



A child stands outside of his family tent in the rain in an area just outside Moria Camp known as the olive grove or 'jungle'. Photo: Giorgos Moutafis/Oxfam.

DIMINISHED, DEROGATED, DENIED

How the right to asylum in Greece is undermined by the lack of EU responsibility sharing

The new Greek asylum law that entered into force on 1 January 2020 has significantly diminished protection for people seeking asylum. The law and its amendments increase asylum seekers' vulnerabilities, while limiting access to their fundamental right to seek asylum and be protected from serious risks. Meanwhile, the Greek policies and practices are part of a worrying EU-wide effort to reduce the number of refugees who can find safety in European countries.

SUMMARY

The implementation of the EU–Turkey statement of 2016 and its subsequent implementation in various Greek laws and practices have transformed the ‘hotspot’ camps on the Greek islands into one of Europe’s worst human rights disasters. The deadlock created by trapping asylum seekers in camps laid the ground for increasingly strict crackdowns on their rights, with increased pressure by the European Commission on the Greek authorities and legislature to deliver results.

The latest manner in which the Greek government has given effect to this EU-led approach is through its ‘International Protection Act’ (IPA), which entered into force on 1 January 2020. The IPA, as well as its amendments in May 2020, introduced significant reforms that have further destabilized the Greek asylum system. It has introduced harsher, punitive measures that have resulted in people being cast out of the asylum procedure and returned to Turkey and/or their countries of origin.

Restricting the rights of the most vulnerable

Whereas previously most vulnerable people seeking asylum were, at least in theory, exempted from the geographical restriction that forced them to stay on the Greek islands, they are now also confined to the ‘hotspots’. In these hotspot camps, there are severe and chronic shortages of medical professionals to identify and assist such people. In addition, since the IPA was amended in May 2020, the processing of their asylum applications is no longer prioritized, and they are no longer exempted from the short timeframes and diminished safeguards of fast-track border procedures.

The IPA and its amendments have also made it easier for new vulnerabilities to appear within an already traumatized population. A case in point is the harrowing increase in cases of sexual harassment and reports of rape, both attempted and perpetrated, and incidents of domestic violence against women in the infamous Moria camp on Lesbos.

Shortened timelines for new arrivals, lengthened ones for others

Accelerated procedures and increased returns are the core of the EU’s strategy for deterring the arrival of those deemed ineligible for protection. The IPA has given priority to the registration and examination of applications of people who arrived in Greece in 2020, in a demonstration that any new arrivals will have risked their lives and money on what is likely to be a very short stay in Greece. These expedited procedures are frequently concluded within just days of arrival, denying those seeking asylum the possibility to prepare or even understand the highly complicated and convoluted asylum process.

On the other hand, people seeking asylum who arrived before January 2020 have been left in limbo, forced to reside for increasingly prolonged periods on the islands. Their asylum interviews have been postponed repeatedly, sometimes without any indication of when they will ultimately take place. Some interviews for people who arrived in 2019 are scheduled as far away as October 2021.

Administrative detention

The IPA and the May amendment have laid the groundwork for administrative detention to become the default rule for managing mixed migration flows, as

opposed to the exception. Although the IPA transposes the absolute minimum that is provided for by EU law, detention takes place without respect for the right of people seeking asylum to be informed of the reason for their detention in written language they understand or are reasonably expected to understand. People seeking asylum now frequently end up in detention, without knowing why or for how long, and without the possibility to appeal.

The May amendment of the IPA did not explicitly prohibit the detention of children, marking yet another missed opportunity to safeguard their rights. Alarming, in mid-June, 229 unaccompanied children remained in administrative detention nationwide. These detention facilities are severely understaffed, lacking the necessary medical and psychosocial personnel to treat even emergency cases, let alone to tend to the needs of vulnerable people.

Rejection at every turn

The IPA introduced provisions that have severely diminished the safeguards in the asylum system. It has made it possible to reject asylum applications as 'unfounded' if an asylum seeker fails to attend an interview or renew their registration on time. However, this neglects the systemic challenges and obstacles to asylum seekers' ability to comply with impossible standards, or the possibility of administrative errors by the authorities. The May amendments of the IPA have, furthermore, made it possible to reject asylum seekers' applications without an interview; for example, when it is apparently impossible to provide interpretation in the applicant's language. Not conducting a personal asylum interview due to the inability to provide interpretation constitutes a violation of EU law and has been condemned by EU institutions.

No appeal, no remedy

The IPA has had a major impact on asylum seekers' right of access to an effective remedy. It makes it impossible for people seeking asylum to lodge an actual appeal against a rejection of their case without the assistance of a lawyer. However, access to legal assistance is extremely limited. State-funded legal aid, particularly on the Greek islands, is almost non-existent. The majority of people seeking asylum are therefore directed to rely on legal assistance provided by NGOs. Their capacity is also limited and, with the very short deadlines for appeal, NGO-funded lawyers are stretched to assist all those who approach them, leaving many people with no legal assistance. This means that those rejected can be immediately detained in order to be deported to Turkey or their countries of origin.

The 'Greek' model as blueprint for the upcoming European Pact on Asylum and Migration

The IPA and its amendments reflect the overarching EU policy of reducing the freedoms that asylum seekers have during the time that their case is being reviewed. The union of interests between the EU and the Greek government is not limited to the IPA and it is likely to manifest in the revision of the EU's common asylum system, under the new European Pact on Asylum and Migration. The Pact, scheduled to be published in the second half of 2020, is expected to expand the Greek model by using detention as primary means of addressing new arrivals and fast-tracking rejections of women, men and children who apply for asylum at the borders.

1 INTRODUCTION

On 1 January 2020, Greece's International Protection Act (IPA) entered into force. It is Greece's fifth legislative asylum reform since the implementation of the EU–Turkey Statement in March 2016,¹ in which the EU member states agreed with Turkey on measures to restrict the ability of people seeking international protection to cross the Greek–Turkish border and ask for asylum in Europe.

Greece has been the testing ground for the EU's migration policies over the past five years. From setting up the 'hotspot' camps on the Greek islands to the investment in shortening asylum procedures and increasing returns, the EU institutions have supported Greece in the process of increasing investment in managing asylum applications close to its borders, with the aim of returning people allegedly not in need of international protection to Turkey.

When the Greek government presented the IPA to the consideration of the Greek parliament, it hailed the law as a 'significant breakthrough' for combining all relevant EU legislation in one national law.² However, in practice, the IPA introduced significant reforms that have further destabilized the Greek asylum system. It has introduced harsher, punitive measures that result in people being cast out of the asylum procedure and returned to Turkey and/or their countries of origin.³

On 2 March 2020, as tensions rose between Greece and Turkey, the Greek government introduced an unprecedented month-long suspension of the right to seek asylum in the country.⁴ A worrying reference was made to people seeking asylum at the border as an 'asymmetrical threat against the country's security'.⁵ The new law and the incidents in Evros region have fueled more intolerance, xenophobia and hate crimes⁶ towards people seeking asylum and the NGOs working with them. Yet this approach, targeted against men, women and children in search of protection and a better life, was backed by European Commission President Ursula von der Leyen, who thanked Greece for 'being our European shield'.⁷

In the midst of the COVID-19 pandemic, an estimated 2,000 people seeking asylum – including people with disabilities, elderly people, pregnant women and children – were detained upon arrival in two overcrowded and hastily constructed sites.⁸ These people were denied the possibility to apply for asylum, in violation of their fundamental rights.⁹

While Greece has a sovereign right to manage its borders, it must always adhere to international law, respect the principle of non-refoulement and ensure access to asylum procedures. The decision to suspend asylum applications was condemned by the UN and NGOs alike for violating the principle of non-refoulement, as enshrined in the 1951 Geneva Convention and other instruments.¹⁰

In April, following significant pressure, not least from the EU Commission,¹¹ Greece provided assurances that people seeking asylum who had arrived in March would ultimately be allowed to apply.¹²

A month later, the Greek government once more amended its asylum legislation, employing administrative mechanisms which resulted in reducing the ability of refugees to be recognised and protected. These amendments reflect the overarching EU policy of reducing the freedoms that asylum seekers have during the time that their case is being reviewed.

