ENNHRI
European Network of National Human Rights Institutions

Hellenic Republic
National Commission for Human Rights

National Report on the situation of human rights of migrants at the borders

Greece

Greek National Commission for Human Rights

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Executive Summary

The **Greek National Commission for Human Rights (GNCHR)** is the National Human Rights Institution in Greece, accredited with A-status since 2001 as in full compliance with the UN Paris Principles. The GNCHR is entrusted with the mandate of protecting and promoting human rights in Greece and acts as the independent advisory body on these matters. The GNCHR attaches, since its establishment, particular importance to the enjoyment of rights by refugee and migrant population residing in Greece. Therefore, it has institutionalised a standing Sub-Commission for the protection of human rights to aliens.

This Report covers mainly the GNCHR's activities on the protection of migrants' rights at borders in 2020, taking into consideration all major developments such as the entry into force of a new legal regime on international protection, tensions occurred at the Greek-Turkish land borders and the spread of the COVID-19 pandemic. During this period, the GNCHR conducted monitoring activities at borders, convened several meetings with relevant national and international stakeholders to address the critical situation faced by asylum seekers and migrants and advised the Greek government and Parliament on all amendments of laws on international protection. It also provided its expert opinion on national reports submitted before UN bodies for periodical review, took initiatives to fill protection gaps and harmonise national law and practice with international standards and made public interventions in cases of immediate endangerment of migrants' rights.

Returns and violence at the borders

During the reporting period, the GNCHR received information on individual or group pushbacks at the Greek-Turkish borders as well as on the use of life-threatening methods in the course of deterrence operations at sea. Allegations on pushbacks are

considered credible by international and European organisations and human rights bodies (such as the UN Committee Against Torture, the UN Working Group on Arbitrary Detention and the Council of Europe Commissioner for Human Rights)/. The allegations are dismissed as unverified by the Greek government, which has denied on several occasions being aware of any recent official complaint on such alleged violations. Only two pushbacks cases were investigated in 2020 by the Hellenic Police and four cases by the Greek Prosecutor, but no case of pushback has ever resulted in a trial before a court.

The GNCHR has recommended the Greek authorities to establish an official independent mechanism for recording and monitoring informal pushbacks complaints and to effectively investigate allegations of pushbacks and disproportionate use of force in order to hold those responsible accountable and protect victims. The GNCHR will soon launch a new Mechanism for recording incidents of pushbacks to contribute to filling this accountability gap.

Effective, fair and transparent asylum procedures

In February 2020, a GNCHR delegation visited the Asylum Service and the Regional Asylum Office of Attica to identify the problems and challenges faced by applicants for international protection and the staff of the Services, as well as to discuss with the Director ways to improve the asylum system.

Based on the concerns raised by NGOs working on the field, GNCHR expressed its reservations on the extensive use of the option to service decisions to a third person and not the applicant himself. In addition, the introduction of an e-service system for decisions on asylum applications raises concerns as to its compatibility with the right to appropriate notification of a decision and of the reasons for that decision in fact and pursuant to EU law.

The provision of free legal aid at the appeal stage of an application for international protection has been deemed seriously deficient, with only 33% of asylum seekers having effective access to it.

A recent law has abolished the automatic suspensive effect of the appeal for certain categories of appeals which may call into question the compliance with the right to an effective remedy within the meaning of Article 13 of the European Convention on Human Rights (ECHR).

Regarding vulnerable asylum seekers, the GNCHR has noted certain irregularities in the screening process (identification) of victims of torture and/or other serious forms of psychological, physical or sexual violence or exploitation, as well as major gaps in the provision of adequate psychosocial support to them. GNCHR called on the cessation of the accelerated border procedure applicable only in the Aegean islands since the entry into force of the EU-Turkey Statement and the exclusion of vulnerable people from such procedures.

Deprivation of liberty at the borders

Recent legislative developments have further restricted the freedoms of applicants for international protection and detention has become *de facto* a mainstream measure with detention pilot programs being implemented in Aegean Islands of Lesvos, Kos and

Leros. The possibility of challenging the legality of detention before the administrative courts is limited. No individual assessment is carried out before the imposition of detention and this measure is implemented without exception, even against vulnerable persons such as families with children, persons suffering from mental illnesses, and victims of torture, while alternative to detention measures are not examined or applied in practice, contrary to the recommendations of the GNCHR. In Kos in 2020, all new arrivals are being detained in the pre-removal centre, irrespectively of whether migrants have expressed their will to apply for asylum.

Due to the travel restrictions taken during Covid-19 pandemic, all returns to Turkey are suspended since March 2020. International organisations and human rights bodies have called for the release of all migrants in detention and the use of alternatives due to lack of prospect for removal and in line with international and regional organs recommendations as a preventive measure against Covid-19

Living conditions in reception centres and makeshift camps at borders

During the on-site visit carried out by the GNCHR in Samos at the Reception and Identification Centre (RIC) of Vathy and the makeshift camp that has been created in the surroundings, the GNCHR delegation concluded that the reception system had collapsed. In Samos, while the RIC was designed to host up to 648 persons, in January 2021 the number of people in the centre or its surroundings (containers, tents and makeshift shacks) reached 7.208 persons.

Applicants for international protection are obliged to live under dire or even undignified living conditions during the processing of their international protection claims, which can take up to several months or years. The most alarming finding was the lack of control by the authorities over a large part of the informal camp outside the RIC where security incidents are frequently noted, such as violent confrontations and injuries among rival communities, extortion from traffickers or other organized groups, arson for reasons of trespassing of forest land or other reasons, rapes of women and minors, incidents of domestic violence and human trafficking.

The GNCHR noted a big gap in the provision of health and psychological services due to lack of staff and appropriate services such as interpretation and shortage of medicines. As a result, the population of the camp is often affected by diseases and health problems.

Access to formal education was almost non-existent for the refugee and migrant population residing in Vathy as the Reception Facilities for Refugee Education (DYEP), which provide afternoon preparatory classes for all school-age children aged 4 to 15, never started to operate because the recruitment process for teachers has never taken place. The children who lived in the hotspot (around 1500) in practice had access only to non-formal education provided by various NGOs.

According to the information collected during the GNCHR's monitoring visit, 330 unaccompanied children were registered by the RIC of Vathy and they were found to be living in unsuitable conditions, often sleeping outdoor. Extortions from smugglers and rapes of unaccompanied minors residing outside the camp had been reported.

After a fire destroyed the Moria camp in Lesvos in September 2020, the GNCHR called

on the Greek State to immediately take all necessary measures to secure a decent accommodation, basic necessities and the provision of health care to the thousands of asylum seekers who remain trapped in Lesvos. Subsequently, all asylum seekers were transferred to a temporary camp in Mavrovouni of Lesvos ("Moria 2.0") and although some improvements were observed, the living conditions remained substandard. The GNCHR has called on the European Union and the United Nations to take concrete action in light of the Moria camp disaster when addressing the Human Rights Council during its 45th session.

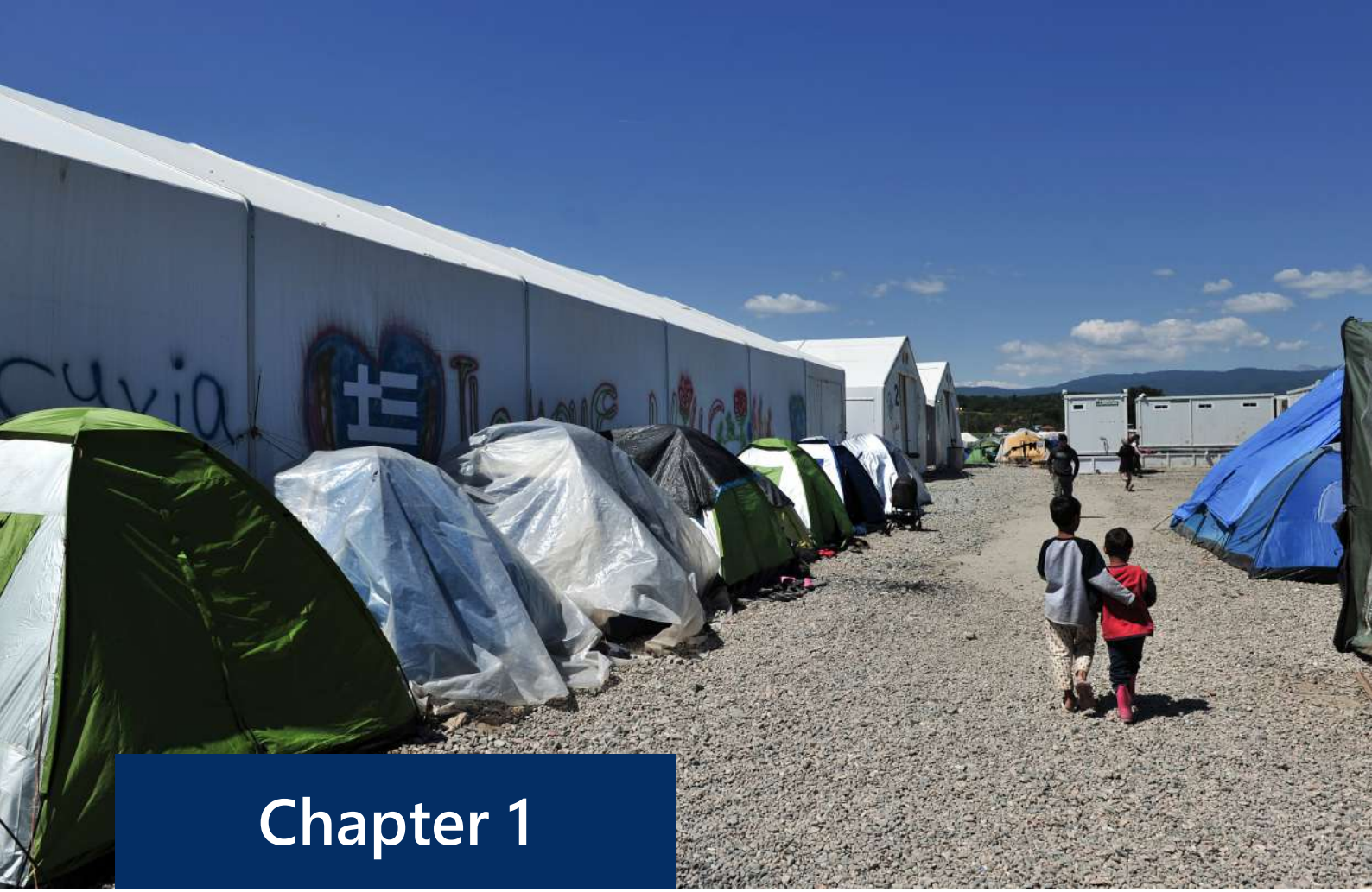
After the fire in Moria, a relocation program of unaccompanied children from Greece to other European States on a voluntary basis was launched and transfers were made, despite the Covid-19 pandemic. In addition, the decongestion of the islands has progressed, giving priority to those most vulnerable to the Covid-19 infection.

Enabling environment for work of other human rights defenders at the borders

Since 2016, NGOs active in Greece in asylum, migration and social inclusion matters are under the obligation to be registered in a special "Register of Greek and Foreign Non-Governmental Organizations (NGOs)", operating under the Ministry for Migration and Asylum. New laws have made the requirements for registration and certification of these NGOs stricter, also requiring the registration of their members and employees (physical members) for anti-laundering purposes, which may produce a chilling effect on the activities of the NGOs.

In addition, the GNCHR is aware, through the Racist Violence Recording Network that coordinates with the Office of the UN High Commissioner for Refugees in Greece of specific racist and xenophobic attacks against newly entering refugees and migrants, employees in international organisations, NGOs and civil society actors, as well as journalists in Lesvos.

During the reporting period, criminal charges have been initiated against NGO members for formation and joining a criminal organisation, espionage, violation of state secrets and violations of the Immigration Code.



Chapter 1

ENNHRI's Project on Migrants' Rights at Borders

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. One of ENNHRI's thematic priorities is our work on "asylum and migration", which is facilitated through our Asylum and Migration Working Group, which brings together over 30 European NHRIs.

In order to support NHRIs' work to promote and protect the rights of migrants at borders, ENNHRI has initiated a project in 2019, supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations. The main objective of the project is to achieve a better promotion and protection of the human rights of migrants at the borders through different capacity-building, advocacy, communication and reporting activities involving NHRIs in Europe.

Under this project, ENNHRI also has published several resources, such as the:

- Background Paper on "Protecting human rights of migrants at borders: evidence and work of European NHRIs", available here.
- Guidance on "Monitoring Human Rights at Borders: building on the mandate and functions of NHRIs", available here.
- Statement on "Stronger human rights monitoring at Europe's borders – why NHRIs are part of the solution", available here.
- Complementary Guidance on "Monitoring human rights of migrants at borders during the

Covid-19 pandemic", available here.

