkish authorities under the EU -Turkey Statement (a letter provided by the Turkish authorities to the EU dated 12.4.2016, which assures that the Syrians who return from Greece will have access to the temporary protection status and a letter dated 4.4.2016 regarding non-Syrians) and on correspondence between EU officers and Greek officers (Letter of Director General of DG Home »considerations with a view to facilitating the implementation of the joint statement of 18 March 2016« dated 5.5.2016; and a letter of the then Commissioner, Dimitris Avramopoulos dated 29.7.2016 stating that that despite the attempted coup d'état of 15 July 2016, the Turkish assurances remain valid).

The current situation in Turkey is not taken into consideration neither in assessing the credibility of the diplomatic assurances, the context in which such assurances are given or the general situation of human rights and the current ability of monitoring them. Additionally, UNHCR letters of 2016 and the Council of Europe Special Representative on Migration and Refugees report are being misinterpreted. The most important findings have been ignored. The letter of UNHCR dated 14.12.2016 is of great importance as UNHCR explicitly states that UNHCR is unable to follow-up the cases of returnees and to guarantee that the returnees have indeed access to temporal protection and their rights. The Council of Europe Special Representative on Migration and Refugees report dated August 2016 provides concrete information about both in theory and practice regarding the gaps in law and the lack of effective safeguards in practice. Moreover, the Appeals Committees have failed to conduct an assessment on their own initiative based both in law and practice in Turkey regarding the effectiveness of the temporary protection status, the safeguards/ procedural guarantees and effective remedies and the monitoring ability against *refoulement* to Syria and ignore international reports and credible evidence by NGOs, like Amnesty International or Human Rights Watch. Finally, the detention and reception conditions of the returnees in Turkey under the obligations deriving from Article 3 ECHR and Article 4 CFR are not examined.

³³ AIDA report Greece, see para. 81.

RSA and PRO ASYL would like to stress that according to the available sources the returnees from Greece to Turkey face de facto detention out of law and then upon their release suffer from homelessness and long waiting periods of preregistration, when they do not have access by law to basic rights such as employment.³⁴

Illustrative decisions

➤ **Decision of 9th Appeals' Committee (Protocol No. 20297/28.11.2017)**

The decision takes into account the letters of the Turkish authorities, the correspondence between EU and Greek authorities and the letters of UNHCR. The decision refers directly to the case law of the Council of State regarding the interpretation of the notion of international protection according to the Geneva Convention. Furthermore, regarding the principle of *non-refoulement*, the Committee argues that Turkish legislation provides protection of the principle of *non-refoulement* and that »the above mentioned are respected in practice, as it is proven by the above mentioned documents and in particular by the letters from the Embassy to Turkey to EU providing assurances about the provision of temporal status consequently about the protection of the principle of *non-refoulement*«. ³⁵ Additionally, it states that »any violation of the obligations deriving from the above mentioned legislation as well as any detection of malfunctions, which is not a systemic problem, taken also the enormous pressure of the country because of the refugees entries«, cannot result on the consideration that the provided protection is not effective.³⁶

➤ **Decision of 7th Appeals Committee (Protocol No. 18873/ 10.11.2017)**

The case of the applicant - a Syrian man - has been considered as inadmissible. Regarding the protection of the *non-refoulement* principle in practice, the Committee found that: »According to the Asylum Information Database (AIDA) about Turkey, the procedure of international protection according to the Aliens Law provides protection against *refoulement* for asylum-seekers independently if they came from a European or no European country. Furthermore, the *non-refoulement* principle has been incorporated (Law no. 6458 on 2013 of Foreigners and International Protection, 4 April 2013) και 4 του (Temporary Protection Regulation, 22 October 2014). Moreover, taken the available country information for Turkey, where 3,5 million refugees live including 2,7 million Syrians, the principle of *non-refoulement* shall by law be

³⁴ J.B. v. Greece, Written Observations before the European Court of Human Rights.

³⁵ Page 25 of the Decision.