‘Our goal at the Ministry of Migration and Asylum is, first, the substantial reduction of migration flows.’

Notis Mitarakis, Greek Minister of Migration and Asylum.¹³

The union of interests between the EU and the Greek government is not limited to the IPA and it is likely to manifest in the revision of the EU’s common asylum system, under the new European Pact on Asylum and Migration. The Pact, scheduled to be published in the second half of 2020, is expected to expand the Greek model by using detention as primary means of addressing new arrivals and fast-tracking rejections of women, men and children who apply to asylum at the borders.

Box 1: The relevant laws and policies

The EU–Turkey Statement

In 2016, EU member states agreed on the EU–Turkey Statement. As per the statement, persons arriving irregularly to the Greek islands after 20 March 2016 who are either not in need of international protection or who could have received international protection in Turkey in accordance with EU law and the 1951 Refugee Convention, are to be returned. Subsequently, the European Commission’s ‘hotspot’ approach was fully rolled-out as a system of centres with restrictions on the movement of people arriving on the islands. The 2015 hotspot approach was built on the expectation that it would be possible to quickly identify, fingerprint and register newcomers, channelling those applying for asylum to the Greek mainland and the rest to return procedures. However, the implementation of the EU–Turkey statement led to a 360-degree change of this approach, transforming the hotspots into one of Europe’s worst human rights disasters and creating the conditions for a never-ending humanitarian crisis on Europe’s south-eastern borders. The deadlock created by trapping asylum seekers in camps laid the ground for increasingly strict crackdowns on their rights, with increased pressure by the European Commission¹⁴ on the Greek authorities and legislature to deliver results.

The International Protection Act (Law 4636/2019)

The IPA, which entered into force on 1 January 2020, transposes into Greek legislation the absolute minimum standards of protection and guarantees of the EU law. In practice, especially on the hotspot islands, it has led to the significant reduction of fundamental guarantees of the Greek asylum and reception system, making it easier to detain asylum seekers for prolonged periods of time, while creating obstacles to their ability to access a fair asylum procedure and severely impeding their right to an effective remedy. In some instances, the law does not even guarantee those minimum standards, raising issues of violations of the EU law and of incorrect transposition of EU law in the Greek legal system.

The May amendments (Law 4686/2020)

Just three months since the IPA’s entry into force, the Greek state once more amended its asylum legislation. Although some very slight improvements were made, the amendments once more failed to consider the actual situation on the ground, while simultaneously creating the conditions for a further expansion of detention and for lesser safeguards. Both the IPA and its May amendment are unilaterally focused on returns, without ensuring the rights of people seeking protection in Greece and Europe.

2 RESTRICTING THE RIGHTS OF THE MOST VULNERABLE

When people seeking asylum reach a new country, they are in a precarious legal situation, often without a clear status and without documentation that is recognized by local authorities or access to social support. This is one of the main reasons why, irrespective of the reasons forcing them to flee their homes, all asylum seekers are in ‘a particularly underprivileged and vulnerable population [...] in need of special protection’,¹⁶ in the country in which they find themselves.

There are circumstances under which some people seeking asylum are in need of additional support, for example if they are unaccompanied children; survivors of sexual and gender-based violence (SGBV), or torture; or living with a mental health disorder. The Greek law¹⁷ guarantees that vulnerable people seeking asylum can access medical treatment and, upon identification, will enjoy adjustments to their reception conditions. However, in practice, especially for those confined in island hotspots, this is impossible to provide, as there are severe and chronic shortages of medical professionals to identify and assist such people.

‘There is no available primary healthcare in the camp. Doctors end up near exclusively focusing on administrative duties.’

Official at the Moria ‘hotspot’¹⁵

Box 2: Confinement with geographical restriction under the ‘hotspot’ approach

Following an action brought forth by GCR, the geographical restriction for people seeking asylum on the islands was deemed illegal in a 2018 decision of Greece’s Supreme Administrative Court.¹⁸ Nonetheless, in practice, the Greek authorities have tried several variations over the years, with the common denominator being the aim of enforcing the EU–Turkey Statement.¹⁹

As a result, the EU hotspots on the islands of Lesbos, Samos, Chios, Leros and Kos have been locked in a vicious cycle of overcrowding and emergency measures taken to alleviate this, basically resulting in open-air prisons.²⁰

Part of the problem is that hotspots were never planned, by the EU and the Greek authorities, to provide anything more than short-term reception for people seeking asylum—making it easier to identify, register and fingerprint them before transfer to the Greek mainland, where applications would have been examined.²¹

The EU–Turkey Statement, the lack of clarity in EU legislation, the IPA and its amendments have also forced vulnerable people seeking asylum to remain on the Aegean islands. Vulnerable people seeking asylum have been covered by the geographical restriction rules since the introduction of the IPA. Since the law was amended in May 2020, the processing of their asylum applications is no longer prioritized, and they are no longer exempted from the short timeframes and diminished safeguards of fast-track border procedures (see **Chapter 3**). Nonetheless, for some, this could mean spending months or even years without access to the support that they need.

The IPA and its amendments have also made it easier for new vulnerabilities to appear within an already traumatized population, whose non-visible vulnerabilities often go unnoticed.²² A case in point is the harrowing increase in cases of sexual harassment and reports of rape, both attempted and perpetrated, and incidents of domestic violence against women in Moria camp.²³ These have been on the rise,

particularly since the further restrictions imposed because of the COVID-19 pandemic. To a much lesser extent, this concerns male survivors as well, an issue which may be being under-reported.²⁴

Box 3: Barlin's story

Barlin* is a single woman from Somalia. Her trip from Somalia to Greece was a 'trip between death and life'. She arrived on Lesbos island in 2019 and is staying in the section designed for single women inside Moria Camp.

'During the Corona time, there were a few weeks in which there were no organizations and less police in the camp. Many people were worried for their safety because of the lack of control in the camp. Everyone was staying inside. There was no way to access healthcare or other services. And there were so many rumors and fake news. So we were all very stressed and frustrated.'

'Outside of the camp, there are a lot of single women living in the olive grove [that is bordering Moria camp]. These women were feeling even more afraid than us. They were really struggling day and night, with men threatening them and taking their mobiles. They weren't able to use the toilets and the bathrooms during the night and they had to defend themselves, as there wasn't any police or security.'

'Many of the young girls have severe fears and suffer from panic attacks. When they see violence, they get panic attacks and they need to go to the hospital for help, as there were no doctors in the camp.'

Barlin has recently been recognized as a refugee. She is given a notice to move out of the section for single women by the end of June. She has nowhere to go.

*Names have been changed for privacy reasons.

According to the Centre for Research on Women's Issues (CRWI) Diotima, a women's NGO, the inhumane living conditions and current legislation have 'created suffocating conditions for these people, and particularly for persons who are in need of special protection, who find themselves further exposed. When you don't have money and you don't have a house, but you do have some kind of vulnerability, then you will become an almost certain victim of [further] exploitation and abuse'.²⁵

'Since the implementation of the new law on January 2020, the first issue we faced was the imposition of the geographical restriction to everyone, including vulnerable asylum seekers. [As a result,] women survivors of SGBV remain trapped for prolonged periods of time, in close proximity with their persecutor.'