- Article on "Protecting the rights of migrants during the pandemic: How have NHRIs responded?", available here.
- Recommendations on "Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum", available here.

In addition, under this project, five NHRIs - from Croatia, France, Greece, Serbia, and Slovenia – have developed national monitoring reports with the result of their human rights monitoring at borders. A comparative regional report will be published in July 2021, building on these findings and reflecting regional developments.

NHRIs work to promote and protect migrants' rights at borders

NHRIs are State-mandate bodies, independent of government, with a broad mandate to promote and protect all human rights, including of migrants. They are periodically assessed against their compliance with the UN Paris Principles.

European NHRIs use their unique mandate and full range functions to address the human rights of migrants, at the borders and beyond. In doing so, they also contribute to safeguarding democratic space and upholding the rule of law at borders.

Human rights monitoring is a crucial task of NHRIs, through which they gather, verify and use information to address the human rights situation of migrants at the borders. As highlighted in ENNHRI's Background Paper, NHRIs have contributed to a growing body of evidence indicating the existence of widespread violations of migrants' human rights at the borders in Europe, in line with the concerns raised by civil society organisations, international and regional human rights bodies.

Among their many functions, NHRIs conduct monitoring on the respect of migrants' rights on the ground, make recommendations to governments for reform of laws, policies and practices, and raise awareness of the rights of migrants, refugees and people seeking asylum by cooperating with regional and international human rights bodies and with civil society organisations. Some NHRIs also regularly monitor and report on immigration detention facilities and reception centres, may receive and handle individual complaints from migrants, and may be able to challenge the legality of a provision before Constitutional and/or lower courts.

During the Covid-19 pandemic, NHRIs have continued to monitor human rights violations at Europe's borders documenting, among others, police violence and systematic pushbacks amid border closures and restrictive measures.

With this series of national reports written by NHRIs across the region, ENNHRI hopes to bring further visibility to their findings and recommendations. Mirroring the main areas identified in ENNHRI's Guidance on Monitoring Human Rights at Borders, NHRIs report on:

- Returns and violence at the borders.
- Access to relevant procedures at the borders.
- Reception conditions and deprivation of liberty at the borders.

- Human rights accountability at the borders.

National reports presented under ENNHRI's project are authored by each specific NHRI, which are ultimately responsible for their content.

The Greek National Commission for Human Rights (GNCHR)

The **Greek National Commission for Human Rights (GNCHR)** was established by Law 2667/1998 and operates under **Law 4780/2021** in accordance with the UN Paris Principles, adopted by the United Nations (General Assembly Resolution A/RES/48/134, 20.12.1993, "National institutions for the promotion and protection of human rights"). The GNCHR is the independent advisory body to the Greek State on all matters pertaining to human rights protection and promotion. By virtue of Law 4780/2021, the GNCHR was explicitly recognized as the National Human Rights Institution in Greece and acquired legal personality, functional independence, administrative and financial autonomy. Since 2001, the GNCHR is being accredited **A status** (full compliance with UN Paris Principles) by the competent GANHRI Sub-Committee on Accreditation (SCA), which operates under the auspices and in collaboration with the Office of the High Commissioner for Human Rights (OHCHR).

The GNCHR is a commission-type NHRI. Its main organ, the Plenary is currently comprised of **42 expert members nominated by institutions whose activities cover the field of human rights: NGOs and CSOs, trade unions, independent authorities, universities, bar associations, political parties, the Parliament and the Administration.** Among them national institutions and authorities competent on migration and asylum policies, such as the Ministry of Migration and Asylum, the Ministry of Citizen Protection, the Ministry of the Interior, the Ministry of Labor,[1] the Greek Ombudsman, the General Confederation of Greek Workers and organisations of general or special purpose relating to the protection of refugees and migrants, such as the Hellenic League for Human Rights, Amnesty International and the Greek Council for Refugees.[2]

The GNCHR is entrusted with the dual mandate of protecting and promoting human rights in Greece. In this context, its main mission is:

- The **constant monitoring** of developments regarding human rights protection, the **continuous reporting** and **promotion** of the relevant research.
- The **maintenance of permanent contacts and co-operation with international organisations**, such as the United Nations, the Council of Europe, the Organisation for Security and Co-operation in Europe, with NHRIs of other States, as well as national or international non-governmental organisations.
- The formulation of **policy advice** on human rights issues.

Amongst GNCHR's most important competences is the provision of advice to State bodies on human rights issues, in the context of its "preventive" action for the harmonization of national legislation, regulations and practices with the international human rights obligations that bind Greece. The GNCHR, responding responsibly and consistently to this role, monitors

legislative and political developments and proposes to the State solutions and initiatives compatible with human rights standards (human rights-based approach). Its advisory role, however, is not limited to submitting opinions, recommendations, proposals or reports and participating in Parliamentary sessions but also extends to assisting with the reporting obligations of the State before international and/or European monitoring bodies as well as to encouraging the ratification of international human rights treaties. In its institutional role and mission as a "guardian" of human rights at international, regional and national levels, the GNCHR plays a pivotal role in bridging the gap not only between the State and Civil Society, but also between the country's international commitments for the implementation of human rights and their effective enjoyment in practice.

Further on, within its **general mandate of monitoring** the compliance of state authorities with the international, regional and national human rights standards, the GNCHR intervenes publicly with statements, announcements, etc. where it deems necessary and in accordance with its internal strict democratic procedures provided by its founding law and its Regulation. After all, the pluralistic composition of the GNCHR, which includes people of different backgrounds and different views, with knowledge and experience in human rights issues and independence of opinion, guarantees a comprehensive approach to the issues in question, a fruitful ferment of different views within the GNCHR, which constitutes a "scale model" of the society and where all GNCHR's positions are tested and, if a broad consensus is reached, they are finally adopted and published.

At the same time, the GNCHR participates, in its capacity as the Greek NHRI **in international and European networks of counterpart institutions.** The GNCHR is a member of the European Network of National Human Rights Institutions (ENNHRI) and the Global Alliance of National Human Rights Institutions (GANHRI). In 2018 the GNCHR has been elected to serve a three years' term in ENNHRI Board and GANHRI Bureau (2019-2021). In addition, the GNCHR was elected in 2021 as Chair of ENNHRI's Asylum and Migration Working Group.

GNCHR's work in the field of Migration

The GNCHR, as the independent advisory body to the Greek State on matters pertaining to the protection and promotion of human rights and as the National Institution of Human Rights (NHRI) in Greece, in accordance with the powers conferred to it by its founding law, has a mandate to monitor human rights issues; to promote public information and to develop initiatives to raise public awareness; and to examine the compliance of Greek legislation with the provisions of international law relating to the protection of human rights by submitting advisory opinions to the competent organs of the State. Furthermore, in accordance with the Belgrade Declaration of 25 November 2015, National Human Rights Institutions are committed to condemn and publicly oppose the infringement of the rights of migrants and refugees.[3]

Against this background, the GNCHR has been closely monitoring, since its establishment, the issues concerning the treatment of foreigners, emphasizing the unconditional respect for the rights of all those who are in Greek territory and attaching the utmost

importance to the protection of the rights of asylum seekers and refugees. Accordingly, from the first years of its operation, it has dealt with issues concerning the entry and residence of foreigners, the reception conditions on the islands and the mainland, the asylum and naturalisation procedures, unaccompanied minors, the detention of applicants for international protection and the return of third-country nationals, the access to education and work, health care and social security, housing and integration, etc.[4] Indeed, the GNCHR has institutionalized **a Sub-Commission for the protection of human rights of alien**s, whose members are very active in migration protection.

Within the framework of its competences, the GNCHR has undertaken several initiatives towards meeting the mandate for the effective protection of the rights of migrants and refugees situated in Greece. In the latest legislative changes concerning the status of applicants for international protection and recognized refugees (Law 4636/2019 on International Protection and Law 4686/2020 Improvement of immigration legislation, etc.), **the GNCHR participated in the consultation by submitting written comments on the Draft Laws as well as by participating in person in the sessions of the Parliament at the law-making stage.** In addition, the GNCHR participates in collective bodies of Public Administration, such as the National Council against Racism and Intolerance (based on articles 15 et seq. of Law 4356/2015) and appoints members to the Naturalization Committees - and until recently to the Appeals Committees of the Presidential Decree 114/2010 and Law 3907/2011.

In recent years, the GNCHR has furnished Comments on the following Reports submitted by Greece in the context of periodic reviews concerning the implementation of its international human rights obligations:

- 7th Periodic Report of the Hellenic Republic on the implementation of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (October 2017)
- 4th Periodic Report of the Hellenic Republic on the implementation of the International Convention on the Rights of the Child (December 2018)
- Initial Report of the Hellenic Republic on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (December 2018)

The aforementioned Reports include comments and suggestions for the effective protection and the indiscriminate implementation of the rights enshrined in the Conventions for all those living in Greece with an emphasis on vulnerable groups such as migrants and refugees. In case its Comments are not taken into consideration by the state bodies, the GNCHR reiterates its Observations in its own (shadow) independent reports to the UN bodies. The GNCHR has raised migration protection issues in its Submission to the UN Committee against Torture in response to the List of Issues with regard to the Report of Greece (June 2019), its Submission to the UN Committee on the Rights of the Child (January 2020) and its Stakeholder Report to the Universal Periodic Review of Greece (March 2021).

The following recent public interventions of the GNCHR in cases of

immediate endangerment of enshrined rights of refugees and migrants are indicatively mentioned:

- GNCHR Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders (March 2020)
- GNCHR Statement on the cessation of social care for beneficiaries of international protection and the immediate risk of homelessness for thousands of recognized refugees (June 2020)
- GNCHR Statement on the reported practices of push backs (July 2020)
- GNCHR Statement on the fire in Moria and the day after (September 2020)

Moreover, the GNCHR, within its mandate as a NHRI, **promotes the harmonization** of the national legislation and the practices of the national authorities with international and regional human rights standards while encouraging the ratification of relevant instruments or accession to them, monitoring at the same time their effective implementation. Recent examples are GNCHR's actions in three issues, which have not been sufficiently regulated by the Greek Legislator whereas administrative practice appears either fragmented or incompatible with international standards.

- **Treatment of missing migrants**. Following bilateral meetings with specialized international organisations and experts in the field and scientific research on the legislation (national and international), case law, practice and international standards applicable to the treatment of missing or deceased migrants, the GNCHR decided to adopt the *Mytilini Declaration*, as a text of guidelines for the State for the formulation of policies related to immigration and the adoption of legislation on the rights of foreigners as well as for the competent bodies in the exercise of their duties towards foreigners and their families.[5] It currently follows-up on the topic of missing migrants and dignified treatment of dead migrants.
- **Identification – certification of victims of torture**. In March 2020, the GNCHR held a hearing of bodies and persons in order to identify any gaps and/or discrepancies in the national legislation in relation to international conventions and guidelines, to discuss the relevant bodies' work to date and to capture the needs and obstacles that exist during the implementation of the procedures for the identification and restitution of victims of torture. With a view to submitting a comprehensive proposal to the State, it has reached a number of valuable conclusions. It is currently formulating its concrete proposal to the State.
- **Protection of human rights defenders.** The GNCHR noted through its own monitoring activities and the annual reports of the **Racist Violence Recording Network** for 2019 and 2020, a worrying trend pointing to an increasingly hostile environment for humanitarian organisations and civil society organisations working with refugees and migrants and with the LGBTQI+ community. The lack of a special protection regime for human rights defenders deteriorates the conditions under which non-governmental organisations are called upon to operate. To this end,

the GNCHR has already approved in principle the adoption of a bill on "Recognition and Protection of Human Rights Defenders", brought before its Plenary by the Greek Transgender Support Association (SYD), which is a GNCHR member. The bill aims at ensuring that human rights defenders are free from attacks, reprisals and unreasonable restrictions, in order to work in a safe and supportive environment. In one of the following meetings of the GNCHR Plenary there will be discussion on the bill's articles and adoption of a final legislative text, which will be submitted to the competent public authorities.

Cooperation with other Human Rights Defenders

Pursuant to its founding law, the GNCHR has the responsibility, inter alia, to exchange experiences at the international level with respective bodies of international organisations, such as the UN, the Council of Europe, the OSCE or other States and to maintain stable communication and cooperation with international organisations, counterpart institutions of other countries, national or international non-governmental organisations. Besides, the Paris Principles call upon NHRIs to maintain regular and constructive collaboration "with the non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particular vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas."

Accordingly, the GNCHR has developed stable communication channels with competent bodies and organisations in the field of human rights protection for migrants and refugees in addition to those participating in its Plenary, such as the Asylum Service, the International Committee of Red Cross, Médecins Sans Frontières, HumanRights360, HIAS Greece etc. These organisations regularly participate in hearings of persons and bodies before the Commission and respond promptly to any GNCHR's requests for assistance.

