

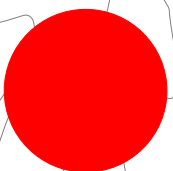
*EXPERT REPORT*

**Detained and Forgotten  
at the Gates of the EU**

**Detention of Migrants on the Island of Kos**

November 2021

*Equal Rights Beyond Borders*



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**Authors**

Jamie Kessler, Athina Ntavasili, Vidya Ramachandran, Sophie Scheytt

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# EXECUTIVE SUMMARY

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This report documents the use of immigration detention on the Eastern Aegean Island of Kos. Kos hosts one of five Greek EU hotspots and the only pre-removal detention centre (PRDC) on the Eastern Aegean islands. Since January 2020, the Greek authorities have detained nearly every asylum seeker who has arrived there, leaving many people to linger in detention for months, and often more than a year.

**Section I** provides context for this report by detailing the history of immigration detention in Greece and Europe more broadly. This section shows that prior to the so-called migration crisis of 2015/2016, immigration detention was on the decline in Europe, in response to growing public concern about human rights abuses in detention. However, the tide shifted in 2015 and 2016 as nearly one million asylum seekers arrived at Europe's border and states sought to keep people from entering Europe. That history sets the stage for the practices on Kos today.

**Section II** introduces the situation on Kos and outlines the report's scope. Section II explains that the report has two separate scopes. First the report explores the legal grounds for detaining migrants in Greece and what procedural guarantees the authorities must provide to them. Second, the report looks at the living conditions in the Kos PRDC and highlights the physical and mental toll detention can take on refugees and asylum seekers.

**Section III introduces the first scope of the report:** the legal grounds for detaining migrants in Greece and the EU and juxtaposes them against the practices on Kos. Section III distinguishes between asylum seekers – people who are in the asylum procedure – and rejected asylum seekers who have had their applications rejected at the second instance. Section III explains that under both Greek and EU law, the authorities can only detain asylum seekers exceptionally, and as long as there is no alternative, less coercive measure. However, as this section shows, the authorities on Kos have automatically detained all asylum seekers upon arrival, regardless of their individual circumstances or available space in the nearby Reception and Identification Centre. Section III also details the grounds for detaining rejected asylum seekers, showing that under Greek, EU, and human rights law Greece may only detain rejected asylum seekers for the purpose of their removal. However, the authorities on Kos continue to automatically detain rejected asylum seekers, even though returns to Turkey have been suspended since March 2020 and there is thus no prospect of return. Section III then goes on to lay out the legal grounds for detaining vulnerable persons before concluding that, in many cases, vulnerable persons are detained unlawfully on Kos. Section III raises particular concern about the authorities' former practice of detaining families with young children and the ongoing practices with respect to survivors of torture and gender-based violence. Finally, Section III concludes by describing the procedural guarantees for detained migrants and the right to an effective remedy. Specifically, this part of Section III looks at detained persons' access to the asylum procedure, legal services, and information on detention. We conclude that people have limited access to information about the asylum procedure, legal services, and information about the reasons for their detention. Section III also concludes that the right to an effectively remedy is severely curbed for people detained in the Kos PRDC.

**Section IV introduces the second scope of the report:** documenting the living conditions for people detained in the Kos PRDC and Greece's obligations to protect migrants' human rights. The analysis in this section is drawn primarily from in-depth interviews with people who were detained in the Kos PRDC. Section A provides a general overview of the detention facility on Kos. Section B lays out the legal standards

for detention conditions under Greek, EU, and human rights law, showing that the state has a special obligation to protect people who are wholly dependent on it. Section B also details the special conditions the law proscribes for vulnerable persons and minors in particular. Section C provides an in-depth analysis of the living conditions in the Kos PRDC divided into 10 themes that were frequently mentioned by interviewees: the use of police detention, carceral environment and ill treatment by the police, inadequate food and water, lack of recreational activities, mixed-gender accommodation, overcrowding, access to privacy, poor hygiene facilities, inadequate healthcare, and inadequate conditions for vulnerable persons. Section IV concludes by showing that conditions people describe are not only appalling but also violate the law on several grounds, particularly for vulnerable persons.

Finally, in **Section V** the report concludes by documenting detained persons' experiences after detention. Section V does not provide a detailed legal analysis on the subject because it is not the focus of the report. However, we have decided to include these people's experiences after detention because we found that they are directly affected by their period in detention and are therefore vital to understanding the immense and devastating consequences of immigration detention.

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# ABBREVIATIONS

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APD	Asylum Procedures Directive
CFR	EU Charter of Fundamental Rights
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GAS	Greek Asylum Service
IPA	Greek Asylum Law 4636/2019
MS	Member State (of the EU)
PRDC	Pre-Removal Detention Centre
OSF	Open Society Foundations
RCD	Reception Conditions Directive
RD	Return Directive
RIC	Reception and Identification Centre
RIS	Reception and Identification Services
SGBV	Sexual and gender-based violence
UNHCR	United Nations High Council for Refugees

# DEFINITIONS

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**Asylum seekers and refugees:** While these terms are sometimes used interchangeably, EU, Greek and international law<sup>1</sup> distinguish between ‘asylum seekers’ and ‘refugees’: an asylum seeker is generally someone who has expressed her will to apply for international protection and is awaiting the outcome of their application, while a refugee is someone whose application for protection has been approved, and who has been granted refugee status.

**European Asylum Support Office (EASO):** An agency of the European Union that provides Member States with varied support in the interests of working towards a Common European Asylum System.<sup>2</sup> In Greece’s EU Hotspots, this includes support with processing claims for asylum. On Kos, EASO caseworkers conduct asylum interviews and issue opinions on refugee status.

**Geographical restriction:** All new arrivals to the EU Hotspots are subjected to a ‘geographical restriction’ that prohibits movement outside the island to which they are assigned until the conclusion of their asylum procedure.<sup>3</sup>

**EU Hotspot approach:** Devised by the European Commission in 2015, the hotspot approach concentrates the “registration, identification, fingerprinting and debriefing of asylum seekers, as well as return operations” within designated zones at the EU’s external borders. Member States that host the EU Hotspots are provided varied operational support,<sup>4</sup> e.g. EASO assists with processing asylum applications, and Frontex assists with facilitating returns.<sup>5</sup> Greece’s five EU Hotspots are located on Aegean islands near the Turkish border: Lesbos, Samos, Chios, Leros and Kos.

**IPA:** Greek Asylum Law 4636/2019 (‘IPA’), entered into force on 1 January 2020.<sup>6</sup> The law takes a more restrictive stance towards migrants and asylum seekers, and aims to reduce the number of arrivals, increase the number of returns to Turkey and strengthen border control measures.<sup>7</sup>

**Migrant:** This report adopts ‘migrant’ “as an umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence...”<sup>8</sup> Our usage of migrant includes several specific legal categories, including asylum seekers and refugees (see ‘Asylum seekers and refugees’). It also includes undocumented migrants, who do not carry any valid legal status in Greece.

**Pre-Removal Detention Centre/PROKEKA:** Article 31 L 3907/2011 provides for the foundation of ‘pre-removal detention centres’ (PRDCs) established in accordance with the Returns Directive.<sup>9</sup> While PRDCs have operated since 2012, they were officially established through Joint Ministerial Decisions in January 2015 (see

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1 UNHCR, Global Report 2012 Glossary (2012), available at: <https://bit.ly/2UKFTw6> [all links last visited on 25/09/2021].

2 EASO, What we do, available at: <https://bit.ly/2WgTQmx>.

3 AIDA, Grounds for detention: Greece, available at: <https://bit.ly/3DjyUfh> [last updated 10/06/2021].

4 European Commission Migration and Home Affairs, Hotspot Approach, available at: <https://bit.ly/3BgEM7b>.

5 Ibid.

6 AIDA, Short overview of the asylum procedure: Greece, available at: <https://bit.ly/3BddOxe> [last updated 10/06/2021].

7 Ibid.

8 IOM, *Who is a migrant?*, available at: <https://bit.ly/3B6mHZg>.

9 AIDA, *Place of detention: Greece*, available at: <https://bit.ly/2Wo1mLQ> [last updated 10/06/2021].

below).<sup>10</sup> There are currently eight active pre-removal detention centres in Greece; a ninth has been legally established on Samos, but at the time of writing, is not operational.<sup>11</sup> While PRDCs vary considerably with respect to capacity, design, and living conditions,<sup>12</sup> they each serve the same objective: to contain both asylum seekers—detained under IPA, and other migrants prior to deportation. In Greek, the acronym for PRDC is ‘PROKEKA’. Detainees on Kos generally refer to it as ‘the prison’ or ‘the closed camp’. This report uses the term PRDC, unless otherwise noted.

**Reception and Identification Centre (RIC):** Formerly known as First Reception Centres; Reception and Identification Centres (RIC) exist in each of the Greek EU Hotspots. According to the IPA, newly arrived persons should be transferred to a RIC, where they are held for at least 5 days for the purposes of reception and identification. This initial period of restriction of movement may be extended for up to another 25 days. RICs also provide information on asylum seekers’ rights and obligations, transfers to other facilities, and possibilities to seek protection or voluntary return; registration and medical checks and referral to the asylum procedure.<sup>13</sup> The Kos RIC is adjacent to the PRDC and is commonly referred to as ‘the open camp’. Individuals in the asylum procedure have the option of living in the RIC but may instead choose to arrange their own accommodation in town. Although their movement is restricted on arrival, those living in the RIC are generally permitted to freely move after this initial period.

**Sexual- and gender-based violence:** This report adopts ‘sexual- and gender-based violence’ (SGBV) to refer to “harmful acts directed at an individual based on their gender”, which “can include sexual, physical, mental and economic harm inflicted in public or in private”.<sup>14</sup> Risks of SGBV, particularly for women and girls, increase during displacement.<sup>15</sup> Men, including LGBTI men, also experience heightened risks of SGBV during displacement. Many Equal Rights clients – both women and men – have disclosed experiences of SGBV, whether in their countries of nationality, in Greece, or somewhere in between.

**The UN Refugee Agency (UNHCR):** In Greece, UNHCR provides protection services, and varied social services including accommodation, cash-based interventions and programmes for unaccompanied and separated children.<sup>16</sup> In Greece, UNHCR is not responsible for refugee registration or status determination. On Kos, UNHCR identifies vulnerable individuals in the asylum procedure to refer on for additional support, and operates a cash-based intervention for non-detained asylum seekers.

**Vulnerability:** Under Article 20 (3) IPA, transposing Article 20 Directive 2011/95/EU, ‘vulnerable persons’ includes:

minors, unaccompanied or immediate relatives of shipwrecked parents (parents and siblings), persons with disabilities, the elderly, pregnant women, single parents, children, victims of human trafficking, people with serious illnesses, people with mental and mental disabilities and those who have been tortured, raped or other

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10 Ibid.

11 Ibid.

12 See e.g., Danai Angeli & Anna Triandafyllidou, Is the indiscriminate detention of irregular migrants an effective policy tool? A case-study of the Amygdaleza Pre-Removal Center, Midas Policy Brief (May 2014), available at: <https://bit.ly/3yiDF51>. See also, AIDA, Place of detention: Greece, available at: <https://bit.ly/2Wo1mLQ> [last updated 10/06/2021], University of Oxford Border Criminologies, Landscapes of Border Control: Moria Pre-Removal Detention Centre, available at: <https://bit.ly/2WnOllT>, University of Oxford Border Criminologies, Landscapes of Border Control: Corinth Pre-Removal Detention Centre, available at: <https://bit.ly/2WpXWbJ>.

13 AIDA, Reception and identification procedure: Greece, available at: <https://bit.ly/3mww2pe> [last updated 10/06/2021].

14 UNHCR, Gender-based Violence, available at: <https://bit.ly/3sJSHFY>.

15 Ibid.

16 UNHCR, Greece, available at: <https://bit.ly/3klCHjv>.

serious forms of psychological, physical or sexual violence, such as victims of genital mutilation of organs

Many Equal Rights clients in detention are members of vulnerable groups; especially single parents, children, victims of trafficking, torture and SGBV, and people with serious illnesses.

# METHODOLOGY

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Our findings in this report are drawn from five key sources. Firstly, we draw from semi-structured interviews conducted between April and July 2021 with nine Equal Rights clients currently or formerly detained in Kos PRDC. Since opening our Kos office earlier this year, most of our clients have been detained – most on arrival, and others, at some stage during their asylum procedure. We were therefore easily able to identify interview participants from our client base and requested interviewees’ participation and obtained their consent prior to interview. Alternatively, where interviews were conducted in the course of our legal services work, specifically, to prepare applications for objections to detention (see below), we requested individuals’ consent to also use their transcripts for this report.

All interviews were conducted either in person at Kos PRDC, or over the phone. They were conducted in participants’ native languages or a language in which they were proficient – Arabic, English, French or Haitian Creole – with the assistance of interpreters where interviewers proficient in the relevant languages were unavailable. Interviews were based on a standard script that included several open-ended questions, and participants were encouraged to include additional information as they saw fit. Our participant pool included nationals of Syria, Guinea, Haiti and Cameroon. Most were young, ranging in age from 20-35. We interviewed women and men, as well as people who are LGBTI, people with serious illnesses, and SGBV survivors. To protect our clients’ anonymity, all interview data included in this report has been de-identified. Subjects did not receive any payment or services in exchange for their participation in interviews and were given the option to withdraw from the research at any point prior to the report’s publication.

Secondly, we draw upon comments and observations made by 22 detained clients during our everyday work. They included nationals of the following countries: Benin, Cameroon, Cote D’Ivoire, Democratic Republic of Congo, Guinea, Haiti, Iraq, Palestine, Syria, Togo, were similarly diverse in age, gender, and sexual orientation. The 22 clients also included single parent families, SGBV survivors, survivors of torture, and persons with serious physical and mental health conditions. Following meetings with clients, we have kept a record of their observations and questions regarding detention practices in Kos. Each of these clients was contacted and consent obtained to use their material in this research.

Thirdly, we have included our own observations formed over our months spent working with clients in detention. Since opening our Kos office, Equal Rights has represented nearly 100 clients, most of whom were detained. Our staff have also made regular visits to the PRDC to meet with our detained clients and to provide legal advice and information. While we have not had access to the living quarters in the PRDC on each of these occasions, we have had access to other parts of the PRDC, including meeting rooms, police offices, and the medical areas. We have also interacted closely with police, witnessed police interacting with detainees, and caught glimpses of detainees’ everyday lives. We have kept detailed field notes following these visits, which further inform our analysis. Similarly, some of the conclusions are drawn from specific outcomes in our cases. For example, we refer extensively to a submission we made in July 2021 to the Greek Ombudsman on behalf of 19 detained rejected asylum seekers. Based on our application, the Greek Ombudsman call on the police to release the 19 people in three separate opinions, but the police have refused to release any of the applicants. The experience and outcome of that case heavily informs several sections of this report.

Fourthly, we have obtained and analysed photos and videos of the PRDC, which are included in this report. These are generally difficult to obtain, as detainees’ phone cameras are routinely broken on their arrival (see below). Still, the limited photos we have accessed clearly illustrate the everyday conditions in the centre, in-

cluding unhygienic facilities, poor-quality food, and maltreatment by police. Additional photos illustrate the ongoing construction of new ‘closed facilities’ in Kos,<sup>17</sup> which point to the expansion and fortification of the detention estate in Kos, and in Greece.

Finally, we reached out to other actors on the island of Kos for their comments on the conditions in the PRDC. UNHCR responded to a list of questions from Equal Rights, and their answers are incorporated in the report and noted accordingly.

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17 ‘Closed reception facilities’ will soon be opened in each hotspot, where newly arrived migrants will be detained until the conclusion of their asylum procedure or until their removal. AIDA, *Reception and identification procedure: Greece*, available at: <https://bit.ly/2WIHtoH>.

# I. CONTEXT FOR THIS REPORT

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Immigration detention has been an integral part of Greece’s approach to migration for the past several decades, both on the Eastern Aegean Islands and in mainland Greece. Today, several so-called pre-removal detention centres exist across Greece, including the Amygdaleza centre in Athens, the Fylakio centre near Thrace, and the Kos pre-removal detention centre (PRDC) near the village of Pyli.<sup>18</sup> Although some reporting exists about detention practices in Greece – particularly on the former use of protective custody to detain unaccompanied minors – there are very few comprehensive studies about detention in Greece.<sup>19</sup> This report aims to fill that gap by providing an in depth look at one of Greece’s detention facilities: the Kos PRDC. The report first offers a background on immigration detention in both Europe and Greece and then moves on to analyse the specific way in which immigration detention plays out on Kos. By situating the practices on Kos within the broader historical context of immigration detention in Europe, this report sheds light on the fact that—despite the island’s geographical isolation—these practices are connected to, rather than isolated from, broader policies that seek to prevent asylum seekers from reaching Europe’s shores.

## A. Background on Immigration detention in Europe

From the 1990s onwards, European Union (EU) legislative, administrative and political frameworks for reception, detention and deportation have rapidly developed.<sup>20</sup> As early as 2001, the European Commission published a Communication on a common policy on illegal immigration,<sup>21</sup> pointing out the importance of a common return policy. However, it took seven years of negotiations among the EU Member States (MS) for the Council to finally approve all of the amendments contained in the European Commission’s opinion. The resulting document was the EU Returns Directive 2008/115/EC (RD), which was adopted in 2008 and entered into force in January 2009. The RD, which has not been amended since it entered into force, provides for the detention of third-country nationals with the aim of facilitating their removal<sup>22</sup> within specialised detention facilities.<sup>23</sup> The Returns Directive further allows for the detention of unaccompanied minors and families with minors as a measure of last resort, and on a short-term basis.<sup>24</sup>

In 2003, the former version of the Reception Conditions Directive (RCD) was adopted, which regulates the reception condition standards for asylum seekers. However, unlike the RD, the initial RCD did not provide clear regulations on the detention of asylum seekers and did not enumerate permissible detention grounds.<sup>25</sup>

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18 AIDA, *Place of Detention*, available at: <https://bit.ly/2ZhsCgF> [last updated: 10 June 2021].

19 Human Rights Watch has published extensive reporting on the detention of unaccompanied minors in Greece, as far back as 2008. See e.g., *Detention of Unaccompanied Children in Greece* (23 June 2020), available at: <https://bit.ly/2XMfrUm>, Human Rights Watch, ‘*Why are you Keeping me Here? Unaccompanied Children Detained in Greece*’ (8 September 2016), available at: <https://bit.ly/3nx-ePed>, Human Rights Watch, *Left to Survive: Systemic Failure to Protect Unaccompanied Minor Children in Greece* (22 December 2008), available at: <https://bit.ly/3EhEs9C>.

20 Lydi Arbogast, *Migrant Detention in the European Union: a Thriving Business*, Migreurop (July 2016), 11, available at: <https://bit.ly/3khGSfW>. See also, Open Access Now, *The Hidden Face of Immigration Detention Camps in Europe*, 9, available at: <https://bit.ly/3mSmTYf>.

21 Commission Communication, COM(2001) 672, *Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration*, available at: <https://bit.ly/3zzYoT4>.

22 Art. 15 Directive 2008/115/EC.

23 Art. 16 Directive 2008/115/EC.

24 Art. 17 Directive 2008/115/EC.

25 See in the drafting history of the Reception Conditions Directive Peek/Tsourdis in Hailbronner/Thym EU Immigration and Asylum Law, Part D.V. para 108 et. seq., p.1441.



The recast of the directive was adopted in 2013 (Reception Conditions Directive 2013/33/EU)<sup>26</sup> which amended the Directive to include provisions on detention. Article 8(3) of the recast RCD provides an exhaustive list of six grounds for detaining asylum seekers.<sup>27</sup>

Within this context, centres for the identification and detention of migrants have proliferated across the EU over the past three decades.<sup>28</sup> Between the 1990s and the first decade of the 21<sup>st</sup> century, many of these centres grew larger and more sophisticated.<sup>29</sup> Between 1999 and 2011, the capacity of Italy's national detention system expanded from fewer than 1,000 beds to 1,900 beds.<sup>30</sup> Meanwhile, immigration detention expanded in Norway as well, a trend described by researchers Synnove and Thomas Ugelvik as resulting from immigration's newfound status as "an issue perpetually at or near the top of the political agenda".<sup>31</sup> In the UK, immigration removal centres with capacity for up to 448 people are either privatised, and therefore overseen by profit-driven companies including G4S,<sup>32</sup> Serco<sup>33</sup> and Clearsprings,<sup>34</sup> or managed by the national prison service.<sup>35</sup>

The so-called refugee crisis in 2015 and 2016 marked another critical moment in the detention of migrants in Europe.<sup>36</sup> From 2010 until 2016, detention in many EU Member States had either plateaued or declined, with public opinion that was disturbed by the reported conditions in many detention centres.<sup>37</sup> For example, 2,982 migrants were taken into custody in Italy in 2016, as compared to 12,112 in 2009.<sup>38</sup> Meanwhile, by 2016, only 4 detention facilities operated in the country, as compared to 13 in 2010.<sup>39</sup> However, after 2016 and the "summer of migration," the number of detention facilities in some European countries began to rise again, as humanitarian concerns gave way to "the need to prevent 'secondary movements' of asylum seekers."<sup>40</sup> This was particularly true in border regions. For example, by mid-2018, six detention facilities with a total capacity for 880 beds were operating in Italy.<sup>41</sup>

The sudden increase of people seeking asylum at the EU's external borders, coupled with the various restric-

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26 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

27 Peek/Tsourdis in Hailbronner/Thym EU Immigration and Asylum Law, Part D.V. para 117, p.1443.

28 Alberti 2010: 139, Lydi Arbogast, *Migrant Detention in the European Union: a Thriving Business*, Migreurop (July 2016), available at: <https://bit.ly/3khGSfW>.

29 Lydi Arbogast, *Migrant Detention in the European Union: a Thriving Business*, Migreurop (July 2016), 2, available at: <https://bit.ly/3khGSfW>.

30 Giuseppe Campesi & Giulia Fabini, *Immigration Detention as Social Defence: Policing 'Dangerous Mobility' in Italy*, *Theoretical Criminology* 24 (2020) 2.

31 Synnove Ugelvik & Thomas Ugelvik, *Immigration control in Ultima Thule: Detention and exclusion, Norwegian Style*, *European Journal of Criminology* 10(6) (2013), 710.

32 Jamie Grierson, *Serco given £200m contract to run two more immigration removal centres*, *The Guardian* (20 February 2020), available at: <https://bit.ly/3yr1JCM>.

33 Serco, *Yarl's Wood Immigration Removal Centre*, available at: <https://bit.ly/3gNaHnZ>.

34 Rob Davies, *Firm running asylum-seeker barracks in Kent standst o earn £1bn*, *The Guardian* (3 Feb 2021), available at: <https://bit.ly/38stpMZ>.

35 GOV.UK, *Morton Hall Immigration Removal Centre*, available at: <https://bit.ly/3t1oBHS>.

36 Giuseppe Campesi & Giulia Fabini, *Immigration Detention as Social Defence: Policing 'Dangerous Mobility' in Italy*, *Theoretical Criminology* 24 (2020) 52.

37 Majcher et al: 2

38 Giuseppe Campesi & Giulia Fabini, *Immigration Detention as Social Defence: Policing 'Dangerous Mobility' in Italy*, *Theoretical Criminology* 24 (2020) 52.

39 Ibid.

40 Majcher et al: 2

41 Giuseppe Campesi & Giulia Fabini, *Immigration Detention as Social Defence: Policing 'Dangerous Mobility' in Italy*, *Theoretical Criminology* 24 (2020) 53.



tive immigration policies that preceded and followed it, have led to a protection crisis by which detention is used as “a convenient off-the-shelf measure that [EU] states employ without careful consideration of its ramifications or usefulness”.<sup>42</sup> Although policymakers and governments across Europe have often justified immigration detention as a means of facilitating migrant returns, overwhelming evidence indicates that only a small percentage of detained migrants are actually, in practice, removed.<sup>43</sup>

## *B Immigration detention in Greece: 1990s-2019*

Greece’s current detention system dates back to the 1990s<sup>44</sup> when the country became one of positive net immigration.<sup>45</sup> In 2001, a special facility for the reception of migrants was opened on Lesbos which was later housed in a disused prison site.<sup>46</sup> Already as early as 2001, illegal measures, including illegal push-backs and detention without notification or access to legal services, were routinely implemented to counter irregular crossings at the border.<sup>47</sup>

By 2005, the detention of migrants had become enshrined in law. Since then, Greek laws on detention have both proliferated and fortified: Law 3386/2005 (‘2005 Law’) provided for the detention of third-country nationals prior to deportation on various grounds, including being “suspect for escape”, “dangerous for the public order”, or “avoid[ing] or obstruct[ing] the preparation of his departure or the procedure of his expulsion”.<sup>48</sup> Law 3772/2009 (‘2009 Law’) then increased the maximum period of detention prior to deportation from 3 to 6 months, and allowed for an extension of up to 12 months, thus allowing for a detention period of up to 18 months in total.<sup>49</sup> Beginning in 2010, detention practices on the ground already diverged from what was legally permissible: in 2010, Amnesty International expressed concerns that the legal provisions on immigration detention were frequently contravened, as Greek authorities were found to be detaining irregular migrants who could not, for various reasons, be removed.<sup>50</sup>

In May 2011, the detention estate was further fortified when the Cabinet expressed its intention to establish the country’s first reception centres and detention facilities in former military camps.<sup>51</sup> The following year, Law 3907/2011 (‘2011 Law’) established Greece’s Asylum Service and First Reception Service, and provided for the detention of third-country nationals subject to return procedures in accordance with the EU Returns Directive.<sup>52</sup> In the months following, border control procedures rapidly intensified, and increasing numbers of undocumented migrants were detained.<sup>53</sup>

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42 Majcher et al: 4

43 Jesuit Refugee Service, *Immigration Detention*, available at: <https://bit.ly/3gLFQI8>.

44 University of Oxford Border Criminologies, *Landscapes of Border Control: Greece*, available at: <https://bit.ly/3DBIhqw>.

45 Leonidas K Cheliotis, *Behind of the veil of philoxenia: The politics of immigration detention in Greece*, 10(6) (1 November 2013) 725.

46 Ibid.

47 University of Oxford Border Criminologies, *Landscapes of Border Control: Greece*, available at: <https://bit.ly/3DBIhqw>,

University of Oxford Border Criminologies, *Landscapes of Border Control: Moria Pre-Removal Detention Centre*, available at: <https://bit.ly/2WnOIT>.

48 Art. 76(3) L. 3386/2005.

49 Amnesty International, *Greece: Irregular Migrants and Asylum-Seekers Routinely Detained in Substandard Conditions* (July 2010), 8, available at: <https://bit.ly/3Dsk3zb>.

50 Ibid at 15.

51 University of Oxford Border Criminologies, *Landscapes of Border Control: Greece*, available at: <https://bit.ly/3DBIhqw>.

52 Art. 30 L. 3907/2011.

53 Pillant Laurence, *Operation “Xenios Zeus”: A strategy for deterring immigration through detention, intimidation and violation of migrants’ rights*, Athens Social Atlas (December 2015), available at: <https://bit.ly/3BsEVOa>.

In 2013, Presidential Decree No. 113 ('2013 Decree') was issued, regulating the detention of applicants for asylum pursuant to the EU Directive 2008/85/EC, governing the minimum standards on procedures for granting and withdrawing refugee status.<sup>54</sup> The Decree, like the Directive, clarified that applicants for international protection could not be held in detention for the sole reason that they were asylum seekers, or that they have entered or stayed illegally in the country, and again provided for a maximum detention period of 18 months.<sup>55</sup> However, it was reported that in many cases, Greek authorities continued to detain asylum seekers automatically and arbitrarily.<sup>56</sup>

In January 2015, the legal grounds for detention in Greece were again expanded with Joint Ministerial Decisions ('2015 Decisions') that established multiple pre-removal detention centres in accordance with the EU Returns Directive.<sup>57</sup> In 2016, Law 4375/2016 ('2016 Law') provided for the pre-removal detention of asylum seekers within the detention areas established in Law 3907/2011 ('2011 Law'). Still, Law 4375/2016 only provided for the detention of asylum seekers who applied for asylum from detention.<sup>58</sup> In practice, however, immigration detention was again far more widely – and often, extra-legally – applied.<sup>59</sup>

In the immediate aftermath of the March 2016 EU-Turkey Statement (also known as 'EU-Turkey Deal'), all new arrivals to the Eastern Aegean islands were subjected to a detention measure "either *de facto* under the pretext of a decision restricting the freedom within the premises of the RIC for a period of 25 days or under a deportation decision together with a detention order".<sup>60</sup> Although this practice has since changed, authorities on the Aegean islands of Lesbos, Kos and Leros began implementing a so-called 'low profile scheme' in 2018. This scheme involves the automatic detention of new arrivals belonging to nationalities with low asylum recognition rates, with no prospect of release throughout the entirety of their asylum procedures<sup>61</sup>

The practice of detaining asylum seekers began to increase dramatically in 2020, following several changes to the asylum and return laws in 2019 and 2020. Those changes, and their consequences, will be explored throughout this report.

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54 Art. 12 Presidential Decree No. 113.

55 Ibid.

56 Leonidas K Cheliotis, *Behind of the veil of philoxenia: The politics of immigration detention in Greece*, 10(6) (1 November 2013) 729.