Interview with Centre for Research on Women's Issues Diotima

Box 4: Rawan's story

Rawan* is a single Afghan mother of two boys (8 and 16 years old). She fled to Greece seeking a safe haven and the prospect of a better future for her children. As Rawan is a survivor of sexual and gender-based violence and a single mother with small children, according to the Greek law, she belongs to the category 'vulnerable asylum seekers' requiring extra protection. However, she remained in the olive grove area that is surrounding Moria (also called 'the jungle') for more than 6 months before she was finally placed in a suitable apartment.

'The situation in Moria was scary. During the pandemic, everybody was afraid that if the virus gets to us, then they will dig a mass grave to bury us. They only gave us two masks and soap. But how are we supposed to wash our hands without water? In the food line, it was so packed, we couldn't keep a distance. We were not protected.'

Rawan's first asylum interview is scheduled for June 2021 - which is 17 months after she arrived in Greece. She has not been informed by the Greek Asylum Service about her rights, such as the right to receive legal support, or about the asylum procedure.

'They never explain anything here. I just accepted it, but it is a very, very long wait. There are so many people, and there isn't enough time for them [the Asylum Service] to explain important things to us.'

3 SHORTENED TIMELINES FOR NEW ARRIVALS, LENGTHENED ONES FOR OTHERS

Months before the IPA became law, the Greek government had laid the groundwork for its acceptance and implementation. In public communications, ministers started to depict refugees as fake asylum seekers, and pledged their swift return to Turkey or countries of origin,²⁷ in part by speeding up asylum procedures. From the start, this was presented as a one-size-fits-all solution for quickly distinguishing refugees from other migrants, speeding up returns and ‘decongesting’ the hotspots.

Accelerated procedures and increased returns are the core of the EU’s strategy for deterring the arrival of those deemed ineligible for protection. Similarly, the Greek government uses these measures as a deterrent, discouraging people seeking asylum to make the dangerous trip to Greece.²⁸ This may very well explain why the IPA gives priority to the registration and examination of applications of people who arrived in Greece in 2020, in a demonstration that any new arrivals will have risked their lives and money on what is likely to be a very short time in Greece.²⁹ These expedited procedures are frequently concluded within just days of arrival.³⁰ This is denying those seeking asylum the possibility to prepare or even understand the highly complicated and convoluted process. Many do not feel safe or ready to speak about the persecution they might have undergone in their country of origin or during their flight—but not doing so can lead to their rejection.³¹

People seeking asylum who arrived before January 2020 have been left in limbo, forced to reside for ever-prolonged periods on the islands. Their asylum interviews have been postponed repeatedly, sometimes without any indication of when they will ultimately take place.

‘There is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased. This may be due, inter alia, to the fact that migrants possibly see detention as an inevitable part of their journey.’

Felipe González Morales,
UN Special Rapporteur on
the Human Rights of
Migrants²⁶

Box 5: Ali and Karima’s story

‘We arrived in November 2019 and they gave us an interview for the initial registration for January 2020, after which they gave me an interview date for a year and a half later, on 10 May 2021. I told them that this date is too far and they told me: “You are right. It is late, but we cannot do anything for you.” I asked them, “if I find a lawyer, can this be done earlier?” They told me no.’

Ali* and his wife Karima*, both Syrian nationals, are among the many people seeking asylum who arrived in 2019 and are forced to wait in Moria camp. During their stay, Karima had an accident, falling from a flimsy bridge in Moria’s slums. As a result, she had a miscarriage. Karima, who is now pregnant again, has never been seen by a state doctor:

‘They don’t accept you. They now told us that pregnant women must go to MSF [Médecins Sans Frontières], but MSF can’t do something about our geographical restriction; they are not the authorities.’

Box 4 continued: Ali and Karima's story

'In 2019, when we arrived, [the state] were recognizing vulnerabilities. For instance, if your wife was pregnant, they gave you an asylum seeker's card without geographical restriction. [Based on the law], we were supposedly vulnerable, my wife was pregnant and I had a medical record, which I submitted to them.

I just want to understand what is happening to us; why I have this red stamp on my card [i.e. geographical restriction] and why we are forced to remain on the island until this date. It is too much. Is there no solution for us?'

The delays in scheduling their asylum applications have worsened in recent months, since the Greek Asylum Services (GAS) suspended services between March and May because of COVID-19. Ignoring the recommendation of the European Commission on adjusting asylum procedures to the new conditions, GAS did not initiate remote interviews, and is doing nothing to facilitate a connection between people seeking asylum and legal aid providers while the hotspots are under lockdown.

The Regional Asylum Office in Lesbos, for example, is scheduling interviews for the people who have arrived this year, starting from July 2020 onwards. People who arrived before 2020, however, get continuous postponements: the first available interview dates are at the end of 2020, but some are as far away as October 2021. This means that people seeking asylum will sometimes have to wait for two years before their first interview takes place.

Box 6: Zahir's story

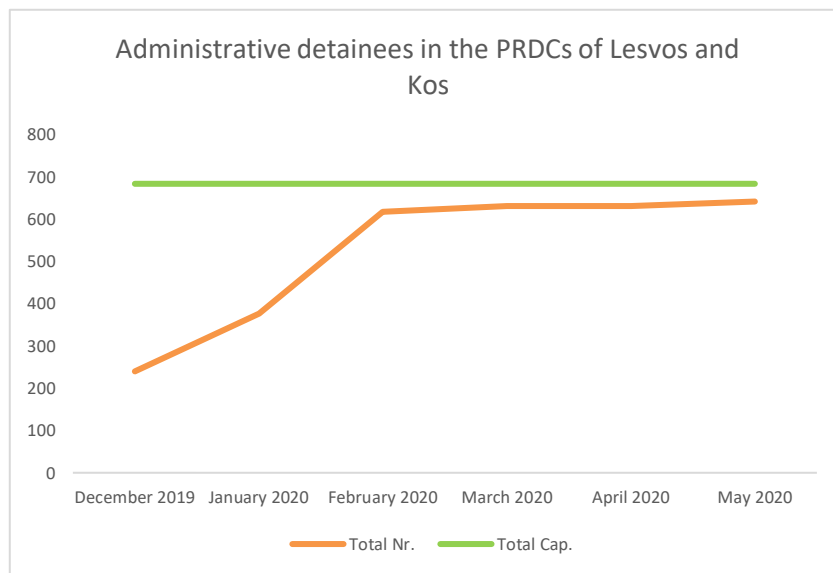
Zahir* is an Afghan asylum seeker who arrived on Lesbos in September 2019. After patiently waiting for eight months for his first interview, scheduled in March 2020, he was informed on the day that it would be postponed to December 2020.

'By now I know the situation. Due to the arrivals of 2020, they postpone all interviews for people who arrived during 2019 or 2018. So, when I went to the Asylum Service and realized my interview was postponed, I didn't say anything; they didn't say anything either. They just gave me a paper where the new date [of my interview] is stated.'

4 ADMINISTRATIVE DETENTION

The IPA and May amendment have laid the groundwork for administrative detention to become the default rule for managing mixed migration flows, as opposed to the exception as dictated by EU law.³²

Figure 1: Administrative detainees in the pre-removal detention centres of Lesbos and Kos



Even before 2019, the practice on the islands of Lesbos and Kos was to detain people seeking asylum solely on the basis of their nationalities and gender.³³ The IPA made it possible to indiscriminately detain all people seeking asylum on arrival, until an administrative panel or judge recognizes them as eligible for international protection in Greece, or they are removed from the country. It is indicative that within the first two months of 2020, the number of administrative detainees in the Pre-Removal Detention Centers (PRDCs) of Lesbos and Kos nearly doubled, and has remained close to each facility's capacity up to the end of May (see **Figure 1**) and even exceeding it for a short time. Similarly, the number of administrative detainees in police cells across the eastern Aegean islands has nearly doubled, from 65 at the end of January to 113 at the end of May.³⁴

Although the IPA is transposing the absolute minimum that is provided for by EU law, detention takes place without respect for the right of people seeking asylum to be informed of the reason for their detention in written language they understand or are reasonably expected to understand. Relevant decisions are written in Greek – although most of the decisions lack any concrete justification. The IPA abolished safeguards such as the obligation for judicial review 'at reasonable intervals'³⁵ of the ongoing necessity for detention and its legality. Instead, the law has given more freedom to the police or camp authorities to determine a course of action. Taken together, this means that people seeking asylum end up in detention, frequently without knowing why or for how long, and without the possibility of appeal.