The GNCHR also maintains a long and close cooperation with the Office of the UN High Commissioner for Refugees in Greece, with which they jointly established and coordinate the Racist Violence Recording Network.[6] The initiative for the creation of the RVRN was launched in 2011 with the mandate to systematically record cases of racist violence in order to bring to the fore the quantitative and qualitative trends of racist violence in Greece. It is an umbrella network that consists of bodies that provide legal, medical, social support or come into direct contact with victims of racist attacks or attacks incited by hatred or prejudice and also bodies that have been created by the same group of people that are usually targeted.

The RVRN is comprised today of 51 CSOs offering medical, social and legal services or/and coming in direct contact with victims of racist violence or victims of other hate- or bias-motivated violent attacks as well as organisations established by the groups which are usually targeted by racist violence themselves (refugees, migrants, LGBTI persons). [7]

Based on the victim's testimony, the RVRN members record incidents of racist violence. Between 2011 and 2021 RVRN has documented, through interviews with the victims, one thousand three hundred sixty-five

(1.365) incidents of racist violence and many victims were supported through the RVRN members' services *inter alia* for accessing justice. Additionally, ten annual reports on qualitative and quantitative trends of racist violence were widely disseminated and press conferences have taken place with pluralistic representation. UN treaty-bodies and mandate holders of the special procedures of the UN Human Rights Council, the European Court of Human Rights (ECtHR), the European Union Agency for Fundamental Rights (FRA) and the Council of Europe's European Commission against Racism and Intolerance (ECRI) recognised its reliability by basing their findings on its data and its conclusions.

It is worth mentioning that the RVRN records also criminal acts or violent activities or behaviours against human rights defenders, namely against people who promote and protect human rights and are targeted because of that. In 2020, 20 incidents against human rights defenders, i.e. people targeted by perpetrators because of their support or supposed support for refugees, asylum seekers and migrants were recorded by the RVRN. More specifically, the RVRN recorded incidents of violent attacks against employees in organisations providing services to the refugee population residing in the Aegean islands. The GNCHR is currently elaborating a legislative proposal for the protection of human rights defenders.

The GNCHR and the Office of the UN High Commissioner for Refugees in Greece also collaborate occasionally in other activities. For example, in December 2019 they co-organized a two-day Conference on the social integration of beneficiaries of international protection in Greece,[8] while stable channels of communication and exchange of information in different areas (asylum, accommodation, children, pushbacks etc) have been long established between members of the staff of each respective organisation.

At the same time, the GNCHR participates in its capacity as a NHRI in international and European networks of counterpart institutions, as mentioned above. In the context of the cooperation with counterpart institutions, the GNCHR adopted in April 2020, jointly with the German, Croatian and Bosnia-Herzegovina NHRIs, a *Joint Statement on the situation at the EU external borders and the future European asylum policy*, where joint recommendations

on the immediate steps to be taken to ensure respect for human rights at the EU's external borders and the need to take decisive steps to advance the negotiations on the revision of the Common European Asylum System are set out.[9]

Impact of COVID-19 on the work of the NHRI

The GNCHR as the State's independent advisory body for the protection of human rights, devoted to the principles that underpin international human rights law and the rule of law, continues, under these unprecedented and extreme conditions that the COVID-19 pandemic has introduced, to operate normally, taking advantage of all the available possibilities of digital media, while taking all the necessary measures to the protection of its members and staff. Taking into account the special circumstances of this global health crisis and the necessary measures of confinement, the GNCHR fulfills its institutional role as guardian of human rights protection in Greece, while closely monitoring the challenges that COVID-19 poses.

Under these circumstances the GNCHR has held online meetings in plenary on a weekly basis during the pandemic, with the participation of governmental and non-governmental stakeholders involved in the decision-making process, in order to deal with the new challenges in the best possible way, assess the impact of the restrictive policy measures regarding human rights and democratic values, provide the Greek government with appropriate advice on the protection of the core human rights and at the same time in order to inform the public about their rights and the risks of violations due to the pandemics. Moreover, the GNCHR, responding to its mission in raising public awareness concerning human rights issues, is currently holding a series of eleven Open Seminars on *Human Rights in the (post) pandemic era: challenges and return to "normality"* (February – June 2021).

In its *Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic*,[10] the GNCHR has stressed that restrictive measures aiming at combating the spread of the pandemic should not undermine respect for human rights and rule of law, nor discriminate, but take into account the special needs of the particularly vulnerable groups. Given that the State has taken emergency measures to deal with the pandemic, imposing restrictions on citizens' rights (such as the right to free movement, personal liberty, access to public health of non-infected citizens, etc.), the GNCHR focused mainly on the impact of those measures on the rights of vulnerable groups, including migrants and refugees, unaccompanied minors, Roma, women and children victims of domestic violence, detainees, persons with disabilities. The GNCHR currently prepares its follow-up report with specific recommendations for the post-pandemic era.

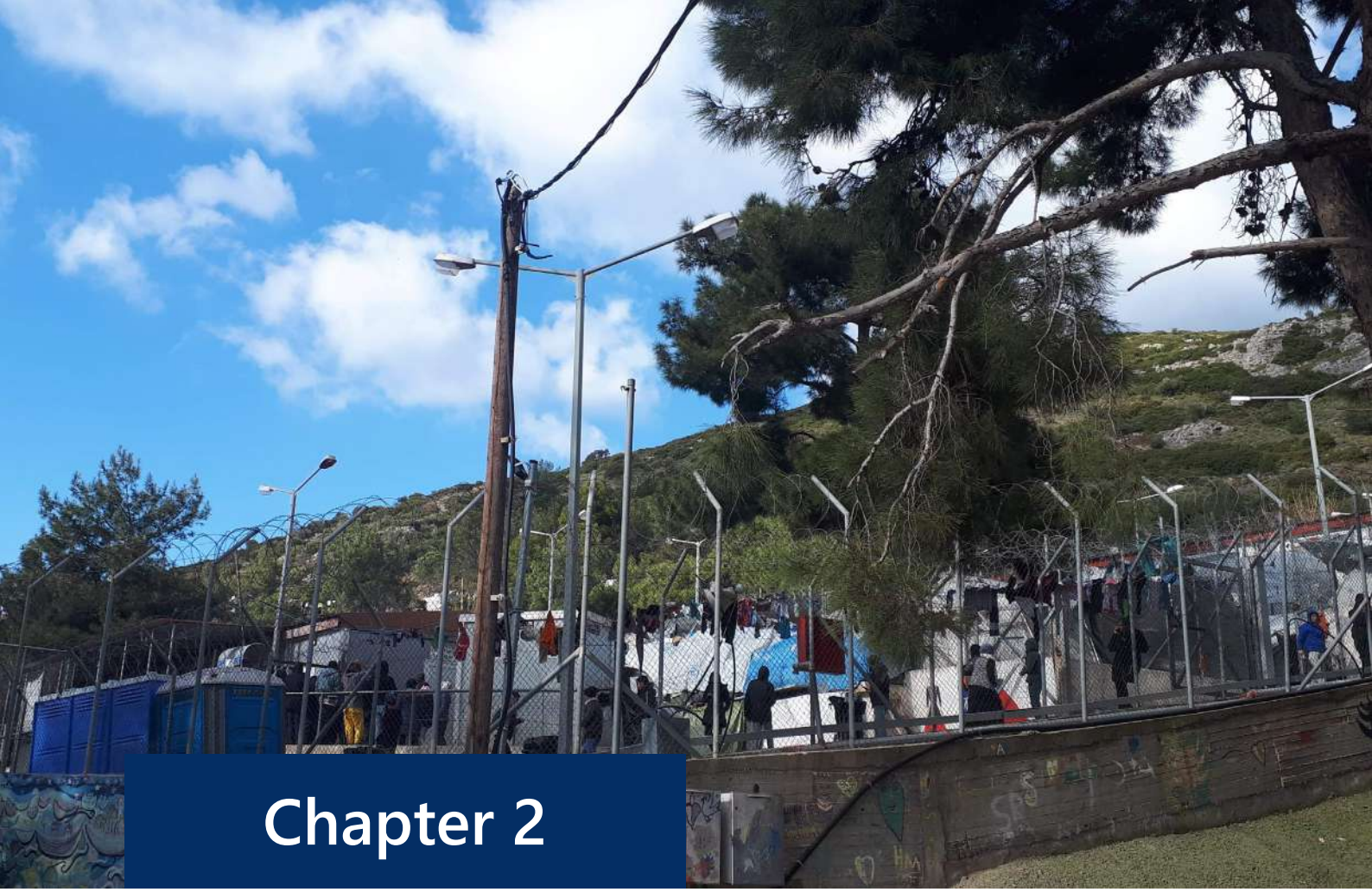
Content of this report

This Report was conducted as part of ENNHRI's project "Migrants Rights at the Borders" (2019-2021), to which the Greek NHRI participates. It contains general information on the work of the Greek National Commission for Human Rights on migration matters, with particular focus on the situation at the Greek-Turkish borders, which also constitute EU external borders.

For the compilation of the findings presented in this Report a combination of qualitative and quantitative research tools was used, such as: a) secondary data research (statistics, legislation, international conventions, EU texts, expert reports etc.); b) on-site visits by GNCHR members in reception centers and other facilities for asylum-seekers; c) bilateral discussions with national bodies, Greek and international organisations or international experts during their field visits to Greece, d) hearings of persons and bodies on specific issues of migration policy and asylum and written contributions by participants received, e) recording of reports/complaints notified to the GNCHR by human rights defenders, refugee/migrant communities or other reputable international and Greek civil society organizations active in the field, and f) exchange of views in international and European forums on migration and asylum, in which the GNCHR participates in its capacity as NHRI.

This Report covers mainly the GNCHR's activities on the protection of migrants' rights at borders in 2020, taking into consideration all major developments such as the entry into force of a new legal regime on international protection, tensions occurred at the Greek-Turkish land borders and the spread of the covid-19 pandemic. The report elaborates particularly on four preselected areas of interest, i.e. returns and violence, access to procedures, reception conditions and deprivation of liberty, human rights accountability. For better placing the GNCHR's findings and recommendations in the broad context of GNCHR's overall positions on migrant and refugee issues, a brief analysis of its key previous findings and recommendations serves as an introduction to each chapter. In addition, developments in early 2021 have been also taken into consideration when evaluating compliance with the GNCHR's Recommendations.

As a last remark, let us also clarify that the purpose of this Report was not to exhaustively present all migrants' rights challenges identified in the field by the GNCHR rather present illustrative examples under each area of interest which, in the GNCHR's opinion are most worrying and/or need urgent actions by the State. In addition, general information regarding the factual and legal background of refugee protection in Greece are provided to meet the needs of an international audience. For more details on the GNCHR's actions and positions on all refugee and migrants issues you can read the comprehensive *GNCHR's Reference Report i*ssued in September 2020 - which is freely accessible in our website. The present document serves as an additional updated *Special Report on migrants' rights at the borders.*



Chapter 2

Overview of state of human rights at border in Greece

Since 2015, Europe has been faced with an unprecedented number of refugees and migrants trying to reach its territory through various routes, with the Mediterranean being the world's deadliest one. Only in 2015, arrivals to Europe reached their higher rate of 1.046.599, with an estimated number of 4.000 people having lost their lives in their attempt to make this journey. Greece, due to its geographical position **at the eastern external borders of the EU, remains one of the major gateways to European Union.** Refugees and migrants take perilous journeys from their home countries in Asia or Africa to reach Turkey and then enter the EU through Greece. The two main entry points are the Aegean Sea islands and Evros region. The situation in the eastern Aegean islands as regards the protection of the rights of migrants, asylum-seekers and refugees has been characterized as a humanitarian crisis by the UNHCR.[11] A significant number of reports by international organisations, NGOs and other entities have documented the failure of the Greek State to offer a dignified treatment towards asylum seekers trapped in the Eastern Aegean Islands, following the closure of borders along the Balkan corridor and the signing of the highly controversial EU-Turkey Joint Statement of 18 March 2016.

Greece has signed and ratified the 1951 Geneva Convention Relating to the Status of Refugees (Law Decree 3989/1959, Government Gazette A' 201, 26.9.1959) as well as the 1967 New York Protocol (Mandatory Law 389/1968, Government Gazette A' 125, 4.6.1968). Greece has also **signed and ratified most of the core international human rights treaties** (Genocide Convention,

ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, CRPD, ICPPED) with the exception of the International Convention on the Protection of the Rights of All Migrant Workers (1990). In recent years, Greece has been submitted to a periodic review before the UN Committee Against Torture (2019) and the UN Committee on the Rights of Persons with Disabilities (2019) whereas the examination is currently ongoing before the Committee on Enforced Disappearance (initial review), the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women and the Human Rights Council (UPR review).