57 AIDA, *Greece: Place of Detention*, available at: <https://bit.ly/2V90WZE>.

58 AIDA, *Greece: Grounds for Detention*, available at: <https://bit.ly/3yzaRFA>.

59 Ibid.

60 AIDA, *Country Report: Greece* (December 2018), 33, available at: <https://bit.ly/2YbBYtD>.

61 Ibid at 147. See also HIAS, *Locked up Without Rights* (December 2019), available at: <https://bit.ly/3kLZDZe>.

## II. INTRODUCTION TO THE SITUATION ON KOS AND THE REPORT'S DUAL-SCOPE

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### *A. Introduction to the situation on Kos*

On 24 March 2021, Greek authorities announced that a man had died in the Kos Pre-Removal Detention Centre (PRDC). The victim was 44-year-old Macky Diabate, a Guinean national who arrived on Kos just two months earlier. Diabate's health was already in poor condition when he arrived as an asylum seeker in Greece. Under both Greek and EU law, persons with "serious illnesses" are considered a vulnerable group eligible for exemption from detention. When Diabate arrived in Greece, he explained his condition to the police—producing medical documents and lifting his shirt to reveal evidence of his two previous abdominal operations.<sup>62</sup> However, Diabate's requests to be released were ignored. The police detained him pending his asylum procedures.<sup>63</sup>

In the weeks following, Diabate's health deteriorated. According to reports from witnesses, in the days leading up to his death, Diabate asked the police several times to be taken to the hospital and at one point was screaming in pain. The day before he died, Diabate tells police he doesn't feel well, and asks to see a nurse. He is told it is too late in the day, and nothing can be done. The following day, he is finally permitted to see a nurse, who gives him three paracetamol tablets, and refuses to transfer him to<sup>64</sup> Diabate is pronounced dead at 8:30pm the same evening. The cause of death is determined as peritonitis – a preventable, treatable abdominal infection caused by a burst appendix.

The fact that a young man—who fled his home in pursuit of Europe's protection—died from an entirely preventable medical complication remains confounding. Our research has revealed that Diabate's experiences – and those of his fellow detainees at Kos PRDC – are not exceptional. In fact, another death occurred in Greece's immigration detention system just four days after Diabate's. On 28 March 2021, 24-year-old Kurdish asylum seeker, Ibrahim Ergun, committed suicide after being detained in the PRDC in Corinth for over 17 months.<sup>65</sup> These incidents have drawn attention to the precariousness that detained asylum seekers' face in Greece – a state of affairs that seems to have barely improved since the foundation of the national detention system three decades ago. Asylum seekers in Greece continue to be routinely and unlawfully detained, deprived of sufficient food and medical attention, and systematically prevented from accessing already inadequate legal remedies and services. Since the opening of our Kos office in January 2021, we have repeatedly seen these issues surface in the Kos PRDC.

This report documents the current situation concerning the detention of asylum seekers in the Kos PRDC. It draws from the testimonies of 31 asylum seekers detained in the Kos PRDC in Pyli in order to examine both their experiences of being detained and the conditions in which they are forced to live. These testimonies are then assessed against standards established under Greek, EU, and international law.

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62 Deportation Monitoring Aegean, *Another death in prison – Outrage in Kos detention centre after medical attention withheld* (26 March 2021), available at: <https://bit.ly/3krQViE>.

63 Ibid.

64 Ibid.

65 AND News, *Brother of Kurdish refugee who committed suicide in Greek camp: The state is responsible* (29 March 2021), available at: <https://bit.ly/3zhv5Vb>.

## *B. Scope*

This report explores 1) the legal grounds for detaining asylum seekers—both those with cases pending and those with final rejections, 2) the living conditions in detention, and 3) the available legal remedies for challenging detention. It also considers the legal grounds for detaining vulnerable individuals, including minors, persons with serious illnesses, and survivors of gender-based violence.

This report raises two key legal questions: (1) do the detention practices on Kos violate Greek, EU, and international human rights law and (2) are the conditions in the Kos PRDC in line with Greece's positive obligations to provide adequate living conditions as proscribed by Greek, EU, and international human rights law? Although the two questions posed by this report are interconnected, they invoke separate legal questions and affect different dimensions of fundamental and human rights. Accordingly, this report is divided into two parts.

**The first section** provides an overview of the legal pre-conditions required to detain migrants in Greece and assesses whether the practice of detaining migrants on Kos is compatible with these various legal standards. It then explores the procedural guarantees that Greek authorities must ensure detained migrants under EU, domestic, and human rights law—including access to lawyers, the provision of information regarding the grounds for one's detention, and an individualised assessment—in order to evaluate whether the procedures on Kos meet these guarantees. In both cases, this report concludes that the practices on Kos are—in many respects—unlawful.

**The second section** investigates whether the Greek state meets its positive obligations to provide living conditions in accordance with the law – regardless of whether the detention itself is lawful or not. This part of the report is based primarily on the reports and insights of the 31 asylum seekers interviewed while detained in the Kos PRDC. It is the most comprehensive report on the living conditions in the Kos PRDC to date, as observers and lawyers have not had access to the living areas of the Kos PRDC since March 2020. Lastly, the second section briefly discusses the hardships faced by those previously-detained on Kos upon their release – highlighting the unforeseen, lasting consequences of Kos' detention practices.

# III. SECTION 1: THE RIGHT TO BE FREE

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This section analyses Greece's right to detain migrants and the procedures the state must follow in order to do so. The first part of Section 1 looks at the grounds for detention in Greece and Europe. Sub-sections A-C look at the different legal statuses of migrants in Europe and analyse the grounds under which states may detain each group. In doing so, sub-sections A-C distinguish between asylum seekers and migrants: asylum seekers are considered lawfully present in Greece, while migrants lack any legal status in Greece or elsewhere in the EU. Sub-section D applies this legal framework to the situation on Kos to show that, in many cases, migrants on Kos are detained unlawfully. Sub-section E then goes more in-depth into the detention grounds and practices on Kos for vulnerable persons.

Having analysed whether there are sufficient legal grounds to detain a person in the first place, the second half of Part I looks at the procedures the authorities must follow when detaining someone. Section F looks specifically at the procedural safeguards the law grants to detained migrants – including access to lawyers, information on the reasons for their detention, and an individualised assessment – before discussing the right to an effective remedy.

Section 1 concludes that the authorities 1) frequently detain asylum seekers and migrants unlawfully, including vulnerable persons, 2) fail to ensure procedural guarantees such as access to information and lawyers, and 3) fail to protect asylum seekers and migrants' right to an effective remedy.

## *A. The Right to be Free as a Fundamental Right*

The right to liberty is among the most fundamental rights in Europe. As laid out in Article 5 ECHR and Article 6 Charter of Fundamental Rights (CFR) of the EU,<sup>66</sup> states are generally prohibited from detaining people, except under limited, exceptional circumstances. Thus, certain preconditions must be met in order for detention to be legal. In the case of migrants, those preconditions depend significantly on a person's legal status.

## *B. Who can be detained and for what reason? The importance of a person's legal status*

For detention to be lawful there must be a legal provision that allows the state to deprive a person of his or her liberty. For migrants who arrive on the Eastern Aegean islands in Greece, those provisions exist under domestic and European Law and distinguish between people who are asylum seekers and those who are not. On Kos and elsewhere in Greece, Greek authorities distinguish between asylum seekers and migrants in the following three ways:

1. New Arrivals are not considered asylum seekers;
2. Persons who expressively formulate their wish for asylum are considered asylum seekers;
3. Persons with a final, rejected asylum applications are not considered asylum seekers.

This distinction is of utter importance, because different legal regimes are applicable to the two different groups—the EU Reception Conditions Directive governs the treatment of asylum seekers, while the EU Return Directive governs the treatment of migrants. While for categories 2 and 3 the legal qualification as either

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<sup>66</sup> Hereinafter: CFR.

asylum seekers or not is clear, the Greek authorities do not consider the first group to be asylum seekers. However, this is neither in line with EU nor domestic law.

## 1. Asylum Seekers

Article 2(b) EU Asylum Procedures Directive defines an asylum application as “a request made by a third-country national or a stateless person for protection from a Member State, who *can be understood* [emphasis added] to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately.” Considering the broad language of this law,, it is hard to imagine that people who reach the Greek coast irregularly by boat from Turkey have not or will not express their will to apply for asylum.<sup>67</sup> Furthermore, the European Court of Human Rights<sup>68</sup> concluded in *Hirsi Jamaa* that the failure of asylum (or protection) seekers to explicitly request asylum does not exempt states from their human rights obligations – the Court specifically emphasized a state’s requirement to comply with the prohibition against refoulement (“non-refoulement”).<sup>69</sup> In addition, Member States are obliged under European<sup>70</sup> and international law<sup>71</sup> to provide access to the asylum procedure. In other words, European law does not limit the meaning of an asylum application to a formal application filed with the relevant domestic authorities. Rather, people who arrive on the Greek islands—typically on small, rubber dinghies from countries with high numbers of asylum seekers—request asylum by simply turning up on European shores. Accordingly, unless an explicit objection against applying for asylum is raised by a new arrival, those reaching the Greek islands are to be defined as asylum seekers with the legal right to be present on Greek territory.<sup>72</sup>

## 2. Persons who reside unlawfully

Given that everyone who arrives on the Greek islands is automatically an asylum seeker for the duration of their asylum procedure, only those with a final rejection of their asylum application can be considered unlawfully present.<sup>73</sup> An asylum application is only finally rejected when there is no longer any legal possibility to appeal the rejection (see Article 2 (e) EU APD).<sup>74</sup> Those with final rejections who are considered to be unlawfully present must therefore undergo the return procedure (cf. below).

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67 In detail Markard/Nestler/Vogt/Ziebritzki: No State of Exception at the EU External Borders, March 2020, p. 21 et seq., available at: <https://bit.ly/32W3BGg>.

68 Hereinafter: ECtHR.

69 ECtHR, Judgment of 23/02/2012 - No. 27765/09 - *Hirsi Jamaa et al*, para. 133. See also EASO, *Judicial Analysis - Detention of applicants for international protection in the context of the Common European Asylum System*, 2019, p. 17 et seq.

70 Cf. Art. 6, 7 APD. In this regard, most recently CJEU, Judgment of 17/12/2020 - C-808/18 - *European Commission v. Hungary*, para. 87 et seq.

71 This results, for example, from the procedural dimension of the prohibition of refoulement derived from Art. 3 ECHR as well as the prohibition of collective expulsion, cf. on this with reference to relevant case law of the ECtHR *Markard/Nestler/Vogt/Ziebritzki: No State of Exception at the EU External Borders*, March 2020, p. 12 et seq, available at: <https://bit.ly/32W3BGg>.

72 See also in detail *Markard/Nestler/Vogt/Ziebritzki: No State of Exception at the EU External Borders*, March 2020, p. 21 et seq., available at: <https://bit.ly/32W3BGg>.

73 According to Art. 104 (3) L. 4636/2019 “The option of exemption from the right of stay in accordance with paragraph 1 shall apply only in the cases referred to in Article 90 herein provided that the applicant receives the necessary assistance of an interpreter and legal assistance and has at least one week’s time to prepare the application and submit to the Independent Appeals Committee the arguments in favour of the recognition of his or her right of stay in the territory of the country pending the outcome of the appeal.” In other words, asylum seekers on Kos who have received a first rejection are technically unlawfully present in Greece. Accordingly, lawyers submit an application for the right to remain along with the appeal. However, in practice the Appeals Committees examine the appeal and right to remain applications together, and so in practice Art. 104 (3) is fairly inconsequential.

74 In the Greek asylum procedure, two legal remedies are permitted, the (administrative) “Appeal”, Article 92 et seq. Greek Asylum Law 4636/2019 and the judicial remedy “Annulment”, Article. 109 Law 4636/2019. According to Article 63(a) Law 4636/2019, the decision made by the Appeals Committee shall be considered final. Because Article 46(1) APD requires an effective legal remedy “before a court or tribunal,” this classification is in any case doubtful, but not discussed in depth in this study.



## *C. Material Legal Pre-Conditions for Detention: Purpose and Lawfulness of Detention*

Having the above-made distinction in mind, the following section details the legal context and preconditions for detaining asylum seekers and undocumented migrants, including rejected asylum seekers, under EU, Greek and European human rights law. For both categories, detention is defined as a deprivation rather than a mere restriction of liberty, as it involves both the full restriction upon one's freedom of movement and the provision of formal detention orders.<sup>75</sup>

### **1. Detention of Asylum Seekers**

#### *a. EU Law: Reception Conditions Directive (RCD)*

Article 2(h) RCD defines detention as the “confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement.” Article 8 provides the grounds and preconditions for detaining asylum seekers and the RCD starts from the general standard that MS “shall not hold a person in detention for the sole reason that he or she is an applicant for international protection”<sup>76</sup>.

Article 8 (2) then goes on to establish a necessity test for detaining asylum seekers stating that “when it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive measures cannot be applied effectively”<sup>77</sup>. Finally, Article 8 (3) provides an exhaustive list of six reasons under which Member States may detain asylum seekers. That list includes:

- In order to determine or verify his or her identity or nationality;
- In order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- In order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- When he or she is detained subject to a return procedure under the Return Directive, in order to prepare the return and/or carry out the removal process, and the Member State can substantiate that he or she already had the opportunity to access the asylum procedure;
- When protection of national security or public order so requires;
- In accordance with the Dublin Regulation to determine the MS responsible for examining the application for international protection.<sup>78</sup>

In other words, although EU law does provide grounds for detaining asylum seekers, it similarly makes clear that detention should be the exception, rather than the rule. Even if a person can be detained for one of the reasons listed under Article 8 (3) RCD, the state authorities must still establish that the detention is necessary and no alternative, less coercive measures are available.

#### *b. Greek Law: IPA*

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<sup>75</sup> See Art.2 (h) Directive 2013/33/EU and Art. 41 (c) L. 4636/2019; Art.15 Directive 2008/115/EC and Art.30 L. 3907/2011, for Art.5 §1 (f) ECHR see e.g. ECtHR, Judgement of 15/12/2016, No 16483/12, *Khlaifia and Others v. Italy*, para 64. The question of deprivation or restriction of liberty is one of degree or intensity and not one of nature or substance. Designated factors are type and place of restriction, relevant duration, effects, and manner of the implementation as well as a person's consent to the confinement in question.

<sup>76</sup> Art. 8(1) Directive 2013/33/EU.

<sup>77</sup> Art. 8(2) Directive 2013/33/EU.

<sup>78</sup> Art. 8(3) Directive 2013/33/EU.

Like EU law, Law 4375/2016 – the old Greek asylum law – provided for the detention of asylum seekers only as an exception and only for very limited reasons. More specifically, Law 4375/2016 only allowed the authorities to detain asylum seekers if they were already in detention when they applied for asylum. However, among other things, the IPA dramatically reshaped the detention practices in Greece and significantly expanded the grounds for detaining asylum seekers. Article 41 (c) of the IPA defines detention similar to the RCD as “the restriction on a specific area imposed by a state authority on an applicant, thus depriving the person of freedom of movement”<sup>79</sup>. However, although Article 46 (2) still only allows the authorities to detain asylum seekers “by way of exception” it removes the condition from Law 4375/2016 that they can only detain asylum seekers who applied for asylum from detention. Further, the IPA also expanded the grounds under which the authorities may detain asylum seekers to include:

- Ascertaining his or her identity or nationality or citizenship;
- Identifying the elements of his or her application for international protection that would otherwise be impossible to obtain, in particular because there is a risk of the applicant absconding;
- When there are good reasons to consider that the applicant is applying for international protection in order to merely delay or prevent the execution of a return decision;
- If the applicant constitutes a significant risk to national security or public policy;
- In order to decide whether the applicant has a right to enter the territory;
- Where there is a significant risk of escape.<sup>80</sup>

Further, the IPA also extended the maximum time the authorities can detain asylum seekers to 18 months.<sup>81</sup> As the most recent AIDA report on Greece notes, “[t]he possibility to extend the period of detention of asylum seekers up to 18 months, raises serious concerns as of its compliance with the obligation as a rule to impose asylum detention ‘only for as short a period as possible’ and to effectuate asylum procedures with ‘due diligence’ in virtue of Article 9 Directive 2013/33/EU”<sup>82</sup>.

Finally, an amendment to the 2019 law, Law 4686/2020 also further expanded the detention practice and, as noted by UNHCR, turned detention “essentially . . . into the rule”<sup>83</sup>. More specifically, Law 4686/2020 accelerates the procedure for asylum seekers in detention, establishes the possibility that the police may communicate first-instance asylum decisions to asylum seekers, foresees that the right to remain in the country ends when a second instance decision is issued as opposed to notified, and provides that in the case an appeal is rejected the applicant is detained until his or her removal is completed.<sup>84</sup> The latter point, which provides for the automatic detention of rejected asylum seekers, in particular does not comply with EU law.

### *c. European Human Rights Law: Article 5 § 1 (f) ECHR, first and second limb*

The detention of asylum seekers is governed by the first limb of Article 5 § 1 (f) ECHR stating that a person

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<sup>79</sup> Art. 41(c) L. 4636/2019.

<sup>80</sup> Ibid. (Art. 46(2) L. 4636/2019).

<sup>81</sup> Art. 46(5) L. 4636/2019.

<sup>82</sup> AIDA, *Country Report: Greece* (June 2021), 195-196, available at: <https://bit.ly/3mMob7c>.

<sup>83</sup> UNHCR, *UNHCR’s Intervention at the hearing for actors to the Standing Committee of Public Administration, Public Order and Justice of the Hellenic Parliament regarding the Draft Law on the Improvement of Migration Legislation* (9 May 2020), available at: <https://bit.ly/3uv0Oj7>.

<sup>84</sup> AIDA, *Country Report: Greece* (June 2021), 197, available at: <https://bit.ly/3mMob7c>.



can be detained “to prevent his effecting an unauthorised entry into the country”.

While the first limb is the standard constellation for asylum seekers, the ECtHR is not bound by EU law and does not follow EU law’s strict distinction between “asylum seekers” and “non-asylum seekers”. It thus finds it – in exceptional cases – possible to detain asylum seekers under the second limb with a view to the deportation of persons, as long as the removal proceedings are in progress.<sup>85</sup>

For both the first and the second limb of Article 5 § 1 (f) ECHR detention must not be arbitrary and an individual assessment must take place, meaning that authorities must weigh and assess each person’s individual circumstances and that the automatic application of detention is contrary to Article 5 § 1 (f) ECHR.<sup>86</sup> “Freedom from arbitrariness” means that detention must be carried out in good faith; it must be closely connected to the purpose of preventing the unauthorised entry of a person into the country; the place and conditions of detention should be appropriate, and the length of the detention should not exceed that reasonably required for the purpose pursued.<sup>87</sup>

Further, Article 5 § 1 (f) ECHR requires the detention to be “lawful”. To be considered lawful, the ECtHR assesses whether there is a basis in the respective domestic legal order and whether its preconditions are met. However, the Court restricts itself when reviewing national law as it considers review, interpretation, and application of national law to be within the primary domain of national Courts<sup>88</sup>.

The Court thus limits its examination to whether the interpretation that national authorities make of national legislation when issuing or reviewing a detention order is “arbitrary or patently unreasonable”; and to whether the effects of that interpretation are in conformity with the ECHR.<sup>89</sup>

## **2. Detention of Rejected Asylum Seekers and People Subject to Return Orders**

Asylum seekers who receive a final rejection to their application are also subject to certain detention provisions under both EU and Greek law. However, whereas both EU and Greek law provide a somewhat extensive list of reasons for detaining asylum seekers, the authorities can only detain rejected asylum seekers in Greece for one reason: in order to prepare for or carry out the removal process.

### ***a. EU Law: Return Directive (RD)***

The Return Directive (RD) governs the standards and procedures for returning “illegally staying-third country nationals”<sup>90</sup> Article 15 RD specifically governs detention for the purpose of removal and establishes that

Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process (...).<sup>91</sup>

Article 15 (1) goes on to provide a list of scenarios in which detention may be necessary, in particular when there is a risk of absconding or the person hampers the removal process. The RD only allows for detention for as long as a period as the conditions of Article 15 (1) are met and for no more than six months.<sup>92</sup> Member

<sup>85</sup> ECtHR, Judgement of 22/09/2015, No. 62116/12, *Nabil and Others v. Hungary*, para. 38.

<sup>86</sup> ECtHR, Judgement of 04/04/2017, No. 39061/11, *Thimothawes v. Belgium*, para 73, ECtHR, Judgement of 26/11/2015, No. 10290/13, *Mahamed Jama v. Malta*, para 146, ECtHR, Judgement of 05/07/2011, No. 8687/08, *Rahimi v. Greece*, para 108.

<sup>87</sup> ECtHR, Judgement of 29/01/2008, No. 13229/03, *Saadi v. the United Kingdom*, para 74.

<sup>88</sup> Cf. ECHR, Judgement of 22/06/2017, No. 77450/12, *S.M.M.*, para. 64.

<sup>89</sup> Cf. ECHR, Judgement of 04/04/2017, No. 39061/11, *Thimotawes*, para. 71.

<sup>90</sup> Directive 2008/115/EC.

<sup>91</sup> Art. 15 (1) Directive 2008/115/EC.

<sup>92</sup> Art. 15 (5) Directive 2008/115/EC.

States may extend a person's detention past six months only for a limited number of exceptional reasons.<sup>93</sup> Finally, under Article 15 (4) RD "[w]hen it appears that a reasonable prospect of removal no longer exists . . . detention ceases to be justified and the person concerned shall be released immediately"<sup>94</sup>.

***b. Greek Law: Law 3907/2011***

Law 3907/2011 transposes the RD into Greek Law. Prior to 2020, the detention standards laid out in Article 30 Law 3907/2011, the article that governed detention, were in line with EU law. However, an amendment to the 2019 asylum law, Law 4686/2020, expanded the detention scheme for rejected asylum seekers in two respects: first, Law 4686/2020 now provides that "in case that the Appeal is rejected, the applicant . . . is detained in a Pre-removal Facility, up until his/her removal is completed or his/her application to be finally accepted"<sup>95</sup>. Second, Law 4686/2020 introduced what AIDA called a "radical amendment" to Article 30 that reversed the rule that detention be used as a last resort and instead established a scheme of automatic detention. Whereas Article 15 RD begins with "unless other sufficient but less coercive measures can be applied . . .", the amended Article 30 Law 3907/2011 states that all "[t]hird country nationals subject to return procedures" be placed in detention in order to prepare the return and carry out the removal process"<sup>96</sup>. The amended Article 30 (1) goes on to say that in the case that the police do not consider there is no risk of absconding, or the person is cooperative and not hampering the return procedure, or there are no national security concerns, then other less coercive measures should be applied.<sup>97</sup>

***c. European Human Rights Law: Article 5 § 1 (f) ECHR, second limb***

Detention of rejected asylum seekers is governed by the second limb of Article 5 § 1 (f) ECHR stating that detention shall only be imposed while "action is being taken with a view to deportation or extradition". Even if Article 5 § 1 (f) does not itself require a test of necessity, such test may still be required due to national legislation.<sup>98</sup> Independently of a necessity test, Article 5 § 1 (f) ECHR requires states to consider the particular circumstances and issue an individual decision.<sup>99</sup>

For a detention to be lawful under Article 5 (1) (f) Second Limb ECHR, the removal must be actually feasible and there must be a prospect of removal.

**i. Factual Possibility of Removal**

The Court requires a reasonable prospect of removal, meaning that the readmission has to be factually possible within a reasonable time frame. For example, in *Tabesh v. Greece*, the Court held that the readmission of the applicant was not immediately possible as he had no travel documents (Judgement of 26/11/2009, No. 8256/07, § 53). The Court held that the applicant's detention for three months was arbitrary as he could not be deported without travel documents, and the Greek authorities had not taken necessary, active steps to get these issued. As such, the duration of his detention exceeded the time reasonably required for the purpose pursued, and therefore there was a violation of Article 5 (1) (f) ECHR.

In the case *A. and Others v. the United Kingdom*, the Court found a violation of Article 5 ECHR because, even though the authorities considered the detention to be necessary because their presence in the country was a threat to

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<sup>93</sup> Art. 15 (6) Directive 2008/115/EC.

<sup>94</sup> Art. 15 (4) Directive 2008/115/EC.

<sup>95</sup> L. 4686/2020.

<sup>96</sup> Art. 30 (1) L. 3907/2011 as amended by L. 4686/2020.

<sup>97</sup> *Ibid* (Art. 30 (1) L. 3907/2011 as amended by L. 4686/2020.).

<sup>98</sup> ECtHR, Judgement of 04/04/2017, No. 23707/15, *Muzamba Oyaw v. Belgium*, para 36; ECtHR, Judgement of 25/01/2018, No. 22696/16, *J.R. and Others v. Greece*, para 111.

<sup>99</sup> ECtHR, Judgement of 04/04/2017, No. 39061/11, *Thimothawes v. Belgium*, para, 73, 79-80.

national security, it was also accepted that the applicants could not be deported “for the time being” (Judgement of 19/02/2009, No. 3455/05, § 170). Following the terrorist attacks in September 2001, the applicants were detained as suspected international terrorists and it was believed that their presence at liberty in the United Kingdom gave rise to a threat to national security. Given that they could not be deported because they would be at risk of ill-treatment, each of the applicants was detained. The Court held that as there was no specific foreseeable time frame in which deportations could take place. Consequently, the detention of the applicants was unlawful (*ibid* at § 170).

Whenever the applicant is already detained and it becomes clear during such detention that a readmission will not be possible, the detention order has to be lifted without undue delay. In *Suso Musa v. Malta*, the applicant was held in detention until March 2013 despite the fact that the authorities had known since 11 February 2013 that there was no prospect of returning him (Judgement of 23/07/2013, No. 42337/12, § 104). The Court held that there was a violation of Article 5 (1) (f) because the detention order should have been lifted immediately after it became known that a readmission would not be possible.

#### ii. Requirement of Active Steps for Removal

The Court has reiterated many times that States must take active steps to remove the specific individual from the territory as quickly as possible when someone is deprived of their liberty in order for the detention to be lawful. Even though these steps do not need to be of a specific formal nature, they have to be undertaken with adequate determination and due diligence (*X. v. Switzerland*, Commission decision of 9 December 1980).

In *Feilazoo v. Malta*, the Court also held that the applicant’s detention was not lawful under Article 5 (1) ECHR, as it lasted for fourteen months and the authorities were aware that the deportation was not feasible and failed to pursue the matter with diligence (Judgement of 11/03/2021, No. 6865/19, §§ 101-104). The Maltese authorities were aware that there was no prospect of readmission because the Nigerian authorities had doubts as to the applicant’s identity (*Ibid* at §§ 107-110). The only step that the authorities took within a 14-month period was to contact the Nigerian authorities for the issuing of a passport. The Court did not consider this request a sufficient step.

The Court has gone on to clarify additional requirements for detaining people under the second limb of Article 5(1)(f). First, steps towards deportation must concern the individual applicant rather than a general group.<sup>100</sup> Second, such steps have to be taken with “energy and impetus”.<sup>101</sup> Finally, the undertaken steps must be continuous. Whenever such steps are not taken with due diligence, the detention will cease to be permissible.<sup>102</sup>

## *D. Detention Practices on Kos*

All arrivals to the Aegean islands are subjected to a ‘geographical restriction’ that prohibits movement outside the island to which they are assigned until the conclusion of their asylum procedure. At the same time, the Kos detention scheme is distinctive. It is currently the only island among the five Aegean EU Hotspots to have a functioning Closed Reception Facility: for asylum seekers on Kos, the experience of detention is therefore intertwined with the unique challenges of arriving via the islands.

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<sup>100</sup> ECtHR, Judgement of 19/02/2009, No. 3455/05, *A. and Others v. U.K.*, para 167.

<sup>101</sup> ECtHR, Judgement of 19/05/2016, No. 37289/12, *J.N. v. the United Kingdom*, para 107.

<sup>102</sup> ECtHR, Judgement of 23/07/2013, No. 42337/12, *Suso Musa v. Malta*, para 91, ECtHR, Judgement of 15/12/2016, No. 16483/12, *Khlaifia and Others v. Italy* [GC] para 90, ECtHR, Judgement of 19/02/2009, No. 3455/05, *A. and Others v. the United Kingdom* [GC], para 164, ECtHR, Judgement of 12/02/2013, No. 58149/08, *Amie and Others v. Bulgaria*, para 72, ECtHR, Judgement of 19/04/2021, Nos. 56751/16, 33762/17, *Shikhsaitov v. Slovakia*, para 56, with further examples of cases disclosing a violation of that provision.

## 1. Detention of New Arrivals

The exact procedures for new arrivals remain relatively unknown to lawyers and other actors on the island because of a lack of access to people upon arrival. Based on our experience working on Kos since January 2021 and consulting with other lawyers working on the island, we have identified at least two scenarios that occur when someone arrives on Kos. In most cases, people undergo reception and identification procedures conducted by RIS. In our experience, RIS issues an order restricting freedom of movement to everyone who undergoes this procedure. However, we cannot confirm that this is the official policy because RIS files are not available without legal authorizations and can be difficult to access even with an authorization. New arrivals are also issued a return decision by the authorities, based on their unlawful presence on Greek territory. In our experience, the authorities issue this return decision in some cases before the reception and identification procedures and, in other cases, after the procedure, although in the latter scenario the person is already an asylum seeker under Greek law. In other instances, new arrivals do not undergo the reception and identification procedures at all and, consequently, RIS never issues them a restriction of movement order. However, because it is difficult for lawyers to access new arrivals, we cannot state with certainty why certain people do or do not undergo reception and identification procedures. However, the 2020 AIDA report on Greece notes that “applicants arriving from islands other than Kos and Rhodes e.g. Symi, Megisti, Kastellorizo are immediately directed to the pre-removal detention centre, without undergoing reception and identification procedures in the RIC,” a practice that we have also observed on Kos.<sup>103</sup>

## 2. Detention of Asylum Seekers

Although the PRDC opened in 2017, January 2020 was a turning point for the detention practices on Kos. Prior to January 2020, the majority of asylum seekers who arrived on Kos were not detained and instead accommodated in the RIC, a so-called ‘open camp,’ meaning that, although their movement was restricted to the island, they could enter and leave the camp freely.<sup>104</sup> However, the detention practices on Kos changed dramatically after the new asylum law went into effect in January 2020. Starting in January 2020 the authorities began detaining all new arrivals in the PRDC with the exception of unaccompanied minors (formally recognized as such),<sup>105</sup> pregnant women, and parents with babies younger than six months old. This practice has historically included vulnerable asylum seekers as well as families with minor children over six months old. In April 2021, the authorities released all families with minor children from the PRDC without warning or decision explaining the reasons for their release. However, it is unclear whether this was a one-time practice or will be the policy moving forward.