4.1 Detention of children

The May amendment of the IPA did not explicitly prohibit the detention of children, marking yet another missed opportunity to safeguard their rights. Instead, it allows for the absolute minimum standards provided by EU law. Alarmingly, mid-June 2020, 229 unaccompanied children remained in administrative detention nationwide, after a record high of 331 administratively detained unaccompanied children at the end of March.³⁶ Chronic gaps and delays in age-assessment procedures, particularly for children in detention,³⁷ mean that the Greek police, Frontex (the European border agency) and the Greek Reception and Identification Service continue to wrongfully identify unaccompanied children as 'adults', and to detain them with unknown adults.³⁸

4.2 Poor standards of care in facilities

The detention facilities are severely understaffed, lacking the necessary medical and psychosocial personnel to treat even emergency cases.³⁹ At the time of writing, both the Lesbos and the Kos PRDC have only one nurse each, but no doctor or psychologist. In February, a large number of the detained asylum seekers in Kos were families with young children and highly vulnerable women and men. Many were in need of medication and mental health support but were not receiving it. Some areas of the facility are covered in sewage, further impacting the precarious physical and mental health of many of the people seeking asylum.⁴⁰

Box 6: Amal's story

'There is no one here to help us; no one to ask for help. Whenever we ask something from the police, they just do not listen to us. I had a medical condition and was asking them every day for a doctor, but they wouldn't help me. For three weeks I was in pain, but they didn't help me; they never took me to a doctor.'

Amal* is a single man who has been detained for close to four months and is currently in the Kos PRDC. He is in an extremely poor psychological condition, with issues relating to self-harm and suicidal thoughts. Despite this, he has yet to be seen either by a doctor or a mental health professional, not least due to chronic public healthcare gaps on the island, which affect both refugees and locals alike.

'The only thing they bring us is food, three times a day They don't provide us with information, no doctor [...] we just remain locked up here, and the only thing we see all day are the two policemen who guard the section.'

The global COVID-19 pandemic has also disproportionately impacted on asylum seekers living in the hotspots. Since 21 March 2020, consecutive Ministerial Decisions of the Ministers of Citizen Protection, Health, and Migration and Asylum have imposed further restrictions on their movement within the hotspots and their perimeters. These restrictions have been extended to 21 June, even though similar restrictions for the rest of Greece have been lifted. Considering that to the time of writing, no COVID-19 case had been identified in the islands hotspots, the prolongation of these measures only further diminishes asylum seekers' access to crucial rights and services, such as healthcare.⁴¹

5 REJECTION AT EVERY TURN

5.1 Unfair grounds for rejection under the IPA

The IPA introduced provisions that have severely diminished the safeguards in the asylum system, while making it impossible to redress administrative mistakes (see **Chapter 6**). For example, it has made it possible to reject asylum applications as ‘unfounded’ if an asylum seeker fails to attend an interview or renew their registration on time. This change was justified by the assumption that failure to show up for an interview indicates that applications are implicitly withdrawn. However, this represents a choice not to recognize the systemic challenges and obstacles to asylum seekers’ ability to comply with these standards, or the possibility of administrative errors by the authorities.

Box 7: Jamal’s story

Jamal* is a 16-year-old boy from Afghanistan who was mistakenly registered as an adult. As a result, he was placed by the camp authorities in a shared tent, alongside a dozen adult men who he did not know. While waiting for a decision on his application, he went to the Asylum Service to renew his card, but due to the overcrowding it was impossible for him to reach the service gate. He went back several times, but the GAS did not accept him as he had no formal appointment, and there is no mechanism for asylum seekers to reach the service without such an appointment. His case was ultimately rejected, as it was considered implicitly withdrawn. Jamal has submitted a subsequent asylum application on the basis of age, and remains in a makeshift camp in the olive grove that surrounds Moria camp.

By denying those whose applications have been ‘implicitly withdrawn’ the right to request a continuation of the examination of their applications, the government had refused to give the opportunity for those seeking asylum to explain why they fled, and why it was unsafe for them to return to their country of origin or to Turkey.

Box 8: Mohammad’s story

On 14 January 2020, after having to remain in Moria for more than five months, Mohammad*, a 19-year-old man from Afghanistan, went to attend his interview. He presented himself to a GAS employee at 7am. The employee took his asylum seeker’s card in order to verify if indeed his interview was on that day. After a while he returned and gave the card back to Mohammad, without saying anything.

Unaware of what would follow, Mohammad patiently remained at the gates, waiting to be called for his interview. He kept waiting, until the service closed for the day. Starting to wonder whether something had gone wrong, he talked with some of his fellow asylum seekers, who informed him that the interviews of people seeking asylum who arrived before 2020 were being postponed. Thinking that this was what had happened in his case as well, Mohammad went back to his tent in the olive grove. Five days later, he was informed that his case had been rejected, as he had missed his interview and thus his application was considered implicitly withdrawn.

He complained to the Asylum Service that he had been waiting all day to be called for his scheduled interview, but that he was still waiting by the end of the day. No one explained to him what had happened on that day, and nor could he provide any proof of his presence there. Mohammad has submitted a subsequent asylum application and is waiting for his interview to take place.

5.2 The effect of the May amendments

Recognizing this, the IPA amendment in May allowed people seeking asylum to have the possibility to apply for the continuation of the examination of their application. It does not, however, fix the errors that were made between January and May 2020. Like Jamal and Mohammad (see **Boxes 7 and 8**), many people seeking asylum have lost their chance to challenge these omissions and are thus denied fair access to asylum. Their cases must serve as an example to redress obstacles that still deny people seeking asylum fair treatment.

However, the Greek government has proceeded with further restrictions on the rights of asylum seekers, making it possible to reject their applications without an interview in more subtle ways. For example, the May amendments make it possible to reject applications when the Asylum Service claims to be unable to provide for interpretation. In cases in which it is ‘manifestly’ impossible to provide interpretation in the applicant’s language of choice, the GAS now has the option to conduct interviews in the official language of the applicant’s country of origin and, more importantly, to reject applications as ‘unfounded’, even if the people seeking asylum genuinely do not comprehend the language used. Not conducting personal asylum interview due to the inability to provide interpretation constitutes a violation of EU law and has been condemned by EU institutions.⁴²

The IPA consolidates an approach aimed at preventing people from seeking protection in Europe, rather than protecting them as per their legal rights.⁴³ It is indicative that, as reported by the European Asylum Support Office, ‘*most first-instance decisions issued in the EU+ using accelerated or border procedures lead to a rejection of the application in a significantly higher proportion than for decisions made via normal procedures*’.⁴⁴

Box 9: Fast-track border procedures

The previous Greek asylum law provided for a special border procedure, known as a ‘fast-track’ border procedure, as part of the implementation of the EU–Turkey Statement (see **Box 1**). The law, passed some days after the EU–Turkey Statement, provided for an extremely shortened asylum procedure with fewer guarantees and making it possible to examine the merits of an asylum application in a very short amount of time.⁴⁵ Although it was initially introduced as an exceptional and temporary procedure, it has become the rule for a significant number of applications lodged in Greece. In 2019, the total number of people who underwent a fast-track border procedure on the Greek Eastern Aegean islands was 39,505 – representing 51.1% of the total number of applications lodged in Greece that year.⁴⁶

In contrast to the previous law, the IPA does not refer to the fast-track procedures as ‘exceptional’.⁴⁷ A Joint Ministerial Decision issued on 31 December 2019 foresaw the application of the fast-track border procedure up to 31 December 2020.⁴⁸

6 NO APPEAL, NO REMEDY

The IPA has had a major impact on asylum seekers' right of access to an effective remedy. It makes it impossible for people seeking asylum to lodge an actual appeal against a rejection of their case without the assistance of a lawyer.⁴⁹ The GAS informs asylum seekers of the negative decision in Greek, without properly explaining it. They do not offer the possibility to lodge an appeal against this decision by themselves.