In all UN treaty bodies' Concluding Observations on periodic reports submitted by Greece in recent years, the matter of treatment of refugees, asylum seekers and migrants residing in the Eastern Aegean Islands (sea borders) or in the Evros Region of Greece (land borders) was specifically addressed. More specifically, the UN Committee against Torture addressed the following issues: the reported breaches of the *non-refoulement* principle, the operation of the new Greek asylum system, immigration detention and living conditions in hotspots where asylum seekers are contained, detention and living conditions of unaccompanied children, incidents of sexual and gender-based violence against women and girls and intimidation and harassment of human rights defenders, humanitarian workers and volunteers helping refugees and migrants.[12]

At the same period, the UN Working Group on Arbitrary Detention visited Greece from 2 to 13 December 2019 upon the invitation of the Government. In its Report, the Working Group stressed that the administrative detention of migrants has significantly increased and it had in particular identified problems or gaps in the following matters: the right of detainees to seek asylum, the measure of protective custody imposed on unaccompanied minors, the inaccurate age assessment procedures leading to detention of children as adults, the detention of vulnerable people, the opportunity to challenge detention and removal decision, the allegations of pushbacks at the border between Greece and Turkey, the legislative amendments (Law 4636/2019) which appear to introduce more restrictive procedures and expand the detention measure and the announced policy on migration, i.e. the construction of five closed centers.[13] Finally, the Committee on the Rights of Persons with Disabilities in its Concluding Observations on the initial report of Greece reported deficiencies with respect to the identification and reception of persons with disabilities in refugee situations, such as insufficient measures for the identification of persons with disabilities, no access to health care, inadequate accommodation, a lack of security and safety and individualized support, such as personal assistance, particularly for women and children with disabilities and no access to education.[14]

Greece is also a **member of the Council of Europe**, having signed and ratified the European Convention on Human Rights (Greek Law Decree 53/19-20.9.1974) and all Protocols to the ECHR, with the exception of Protocols 4 and 12. It has also signed and ratified the following Council of Europe Treaties: European Social Charter (revised), Convention on preventing and combating violence against women and domestic violence, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Convention on Action against Trafficking

in Human Beings, Convention on Human Rights and Biomedicine, European Convention on the Exercise of Children's Rights, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment a.o.

The European Committee for the Prevention of Torture (CPT) has visited Greece multiple times in recent years.[15] In relation to immigration detention, the CPT undertook an ad hoc visit in 2018 and again in 2020, to examine in particularly the treatment of migrants since 1 March 2020 when inter alia the processing of asylum requests was suspended. The CPT visited police and border guard establishments in the Evros region (territorial borders with Turkey) and Samos (sea borders with Turkey). In the course of the visit, the CPT's delegation made a number of requests to the Greek authorities in respect of matters requiring urgent attention, such as transfers of persons held in police cells to alternative premises offering humane and decent conditions. A systematic deficiency of fundamental importance, which the Committee raised once again in its report on the 2018 visit, concerns an almost total lack of available interpretation services in all the establishments visited.[16]

Finally, Greece is also a **member of the European Union** who has shared competence with Member States on migration and asylum and has developed, since 1999, a sophisticated Common European Asylum System (CEAS) - currently under review. Consequently, Greece is bound by Article 18 of the EU Charter of Fundamental Rights that explicitly provides for a right to asylum, as further analysed and elaborated in Qualification Directive (2011/95/EU, Articles 2, 13, 18), in Asylum Procedures Directive (2013/32/EU, Preamble par. 12, 15-18 and Articles 1, 2, 10), in Reception Conditions Directive (2013/33/EU, Preamble par. 26, Articles 3, 6), in Schengen Borders Code (Regulation EU 2016/399), in Dublin III Regulation (604/2013) and in Regulation establishing rules for the surveillance of the external sea borders (656/2014). Greece has also transposed into national law the relevant EU Directives on Qualification, Asylum Procedures, Reception Conditions and Returns.

1. Returns and violence at the borders

The GNCHR brought to the attention of the State, as early as 2002, reports from NGOs, such as Amnesty International and the World Organization against Torture, on **illegal practices of violent push backs at the Greek-Turkish maritime and land borders,** which raise concerns about respect for the fundamental rights of third-country nationals and the *non-refoulement* principle.[17] In fact, in its *Opinion* on the Draft Law concerning the ratification of the Readmission Protocol between the Hellenic Republic and the Republic of Turkey the GNCHR underlined that the diplomatic assurances by the Greek Ministers of Foreign Affairs and Public Order were encouraging but not sufficient, given that in practice people are being summarily returned without ensuring prior access to asylum.[18] In 2008, the GNCHR in its relevant *Report* on the basis of complaints concerning mistreatment of foreign nationals by the Greek Coastal Guard highlighted, inter alia, the obligation to rescue persons at sea and to refrain from behaviors that may result to a risk of life or may constitute inhuman or degrading treatment.[19] Since then, the GNCHR closely monitors the situation and

intervenes where appropriate.

In recent years, there has been an increase in incidents reported by international organisations,[20] civil society[21] and the press on individual or group pushbacks allegedly taking place at the Greek-Turkish land and sea borders - which also constitute the EU's external borders. Unfortunately, no Greek Court had yet the opportunity to rule upon such a complaint[22] and in few cases where official investigations were opened[23] there has been no outcome. The GNCHR consistent to its role as a "human rights watchdog", issued two *Statements* (in 2017[24] and in 2018[25]) calling the Greek State to take all measures in order to ensure:

1. The respect of the *non-refoulement* principle;
2. The unhindered, timely and effective access to international protection procedures for all foreigners with irregular entry without discrimination based on race, religion, ethnicity, participation in a social group of political opinion; and
3. The timely and thorough investigation of all complaints on informal, violent pushbacks in Evros.

As the GNCHR repeated in its *Reference Report on the Refugee and Migrant Issue* in 2019,[26] "the suspicion of existing and operating on a systematic basis state or parastatal channels of unlawful management of migration and refugee flows undermines any concept of rule of law and exposes the country at an international level".

1.1 Returns, pushbacks and violence by state authorities at the border

In 2020, during the reporting period of ENNHRI's Project, **the GNCHR received information on individual or group pushbacks at the Greek-Turkish borders as well as on the use of life-threatening methods in the course of deterrence operations at sea.** In addition, international organisations, like the UNHCR and the IOM[27] as well as other international and European human rights bodies, like the UN Committee Against Torture,[28] the UN Working Group on Arbitrary Detention[29] and the Council of Europe Commissioner for Human Rights[30] referred to credible allegations received on summary returns and/or pushbacks from Greece to Turkey. What is most worrying is the fact that the Greek Government and competent authorities systematically deny the occurrence of illegal pushbacks.[31]

On 18 June 2020, the GNCHR's Sub-Commission for the application of human rights to aliens held an online hearing of relevant stakeholders on the matter of pushback practices at the Greek border. **Due to Covid-19, the GNCHR suspended its field visits and continued to monitor the situation at borders remotely.**[32]

Among the tools that the GNCHR is empowered with by its founding law is the option to invite persons to be heard before it who may facilitate its work by presenting personal experiences or expressing views on the protection of human rights as well as the right to seek from public services and from individuals "any information, document or any item relating to the protection of human rights"; "public services must facilitate the work of the Commission". The President may take knowledge of documents and other items, which are classified as confidential, unless they concern national defence, state security and international relations of the state.[33]

The hearing of 18th June 2020 was attended by representatives of the

Government, the competent security forces, international organisations, independent authorities and civil society organisations.[34]

The representatives of the state bodies that participated in the hearing have stated that they have no knowledge of any recent complaints on violent push backs and have called anyone who has evidence to inform the competent authorities in writing. More analytically, the representative of the Ministry for Migration and Asylum has declared that there is no issue of pushbacks while he disputes whether recent incidents in Evros can constitute a *refoulement* under the Geneva Convention Relating to the Status of Refugee.

The representative of the Hellenic Police made it clear that "the reported practices of informal pushbacks are outside the operational framework of the Hellenic Police". Likewise, the representative of the Coast Guard stated that "push backs do not belong to the operational practice of the Coast Guard".

The officers that attended the hearing explained to the GNCHR members their operational mode of action at the land and sea borders in cases of detection of foreigners entering irregularly. They attributed the rumors of push backs to an attempt to put pressure on Greece to relax the securing of its external borders.

Finally, they have reassured the Committee that any complaints submitted in the past have been investigated in a substantial way and have proven unfounded. A Frontex representative did not attend, although invited. However, the Head of the Frontex Agency, in a meeting of the European Parliament where he attended,[35] clarified in relation to the incident occurred in early March and took publicity – regarding wrong orders of the Greek Coast Guard to Danish vessels of Frontex – that it is a "misinterpretation" and that the Greek Coast Guard acknowledged the mistake. He conveyed the reality from the field, stressing that operations on the Greek-Turkish borders are difficult given the complex geopolitical situation and the growing pressure from Turkey.

The Vice-President of the European Committee of the Council of Europe for the Prevention of Torture (CPT) participated in the GNCHR hearing. He was the Head of the CPT's Mission that visited Greece in mid-March.[36]

During the CPT's visit in Greece, the Committee examined complaints on pushbacks and informal detention places (facilities in Poros outside Ferres, a vessel in Lesvos). According to the CPT, "pushback" is any summary return of people in the other country without knowing who they are, without being informed on their rights and without being given the opportunity to submit an asylum application.

The CPT has issued its final Report in November 2020 calling on Greece to reform its immigration detention system and stop pushbacks.[37]
The representative of the Greek Ombudsman who attended the hearing noted that the Ombudsman carries out already since 2017 an *ex officio* investigation for the reported incidents of illegal push back in Evros of Turkish citizens from political parties and organisations. Later on, the Ombudsman expanded the investigation to include third-country nationals.

As the investigation is ongoing, the data are not public at this stage; however the Ombudsman is in cooperation with the competent Greek authorities in

this matter.[38] Moreover, representatives of the judicial authorities were invited to the hearing of public bodies and persons, but unfortunately did not attend.

On the part of the humanitarian organisations participating in the hearing, there was an increase in reported cases of individual or group push backs at the land border of Greece with Turkey, culminating in the period 28.02.2020– 2.3.2020. In addition, some of the organisations that are active in the islands of the Eastern Aegean have recorded in recent months (March-June 2020), through testimonies of their beneficiaries, cases of group pushbacks at sea using life-threatening practices for foreigners.

Furthermore, organisations providing legal support to refugees and migrants, such as Equal Rights Beyond Borders, have reported cases of disappearances, loss of life and injuries in Evros that they are handling following an authorization provided by the victims. Similarly, Amnesty International recorded in a Report published on 3 April 2020 various testimonies of human rights violations of foreigners during the period 28.02.2020-02.03.2020 in Evros.[39]

It is worrying, according to GNCHR, that all the organisations that participated in the hearing had recorded recent incidents of pushbacks at the land and / or sea borders of Greece with Turkey. At the same time, there are increasing reports of cases of group pushbacks by the Greek authorities after the entry of foreigners into Greek territory and either being detained in informal detention centers (Legal Center Lesvos) or staying for a long time in mainland (Greek Council for Refugees).

Emphasis was placed during the discussion on the lack of effective investigation of the alleged incidents but also on the impossibility of effective judicial control of these practices due to, among other things, as mentioned by the Refugee Support Aegean, lack of objective evidence regarding the facts and electronic recording or audiovisual recording material of the Coast Guard

operations.

The UNHCR has forwarded reports to the competent Greek authorities, requesting their investigation and the adoption of appropriate precautionary measures so that there is no room for doubt as to the observance of international refugee law by the state bodies.[40]

The Greek Council for Refugees has in the past but also recently filed complaints and reports before the Greek judicial authorities for a number of criminal offenses during the conduct of informal violent pushbacks, which are pending in Greek justice.

Other organisations, such as HumanRights360 and ARSIS, have in the past published reports, notified them to the competent bodies of the State, the Ombudsman and the Prosecutor's Office for further investigation, but for various reasons they have been fruitless.[41] The GNCHR was further informed that HumanRights360, in order to effectively highlight and address this "practice" developed in the Evros region, had lodged an urgent appeal with the Office of the UN High Commissioner for Human Rights - Special Procedures Mechanism for a case in which there are numerous photographs, videos and geographical locations proving that the person in question was in Greece seeking international protection. Moreover, HumanRights360 together with GLAN filed a complaint with the UN Human Rights Committee regarding the case of a man who legally visited Greece, being a recognized refugee in Germany and was pushed back to the border of Evros with Turkey more than one (1) time.[42] Finally, the GNCHR monitors the development of two recently brought applications before the European Court of Human Rights by Syrian nationals against Greece, alleging violations of ECHR provisions due to their alleged push back to Turkey in February 2020.[43]

Following the above hearing and based on its findings, the GNCHR issued a *Statement*[44] with the following Recommendations to the Greek authorities:

1. to ensure that all state organs comply with the *non-refoulement* principle without exception, act in conformity with it and carry out rescue at sea operations in a timely manner, as required by international law;
2. to establish an official independent mechanism for recording and monitoring informal pushbacks complaints, due to the most serious human rights violations involved;
3. to effectively investigate allegations of informal pushbacks, disproportionate use of force and lethal injuries, underlining that any failure to do so not only contravenes international human rights obligations binding Greek authorities but also exposes the country under international human rights law;
4. to bring those responsible for any such illegal act to justice;
5. to ensure, through the use of technological equipment and other ways of operational action, the collection of objective data available to the police and judicial authorities for the effective investigation of complaints on pushbacks;
6. to ensure an effective cooperation with the judicial authorities as required in the context of investigations of complaints on pushbacks; and
7. to take measures on the effective

access of victims to justice and their protection similarly to other victims of crime, such as victims of trafficking in human beings and victims of forced labor.