Otherwise, when asylum seekers arrive on the island of Kos, they are issued a detention order upon registering with the authorities and detained automatically in the PRDC, regardless of their specific needs or whether there is space in the RIC.

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<sup>103</sup> AIDA, *Country Report: Greece* (June 2021), 202, available at: <https://bit.ly/3mMob7c>.

<sup>104</sup> Prior to the COVID-19 pandemic, asylum seekers who lived in the RIC could enter and exit the structure freely. Since March 2020, restrictions restricting residents of the RICs across Greece from leaving for all but a few exception reasons have been in place. During the period documented in this report on Kos, residents of the RIC have only been able to exit the RIC with special permission from the police once per week.

<sup>105</sup> This is the formal policy of the PRDC, however Equal Rights has represented one client who was in the age assessment procedure – meaning that the authorities had doubts as to his age – and was detained in the PRDC. This violates Art. 75 (e) of L. 4636/2019, which establishes that individuals in the age assessment procedure should be treated as minors until proven otherwise.

### 3. Detention of Rejected Asylum Seekers and People Subject to Return Orders

Even prior to 2020, the authorities on the Aegean islands detained essentially all asylum seekers as soon as they received a second rejection in order to prepare for their readmission to Turkey.<sup>106</sup> Asylum seekers on Leros, Chios, and Samos – where there was no PRDC – were generally detained in police stations before being transferred to one of the two PRDCs on Kos and Lesbos. However, for several reasons the practices on all of the islands have changed in important ways since March 2020. First, readmissions to Turkey have been suspended since March 2020 because of the Covid-19 pandemic and deteriorating political relations between Turkey and Greece.<sup>107</sup> Second, in September 2020, the Lesbos PRDC was destroyed by a fire at the Moria EU Hotspot, leaving Kos with the only remaining functioning PRDC on the islands.<sup>108</sup> Consequently, since mid-2020 most rejected asylum seekers on Lesbos, Leros, Samos, and Chios have not been detained. Instead, many have been issued so-called ‘voluntary return’ orders requiring them to leave the country in a period of 10 days.<sup>109</sup>

Although readmissions to Turkey have not taken place since March 2020, the automatic detention of rejected asylum seekers continues on Kos, particularly because of the amendment to the return law in the summer of 2020. Like for people in the asylum procedure, the authorities only make exceptions for unaccompanied minors, pregnant women, and families with children under six months old. As soon as an asylum seeker receives a negative second instance decision her initial deportation decision is “reactivated” and the police will issue her a new detention order under Article 30 Law 3907/2011, based on the fact that she is subject to a return procedure.<sup>110</sup>

On Kos, the interplay of both legal frameworks – the IPA and Law 3907/2011 – means that individuals are often detained for prolonged periods, in many cases over one year.<sup>111</sup> Both the IPA and Law 3907/2011 foresee the possibility that a person could be detained for up to 18 months. In theory, this then means that a person could be detained for 18 months under the IPA and then for another 18 months under Law 3907/2011 – as long as the preconditions for detention are otherwise met – totalling a maximum of 36 months. However, we’ve observed that the police generally release people after 18 months, regardless of which law they are detained under. Even so, people are regularly held in the PRDC for over one year and even the maximum 18 months. Of the 31 people we interviewed for this report, three had been detained for over 12 months at the time of the interview and at least two more were approaching the 12-month mark.

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106 AIDA, *Country Report: Greece* (December 2020), 202, available at: <https://bit.ly/3zB7dMF>.

107 See e.g., AIDA, *Overview of the Main Changes Since the Previous Report Update* (10/06/2021), available at: <https://bit.ly/3ivQpPH>, Answer by Ylva Johanson to Parliamentary Question by MEP Erik Marquardt, Reference No. P-000604/20201, 01/06/2021, available at: <https://bit.ly/3ez3E0P>.

108 AIDA, *Country Report: Greece* (June 2021), 200, available at: <https://bit.ly/3yBZTPI>.

109 Greta Albertari et. al., *Consequences of the EU-Turkey Statement: The Situation of Syrian Asylum Seekers on the Greek Aegean Islands*, *Equal Rights Beyond Borders* (July 2021), 33-34, available at: <https://bit.ly/3yCnRu4>.

110 L. 4636/2019 applies only to applicants for international protection. Art. 2(c) defines an applicant for international protection as “a third-country national or stateless person who declares orally or in writing before any Greek authority [...]. and on whose request no final decision has yet been taken.” Art. 63(a) goes on to clarify that a final decision means, *inter alia*, a decision by the Independent Appeal Committees determining the outcome of an appeal brought against decisions made by the Asylum Service.

111 Both L. 4636/2019 and L. 3907/2011 foresee a maximum detention period of 18 months. In theory, a person can be detained for 18 months under L. 4636/2019 and then another 18 months under L. 3907/2011, a maximum of 36 months. However, in practice on Kos the police seem to release people after 18 months regardless of which law they were detained under.



## *E. Detention of Specific Groups: Detention of Vulnerable Persons*

This section explores the legal grounds for detaining certain vulnerable groups identified within our client base on Kos. We have identified most of these groups based on the IPA: Articles 20(3), 39(5)(d), and 58(1), which are transposed from Article 20 Directive 2011/95/EU, define ‘vulnerable persons’ to include unaccompanied or unmarried minors, immediate relatives of shipwrecked people, people with disabilities, the elderly, pregnant women, single parents, children, victims of human trafficking, people with serious illnesses, people with mental disabilities, and people who have been tortured, raped or have experienced other serious forms of psychological, physical or sexual violence, such as victims of genital mutilation. Similarly, the RD defines vulnerable persons to include unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.<sup>112</sup>

While this section explores whether the authorities can detain vulnerable persons in the first place, Section 2 looks more closely at whether the detention conditions on Kos violate their rights. However, for vulnerable groups the questions of when persons can be detained and when detention conditions violate their rights are closely connected. This is because, the ECtHR considers detention to violate Article 5 § 1 ECHR whenever the conditions violate Art. 3 ECHR.<sup>113</sup> Further, a certain form of detention is already considered unlawful under Greek Law, if special preconditions for vulnerable persons are not met. For example, if Article 48 (3) IPA requires that families are detained separately from other people in detention, this – *a contrario* – means, that where they cannot be detained separately, the detention as such is unlawful.

Because these two issues are interconnected, they cannot be neatly separated. Accordingly, certain issues related to the detention conditions are already raised in the following section on grounds for detention.

### **1. Legal Preconditions**

#### *a. Under EU and Greek law*

Although both Greek and EU law implicitly allow the authorities to detain vulnerable asylum seekers and rejected asylum seekers, both legal systems impose additional standards that must be met for the detention to be lawful.<sup>114</sup> In general, when assessing whether asylum seekers or vulnerable rejected asylum seekers should be detained, both legal frameworks require authorities to conduct an individualized assessment that takes into account a person’s specific vulnerabilities.<sup>115</sup>

EU and Greek asylum law require that the health, including mental health, be the primary concern of the competent authorities. Under EU Law, Article 11 RCD provides further guarantees for vulnerable persons in detention. Since their health, especially their mental health, is particularly at risk due to the situation of detention, Article 11 RCD declares this to be a priority concern of national authorities and prescribes regular reviews of whether adequate support is being provided (para. 1).

When detention is ordered, authorities must ensure regular monitoring and adequate support that accounts for the person’s physical and mental health.<sup>116</sup> Both EU and Greek asylum law provides additional protections to women, stating, for example, that they must be housed separately from men.<sup>117</sup> Greek and EU law

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<sup>112</sup> Art. 3 (9) Directive 2008/115/EC.

<sup>113</sup> ECHR, Judgement of 05/11/2015, No. 58399/11, A.Y. v. Greece, para. 88.

<sup>114</sup> See Art. 48 L. 4636/2019, Art. 11 2013/33/EU, Art. 16 2008/115/EC, Art. 31 L. 3907/2011.

<sup>115</sup> Art.31 (1) L. 3907/2011, Art.15 (1), 16 (3), 17 RD and Art. 8 (2), Art.11, RCD, Art.46 (1) L. 4636/2019.

<sup>116</sup> Art. 11 (1) Directive 2013/33/EU, Art. 46 (1) L. 4636/2019.

<sup>117</sup> Art. 11 (1) Directive 2013/33/EU, Art. 48 (5) L. 4636/2019.

governing rejected asylum seekers also states that “particular attention shall be paid to the situation of vulnerable persons”, and more specifically that where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.<sup>118</sup>

Finally, both EU and Greek law state extremely clearly that minors can only be detained as an absolute last resort and when no alternative, less restrictive measures can be applied, regardless of whether they are asylum seekers or undocumented migrants.<sup>119</sup> Unaccompanied minors can only be detained under exceptional circumstances and cannot be held in a “prison accommodation”.<sup>120</sup>

Since the best interests of the child must also be given priority under Article 23(1) RCD, minors may only be detained as a last resort and only after all conceivable alternatives to detention have been comprehensively examined. Thus, the CJEU considered the indiscriminate detention of minors over 14 years of age in the Hungarian transit zones of Rösztke and Tompa as a violation of Art. 11(2) RCD.<sup>121</sup>

Minors in detention must be given the opportunity to engage in leisure activities, including age-appropriate play and recreational opportunities.<sup>122</sup> Unaccompanied minors may only be detained in absolutely exceptional cases, and only separately from adult detainees. Under no circumstances may they be accommodated in ordinary detention facilities.<sup>123</sup> As far as possible, they are to be accommodated in facilities that take into account age-appropriate needs. Article 48 (3) IPA provides that “families in detention shall be provided with separate accommodation . . . which ensure the protection of private and family life”<sup>124</sup>. The return laws also guarantee families similar rights.<sup>125</sup> Finally, Article 17 of the RD requires states to provide minors in detention with “the possibility to engage in leisure activities, including play and recreational activities appropriate to their age,” and requires that they “shall have, depending on the length of their state, access to education.”<sup>126</sup>

**If these conditions are not met, the detention is unlawful and the person must be set free.**

#### *b. Under European Human Rights Law*

The ECHR requires administrative authorities to take into account the specific situation of detained individuals (such as accommodation, hygiene and infrastructure) including any particular vulnerabilities (such as health or age) which may render their detention inappropriate.

In *Thimothawes v. Belgium*, the Court pointed out that general or automatic decisions to detain asylum seekers without any individual appraisal of any special needs could raise an issue under Article 5 (1) ECHR.<sup>127</sup> The Court specifically took into consideration the effect of the detention on the applicant’s mental health.<sup>128</sup> Similarly, in *Rahimi v. Greece*, the Court criticised the automatic application of detention and held that the specific circumstances of the applicant being an unaccompanied minor had to be taken into account, thereby

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118 Art. 16 (3) Directive 2008/115/EC, Art. 31 (3) L. 3907/2011.

119 Art. 48 (2) L. 4636/2019, Art. 11 (2) Directive 2013/33/EU, Art. 17 (1) Directive 2008/115/EC.

120 Art. 11 (3) Directive 2013/33/EU, Art. 46 (2) L. 4636/2019.

121 CJEU, Judgment of 17/12/2020- C-808/18 - Commission of Hungary, para. 203.

122 Art. 11(2) subpara. 3.

123 Art. 11(3) RCD

124 Art. 48 (3) L. 4636/2019.

125 See e.g., Art. 17 (2) Directive 2008/115/EC.

126 Art. 17 (3) Directive 2008/115/EC.

127 ECtHR, Judgement of 04/04/2017, No. 39061/11, *Thimothawes v. Belgium*, para 73.

128 *Ibid*, § 79-80.

rendering the detention unlawful.<sup>129</sup>

In assessing the detention of vulnerable migrants, the ECtHR also looks at possible Article 3 ECHR violations and the corresponding “minimum level of severity” analysis, taking into account possible vulnerabilities such as age, sex, physical and mental health of the applicant.<sup>130</sup> If Article 3 ECHR would indeed be violated, the detention as such would by definition violate Article 5 § 1 ECHR.<sup>131</sup>

When it comes to detaining minor migrants, the ECtHR has repeatedly held that the best interest of the child should always take precedence, regardless of whether children are alone or detained with their parents.<sup>132</sup> In this context, the Court has repeatedly found that states violate the Convention on multiple grounds when they detain children – in terms of the detention conditions and in terms of the “right to be free” with regard to Article 5 ECHR. In *Popov v. France* the Court held that French authorities violated Articles, 3, 5 (1), 5 (4), and 8 when they detained a family for two weeks in an administrative detention centre.<sup>133</sup> In *Popov* the Court stated that “[T]he child’s extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant (...). ... [C]hildren have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status.”<sup>134</sup> The Court also noted that even though the family was separated from other detainees, the facility lacked proper beds and play areas.”<sup>135</sup>

## **2. Detention of Vulnerable Persons in the Kos PRDC**

### *a. Generally*

As a rule, the police do not detain pregnant woman, families with children under six months, and recognized unaccompanied minors. In general, we have also found that the police are willing to release people who they know to be “type A” vulnerable,<sup>136</sup> meaning that RIS has found them to be a member of a vulnerable group, such as a survivor of gender-based violence. In practice, however, the police do detain many vulnerable persons, regardless of whether they have been officially recognized as such or not. Since opening our office in January 2021, our clients have included survivors of torture and gender-based violence, families with minor children, unaccompanied minors in the age assessment procedure, and people with serious medical conditions. We have found that vulnerable persons are detained because of one of two reasons: either they are recognized as Type A vulnerable and they or the police are not aware of this, or they have not had access to a proper vulnerability assessment and so are not officially recognized as vulnerable.

#### i. Persons Recognized as Vulnerable by the Greek Authorities

We have found that the police generally do not detain or are willing to release people who are officially recognized as Type A vulnerable. However, we have learned that the police are often unaware whether or not a person is vulnerable. This happens because RIS conducts the vulnerability assessment and then files the

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129 ECtHR, Judgement of 05/07/2011, No. 8687/08, *Rahimi v. Greece*, para 108.

130 ECtHR, Judgement of 27/01/2015, Nos 36925/10 et. al., *Neshkov and Others v. Bulgaria*, para 227 with further references.

131 ECHR, Judgement of 05/11/2015, No. 58399/11, *A.Y. v. Greece*, para. 88.

132 See e.g., ECtHR, Judgement of 24/10/2012, No. 14902/10, *Mahmundi and Others v. Greece*, ECtHR, Judgement of 12/07/2016, No. 11593/12, *A.B. and Others v. France, A.B. and Others*, ECtHR, Judgement of 05/07/2011, *Rahimi v. Greece*.

133 ECtHR, Judgement of 19/01/2012, Nos. 39472/07 & 39474/07, *Popov v. France*, para 91.

134 *Ibid.*

135 *Ibid* at 95.

136 After asylum seekers arrive and register with RIS they undergo a medical, and in some cases, psychological assessment to determine if they have any vulnerability. Whether a person is vulnerable is noted in a person’s RIS file using the system of Type A, Type B, and Type C vulnerable. A person who is Type A vulnerable is considered vulnerable within the meaning of the IPA – i.e. they are a member of a vulnerable group. Type B vulnerability includes people who are not vulnerable but for another reason require special accommodation and Type C means that there is no vulnerability.



results in a person's RIS file. At the same time, RIS does not automatically submit copies of a person's RIS file to the police, meaning that, for the police to have the file, either the individual or her lawyer must submit it directly to the police. This in practice is extraordinarily difficult to do without a lawyer. First, most people are not aware that their files are divided among the different authorities and that they are responsible for ensuring that the police have access to all of their files. However, even if they were aware of this, they would still face significant hurdles to actually access their RIS files. People cannot request electronic copies of RIS files; they must take a hard copy in person. However, because people are detained automatically upon arrival and the RIS offices are outside of the PRDC, they have no way to leave the PRDC to physically take their file and submit it to the police. Practically speaking, the only way that a detained person can submit her RIS file to the police is through a lawyer. As such, even if RIS identifies a person as vulnerable, both the police and the applicant often remain unaware because the assessments are issued after the applicants are already in detention and RIS does not hand over the files to the police.

In the past ten months, Equal Rights has come across two cases of people who were identified by RIS as Type A vulnerable and detained for prolonged periods of time, while the police were unaware of their vulnerabilities. In both of those cases, a lawyer from Equal Rights discovered that they were vulnerable after requesting their RIS files for a separate reason. After seeing that the clients were vulnerable, the lawyer submitted the RIS file to the police who, in both cases, released the clients within days based on their vulnerabilities. In both cases the clients were survivors of gender-based violence, and in one case the client suffered from myriad physical and mental health conditions and had struggled to get proper medical treatment in the PRDC. In the latter case, the client spent nearly 8 months in detention, even though she had been identified by RIS as vulnerable early on in her procedure. Further, in these cases the detention orders did not contain any individualised assessment based on their vulnerabilities, because the authorities had no knowledge that they were vulnerable in the first place. Accordingly, they also did not receive any special medical or psycho-social treatment, as required by EU and Greek law.

## **ii. Persons Not Recognized as Vulnerable by the Greek Authorities**

More commonly though, vulnerable persons are never recognized by the Greek authorities as vulnerable in the first place. For years, observers have documented the many flaws in the age assessment procedure for unaccompanied minors,<sup>137</sup> however these flaws extend also to vulnerability assessments for other groups of people as well. This report does not go in-depth into the many problems with the vulnerability procedures on Kos, yet it is worth noting that most of our clients have indicated some vulnerability or special need but have not had access to a proper vulnerability assessment procedure. This is particularly true for survivors of torture. Under Article 72(1) the authorities can refer a person for medical or psycho-social exams when they suspect that the person may have suffered from serious harm. These exams should be conducted by specialized personnel and free of charge.<sup>138</sup> However, currently there are no public authorities that specialize in identifying or treating torture survivors<sup>139</sup> and there is only one NGO, METAdrasi, that conducts torture assessments in line with the Istanbul Protocol.<sup>140</sup> The METAdrasi unit is based in Athens and has not had a mission to Kos since Equal Rights opened its office. In other words, asylum seekers on Kos have no access to either a public or private authority that can conduct torture assessments.

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<sup>137</sup> See e.g., Human Rights Watch, *Greece: Lone Migrant Children Left Unprotected* (19 July 2017), available at: <https://bit.ly/2YTEFRc>.

<sup>138</sup> Art. 72(1) L. 4636/2019.

<sup>139</sup> AIDA, *Country Report: Greece* (June 2021), 121, available at: <https://bit.ly/3mMob7c>.

<sup>140</sup> METAdrasi, *Hope and Memory: Identification and Certification of Victims of Torture*, available at: <https://bit.ly/3jTd2PR>.

Similarly, people with serious medical conditions also struggle to get proper records of their condition. As discussed in Section 2, the medical care in the Kos PRDC is inadequate and there has been no doctor on site since July 2021. The people interviewed for this report described numerous barriers to accessing proper medical care, and our experience on the ground confirms such reports. Consequently, even if a person does have a medical condition that would qualify them as vulnerable, in many cases this remains undiagnosed and so there is no proof to submit to the authorities.

Unlike in cases where people have official vulnerability assessments, these cases present far fewer options for release. Without official proof of vulnerability, those with unsubstantiated vulnerabilities – or their lawyers – have no legal basis to argue that they should be released because they are vulnerable. Further, the police do not conduct any kind of individualized vulnerability assessment or provide additional protection or benefits. legal safeguards, according to the Greek government, they are not vulnerable. This situation has caused immense suffering for our many vulnerable clients detained in the PRDC who have been denied access to proper vulnerability assessments and medical treatment.

### *b. Minors*

Between January 2020 and April 2021, the authorities regularly detained families with minor children, several of whom were clients of Equal Rights. However, in those cases Equal Rights found that the detention orders did not depart significantly from the other generic detention orders. For example, in one case Equal Rights represented a single woman with three minor children between the ages of 8 and 14 who was detained after her asylum application was rejected. In her case, her detention order did not make any mention of if there were other, less coercive measures available or whether detention was in the children’s best interest. In fact, the detention order only mentioned the three children to state that the client was accompanied by her children. In April 2021, the police released all families from the PRDC and since then they have not detained families with minor children, except for in one case where a family refused to apply for asylum. Additional details regarding the detention conditions for minors are provided in Section 2 below.

As for unaccompanied minors, recognised unaccompanied minors are not detained in the PRDC. Instead, they are accommodated in the “safe zone” inside the RIC. However, as has long been documented throughout Greece, the process for recognising unaccompanied minors is extremely flawed and frequently leads to the authorities concluding that applicants for asylum are adults when they are, in fact, minors.<sup>141</sup> In the period covered in this report, Equal Rights has represented one client in the PRDC who claimed to be a minor and was able to provide original documentation to support his age. Equal Rights is also aware of at least two people in similar situations. In the case that Equal Rights represented, the applicant was already in the age assessment procedure when it undertook the case – meaning that the authorities had some doubt as to his age. However, he was still detained in the PRDC, in direct violation of Article 75 (3) (d) IPA, which provides that “until the age determination procedure is completed, the person claiming to be a minor shall be treated as a minor”<sup>142</sup>. In other words, applicants in the age assessment procedure cannot be detained except for exceptional reasons. In our case, the police agreed to release the applicant while his age assessment procedure was ongoing, but our intervention revealed that they were not even aware that he was in the age

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<sup>141</sup> HIAS, *Communication in accordance with Rule 9.2 of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by HIAS GREECE in the M.S.S. and Rahimi Groups v. Greece* (August 2020), 20, available at: <https://bit.ly/3v9tNuw>, Human Rights Watch, *Greece: Lone Migrant Children Left Unprotected* (19 July 2017), available at: <https://bit.ly/2YTEFRc>. European Committee of Social Rights, *Observations by the United Nations High Commissioner for Refugees* (16 August 2019), 4, available at: <https://bit.ly/3Dt1BWi>.

<sup>142</sup> Art. 75 (3) (d) L. 4636/2019.

assessment procedure in the first place because RIS had failed to inform them.

### 3. Conclusions

The practices on Kos towards members of vulnerable groups raise serious questions about whether they are in line with EU law, Greek law, and human rights law. First, the policy of automatically detaining all asylum seekers upon arrival and then automatically extending their detention upon a second rejection excludes the possibility that authorities are conducting an individualised assessment that accounts for their vulnerabilities and the ways in which their needs could be met in detention. Since Equal Rights started working on Kos in January 2021, we have not been aware of a single detention order for asylum seekers or rejected asylum seekers where authorities conducted a proportionality assessment, weighing the need for detention on the one hand and the individual’s vulnerabilities on the other hand. The lack of such individualized assessments is contrary to Article 30 (1) Law 3907/2011, Article 15 (1), 16 (3), 17 RD and Article 8 (2), Article 11, Article 21 et. seq. and Recital 15 RCD, Article 58 (2), Article 46 (1) IPA. Similarly, the ECtHR requires state authorities to consider potential vulnerabilities when issuing detention orders and to prevent inhuman and degrading treatment.<sup>143</sup> For example, there is no doctor on site for people with serious medical issues and the psychologist does not have an interpreter. This automatic application of detention renders detention orders of individuals with specific vulnerabilities disproportionate and hence unlawful.

Second, the historical practice of detaining minor children in the PRDC quite clearly violates EU, Greek, and human rights law. In the cases we represented where minors were detained, their detention orders did not take into account alternative less-restrictive measures, whether the PRDC was a suitable accommodation, or the children’s best interest, all of which are required by the law for both asylum seekers and rejected asylum seekers.<sup>144</sup> Further, the PRDC is in no way equipped to house minors – there are no play areas, educational programs, or specialised medical/psycho-social staff (see more in Section 2). These conditions not only violate EU law and Greek law but are similar to the conditions that led the ECtHR to find violations in both *Popov* and *Rahimi*<sup>145</sup>.

## *F. Formal Legal Pre-Conditions: Procedural Guarantees and the Right to an Effective Remedy*

Having analysed the legal grounds for detention in Greece, this section documents what procedures the authorities must follow when detaining migrants and asylum seekers. In particular, this section looks at detained persons’ experiences accessing legal services, the asylum procedure, information about their detention, and remedies against detention. We have found that detained persons lack access to reliable, accurate information regarding the reasons for their detention and the asylum procedure. We have observed that this lack of information undermines detained asylum seekers’ ability to legally challenge their detention and to understand and engage with the asylum procedure.

### 1. Formal Legal Preconditions

#### *a. Access to Asylum and Information about Asylum Procedures*

Under Greek law, asylum seekers have a right to access the asylum procedures and information about the procedure from as early as the reception and identification procedure and even before they’ve filed formal

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143 *Thimothawes v. Belgium*, § 73; *Rahimi v. Greece*, § 108, *Neshkov and Others v. Bulgaria*, § 227 with further references.

144 See e.g., Art. 11 (2) Directive 2013/33/EU, Art. 17 Directive 2008/115/EC.

145 Cf. footnotes above.

asylum applications with the asylum service.<sup>146</sup> This is true regardless of whether they are in detention or not.<sup>147</sup> Article 8 APD, transposed into Article 66 IPA, requires Member States to provide people with information on the asylum procedure from the moment there are “indications” that a person wishes to apply for international protection.<sup>148</sup> However, the right to information extends beyond a person’s initial arrival and registration. Article 19 APD, transposed into Article 71 (2) IPA, requires MS to ensure that during the first instance procedures “applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant’s particular circumstances”.<sup>149</sup> This requires authorities to, at a minimum, provide an explanation of the “procedural steps, devices, rights and obligations that are likely to be relevant to the individual case”<sup>150</sup> In the case of a negative asylum decision, Greek and EU law go even further by requiring authorities to provide a decision in writing that details the reason for the rejection and provides information on how to challenge a negative decision in a language that the applicant can reasonably be expected to understand.<sup>151</sup>

### *b. Access to Legal Services*

Although the APD does not guarantee every person a lawyer during the first stage of their asylum procedure, Article 71 IPA gives applicants the right to consult a lawyer or other adviser on their case.<sup>152</sup> In the event that an applicant does appoint a lawyer or legal counsellor, both Greek and EU law make clear that legal counsel must have access to the applicant, particularly if they are in detention or at a border-crossing point. For example, Article 8 (2) APD obliges Member States to “ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points”<sup>153</sup> while the RCD similarly stresses that “legal advisers or counsellors . . . have the possibility to communicate with and visit applicants in conditions that respect privacy”<sup>154</sup> During the second stage of the procedure – i.e. after a person has received a first rejection – the law provides additional guarantees. Specifically, the IPA Article 71 (2) states that applicants, upon request, shall be provided with legal assistance in their proceedings before the Appeals Authority.<sup>155</sup>

### *c. The Right to Information in Detention and Individualised Detention Orders*

Greek, EU, and human rights law guarantee detained persons the right to access information about their detention and legal proceedings, regardless of whether they are asylum seekers or rejected asylum seekers. In this regard, Article 10 RCD – which concerns detention conditions – requires MS to “ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and set out their rights and obligations in a language which they understand or are reasonably supposed to understand”<sup>156</sup>. Similarly, for rejected asylum seekers, the RD and Law 3907/2011 both require the authorities to “systematically” provide detained persons with information regarding the rules, as well as their rights and obligations within, the detention centre.”<sup>157</sup>

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146 Art 39(3)(d) L. 4636/2019, as amended by Art. 2(1) 4686/2020.

147 See Art. 6 (1) Directive 2013/32/EU.

148 Art. 8 (1) Directive 2013/32/EU.

149 Article 19 (1) Directive 2013/32/EU.

150 Vedsted-Hansen Commentary p. 1328.

151 Art. 10 (2) Directive 2013/32/EU.

152 Art. 71 (1) L. 4636/2019.

153 Art. 8 (2) Directive 2013/32/EU.

154 Art. 10 (5) Directive 2013/33/EU.

155 Art. 71 (3) L. 4636/2019.

156 Art. 10 (5) Directive 2013/33/EU. See also Art. 47 (6) L. 4636/2019.

157 Art. 31 (5) L. 3907/2011, Art. 16 (5) Directive 2008/115/EC.

Moreover, providing an individualised and reasoned order is a vital precondition before a state can deprive a person of their liberty. This is true regardless of whether the person is detained as an asylum seeker or a migrant subject to a return order. Article 8 (2) RCD states that detention can only be ordered “on the basis of an individual assessment” and where it proves necessary.<sup>158</sup> These conditions must be regulated by law and must be examined and justified in writing in each individual case. The decision, which is incumbent upon an administrative authority or a court, must comprehensively explain the factual and legal situation on which the detention is based.<sup>159</sup> The RD similarly requires Member States to apply detention only on a case-by-case basis and that detention may only be ordered “in writing and with reasons being given in fact and law.”<sup>160</sup> European human rights law provides for similar rights. Article 5(2) in conjunction with Article (3) ECHR provides for a case-by-case examination and the possibility for appeal in order to administer a an appealable detention order in the event of deprivation of liberty.