6.1 The difficulties of accessing legal assistance

The GAS informs people seeking asylum that they have the right to apply for state-funded legal aid, which is severely limited.⁵⁰ So mostly, asylum seekers have to find a lawyer by themselves. At the time of writing, lacking legal assistance means that those rejected can be immediately detained in order to be deported to Turkey or their countries of origin.

While the assistance of a lawyer is necessary, access to legal assistance is extremely limited. According to the Asylum Service's statistics, in 2019, out of a total of 15,378 appeals lodged in 2019, only 5,152 (33%) people benefitted from the state-funded legal aid scheme.⁵¹

To make matters worse, during the two months that the GAS had suspended its services on account of the COVID-19 pandemic, the service has rejected hundreds of people seeking asylum in Lesbos alone, and 11,000 applicants for asylum in all of Greece.⁵²

The majority of people seeking asylum are directed to rely on legal assistance which NGOs provide. However, their capacity is limited and, with the very short deadlines for appeal, NGO-funded lawyers are stretched to assist all those who approach them, and many people have no legal assistance whatsoever. Due to the restriction of movement for all people seeking asylum residing in camps as a measure to prevent an outbreak of COVID-19, it is even harder for people seeking asylum to find a lawyer from an NGO. In addition, they were completely overwhelmed by the hundreds of rejections that were issued by the GAS during the month of March 2020.

The legal reforms have also imposed additional administrative requirements. For example, the legal authorization providing 'power of attorney' has to bear a signature from the authorities (either the Citizen Service Center or the police) and is only valid for a short period before requiring renewal.⁵³

6.2 The unfair system for the notification of decisions

Finally, the new law requires that asylum seekers must be notified of decisions on their cases within one day of their issuance.⁵⁴ When it is not possible to contact the applicant, the GAS is permitted to notify the decision to the Reception and Identification Centre (RIC, i.e. camp) director or the applicant's lawyer, if applicable. Through this scheme of notifications, many of the people seeking asylum do not become aware of decisions and can miss the deadlines for appeals before the Appeals' Authority.⁵⁵

Box 10: Manal and Massoud's story

Manal* and Massoud* from Syria arrived on Lesbos on 31 December 2019 with their three children. On 2 January 2020, they underwent two days of reception procedures in Moria camp. They were then transferred to the Asylum Service for registration. During this time, they were not informed about their rights, only their obligations. They were not informed about their right to consult a lawyer.⁵⁶ Even if they had been, they would still have lacked the time to do so, as their interview was scheduled within just three days from initial registration.

*'We just received a document in English and Arabic, which states that we must not touch the fuses and the electric cables, and that we must not create problems. They never told us about any interview. They just told us to be there on 7 January. We finished with this [initial registration] in the evening (8pm) and were just left there. We didn't even have a tent, nothing, we were just left in the rain.'*⁵⁷

The family never underwent a medical screening for potential vulnerabilities. The health cards that they received as part of their registration remain blank to this day, more than five months since their arrival.

'They just told us that if we wish to undergo a medical examination, we can do so by 14 January, but due to the holiday season we were unable to find any doctors. I went to KEELPNO [formerly the National Center for Disease Control and Prevention] four times, but they told me I have to have an interview to be accepted. Two of my children were sick. I went to the hospital, but they don't accept anyone there, not even children, if they are [just] sick, unless they are transferred there by EKAB [ambulance].'

The family was issued a negative decision on 9 January, just two days after their interview. They were not informed about this decision, as it was only notified to the RIC director on 17 January, which they were not aware of.

'I was at the Asylum Service, but they told us nothing about any decision. On 5 February, I saw our number in the list [a piece of paper that is put up at the fenced doors of the Reception Service]. I passed through the gate every day, but this was the first time I saw it and [when I went there], they told me I had been issued a negative decision on 13 January.'

So a decision issued by the GAS on 9 January, which was sent to the RIC on 13 January and notified to the head of RIC on 17 January, finally reached the applicants on 17 February. They managed to hire a private lawyer the next day and on 19 February, well within the 10 days of the actual time of their notification (which is guaranteed by law), submitted an appeal. On 17 March, their appeal was rejected. The reason is Kafkaesque: they had missed their deadline in January to submit their appeal. They are now at risk of being returned to Turkey.

7 RECOMMENDATIONS

Recent amendments to Greek law have aimed at making administrative detention the primary means of addressing the arrival of people seeking asylum in Greece. It diminishes the safeguards of the asylum procedure, while obstructing access to effective remedies for those whose procedural rights are violated. The IPA also expanded the categories of people seeking asylum who can undergo so-called ‘fast-track’ asylum procedures on the islands,⁵⁸ which are actually geared at issuing decisions as fast as possible, thereby increasing the risks of error or misjudgements. The IPA’s implementation is already showing its incompatibility with a fair and efficient asylum system, to the detriment of human rights and contrary to European values and responsibilities.

The Greek law is increasing asylum seekers’ vulnerabilities, while limiting access to their fundamental right to seek asylum and be protected from serious risks. While the IPA and its amendments were introduced by the Greek government and approved by the country’s parliament, there is strong reason to believe it is part of an EU-wide effort to reduce the number of refugees who can find safety in European countries.⁵⁹

The IPA, as it stands today, represents a worrisome continuation in the flawed European approach towards refugees. To the extent that Greece serves as a blueprint for the reform of the European Common Asylum System and the newly launched process of reshaping the EU’s approach to refugees and migrants – known as the new Pact on Migration and Asylum – the IPA is a further warning of the real harm that awaits vulnerable women and men subjected to mass-scale, hasty and ineffective procedures at the borders.

In view of the urgent need to improve the situation on the Aegean islands; the importance of the expected discussions on the new Pact on Asylum and Migration; and with the aim of promoting the protection of human rights in Europe, the Greek Council for Refugees and Oxfam have the following recommendations.

The European Commission and (when relevant) the European Parliament should:

- Review Greece’s compliance in both law and practice with European Directives pertinent to international protection. The findings should be published, and the situation closely monitored.
- Promote respect for fundamental rights and the rights of refugees. This includes ensuring all communications avoid inflammatory language and war-like terms. Any attempts by countries to instrumentalize the plight of asylum seekers for political gain cannot be resolved by demonizing vulnerable people.
- Ensure that all vulnerable asylum seekers are explicitly exempt from expedited border procedures. The use of expedited procedures, which are more prone to errors in judgement, should be restricted to the absolutely necessary minimum. Access to safe accommodation, healthcare and legal assistance should always be guaranteed.
- End the administrative detention of children and their families by explicitly prohibiting it in legislation.

- Establish mandatory responsibility sharing mechanisms for asylum seekers that enhance their protection – this is the only effective and long-term solution to reducing the pressure on asylum services and social support in Greece.