In addition, the GNCHR called Frontex to ensure that its operations at the EU external borders with Turkey comply with the *non-refoulement* principle and the duty to rescue persons in distress at sea. In this regard, the GNCHR, through the European Network of National Human Rights Institutions (ENNHRI) has already proposed to the EU Member States to strengthen the role of NHRIs as independent human rights monitoring bodies at EU borders.[45]

Noting that,

- albeit repeated calls by the GNCHR and other national and international bodies upon the Greek Government to effectively investigate reported incidents of summary returns, push backs with the use of violence or not, **the Greek Government still denies** all allegations of pushbacks at the Greek-Turkish borders;
- based on reports from relevant stakeholders **there is clearly a gradual but steady consolidation** of the characteristics of the phenomenon of reported informal push backs as well as of their repeated methodology; and
- **no effective investigation** has yet taken place on the reported incidents while many incidents remain **severely underreported** to the authorities for several reasons, among them fear of forced return, detention or intimidation by the authorities,

the GNCHR has established a Working Group on a Mechanism for recording incidents of informal forced returns.

The main aims of this initiative, as defined at this preliminary stage of preparatory works, are the following: a) raising visibility on systematic practices of individual or group informal forced returns, b) enhancing the consolidation of the respect for the *non-refoulement* principle, c) enhancing accountability for human rights violations occurring during these incidents, d) adding to the credibility of alleged incidents by recording all incidents in a transparent, common and professional manner, and e) providing protection to human rights defenders who record incidents of informal forced returns by way of an affiliation to the Greek NHRI. The GNCHR will soon launch this initiative.

2. Access to procedures at the Borders

The GNCHR has already since 2001[46] formulated concrete P*roposals for the promotion of a modern and effective refugee protection framework in Greece* in relation to legislative reforms, detention practices, establishment of reception centers, provision of information regarding asylum procedures, interpretation services, training of officers, status of asylum seekers, right to appeal, legal aid, safe third country concept, protection of unaccompanied minors, access to education and language courses, social assistance a.o. With respect to asylum seekers situated at borders or in transit zones, the GNCHR had made the following specific Recommendations:

1. given the delays in the examination of their asylum claims, the Administration must provide for special places within transit zones to host asylum seekers in decent conditions; and
2. frontline officers and state authorities that receive asylum applications

or refer asylum applications to the competent authorities must be adequately trained and fully informed on international law, human rights, asylum procedures law, interview techniques etc.

In 2005 the GNCHR identified a series of impediments on access to asylum procedures in the event of a large number of arrivals of third country nationals at borders. At that time, newcomers were held in detention for 3 months with no access to a lawyer and then they were being released with an order to leave the country within 30 days. Access to asylum was limited since the competent authority (Aliens Division of Attica) was open to public only once a week.[47] Up until 2011 and the establishment of the autonomous Greek Asylum Service, the GNCHR reiterated in all relative *Reports and Recommendations* its firm position that asylum procedure must be assigned to civil staff. The fact that the Police Corps was in charge of both curbing illegal immigration and granting refugee protection entailed a risk for a fair and efficient asylum procedure. The very low recognition rates at first degree, the difficulty of accessing asylum and the systemic deficiencies in the international protection process (quality of interviews, lack of interpreters, limited staff with no special training etc.) contributed to the condemnation of Greece by the European Court of Human Rights in *M.S.S. v. Belgium and Greece*[48] which constitutes a landmark case for the suspension of transfers via Dublin Regulation to Greece and triggered a holistic reform of the national asylum system.[49]

As a consequence of the increased number of arrivals in 2015 and 2016[50] and the subsequent closure of borders along the Western Balkan Route, the Greek Asylum System reached its limits with almost 60.000 people trapped in Greece asking simultaneously for access to asylum. The standard operation hours of the Regional and Central Asylum Offices could not meet their needs and therefore the Asylum Service opted for the use of electronic means (online call via Skype) to facilitate access to registration of asylum claims[51] together with a coordinated action of the Ministry of Interior and the UNHCR Office in Greece, IOM and EASO to install movable asylum units in refugee camps all over Greece for a one-off pre-registration exercise.[52]

Specifically, after the adoption of the EU-Turkey Statement in March 2016, all people who irregularly cross the Greek-Turkish sea borders are obliged to stay in the Eastern Aegean Islands pending the examination of their applications for international protection; therefore, a geographical restriction is imposed on them. This led to an overcrowding of reception facilities and an increased demand of access to asylum in the islands. Existing Regional Asylum Offices in Lesvos and Rhodes were reinforced and new Regional Asylum Offices in Samos, Chios, Leros and Kos were established to meet the needs. However, the capacity of these Regional Asylum Offices was limited due to shortage of human resources and infrastructure.

During 2016-2018, 179.658 asylum applications were submitted whereas at the end of 2019, there were still 87.461 pending asylum applications at first degree.[53] Significant delays in registration of asylum claims (access to asylum) and in the examination of asylum applications at first and second degree (fair and efficient asylum procedure) occurred varying from several months to years. What is more, an accelerated special border procedure

was instituted by Greek Law 4675/2016 for those falling within the ambit of the EU-Turkey Statement which in practice fell short of necessary procedural safeguards.[54]

A new increase in arrivals has been recorded in 2019, [55] leading to a reform of the Greek asylum law in order to streamline and speed up all procedures (Greek Law 4636/2019 on International Protection).

The GNCHR, although it was not informed in advance about the forthcoming legislative changes, has thoroughly studied the proposed draft law, elaborated detailed Observations thereon and submitted them both to the competent Minister and the Parliament.

As a general observation, the new legislative framework is considered by the GNCHR, the UNHCR and civil society as a regress to migrants' rights (in comparison with the previous regime). The detention measure was significantly strengthened and generalized, contrary to international standards. Tighter deadlines were introduced to speed up asylum procedures without securing first decent living conditions for the applicants, adequate legal safeguards for the most vulnerable ones, such as victims of torture and unaccompanied minors and the unhindered provision of free legal aid to all applicants who wish to submit an appeal, as minimum guarantees for a fair and efficient asylum procedure.[56]

In 2020, given the extremely critical humanitarian situation on the Eastern Aegean Islands and in view of the GNCHR's participation in the ENNHRI Project "Migrants at Borders", the GNCHR decided to carry out on-site visits to reception and identification centers, accommodation facilities, detention centers and other structures and bodies providing services to migrants and refugees. On-site monitoring is an extraordinary tool used by the GNCHR in exceptional circumstances. Regarding refugees' and migrants' rights, the GNCHR had previously conducted a series of monitoring visits in detention centers and border guards' sectors in 2011 together with the Greek Ombudsman to monitor detention conditions, the application of asylum legislation as well as the management of migrant and refugee flows in entry points. In 2016, the GNCHR with the participation of the Greek Ombudsman, the ENNHRI and the European Migration Network visited reception and accommodation centers to monitor living conditions.[57] The aim of the on-site visits scheduled for 2020 was **to monitor the implementation of GNCHR's previous Recommendations addressed to the Greek State, to draw preliminary conclusions on the state of implementation of the new Law 4636/2019 on International Protection –which entered into force on 1st January 2020- and finally to detect any new challenges and protection gaps in the field, as a result of the large number of refugees and migrants trapped in the Greek Islands, living inside or outside hosting facilities.**

2.1 Access to asylum procedures

Greek Law 4636/2019 (Article 39) introduced a 5 steps procedure for all third country nationals and stateless persons who have illegally entered the country or are found to illegally reside in Greece and their citizenship and identity are not proved by virtue of an official document. The so-called reception and identification procedures include: (1) provision of information on their rights and obligations; (2) allocation to a reception centre or other establishment;

(3) registration and medical screening; (4) referral to an international protection procedure and (5) further referral (e.g. to forced return procedure) and relocation.

More particularly, during the first stage of "Information" the third country nationals or stateless persons are informed by the Reception and Identification Center or in case of mass arrivals by the Greek Police or the Hellenic Coast Guard or even the Armed Forces, in a language that they understand, in a simple and accessible way: (a) about their rights and obligations at the reception stage and the consequences of non-compliance with these obligations; (b) on their transfer to other reception centers, the reasons for the transfer and the consequences for them; (c) on the possibility to apply for international protection; (d) about their rights and obligations during the examination of their application for international protection and the consequences of non-compliance with these obligations; (e) the possibility of joining a voluntary repatriation program; (f) about the terms and conditions of the internal regulations of the reception center; (g) αbout their right to object against the decision to extend the restriction of their liberty in accordance with the further provisions of this Law; and (h) on the procedure to obtain an asylum card (Article 39 par. 3). Personnel of the UNHCR who is present in reception and identification centers undertakes also individual and/or group information sessions to newly arrived refugees and migrants.

At the end of February – beginning of March 2020, increasing tensions were observed at the Greek-Turkish land borders when suddenly large group of migrants and refugees, with the invitation of the Turkish government

gathered along the border line asking for entry into EU territory. The Greek Government considered that the "sudden, massive, organized and coordinated pressure from population movements on its eastern, land and sea borders constitutes an active, serious, exceptional and disproportionate threat to the country's national security" and suspended for one month the lodging of new asylum applications.[58]

The GNCHR, noting with concern the developments on the Greek-Turkish land borders, among others, issued a *Statement* with specific proposals addressed to the national authorities as well as to the EU and its Member States.[59] In fact, the GNCHR:

1. recognizing the sovereign right of states to protect their borders, whether these are national or external EU borders, in full respect of the universal principle of *non-refoulement* and the obligations that the Greek State has undertaken under the international and regional human rights conventions to which it is a party;

2. noting, in particular, that the right to seek asylum and the prohibition of *refoulement*, explicitly enshrined in many international and European statutory instruments (article 33 of the Geneva Convention of 1951 Relating to the Status of Refugees, articles 18 and 19 of the Charter of Fundamental Rights of the European Union, articles 3 and 4 of the Schengen Borders Code, article 98 of the United Nations Convention on the Law of the Sea etc.), constitute a fundamental pillar of both the refugee law and the universal human rights principles, upon which the international and European community have been built, while, at the same time, there are no clauses allowing for derogation from the application of the aforementioned provisions in the event of an emergency situation, on grounds of national security, public health etc; and

3. recalling that a necessary condition for the effective exercise of the right to asylum is the access to the territory of the country of destination, through the provision of safe legal passages, possibly also through the providing of an effective and genuine possibility of accessing international protection procedures via diplomatic authorities abroad (see ECtHR, *N.D. and N.T. v. Spain*, Judgment of the Grand Chamber of the 13th of February 2020),

called upon the Greek Government **to lift the decision to suspend the lodging of asylum application** as well as the decision to automatically return newcomers to the states of origin or transit – while providing for a legal access route to asylum in a coordinated manner.

At the end of March 2020, **the suspension measure** of lodging an asylum application in Greece **ceased permanently**, while those who entered in March 2020 and wished to apply for international protection were able to register their claim. However, the GNCHR expresses its **concern about the indiscriminate prosecution and detention** of those who have illegally entered Greece in March 2020.

Overall in 2020 there has been a significant decrease of arrivals, mostly due to the coronavirus pandemic. According to the official statistics, 15.140 people arrived through land or sea in Greece and 40.559 new applications for international protection were lodged. Arrivals of 2020 were *de facto* being

prioritized in registration of their asylum claims in accordance with the new procedures under Law 4636/2019 on International Protection. During the GNCHR's monitoring visit in Samos (January 2020), the delegation met with applicants who had arrived in early 2019 and were still waiting for a decision upon their claim. According to the Regional Asylum Office of Samos, there is a few months waiting time between the date of arrival and the date of full registration of the international protection application for those who have expressed their will to lodge an asylum application. On the day of the visit of the GNCHR delegation at the Regional Asylum Office, asylum applications of those arrived in October 2019 were being registered. Although the Registrations Department of the Regional Asylum Office was also supported by EASO and Hellenic Police personnel, there was still a backlog. Around 200 asylum applications were being registered per week. At the end of 2020, 76.335 asylum applications in total were pending for examination at first degree and 3.553 at appeals stage.