As discussed earlier in this report, under Greek asylum law authorities can only detain someone by way of exception, and only after conducting an individualised assessment.<sup>161</sup> Article 46 (2) IPA goes on to list several factors that the authorities must consider before imposing detention, including “the lack of adequate detention facilities, the difficulties in ensuring decent living conditions for detainees, and the vulnerability of the applicants”<sup>162</sup>. Article 46(4) requires the authorities to issue a detention decision only “following an individual assessment” and that the decisions “shall be thoroughly justified”<sup>163</sup>. Similarly, Article 30 (2) Law 3907/2011, which has not been amended, governing returns, establishes that “the detention order shall contain the reasons in law and fact . . . and shall be issued in written form”<sup>164</sup>.

Similar rights are also guaranteed under the ECHR. Article 5 (2) establishes that “[e]veryone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him”<sup>165</sup>. Under this paragraph it is therefore “decisive” that asylum seekers “be informed, in *simple language* [emphasis added] accessible to [them], of the *legal* and *factual* [emphasis added] reasons of his deprivation of liberty”<sup>166</sup>. The ECtHR has found violations of Article 5 (2) even in cases where the applicants are provided some general, limited information,<sup>167</sup> and has suggested that it would find a violation in cases where decisions rely on stereotypical and brief language.<sup>168</sup> The right to information is also critically linked to Article 5 (4) ECHR – establishing a right to a judicial remedy because people cannot challenge their detention without first understanding the reasons for it. For this reason, the ECtHR held in *Khlaifa and Others v. Italy* that the authorities had violated the applicants’ rights under Article 5 (4) because they had failed to provide

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158 Art. 8 (2) Directive 2013/33/EU.

159 See CJEU, Judgment of 14/05/2020 - C-924/19 PPU and C-925/19 PPU - FMS et al, para. 257 et seq. See also Edwards, Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants, UN Doc. PPLA/2011/01.Rev.1, April 2011, available at: <https://bit.ly/3aVmcXe> and

UNHCR, Detention Guidelines - Guidelines on Applicable Criteria and Standards Concerning the Detention of Asylum Seekers and Alternatives to Detention, 2012, available at: <https://bit.ly/3dp2UL7>.

160 Art. 15 (1) and Art. 15 (2) Directive 2008/115/EC.

161 Art. 46(2) L. 4636/2019.

162 Art. 46 (2) L. 4636/2019.

163 Art. 46 (4) L. 4636/2019.

164 Art. 30 (2) L. 3907/2011.

165 Art. 5 (2) ECHR.

166 Juan Jose Ruiz Ramos, *The right to liberty of asylum seekers and the European Court of Human Rights: case law analysis in the aftermath of the 2015 refugee crisis*, Universidad de Granada (2019), 85.

167 ECtHR, Judgement of 25/01/2018, No. 22696/16, J.R. and Others v. Greece, para 121.

168 ECtHR, Judgement of 04/04/2017, No. 39061/11, Thimothawes v. Belgium, para 77. In this case the applicants did not invoke Art. 5 (2).



them with sufficient information on their detention.<sup>169</sup>

## 2. The Right to an Effective Remedy

Procedures grounded in EU and European law must include the right to an effective remedy. Article 13 ECHR guarantees the right to an effective remedy before a national authority against violations of rights and freedoms laid down in the Convention. Where fundamental rights violations are at stake, the remedy must thoroughly and accurately examine such risks.<sup>170</sup> Article 47 CFR enshrines the right to an effective remedy in EU law. Paragraph 1 of Article 47 establishes that “everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.” Under Article 52(3) CFR, the rights laid out in Article 47 must be equal to or greater in scope as those provided for in Article 13 ECHR. However, the CJEU has interpreted Article 47 to specifically include the right to an effective remedy before a court.<sup>171</sup> Article 47 requires an effective *judicial* remedy against both the rights laid down in the CFR itself and those established elsewhere in EU law, making it broader in scope than Article 13.<sup>172</sup>

Article 5 (4) ECHR guarantees “everyone who is deprived of his liberty by arrest or detention” the right to “take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”<sup>173</sup> Article 6 (4) CFR establishes the same right using the same language as Article 5 (4).<sup>174</sup> Secondary EU asylum law also directly provides for the right to an effective remedy, particularly where the state deprives a person of her liberty. The RCD specifically guarantees applicants who are detained effective access to necessary procedural guarantees, including a remedy before a national judicial authority.<sup>175</sup> Similarly, the RD requires Member States to provide for “a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible” or to grant the person “the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review . . .”<sup>176</sup>

The right to an effective remedy both protects a person’s fundamental rights *and* safeguards the legal system as a whole.<sup>177</sup> When a person’s fundamental rights are at stake, as is the case when they are detained and under the full custody of the state, the CJEU has held that it is particularly important for judicial protection to be effective.<sup>178</sup> The ECtHR has similarly taken a stricter approach to the right to an effective remedy in cases involving the prohibition of torture and inhuman and degrading treatment (Article 3) and, on a more limited basis, in the case of detention (Article 5).<sup>179</sup> Any orders or decisions issued by the authorities must provide clear reasoning and be “sufficiently detailed”, a principle stemming from Article 296 on the Treaty of the Functioning of the EU and Article 41(2) of the Charter, codified in Article 9 of the Procedures Directive.<sup>180</sup> Finally, in order

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169 ECtHR, Judgement of 15/12/2016, No. 16483/12, *Khlaifa and Others v Italy*, paras 132-135.

170 ECtHR Judgment of 21 January 201, No. 30696/09, *M.S.S. v. Belgium and Greece*, para. 387.

171 Case 222/84 *Johnston* [1986] ECR 16510 15 May 1986.

172 Cf. Only Lübke, *The Elephant in the Room*, *Verfassungsblog* 19/02/2020, available at: <https://bit.ly/3gOzwyW> [last accessed: 22/06/2021].

173 Art. 5 (4) ECHR.

174 Art. 6 (4) CFR.

175 Preamble para 15 RCD.

176 Art. 15 (2) Directive 2008/115/EC.

177 CJEU, Judgement of 15 October 1987, *UNECTEF v Heylens and others*, 222/86; CJEU, Judgement of 7 May 1991, *Irène Vlassopoulou contro Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, C-340/89.

178 CJEU, Judgement of 18 January 2007, *Osman Ocalan*, on behalf of the Kurdistan Workers’ Party (PKK) and Serif Vanly, on behalf of the Kurdistan National Congress (KNK) v Council of the European Union, C-229/05, para 110.

179 ECtHR, Judgement of 13/12/2016, No. 26623/07, *Kaya v. Turkey*; ECtHR, Judgement of 25/05/1998, No. 15/1997/799/1002, *Kurt v. Turkey*,

180 Article 296 TFEU and Article 41 of the Charter are directed towards the Institutions of the EU. However, from the case-law of

for a remedy to be effective it must be accessible during a person's detention, and it must be capable of leading to release.<sup>181</sup> Thus, structural obstacles preventing access to administrative procedures, courts, or legal counsel de facto amount to the deprivation of an effective legal remedy.

### 3. Practices on Kos

#### a. Formal Procedures

##### i. Access to Asylum and Information about Asylum Procedures

We have found that detained asylum seekers have limited access to information regarding the asylum procedure. Detained persons in Kos PRDC are routinely registered within the asylum procedure, which usually occurs without access to legal advice or information.

For detained persons who are still asylum seekers, certain structural barriers significantly hamper their access to information about the asylum procedure and their individual applications. For example, asylum seekers detained in the PRDC cannot leave the facility to go to the asylum service, unless transferred there by the police for a specific appointment. Instead, asylum seekers who are detained must either e-mail the asylum service to request information about their cases (a slow and inefficient option) or rely on the police for information. Similarly, the police are responsible for notifying asylum seekers in the PRDC about any decisions regarding their asylum applications. Clients have expressed to Equal Rights that these notifications routinely take place without an interpreter, often leaving people confused about the reasons or consequences of a negative decision or the right to legal assistance.

A lack of formal information channels causes information to circulate in a word-of-mouth fashion, often reflecting asylum seekers' many fears and anxieties. Joud told us that while he had not planned to submit an asylum application in Greece, he had heard from others in detention that he would be detained for at least 18 months if he did not lodge a claim. Louis told us that when he arrived in detention, he became worried when others in detention advised him on accessing the asylum procedure. He told us: *"everyone kept telling me there were no interpreters and I wouldn't be interviewed for a year and two months and that really gave me problems...when I finally got to have my interview after two months I was relieved..."*. The information circulated is therefore at times unnecessarily distressing to detained asylum seekers.

We have also observed the spread of inaccurate information while administering client-counselling session. Two of our clients, in separate appointments, asked us whether it was true that all Syrian nationals who had fled military service would automatically be given refugee status. It became apparent to us that a recent CJEU judgment, that held that fleeing the Syrian military was a ground for asylum, had been misinterpreted and discussed in the PRDC. We had to explain to our clients that this judgment did not automatically mean they would receive refugee status, and that Syrians on the islands were still routinely rejected under the border procedure to assess whether they could be returned to Turkey under safe third country laws.<sup>182</sup> This informal spread of information among asylum seekers can therefore give rise to false hope—a dangerous prospect considering the emotional desperation already prevalent throughout this population.

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the Court of Justice, it emerges that the duty to state reasons also applies to the national authorities taking a decision on the basis of EU legislation. CJEU, Judgement of 15 October 1987, *UNECTEF v Heylens and others*, 222/86, para 15; CJEU, Judgement of 15 February 2007, *BVBA Management, Training en Consultancy v Benelux-Merkenbureau*, C-239/05, para 36. Also cite *S.C. v Romania* § 76.

181 ECtHR, Judgement of 19/05/2016, No. 37289/12, *JN v, UK*, para 88.

182 For an in-depth discussion of the admissibility procedure for Syrians on the Eastern Aegean Islands see *Equal Rights Beyond Border, Consequences of the EU-Turkey Statement: the Situation of Syrian Asylum Seekers on the Greek Aegean Islands* (July 2021), available at: <https://bit.ly/3vSVt6Z>.

Lastly, clients have also frequently reported to us that they have been told inaccurate information by the police in detention. On numerous occasions, when we have sent our legal authorization forms to the PRDC to be signed by clients prior to taking on their cases, they have told us that police asked them whether they had any family in Europe, as this could be useful for their cases, and told them to pass their families' details to their lawyers, even though they were all rejected asylum seekers. In late June and early July, at least three of our clients were told this. They later asked us how they could legally reunite with various family members in Europe and provided us with their family members' contact details. We also received a call from one client's mother in Belgium. We had to explain to our clients and their families that family reunification under the Dublin Regulation is only available for certain forms of familial relationships, including married couples, dependent children and parents, and relationships between adults with high support needs and their caretakers, and that unfortunately, none of them were eligible for this procedure. Inaccurate information, however well-intentioned it might be, can therefore again raise clients' hopes, and complicates our ability to gain and maintain their trust.

## ii. Access to Legal Services

### *aa. Generally*

The number of lawyers working on Kos who specialise in asylum and refugee law is extremely limited. At the time of this report's publication, there were three legal NGOs operating on the island – Greek Council for Refugees (GCR), METAdrasi, and Equal Rights. There are also several private lawyers on the island who undertake asylum cases for a fee. The number of lawyers on the island is not sufficient to meet the legal needs for all of the persons detained in the Kos PRDC. Equal Rights frequently has to turn cases away because of a lack of capacity, and the same is true of the other NGOs. In particular, it can be hard for people detained at the PRDC to find lawyers willing to undertake their detention case as opposed to their asylum cases. All three NGOs will submit legal remedies against detention, however all three also generally prioritise asylum cases when making decisions about capacity. In its response to Equal Rights, UNHCR also raised concerns that *“effective access of detainees to administrative and judicial remedies against their detention and deportation decisions is seriously challenged by the lack of adequate provision of information to the detainees in a language they understand and the lack of interpretation services in detention facilities. Furthermore, no legal-aid scheme has yet been established by the Greek authorities for the provision of free legal assistance and representation to detainees as foreseen by article 9(6) of the recast Reception Conditions Directive”*.

Even if a person is able to find a lawyer to take over her case, Equal Rights has observed multiple issues arise with regards to detained persons' access to legal services during our time on Kos. Making detained persons aware of our services has proven challenging. As a new organisation on Kos, we are still building our local profile, only slowly becoming known to asylum seekers on the island. As we have only restricted access to the detention centre, we have been unable to conduct any outreach services in detention. New clients are therefore referred to us by other legal organisations and the UNHCR. Detained persons may also obtain our details from their own contacts, or from each other in detention. Ismail learned of our organisation from his sister in Germany, while Zain told us that local lawyers' contact details are circulated in detention: *“It's around one or two lawyers that most of the people in detention talk about, it's not a lot of choices. Everyone knows their numbers”*. Joud mentioned he obtained our details from *“a guy who was in the open hotspot, and he was detained, and he had your number so I took it from him”*. However, it is clear to us that not everyone in detention is aware of the legal services available on the island: many have contacted us at later stages of their procedure, explaining that they had only recently received our details. Faiza told us that when she first arrived in detention, she was not made aware of legal services on the island. She told us that she, like others she knew in detention, was first



offered a lawyer only after receiving her first rejection. Making detained persons aware of our services early in their procedure is therefore still a challenge.

Regarding access to lawyers for the appeal procedure, Equal Rights frequently hears from clients that they will request a lawyer for their appeal and are told by the police that either one is not available or that they do not have a right to one. In some cases, clients have reported that the police told them they would help them find one, but never followed up, so they had to submit the appeal on their own in order to meet the 10-day deadline.

Finally, we have also experienced various issues with gaining access to clients in detention to conduct legal counselling sessions. Although the police generally approve lawyers' requests to meet with clients in detention, they generally require two-days' notice to schedule an appointment and urgent appointments are challenging to arrange. Various issues for lawyers often arise inside the PRDC as well. Upon entering the facility at the designated time and date, we are frequently asked to wait up to an hour and a half to meet with our clients, on the premise that the meeting container is occupied by other professionals. Meanwhile, when we have requested particular dates and times that we have been told are unavailable, we have arrived to find the meeting container completely empty. During consultations, we are frequently refused sufficient chairs for ourselves, our clients and interpreters. Several police officers stand outside the meeting container, in full view of the meeting rooms, during advice sessions, which can be intimidating to our clients. On multiple occasions, police have peered into the windows of the meeting container or have even entered the meeting room without warning during our advice sessions with little respect for our confidentiality. On 20 February 2021, police walked in and out of our meeting with a client – who identifies as LGBTI and is an SGBV survivor – at least 5 times, while he was discussing his sexual orientation and experience of SGBV. Additionally, one of the two rooms in the meeting container does not have a door, and police frequently walk by to use the bathroom. In our experience, police interfere with our client meetings more often than not. As a result, the process of meeting and working with clients in detention is unnecessarily complicated and hinders our ability to provide confidential advice and obtain and maintain our clients' trust.

*bb. Accelerated procedures for new arrivals and lack of access to legal counsel*

Since opening our Kos office in January 2021, we have observed that many new arrivals to Kos enter the asylum procedure while in pre-detention quarantine. Without access to their phones, information regarding the asylum procedure, or available legal services on the island, new arrivals are often unable to access legal advice prior to their pre-registration, or even their registration. This practice can cause procedural complications that are difficult to later rectify, and that can have harmful consequences for applicants' chances of success in the asylum procedure. One of our clients, who arrived in Kos in March 2021, disclosed during his 'pre-registration' procedure that he was Syrian. During his registration, he was consequently registered as a Syrian national. We learned only after his registration that he was actually Palestinian-Syrian and did not have Syrian citizenship. While we lobbied to have our client re-registered as Palestinian, a procedural change that ultimately ensured that he obtained refugee status, our client would likely have been incorrectly interviewed and erroneously rejected without our intervention.<sup>183</sup> Entering the asylum procedure

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183 At the time, Palestinian refugees born in Syria were not subject to the same admissibility procedure on Kos that other Syrians had to undergo. Under this admissibility procedure, Syrians were screened to see whether their applications were admissible, i.e. whether Turkey was a safe third country for them. A report published by Equal Rights in July 2021 found that the authorities rejected almost all Syrians under the admissibility procedure. Greta Albertari et. al., *Consequences of the EU-Turkey Statement: The Situation of Syrian Asylum Seekers on the Greek Aegean Islands*, Equal Rights Beyond Borders (July 2021), 1, available at: <https://bit.ly/3yCnRu4>.

without access to legal services can therefore have serious consequences for applicants' chances of success.

Additionally, on 13 July 2021 a group of 26 asylum seekers arrived on the island of Kos. According to several people interviewed by Equal Rights and other NGOs on the island, the police brought the new arrivals to a quarantine area in the PRDC on 13 July 2021 where they stayed for one day. On 14 July 2021, one day after they arrived in Greece, all 26 newly arrived asylum seekers were registered by Frontex and RIS, in which they underwent medical and vulnerability 'assessments.' Approximately half of the new arrivals were registered by GAS on 14 July 2021 as well, and at least six were scheduled for asylum interviews for the following day, 15 July 2021. After putting significant pressure on the authorities, lawyers from the three NGOs on Kos were allowed to meet with the group of new arrivals, who were all being held in a gated area inside the RIC, for a little over one hour. During that time, lawyers and interpreters from the three NGOs provided people with background information on the asylum procedures, and in particular what they could expect during the asylum interview. However, lawyers were not able to sign legal authorisations with any of the new arrivals on 14 July 2021 and were otherwise prevented by the authorities from attending the interviews the following day.<sup>184</sup> After their registration, all of the new arrivals were transferred back to the PRDC, with the exception of four unaccompanied minors. At the same time, the police took the phones of every new arrival – a decision seemingly connected to an investigation into smuggling routes – and had yet to return them one week later, by which time many had already received first instance rejections. Ultimately, it was impossible for the majority of the new arrivals to access legal services both prior to their interviews and for their appeals.

### iii. The Right to Information on Reasons for Detention and Individualised Detention Orders

On this point, we identified two major issues facing people detained in the Kos PRDC: first, the issuance of generic, template-like detention orders and, second, a lack of information provided to detainees about the reasons for their detention. We identified these issues primarily through our representation of more than fifty clients detained in the PRDC along with interviews conducted for this report.

#### *aa. Detention orders*

Both through interviews conducted for this report and experience providing legal representation on Kos, we found that people detained in the PRDC have either never seen their detention orders or were unaware of the orders' contents. Detention orders are issued in Greek and, due to the lack of interpreters in the PRDC, are rarely orally translated.<sup>185</sup> Clients of Equal Rights frequently contact us seeking an explanation as to what the "paper for three months," means—unaware that they inadvertently signed an order to extend their detention.

Even when served properly, the detention orders generally lack sufficient reasoning or valid legal basis. In July, Equal Rights submitted a complaint to the Greek Ombudsman on behalf of 19 rejected asylum seekers detained in the PRDC. In preparing the submission, Equal Rights observed that—across the board—detention orders simply copied the relevant provision of the law and contained no individualised assessment. None of the detention orders considered vulnerability, despite that fact that three of the applicants were SGBV survivors, one was a victim of human trafficking, and several suffered from serious medical and psychological conditions. Similarly, the orders did not address the length of any previous detention. One of the 19 people included in the submission had been in detention for 17 months at the time of the submission, and 17 had been detained for over six months. Further, Equal Rights discovered numerous procedural errors, that, in

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<sup>184</sup> Equal Rights and GCR submitted a letter to the competent authorities and Greek Ombudsman in response to these events. The letter was also published in the media. See e.g., Γιώργος Παγούδης, *Σύγχρονοι Πύργοι του Κάφακα*, EFSYN (07 August 2021), available at: <https://bit.ly/3DBfMZl>.

<sup>185</sup> An example detention order is included as an annex to this report.

some cases, made the detention per se unlawful. Seven clients had not been given a valid detention order at the time of submission, and in two clients' most recent detention orders were based on the wrong law. In those two cases, the applicants were detained under the IPA, the asylum law, even though they had final rejections and were therefore subject to the return law.

#### *bb. Reasons for Detention*

Each of the nine participants interviewed on the subject reported that they did not receive verbal or written information in a language they could understand, prior to or during their detention, on the reasons for their detention. In some cases, participants reported receiving papers which they could not read. Zain informed us that when he was first detained on another island, he was asked to sign some documents in English, which he does not understand. Describing his transfer from that island to Kos, he told us: *"I was not given any information. Here, I have not really been given any information, since I came here. In the first three months, I tried to talk to them about the situation and no one gave me any information"*. Zain, Joud and Faiza all mentioned receiving some documents at some stage during their experience of detention – Joud before he was detained, and Zain and Faiza while they were in detention – but that they were written in Greek, which they cannot read or understand. Similarly, Boubacar told us that he received some papers when he arrived in detention, but that they were written in a language he could not understand. Some participants also reported being provided information that they later learned was inaccurate or incomplete. When Haroun was arrested at Kos airport, he was informed that he would spend two weeks in quarantine and then be transferred to the 'open camp', or RIC. However, he was in quarantine for approximately 22 to 23 days, before being transferred to the PRDC. Meanwhile, Louis and Faiza both told us that when they arrived in detention, they were informed by authorities that they would be detained for 25 days, although they were ultimately detained for far longer. While there are legal grounds for extending asylum seekers' detention beyond the initially delineated period, we found that participants were not informed of such grounds, and often did not understand the reasons for their detention.

Due to this widespread lack of information regarding the reasons for their detention, some participants reported attempting to independently seek information about their circumstances. Joud told us: *"...I tried to look myself by the internet and I found out whoever comes illegally to the island got detained..."*. Meanwhile, Zain told us that although he tried to ask the asylum service about the reasons for his detention, he was not told anything, and was asked to approach the police. When he approached the police, however, he was told: *"they said we're not really arresting you, we don't want you to escape, that's it, and we're helping you by staying here"*. In contrast, when Haroun approached the captain of the PRDC for information, he was told he was in detention because he 'illegally' entered Greece, and because Turkey was a safe country for him. Similarly, when Faiza asked the asylum service about the reasons for her detention, she was told that she was detained as she came to Greece "illegally" and did not have any valid status in the country – despite being in the asylum procedure, which bestows temporary legal status on applicants. Still, others did not feel that they could approach authorities for information. Jeanne told us: *"We haven't asked, we haven't had the possibility"*. Information therefore remains limited, even where it is requested.

Just as the lack of information provided about the asylum procedure – discussed above – has led inaccurate information to circulate among asylum seekers in the PRDC, the lack of information regarding immigration detention has led to similar challenges. The word-of-mouth circulation of information among detained asylum seekers themselves is frequently inaccurate. Florence told us that she learned, from speaking to other women in detention, that she may receive voluntary return papers after 6 months of being detained. However, we have observed through our practice on the island that voluntary return papers are issued somewhat

randomly with no guarantee of receipt. Meanwhile, Zain described feeling a sense of resignation due to the inaccurate information that he was given by others. He told us: *“I already knew when I was coming [to Kos]...that they can detain me, nearly a year and a half. Everyone already heard about it, everyone was telling each other that...I knew it, [it’s] information among everyone... Once they mentioned Kos island I knew I’d be here for a year and a half”*. However, not all asylum seekers are detained for this long. This misinformation – stemming from a lack of proper information channels with authorities or access to legal services – thus creates a sense of resignation among detained persons.

Lastly, we have found that detainees’ lack of information regarding their detention often persists after their release. Florence told us that when she was released following a successful legal challenge to her detention, she was provided documents that she did not understand. She stated: *“The document I signed that the police gave was in Greek. I asked what it was. They said you can take a copy. I don’t know what I signed”*. Ismail was not certain as to the reasons for his detention, telling us: *“...I have no idea why we are inside detention. Even now, I don’t really know why. The only thing that I think is the reason I didn’t have any documents, but I don’t really know”*. Meanwhile, Louis claimed he understood the reasons for his detention better upon his release due to the papers he was provided at that time, although they were written in French, which he can only partially understand. When asked, he explained that the document: *“it said the reason we were in the camp was because we came to the country without papers”*. We have thus found that detainees’ lack of information regarding their detention causes distress, confusion, and disillusionment with respect to the Greek authorities. On a practical level, it prevents them from effectively challenging their detention.

#### ***b. Right to an Effective Remedy***

The primary legal remedy against detention in the PRDC is referred to as “objection against detention.” This remedy must be lodged in front of an administrative court and cannot be submitted electronically. Further, the judge’s decision cannot be challenged by a higher instance court, meaning that there is no remedy against a negative decision.<sup>186</sup>

Objections must be filed in person. However, there is no competent administrative court on Kos to review objections to detention. The nearest competent court is on the island of Rhodes, approximately 2-3 hours from Kos by ferry. Practically speaking, people detained in the PRDC cannot submit objections without the assistance of a lawyer, and even lawyers on Kos must either coordinate with lawyers on Rhodes to submit the objections or travel there themselves. Moreover, in our experience, the vast majority of people detained in the PRDC are not aware that a remedy against detention exists at all. Even if people are aware that there is some legal action they can take against their detention, the authorities do not provide people with any information on what remedies exist and how to file them, such as information about where the administrative court is, what requirements objections must meet, if any deadlines exist, or the free legal aid scheme that is available to anyone in detention in Greece.<sup>187</sup>

Equal Rights has submitted four objections against detention since opening in January 2021. Three were for single women, two of whom were survivors of SGBV, and the fourth was for a single parent family with three minor children between the ages of 8 and 13. The first two objections were accepted and the second two were rejected. The court accepted the first objections on the grounds that the client had a final rejection to her asylum application despite there being no reasonable prospect of her return to Turkey. Although the

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<sup>186</sup> HIAS, *Locked up Without Rights* (December 2019), 17, available at: <https://bit.ly/3kLZDZe>.

<sup>187</sup> Art 46 (7) L. 4636/2019 states that if the detention order or any extension thereto is contested, the applicants concerned shall be offered free legal assistance, under the procedure proscribed in the provisions of Law 3226/2004 (A’ 24), which apply *mutatis mutandis*.

administrative court accepted this argument in this particular case, it has repeatedly rejected this argument in cases that have been brought before it since. In the two cases that were rejected, the decisions were poorly reasoned and failed to address our lawyers' main arguments.

In addition to objections against detention, several other extra or non-legal remedies are available to lawyers and persons detained on Kos. First, lawyers on Kos have had varying success with a procedure known as 'interventions.' This is a non-legal procedure that involves lawyers submitting a request for release directly to the police, generally based on the person's vulnerability. However, because this is a non-legal remedy any decision is at the complete discretion of the police and there is no way to appeal a negative response. Secondly, people can submit a complaint to the Greek Ombudsman. However, the Ombudsman's recommendations are similarly not legally binding. In July 2021, Equal Rights submitted a complaint to the Greek Ombudsman on behalf of 19 rejected asylum seekers detained in the PRDC with no possibility of return to Turkey. The Ombudsman issued three opinions requesting the authorities to "reconsider the decision of administrative detention" in all 19 cases.<sup>188</sup> However, the police have so far refused to follow the Ombudsman's order; at the time this report was published the majority of the 19 applicants were still in detention.

Finally, people detained in the PRDC can submit their claim to the ECtHR, usually based on alleged violations of Article 3 and 5. However, this remedy is not only prohibitive to people without knowledge of the ECHR and its complicated filing procedure, but is also not a realistic means of release, as it can take years to get a final decision.

Practically speaking, none of the remedies mentioned above are available to non-Greek or non-English speakers. In other words, without legal aid, these remedies are all but non-existent for the vast majority of people in the PRDC.

## **4. Conclusions**

### *a. Formal Procedures*

The above data clearly establishes that the procedural safeguards laid out in the APD and RD are not met for people detained in the Kos PRDC in numerous respects. First, there is a complete lack of information regarding the asylum procedures and people's procedural rights, and, where information is provided by the police, oftentimes it is provided exclusively in Greek. This is in direct conflict with both Article 8 and 19 APD, which require that the authorities provide some amount of information to asylum seekers about the procedures. Further, reports from clients that the police often fail to honour their requests for legal assistance similarly conflicts with Article 71 IPA, particularly in cases where people ask for a lawyer for their appeals. Finally, contrary to the guarantees under Greek, EU, and human rights law, detainees generally have no knowledge of why they are detained and, even if they do receive copies of their detention orders, they are written in Greek and the police generally do not provide any translation.

According to our research, detention orders do not contain any individualised assessment. The specific grounds for detention outlined in Article 8 (2) RCD, Article 46 Law 4636/2019 and Article 15 (1), (6), Article 30 (1), (6) Law 3907/2011 are not assessed adequately. Instead, administrative decisions mainly concern a mere repetition of the legal provisions. This automatic application of detention is contrary to Article 8 (2) RCD, Article 46 (2) Law 4636/2019 and Article 15 (1) RD, Article 30 (1) Law 3907/2011 as well as both limbs of Article 5 § 1 (f) ECHR. Given that we have never seen an individualised detention order, the current

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<sup>188</sup> Equal Rights Beyond Borders, *Greek Ombudsman calls for Release of 19 Persons who are Unlawfully Detained in the Pre-Removal Detention Centre on Kos* (3 August 2021), available at: <https://bit.ly/3BPvn6X>.



procedural practices in the Kos PRDC raise the question as to whether any person in the PRDC is legally detained, regardless of whether they are an asylum seeker or have received a final rejection.

Additionally, although the police have generally granted us access to meet with clients in the PRDC, that access is not unhindered and therefore does not always comply with the law. Specifically, the requirement laid out in Article 10 APD that lawyers must be able to meet clients in a manner that respects their confidentiality is routinely not met.