EU member states should:

- Provide financial and in-kind support for protection work, social services and legal assistance to asylum seekers in areas that see a large number of arrivals, under an EU-wide responsibility sharing mechanism. All projects should be gender-sensitive and address the specific needs of women.
- Pledge to resettle refugees from non-EU countries and commit to creating additional legal pathways for refugees and migrants, in order to gradually reduce the need to resort to dangerous routes.

The Greek government should:

- Review and amend the International Protection Act based on an impact assessment, so as to ensure respect for the rights of asylum seekers and compliance with international and EU law.
- Ensure that all asylum seekers, regardless of nationality, have access to a fair and efficient asylum procedure in a safe environment, as well as the healthcare and services they need.
- Enhance state-funded legal aid so that, at a minimum, all asylum seekers are able to receive legal assistance at second instance of their asylum examination, as mandated by EU law. Guarantee that lawyers and organizations that provide legal assistance have unhindered access to people seeking asylum so as to provide legal assistance and services at first and second instances.
- Implement alternatives to detention and only ever use administrative detention as a measure of last resort, after a thorough examination and justification of its necessity on a case-by-case basis.⁶⁰ Explicitly prohibit the detention of children and their families by law.
- Significantly bolster the capacities of the Greek Asylum Service, the Reception and Identification Service and the National Public Health Organization by increasing staffing and improving training.
- Take all necessary measures in order to eliminate all phenomena/instances of xenophobia and racist violence. Promote a facts-based engagement between Greek authorities, Greek nationals, and refugees and migrants in order to reduce tensions between communities on the islands and foster social cohesion.

NOTES

* All names in the paper have been changed for privacy reasons

- 1 L. 4375/2016 and its amendment (L. 4485/2017), L. 4540/2018, L. 4636/2019 and its amendment (L. 4686/2020).
- 2 Explanatory Memorandum on the draft law 'On International Protection and other provisions' towards the Parliament of the Hellenic Republic, 21 October 2019, available in Greek at: <https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/p-diethnProstasias.pdf> [last accessed 19 June 2020]
- 3 As noted by the Union of Employees of the Greek Asylum Service. See newsbeat, 'The new law tramples on the fundamental rights of asylum seekers', 31 January 2020, available in Greek at: <https://www.newsbeast.gr/greece/arthro/5956896/o-neos-nomos-katapata-themeliodi-dikaiomata-ton-aitoynton-aitoyson-asylo>. Also see Greek Council for Refugees (GCR). (2019a). GCR's comments on the draft bill "On International Protection", 15 October 2019, available at: https://www.gcr.gr/media/k2/attachments/GCR_on_bill_about_International_Protection_en.pdf.
- 4 Official Government Gazette (2020, March 2) on the Greek legislative act on the suspension of the submission of asylum applications, available in Greek here: <http://asylo.gov.gr/wp-content/uploads/2020/03/pnp-anastolh-ths-yповolis-aithseon-asylou.pdf>
- 5 EU Debates. (2020, March 3). Kyriakos Mitsotakis: Migrant crisis has become asymmetrical threat. Greece calls it an 'invasion'. Youtube video. <https://www.youtube.com/watch?v=csz11416hHw>
- 6 Redfish. (2020, March 27). Lesbos Refugee Camp: The Crisis At The EU Border. Youtube video. <https://www.youtube.com/watch?v=y6pRE9bhMzg>. Amnesty International. (2020). Caught in a Political Game: Asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe's failures. https://www.amnesty.at/media/6952/amnesty_caught-in-a-political-game_bericht-april-2020.pdf p. 15–7. Racist Violence Recording Network. (2020, March 5). Racist Violence Recording Network: Serious concern over attacks against refugees and humanitarian workers. <http://rvrn.org/2020/03/racist-violence-recording-network-serious-concern-over-attacks-against-refugees-and-humanitarian-workers/>. M. Fielitz. (2020, March 23). Far-right vigilantism at Europe's borders: the Greek experience. Open Democracy. <https://www.opendemocracy.net/en/countering-radical-right/far-right-vigilantism-at-europes-borders-the-greek-experience/>. Y. Souliotis. (2020, March 6). Greek security services expel members of German extreme-right group. E-kathimerini. <https://www.ekathimerini.com/250310/article/ekathimerini/news/greek-security-services-expel-members-of-german-extreme-right-group>
- 7 European Commission, (2020, March 3), Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel, https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380
- 8 Human Rights Watch. (2020, March 31). Greece: Nearly 2,000 New Arrivals Detained in Overcrowded, Mainland Camps. <https://www.hrw.org/news/2020/03/31/greece-nearly-2000-new-arrivals-detained-overcrowded-mainland-camps>
- 9 Article 14 Universal Declaration of Human Rights, Article 18 Charter of Fundamental Rights of the European Union.
- 10 Among others, Article 33 (and 31) 1951 Convention Relating to the Status of Refugees, Article 3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 7 International Covenant on Civil and Political Rights; Article 78(1) Treaty of the Functioning of the European Union. See also Articles 2 and 3 of the European Convention on Human Rights. Also see: European Union Agency for Fundamental Rights (FRA). (2020). Fundamental rights of refugees, asylum applicants and migrants at the European borders. <https://fra.europa.eu/en/publication/2020/fundamental-rights-refugees-asylum-applicants-and-migrants-european-borders> p. 7. UNHCR. (2020, March 2). UNHCR statement on the situation and the Turkey-EU border. <https://www.unhcr.org/news/press/2020/3/5e5d08ad4/unhcr-statement-situation-turkey-eu-border.html>. GRC. (2020, March 6). Open Letter of 256 organizations regarding the current developments at the Greek border. <https://www.gcr.gr/en/news/press-releases-announcements/item/1402-open-letter-by-85-organizations-on-current-developments-at-the-greek-borders>.
- 11 J. Rankin. (2020, March 12). Greece warned by EU it must uphold the right to asylum. The Guardian. <https://www.theguardian.com/world/2020/mar/12/greece-warned-by-eu-it-must-uphold-the-right-to-asylum>
- 12 For a brief overview, see GCR and Oxfam. (2020). Lesbos COVID-19 Briefing #2: Update on the EU 'hotspot' Moria by the Greek Council for Refugees and Oxfam. <https://www.gcr.gr/el/news/press-releases-announcements/item/1431-enimerotiko-deltio-tou-esp-kai-tis-oxfam-gia-ti-lesvo-2> (in Greek)
- 13 Hellenic Parliament, Review and examination of the draft law of the Ministry of Migration and Asylum 'Improvement of immigration legislation, amendment of provisions of laws' 4636/2019 (A