On 6 July 2020 and while on-site visits were suspended due to Covid-19 outbreak and imposed restrictions on movement, the GNCHR decided to convene an online hearing on matters of international protection and social security coverage of refugees with the participation of the competent authorities (Ministry for Migration and Asylum, Asylum Service), international organisations (UNCHR) and civil society (Greek Council for Refugees, Network for Children Rights, Greek Forum for Migrants, Greek Forum for Refugees, Danish Refugee Council, Solidarity Now, Doctors without Borders a.o.).[60] Emphasis was given to problems encountered in the implementation of Laws 4636/2019 and 4686/2020 and during to the Covid-19 pandemic. Based on the new legislation, an electronic application of self-registration was launched by the Greek Asylum Service to facilitate access to asylum. However, applicants encounter several practical problems completing the online form which have been communicated by the civil society organisations to the Asylum Service. The Asylum Service was working to resolve them during the reported period. At borders, there are certain delays at the stage of registration of asylum claims at the Regional Asylum Offices of Samos and Kos while a serious complaint was raised by HIAS Greece on minors being systematically registered as adults by Frontex's personnel. An official complaint was lodged before Frontex and the Greek Ombudsman. Finally, delays in full registration of unaccompanied minors and other applicants for international protection leads to a *de facto* loss of their right to family reunification under the Dublin procedure since on the one hand minors had already turned 18 and on the other hand the 3-month time period had elapsed.[61]

2.2 Effective, fair and transparent asylum procedures

As mentioned above, significant changes to national asylum and immigration legislation have taken place in the last year. In October 2019, Law 4636/2019 on International Protection was passed by the Parliament, which aimed to codify separate national provisions for the recognition and status of beneficiaries of international protection, asylum procedures, reception conditions for applicants for international protection and the judicial protection of them. However, soon afterwards, this legal framework was amended (see Law 4686/2020) since the newly established Ministry of Migration and Asylum

wished to improve the provisions of Law 4636/2019 in order to speed up the process of granting international protection. **During the reported period, in total, four amending laws of Law 4636/2019 have passed by the Parliament, with most of them concerning matters related to child protection.**[62]

At the same time, the GNCHR closely monitored the operation of the asylum system, which once again reached its limits taking into account the pathogenesis of the pre-existing system (e.g. majority of staff under temporary employment agreements, lack of space and adequate facilities) and the new exceptional circumstances (increased flows in the Eastern Aegean islands and massive applications for international protection in the second half of 2019, successive changes of competence at the Ministry level, changes in asylum procedures due to the implementation of the new Law 4636/2019 from January 1, 2020, unrest at the Greek-Turkish land borders and a decision to suspend access to asylum in March 2020 and a coronavirus pandemic, which significantly affected the functioning of services and the progress of asylum procedures).

In this context, **a GNCHR delegation visited the Asylum Service and the Regional Asylum Office of Attica in February 2020** to identify on the spot the problems and challenges faced by applicants for international protection and the staff of the Services as well as to discuss with the Director ways to improve the asylum system, in the aftermath of the implementation of the new Law 4636/2019. Furthermore, **the Minister of Immigration and Asylum** was invited and **attended for the first time in GNCHR's history, its Plenary meeting in April 2020**. In this occasion, he explained the reasoning of Law 4686/2020 and answered questions from members. Moreover, **a special hearing of persons and public bodies was held on 6 July 2020 by the GNCHR's Sub-Commission for Social, Economic and Cultural Rights and its Sub-Commission for the Application of Human Rights to Aliens** on problems encountered in first and second degree asylum after the entry into force of Laws 4636/2019 and 4686/2020 and during the coronavirus pandemic.

At the borders, the **accelerated border procedure** provided by article 90 par. 3 of Greek Law 4636/2019 (as amended) in the event of mass arrivals of third country nationals or stateless person has been activated in the aftermath of the signing of the EU-Turkey Statement in 2016 and is still in force.[63] The asylum applications of Syrians arriving at the Eastern Aegean Islands after 20th March 2016 are submitted first to an admissibility procedure based on the 'safe third country' concept. If admissible, then their applications are examined on the merits within the tight deadlines imposed by the Greek Law.

The same procedure applies also to non-Syrians with a recognition rate over 25%. A personal interview is being conducted with the assistance of a certified interpreter, provided by METAdrasi, an NGO offering interpretation services, among others, to the Asylum Service. The decision on the international protection application should be issued within 7 days. The deadline for filing an appeal against first instance decisions rejecting an asylum application as inadmissible or unfounded is 10 days. The new Law 4636/2019 abolished the automatic suspensive effect of the appeal for certain categories of appeals (article

104 par. 4). The applicant has the right to free legal aid at the appeals stage. The appeal is being assigned to an Independent Appeals Committee within 4 days. Independent Appeals Committees are administrative committees with jurisdictional competences and their composition varies from 1 to 3 administrative judges (depending on the procedure).

The procedure before the Independent Appeals Committee is usually written and the examination of the appeal is carried out on the basis of the documents in the file. The applicant holds the right to submit a Legal Memorandum until one day before the date of examination of the appeal. However, in a number of restrictively enumerated cases (e.g. revocation of international protection status, substantial new evidence) the Committee invites the applicant to an oral hearing with the assistance of a certified interpreter. In such a case, the applicant will be notified one day in advance. The decision on appeal should be issued within 7 days.

In addition to the above, other particularities of the accelerated border procedure are: (a) the registration of the applications for international protection, the service of decisions and other procedural documents as well as the receipt of appeals may be executed by personnel of the Hellenic Police or of the Armed Forces; (b) the interview with the asylum seekers may be conducted by personnel of the European Asylum Support Organisation or other authorities in special extraordinary circumstances, such as personnel of the Hellenic Police or the Armed Forces, if this personnel has previously received the necessary basic training, especially regarding the international protection of human rights, the EU acquis on asylum and the interview techniques. The involvement of EASO personnel in decision making procedures was questioned for its legality before the Greek Courts.[64]

During the reporting period, Law 4636/2019 was **amended by Law 4686/2020** on *Improvement of migration legislation, amendments of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions*. Although some of the new regulations were positively evaluated by the GNCHR regarding, for instance, the replacement of paper asylum card with an electronic card, the Commission expressed **its reservations on the introduction of an e-service system for decisions on asylum applications which raises concerns as to its compatibility with the right to appropriate notification of a decision and of the reasons for that decision in fact and in law** (par. 25 of the Preamble, Directive 2013/32/EU).

The GNCHR notes that the manner in which the decision is serviced as well as the provision and quality of the interpretation/translation of the decision and of the information on how to challenge the decision determine decisively whether the applicant understood the content and the legal effects of the serviced decision in order to be able to file an effective remedy. The service of the decision directly to the applicant fulfills the criteria of "appropriate notification" or "simple and accessible way" of Law 4636/2019. Whereas, the service to a third person, i.e. the Director of the Reception and Identification Center or the plenipotentiary lawyer or other counselor does not guarantee the applicant's actual knowledge and jeopardizes his/her access to an appeal.

It is the GNCHR's view that the non-provision within the text of the EU

Directive of the possibility of notifying a decision by electronic means as well as the lack of a consistent practice from other EU Member States leads to the conclusion that this practice is unsafe. Article 82 par. 3 of Law 4636/2019 as amended stipulates that "Service of the decision to the applicant shall be effected by a registered letter to the registered address of residence or stay or at the place of work, to himself or to his attorney or to his authorized counsel or representative in accordance with Article 65 hereof. Together with the decision, in the event that service is effected to the applicant, an accompanying form shall be communicated in a language which he understands and which shall explain in a simple and accessible manner the contents of the document served, its consequences for him and the actions he may take. Exceptionally, if the decision recognizes the applicant as a beneficiary of international protection, only the excerpt of the operative part of the decision shall be served in accordance with the above paragraphs".

Based on information received by NGOs working in the field with asylum seekers, there are reported incidents of applicants not being informed in a language that they understand of the content of the serviced decision.

Moreover, in practice, there is a widespread use of the possibility to service the decision to the Director of the RIC or the detention center (special procedure for prisoners or residents in RICs as per par. 4 of article 82) who has the obligation to immediately find the applicant and service the decision in his/her hands. In addition, the organisations in the field confirm the concerns expressed by the GNCHR during the discussion of the new Law 4686/2020 before the Parliament in relation to the assumption of responsibility for the full registration of the application for international protection by the Reception and Identification Service.

The GNCHR in its Observations in the Draft Law 4686/2020[65] considered that the assignment of this competence without additional safeguards to the RICs might cause problems in the asylum procedure since under the new regime of Law 4636/2019, data and information provided by the applicant at the stage of full registration of his/her asylum claim are extremely critical to the categorization and further referral of his/her case to the relevant asylum procedure (priority, fast-track, Dublin, etc.).

Therefore, the GNCHR emphasized that the assumption of the relevant responsibility by the RICs **should be accompanied by the same substantive and procedural guarantees as in the asylum procedure** (adequately trained staff, appropriate interpretation, prior information from the UNHCR or the European Asylum Support Office, adequate time to prepare etc). In the implementation of this provision, the GNCHR found that the staff of the RICs who have undertaken the registrations are not specialized in this domain and do not have the necessary knowledge to avoid irreparable mistakes, which may obstruct the transfer of persons to other countries through the Dublin III Regulation. For example, if the applicant's name or other personal information has not been properly recorded from the outset, they cannot be corrected at a later stage in the absence of an official identification document and thus, will not be accepted by the authorities of the other EU state.

A key problem that persists over time and which, despite the corrective actions

of the Administration has not been resolved in practice is the inability to meet all the requests of the applicants for **free legal aid at the appeals stage** in accordance with the provisions of national and EU law. The right of international protection applicants to free legal aid - at least in the second degree - is enshrined in Article 20 of Directive 2013/32/EU and is a basic procedural guarantee for the exercise of the right to an effective remedy (Article 46 of Directive 2013/32/EU, Article 47 of the EU Charter of Fundamental Rights, Article 13 of the European Convention on Human Rights).[66]

Under the regime of Law 4636/2019, upon service of the first instance rejection decision, the applicant is informed on his right to appeal against it as well as on his right to free legal aid for the submission of his appeal. If he/she wishes to acquire free legal aid, he/she fills a relevant application before the competent Regional Asylum Office. His/her application is automatically accepted provided that the applicant is not represented by another lawyer. Free legal aid is provided by a lawyer registered with the Asylum Service.

During the first weeks of implementation of the new Law 4636/2019, the GNCHR's delegation in Samos found that an information sheet in Greek was being handed over by the Regional Asylum Office to rejected asylum seekers at first degree with information and directions how to submit an appeal under the new Law. This practice was of course defective to meet the requirements of the law regarding the adequate information of the applicant on his right to appeal. Based on information received by the organisations which participated in the 6th July 2020 hearing, only 33% of asylum seekers has access to free legal aid. The Register of Lawyers of the Asylum Service cannot cover the huge demand for legal aid. In the islands of the Eastern Aegean, free legal assistance from lawyers of the Asylum Service Register is from minimal to zero.

Civil society organisations that provide free legal services to applicants are trying to fill the gap in the field, but they cannot cope with the tens of thousands of rejection decisions produced and serviced during the pandemic.

The Ministry of Migration and Asylum has issued since 2018 two calls for lawyers to staff the Asylum Service Register, however there is limited participation due to unfavourable remunerations combined with the specialized knowledge required given the complexity of asylum procedures.

The Asylum Service, reacting flexibly to the needs and the identified gaps in the field, recently decided to provide remote legal assistance to the islands of the Eastern Aegean through a video conference by lawyers of the Regional Office of Attica's Register. This model has been endorsed in Samos; the GNCHR has not yet evaluated its functionality and efficiency.

The GNCHR had already underlined in its Observations in the Draft Law 4636/2019 the significant shortcomings and gaps that have been identified in practice during the evaluation of the operation of the provision of free legal aid in the second degree of the asylum procedure.

To ensure the accessibility of legal aid, the GNCHR called on the Greek State to ensure in practice the provision of free legal aid to all applicants wishing to file an appeal as well as the explicit provision of a safeguard in case of objective reasons that prevented

the applicant from receiving the free legal aid, although he had requested it. The only possibility currently offered by the Greek law is for the applicant to ask once for the postponement of the examination of his appeal to a subsequent date.

The competent Independent Appeal Committee will review his claim for postponement and if it considers that the applicant will suffer an irreparable harm due to the lack of legal aid and that his appeal is likely to be accepted, then it will grant the postponement (article 98). The universal provision of free legal aid in the second degree becomes extremely critical and substantial after the introduction of Law 4636/2019 and the stricter procedures in the second degree (mandatory specific grounds for appeal against the penalty of inadmissibility, attendance in person or by proxy of the Independent Appeals Committee session, abolition of automatic suspensive effect for certain categories of appeals and the need to file a separate application for suspension, etc.). The lack of legal aid can have a direct impact on the success or failure of the appeal and therefore raises questions regarding its ineffectiveness. Also of concern is the information received by the GNCHR from the Register of Lawyers of the Asylum Service[67] for an unusually dramatic reduction of applications for free legal aid after the entry into force of Law 4636/2019 as amended by Law 4686/2020. The amendments in the service of documents and the digitization of the process through the Asylum Service platform lead to the inability of the applicants for international protection to request timely free legal aid. There are also delays in the assignment of cases by the Regional Asylum Office to the Lawyers of the Register, resulting, in some cases, to the case being assigned to a lawyer

after the submission of the appeal by the applicant.