Finally, even where basic procedural safeguards are met, it has become clear to us that detention can have a significant negative impact on a person's asylum claim. Firstly, as demonstrated throughout this report, the experience of being in detention is traumatising – it strips people of their liberty and dignity, puts them at risk of developing medical problems, and disconnects them from their lawyers, families, and community support systems. In our experience, detained clients regularly go into their interview unprepared, anxious, and with a sense of hopelessness about their situation. Second, the lack of information and the prevalence of misinformation in the PRDC creates profound anxiety and confusion among persons detained there, often leading them to make decisions that negatively impact their case. For example, the misinformation provided to people upon a first rejection – particularly with respect to legal services – often results in people submitting appeals on their own rather than through a lawyer. Third, it is extraordinarily difficult for people in detention to collect the necessary evidence to support their asylum claim, particularly any documents related to any medical condition.

#### *b. The Right to an Effective Remedy*

As documented above, the procedures for people detained in the PRDC lack numerous procedural safeguards, that also raise issues regarding people's right to an effective remedy. In particular, people in the PRDC lack an effective remedy with respect to their detention. Detention orders are issued automatically and contain no individualised or personal assessment, making it impossible for people to know or understand the underlying reasoning for their detention in order to challenge it. At the same time, the lack of reasoning included in template-like detention orders makes it difficult for courts to adequately review a person's detention. Further, even if people wanted to challenge their detention order, the police provide them with neither a written nor oral translation of the order. Thus, it is practically impossible for people to challenge their detention order because they cannot possibly know why they are detained in the first place. In this respect, Greece is quite clearly failing to meet its duty under the EU principle of good administration.

Moreover, the sole legal remedy available to people detained at the PRDC is itself not an effective remedy. First, decisions from the administrative court in Rhodes are often poorly reasoned and there is no way to appeal a negative decision. Further the logistical and procedural hurdles people must overcome to file objections exclude people from filing a remedy without a lawyer. For example, the police do not inform people about their right to object to their detention, detention orders are not provided in a language people can understand, and the objections must be filed in person at the administrative court in Rhodes. Thus, although the remedy exists factually, it does not exist for the vast majority of people detained in the PRDC in practice.

## G. Conclusion to Section 1

Section 1 of this report looked at whether the detention practices on Kos were in line with EU, Greek, and human rights law. In general, Section 1 asked whether the authorities have grounds to detain migrants and asylum seekers on Kos and, if so, what procedures they then must follow. Overall, Section 1 found that the practices on Kos violate, EU, Greek, and human rights law on several levels.

First, the practice of automatically detaining asylum seekers upon arrival flagrantly violates both Greek and EU asylum law, both of which only allow authorities to detain asylum seekers exceptionally, if there are no alternative less restrictive measures, and only after conducting an individualised assessment to determine if detention is appropriate for each person. However, asylum seekers on Kos are not detained exceptionally, but rather as a rule upon arrival. As for alternative, less restrictive measures, authorities clearly do not consider any because the RIC, which is located directly next to the PRDC, has been hosting fewer than 500 asylum seekers since January 2021, although it has a capacity for 816.<sup>189</sup> Regardless of whether there is space in the RIC, all asylum seekers on Kos are issued a geographical restriction upon arrival, which could serve as another alternative measure to detention. Moreover, in our experience, many individual detention orders do not meet the legal requirements outlined above. Further, the specific grounds for detention outlined in Article 8 (2) RCD, Article 46 IPA and Article 15 (1), (6), Article 30 (1), (6) Law 3907/2011 are not assessed adequately, as administrative decisions often include a mere repetition of the legal provisions. This is particularly true for vulnerable persons, whose detention orders make no reference to their individual needs or circumstances.

Second, with regards to the detention of rejected asylum seekers, Article 15 (1), (4) RD, Article 30 (1), (4) Law 3907/2011 and Article 5 § 1 (f) second limb ECHR require a “reasonable prospect of removal” and that the authorities take active steps to carry out the removal process. Given that readmissions to Turkey have not taken place since March 2020 and are unlikely to resume in a reasonable period, the detention of rejected asylum seekers on Kos is unlawful. This was emphasised by the Greek Ombudsman in July 2021, following a submission by Equal Rights. However, the administrative authorities on Kos have yet to follow the recommendation of the Ombudsman to review the detention decisions of the 19 applicants. Instead, they continue to detain the applicants unlawfully<sup>190</sup>.

Third, the practices towards both asylum seekers and rejected asylum seekers are likely not “lawful” within the meaning of Article 5 § 1 (f) because the preconditions laid out in Greek law are rarely met for people detained in the Kos PRDC as described above.

Finally, even where there are grounds to detain a person, Section 1 concludes that the practices on Kos fail to protect people’s procedural rights and their access to an effective remedy. In particular, people do not receive information about their detention because there are no interpreters in the PRDC and access to lawyers is limited by both a lack of a capacity among lawyers on the island and a lack of confidential and secure meeting spaces.

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<sup>189</sup> As of 6 January 2021, the RIC was hosting 473 asylum seekers. Infocrisis, *National Situational Picture Regarding the Islands at Eastern Aegean Sea* (06 January 2021), available at: <https://bit.ly/3bl6qFa>. However, by 12 March 2021 that number had dropped to 132, Infocrisis, *National Situational Picture Regarding the Islands at Eastern Aegean Sea* (12 March 2021), available at: <https://bit.ly/3jMOc3P>, and to 77 by 25 June 2021. Infocrisis, *National Situational Picture Regarding the Islands at Eastern Aegean Sea* (25 June 2021), available at: <https://bit.ly/3EqKSDy>. During that entire period, the Greek authorities detained all new arrivals upon arrival, despite obvious capacity in the RIC.

<sup>190</sup> Equal Rights Beyond Borders, *Greek Ombudsman calls for Release of 19 Persons who are Unlawfully Detained in the Pre-Removal Detention Centre on Kos* (3 August 2021), available at: <https://bit.ly/3BPvn6X>.

# IV. SECTION II: HUMAN RIGHTS WHILE IN DETENTION: DETENTION CONDITIONS & OBLIGATIONS TO FULFIL & PROTECT

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Section 2 documents the living conditions for people detained in the Kos PRDC. Greek, EU, and human rights law all require the state to provide a certain standard of living to detained migrants, regardless of whether the detention is lawful or not. The first subsection explores the legal guarantees afforded to migrants in detention in Greece, both in general as well as the additional guarantees provided for vulnerable persons. The second subsection provides a detailed analysis of the actual living conditions inside the Kos PRDC. This analysis is drawn primarily from first-hand testimonies provided to us during in-depth interviews and divided into 10 themes that were frequently mentioned. Based on those interviews along with our experiences working Kos, Section 2 ultimately concludes that the living conditions in the Kos PRDC fall far below the standards required by law.

## A. Introduction to the Kos PRDC

The Kos PRDC opened on 30 March 2017.<sup>191</sup> According to Greek government statistics, the facility has capacity to hold 474 people.<sup>192</sup> As of 16 October 2021, 165 people were detained in the Kos PRDC, according to official government statistics.<sup>193</sup> The PRDC and RIC are located next to one another on a former military base in Pyli, a small village 15 kilometres from Kos Town.<sup>194</sup> The Regional Asylum Office is housed inside the premises of the RIC. The EU Hotspot itself was opened in March 2016, in response to the EU-Turkey deal.<sup>195</sup>

Due to its relatively low number of arrivals, Kos has attracted little attention compared to other border locations and reporting on the island remains limited.<sup>196</sup> Even so, existing reports indicate that the same concerns raised with regard to the Greek detention estate more broadly – such as unlawful and arbitrary detention practices, poor living conditions, and inaccessible legal remedies – also exist on Kos. In 2018, the European Council on Refugees and Exiles reported that there was no doctor or psychiatrist in the Kos detention centre.<sup>197</sup> In September 2019, an Open Society Foundation (OSF) funded-delegation reported that asylum seekers were unlawfully detained in Kos in the absence of viable alternative accommodation.<sup>198</sup> The Kos RIC, built for around 800 people, accommodated more than 2,410.<sup>199</sup> In the words of OSF, “authorities resorted to a population exchange between the camp and the detention centre, using the nearby detention facility as a space management tool”.<sup>200</sup> In April 2020, Refugee Rights Europe reported that the Kos centre held 447 people in a space for 474, and an additional three people in police detention. Refugee Rights Europe reported that new arrivals to the island in March 2020 were placed directly in detention, without being

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191 RSA, *Greece: Back to Detention* (13 April 2017), available at: <https://bit.ly/3kPikv3>.

192 General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at Eastern Aegean Sea* (05/08/2021), available at: <https://bit.ly/3BDNvAf>.

193 Official Greek Government statistics on the Eastern Aegean islands can be found at the following link: <https://bit.ly/3Gz9T1k>.

194 Refugee Rights Europe, *The Invisible Islands: Covid-19 Restrictions and the Future of Detention Kos and Leros*, 6, available at: <https://bit.ly/3gYol7H>.

195 Ibid.

196 Adriani Fili, *Ending Up in Detention on the Island of Kos: The ‘Undesirable’ Foreigners*, University of Oxford Border Criminologies (20 November 2019), available at: <https://bit.ly/2WLJTxi>.

197 AIDA, *Country Report: Greece* (December 2018), 18, available at: <https://bit.ly/2YbBYtD>

198 Adriani Fili, *Ending Up in Detention on the Island of Kos: The ‘Undesirable’ Foreigners*, University of Oxford Border Criminologies (20 November 2019), available at: <https://bit.ly/2WLJTxi>.

199 Ibid.

200 Ibid.



screened for Covid-19,<sup>201</sup> and that families and women – including survivors of sexual and gender-based violence – were unlawfully detained together with men, separated by only a small fence.<sup>202</sup>

People who are detained in the PRDC cannot leave the premises on their own for any reason, even to visit the asylum service, seek medical treatment, or meet with lawyers. Lawyers are only allowed to enter the PRDC to meet with clients with prior approval from the police. UNHCR also has access to people detained in the PRDC. According to UNHCR, the organization visits the PRDC at least once per week. However, protection officers have not been able to enter the living areas since March 2020. The asylum service has offices inside the PRDC, but those offices are used for limited reasons. For most communication with the asylum service, detained applicants are expected to use e-mail or request information from the police. For interviews and appointments with the asylum service, police transfer applicants by police car to and from the RIC. For medical care outside of the PRDC, the police also transfer applicants in their custody.

## *B. Legal Preconditions*

### **1. Greek and European Law**

Central to this report are the provisions laid out in Article 10, 11 and 19<sup>203</sup> RCD and Article 47 of the IPA. Specifically, Article 10 RCD imposes on Member States the following minimum standards:

- Asylum seekers should be detained, as a rule, in specialised detention facilities as opposed to prisons. In exceptional cases where they cannot be detained in a detention centre, they should be kept separately from “ordinary prisoners” and from other migrants who have not lodged an asylum application.<sup>204</sup>
- Asylum seekers must have access to open-air spaces.<sup>205</sup>
- Minors and families should only be detained in exceptional circumstances and with specific safeguards.<sup>206</sup>
- Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.<sup>207</sup>
- Asylum seekers shall receive “the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders” and “necessary medical or other

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201 Refugee Rights Europe, *The Invisible Islands: Covid-19 Restrictions and the Future of Detention Kos and Leros*, 5, available at: <https://bit.ly/3gYol7H>

202 Ibid at 10.

203 Health Care is not specifically mentioned for detention in Art.10, so Art.19 (which does not specifically address detention) applies without modifications. See also Peek/Tsourdis in Hailbronner/Thym EU Immigration and Asylum Law, Part D.V. para 298, p. 1480.

204 Art. 10 (1) Directive 2013/33/EU.

205 Art. 10 (2) Directive 2013/33/EU. Art. 10 (2) has to be interpreted in the light of the CPT Standards. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stated more specifically that every type of prisoner without exception, should be allowed at least one hour of exercise in the open air every day. According to the Committee, this is widely accepted as a basic safeguard and preferably it should be part of a broader programme of activities (CPT Standards, CPT/Inf/E (2002) 1 – Rev. 2011, 18), see also Peek/Tsourdis in Hailbronner/Thym EU Immigration and Asylum Law, Part D.V. para 160, p.1453.

206 Art. 11 (2), (3), (4) Directive 2013/33/EU.

207 Art. 11 (5) Directive 2013/33/EU.

assistance to applicants who have special reception needs.”<sup>208</sup>

Article 47<sup>209</sup> and 48 IPA largely transpose Article 10, 11 and 19 RCD into national law.

Regarding rejected asylum-seekers, detention conditions are outlined in the RD and Law 3907/2011. The RD does not provide detailed preconditions for detention conditions.<sup>210</sup> Article 16 RD, read together with Recital 17 of the RD, imposes on Member States the following minimum standards:

- Rejected asylum seekers should be detained, as a rule, in specialised detention facilities as opposed to prisons.<sup>211</sup>
- Particular attention shall be paid to vulnerable persons.<sup>212</sup>
- Emergency health care and essential treatment of illness shall be provided.<sup>213</sup>

Article 31 Law 3907/2011 transposes Article 16 RD.<sup>214</sup>

## 2. European Human Rights Law

The ECtHR addresses detention conditions under different articles. Unlawful detention conditions mainly concern Article 2 (positive obligation to protect the right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 5 (detention of third-country nationals), Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience, and religion) ECHR.<sup>215</sup>

Article 3 ECHR prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim’s behaviour.<sup>216</sup> To fall within the scope of this Article, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative and depends on all circumstances of the case. Circumstances which have been considered relevant by the ECtHR for an Article 3 analysis include: the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.

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208 Art. 19 Directive 2013/33/EU. The wording of the provision is relatively vague and the application in the different EU MS varies considerably, Peek/Tsourdis in Hailbronner/Thym *EU Immigration and Asylum Law*, Part D.V., para 302, p. 1481.

209 Art. 55 L. 4636/2019 officially transposes Art.19 RCD, but the transposition of health care for asylum-seekers is reflected in Art.47 L. 4636/2019.

210 Art. 16 RD does not regulate other detention conditions, such as access to sanitary facilities, access to open air spaces and recreation areas, nutrition, etc. However, in accordance with Art. 3 ECHR and Art. 4 of the EU Charter read in conjunction with Recital 17 RD, Member States are obliged to observe not only the relevant Strasbourg case-law, but also the basic requirements reflected in the Council of Europe (CoE) Guideline on forced return No. 10 (‘conditions of detention pending removal’); standards on immigration detention established by the CoE Committee on the Prevention of Torture (‘CPT standards’), and the 2006 European Prison Rules as basic minimum standards. See also Manashvili in Hailbronner/Thym *EU Immigration and Asylum Law*, Part C.VII. para 342 et. seq., p.775.

211 Art. 16 (1) Directive 2008/115/EC.

212 Art. 16 (3) Directive 2008/115/EC.

213 Ibid.

214 Art. 31 L. 3907/2011 mostly transposes Art. 16 RD literally. The only specifications concern Art. 31 (1) L. 3907/2011 (detention should not only as a rule but always take place in specialised facilities) and Art. 31 (4). 3907/2011 establishing that visits by national, international, and non-governmental organizations and institutions are subject to authorization, a possibility that is foreseen by Art. 16 (4) RD.

215 See for an overview of the ECtHR case law on prisoners’ rights: CoE, *ECtHR Guide on the case-law of the European Convention on Human Rights, prisoners’ rights*, last updated April 2021, available at <https://bit.ly/3kLXA7I>.

216 ECtHR, Judgement of 10/12/2020, No. 42732/12, *Ananyev and Others v. Russia*, para 139, with further references.

For detention, specifically, to be considered under Article 3 ECHR, the suffering and humiliation involved must go beyond the inevitable element of suffering and humiliation connected with deprivation of liberty itself. That said, authorities must ensure that: (1) a person is detained in conditions compatible with respect for human dignity; (2) the manner and method of execution of a custodial sentence or other type of detention measure do not subject the person concerned to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and (3) that, given the practical demands of imprisonment, this person's health and well-being are adequately secured.<sup>217</sup> When assessing detention conditions under Article 3 ECHR, it is particularly important to account for the cumulative effects of these conditions, the specific allegations made by the person concerned, and the amount of time that he or she has spent in these conditions.<sup>218</sup> Even where each individual aspect of these conditions complies with domestic law, their cumulative effect may be such as to result in inhuman or degrading treatment within the meaning of Article 3 ECHR.<sup>219</sup> In general in these cases, the ECtHR considers the lack of personal space (overcrowding)<sup>220</sup>, access to outdoor exercise<sup>221</sup>, natural light and fresh air (availability of ventilation)<sup>222</sup>, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.<sup>223</sup>

#### *a. Increased Obligations of the State for persons wholly dependent on the State*

States have an obligation to respect, protect, and fulfil human rights. States' obligation to protect and fulfil increases when the state has made persons largely dependent on the state through measures that restrict or deprive freedom in the context of detention or camp accommodation.<sup>224</sup> When persons are totally dependent on the state because they cannot independently access shelter, medical care or sanitation and cannot protect themselves from violence, the ECHR imposes additional positive obligations on the state.<sup>225</sup>

#### *b. Use of police detention*

Regarding detention location, the ECtHR has consistently held that prolonged detention in police stations, *per se*, violates Article 3 ECHR because of the conditions inherent to police stations.<sup>226</sup>

#### *c. Inadequate food and water*

The Court has held that providing clearly insufficient food to a prisoner raises an issue under Article 3 of the Convention.<sup>227</sup> In that regard, the Court has found a violation of Article 3 ECHR when detainees are only

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217 Ibid. at 141, with further references.

218 Ibid. at 142, with further references.

219 ECtHR, Judgement of 27/01/2015, Nos 36925/10 et. al., Neshkov and Others v. Bulgaria, para 225 et. seq, ECtHR, Judgement of 10/12/2020, No. 42732/12, Ananyev and Others v. Russia, para 139-158.

220 ECtHR, Judgement of 23/07/2013, No. 55352/12, Aden Ahmed v. Malta, para 87, ECtHR, Judgement of 07/07/2005, No. 53254/99, *Karalevičius v. Lithuania*, para 36; ECtHR, Judgement of 10/12/2020, No. 42732/12, Ananyev and Others v. Russia, para 143-148.

221 ECtHR, Judgement of 10/12/2020, No. 42732/12, Ananyev and Others v. Russia, para 150-152.

222 Ibid., paras 153-155.

223 ECtHR, Judgement of 23/07/2013, No. 55352/12, Aden Ahmed v. Malta, para 88. ECtHR, Judgement of 10/12/2020, No. 42732/12, Ananyev and Others v. Russia, para 156-159.

224 See also Council of Europe/European Court of Human Rights, Thematic Report: Health-related issues in the case law of the European Court of Human Rights, June 2015, p 13.

225 ECtHR, Judgment of 25/01/2011 - No. 38427/05 - Elefteriadis, para. 47.

226 ECtHR, Judgement of 04/10/2013, No. 50520/09, Ahmade v. Greece, para 101; ECtHR, Judgement of 28/02/2019, No. 19951/16, S.Z. v. Greece, para 40, ECtHR, Judgement of 21/06/2018, No. 66702/13, H.A. and others v. Greece, para 170, ECtHR, Judgement of 13/06/2019, No. 14165/16, Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia.

227 ECtHR, Judgement of 07/11/2017, No. 37717/05 Dudchenko v. Russia, para 130.

provided with one meal per day.<sup>228</sup> A mere dissatisfaction with the quality of the food when provided three times a day and regularly inspected by the authorities does not constitute a violation of Article 3 ECHR.<sup>229</sup>

Article 9 ECHR obliges authorities to account for detainees' religious beliefs when providing nutrition.<sup>230</sup> While the Court accepts that special dietary requirements pose an additional financial and organizational burden on administrative authorities, it requires states to strike a fair balance between such considerations and the detained person's freedom of belief. In that regard the Court has found the request for a religiously motivated vegetarian diet (Buddhism) reasonable and protected under Article 9 ECHR while a kosher diet was not found to be reasonable.<sup>231</sup>

When the need for a special diet is based on medical reasons, the Court does not accept any possible justification on economic grounds.<sup>232</sup> Since detained persons are unable to seek medical help at any time from a hospital of their choosing, authorities are obliged under Article 3 ECHR to offer an adequate diet and protect the detained person's well-being.

#### *d. Recreational Activities*

Regarding recreational activities in detention, the Court refers to European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards<sup>233</sup> which include outdoor exercise, preferably as a broader programme of out-of-cell activities. Outdoor exercise facilities should be reasonably spacious and, whenever possible, offer shelter from inclement weather.<sup>234</sup> The recreation area must be usable "in a meaningful way".<sup>235</sup> In that sense, the Court found a violation of Article 3 ECHR where an outdoor area was not usable due to bad weather conditions and not having a roof.<sup>236</sup>

#### *e. Hygiene*

The Court has held that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining prisoners' sense of personal dignity. Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a necessary condition for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean.<sup>237</sup>

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228 ECtHR, Judgment of 04/05/2006, No. 62393/00, *Kadikis v. Latvia* (no. 2), para 55, ECtHR, Judgment of 06/11/2007, No. 8207/06, *Stepuleac v. Moldova*, para 55.

229 ECtHR, Judgment of 20/10/2016, No. 7334/13, *Muršić v. Croatia* [GC], 2016, para 166.

230 ECtHR, Judgment of 02/05/1997, No. 146/1996/767/964, *D and E.S. v. United Kingdom*, 1990, Commission decision, ECtHR, Judgment of 07/12/2010, No. 18429/06, *Jakóbski v. Poland*, para 45; ECtHR, Judgment of 17/12/2013, No. 14150/08, *Vartic v. Romania*, para 44-55.

231 ECtHR, Judgment of 07/12/2010, No. 18429/06, *Jakóbski v. Poland*, ECtHR, Judgment of 09/06/2020, Nos 23735/16 & 23740/16, *Erlich and Kastro v. Romania*, para 44.

232 ECtHR, Judgment of 13/03/2018, No. 10839/09, *Ebedin Abi v. Turkey*, para 31-54.

233 See for example European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Factsheet Immigration Detention* (March 2017), CPT/Inf(2017)3, available at <https://rm.coe.int/16806fbf12>.

234 ECtHR, Judgment of 10/12/2020, No. 42732/12, *Ananyev and Others v. Russia*, para 125, 150, ECtHR, Judgment of 09/10/2008, No. 62936/00, *Moiseyev v. Russia*, para 125.

235 ECtHR, Judgment of 20/10/2011, Nos 5774/10 & 5985/10, ECtHR, Judgment of 20/10/2011, Nos 5774/10 & 5985/10, *Mandić and Jović v. Slovenia*, para 78.

236 *Ibid* at para 78.

237 ECtHR, Judgment of 10/12/2020, No. 42732/12, *Ananyev and Others v. Russia*, para 156.

Necessary sanitary precautions also include measures against infestation with rodents, fleas, lice, bedbugs, and other vermin. Such measures comprise sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation and check-ups of the cells, particularly bed linen, mattresses, and areas used for keeping food.<sup>238</sup>

#### *f. Access to health care*

##### i. General aspects

The ECHR does not specifically guarantee a right to healthcare as health care would be considered a socio-economic right.<sup>239</sup> However, in the case of detention, there are no precise and clear boundaries between the fundamental rights and freedoms enshrined in the Convention and socio-economic rights. Health-related cases brought before the Court have most frequently been argued under Articles 2, 3, 8 and 14 of the Convention.<sup>240</sup>

Generally, the national authorities must ensure that diagnosis and care in detention facilities, including prison, are prompt and accurate. Where necessitated by the nature of a medical condition, health care supervision must be regular and involve a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing deterioration of his or her condition.<sup>241</sup>

Furthermore, the Court has highlighted that medical assistance must be in line with Article 8 ECHR and Chapter III, paragraphs 34 and 50 of the CPT standards,<sup>242</sup> respecting the detainee's privacy and the principle of medical confidentiality.<sup>243</sup>

Inadequate health care may also violate Article 8 ECHR, which grants every person the right to have his or her family and private life respected. The ECtHR has emphasized in various places that, while the ECHR does not include a right to medical care, respect for private life includes a person's "physical, psychological and moral integrity." In the absence of an explicit codification in the ECHR, the Court thus reads a right to physical integrity, such as is known from Article 3 (1) CFR or Article 2 (2) German Grundgesetz, into the duty to respect private life from Article 8 ECHR.<sup>244</sup> In accordance with the human rights doctrine described above, the state also has a positive obligation to protect this integrity.<sup>245</sup>

In its case law, the ECtHR has so far derived obligations to protect from Article 3 ECHR. The Court has expressly clarified that "suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible."<sup>246</sup> State acts and

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238 Ibid at para 159. See also, ECtHR, Judgement of 27/01/2015, Nos 36925/10 et. al., Neshkov and Others v. Bulgaria, para 243.

239 Matters such as health and other socio-economic rights are traditionally addressed in instruments such as the European Social Charter or by the United Nations International Covenant on Economic, Social and Cultural Rights.

240 See for health-related issues under the Convention: ECtHR, Thematic Report, Health-related issues in the case-law of the European Court of Human Rights (June 2015), available at <https://bit.ly/3ySMv9D>.

241 ECtHR, Judgement of 30/07/2009, No. 34393/03, Pitalev v. Russia, para. 54.

242 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards for Immigration Detention, CPT/Inf(93)12-part, available at <https://rm.coe.int/16806ce943>.

243 ECtHR, Judgement of 02/06/2009, No. 36936/05, Szuluk v. the United Kingdom, para 43-55.

244 See, for example, ECtHR, Judgment of 24/09/2007 - No. 5410/03 - Tysi c, para. 107; Judgment of 09/03/2004 - No. 61827/00 - Glass, para. 74 et seq.

245 As early as 1981, the German Federal Constitutional Court stated that Art. 2 (2) of Grundgesetz also stipulates the state's duty to "protect and promote the legal interests mentioned in Art. 2 (2) of Grundgesetz and [...] to preserve them", see German Constitutional BVerfGE 56, 54, 73 – Flugl rm [Aircraft Noise].

246 ECtHR, Judgment of 29/04/2002 - No. 2346/02 - Pretty, para. 52.



omissions in the area of health care can, thus, trigger state responsibility to effectively prevent a violation of Article 3 ECHR by state provision of adequate medical treatment. Failure to do so, then, constitutes a violation of Article 3 ECHR.<sup>247</sup>

If a lack of health care does not reach the threshold of degrading or inhuman treatment, then access to and financing of medically necessary treatment falls, in any case, within the scope of protection of physical integrity from Article 8 ECHR.<sup>248</sup> This applies in particular if the person is dependent on the state. Otherwise, they would not be able to gain access to health care and would be dependent on the state to provide it. Based on this, access to necessary medical care must be ensured, at least for the group of asylum seekers living in the camps, according to the requirements of the ECHR. If it is not provided, the physical and psychological integrity of the person would be violated. This is especially the case if an individual's state of health deteriorates in state care or if an illness first arises because of living conditions – for example, chronic lung disease or mental illness due to hopelessness. In certain cases, there may also be a violation of Article 3 ECHR if the lack of health care reaches the standard of degrading treatment.<sup>249</sup>

It is unsettled whether a failure to provide health care combined with state sponsored (reception) conditions that contribute to the deterioration of health culminate in a violation of physical integrity under Article 8 ECHR. According to the case law of the ECtHR, a certain relevance threshold must be exceeded in such cases. The Court assumes that Article 8 protection applies if persons are “directly and seriously” affected.<sup>250</sup> Accordingly, a violation of Article 8 ECHR through lack of access to health care is not within the typical scope of application of the provision. However, in view of the regulatory content developed by the Court and the requirements of Article 8 ECHR, such an understanding is warranted: that a violation of physical integrity and thus of Article 8 ECHR is possible in the absence of treatment of a condition that is known or should have been known.

## ii. Mental Health

The Court has consistently held that Article 3 ECHR<sup>251</sup> requires States to ensure that the mental well-being of prisoners is adequately secured.<sup>252</sup>

Firstly, the psychological condition of detainees needs to be assessed properly by taking into account the individual's health and the effect of the manner of detention on him or her. The Court has recognised that detainees with mental disorders are more vulnerable than ordinary detainees, and that certain requirements of prison life pose a greater risk that their health will suffer.<sup>253</sup> The state's assessment of a person's situation must include the person's vulnerability, including their inability to complain coherently or at all about how they are affected by any particular treatment.<sup>254</sup>

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247 Thus explicitly ECtHR, Judgment of 26/05/2011 - No. 27617/04 - RR, para. 152.

248 ECtHR, Judgment of 04/01/2005 - No. 14462/03 - Penticova, under B. In conclusion, the Court finds no violation of Art. 8.

249 For the scale, see above under D.I.4.

250 ECtHR, Judgment of 08/07/2003 - No. 36022/97 - Hatton et. al, para. 96 f.; For application to health care and physical integrity see Hesselhaus, Art. 3 GRC, in Pechstein/Nowak/Häde, Frankfurter Kommentar, 1st edition 2017, para. 14.

251 Mental Health related questions may also arise with regard to Art. 2 ECHR (prevention of suicide). Furthermore, the conditions in which a person suffering from a mental disorder receives treatment are also relevant in assessing the lawfulness of his or her detention within the meaning of Art. 5 ECHR, See ECtHR, Judgement of 31/01/2019, No. 18052/11, Rooman v. Belgium [GC], para 194, 208.

252 ECtHR, Judgement of 20/01/2009, No. 28300/06, Sławomir Musiał v. Poland, para. 87.

253 ECtHR, Judgement of 31/01/2019, No. 18052/11, Rooman v. Belgium [GC], para. 145.

254 ECtHR, Judgement of 26/04/2016, No. 10511/10, Murray v. the Netherlands [GC], para. 106; See also, ECtHR, Judgement of 24/09/1992, No. 10533/83, Herczegfalvy v. Austria, para. 82, ECtHR, Judgement of 30/07/1998, No. 61/1997/845/1051, Aerts v. Belgium, para. 66.