³⁶ Page 26 of the Decision.

respected, and the Turkish government provided to EU assurances regarding compliance with the *non-refoulement* principle, and these assurances are confirmed by reliable sources. Additionally, according to the Council of Europe Special Representative on Migration and Refugee's Report, Turkey is not found to be responsible for specific acts or omissions that constitute violations of rights which may lead to the conclusion that persons returned to that country are at risk of *refoulement* or forced removal. Moreover, the attack he (the applicant) has suffered in Turkey while attempting to enter Turkey illegally from a non-frontier checkpoint is fragmentary /non-systematic, arbitrary and not individualized nature while, at the same time, it (the attack) cannot result to the conclusion that there is a reasonable risk of return to Syria (taken also the duration he has stayed in Turkey where he reportedly he did not face any problem). Additionally any violent pushbacks while aliens attempting to cross its borders with Syria, as the applicant himself suffered, is inadmissible, since in this case examines the return of a Syrian to Turkey from Greece and not his return to Turkey from Syria.«

Regarding examination of the detention and reception conditions in Turkey the above decision finds that »there is no available evidence that Syrians are detained under deprivation of their liberty and under conditions which constitute a violation of Article 3 ECHR«.

b. On the annulment and suspension application and relevant case law

In Theory, the applicants have the right to submit an application before the competent Administrative Court of Appeal requesting the annulment of the final decision of an Appeals Committee within 60 days³⁷ from the notification of the final asylum decision. This remedy is not considered as effective remedy though³⁸ as:

(a) The filing of an annulment application and suspension application (or interim measures) does not suspend the execution of the readmission automatically /does not have an automatic suspensive effect;

(b) The 60 days deadline period for filing the annulment application does not suspend the execution of readmission automatically.

Additionally, the scope of the annulment application is limited to the legality of the contested decisions, and the courts do not examine the merits of the case. These remedies could be

³⁷ Article 108 of Law 4636/2019 amends the existing provisions in the right of the application of annulment by stating that asylum-seekers can exercise this right before the competent Administrative Court of First Instance; the deadlines for the exercise of this right is thirty days from the next day of the notification of the final asylum decision. The provision will enter into effect from 1 January 2020.

³⁸ See solid case law of ECtHR regarding Greece: *MSS v Greece and Belgium*; *RU v. Greece*, Application No. 2237/08, and Judgment of 7 September 2011 etc. *BAC v Greece*.

filed only by a lawyer, but access of the applicants - let alone of detainees - to legal aid and lawyer is severely restricted³⁹. The competent Court in the applicant's case is the Appeals Administrative Court in Piraeus. The procedure is also long lasting and has a lot of costs.

Additionally, the case law on Appeals of Administrative Court of Piraeus is solid regarding inadmissibility of cases of Syrians, if not found to be vulnerable. The vast majority of the annulment and suspension applications are rejected, as the Administrative Appeals Court of Piraeus finds that the decisions of the Appeals Committee regarding inadmissibility are proper and legal. According to this case law, the argumentation of the Appeals Committees is in accordance with the leading case law of the Council of State (see also above). Only in exceptional cases of vulnerable protection seekers of Syrian nationality, whose vulnerability has not been taken into account by the competent authorities and their claim was unlawfully examined by the fast-track procedure, their annulment applications have been accepted and their cases has been appointed to be examined by the Appeals Committee.

All annulment applications of Syrians brought by RSA lawyers before the Administrative Appeals Court of Piraeus against the inadmissibility decisions of the Appeals Committees have been rejected, except of one case of an identified victim of torture with mental health problems, whose vulnerability was not taken into account from the Appeals Committee. His annulment application was accepted by the Appeals Administrative Court on the basis that his vulnerability should have been taken into account and his case should have been examined in the normal and not in the fast track procedure by the Appeals Committee.⁴⁰

Thus, it is clear that upon the notification of the final decision of the Appeals Court, the applicant will face immediate danger of readmission to Turkey. RSA and PRO ASYL would like to stress also that the applicant upon his arrival will be detained in Athens and Kos, so upon notification of the final decision, he will face an IMMEDIATE and real risk of readmission to Turkey. Even if he manages to have access to legal aid and to file an annulment and suspension application, its filing does not have automatic suspensive effect and the filed legal remedies will be rejected.

³⁹ AIDA report, available at: <https://bit.ly/34tzJ2v>.

⁴⁰ Case A462/2018 of the Administrative Appeals Court of Piraeus.