In addition, the **abolition of the automatic suspensive effect** of the appeal and the introduction of numerousexceptions (article 104 par. 2 of Law 4636/2019) for which the prior submission of a request for suspension is required by the applicant before the Independent Appeals Committee, although compatible under certain conditions with the EU law, may be contrary to Greece's obligations under the European Convention on Human Rights. According to the settled case law of the European Court of Human Rights, a remedy in order to be effective within the meaning of Article 13 of the ECHR requires to have an automatic suspensive effect.

Furthermore, regarding the exceptional application of the accelerated border procedure, the GNCHR has already pointed out, in a relevant Report that the extremely short deadlines raise doubts about the effectiveness of the international protection process and that it has received reports from the UNHCR and a number of NGOs active in the field for shortcomings in the border procedure of article 90 par. 3 and for "poor quality" of decisions due to the super-fast procedure. In the same spirit, the European Union Agency for Fundamental Rights, in a recent Opinion, expressed doubts as to whether the deadlines of the border procedures of the former Article 60 par. 4 or/and of the ordinary procedure can be further shortened without the quality of the decisions being compromised.[68]

In particular, regarding **vulnerable asylum seekers**, the GNCHR has noted certain irregularities in the screening process (identification) of victims of torture and/or other serious forms of psychological, physical or sexual violence or exploitation as well as major gaps in the provision of adequate psychosocial support to them as provided by Law 4636/2019.

According to the new Law 4636/2019 (articles 39 par. 5 and 58 par. 1), the following categories of persons are considered as vulnerable: children, unaccompanied children, direct relatives of victims of shipwrecks (parents and siblings), persons with disabilities, elderly, pregnant women, single parents with minor children, victims of trafficking, persons with serious illness, persons with cognitive or mental disability and victims of torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation.

The finding that a person belongs to a vulnerable group has as its only consequence the immediate coverage of his / her special reception needs. However, significant delays in identification of vulnerable people,[69] due to shortage of medical personnel present at borders result to asylum procedures being initiated without the applicants' vulnerability having been assessed.

For the wider category of persons in need of special procedural guarantees due to their age, gender, sexual orientation, gender identity, mental disorder or as a result of torture, rape or other serious forms of psychological, physical or sexual violence (article 67 of Law 4636/2019), the cessation or non-application of the accelerated procedure laid down in Article 83 (9) and the border procedure laid down in Article 90 are provided for, under the condition that "adequate" or "appropriate" support is not provided, for instance the possibility for the applicant to move during the personal interview, if this becomes necessary due to his

health situation, as well as the leniency in non-important inaccuracies and contradictions, insofar as the latter relate to the state of his health.

However, the GNCHR had pointed out in its *Observations*[70] on the Draft Law that there was no mention of the indicative forms of "adequate support" mentioned in the Preamble (par. 29) of the EU Directive 2013/32, such as the provision of "sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection".

The GNCHR has also highlighted the lack of provision by the Law for the relevant decision-making body and for the criteria on which it shall be decided whether or not those in need for specific procedural guarantees will be excluded from the above procedures. During the hearing of persons and entities held before the GNCHR on 6.7.2020, the difficulty of implementing this provision in practice was confirmed, due to the fact that, as non-governmental organisations pointed out, the criteria of "adequate support" are not clear, resulting to the creation of insecurity and inability to control and challenge the legitimate or not subjection to the accelerated procedure. In any event, for certain categories of persons in need of specific procedural guarantees, such as victims of torture and violence, it is objectively established that the conditions of "adequate support" are not fulfilled, as in practice there is a gap in the certification of victims (the competent bodies, i.e. public hospitals, declare lack of competence), while victim rehabilitation centers are not operating.

Therefore, it is reasonable to expect that the victims in question cannot establish clearly and accurately the facts which led them to leave their country of origin and give sufficient evidence supporting their claims without previously obtaining proper medical and psychological treatment (Article 61 of the Law 4636/2019).

The GNCHR, conscious of the significant problems for the physical and mental health of asylum seekers **victims of torture or related acts of inhuman treatment**, who do not receive in practice medical care and rehabilitation, held a hearing on March 4, 2020 in order to identify any gaps and deviations in national legislation in the light of the EU framework, international conventions, and guidelines, and to capture the obstacles which exist during the implementation of the procedures for the identification and rehabilitation of victims of torture.

Following this hearing and based on a thorough research, the GNCHR expressed its particular concern for the incorrect transposition of Article 25 of the EU Directive 2013/33 into the national legal order, which imposes an obligation on public authorities to identify and rehabilitate victims of torture. In the same context, it was stated that the competent authorities for the identification of victims of torture did not apply article 61 of Law 4636/2019, since they did not have the appropriate knowledge to perform their duties, a fact that due to its gravity has a serious impact on the core of the right to the identification of victims of torture, which may adversely affect their request for international protection.

To that end, the GNCHR submitted a specific proposal for the amendment of Article 61 of Law 4636/2019 to the Greek State, so that it can be both reflected the full scope of the requirements of Article 25 of the EU Directive 2013/33

and institutionalized the distinction and the different purposes of the concepts of "identification" and "certification" of the victims of torture.

The GNCHR also proposed specific additions to the provisions of Articles 61 and 77a of Law 4636/2019, so that the staff working in the relevant field can be properly trained and thus, identify "obvious" cases but also incidents for which there are indications of torture, in order for the victims to be referred to rehabilitation immediately and without undue delay.

With regard to the entities which will be involved in the above procedures, the immediate need to establish a permanent mechanism of uninterrupted funding, in order to carry out the processes of identification and rehabilitation of victims of torture was also stated.

Finally, the GNCHR pointed out that in addition to the "identification" process, the "certification" of victims of torture is a different concept, since the latter aims at the submission of certificates for judicial use. Furthermore, the "certification" of victims of torture must be carried out in the light of the principles of the Istanbul Protocol, namely by a full scientific team, which will be independent of any public or private body for reasons of impartiality and objectivity, following the purposes, principles, guarantees, and procedures set out in the above-mentioned Protocol. Regarding the condition and the procedures of the "certification" of the victims of torture which take place in Greece, the GNCHR reserved to express its views in the future in the context of the process concerning the drafting of the respective national legislation.

With regard to **unaccompanied asylum seekers**, who fall within the broader category of persons in need for special procedural guarantees, it is extremely worrying that the explicit reference in previous Law 4375/2016 that all unaccompanied minors are exempted from accelerated procedures was abolished. Following consultations on the Draft Law 4636/2019 and the reactions of many institutions, independent authorities, international organisations and civil society organisations, a new provision was introduced whereby applications of unaccompanied minors under 15 years of age or/and minors who are victims of trafficking, torture, rape or other serious forms of psychological, physical or sexual violence are only exempted from accelerated asylum procedures. This last provision is questioned by the GNCHR as to its compatibility with EU law (article 25 par. 6 of EU Directive 2013/32 on Guarantees for unaccompanied minors).

The **UN Working Group on Arbitrary Detention** that visited Greece from 2 to 13 December 2019 upon the invitation of the Government has urged the authorities to ensure the prompt examination of applications from vulnerable individuals in practice.[71] While Law 4636/2019 provided for a prioritization of their asylum applications, in practice this could not be achieved due to the shortcomings mentioned above which prolonged the asylum procedure until a proper assessment on vulnerability was made. Although speedy asylum procedures for vulnerable people are of utmost importance, the fairness of the asylum procedure could be imperiled if not accompanied by a strict compliance with special procedural safeguards provided by law. Therefore, subsequent Law 4686/2020 de-prioritized their asylum applications.

In light of all the above, the GNCHR reiterates the following Recommendations to the Greek State:

1. to ensure the right of access to asylum for all those who expressed their will to, without undue delay and obstacles;
2. to examine promptly and smoothly applications for international protection at every stage of the process, with a view to ensuring the quality of administrative decisions, so that the process meets the requirements of effectiveness;[72]
3. to terminate the application of accelerated border procedure under article 90 par. 3 of L. 4636/2019, which was introduced as an exceptional and temporary measure. Irrespectively of the above, the State must eliminate the inclusion of unaccompanied minors and victims of torture, rape or other serious forms of psychological, physical or sexual violence in accelerated border procedures;
4. to ensure the administrative and financial independence of the Asylum Service and the Appeals Authority[73] and to upgrade the tools and working spaces of the staff in view of the new challenges posed by the pandemic;
5. to harmonise the administrative practice of Regional Asylum Offices and Independent Appeal Committees as well as to interconnect the electronic records of the Reception and Identification Service and the Asylum Service for reasons of transparency, efficiency and acceleration of the procedures, in particular family reunification under Regulation 604/2013; and
6. to comply with procedural safeguards, such as ensuring the provision of interpretation services and free legal aid at the second degree to all applicants who have requested it.[74]

3. Reception conditions and deprivation of liberty at the borders

Prior to the adoption of Law 3907/2011, there was no provision for the establishment of a "reception system" at borders. Migrants who were arrested to have irregularly entered Greece were systematically being detained for 6 months (maximum time) in view of their deportation. Once the period of 6 months elapsed, there were being released with a note to leave voluntarily the country within 30 days. The GNCHR thoroughly addressed the specific matter of detention conditions in police stations and detention facilities for aliens, including at borders, in a Special Report issued in 2010.[75] In March 2011, a joint delegation by the GNCHR and the Greek Ombudsman visited detention centers for aliens at the land borders (Evros region). The GNCHR expressed **serious concerns on the measure of detention being applied in an indiscriminate manner** to all newcomers at land borders, irrespectively of whether there was a realistic prospect to be deported to their country of origin or whether, in the meantime, they have acquired the asylum seeker status – a fact that triggers the application of special rules regarding the exceptional character of the detention measure and the obligation to previously consider the use of alternative measures.[76]

In accordance with European Union law and Article 5 of the European Convention on Human Rights, the deprivation of liberty on grounds related

to immigration can only be employed as a last resort and unless less intrusive measures are sufficient to achieve the legitimate aim pursued.[77]

Irrespectively of the above, detention shall be imposed only on the basis of an individual assessment and provided that alternative measures have already been considered.[78] Under previous regime (Law 4375/2016) new arrivals were being detained for 3 to maximum 25 days inside reception and accommodation centers. When they applied for asylum, there were normally released and hosted in reception and identification centers.

Due to the overcrowding in RICs at the Aegean Islands, this measure was soon abolished in practice. On the other hand, if they did not apply for asylum or there were reasons for absconding or they had committed an offence, they were being detained either in police departments or in pre-departure detention centers. Similarly, detainees who have expressed their will to voluntarily return to their country of origin via International Organization for Migration programmes were also being detained. This last practice was critised by the CPT delegation who made an *ad hoc* visit to Greece in 2016 and was further reiterated in 2018.[79] In 1.11.2019, 4.385 migrants were being detained for immigration purposes (administrative detention) whereas returns were effectuated at a slower pace.

The Greek Ombudsman reiterated that if detention becomes the rule rather than an exception, the legal basis of proportionality of the deprivation

of liberties will be tested. It is all too clear that, with respect to the return-readmission system, what is at stake is the endurance of both the EU borders and the rule of law, as one of the core and founding values of the EU.[80]

The **United Nations Committee Against Torture** (CAT), in the Concluding Observations on the Seventh Periodic Report of Greece,[81] expressed its additional concern over the fact that detained migrants and asylum seekers are often **deprived of fundamental judicial guarantees,** such as access to a lawyer and the right to lodge objections against detention. In view of the GNCHR's Recommendations,[82] the CAT noted that Greece should refrain from the detention of asylum seekers and foreigners who have irregularly entered Greece for a long period of time and make use of detention as a last resort and for the shortest period of time possible, while highlighting the need to ensure procedural guarantees to the detainees, such as access to a counsel, the possibility of challenging the legality of administrative detention and the provision of adequate health care.

The **European Network of National Institutions for Human Rights** (ENNHRI) has stressed out that alternative to detention measures in the context of migration should not constitute a "second thought", but rather the primary concern of the authorities.[83]

More specifically, with regard to **vulnerable applicants for international protection**, the GNCHR has already expressed the *Opinion* that they should not be detained, as the imposition of the detention measure on a person belonging to a vulnerable group constitutes, as a rule, a disproportionate measure.[84]

Similarly, with regard to **minor third-country nationals**, irrespective of their residence status in the country and regardless of their family status (if they are unaccompanied or accompanied by an adult), they should not be detained for reasons related to immigration and asylum law. Several international and regional monitoring mechanisms, like the ECtHR,[85] the European Committee on Social Rights[86] and the UN Committee Against Torture[87] have condemned the practice of minor children being detained in police stations under the "protective custody" regime.