Secondly, it is essential that proper treatment for the problem is diagnosed and suitable medical supervision is provided.<sup>255</sup> It is not enough for such detainees to be examined and a diagnosis made.<sup>256</sup> An absence of a comprehensive therapeutic strategy aimed at treating a prisoner with mental health issues may amount to a “therapeutic abandonment” in breach of Article 3 ECHR.<sup>257</sup>

Thirdly, such treatment has to be provided in a timely manner. A significant delay in admission to mental health institutions and, thus, in treatment of the person concerned will obviously affect the prospects of the treatment’s success.<sup>258</sup>

Lastly, the level of care required for this category of detainees must go beyond basic care. Mere access to health professionals, consultations, and the provision of medication cannot suffice for treatment to be considered appropriate and thus satisfactory under Article 5.<sup>259</sup> In this context, Article 3 ECHR may impose an obligation on the State to transfer mentally ill prisoners to special facilities to receive adequate treatment.<sup>260</sup>

The Court has applied the above principles to the treatment of various mental health issues suffered by prisoners. These include chronic depression,<sup>261</sup> psychiatric disorders involving suicidal tendencies,<sup>262</sup> post-traumatic stress disorder,<sup>263</sup> chronic paranoid schizophrenia,<sup>264</sup> acute psychotic disorders,<sup>265</sup> and neurological disorders.<sup>266</sup>

### iii. The Right to Confidentiality

The right to privacy enshrined in Article 8 ECHR obliges state authorities to ensure medical confidentiality in detention. In *Szuluk v. the United Kingdom*, the Court dealt for the first time with the issue of medical confidentiality in prison. A prisoner who had undergone brain surgery discovered that his correspondence with the specialist supervising his hospital treatment had been monitored by a prison medical officer. The Court found that the state violated its obligation to respect his right to confidentiality of his correspondence under Article 8 ECHR and underlined the importance of medical confidentiality in detention. Article 8 ECHR furthermore imposes a positive obligation on domestic authorities to ensure appropriate access to sanitary facilities with a minimum level of privacy.<sup>267</sup>

### iv. Additional Obligations during the Covid-19 Pandemic

In its jurisprudence, the Court has reiterated that states have a positive obligation to prevent the spreading of contagious diseases in detention centres, to introduce a screening system for prisoners upon admission, and to guarantee prompt and effective treatment. But the Court grants states a margin of appreciation regarding specific measures that should be taken.<sup>268</sup>

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255 Ibid at para. 106.

256 Ibid.

257 ECtHR, Judgement of 21/01/2020, No. 34602/16, *Strazimiri v. Albania*, 2020, para. 108-112.

258 ECtHR, Judgement of 12/02/2008, No. 34151/14, *Pankiewicz v. Poland*, 2008, para. 45.

259 ECtHR, Judgement of 31/01/2019, No. 18052/11, *Rooman v. Belgium* [GC], para. 209.

260 ECtHR, Judgement of 26/04/2016, No. 10511/10, *Murray v. the Netherlands* [GC], para. 105; ECtHR, Judgement of 21/12/2010, No. 36435/07, *Raffray Taddei v. France*, para. 63.

261 ECtHR, Judgment of 26/10/2000, No. 30210/96, *Kudła v. Poland* [GC].

262 ECtHR, Judgement of 31/03/2020, No. 82284/17, *Jeanty v. Belgium*, para. 101-114

263 ECtHR, Judgement of 14/09/2007, *Novak v. Croatia*.

264 ECtHR, Judgement of 18/12/2007, No. 41153/06, *Dybeku v. Albania*; See also, ECtHR, Judgement of 20/01/2009, No. 28300/06, *Slawomir Musial v. Poland*.

265 ECtHR, Judgment of 16/10/2008, No. 5608/05, *Renolde v. France*.

266 ECtHR, Judgement of 03/02/2009, No. 23052/05, *Kaprykowski v. Poland*.

267 ECtHR, Judgement of 15/12/2005, No. 17249/12, *Szafrański v. Poland*, para. 37-41.

268 ECtHR, Judgement of 24/02/09, No. 9870/07, *Poghosyan v. Georgia*, ECtHR, Judgment of 03/03/2009, No. 23204/07, *Ghavitadze*

While there are many pending cases<sup>269</sup> which address detention under Covid-19, the Court has so far only examined one case concerning immigration detention. In *Feilazoo v. Malta*, the Court examined an issue of automatic placement of new arrivals in Covid-19 quarantine.<sup>270</sup> The Court held that because the application had undergone de facto isolation during the first 45 days of his detention in Malta, there was no need for another quarantine period, especially if such quarantine is done together with other detainees and exposes the applicant to a new risk of contracting Covid.<sup>271</sup>

### 3. Special Conditions for Vulnerable Persons

Under EU and domestic Greek law as well as under European human rights law, the state must provide special preconditions for particularly vulnerable persons. While Greek and EU law define certain groups of people as vulnerable (cf. above), human rights law does not distinguish different groups in the same way, but rather, acknowledges vulnerabilities by taking them into account when examining if the threshold for a human rights violation is met.

#### *a. Under EU and Greek Law*

The minimum standards under Greek and EU Law have been mostly set out above. Additionally, EU and Greek law establish specific condition standards for minors.

Article 11 RCD, transposed into Article 48 IPA, states that minors should be placed in accommodation suitable for minors and that unaccompanied minors “shall never be detained in prison accommodation. Article 11 also states that “Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.”

For rejected minor asylum seekers, Article 17 RD, transposed in Article 32 3907/2011, proscribes the following standards:

- Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.
- Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

#### *b. Under European Human Rights Law*

Other than domestic and EU Law, human rights law – particularly the ECHR – does not provide specific, additional guarantees to vulnerable persons. This is due to the broad nature of human and fundamental rights. The ECHR focuses instead on when persons are vulnerable enough to actually suffer a human rights violation. Indeed, a state measure must meet a minimum level of severity to constitute a violation of human rights, including Article 3 ECHR in the context of the detention of asylum seekers. The determination of this threshold must be relative. One should consider all circumstances of the individual case such as the duration of the detention measure, physical and psychological consequences, and, in some cases, the gender, age and state of health of the respective beneficiary of fundamental rights. However, the ECtHR does not solely

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v. Georgia.

269 See for example *Hafeez v. the United Kingdom* (no. 30379/20); *Maratsis and Others v. Greece* (no. 30335/20) and *Vasilakis and Others v. Greece* (no. 30379/20); *Fenech v. Malta* (no. 19090/20). For a complete overview of Covid-19 related jurisprudence, see ECtHR, Factsheet – COVID-19 health crisis, June 2021, available at <https://bit.ly/3BKw9BV>.

270 ECtHR, 11/03/2021, No. 6865/19, *Feilazoo v. Malta*, para. 92.

271 *Ibid.*

consider whether an individual is a member of a particular group or not when deciding whether there was a human rights violation.<sup>272</sup>

Article 21 et seq. RCD, as set forth above, defines certain groups in need of protection. This definition was provided primarily because persons who exhibit the listed group characteristics are likely to be considered vulnerable. Special protection provisions, therefore, apply to these groups of persons. The “special need for protection” in Article 21 et seq. RCD is not congruent with the concept of “vulnerability” within the meaning of Article 3 ECHR. This is because the telos of the respective legal concepts is different. While the RCD is centered on the premise that certain groups of persons require special guarantees in the context of an asylum procedure, the case law of the ECtHR on vulnerability under Article 3 ECHR is based on the idea that certain groups of persons are particularly “vulnerable” with regard to human rights violations. Thus, the ECtHR’s criterion was developed with the idea that certain groups of people may be at particular risk of human rights violations. For example, a blow to the body of an adult man will not constitute inhuman treatment, in some circumstances. However, an equally severe blow to a child may be assessed differently. The same state action can therefore cause different levels of suffering depending on the degree of vulnerability of the person in question. It can therefore also be assessed differently in the context of Article 3 ECHR.<sup>273</sup> Regarding the minimum requirement for the detention conditions and protection of certain persons under ECHR, existence of a violation will depend primarily on the state (in)action that causes the level of suffering.

There is currently no blanket answer to when detention conditions violate human rights. There exists, however, significant ECtHR case-law that suggests that the Court regularly considers applicants’ special circumstances or needs. For example, in *Rahimi v Greece*, the Court found that the conditions for an unaccompanied minor detained on Lesbos violated his rights under Article 3, noting that the conditions had been described as “abominable” and that the detention centre lacked any age appropriate facilities.<sup>274</sup> In *Eleftheriadis*, the ECtHR ruled that Article 3 ECHR obliges the state to protect a prisoner with a serious lung condition from the effects of so-called passive smoking.<sup>275</sup> The Court has also held that failure to treat serious illnesses may fall within the scope of Article 2 ECHR – the right to life – if the state was responsible for the treatment<sup>276</sup> – as it is in detention.

On healthcare, the Court has expressly clarified that “suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible.”<sup>277</sup> Thus, state acts and omissions in the area of health care can, in certain circumstances, trigger state responsibility to effectively prevent a violation of Article 3 ECHR by requiring the state to provide adequate medical treatment. Failure to do so constitutes a violation of Article 3 ECHR.<sup>278</sup> In *Popov v. France*, the Court held that French authorities violated Articles 3, 5 (1), 5 (4), and 8 when it detained a family for two weeks in an administrative detention centre.<sup>279</sup> In *Sakir*, the Court ruled that national authorities must ensure

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272 ECtHR, Judgment of 21/01/2011, No. 30696/09, *M.S.S v. Belgium and Greece*, para. 219.

273 Cf. in detail Sußner, *Wer geht, ist selber schuld? Unionsrechtliche Perspektiven auf Gewaltschutzansprüche von LGBTIQ-Asylsuchenden in Unterkünften – unter Berücksichtigung der Rechtsprechung des EGMR*, in *EuGRZ* 2019, p. 442 et seq.

274 ECtHR, Judgment of 05/07/2011, No. 8687/08, *Rahimi v. Greece*, paras. 81-85.

275 ECtHR, Judgment of 25/01/2011, No. 38427/05, *Eleftheriadis v. Romania*, para. 48.

276 Cf. ECtHR, Judgment of 09/06/1998, No. 23413/94, *L.C.B. v. the U.K.*, paras. 36-41. The Judgment concerned an applicant suffering from leukemia. Numerous other decisions, such as on treatments for hepatitis and HIV can be found in: ECtHR, Guide on Art. 2 of the Convention - Right to life, 31/12/2020, p. 7.

277 ECtHR, Judgment of 29/04/2002, No. 2346/02, *Pretty v. the U.K.*, para. 52.

278 Thus explicitly ECtHR, Judgment of 26/05/2011 No. 27617/04, *R.R. v. Poland*, para. 152.

279 ECtHR, Judgment of 19/01/2012, Nos. 39472/07 & 39474/07, *Popov v. France*, para. 91.

that diagnosis and treatment in prisons, including prison hospitals, are prompt and appropriate.<sup>280</sup> The Court also held that states must ensure that, where required by the prisoner's state of health, monitoring takes place at regular intervals and includes a comprehensive treatment strategy aimed at achieving the prisoner's recovery or at least preventing his or her condition from worsening.<sup>281</sup> Because the authorities could not provide a certain treatment, the detention was found to be in violation of Article 3 ECHR.<sup>282</sup>

The case-law shows that, while a single answer cannot be given, individual circumstances must be considered when determining whether detention conditions violate human rights. When considering individual circumstances, as a matter of course, a sufficient vulnerability assessment must be conducted.<sup>283</sup> For vulnerable persons, a violation of human rights is, hence, much more likely.

### *C. Living Conditions in Kos PRDC*

With the legal context in mind, this subsection documents asylum seekers' living conditions in Kos PRDC. Many of the conditions reported below quite clearly violate the legal preconditions laid out above, something explored more in depth in the conclusion to this section. However, even where certain facts do not necessarily constitute a breach of law, we have decided to include them because, taken together, all the conditions described below contribute to a sense of hopelessness, degradation, and insecurity among migrants detained at the PRDC. When asked to comment on any concerns they might have about the conditions in the PRDC, UNHCR reported that *"as per communication with detainees and other actors, UNHCR notes that systemic problems observed in the past continue to be prevalent. UNHCR notes the limited provision of medical and psychosocial services for detainees and the poor quality and nutritional value of the food provided."*

The below findings are primarily based on individual testimonies provided during in-depth interviews and our everyday work. From these, we have identified 10 themes that were frequently mentioned, and which we outline below.

#### **1. Use of police detention**

Some participants reported being held in police detention for short periods of time prior to their detention in the PRDC. Zain told us that he was held in police custody for four to five days on the island where he was arrested before his transfer to Kos. After his transfer, he was immediately taken to the police station in Kos Town for some hours, before being taken to the PRDC. Joud reported being held in police detention overnight, explaining he was *"...in a small room that was like a prison, it was really dark, and they took my phone. I stayed there for one day and at 3 am they came to investigate me and they fingerprinted me and then they transferred me from the police station to the detention [the PRDC] after that"*. Ismail reported that the conditions in Kos police station, where he was also held overnight, were poor, stating: *"I don't have any words to describe it, it's better to have a look to see what it looks [like]. Actually, it's a small room and it [had] a toilet inside it...it was a bad condition. That's the only thing that I can say about it"*. He further reported that the cell was overcrowded: he shared the room with several men, three of whom were there when he arrived, and several others who were arrested at the same time as him.

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280 ECtHR, Judgement of 24/03/2016, No. 4875/09, Sakir v. Greece, para. 52.

281 Ibid.

282 Ibid at para 58.

283 In detail on case-by-case examination Markard/Nestler/Vogt/Ziebritzki: No State of Exception at the EU External Borders, March 2020, p. 17 et seq, available at: <https://bit.ly/32W3BGg>.

Not all participants reported being held in police detention, and none reported being held in police detention for longer than a few nights. While police detention is certainly in use in Kos, the practice is inconsistently exercised. The practice appears to mainly be applied as an interim measure before asylum seekers' transfer to the PRDC. Despite only being used for short periods of time, however, conditions in police detention in Kos may still be poor and may cause individuals significant distress.

## **2. Carceral environment and ill treatment by police**

Several participants indicated their belief that the PRDC constituted a carceral environment. Zain drew parallels between his experiences of imprisonment in Syria and Turkey and his current detention in Greece, stating: *"I was detained in Turkey, I was detained in Syria, once I got here, I was like, detention again. I was really scared, and it was traumatising, being in detention again"*. For Zain, the very experience of being detained compounded his past experiences of serious violence and torture. Eleven participants frequently referred to the PRDC as a "prison"; an impression that was further compounded by everyday conditions within the PRDC. As Joud stated, *"The first time when I arrived there and saw surrounded by detention, gates, police, everything, I said I'm definitely arrested, I'm in a prison, it's not detention"*. Florence similarly expressed her shock and disbelief at being criminalised, stating: *"I was in prison. I didn't kill anyone, I didn't commit any crime, why should I be locked there like a criminal, I didn't do anything... When you stay in prison, police are telling you, you are a prisoner. They are shouting at you, it's not good"*. Rashid stated, *"...to be honest the situation is really bad, like I was arrested in my country and I consider detention a prison, not what they're trying to show – you're isolated on top of a mountain and I've been inside detention for 16 months...Greek people here, they treat their dogs better"*. Meanwhile, Haroun recognised the punitive nature of his surroundings, stating: *"Also I want to say, I am detained right now and I have a lot of rights. Even in the worst detention in Syria you would still be allowed to receive visitors and food, so I don't know why they are doing that to us"*. These statements indicate that, due to the conditions of their environment, participants frequently understood – though protested – that their detention followed from their criminalisation.

During our visits to the PRDC, Equal Rights has also observed various conditions that create the impression of a carceral environment, including a continuous, heavy police presence, and an intensive use of barbed wire fences, illustrated in the figures below. This impression is further reinforced through the PRDC's everyday administration: all detainees are assigned a 4-digit 'ABK' police number, by which they are addressed by the camp authorities. During a legal advice session, one of our clients, who is an (alleged) unaccompanied minor, told our staff that he felt as though he had forgotten his name, as he was only addressed by his ABK. Punitiveness pervades detainees' experiences of the centre: they are deprived of their belongings, obstructed from accessing medical care, and provided limited quantities of poor-quality food. This sense of being punished arose within several participants' testimonies. As Raphael stated, *"I didn't do anything wrong and now I am at the mercy of the state"*. Meanwhile, Zain told us, *"We're not killers, we didn't commit crimes. We've been detained for no reason"*. In addition, as we previously highlighted, detainees' experiences of arrest can, at times, further compound their impressions of the PRDC's carceral nature. We have found that, for detained persons, the PRDC is mostly perceived and experienced as a predominantly carceral environment.

### **a. Use of handcuffs**

Four participants reported being handcuffed prior to their arrival in the PRDC. Zain described being handcuffed during his journey from the airport on another island, where he was arrested, to the police station, to the port; and, again, from the port in Kos to the police station and to the PRDC. Meanwhile, Florence, who was arrested after being apprehended in Kos Town for failing to obtain permission to be outside during lockdown, was restrained in handcuffs during her journey from the police station to the PRDC. Ismail, who was apprehended and arrested while staying in a hotel after his arrival in Kos, was



handcuffed on his way from there to the police station. Finally, Joud described being handcuffed on his journey from Kos airport, where he was arrested, to the police station in town, and again on his way to the PRDC. Other participants either did not mention being handcuffed, or confirmed they were not handcuffed or restrained at any point prior to their arrival. Meanwhile, during a conversation with us in July 2021, Yacouba revealed that detained persons are handcuffed when they go to hospital from the PRDC. Police use of handcuffs on Kos, thus, appears inconsistent. Still, where they are used, handcuffs can be experienced as humiliating and shameful. Joud told us that he felt like a “criminal” both times he was handcuffed. The use of handcuffs can therefore cause unnecessary distress to migrants and asylum seekers and create the impression of a carceral environment (discussed further above).

### ***b. Maltreatment by police***

Seven participants described experiencing some form of maltreatment by police in the PRDC. Hana reported that she and her fellow detainees were frequently verbally insulted by police, stating: *“The police says “malaka malaka” and insults us. I lost my dignity and pride in here in detention (cries)”*. Saeed reported similar treatment, stating: *“whenever I go to the police to ask for medication or help, I can tell that they’re insulting people whenever they want to ask for help or something, you can tell how they speak and the way that they talk with us”*. Florence reported that verbal insults from the police were routine, explaining: *“Not all of the police, but majority are bad. Because they talk to you rudely”*. Meanwhile, Louis told us that the police ransacked detained persons’ belongings, stating: *“They would come into the area we were staying, go through our stuff randomly, disorganise everything and left them that way. They would search stuff for drugs”*. Faiza repeatedly mentioned she was “afraid” of the police, especially following the incident where she was isolated in a room due to concerns that she had COVID-19. On our visits to the PRDC, Equal Rights has also observed multiple incidents where police have shouted at and verbally abused our clients. On 6 April, after meeting with a client for several hours to prepare him for his first-instance asylum interview, we observed police aggressively handling and checking our client outside the meeting container. On 17 June, one of our lawyers witnessed a police officer aggressively shout at several detainees for reasons that were unclear to her. Based on our interviews and observations, we have concluded that detained persons experience various forms of maltreatment by police which further compounds their fear and distrust of the authorities.

### ***c. Broken phone cameras***

Thirteen participants reported that the police asked them to break their phone cameras, or alternatively, having them broken by police on their arrival in the PRDC. Participants were not directly asked about this subject, and it is likely that far more have had their cameras broken. In Equal Rights’ experience, almost every asylum seeker we have spoken to in the PRDC has had their phone camera broken on arrival. Police appear to routinely present detainees with a choice on arrival: have their phones confiscated or agree to have their cameras broken, so that they cannot take photographs inside the PRDC. Ismail described how he and his fellow detainees were told on arrival to hand over their phones for safekeeping, or keep them, on the condition that they break their phone cameras. Faiza’s story was similar, and she explained: *“The police broke the camera. They asked me either if I break camera or police will and if you don’t want to break it then the phone is not allowed to get inside detention...”*. Meanwhile, Louis explained that his phone was initially confiscated during his two weeks of quarantine in a seaside facility. On his transfer to the PRDC, his phone was returned, however, his camera was then broken. Similarly, Haroun told us: *“When I was quarantined, I did not have any connection with anyone. They took our phones and did not explain anything. Before they transferred me to detention, I had to do an interview for 3-4 hours in the open camp. Afterwards they gave me my phones and said: ‘either we will break the cameras or you cannot have them inside at all’. I agreed to break the camera”*. However, when the police broke Haroun’s



phone cameras, they also shattered his phone screens, and both phones stopped working. Ismail further explained that phone cameras obtained after arrival in detention also needed to be broken: When he tried to break his camera, his phone screen also shattered, and he therefore ordered another phone, and requested that the camera be broken before delivery so it would be permitted inside the PRDC.

However, some asylum seekers manage to retain their cameras. Zain explained that police initially broke his phone's fingerprint reader, rather than its camera. This was later broken, however, when police eventually realised that he had a functioning camera. Some participants expressed awareness that being discovered with a camera could have serious repercussions. Saeed explained that he had heard that detained persons found with phone cameras would be punished, stating: *"I've heard they will take him to a prison, in isolation, just alone, and they will keep him for 15 days inside...before I was trying to talk with international organisation that supports refugees and tell them about my conditions in detention, I was really scared they would know and do the same with me, break my phone and take me to isolated jail, prison"*. Meanwhile, Faiza, who confirmed that her camera was broken, described an incident where another detained woman, with whom she had had various disagreements, told police that she had a functioning camera, which, she stated, *"caused me troubles inside detention and the police were coming every second day to check if I had [a] camera or not"*. Participants thus remained fearful of authorities' influence. Detained persons who have retained their phone cameras can therefore experience anxiety and harbour significant fear of the authorities for doing so.

The practice of breaking phone cameras further isolates and causes distress to detainees. Hana told us she cannot video call her family as her camera is broken. Similarly, Afran, who surrendered his phone rather than consenting to have his camera broken, told us he had not been able to see his daughter in Syria for a long time. Lacking access to a camera further complicates' asylum seekers' access to vital services. For example, Equal Rights is unable to request photographs of clients' documents while they are in detention. We are therefore required to arrange in-person meetings to obtain basic information, which is not always possible amid COVID-19 restrictions and our restricted access to the PRDC. Detained persons are also unable to obtain and share video or photo evidence of their living conditions in detention, including with our organisation, which has complicated our efforts to monitor the issues they are experiencing and communicate these to authorities. As we have previously highlighted, to conduct our direct services and reporting work, we are reliant on detained asylum seekers' testimonies regarding their living conditions, and those of other professionals with access to the PRDC.

### **3. Inadequate food and water**

Participants confirmed that detainees are provided meals three times a day. Twenty-four participants, however, reported that the food provided was inadequate in some way: either because the quantities of food and water were insufficient, because it was poor quality, or because it was not suited to their dietary requirements. Nine participants reported the quantities of food provided are insufficient. Zain explained: *"The amount of the food is little, we don't really feel full after eating this food...if it was good food, they make it even smaller, too...the better it is, the less you get"*. Kamal told us that that he sometimes goes to sleep hungry due to the insufficient quantities of food provided: *"No I don't receive sufficient food (laughs)...Sometimes I sleep and I'm not really full, it's not enough all the time..."* Messan further reported that detainees received insufficient drinking water and had been told by police to drink tap water – which in Kos, is unsafe to drink – when they ran out: *"We only get 1 bottle of 1.5 litres of water every day. If we tell the police that we would like more water, they tell us we should drink the tap water. However, we know that the tap water is not drinkable and could worsen our health"*. Efe concurred that the quantity of water provided is insufficient: *"They only provide us with one 1.5 litre water bottle per day here which is not enough, especially in summer"*. In summary, many of our participants reported that their

basic needs with respect to food and water were not met.

Every one of the 24 participants who spoke on the subject also reported that the quality of the food is very poor. This issue has also repeatedly surfaced during Equal Rights' everyday conversations with clients. Louis described the food provided in the camp in detail:

*They would give me three meals a day. In the morning, a jug of water, bread, and an orange or apple. Five days out of the month they would only give us bread and water, no orange or apple. At noon they would give us really badly cooked rice that we could barely eat, and the same thing for dinner at night...the food was raw...The food had no salt...sometimes they would give us food made earlier during the day, and later that afternoon, and for dinner.*

Daouda was similarly critical of the food he was provided, describing it as “fit for the bin”, while Boubacar told us it was “miserable...not good...disgusting”. Meanwhile, Hana broke down when describing her daily meals: “... The only thing that humans can eat is the breakfast, lunch and dinner are in a bad quality. Nobody can eat it and nearly nobody actually eats that food (cries)”. Participants also reported that the food provided was sometimes spoiled. Zain told us that he was once provided lentils “like a rock...even the police couldn't smell it and thought it was gross”. Faiza noted: “Sometimes they were giving us food that was melted and it's expired as well”. Haroun told a similar story, stating: “Dinner is really bad. The eggs are purple sometimes. Generally the quality is really bad. Sometimes the food has gone off already, its moulded”. Louis also told us that while the food sometimes smelled bad, he would always eat it, as he had no other means of obtaining food.

Four participants further explained that the poor-quality food provided had either exacerbated existing health conditions, or instigated health problems they had previously not experienced. Jeanne told us: “...Oh, I don't know how to talk about it...the rice is really badly cooked and it gives me stomach problems...The food has really made my health conditions worse. Efe similarly explained that the food provided made him ill: “I believe that the food might be the cause of my stomach problem. It worsens the problem in any case. The doctor told me that I should not eat any rice. However, they serve a lot of rice here in the PRDC. In any case, the other food also gives me stomach-ache so I don't see a big difference to eating rice or noodles or whatever it would be”. Issa admitted that he avoids eating the meals provided as they make his health worse, stating: “When I eat, it makes me sick, so I often sleep without eating”. Other participants also expressed concerns that their health would deteriorate in the future their health due to the poor-quality of the food they were eating. Saeed expressed concern over potentially becoming ill due to the food provided, stating: “I think the more we spend more time eating this food, I think we will have more diseases too, there's no vitamins inside, it doesn't have all the things humans should have in their food, like vitamins or other proteins or things. Some have become ill due to the food provided in the PRDC, while others have been concerned about their future health.

Six participants reported that the food provided did not meet their medical or religious dietary requirements. Zain told us that while he is allergic to rice, which is frequently served in the PRDC, he has not told the authorities about his allergy. Based on his past interactions with authorities regarding the food in the camp, he believes they would make no effort to meet his needs. He therefore simply avoids eating rice when it is provided. Additionally, while Zain is Muslim and usually adheres to halal dietary requirements, he informed us that he cannot follow these requirements in detention and accepts whatever food he is given. He explained: “We've been forced to eat it, there's no other choice. Even in the supermarket, they only sell pork and tuna and canned meat...”. Faiza noted that she was unsure as to whether her religious dietary requirements were met in detention, stating: “...I'm Muslim and I can't eat pork...Actually I don't know if they were catered for. It's rare for them to bring meat, and I can't tell if it has pork or not. But I don't think they were giving us pork”. During Ramadan this

year, Equal Rights also observed our Muslim clients' concerns over fasting in detention, without autonomy over their meals and mealtimes. Meanwhile, Florence reported that the food provided was high in salt, and therefore poorly suited to her high blood pressure. We have thus found that detained persons' dietary requirements are not always accommodated, and they have often expressed that they feel too disempowered to assert these requirements to ensure they are met.

Lastly, six participants mentioned their reliance on supplementary food from the PRDC supermarket – a truck that visits the PRDC on a weekly basis. Rashid explained: *"If we don't buy things from the supermarket, we would be starving, because the food is just really bad...So we spend most of the time eating cheese, tuna, just the things we can buy from the supermarket, and chips"*. Afran agrees: *"If you're not able to buy things from the market you'll be starving because the food is really bad and you can't really eat it"*. However, not all participants could afford to purchase additional food and many clients of Equal Rights have complained that the market's prices are far higher than average costs. Emmanuel told us: *"We don't work here, we don't have money here. Some people buy condiments to mix into their food, but if you don't have money then you can't do that"*. Meanwhile, Louis stated: *"I didn't have anyone else I could call to give me something if I didn't want to eat something. I had to eat everything"*. Not all detainees, then, have access to supplementary food, and are therefore reliant on whatever they are provided.

#### **4. No recreational activities**

Each of the nine participants interviewed on the subject reported that they had no access to recreational activities in detention. Most reported that they spent their time sleeping or browsing the internet on their phones. Joud, Ismail, and Haroun each told us they would sleep during the day and wake during the night. Ismail stated: *I usually wake up at 7pm and start my day. I used to play games on the phone, or trying to learn something useful, spending some time to learn German language or anything that could be useful for me*. Meanwhile, Haroun explained that awaking during the night was the only way he could get some privacy. Florence informed us that she used the last of her money to pay for internet on her phone so that she could read the news and study the Bible. Faiza noted that she preferred to spend most of her time in her room, talking to her husband and family, as spending too much time with her neighbours in detention was hard on her mental health, stating: *"Once I get outside people were really depressed and shower me with negativity and saying that I will stay for a long time so I'd rather stay in the room and talk with my family and my husband"*.