Cases before national courts represented by the RSA legal team

➤ Judgment No. A697/27.12.2018 of the Piraeus Administrative Court of Appeal

The applicant is a Syrian woman without family in Turkey and victim of ill-treatment in Syria and Turkey. The Court dismissed the application for annulment. The Court found that the *non-refoulement* principle is respected as: »(a) According to available sources of information, 3.5 million refugees, including 2,75 million Syrians, are living in Turkey; (b) according to Turkish law, the principle of non-refoulement is respected; (c) the Turkish Government has provided the European Commission assurances that Turkey respects the principle of *non-refoulement* in practice and which (assurances) are confirmed by reliable sources (letters from the Director-General for Immigration and Internal Affairs of the European Union; Immigration Commissioner's letter; letters of the UN High Commissioner for Refugees). The reported by her (the applicant in this case) attacks/ violations that took place while trying to enter illegally from a non-border checkpoint to Turkey, have a fragmentary and non-targeted/not individualized nature and, taken that she did not face any serious problem by the Turkish authorities, they (the reported violations) could not result to the conclusion that there is a reasonable risk of being returned to Syria«.

The Court held that the decision of the Appeals Committee was »appropriate and legitimate« »which is not undermined by the reports about Turkey by human rights organizations submitted by the applicant«. The Court found also that the applicant has not expressed and individualized fear of persecution regarding the protection of *non-refoulement* principle under Article 56 of Law 4375/2016.

The Court referred explicitly to the case law of the Council of State regarding para. 1 e of Article 56 Law 4375/ 2016, (Article 38 par. 1. e of Directive 2013/32/EE); dismissed the arguments of the applicant regarding the lack of effective protection equivalent to the refugee status of »the temporal protection status for Syrian in Turkey«. The Court found that »the applicant argued that: i. It is a temporary regime which may at any time by a decision of the Council of Ministers be limited or suspended for reasons of public order, security, health or national security and to be ceased for reasons of suspicion of participation in terrorism or other reasons. Suspension or cessation of the temporary status is at the exclusive discretion of the executive without individualized judgment and with the possibility of *refoulement* to their countries of origin and does not guarantee the right to work and does not provide for conditions for reception and accommodation; ii. the temporary protection document provides right of stay in Turkey but is not considered as a residence permit, the right to move freely, the provision of housing and education and the right to work is not guaranteed.« The Court dismissed these arguments , as »the legal provisions on the withdrawal of

the temporary protection status by means of a general act by an executive body with no previous assessment of whether the grounds from withdrawing international protection, as laid down in the Directive and in the Geneva Convention, are satisfied in the case of each particular foreign national, does not mean that the protection granted is not in line with the requirements of the par. E , in so far as it does not necessarily lead to the return of international protection beneficiaries to their countries origin (Council of State Judgment No. 2348/2017 para. 56); ii. Pursuant to the Directive and to the law »protection in accordance with the Geneva Convention« does not exclude in principle the imposition of restrictions to the exercise of the right to select a place of residence, free movement and access to labor market nor does it impose that the latter shall be put in the same category as the citizen of the country of residence in terms of salaried employment (Council of State Judgment No. 2348/2017, para. 56). «

Furthermore, the Court found proper the reasoning of decision of the Appeals Committee that »the available sources of information do not show that persons of Syrian origin are detained in deprivation of liberty and in conditions that constitute degrading treatment within the meaning of Article 3 ECHR«.

➤ **Judgment No. A536/18.10.2018 of the Appeals Administrative Court of Piraeus**

The applicant is a Syrian single man and victim of ill-treatment in Turkey and torture in Syria. He has complained among others that the Appeals Committee »has failed to take into account the sources cited by him, which showed the general human rights situation in Turkey and, in particular, the lack of protection faced by Syrian refugees.«⁴¹ Further, the applicant referred to »Articles 35 and 36 of the State Gazette 676 2016 of the Turkish Government's Cabinet amending Articles of Aliens Law«, which cancels the automatic suspensive effect of an appeal against removal for some aliens.