- '169), 4375/201, Permanent Committee of Public Administration, Public Order and Justice, <https://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#1741a428-ee36-4f32-89b9-abb300e694c7>, [1:54:00 – 1:54:07].
- 14 As per the Director of the Asylum Service: 'Insufferable pressure is being put on us to reduce our standards and minimize the guarantees of the asylum process... to change our laws, to change our standards to the lowest possible under the EU [Asylum Procedures] directive.' IRIN. (31 March 2016). 'Greek asylum system reaches breaking point'. <https://www.thenewhumanitarian.org/news/2016/03/31/greek-asylum-system-reaches-breaking-point>. See also ECRE. (9 December 2016). 'European Commission proposes to increase numbers of returns to Turkey under EU-Turkey deal and re-start returns to Greece under Dublin'. <https://www.ecre.org/european-commission-proposes-to-increase-numbers-of-returns-to-turkey-under-eu-turkey-deal-and-re-start-returns-to-greece-under-dublin/>
 - 15 Information provided during meeting at the Moria hotspot on 29 January 2020.
 - 16 See the European Court of Human Rights judgement on *M.S.S. v. Belgium and Greece*, available at: <https://bit.ly/3eqwWw5>, para. 251 and 263.
 - 17 Article 39 § 5 (d) Law 4636/2019.
 - 18 Oxfam. (2018, April 24). Oxfam and GCR applaud Council of State for ending containment policy and condemn Greek Government's attempts to defy Court's ruling. Press release. <https://www.oxfam.org/en/press-releases/oxfam-and-gcr-applaud-council-state-ending-containment-policy-and-condemn-greek>. For more information, see: AIDA, Country Report on Greece, Update 2019, <http://asylumineurope.org/news/23-06-2020/aida-2019-update-greece>.
 - 19 Article 11(c) of the latest decision imposing geographical restriction on the islands is intended to: 'implement the joint statement of 18-3-2016 between the European Union and Turkey, for which it is deemed necessary to impose a restriction on the freedom of movement of applicants for international protection, who enter the Greek territory through the islands of Lesbos, Rhodes, Samos, Kos, Leros and Chios after 20-3-2016, the date that the aforementioned joint statement entered into force.' Ministerial Decision 1140/2019 on the 'Limitation of the Freedom of Movement of Applicants of International Protection' (21 December 2019), Gov. Gazette 4736/B/20-12-2019, available in Greek at: <https://bit.ly/37rG0yu>
 - 20 For example, see: GCR. (2019b). Limits of Indignation: the EU-Turkey Statement and its implementation in the Samos 'hotspot'. https://www.gcr.gr/media/k2/attachments/Report_Samos.pdf pp. 15–6.
 - 21 European Commission. (2015a). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European agenda on migration. COM(2015) 240 final. https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf. European Commission. (2015b). The hotspot approach to managing exceptional migratory flows. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf
 - 22 Joint live discussion (organized by Amnesty International) on the situation on the Greek islands, on 8 May 2020. <https://msf.gr/magazine/koini-live-syzitisi-gia-prosfygikometanasteytiko-sto-facebook> (in Greek)
 - 23 Ibid.
 - 24 Centre for Research on Women's Issues Diotima. (2019). Final Report. Research on Accessibility and Barriers to Gender-Based Violence Services for refugee and migrant girls, boys, women and men in Greece. <https://diotima.org.gr/en/final-report-research-on-accessibility-and-barriers-to-gender-based-violence-services-for-refugee-and-migrant-girls-boys-women-and-men-in-greece/>
 - 25 Interview with Diotima in Lesbos on 2 June 2020.
 - 26 UN General Assembly. (2012). Report of the Special Rapporteur on the human rights of migrants, François Crépeau. Human Rights Council agenda item 3. A/HRC/20/24. <http://www.refworld.org/docid/502e0bb62.html> para. 8. Also see: UNHCR. (2014). Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019. <http://www.refworld.org/docid/536b564d4.html> p. 5
 - 27 A. Jamieson and S. Theodorou. (2019, November 22). Greece tightens borders and will 'shut the door' on migrants not entitled to asylum. EuroNews. <https://www.euronews.com/2019/11/22/greece-tightens-borders-and-will-shut-the-door-on-migrants-not-entitled-to-asylum>. S. Sanderson. (2019, July 16). New Greek government announces plans to tackle migration. Info Migrants. <https://www.infomigrants.net/en/post/18201/new-greek-government-announces-plans-to-tackle-migration>
 - 28 M. Karamitrou. (2019, October 16). Refugee Issue: 'Fast-forwarding' the legislation on asylum to increase returns. CNN. Available in Greek at: <https://www.cnn.gr/news/ellada/story/194047/prosfygiko-trexoy-n-to-nomosxedio-gia-to-asylogia-na-ayxithoy-n-oi-epistrofes>. K. Bokas. (2019, October 23). Refugees: Asylum only to those that meet the criteria recommends Chrysochoidis. Proto Thema. Available in Greek at:

- <https://www.protothema.gr/politics/article/938452/hrusohoidis-gia-asulo-prostasia-mono-stous-prosfuges-pou-pliroun-ta-haraktiristika/>. Amnesty International. (2019). The proposed draft law on asylum undermines the protection and the rights of refugees and violates European and international legal standards. Available in Greek at: <https://www.amnesty.gr/news/press/article/22623/proteinomeno-shedio-nomoy-gia-asylo-povathmizei-tin-prostasia-kai-ta>.
- 29 See: ECRE. (2020, February 21). Greece: Fast Track Procedures Cutting the Line – Turmoil Over Closed Centres and Transfers to Mainland. <https://www.ecre.org/greece-fast-track-procedures-cutting-the-line-turmoil-over-closed-centres-and-transfers-to-mainland/>
- 30 Article 77 § 4 (interviews), 83 (examination of asylum application under fast track procedure), 90 (border procedure) of L. 4636/2019. To be noted, as per EU law, vulnerable applicants need 'sufficient time [...] for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection'. See 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 (recast), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>, Recital 29.
- 31 K. Schock, R. Rosner and C. Knaevelsrud (2015). Impact of asylum interviews on the mental health of traumatized asylum seekers. *European journal of Psycho-traumatology*, 6.
- 32 Inter alia, Recital 20 and Article 8(2) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, which lay down standards for the reception of applicants for international protection (recast); and Recital 16 and Article 15(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals.
- 33 For example, see: E. Kriona Saranti. (2019). Locked Up Without Rights: Nationality-based detention in the Moria refugee camp. HIAS. https://www.hias.org/sites/default/files/report_on_low_profile_detention_in_greece_hias_dec_2019.pdf
- S-V. Oikonomou. (2018). Borderlines of Despair: First-line reception of asylum seekers at the Greek borders. GRC and Social Change Initiative. <https://www.gcr.gr/media/k2/attachments/SCIZReportZfinalZPDF.pdf>
- 34 Capacity stands at 210 detention places in the Lesbos PRDC and 474 in Kos. Between 5–13 March 2020, the Kos PRDC exceeded its capacity for the first time since the EU–Turkey statement, reaching a record 489 administrative detainees on 8–9 March. All data acquired from the regular updates issued by the General Secretariat of Information and Communication (GCIC), available at: <https://infocrisis.gov.gr/prosfygiko-metanasteftiko/>.
- 35 Greek Council for Refugees (GCR). (2019a). GCR's comments on the draft bill 'On International Protection', 15 October 2019, p. 3-4, available at: https://www.gcr.gr/media/k2/attachments/GCR_on_bill_about_International_Protection_en.pdf.
- 36 National Center for Social Solidarity (EKKA), Situation Update: Unaccompanied Children (UAC) in Greece (15 June 2020), http://www.ekka.org.gr/images/ΣΤΑΤΙΣΤΙΚΑ_2020/EKKA%20Dashboard%2015-6-2020.pdf.
- 37 International Commission of Jurists (ICJ) and GRC. (2020a). Longer note to the Joint Submission of the International Commission of Jurists (ICJ) and of the Greek Council for Refugees (GCR) to the United Nations Special Rapporteur on the human rights of migrants report on ending immigration detention of children and seeking adequate reception and care for them. <https://www.icj.org/wp-content/uploads/2020/05/Joint-Submission-ICJ-GCR-SRMigrants-2020-ENG.pdf>, p. 3.
- 38 For example, see: ICJ and GRC. (2020b). Joint Submission on Immigration detention of children in Greece. <https://www.icj.org/joint-submission-on-immigration-detention-of-children-in-greece/>. UN Human Rights Office of the High Commissioner. (2019). Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece (2019, December 2 - 13). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25421&LangID=E>
- 39 AIDA, Country Report on Greece, Update 2019, <http://asylumineurope.org/news/23-06-2020/aida-2019-update-greece>
- 40 A significant body of research has already highlighted how administrative detention severely impacts on the mental health of asylum seekers, including: M. von Werthern, K. Robjant., Z. Chui, R. Schon, L. Ottisova, C. Mason and C. Katona. (2018). The impact of immigration detention on mental health: a systematic review. *BMC Psychiatry* 18(382). <https://doi.org/10.1186/s12888-018-1945-y>. International Committee of the Red Cross. (2017). ICRC policy paper on immigration detention. *International Review of the Red Cross* 99(1): 359–63. Migration and displacement. https://international-review.icrc.org/sites/default/files/irrc_99_19.pdf p. 361, referencing M. Bosworth. (2016). The Impact of Immigration Detention on Mental Health: A Literature Review. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2732892. S. Shaw. (2016). Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw. UK Government. <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> appendix 5. J. Cleveland, C. Rousseau and R. Kronick. (2012).