Some participants reported that they sometimes devised their own recreational activities: Boubacar explained that some of his friends played football outside, while Joud told us he would sometimes go for fast walks around the complex to keep healthy. Haroun, who did not have a phone in his first months in detention, told us that he spent most of his time walking outside his container, as he felt like he could not breathe while he was inside. Faiza, however, noted that there was not much space to move outside, estimating that there were only 35-50 metres of free space in the two sections in which she was placed, which was crowded with people. She stated: *"There's not enough space to make exercises or anything"*. However, all participants confirmed that no recreational activities were organised by the authorities, and that they were responsible for filling their time with the limited resources available. Zain explained: *"Most of the time we spend on our phones. There's nothing else you can do actually, they can make a place for people to fix things, electrical or stitching or something but there's nothing"*. In some cases, this sense of inertia caused participants evident distress: Boubacar explained: *"I don't have the words frankly, to explain how I pass the days here"*. In other cases, detained persons were too distressed to design their own activities. Faiza stated: *"I'm supposed to learn the language but because I was so depressed I didn't even try. I was thinking to learn English or German"*. We have thus found that the lack of recreational activities and resources in the PRDC is harmful to detained persons who spend long periods in detention with very few means of passing the time.

## 5. Mixed-gender accommodation

Based on our interviews and everyday conversations with our clients, we have established that accommodation in the PRDC is usually separated by gender. Most participants in this report confirmed that they were housed only with members of their gender. However, we have also found that this practice of separating accommodation by gender is not consistently applied. Five participants in this report mentioned being placed within mixed-gender accommodation at some stage during their detention in the PRDC. Louis told us that both women and men were housed in the first section in which he was housed. He described a container in the section that housed three women, one of the women's children, and three unrelated men, and another that housed single women in one room and single men in another. Accommodation in the PRDC is therefore not always separated by gender.

Mixed-gender accommodation can cause various complications, particularly for women, and for SGBV survivors. In our report, three women who reported being SGBV survivors mentioned being placed in mixed-gender accommodation. During her 14 days of quarantine, Florence reported that she was housed with both women and men in a particular section of the PRDC. She explained that she had her own room, that the other woman in her section also had her own room, and that the two shared a toilet and shower. However, Florence's room did not have a lock on the door, and she estimated there were approximately eight men sharing the wider section with the two women. She told us she did not feel "easy" being around the men given her experiences of SGBV. Similarly, Jeanne explained that she was housed in a section with both women and men, and experienced similar fears due to her history of SGBV, explaining: *"...I'm not comfortable with it. It's not easy to live with men, because of what I experienced in Cameroon. I am frightened of the men"*. Mixed-gender accommodation can thus be particularly distressing to SGBV survivors, which includes 4 of the 5 women who participated in this report.

For both women and men, mixed-gender accommodation can have additional implications. Faiza, who was placed in mixed-gender containers for the duration of her time in the PRDC, explained that it was difficult for her to live with unrelated men as she wears a hijab, stating: *"...yes I had an issue with living with, being with men in the same container. Because I'm a Muslim and I wear a hijab...I wasn't feeling free, and I had to be careful of everything I do and wear my hijab every time"*. Meanwhile, Haroun told us that he found it challenging to live with women, stating: *"It was hard for me to stay with another gender. Also because I am Christian and the other two girls were Muslim and wearing hijab. So I had to knock before I came in so they knew when I came in. Also the same for the bathroom. So it was not comfortable for me"*. Mixed-gender accommodation can therefore cause various forms of discomfort for women, and compound existing feelings of fear and anxiety regarding their surroundings, and may also be uncomfortable for men

## 6. Overcrowding

All nine participants interviewed on the subject reported that the spaces they were allocated in the PRDC were small and shared among many people. Participants reported living in sections that hosted anywhere between 17 to 100 people at any given time. Containers were generally shared between three to four people. Very small containers, that were about half the size of the others, were usually shared between two. Ismail reported that while he usually lived in a container of four, when there were more arrivals, 7 or 8 people would share the container. Participants also disclosed that bathrooms were sometimes shared between containers: Boubacar reported that his neighbours shared the bathrooms in his container, while Ismail told us that many containers in his section – he approximates ten – didn't have toilets, and the toilet in his container was therefore shared among several additional people. Meanwhile, as the bathroom in his container didn't have warm water, Boubacar would also visit other containers to use their showers. Similarly, Faiza told us

that, at one point, she shared a single container and bathroom with 10 other people; 6 of them, including 2 children, were placed in a single room with just 4 beds. Others noted that rooms inside the containers were small. Saeed estimated that the bedroom he shared with one other person measured about 1 by 1.5 metres. As previously highlighted, some mentioned that the small spaces in detention posed health risks. Emmanuel told us that there was little possibility for social distancing given the small rooms, and Rashid expressed concerns that COVID-19 could spread quickly through the centre due to the lack of space. In summary, participants' testimonies indicated overcrowding in the PRDC, which they were aware could carry negative consequences for their health and hygiene.

## 7. Access to Privacy

Several participants revealed that they had limited privacy in the PRDC. According to Joud, "a lot of containers don't have doors", while Ismail told us that only some of the bedrooms inside the containers had doors. Louis told us that, as there was no door to his container when he arrived, he and his fellow detainees hung curtains in its place. Joud and Ismail both noted that the doors to their containers did not have locks, while Jeanne and Faiza told us that neither her room, nor her container, had a lock. However, some participants conceded that having locks made, or would make, little difference to their access to privacy. Florence told us that while her room had a door with a lock on it, she did not lock her door, as the police entered the container to conduct checks every day. As an SGBV survivor, she found her interactions with the police – almost all of whom are men – especially traumatising. She reported: "...we don't have women police. They are only men who come in. The door there doesn't have key, every door is unlocked. Even when you are coming to the toilet, the police push the door without knocking". Ismail also told us "...we didn't have a lock. But even if we had it, we can't really lock it because the police came every six hours to see if you're inside – even if you're in the toilet or sleeping, they have to check if you're still here or not". Similarly, Joud reported: "We didn't have any lock, we're not allowed to close the doors as well because police come and check on us at 3 am and 10 pm...When they come to check they just open the door and turn on the lights on us which is something that annoyed us a lot and they shout sometimes, it was an annoying thing to do every day". Detained persons' access to privacy was therefore limited due to both the physical conditions within the PRDC, and their enforced interactions with police.

## 8. Poor hygiene facilities and materials

Many participants reported conditions of poor hygiene in the PRDC. Every participant interviewed on the subject reported that the toilets and showers were in very poor condition, were never cleaned, and that detained persons were not provided products to clean them and were expected to independently purchase these if they wished to clean the facilities. Florence told us that the toilet and shower in her container were in bad condition. When she asked authorities for a brush to clean them, she was told they did not have one and that she would have to buy one herself. Fares also told us that in both sections in which he stayed:

*"It was smelling really bad...the flush for the water wasn't working. When you finish...with the bathroom, the thing doesn't flush regularly...The shower was also broken, so we weren't really able to have a shower because it was broken and it was smelling really bad..."*

Louis also explained that the bathrooms were:

*"disgusting. They would sometimes get filled up and were not properly maintained. [They had] a yellow colour all the time". He further explained: "There were odours coming from the toilets and sometimes there would be water running from the toilets into the areas where we slept..."*



Faiza told us:

*“In the first section that we were inside, we didn’t have hot water and also it was a problem in the toilet, like once you want to flush the water, there is no water system to get rid of the toilet water. They had to make hole in the floor. When you flush the water from the toilet, it goes down the floor. In the second section we had hot water, it had the same problems with flushing the toilet water though, so we also had to make a hole in the floor to get rid of the water from the bathroom.”*

Like Florence, both Louis and Faiza mentioned that detainees would clean the toilets and showers themselves if they had their own money to purchase cleaning products from the supermarket. Meanwhile, Ismail told us that, as there was no door outside the toilet, he and his fellow detainees hung a blanket in its place. He additionally explained that the supermarket would not sell detainees cleaning products, such as chlorine, that could be used to self-harm. However, Jeanne noted that she was occasionally provided cleaning products by the police and would otherwise buy them herself. Joud told us that he understood that detained persons were provided cleaning products once a month, but that for the period he was in detention, they were only provided these once, and only because, to his knowledge, an external organisation was due to visit to monitor conditions in the PRDC. At other times, detained persons would buy cleaning products themselves. The poor levels of hygiene in the detention centre often caused participants evident distress. Ismail told us: *“The cleaning condition was really bad – the toilet, the rooms, it made me think I don’t want to make an application for asylum, I just wanted to get out of detention, no matter how”*. Several participants also described the conditions as being *“disgusting”, “dirty”, “uncomfortable”* and in *“bad condition”*. Overall, toilets and showers were frequently described as being in poor condition, and detained persons were not consistently provided products to clean them.

Participants also reported that they lacked regular access to essential hygiene and sanitary products. Florence told us that she was menstruating when she was arrested and detained and asked the attending police for sanitary products. She was told they did not have any and was told to instead ask a friend for these. Florence asked a friend living in the RIC to deliver sanitary products to the PRDC, and, after spending two days in detention, she was finally provided sanitary products by the police. She explained that it was very difficult coping without the necessary provisions over this time. During the rest of her time in detention, Florence’s friend in the RIC delivered toilet rolls, sanitary napkins, soap and toothpaste to the PRDC for her. Florence explained that, although she had asked for these items many times, they were not given to her. Meanwhile, Louis explained that he and persons detained with him were not provided with toilet paper, and instead saved the paper that wrapped the cutlery distributed with meals to use in the toilet. He also told us that detained persons were generally only given one tube of toothpaste every two months, to share between two people. Joud also reported that he was given toothpaste and soap ahead of the monitoring delegation’s visit, while Haroun told us: *“We have to buy everything on our own, they don’t offer anything. Within the 6 months that I am here, they only provided us once with sanitary products, the size of a cup, full of chlorine. And also Colgate (toothpaste) and a liquid for cleaning”*.

Several participants also reported having problems with mosquitoes, bed bugs, cockroaches, rodents, and stray cats in the PRDC. Faiza told us that mice and cats entered her room, and that *“the floor had holes, so all the rodents and the cockroaches were coming outside it”*.

Saeed reported: *“There are a lot of small creatures jumping on my bed and head when I’m sleeping, it’s really inhuman. I’m not like in my mind, I think it’s all like a nightmare, it’s not real”*, while Joud told us *“we got a lot of small creatures, mosquitos and bugs”* in the containers.



## 9. Inadequate healthcare

Limited access to adequate medical treatment is endemic in the PRDC. Every participant interviewed for this report reported significant issues with access to healthcare. During our time on Kos, almost every one of our clients in detention has disclosed concerns about their health and reported multiple barriers to accessing medical care in detention. In response to frequent concerns from clients about their medical conditions, lawyers from Equal Rights met with the only doctor in the PRDC on 13 July 2021. During that meeting we learned that the medical staff at the PRDC consisted of the following employees:

- 1 doctor
- 2 nurses
- 1 social worker
- 1 psychologist
- 1 Sorani interpreter (who speaks some, limited, Arabic)

According to the doctor, these health care professionals were meeting the medical needs of approximately 180 individuals. The doctor also informed us that he worked until 14:00 every day and was able to see 12-20 people per day. He also stated that he and the other medical staff at times relied on other people detained in the PRDC to translate because of a lack of interpreters. Outside of the medical staff in the PRDC, the doctor also confirmed that Kos is lacking any specialists in the following fields:

- Neurology
- Dentistry
- Psychiatry

Regarding a psychiatrist on the island, the doctor stated that there are only two private psychiatrists and that he had reached out to both personally, but they refused to take patients referred from the PRDC. Finally, the doctor expressed significant concern about the lack of medical resources both inside the PRDC and on Kos in general. He was particularly concerned about the lack of psychological and neurological treatment. He stated that, in general, the police are slow to respond to people's requests for medical attention or follow up on his concerns regarding certain patients' health. In late July, the doctor resigned from his post at the PRDC and had not been replaced by the time this report was published in November 2021.

From our interviews with people detained in the PRDC, we have identified five main sub-themes from these testimonies – a lack of knowledge regarding the healthcare services available to persons in detention, deterrence from and long waiting times for obtaining medical attention, dismissiveness by healthcare professionals, a lack of interpreters at medical services, and inaccessible and unaffordable private healthcare services – which are explored in-depth below.

### *a. Lack of knowledge regarding services available*

We have observed that detained persons often lack knowledge regarding healthcare services available to them in the PRDC. Kamal informed us that he did not understand who to approach for help, stating: *"I don't know with whom I should communicate to seek this [medical] help or service. I'm just helpless to be honest"*. Meanwhile, Yves expressed confusion over the availability of a psychologist in detention, stating: *"I haven't seen the psychologist - there isn't a psychologist, I asked for one and I didn't see one"*. Emmanuel expressed additional confusion over his

eligibility for psychological services, stating: *“I know there’s a psychologist here, I didn’t know if everyone could go there. There are people who take medications, because their heads don’t work well, I thought it was them who had the right to go there”*. Detained asylum seekers are therefore not always fully aware of their rights and entitlements to healthcare services, and of how to access these services if required.

### ***b. Deterrence and long waiting times***

Several participants reported long waiting times to see the PRDC’s doctors or psychologist. Florence told us: *“When you go there to complain that you need to see a doctor, it takes them time to talk to a doctor”*. Similarly, Kamal reported: *“I asked for psychologist here and they told me ‘yeah we will let you meet him’, but they never called my name. That was before I received my second rejection”*. Amir similarly complained that he had been trying to see the PRDC’s psychologist for a month and had not managed to secure an appointment. Taher further told us that as the PRDC’s doctors do not work on weekends, *“if you were sick on Saturday and Sunday, the doctor is off, so there is no medical service during these two days”*. At times, these long waiting times were perceived as tactics of deterrence, implemented by the police, or healthcare professionals themselves.

Multiple participants also reported deterrence and dismissiveness by police with regards to their access to medical and psychological services. Joud described his challenges when attempting to obtain medical attention for one of his fellow detainees, stating: *“He fainted and we tried to call the police but they took a really long time to come and check on him. And they came and they didn’t really care about him”*. Similarly, Afran stated: *“...it’s really hard even if you went to the police to register your name to meet the doctor, they will delay you for a couple of days...you have to register yourself every day to make sure they give you an appointment, sometimes they agree to send you to the doctor and psychologist and sometimes they don’t”*. Meanwhile, Faiza described an incident where she was prevented from accessing adequate medical care. She explained that when she had a fever, police took her to be isolated in a cold and dirty room for two days in case she had COVID-19. She reported that she had no mattress, was provided with a dirty blanket, and that there were mice on the floor of the room. She was only permitted to see the doctor after two days, when another detained person saw her through the container window and persuaded police to allow her access to medical care. Zain’s experiences of continuous deterrence by police in fact put him off from seeking medical assistance. When describing one incident of illness, he stated: *“I felt the pain during the night but I knew if I went to the police they wouldn’t do anything about it. I waited till the morning and went to the police so they could check me. Once he saw that I have a really high fever and my situation was getting worse he looked at the surgery that I had, he said they should send me to hospital”*. Multiple participants also expressed their fear of the police and feelings of resignation as they felt there was nothing the police would do for them.

Many of these issues have come to light after the death of Macky Diabate, the asylum seeker who died from appendicitis in March 2021. Zain, who lived in the same section as Diabate, attempted to explain the institutional failures that contributed to Diabate’s passing: *“They tried to talk with the police to take him to the hospital but they didn’t really do it and the police officer said there is no doctor right now and we can’t offer anything right now for him”*. Similarly, Ismail told us: *“...he was trying to talk with the police and they didn’t even respond to him. So what am I supposed to ask them, and what would they answer to me. The African guy tried to seek help from them and they didn’t do anything, so there’s no point of asking them”*. Diabate’s death has not only caused significant distress and panic among the detained population in Kos but has also exacerbated their distrust in the Greek authorities and made people even more reluctant to seek medical care.

### ***c. Dismissiveness by healthcare professionals***

Several participants reported dismissiveness by healthcare professionals, and an inability to procure adequate treatment from them. Several of our clients, including participants in this report, referred to PRDC medical staff as “Depon doctors”, complaining that they simply prescribe every person Depon-brand paracetamol, no matter their condition, and dismiss their other concerns. As Zain stated: *“We call the doctor here a ‘Depon doctor’, he keeps giving us the same medicine no matter what happens to you, if you’re pregnant or you’re dying. It’s something that makes you remove the headache. It doesn’t matter if it’s your eyes, your mouth, it’s the same medication”*. Boubacar described his experience of accessing medical services in the PRDC in similar terms: *“...the doctor...writes some things. And then they give you paracetamol... I have pain in my lungs, I went to the doctor, who asked if I smoked. I said no I’ve never smoked in my life. He said no problem, and then gave me paracetamol”*. Meanwhile, Faiza described her experiences of being dismissed by medical professionals: *“I have asthma and high blood pressure. I’ve seen the doctor in the detention centre but he accuses me of lying. I have medical documents from Syria though that document my condition—why would the doctors in Syria lie?”*. On another occasion, she told us: *“...so my experience whenever I go to the doctor and tell him about how I feel, he doesn’t believe people till you suffer a lot and till you’re almost dead then he’ll believe you’re sick and send you to hospital or give you medication, but otherwise he wasn’t really helpful”*. Even when they have access to healthcare, detained persons thus experience challenges with obtaining appropriate and adequate treatment.

#### ***d. Lack of interpreters***

As of November 2021, there was only one interpreter in the PRDC, a Sorani interpreter who speaks a limited amount of Arabic. Based on our first-hand experience, however, most people detained in the PRDC during the period covered in this report were either French or Arabic speakers. Several participants also reported that they were unable to communicate with medical services as they frequently lacked interpreters. This occurred both within medical services in the PRDC, and in the hospital in Kos Town. Boubacar told us that when he visited the doctor in the centre, *“the communication was...bad with the doctor – they speak English, I speak French. There was no interpreter”*. Zain told us that when he visited the hospital in town: *“Because I don’t speak good English and there was no interpreter, I don’t really know what they said...I wasn’t really able to describe what I’m suffering from, didn’t have enough English to tell them”*. Meanwhile Amir expressed reluctance to engage with the psychologist in the PRDC at all, as he was aware there were no appropriate interpreting services available, and that detained persons were often asked to translate for each other during sessions with the psychologist, stating: *“...it doesn’t really help me anyway, there is no common language that we speak. Some of the refugees would be translating”*. Clients have also told us that, after our repeated intervention, they were able to book appointments with the PRDC psychologist, but in some cases the appointments were postponed because there was no interpreter available. Clients of Equal Rights have also stated that, in some instances, the medical staff will use other detained persons to help with interpretation. One client stated that he had interpreted from Arabic-English for the psychologist. The doctor similarly confirmed to Equal Rights that at times he had relied on other detained asylum seekers to assist with interpretation during appointments. Detained persons may therefore find it difficult to access healthcare services without appropriate interpreters available. Further, relying on detainees for interpretation raises serious concerns about asylum seekers’ privacy, confidentiality, and even safety.

#### ***e. Unaffordable and inaccessible private healthcare services***

Many participants also reported being referred to private healthcare services or being asked to pay for medication, which they were often unable to afford. Ismail reported being offered private services that he could not afford, stating: *“...I had a problem with my teeth – they took me to the doctor and said we can’t help you here but we can take you to private doctor with police car which I refused to do. I was waiting for some money and I didn’t*

have enough money to go to a private doctor". Yacouba further described detainees' financial barriers to accessing adequate medical services, stating: "It's not easy to see the doctor, we don't have money to pay the doctor, I don't work, I'm an immigrant, I'm detained. We have to pay to go to the hospital. The doctor in the camp only deals with small things, small headaches, paracetamol, things like that, tooth hurt, but not big things – we have to go to the hospital for that and you have to pay". Meanwhile, Mado mentioned having to purchase medications, which he could not always afford. Detained asylum seekers' financial circumstances therefore prove an additional barrier in accessing adequate health services. However, even getting a referral to a private doctor is, generally, an arduous process for most people. During our 13 July meeting, the doctor stated to two of our lawyers that he generally refused to refer people to private specialists for fear that he would be accused of taking money in exchange for making referrals.

#### *e. Limited COVID-19 prevention measures*

Many participants noted that few measures were being implemented to prevent against COVID-19 in the PRDC. Several confirmed that detained persons are not provided masks to wear in detention and are only offered masks when they are required to attend meetings with external actors, including lawyers, doctors, or the asylum service. Saeed explained: "The only times they give us masks is when we go to make interviews with asylum service or when we go to the doctor or something, that's the only time that they offer us masks". Emmanuel further clarified: "We don't wear masks...only when we go out to go to the hospital, then we do. But we don't wear them inside here in the caravans and outside". Five participants additionally noted that the policemen in detention do not always wear masks. Messan informed us that police mask practices were inconsistent: "Some wear masks, some don't. They usually do when they enter our rooms, when they are outside, they usually don't". However, Daouda reported that sometimes, police did not wear masks even when entering the containers: "The police wear masks when they come into the containers, sometimes, and there are some who don't wear masks at all. Yesterday there were two who came without masks". On Equal Rights' visits to the PRDC, we have also observed that police do not consistently wear masks in both open and closed spaces during their interactions with detained persons. Provision and use of masks in the PRDC therefore appears inconsistent and inadequate.

Many participants additionally noted that social distancing was not possible in detention. Afran explained that his section was crowded: "We're almost 65 people inside it, I think the capacity should be 25, so it's almost impossible to have social distancing". Kamal concurred that his section was too crowded to effectively implement any social distancing measures, stating: "...there's almost 60 people inside the section, what sort of distance we can take...It's a small space and we're sharing the rooms so it's not possible". Although the PRDC was operating at less than half than capacity during the entire period covered in this report, social distancing measures appear to be unenforced in some cases and impossible to follow in others.

A few participants expressed their fears of contracting the virus in detention, highlighting that certain conditions in detention made them particularly vulnerable to infection. Rashid expressed his concerns regarding the danger of living in small, crowded spaces during a pandemic: "If someone got coronavirus inside the detention, definitely everyone around him will get it, the rooms are really small, and we can't make any social distance between each other and also it's unclean and unhealthy". Saeed stated: "...about cleaning the situation is really bad, it's all unclean...there is no possibility to be safe or take care of yourself while you're in detention, to not get the virus". Daouda further highlighted: "We are really exposed to corona, there are people who come here to give food, and people go out as well, so we can be contaminated for that, we're really exposed". In general, participants were dissatisfied with the COVID-19 prevention measures implemented in the PRDC and highlighted the facility's crowdedness and poor hygiene as areas of particular concern.

Further, while some participants interviewed on the subject confirmed they had registered for a COVID-19 vaccine, at the time of our interviews, none had been vaccinated. As of 28 October 2021, our sources confirmed that vaccinations still had not been administered in the PRDC. Messan explained:

*“This month, the police started to issue papers for vaccinations. However, there is no specific date or anything for the vaccinations, two people have already been to the police office, but they just signed a paper, they did not get vaccinated. We don’t know when we will be vaccinated, it might be soon but it might as well not be soon”.*

This fact was similarly confirmed by the PRDC doctor. During our meeting with him, he told Equal Rights that only 26 out of 180 persons in the PRDC had registered for the vaccine and he was not confident that the Greek National Public Health authority (EODY), the authority responsible for administering the vaccine, would come for such a small number of people.

The low number of vaccine registrations reflects, as we understand, fears regarding the vaccine’s safety or a lack of accurate information regarding its risks and benefits. In the summer of 2021, UNHCR distributed information flyers about the vaccine to detainees. However, this has not appeared to have a major impact on people’s vaccination decisions. Emmanuel told us: *“I have not registered for the vaccine, even though they gave us the paper for it. I am scared, I don’t know how it’ll work”.* Similarly, Rashid reported: *“I refused to register my name because I’m not sure what type of injection I’ll have and I’m not sure what type of side effect I could have after getting the injection...most of us refused to get it, no one explained what sort of injection we’re going to get, or more details about the injection”.* Mado told us that she did not require a vaccination, as she did not have COVID-19, while Hana described other detainees’ wider attitudes towards the vaccine *“I am registered for vaccinations but many people think that maybe they will poison us so a lot of people start rejecting the vaccinations”.* Yacouba also reported that some of his fellow detainees were reluctant to register for the vaccine as, based on the information they were provided by the authorities, they were fearful that doing so may prolong their period of detention: *“They asked us if we wanted to get the vaccine, and said we have to stay here and get a vaccination card if we do, and if we can only be liberated if we don’t want it. So a lot of people said they didn’t want it”.* It appears that several detainees, then, are fearful of being vaccinated due to a lack of accurate and reliable public health and legal information.

## **10. Inadequate Conditions for Vulnerable Persons**

As described in Section 2, we have observed that persons detained on Kos often do not undergo any vulnerability assessment,<sup>284</sup> that vulnerable people are routinely detained, and that measures intended to safeguard vulnerable people are almost never implemented. The following subsections explore the detention conditions for certain vulnerable groups identified during our research as well as three groups—single women, persons who are LGBTI, and shipwreck survivors—who are not legally categorised as vulnerable but, in our experience, often have had experiences based on their identities that would make them eligible for certain protections.

### **a. SGBV survivors**

Five participants in this report, all single women, are known to be SGBV survivors. Two of these participants have claims for asylum based on experiences of SGBV, while three participants have disclosed histories of SGBV during their interviews for this report, or over the course of their interactions with us. Some of these women expressed experiencing fear, discomfort, and unease at being in proximity to unknown men while in

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<sup>284</sup> According to Art. 58(2) L. 4636/2019, authorities are to conduct an “assessment of vulnerability” during the identification process for all asylum seekers, without prejudice to the assessment of their international protection needs.



detention. Florence and Jeanne told us that they did not feel “easy” living alongside men in the PRDC’s mixed-gender sections. Others reported other various forms of compounded trauma. Faiza, who experienced sexual harassment in Turkey in transit to Greece, explained that she often had nightmares and thought someone would kill her while she slept. For SGBV survivors, the experience of being detained has therefore been observed to exacerbate existing trauma.

#### ***b. Persons with serious illnesses***

Almost all participants in this report disclosed having various medical conditions. Many had pre-existing health conditions: one participant reported having low blood pressure and diabetes, one reported a hernia, two participants reported asthma and respiratory problems, and three reported vertigo and high blood pressure. Zain disclosed having an intestinal gastric nerve issue that causes him *“deep deep pain inside my intestines. I get convulsions”*. Amir told us that he had claustrophobia, documented within multiple medical reports, and that he had fainted twice in the PRDC as he could not breathe. Hana told us that she had a liver problem that started when she was in Syria, that causes her severe pain in her liver, stomach and vaginal area. Nour told us that she has had problems with her lungs since she was in Syria, and that she has irritable bowel syndrome and bronchiolitis. Some participants had pre-existing health conditions that had followed from experiences of serious violence or injury. Zain told us that his nerves had been damaged following a shrapnel injury in Syria, while Raphael informed us that he had experienced *“constant stomach aches...starts on top of my navel and goes down to my lower stomach”* since he was subjected to serious gang violence in Haiti. Florence, who was gang raped in Cameroon three months after giving birth, had incurred an injury at her caesarean section that continues to cause recurring pain. Each of these individuals was detained on arrival in Kos, despite having various medical conditions, many of which are serious.

Most participants described multiple health conditions, both physical and psychological, that had developed in detention. Louis described having *“a lot of pimples that started coming up on my hands and feet. I didn’t have time to even go to the hospital, because I got the results of my notification. I still have them, they itch a lot and I scratch them a lot. They well up and leave marks on my feet”*. Meanwhile, Haroun explained that he had a fall during quarantine, and injured his hand, which he can no longer feel, and that he had also been bleeding from his urethra for several months. Yves described experiencing hip trouble when he arrived in Kos, while Daouda told us that he had been experiencing pain while walking since his arrival. Six participants described experiencing stomach pain, which most attributed to the food provided in detention. Efe stated: *“I have stomach problems. My belly is inflated, it looks as if I was pregnant. When I eat something, I immediately get a stomach-ache. This causes me digestive problems as well, I have constipations...I have had this problem since I arrived in the PRDC. I didn’t have this problem before, I believe that it is connected to the stress that I am experiencing here in the PRDC and also to the food that I am receiving here”*. Louis further described being *“...sick in the stomach. I was spitting blood and something black”*. Many had sought, or attempted to seek, medical attention for these various conditions, but often faced various barriers to accessing adequate services.

Twelve participants also described having trouble sleeping in detention. In some cases, participants attributed these problems to the conditions in detention. As Saeed stated, *“There are a lot of small creatures jumping on my bed and head when I’m sleeping...I think it’s all like a nightmare, it’s not real”*. Zain told us: *“...when you try to sleep, the beds, they’re broken, and the mattresses are really shit, you wake up and your back is hurting you, the blankets, they only give you one, no pillows, we try to make pillows from our clothes”*. Others were distressed due to their circumstances or being separated from their families. Yacouba told us: *“My wife is in Athens, I don’t sleep, she is pregnant, I can’t sleep. She is alone. So it tires me”*.