The Court dismissed his application for annulment. In particular, the Court found that the Appeals Committee properly decided that the *non-refoulement* principle is respected as »(a) Turkey has 3,5 million refugees, including 2,75 million Syrians; (b) Turkish law respects the principle of *non-refoulement*; and (c) the Turkish Government provided the European Commission with assurances of compliance to the principle of *non-refoulement* in practice and which (assurances) are confirmed by reliable sources (letters from the Director-General for Immigration and Home Affairs of the European Union, the relevant letter from the Commissioner for Immigration, UNHCR's letters) and therefore are of particular evidential value. Furthermore, the Appeal's Committee took into account as evidence of the application of the principle of *non-refoulement* in practice, on the one hand, the large number of »refugees« (and, in particular, Syrian asylum-seekers) residing in Turkey and, on the

⁴¹ Judgement, p. 13.

other hand, letters of authorities and international organizations, and in particular the aforementioned two letters of the Ambassador of the Permanent Representation of Turkey to the European Union (...). Moreover, during the applicant's stay in Turkey from 1/2016 until 6/2016, he was not subjected to torture, but only he vaguely refers to mistreatment by Turkish policemen and a knife assault by a group of citizens (...).

➤ **Judgment No. A939/21, 12 2017 of the Piraeus Administrative Court of Appeals**

The applicant is a Syrian male, whose application was rejected by the Administrative Court of Appeal with a similar argumentation to that of Council of State 2017 rulings mentioned above. His request for the Court to make a preliminary reference was also rejected.

III. Regarding lack of safeguards/ effective remedy during the readmission procedure

Although the case file on the applicant's readmission was not provided to the RSA lawyer representing him by the police, the two organizations would like to stress the following:

There is no doubt that the applicant's removal via a readmission order has been automatically issued against him by the Kos police upon his arrival/apprehension without further assessment of the applicant's individual case and without ensuring to the applicant the right of a hearing.

Removal via readmission to Turkey is regulated by Law 3386/2005 (Articles 76, 77, 78, 79)⁴² and Law 3030/2002 (Readmission between Greece and Turkey).⁴³ Pursuant to Law 3386/2005 »expulsion shall be ordered by a decision of the competent Police director having given the alien a period of at least 48 hours to express its objection«. According to Article 77 of Law 3386/2005, the applicants have the right to appeal before the police authorities against the removal within five days of the notification of the removal decision. According to Law 4375/2016, the removal via readmission decision should be ordered only after the first reception procedure and the asylum procedure are completed. **Nevertheless, in practice and systematically on the Aegean islands, the police**

⁴² Law No. 3386/2005, Codification of Legislation on the Entry, Residence and Social Integration of Third Country Nationals on Greek Territory [Greece], June 2005, available at: <https://bit.ly/34i9Nqi>. As amended by Laws 3448/2006 (GG A 57), 3536/2007 (GG A 42), 3613/2007 (GG A 263), 3731/2008 (GG A 263), 3772/2009 (GG A 112) and 3801/2009 (GG A 163).

⁴³ Law No. 3030, G.G. A' 163, of 2002, Protocol for the implementation of Article 8 of the Agreement between the Government of the Hellenic Republic and the Government of the Republic of Turkey on combatting crime, especially terrorism, organised crime, illicit drug trafficking and illegal migration, 15 July 2002, available at: <https://bit.ly/2PI5WNW>.

order the removal via readmission to Turkey of the apprehended Syrians automatically upon their arrest. The practice is based on Police Circular no 1604/16/1195968 in view of implementing the EU-Turkey Statement. Such a blind and automatic order of removal via readmission to Turkey violates national and European law and the obligations deriving from Article 3 ECHR.

The police decisions ordering the applicant's »removal via readmission to Turkey« are stereotyped and based only on the EU-Turkey Statement. Neither the general situation in Turkey (even after the failed coup d'état) nor the individual situation of the apprehended are taken into consideration. The removal decisions are only in Greek language and are systemically notified to the apprehended without interpretation. In any case, even if the apprehended are aware of their right to appeal against the removal decision, their access to remedy is only theoretical, as they could not be expected to submit a written appeal in Greek language before the police without the support and assistance of a lawyer or legal counselor. But in Greek law, no legal assistance is provided in such cases⁴⁴ and the apprehended do not have access to any legal counseling or aid.⁴⁵

In practice, these removal via readmission decisions are suspended by the Regional Police Directorate until the asylum procedure is completed. Upon the final rejection by the Appeals Committee, they are set automatically in force and the Syrian detainees are in immediate danger of removal via readmission to Turkey.