The Harmful Effects of Detention and Family Separation on Asylum Seekers' Mental Health in the Context of Bill C-31: Brief Submitted to the House of Commons Standing Committee on Citizenship and Immigration concerning Bill C-31, the Protecting Canada's Immigration System Act. Available at: https://refugeereseach.net/wp-content/uploads/2016/11/Cleveland-et-al-2012-Detention-and-asylum-seekers_mental-health.pdf. C. Neave. (2013). Suicide and Self-Harm in the Immigration Detention Network. Report by the Commonwealth and Immigration Ombudsman, Australian Government. https://www.ombudsman.gov.au/__data/assets/pdf_file/0022/30298/December-2013-Suicide-and-self-harm-in-the-Immigration-Detention-Network.pdf

- 41 MsF Greece. (12 June 2020). 'Greece/COVID-19: The extension of the restriction of movement of asylum seekers until 21 June is unjustifiable', available in Greek at: <https://www.msf.gr/magazine/elladacovid-19-adikaiologiti-i-paratasi-periorismoy-kykloforias-ton-aitoynton-asylo-mehri>. It also amounts to a disproportional restriction on asylum seekers' freedom of movement, in violation of the EU Commission's relevant guidelines. See European Commission. (16 April 2020). COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, p. 3, available at: <https://ec.europa.eu/info/sites/info/files/guidance-implementation-eu-provisions-asylum-return-procedures-resettlement.pdf>.
- 42 European Commission, Reply of Commissioner Johansson to parliamentary question, P004017/2019, 5 February 2020, available at: <https://bit.ly/3a2pXaj>.
- 43 ECRE. (2019). Border Procedures: Not a Panacea. <https://www.ecre.org/wp-content/uploads/2019/07/Policy-Note-21.pdf> p. 4
- 44 EASO. (2019). EASO Annual Report on the Situation of Asylum in the EU 2018. <https://www.easo.europa.eu/sites/default/files/ar-es-2018-english.pdf> p. 13
- 45 For more information, see ECRE's Asylum Information Database country report for Greece: <http://www.asylumineurope.org/reports/country/greece>
- 46 AIDA, Country Report on Greece, Update 2019, <http://asylumineurope.org/news/23-06-2020/aida-2019-update-greece>
- 47 The fast-track border procedure under Article 90(3) of the IPA repeats to a large extent the previous legal framework. Its additional provisions include: The registration of asylum applications, the notification of decisions and other procedural documents, as well as the receipt of appeals, may be conducted by staff of the Hellenic Police or the Armed Forces, if police staff is not sufficient. The interview of asylum seekers may also be conducted by personnel deployed by the European Asylum Support Office (EASO). '[I]n particularly urgent circumstances,' interviews can be conducted by trained personnel of the Hellenic Police or the Armed Forces, as opposed to the strict limitation to registration activities under the previous L. 4375/2016.

The asylum procedure shall be concluded in a short time period. This may result in the underestimation of the procedural guarantees provided by the international, European and national legal framework, including the right to be assisted by a lawyer. As these truncated time limits undoubtedly affect the procedural guarantees available to asylum seekers, there should be an assessment of their conformity with Article 43 of the recast Asylum Procedures Directive, which does not permit restrictions on the procedural rights available in border procedures for reasons related to large numbers of arrivals.

More precisely, according to Article 90(3)(c) of the IPA: The Asylum Service shall take a first instance decision within seven days. The deadline for submitting an appeal against a negative decision is 10 days. The examination of an appeal is carried out within four days. The appellant is notified within one day to appear for a hearing or to submit supplementary evidence. The second instance decision shall be issued within seven days.
- 48 Joint Ministerial Decision for the application of the provisions of par. 3 and 5 of article 90 of IPA, No 1333/30.12.2019, Gov. Gazette 4892/B/31.12.2019.
- 49 M. Bouchetel. No Rights Zone. (2019). Oxfam & GCR. <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2019-12/Oxfam%20%26%20GCR%20Briefing%20Paper%20-%20No-Rights%20Zone%20-%2006122019.pdf>. There seem to be some few cases in which the GAS accepted handwritten appeals by applicants themselves (article 93, 94 of L. 4636/2019) though to date, this is not possible to properly confirm. Even if such incidents are confirmed, they do not amount to access to effective remedies. Based on the IPA's provisions, these 'appeals' are to be rejected as inadmissible. Any ad hoc practices aimed at countering the deficiencies of the legal context serve only to prove its deficiencies. At worst, it may legitimise the speedier rejection of people in need of protection, under the cover of them allegedly having been provided with the opportunity to appeal their decision.
- 50 Indicatively, there is only one state-funded lawyer on the island of Lesbos, whereas on other islands there are none or also 1 to 2.
- 51 For more information, see AIDA, Country Report on Greece, Update 2019, <http://asylumineurope.org/news/23-06-2020/aida-2019-update-greece>
- 52 For more information see: Oxfam. (2020, May 19). Massive number of rejections in Greece deny people fair asylum process, Oxfam and GCR say. Press release. <https://www.oxfam.org/en/press-releases/massive-number-rejections-greece-deny-people-fair>

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- 53 Article 71, 78 of L. 4636/2019, and article 11 of L. 4686/2020
- 54 Article 82 of L. 4636/2019.
- 55 For more information see: Oxfam. (2020, May 19). Massive number of rejections in Greece deny people fair asylum process, Oxfam and GCR say.
- 56 L. 4636/2019, article 39 par. 8(στ)
- 57 On the weekend of 4–5 January 2020, cold weather and heavy rain were recorded, with Storm Iphigeneia affecting the area from the early hours of 5 January. See In.gr (2020, 4 January). 'Weather: "Hephaestion" arrives with anger - brings a wave of cold, storms and snow.' <https://www.in.gr/2020/01/04/greece/kairos-o-ifaistion-erxetai-agriemenos-fernei-kyma-psyxous-kataigides-kai-xionia/>
- 58 Specifically, article 90 IPA abolished the exemption of vulnerable asylum seekers from undergoing fast-track border procedures on the islands, which was provided by article 60 of the previous law (L 4375/2016).
- 59 ECRE, 'EU ministers agree on measures to deter 'non-cooperation' of refugees and migrants', 13 November 2015, <https://www.ecre.org/eu-ministers-agree-on-measures-to-deter-non-cooperation-of-refugees-and-migrants/>; ECRE, 'New EU Commission plans on returns and detention will create more harm and suffering', 3 March 2017, <https://www.ecre.org/new-eu-commission-plans-on-returns-and-detention-will-create-more-harm-and-suffering/>; HRW/B. Frelick, I. M. Kysel & J Podkul. (2016). The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants. <https://www.hrw.org/news/2016/12/06/impact-externalization-migration-controls-rights-asylum-seekers-and-other-migrants>; Gammeltoft-Hansen, T., & Tan, N. F. (2017). The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy. *Journal on Migration and Human Security*, 5(1), 28–56.
- 60 For a summary, see: FRA. (2015). Alternatives to detention for asylum seekers and people in return procedures. http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-alternatives-to-detention-compilation-key-materials-2_en.pdf

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For further information on the issues raised in this paper please email advocacy@oxfaminternational.org

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