Almost all participants described being in poor psychological health. Many connected these issues to the experience of being detained and the conditions in detention. Louis told us that many people in detention had psychological illnesses, explaining: *“When I first arrived to the camp, I saw the people there as if they were society’s rejects...they would show me pictures of themselves on the outside, and they were normal”*. Kamal further explained: *“...I have psychological problems, like anyone who has been detained will for sure have psychological problems. I’m really depressed, I don’t get out of the caravan, I don’t talk with anyone inside detention, I don’t spend any time with anyone”*. Similarly, Afran stated: *“I think being detained for 10 months without an obvious reason, it just makes you mentally exhausted, including the bad food, the bad accommodation, the sleeping problems as well, you can’t really sleep the way that I should be sleeping, and also the place is really dirty and it’s unclean and unhealthy as well”*. Others explained that their psychological health was suffering due to their concern for or grief at being separated from their loved ones. Rashid told us: *“...I am suffering from overthinking and it’s really hard for me to fall asleep. I just want to tell you that I’m married and I have three children as well and I can’t stop thinking about them and what they’re doing, and thinking about myself in detention. My children are in Syria, and my wife as well with them”*. Similarly, Efe explained: *“My father in Benin just passed away. I am very sad and stressed about that so I don’t sleep well at night”*. Still, others connected their psychological issues to past traumatic experiences. For example, Messan, who survived a shipwreck on his way to Greece, explained: *“Yes, I have nightmares all the time. I am dreaming about the shipwreck a lot and also about my parents. I have lost both of them”*. Again, each of these individuals remained detained, despite developing various health problems while in detention.

Notably, many participants described health problems that were undiagnosed – often, due to the inadequacy of the healthcare services available in detention – but that often appeared severe. Issa described, and we have observed, how he cannot move one of his arms, which constantly trembles. Meanwhile, Khader told us that he has trouble breathing, but that he doesn’t know whether it is asthma. Louis also described being *“...sick in the eyes...they were always itchy...I would scratch them and it would hurt. They would water up”*. As we have previously highlighted, we have observed that detained persons face immense challenges with gaining access to adequate medical treatment. In the absence of adequate healthcare services, detained persons may experience deteriorating health. However, they may also find themselves unable to procure diagnosis and documentation of their medical conditions, which undermines their ability to file interventions and objections to detention on health grounds.

### *c. Persons with physical disabilities*

While most participants did not claim having a physical disability, a few described conditions that could be considered disabilities. Mado disclosed visual impairment. Meanwhile, Issa explained that he could not use his arm, and Afran told us that he had lost a finger. Again, these individuals were detained despite these conditions, and were often unable to gain further medical assessments to pursue legal remedies to their detention.

### *d. Survivors of torture and serious violence*

Nine participants, all single men, disclosed histories of torture and/or serious violence. Zain was arrested and detained by the Assad regime in Syria, where he describes: *“They were putting around 20 people there [in the same room] to sleep and eat and shit in the same place...they were torturing us by hitting us with the belt and they put our heads in water...There is no word to describe it. They used to put out their cigarettes in our bodies...”*. Meanwhile, Raphael described being kidnapped and beaten on two separate occasions by gangs in Haiti. With respect to the first incident, he explained: *“They took me to the woods where they beat me with the intention to kill me – there were marks on my hands, head....and they left me there for dead”*. Both Zain and Raphael were visibly traumatised and broke down in tears as they described their ordeals. These experiences had occurred some years ago – yet on their

arrival in Kos, they were automatically detained, with little evidence of any assessment of their histories of violence.

#### *e. Minors and Single Parent Families*

As discussed in Section 1, both accompanied and alleged unaccompanied minors have historically been detained in the Kos PRDC. However, the facility does not have a play area for children, does not provide specialised facilities or areas for children, has no formal or informal education program, and does not employ any staff who specialise in working with children.

From our conversations with clients in the PRDC, families were sometimes, but not always, detained separately from other people in detention. Faiza told us that the two containers she was placed in were shared with unrelated families. Furthermore, she initially shared a room with her sibling and their family, including children, which made a total of six in one room. She further disclosed that this room was poorly suited to the extended family's needs; the four adults each had one bed each, while the two children had nowhere dedicated to sleep. More concerning, one of the children has a serious medical condition and requires constant care and specialised medical attention. Louis also told us that he shared a container with a married couple; they shared one room in the container, while he and two other single men shared the other. Families are thus not always given significant privacy in the PRDC.

Meanwhile, for children detained in the Kos PRDC, the experience is distressing. One of our clients, who was detained along with her three minor children, told us: *"Sometimes my children say they wish we were back in the war in Syria rather than being here, in detention"*. The three children had all been in an informal school program before the authorities moved them to detention, but they were unable to continue their schooling while in detention because the police routinely failed to set-up their online lessons. Another client, who was detained with his wife and 4 children, informed us that one of his children had epilepsy and that, at one point, the family had run out of medication for one of the children who had epilepsy.

#### *f. Shipwreck Survivors*

Under the IPA, direct relatives of shipwreck victims – i.e. parents and siblings of persons who have deceased during shipwrecks – are considered vulnerable. However, survivors of shipwrecks themselves are not classified as vulnerable groups. This exclusion marks a departure from previous versions of the law, a shift has been widely criticised by human rights actors. When the 2019 IPA was introduced, Human Rights Watch classified the exclusion as among a number of "changes to the asylum procedure that would make it harder to receive a fair evaluation and to appeal negative decisions".<sup>285</sup> In line with these actors,<sup>286</sup> we have decided to foreground the trauma experienced by shipwreck survivors, with the intention of highlighting their evident vulnerability – which is ignored in both law and practice.

In this report, four participants identified themselves as survivors of shipwrecks. Saeed explained that the boat he had taken from Turkey, which was originally destined for Italy, had sunk in the Aegean, and that the Turkish and Greek coastguard had rescued them and transferred them to the islands. Meanwhile, Afran told us that on his journey to Greece, five people that he knew died when their boat sank. He explained: *"We were really shocked when we were rescued...we were nearly dead after the shock...for me and another six people, neither the helicopter nor the rescue boats found us, and we had to swim for nearly six hours to find a rescue boat in order to take us with them. After swimming for six hours, we managed to find a Chinese boat and they took us. And it was the middle of the night as well"*. Hana described being beaten by police in Rhodes after being rescued, while, as previously

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285 Human Rights Watch, *Greece: Asylum Overhaul Threatens Rights* (29 October 2019), available at: <https://bit.ly/3lzzAWJ>.

286 IRC, *The Cruelty of Containment* (December 2020), available at: <https://bit.ly/3avJDWC>.

highlighted, Messan reported having recurring nightmares due to his experience of shipwreck. Participants who disclosed having survived a shipwreck were evidently distressed and traumatised these experiences and had unanimously not received adequate psychological care.

It is worth noting that participants were not asked whether they had experienced a shipwreck during interviews for this report, and these four raised their experiences while answering other questions. It is therefore possible that additional participants, and additional persons detained within the PRDC, are also shipwreck survivors. Last year, a report by the International Rescue Committee found that one in twenty people referred to their organisation for psychosocial support, were shipwreck survivors, or relatives of shipwreck victims.<sup>287</sup> While the above sections highlight that the legal protections that should be afforded to asylum seekers are routinely not implemented, in this section, by foregrounding our participants' experiences of shipwrecks, we hope to draw attention to the inadequacy of 'vulnerability' as it stands in Greek law. In both instances, the effect is that vulnerable people are continually and routinely detained.

#### *g. Single Women*

Seven of this report's participants were single women. As we have previously outlined (see 'Mixed-gender accommodation' above), two disclosed being housed in mixed-gender sections, and one disclosed being in a mixed-gender container. Another male participant also disclosed being housed in a container with women and men. Accommodation in the PRDC is thus often, but not always, separated by gender, and single women are sometimes housed in the same sections or containers as men.

#### *h. LGBTI Persons*

Four participants identified as persons who are LGBTI. All had experienced persecution for their sexual orientation, which formed the basis of their claim for asylum. Two disclosed having experienced serious violence due to their sexual orientation. Emmanuel told us: "*I was beaten and attacked in Togo because I am gay, by people in the area where I lived*". Daouda also disclosed that he was hit with batons in Guinea for the same reason, which left him with lasting injuries in his legs and feet. Others disclosed that they did not feel they could be open about their sexual orientation in the PRDC. Louis told us that only one other person in detention knew about his sexual orientation; a friend, who he felt had consequently distanced himself from him. Rashid additionally reported: "*...nobody knows about it in the PRDC, I did not tell any asylum-seekers and I did not tell the police, so I am not sure whether they know*". Despite having experienced persecution related to their sexual orientation, each of these individuals was detained without any assessment of vulnerability following from their being LGBTI.

## *D. Conclusions*

The detention conditions described by our clients and reflected in our personal experiences inside the PRDC on Kos neither fulfil the standards laid down in Greek national law nor under EU law and international human rights law. The human rights standards on nutrition, recreation, access to health care and Covid-19 measures, as outlined above, are not met, especially when considering the cumulative effect of these deficiencies.

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<sup>287</sup> Ibid at 14.

## 1. Inadequate food and water

The nutrition in the PRDC on Kos raises concerns under both Article 3 and 9 ECHR. All participants report that the quality as well as the quantity of food and water is insufficient. Furthermore, six participants state that the food does not meet their medical and/or religious dietary requirements. Equal Rights is not aware of a single case when the specific dietary requirements of a detainee have been taken into account.

Article 9 ECHR<sup>288</sup> obliges administrative authorities to strike a fair balance between financial and organizational burden and religious beliefs of the detainees. It is highly unlikely that such considerations have been made by administrative authorities in the PRDC Kos and that, according to their assessment, organizational and financial aspects prevail in every single case. Instead, there are valid grounds to believe that such considerations never take place, and that Article 9 ECHR is routinely ignored as applied to nutrition in the detention centre.

Regarding Article 3 ECHR and special medical dietary requirements, the ECtHR does not take into account any financial or organizational burdens, but instead requires states to always offer an adequate diet and to protect the detainees' well-being.<sup>289</sup> Efe reports that she is unable to follow the explicit medical recommendations of the doctor in PRDC Kos. Zain stated that, even if he is allergic to specific food items, he is not provided adequate alimentation. Similarly, Florence reports that the food further aggravates her high blood pressure. Hence, the requirements established by the ECtHR are not reflected in our clients' reports.

## 2. Recreation

Regarding recreation, the circumstances described by our clients are concerning in light of Greek national law<sup>290</sup>, EU law<sup>291</sup>, and international human rights law<sup>292</sup> standards as all these provisions have to be interpreted in the light of the CPT standards. The CPT has stated that, while every detainee should be allowed one hour of exercise in the open air every day, a broader programme of activities should also be established.<sup>293</sup> Furthermore, the ECtHR specified that exercise facilities should be reasonably spacious and, whenever possible, offer shelter from inclement weather.<sup>294</sup> The recreation area has to be usable "in a meaningful way".<sup>295</sup>

These standards stand in contrast to the reality reported by our clients. The outside areas in the PRDC do not offer any protection from the weather. All participants confirm that the only possibilities for recreation within the detention centre are walking around or being on the phone. Faiza reported that the outdoor area that is accessible to her is only 30 by 35 metres squared and that it is so crowded that there is no possibility to do sports or other activities. These reports are also in line with observations by staff members at Equal Rights who make frequent visits to the PRDC. As Boubacar reports, the lack of recreation facilities has an immense psychological effect on the detainees.

## 3. Hygiene and Sanitary Facilities

The hygiene within the PRDC on Kos is not in line with human rights law standards set out in Greek national, EU, and international human rights law. It is clear from ECtHR jurisprudence that Article 3 ECHR

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288 *D and E.S. v. United Kingdom*, 1990, Commission decision; *Jakóbski v. Poland*, para 45.

289 *Ebedin Abi v. Turkey*, paras. 31-54.

290 Art. 47 (2) L. 4636/2019.

291 Art. 10 (2) Directive 2013/33/EU, Art. 16 and Recital 17 Directive 2008/115/EC.

292 Art. 3 ECHR.

293 CPT Standards, CPT/Inf/E (2002) 1.

294 ECtHR, Judgement of 10/12/2020, No. 42732/12, *Ananyev and Others v. Russia*, paras. 150, 152, ECtHR, Judgement of 09/10/2008, No. 62936/00, *Moiseyev v. Russia*, para. 125.

295 ECtHR, Judgment of 20/10/2011, Nos 5774/10 & 5985/10, *Mandić and Jović v. Slovenia*, para. 78.

establishes a positive obligation to take sanitary precautions and to keep sanitary facilities in detention centres clean. Such obligations include measures against infestation with rodents, fleas, lice, bed bugs, and other vermin. The measures comprise sufficient disinfection facilities, the provision of detergent products, regular fumigation, and inspection of the cells.<sup>296</sup>

Administrative authorities within the PRDC do not comply with this legal obligation. All participants reported that toilets and showers are in very poor condition and have never been cleaned by the administrative authorities. Moreover, clients confirm that they are not provided with sanitary products to clean the facilities themselves. Instead, detainees must purchase cleaning products with their own money if they want to clean the sanitary areas. Clients report infestation with bed bugs, cockroaches, and other rodents within the PRDC. Faiza reported that mice and cats entered her room, that the floor had holes and cockroaches, and that other rodents were regularly coming in through the holes in the floor. Saeed reported that “small creatures” are jumping from his bed and on his head when he goes to bed and that this infestation caused a serious psychological impact. Similarly, Florence, an SGBV survivor, experienced negative psychological effects when she was menstruating but was not provided with sanitary products for several days while being surrounded by male policemen.

In some cases, the sanitary facilities in the detention centre raise concerns regarding Article 8 ECHR. Ismail told us that there was no door outside the toilet and that he and his fellow detainees hung a blanket in its place to ensure at least a modicum of privacy.

## **4. Access to Healthcare**

### *a. General Conclusions*

The lack of healthcare provided within the PRDC on Kos clearly violates both national and EU law as well as international human rights law. Article 19 RCD and Article 47 (7) IPA guarantee access to healthcare for asylum seekers. Similarly, Article 16 (3) RD and Article 31 (3) Law 3907/2011 guarantee at least emergency health care for rejected asylum-seekers and adequate medical and psychological assistance for vulnerable individuals. The lack of medical care may also raise an issue under Articles 3 and 8 ECHR, particularly because we have found that authorities are often aware that people need treatment and fail to provide it. The also ECtHR requires state authorities to ensure prompt and accurate diagnosis and treatment in detention facilities including, where necessary, a comprehensive therapeutic strategy<sup>297</sup> and to ensure the detainees medical confidentiality.

None of these requirements are met in the PRDC. As of 29 October 2021, there was no doctor working in the detention centre. However, even when there was a doctor, the quality and quantity of medical staff was not sufficient to provide the legally required standards of medical assistance. Participants reported a lack of knowledge on how to access medical services. Furthermore, there is practically no interpretation available for detainees, clearly implicating their right to privacy as individuals have to choose between not receiving any medical aid or sharing confidential medical details with fellow detainees who help them translate. The fact that detainees must justify to police their medical needs before being granted an appointment with the doctor infringes on their right to privacy. According to clients’ reports and the experience of Equal Rights as well as the appointment that Equal Rights staff had with the doctor in the PRDC, the medical staff in the detention centre only provide a very limited amount of basic care and mainly prescribe paracetamol instead

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<sup>296</sup> ECtHR, Judgement of 10/12/2020, No. 42732/12, *Ananyev and Others v. Russia*, para. 159, ECtHR, Judgement of 27/01/2015, Nos 36925/10 et. al., *Neshkov and Others v. Bulgaria*, para. 243.

<sup>297</sup> ECtHR, Judgement of 30/07/2009, No. 34393/03, *Pitalev v. Russia*, para. 54.



of developing a comprehensive therapeutic strategy, an accurate diagnosis, and an accurate treatment. Especially when it comes to neurology, dentistry, and psychiatry, no assistance is provided at all as such services are not available on Kos. Lastly, according to clients' reports and Equal Rights' experience, referrals to the hospital in Kos Town do not take place or do not take place in a timely manner.

### ***b. Mental Health***

The mental health care standards in the PRDC on Kos are not in line with Article 19 RCD, Article 47 (7) IPA, and Article 31 (3) Law 3907/2011. These standards, laid down in Greek and European law, have been further specified by ECtHR jurisprudence which clearly states that a specific and individualised assessment of needs has to take place<sup>298</sup> and that there has to be a timely examination and diagnosis as part of a comprehensive therapeutic strategy in contrast to a "therapeutic abandonment".<sup>299</sup> Mental health care has to go beyond basic care.<sup>300</sup> It has to be prompt and timely and respect the right to privacy enshrined in Article 8 ECHR.

None of these requirements are met with mental health care provided in the PRDC. Clients reported that they have essentially no access to mental health care and that they lack information on the services provided. Furthermore, interviewees report long waiting times to see a psychologist or social worker. Even if an appointment is provided, it is not part of a therapeutic strategy. It merely constitutes a single appointment which is not necessarily followed up by another appointment, an in-depth assessment of the psychological needs, or a proper diagnosis. This is not surprising, as there is no interpretation available, making a proper assessment of the detainees' mental state factually impossible. Hence, the mental health care in the PRDC amounts to a factual "therapeutic abandonment", further aggravating the existing mental health problems that detainees already have.

### ***c. Covid-19 Measures***

The Covid-19 measures within the PRDC on Kos raise serious legal concerns. According to ECtHR jurisprudence, states have a positive obligation to protect the detainees' health. Even if the ECtHR grants states a margin of appreciation, some measures must be taken and these measures must adequately prevent the spread of infectious diseases.<sup>301</sup>

The vaccine program for asylum seekers began in June 2021,<sup>302</sup> and by 28 October 2021 over 60% of the population in Greece had received at least one dose of the vaccine.<sup>303</sup> However, the administrative authorities in the PRDC have not started vaccinations yet, although people detained in the PRDC clearly fall into the category of vulnerable groups more likely to contract and spread Covid.<sup>304</sup> Furthermore, there is no state-run COVID-19 information policy in the PRDC, aggravating the spread of misinformation among detainees (such as the rumour that when detainees register for the vaccination, their detention period may prolong) which reduces the detainees' willingness to receive a vaccination.

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298 *Murray v. the Netherlands* [GC], § 106; *Herczegfalvy v. Austria*, § 82; *Aerts v. Belgium*, § 66.

299 *Strazimiri v. Albania*, 2020, §§ 108-112.

300 *Rooman v. Belgium* [GC], § 209.

301 *Poghosyan v. Georgia* and *Ghavitadze v. Georgia*.

302 Benjamin Bathke, *Greece starts vaccination campaign at facilities for asylum seekers*, Infomigrants (04 June 2021), available at: <https://bit.ly/2WXJtUj>.

303 As of 12 August 2021, see [https://ourworldindata.org/covid-vaccinations?country=OWID\\_WRL](https://ourworldindata.org/covid-vaccinations?country=OWID_WRL).

304 World Health Organization, Regional Office Europe, *FAQ: Prevention and control of COVID-19 in prisons and other places of detention*, available at <https://bit.ly/3l07frm>.



According to client reports and experiences of Equal Rights staff members, detainees are only provided with masks when they leave the facility, and police staff do not always wear masks. Due to the very limited space, it is impossible for detainees to adhere to social distancing measures. Even if a broad margin of appreciation is granted to state authorities, it is clear that authorities within the PRDC on Kos do not implement any prevention measures, not even basic measures such as distributing masks to detainees or providing them with disinfectant. The lack of a consistent prevention strategy and even very simple prevention measures is contrary to the states' positive obligation to protect the detainees' health.

The office of the Greek Ombudsman highlighted the high occupancy rate of detention centres during the pandemic and strongly recommended the ample use of alternative measures to detention.<sup>305</sup> However, Greek authorities have repeatedly ignored the Ombudsman's recommendations when it comes to immigration detention. Authorities still do not adhere to a specific recommendation from July 2021 concerning the release of 19 clients of Equal Rights in the PRDC on Kos.<sup>306</sup>

## 5. Conditions for Vulnerable Persons

The conditions for vulnerable persons also fall short of the appropriate legal requirements. In general, the authorities do not pay particular attention to vulnerable persons or provide them with special treatment, as required by the law.<sup>307</sup>

Although both the IPA and RCD require that men and women are accommodated separately,<sup>308</sup> the facilities in the Kos PRDC are not separated by gender. While men and women are generally housed in separate containers, the living areas are not separated by gender and the container doors do not lock. Further, multiple women in this report reported that they had shared a container with male detainees at some point during their detention, normally during the initial quarantine period. This has a particularly severe psychological effect on survivors of SGBV who reported feeling fear and discomfort sharing living spaces with men.

For people living with serious physical and mental illnesses and survivors of serious forms of violence, the living conditions in the Kos PRDC similarly fail to meet basic legal standards, and the inadequate medical care in the PRDC was among the most serious problems highlighted in interviews. As discussed above, asylum seekers are generally not provided with "necessary health care"<sup>309</sup> in the Kos PRDC, especially given that there has not been a doctor there since July 2021. The complete lack of healthcare, even for vulnerable persons, means that people with serious medical issues often go long periods without treatment or medical attention. This likely raises an issue under Article 3 ECHR given the state's responsibility to care for people entirely under its control.

As for minors, the conditions in the Kos PRDC quite clearly fail to meet even the most basic standards established by EU, Greek, and human rights law. There are no age-appropriate facilities inside the Kos PRDC, including play areas, educational spaces and materials, family-only facilities, or enough beds for large families. This not only raises an issue under the RCD and IPA, but the ECtHR has also emphasized numerous times that, in the rare instances where states can detain minors, they may only do so in detention centres that

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305 Ombudsman of the Citizen, *Letter no. 38/27-03/2020 to the relevant Ministers* (27 March 2020), available at <https://bit.ly/3zOGFrt>.

306 Equal Rights Beyond Borders, *Greek Ombudsman calls for Release of 19 Persons who are Unlawfully Detained in the Pre-Removal Detention Centre on Kos* (3 August 2021), available at: <https://bit.ly/3BPvn6X>.

307 Art. 16 (3) Directive 2008/115/EC.

308 Art. 10 (1) Directive 2013/33/EU, Art. 47 L. 4636/2019.

309 Art. 19 Directive 2013/33/EU.

have age-appropriate facilities.<sup>310</sup>

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310 See e.g., ECtHR, Judgement of 19/01/2012, Nos. 39472/07 & 39474/07, *Popov v. France*, para 91, ECtHR, Judgement of 05/07/2011, No. 8687/08, *Rahimi v. Greece*, paras. 81-85.

# V. LIFE AFTER DETENTION

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This section documents detained persons' experiences of life after detention, drawing on the testimonies of four participants interviewed on the subject, and the experiences of four additional clients to whom we provided direct services, and whose circumstances after detention we carefully documented. This section does not provide a detailed legal analysis on the subjects outlined below as they are not the focus of the report. However, we have decided to include them because the experiences people have after they are released from detention are directly affected by their period in detention and are therefore vital to understanding the immense and devastating consequences of immigration detention.

## *A. Freedom of movement*

Participants' freedom of movement following their release varied, depending both on their legal status after release and the conditions of release. Three were released when they obtained refugee status: one after filing a successful objection to their detention after receiving a second rejection and two after receiving voluntary return papers after their second rejections. Of the two who received voluntary return papers, one did so at the discretion of the authorities due to her serious medical conditions while awaiting their appeal decision and one because he had been detained for the maximum period of 18 months while awaiting the decision of their appeal. These individuals were, therefore, subject to diverse legal conditions upon release. Those who were released with a second rejection, but without a voluntary return paper, or while awaiting the decision of their appeal, remained bound by their geographical restriction: they were therefore unable to legally leave Kos. Still, two of these participants found an irregular route to the mainland. In contrast, those with refugee status were no longer subject to the geographical restriction but chose to remain on Kos to organise their identification and travel documents – which can take many months – prior to their departure. Meanwhile, those who were provided voluntary return papers were able to circumvent the geographical restriction, and immediately travel to the mainland. While detained persons' freedom of movement following their release varies depending on their legal status and the conditions of their release, all plan to leave the island, and many eventually do.

## *B. Lack of information*

Participants reported having limited information regarding the reasons for their release as well as their rights and entitlements following their release. Louis informed us that he did not understand the voluntary return paper he was given, as it was written in French, which he cannot read. Florence told us that, upon her release, she was provided a paper to sign, but told us: *"I don't know what I signed"*. She explained that this paper was in Greek, which she cannot read or speak.

## *C. Housing insecurity and homelessness*

Florence, who was released after we filed a successful objection on her behalf, was suddenly released on a Friday evening, stating: *"...I was sleeping and the police called me...They said the captain said you have to leave today"*. She explained that she did not know where to go after she was released: she did not have any money to pay for transport into Kos Town, where she had friends and acquaintances with whom she could stay. Although Florence had received a second rejection and was not eligible to stay in the RIC, she persuaded the authorities to allow her to sleep there for an evening, before going into town the following day. Meanwhile, another of our clients was suddenly released one weekday morning at the discretion of the authorities, without any further information. She lingered for several hours on the main road outside the PRDC and RIC, where she did not have any reception on her phone, as she tried to contact our office for assistance. When she finally

got in touch with us, she explained she had spent the whole day on the road with her belongings. As she was awaiting the decision of her appeal at the time of her release, she was eligible to be housed in the RIC, which she was not told – and as she had been detained on arrival in Kos, she had not known to approach the RIC herself. Similarly, Zain was suddenly released from detention with no further information, which we learned when we observed him walking outside the PRDC/RIC complex. Again, as Zain had not yet received a decision on his appeal, he was entitled to live in the RIC following his release, but he was not told so. In contrast, Joud, who was released upon receiving refugee status, was told he could approach the RIC and request accommodation which they had the discretion to provide for up to 30 days. Information available to detained persons upon their release is therefore inconsistent and incomplete and can have serious consequences for their welfare.

Regardless of their legal status, all participants experienced some housing insecurity following their release from detention, and many experienced street homelessness. While participants' entitlement to housing support on Kos and the mainland varied depending on their legal status, we have found that overall, housing support available to asylum seekers and refugees is hugely inadequate. Many participants were therefore reliant on finding accommodation through their social networks, whether on Kos or on the mainland. After staying in the RIC for an evening, Florence approached a house where she had previously lived in Kos Town but was told there was no space for her there. Florence then approached another house, which was also overpopulated, but where she convinced the tenants to allow her to stay. There, she shared a room with five other women and children, splitting the rent with her co-tenants. Similarly, Ismail, who received refugee status, stayed in the RIC for a month after his release, before renting a house in Kos Town with friends. Louis, who was released after being provided a voluntary return paper along with his second rejection, stayed with friends of an acquaintance in Athens. However, not everyone could rely on social networks for material support. During the lockdown, a member of our staff came across another of our clients, a recognised refugee, sleeping in the port in Kos Town. Our client was detained on arrival in Kos, and following his recognition and release, did not have networks he could approach for support. Meanwhile, on receiving a voluntary return paper along with her second rejection, Jeanne travelled to Athens, where she had no social networks, and slept in a park.

All participants, regardless of their current housing situation, however, expressed anxiety about the future, and were aware of the uncertainty that awaited them. Joud was not sure how long he would be permitted to stay in the RIC, stating: *"Maybe they will just let me stay until I get my ausweiss and then they will ask me to leave"*. Louis was also aware that he would not be able to stay with acquaintances for long and was thinking of longer-term solutions.

## *D. Poverty*

Again, financial support for asylum seekers and refugees in Kos and the mainland is hugely inadequate, and many of our clients have struggled to support themselves. Participants noted that they were concerned about their financial status following their release from detention. Ismail told us: *"...I didn't think that I would stay here for 7 months, and the island here is expensive, it's not that cheap, so it's a little bit hard condition for me. My friends send me money"*. Louis also expressed concerns about his financial situation in Athens, and worried that he had no means of supporting himself into the future. Florence told us that she was living on money that she had saved from the UNHCR cash subsistence scheme, which she had once received, and was also helped by friends in Athens.

# VI. CONCLUSION

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On 18 September 2021, Greece opened its first “closed” camp for migrants on the island of Samos to much pomp and circumstance.<sup>311</sup> The new facility is the first of five that will open on the islands that are supposed to improve living conditions in the notoriously squalid EU Hotspots.<sup>312</sup> However, unlike the former RICs, per their name, the new facilities will severely curb residents’ movement – according to media reports, asylum seekers are allowed to leave the Samos facility between 8 a.m. and 8 p.m. and have to go through lengthy security checks and procedures in order to enter and exit.<sup>313</sup>

On Kos, construction of the new closed facility is well underway, and authorities expect it to open by the end of 2021. Consequently, the detention practices on Kos are likely to change, as lawyers and advocates expect the authorities to place new arrivals in the new facility rather than in the PRDC. Although the exact future of detention on Kos remains unclear, what is clear is that the practices documented in this report have in many ways served as a precursor for the new closed facilities, as Greece seeks to curb asylum seekers’ liberty across all 5 of the EU Hotspots. In many ways then, this report serves as a glimpse into the future of how Greece plans to address migration on the Eastern Aegean islands. Although the Government has praised the new facilities’ conditions, the situation on Kos foresees a starkly different reality. As this report reveals, the practice of detaining asylum seekers automatically and for months on end is not only unlawful but has devastating physical and mental health consequences on migrants. Or, as Joud put it, *“you shouldn’t detain someone who is trying to seek a better life and submit an asylum claim. This idea of putting refugees inside jail, this is inhuman.”*

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311 DW, *Greece opens first refugee holding camp on Samos island* (18 September 2021), available at: <https://bit.ly/3EvnbKp>.

312 Ibid.

313 Ibid.

# EQUAL RIGHTS

## *Beyond Borders*

is a Greek-German human rights organisation that works to enforce the rights of refugees and asylum seekers in Greece, Germany, and throughout the EU. Witnessing violations of our clients' fundamental rights on a daily basis, our international team of lawyers applies legal means to defend and protect the dignity and equality of every person.

We stand with refugees, fighting against undignified living conditions in the EU Hotspot camps on the Greek islands, unlawful detention, and illegal deportations, and advocating for family reunifications from all over the world.

At Equal Rights Beyond Borders, we provide free legal services to refugees in Greece and Germany with a focus on casework and litigation in front of Greek, German and international courts.

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Our work would not be possible without the support of our partners. For this report we would in particular like to thank:

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