IV. Regarding the applicant's detention/living conditions upon his return to Greece

➤ Applicant facing risk of detention upon his return to Greece

As already clarified, the police authorities issue automatically a removal via readmission to Turkey order against all the apprehended Syrians (and the rest third national countries) on the Aegean islands after the EU-Turkey Statement came into effect (Law 3386/2005). Additionally, the police order their detention. In practice, this removal order is suspended by the competent General Police Directorate (in the case of the applicant by the Dodecanese General Police Directorate) until the asylum procedure is completed and always under the condition not to leave in the island and stay in the hotspot (in the case of the applicant the Kos hotspot).

According to Police Circular No 1604/16/1195968, issued by the Greek Police Headquarters in June 2016 and still in force, which regulates the administrative treatment of asylum applicants who are

⁴⁴ Appeals before the police authorities under Law 3386/2005.

⁴⁵ See also similar cases regarding the ineffectiveness of such a remedy in *RU v Greece*; *AA v Greece*, Application no. 12186/08, Judgment of 22 July 2010, etc.

subject to a 'geographical restriction' on a Northeastern Aegean Island⁴⁶, in case that they are detected outside said island: »detention measures will be set again in force and the person will be transferred back to the islands for detention – further management (readmission to Turkey)«. ⁴⁷

Those who have been detected by the police out of the islands are arrested, automatically detained and transferred to the pre-removal centre of the responsible island, where they stay in detention until the asylum procedure is completed and/or the readmission is complete

Consequently, upon his arrival in the Athens international airport, the applicant will be automatically detained by the Greek police, as he has violated the imposed geographical restriction ordering him to remain on Kos Island. No further individual assessment will be conducted by the authorities. He will be detained for an unknown period in the Athens airport in view of his transfer back to Kos Island, where he will stay in detention in the pre-removal center, while the decision by the competent Appeals Committee is pending. Upon his notification of the rejection of his asylum claim by the Appeals Committee, the removal order will be in force automatically and he could remain in detention in view of his removal via readmission to Turkey under Law 3386/2005.

RSA has been monitoring the case of an asylum seeker from the Horn of Africa region who has been returned back on Samos Island after being detected and apprehended outside of it. His asylum claim has been interrupted and he was detained in Amygdaleza pre-removal centre for some months pending his transfer back to the island. He has now been returned to Samos where he lives in dire and unsafe conditions in the severely overcrowded hotspot.⁴⁸

The Greek Council for Refugees (GCR) has published a report about the first return of a Syrian asylum seeker from Germany to Greece under the so-called »Greek-German Administrative Arrangement«. The report documents that upon arrival at Athens airport, the Syrian asylum seeker was automatically detained. According to the report: »After a few days in Athens detention centers, he was returned to Leros as part of the implementation of the EU-Turkey Statement and for the purpose of his readmission to Turkey, and has since remained in detention, in conditions that constitute inhuman and degrading treatment«. ⁴⁹

In two other cases of Afghan nationals (without a geographical restriction) who have been returned in April 2019 by the German authorities under the so-called »Greek-German Administrative

⁴⁶ Law 4375/2016.

⁴⁷ Available at: <https://bit.ly/2smRa7e> (in Greek).

⁴⁸ On Monday night, 14 October 2019, a fire broke out in Vathy hotspot on the island of Samos and hundreds of refugees had to flee the camp in order to escape from danger. The fire destroyed a large part of Vathy hotspot including tents and prefabs. According to Doctors without Borders, around 600 people who had nowhere to go following the fire, were hosted by local NGOs in various buildings on the island. See <https://bit.ly/2EoCRSr>. See also <https://bit.ly/2EA2gZu>.

⁴⁹ Available at: <https://bit.ly/36rX7P3>.

Arrangement», the returnees have been automatically detained as their asylum claim has been interrupted and stayed for months in the detention facility of the airport premises.

a. Concerns over legislative reforms and impact upon applicant's detention

RSA and PRO ASYL would like to highlight their concerns over reforms in the detention regime of asylum-seekers introduced by the recent legislation on international protection that can affect the applicant's length of detention and prospects of success when challenging his detention order. Law 4636/2019 »On International Protection and other provisions« will enter into force on 01.01.2020.⁵⁰

Article 46 of Law 4636/2019 has introduced significant detrimental changes to the legal framework of detention of asylum seekers:

1. Whereas detention of asylum seekers was previously permissible only in cases where persons sought asylum while in pre-removal detention,⁵¹ Article 46(2) IPA also permits detention of persons who have applied for asylum at liberty. Article 46(3) provides a basis for maintaining in detention persons who apply for international protection while being held in pre-removal detention.
2. Law 4636/2019 has inserted more grounds for detention by permitting detention for the purposes of deciding in a border procedure on an asylum seeker's right to enter the territory.⁵²
3. Asylum detention orders are no longer preceded by a recommendation (*εισήγηση*) of the Asylum Service to the competent police authorities. Under Article 46(4), the Police should have received prior information (*προηγούμενη ενημέρωση*) from the Asylum Service when issuing a detention order. The repeal of the requirement of a recommendation exacerbates risks of arbitrariness, since it strips the Asylum Service of a crucial role in the determination of whether detention is necessary for effectively carrying out the asylum procedure. In fact, the Asylum Service has often advised against the use of detention, with 13,587 out of 21,492 recommendations issued in 2018 (63%) calling for release of the applicants concerned.⁵³

⁵⁰ For some provisions the new law stipulates a different date of entry into force. For example, Article 55 regulating the access of asylum-seekers to public health care entered into force upon the publication of Law 4636/2019 in the Government's Official Gazette (OG). However, the provision has not yet been implemented as the required Joint Ministerial Decision has not been signed. For the detailed provisions of the law see: <https://bit.ly/2tu6Dmx>.

⁵¹ Article 46(2) Law 4375/2016.

⁵² Article 46(2)(e) of Law 4636/2019.

⁵³ Asylum Information Database, *Country Report Greece*, 2018 Update, March 2019, 151, available at: <https://bit.ly/2M3uxvC>.

4. Article 46(5)(b) extends the general duration of asylum detention orders from 45 days to 50, subject to the possibility of prolongation by a further 50 days. More worryingly, however, the reform extends the maximum period for which an asylum seeker may be detained from 3 months to 18. Previous periods of time spent in pre-removal detention are not counted in the calculation of said time limit. Accordingly, the design of the law could lead to situations where the combined effect of asylum and return regimes would expose individuals to deprivation of liberty for up to three years. This creates risks of disproportionate length of administrative detention contrary to constitutional guarantees, bearing in mind that pre-trial detention may never exceed 18 months under the Greek Constitution.⁵⁴
5. The procedure of *ex officio* judicial review of detention orders by the President of the Administrative Court is only made available in case of prolongation. The remedy was available upon issuance of the initial detention order under the previous legal framework.⁵⁵ It appeared to be ineffective in practice, as the vast majority of detention orders were rubberstamped by the courts; only 0.3% of 1,192 asylum detention orders reviewed by the Administrative Court of Athens in 2018 were quashed.⁵⁶ Without the option of *ex officio* review, however, asylum seekers' only recourse to challenge their initial detention lies in a largely dysfunctional objections procedure (*αντιρρήσεις*) before the President of the Administrative Court. The objections procedure arguably raises questions of compliance with Article 9 ICCPR. The European Court of Human Rights (ECtHR) has consistently found the practical accessibility of the objections procedure to be incompatible with Article 5 of the European Convention on Human Rights (ECHR).⁵⁷ In particular, RSA would like to stress that, albeit provided in national legislation,⁵⁸ legal assistance to challenge a detention order is not guaranteed in practice. This results in detained asylum seekers in need of legal assistance not being able to challenge their detention in practice. Furthermore, the detention order issued by the police authorities is only written in Greek and interpretation of the decision together with information on the right to challenge such decision is often not provided to detained asylum seekers upon its notification.

⁵⁴ Article 6(4) Greek Constitution.

⁵⁵ Article 46(5) Law 4375/2016.

⁵⁶ Asylum Information Database, *Country Report Greece*, 2018 Update, March 2019, 171.

⁵⁷ ECtHR, *Kaak v. Greece*, Application No 34215/16, 3 October 2019; *O.S.A. v. Greece*, Application No 39065/16, 21 March 2019; *J.R. v. Greece*, Application No 22696/2016, 25 January 2018; *Rahimi v. Greece*, Application No 8687/2008, 5 April 2011; *R.U. v. Greece*, Application No 2237/2008, 7 June 2011.

⁵⁸ Article 46(7) Law 4636/2019.

V. Detention conditions

- **The conditions in the detention premises at the Athens airport are humiliating and violate Article 3 ECHR.**

On 2016, the Council of Europe Committee for the Prevention of Torture (CPT) observed that pre-removal detainees had no access to outdoor exercise which made the center unsuitable for detaining persons for more than one day.⁵⁹

a. Regarding the detention conditions in Kos (Pyli) pre-removal centre

Between 18 and 19 October 2019, RSA staff visited the Kos (Pyli) hotspot and spoke with 30 refugees and asylum-seekers who resided in and outside the hotspot. Among those were individuals who have been detained at the Kos (Pyli) pre-removal centre. The detention facility is next to the hotspot, has a capacity of 420 people and at the end of October 338 individuals were detained there. According to UNHCR observations, the main nationalities are Iraq, Cameroon, Egypt, Syria and Pakistan.

According to reports, newcomers in nearby islands that are transferred to Kos are also detained there until they submit their asylum claim. Among the detainees, there are people who have not been subjected to reception procedures due to shortcomings of the Reception and Identification Authority⁶⁰. Following his visit to Kos in August 2019, Philippe Leclerc, the UNHCR Representative in Greece, reported that since May 2019, the pre-removal centre »has broadly been used as a place for direct placement in detention, instead of reception, of asylum-seekers, including women and those with specific needs, some of whom without prior and sufficient medical or psychosocial screening, due to lack of enough personnel«.⁶¹

In the context of the pilot project implemented in Lesbos, even extremely vulnerable individuals are being detained, despite the fact that there is no doctor in the Pre-removal Center. RSA interviewed an African refugee with a serious medical condition who said that he was detained for three and half months despite his health problems.

According to complaints by at least two people who have been detained at facility, the police broke the camera of their mobile phones, that resulted in the phones not functioning and them losing their contacts and the only means of communication with their families. Those interviewed also spoke of lack of access to a doctor and medicines as well as a lawyer.

⁵⁹ Available at: <https://bit.ly/34smZZK>.

⁶⁰ Source: UNHCR, October 24, 2019.

⁶¹ Source: <https://bit.ly/36ukEyV>.

The serious insufficiencies regarding access to medical assistance for those held at the Kos pre-removal centre have been previously identified by CPT following a visit in Greece in April 2018. In its report, CPT noted: »As regards health-care staffing: The situation was critical at Moria and Pyli Pre-removal Centres and at Fylakio RIC, as none of the centers had a doctor. At Moria, medical services were only occasionally provided by the doctors of the adjacent RIC. Pyli had only two nurses six days a week who had started working ten days prior to the delegation’s visit and, once a week, detained persons were sent to the local hospital (including to the dermatologist and the GP) for assessment.... «⁶²

b. Regarding the reception conditions in RIC/ Hotspot Kos

In the remote chance of his release, the applicant will have to stay in Kos Reception and Identification Center (RIC/hotspot) which is designated only for short temporary stay (about 25 days under Greek law). Therefore, conditions at the RIC/hotspot do not fulfil international standards. However, the chances of the applicant not being detained appear most unlikely considering the very recent announcement of the Greek government of a regime of generalized detention and the turning of hotspots into closed centres that will include pre-removal facilities and RICs in their premises.⁶³

Since April 2010, the Kos hotspot has been overcrowded, while the number of transfers of vulnerable refugees from the island to the mainland is significantly lower compared to other islands, therefore creating an unbearable sense of entrapment for the refugees living there.

According to official data, as of 28 October, the hotspot which is designed for a maximum occupancy of 816 people was accommodating 3.734 people.⁶⁴ The material collected by RSA pointed out to an unspeakable crisis in reception condition. Hundreds of refugees are forced to live in boxes made out of cardboard and reed or makeshift sheds inside and outside of the hotspot, in the utmost precarious and unsuitable conditions, without access to adequate medical and legal assistance.⁶⁵

- **Taken all the above mentioned, the living conditions in the Kos hotspot could result to violations of fundamental rights and to exposure to conditions similar to homelessness.**

⁶² Available at: <https://bit.ly/2Px5FyJ> , p. 51.

⁶³ Announcement by Government Spokesperson and Deputy Minister of Defence, 20 November 2019, <https://bit.ly/2PPbSF0>.

⁶⁴ See <https://bit.ly/36JliYw>.

⁶⁵ See <https://bit.ly/2PS679J>.

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