The GNCHR advocated for the abolition of the detention measure for unaccompanied minors for illegal entry into the country and its substitution by alternative measures of accommodation in appropriate shelters during identification, examination of the reasons and circumstances of entry into the country, tracing of their family and the delimitation of their legal protection.[88] The Greek Ombudsman in his Report as the National Prevention Mechanism (OPCAT) pointed out that detention of unaccompanied minors in police facilities sets at immediate peril their normal development and violates rules on international protection of children's rights.[89]

Even if Greek legislation had already provided for the establishment of First Reception Centers since 2011, organized centers of first reception for refugees and migrants began to operate several years later. In 2001, the GNCHR had documented the complete lack of state reception centers, with the exception of one in Lavrio, and the problem of homelessness for thousands of asylum seekers in Greece,[90] pointing out, on the occasion of the Greek Presidency of the Council of Europe in 2003, that the only

solution to ensuring decent reception conditions for asylum seekers is the creation of robust, complete reception centers.[91]

The Law 3907/2011 provided for the establishment of the First Reception Service as an autonomous service at the Ministry of Public Order. In its detailed comments to this draft law,[92] the GNCHR highlighted, with reference to the organization and functioning of the First Reception Centers,[93] the need to identify and separate persons that are eligible for international protection or belong to vulnerable groups and to ensure decent reception conditions for all. With the adoption of the Law 4375/2016, the First Reception Service has been replaced by the First Reception and Identification Service (RIS), under which now operate the Reception and Identification Centres (RICs or 'hotspots') in Greece.[94] Evaluating RIS operation, the GNCHR has stressed the importance of being adequately equipped with personnel with full labor, financial and personal security while operating in a perfectly adequate and financially transparent manner, ensuring full, efficient and secure services for the applicants for international protection.

During the period of increased refugee and migrant flows in Greece (2015-2016), the GNCHR exercising its overall breadth of competence, closely monitored the developments at national and international level, initially addressing concrete *Recommendations* to the Greek State and then publicly intervening with *Statements* and *Declarations*.[95]

As already mentioned in the previous Chapter, the GNCHR with the participation of the Greek Ombudsman, the ENNHRI and the European Migration Network conducted monitoring visits to the Reception and Accommodation Centres regarding living conditions for the applicants.

The GNCHR presented in a public event the findings of these autopsies and proposed concrete measures to address the urgent and long-term needs concerning the reception and hosting needs of refugees in Greece. According to the GNCHR's estimates,[96] there were *de facto* violations of the rights of applicants for international protection and refugees with respect to their massive and indiscriminate detention in the Eastern Aegean islands, the timely and effective access both to international protection procedures and to decent accommodation, health and education services, while the right to raise objections against detention were not respected. At the same time, the GNCHR worried about the ongoing violent incidents inside and around reception and accommodation centers, contributing to racism and xenophobia developed in certain parts of Greece and hampering successful integration of recognized refugees in Greece.

In 2015, due to the highly increased needs for provision of housing to applicants for international protection in Greece, the UNHCR Office in Greece, funded by the European Union, launched a program on the "Provision of support to Greece for the realization of the hotspots/relocation program and the increase in the reception capacity for asylum seekers", which provided for the creation of 20.000 reception places for asylum seekers who were candidates for relocation to other EU Member States, as well as vulnerable asylum seekers in Greece. During 2015-2017, an emergency relocation program from Italy and Greece was being activated by EU Council Decisions. A total number of 21.710 asylum seekers were transferred to other EU countries. When the relocation program was completed,

the **ESTIA (Emergency Support to Integration and Accommodation)** program was launched for all asylum seekers, with a priority for the most vulnerable.[97] This program gives beneficiaries (applicants for international protection) free housing in private residences, apartments and buildings and other supporting services, such as information, counseling and support for administrative procedures, psychosocial support and interpretation. In addition, the Ministry of Migration and Asylum adopted the Ministerial Decision 16987/20 (Government Gazette 2587/B/26.6.2020) on the conditions for providing financial assistance to applicants for international protection. According to the UNHCR that was managing the program, housing in an urban environment helps to restore a sense of normality for applicants for international protection and provides better access to services, including education and health. Individuals are also supported by social workers and interpreters, so that beneficiaries have access to medical services, the labor market, language courses and entertainment activities. On the 15th of July 2020, a trilateral agreement was signed between the European Commission, the UNHCR and the Ministry of Migration and Asylum for the ESTIA II program, which is now being managed by the Ministry.[98] For 2021, ESTIA Program received funding from AMIF for 12 months. It will offer increased social services and inaugurate new accommodation shelters of limited capacity for extremely vulnerable cases.[99]

Moreover, the GNCHR had since the beginning of the crisis called on the European Union to urgently assume its responsibilities and redesign its asylum policy.[100] Jointly with the ENNHRI, it had highlighted that it is not enough to provide financial assistance to the affected countries, but a full redesign of the EU's migration policy, with the focus on the protection of human rights and the fair and effective burden sharing, is required.[101] The GNCHR has **strongly criticized**, from the day of its signature, **the Joint EU-Turkey Statement, which has not eventually been implemented and was proven to be ineffective and a key factor to the limitation of the rights** of both asylum seekers who remain trapped on the islands in undignified living conditions for a long period of time, as well as the inhabitants of Greek islands who bear the disproportionate burden of a fruitless European policy, resulting to the raise of racism and the manifestation of social disturbances. The GNCHR has often highlighted the need for immediate termination of the entrapment of applicants for international protection in the Aegean islands by means of their transfer to the mainland, in appropriate structures for long-term hospitality, and by ensuring at least a certain level of decent living in these structures.[102]

In 2019 there has been an increase of refugee and migration flows in Greece, compared to the previous year.[103] Reception centres on the islands at the end of 2019 were **overcrowded, far beyond their hosting capacities**,[104] with immediate danger of violation of fundamental rights of third-country nationals, such as the protection against inhuman or degrading treatment and the provision of a **minimum level of decent living**. For these reasons, among others, the GNCHR Plenary decided that a delegation of GNCHR's members should carry out monitoring field visits at the beginning of 2020.

3.1 Deprivation of liberty and *de facto* detention at the borders

Under Law 4636/2019 on International

Protection which entered into force during the reporting period of ENNHRI's Project, **measures restricting the freedom of third country nationals are strengthened** for several reasons:

1. **Detention measure expressly extends to all applicants for international protection, even at liberty, including vulnerable persons and unaccompanied minors**. Under the previous regime, asylum seekers who were already in detention for the purpose of removal could remain detained for specific grounds enumerated in law and following the recommendation of the Asylum Service. All other applicants who submitted an international protection claim at borders remained free during the examination of their application. However, a geographical restriction was imposed on those entering Greece by the Aegean Islands as a result of the EU-Turkey Statement, restricting their freedom of movement outside the designated island.

According to information that the GNCHR received from civil society organisations, following the entry into force of Law 4636/2019, a broad interpretation of the concept of "public order risk" is observed in the field, so that several applicants for international protection, who are free, are arrested and detained without a detailed reasoning.[105]

2. Although Law 4636/2019 explicitly mentions that detention is a measure of last resort for applicants of international protection, given the lack of alternative measures in practice, the detention measure may take the form of a rule, contrary to international and European law. To that end, **the GNCHR proposed the explicit reference in the Law of the rules concerning the alternative to detention solutions**, such as regular appearance before the authorities, the deposit of a financial guarantee or the obligation to reside in an indicated place, as provided for in Article 8 (4) of the Directive 2013/33/EU on the Reception Conditions.[106]

3. The GNCHR is alarmed by the vague wording of Article 46 (5) of Law 4636/2019, whereby applicants for international protection may be detained for a maximum of 18 months (in the context of the asylum procedure), with a possibility of prolongation of the detention for another 18 months (in the context of the return procedure).

4. During the reforming of the legislative framework, the Legislator did not take into consideration the settled Recommendation of the GNCHR concerning the abolition in law of administrative detention of unaccompanied children and children accompanied by family members, despite the fact that their detention in the context of asylum and immigration legislation can never be in the best interest of the child[107] and in spite of the repeated convictions of Greece by the European Court of Human Rights (see indicatively *H.A. and Others v. Greece*, application no. 19951/16, 28.02.2019)[108] and in contrast to the immediate measures indicated by the European Committee of Social Rights.[109] Law 4760/2020 that abolished detention of unaccompanied minors in police departments (so called "protective custody") is a positive step. In practice, given the official statistics,[110] only few children are being detained in police departments and for the shortest period possible.

5. Article 31 of Law 4686/2020 rephrased paragraph 1 of Article 30 of Law 3907/2011 by reversing the principle of the exceptional application of detention measures . Under the EU

legislation "the use of detention for removal purposes constitutes a serious infringement of the fundamental right of persons to freedom and is thus subject to strict limitations".[111] National legislator has no margin to deviate from these rules. The GNCHR has already stressed the above issue to the competent executive and legislative authorities, asking for the removal of such provision.[112]

6. With regard to **"Closed Centers of Temporary Reception of third-country nationals or stateless persons"** provided for by Law 4636/2019 and then converted into "Closed Controlled Island Centers of temporary reception and accommodation of third-country nationals or stateless persons" under amending Law 4686/2020, the GNCHR during its on-site visit to Samos raised this issue with stakeholders, since the works were still in progress. Following the visit, the GNCHR expressed its reservations regarding the feasibility of constructing the Closed Center in the designated area given the lack of infrastructure (sewage system, connection with water supply). In addition, the GNCHR raised some doubts on whether hosting refugees in a remote area outside the residential area will contribute to the well-being of both local and refugee populations. What is more, the GNCHR could not conclude whether the new "multipurpose" reception facilities in the islands will constitute close or controlled centers. The Council of Europe's Commissioner of Human Rights requested information from the Greek government about the deprivation of liberty regime that will be applicable to the new facilities in the islands. In his reply letter, the Greek Ministry of Citizen Protection did not clarify the terms of operations of the new facilities.[113]

What is worrying is the trend of detention pilot programs being implemented in Lesvos, Kos and Leros. The Greek Council for Refugees refers to asylum seekers arriving at the Aegean islands being automatically detained under these "pilot programs", as well as the detention of foreigners after a rejection on their appeal. The possibility of challenging the legality of detention by lodging "objections" before the administrative courts is limited. No individual assessment is carried out before the imposition of detention and this measure is implemented without exception, even against vulnerable persons such as families with children, persons suffering from mental illnesses, victims of torture, etc., while alternative to detention measures are not examined or applied in practice. In Kos in 2020, all new arrivals are being detained in the pre-removal center, irrespectively of whether migrants have expressed their will to ask for asylum.

The GNCHR awaits for the construction and operation of the new centers in order to safely deliver an opinion on the restriction or not of the freedom of the people residing in them.

At the same time, due to Covid-19 all returns to Turkey are suspended since March 2020. International organisations and human rights bodies have called for the release of all migrants in detention and the use of alternatives.[114] It is a well-established rule that pre-removal detention with no prospect of deportation may raise issues of arbitrariness and unlawfulness. The Greek authorities are reluctant to issue removal suspensions for third-country nationals, whose return to the countries of origin or Turkey is objectively impossible, e.g. during the Covid-19 pandemic.

The GNCHR, noting with particular

regret, the regression of both legislation and practice regarding issues of detention of refugees and migrants on grounds relating to their immigration status,

1. *reminds* that **the measure of detention should be used only as an exception or as a last resort** for reasons expressly provided for by law and be examined by a court for its legality. The duration of the detention should be as short as possible.
2. *advocates* for the **abolition of administrative detention** of asylum seekers on the grounds of illegal entry and especially of those belonging to a vulnerable group, such as families with children or unaccompanied minors.
3. *requests* the **amendment of the recent legislative framework for the detention of third country nationals in return procedures** in order to always allow the consideration, in each individual case and before the imposition of a detention measure, the application of alternatives measures, in line with international and European standards. In this regard, the GNCHR calls the State to adopt widely the alternative measures to detention provided by Law 3907/2011, to deal, more particularly, with health risks, such as the recent coronavirus pandemic.
4. *calls upon the State* to ensure that detained asylum seekers or third-country nationals in return procedures have **a real, unhindered access to a lawyer, the possibility of challenging the legality of detention and an effective access to health services.**

3.2 Living conditions in reception centres and makeshift camps at borders

During the **on-site visit carried out by the GNCHR in Samos**, the GNCHR's delegation concluded that the system had collapsed. In particular, an inspection of the areas of the Reception and Identification Centre (RIC) and the makeshift camp that has been created around it took place, as well as meetings with the Mayor of Eastern Samos, the Regional Vice-Governor of Samos and staff, the Director of the Police Department, the Deputy Commander of the Coast Guard, the Deputy Head of the Regional Asylum Office and staff, the Administrator of the Reception and Identification Centre, the Head of the UNCHR's Field Office of Samos and NGO's representatives active in the field. Here are the main findings of the mission:

1. The key finding of the GNCHR delegation is that the situation regarding the reception and the living conditions of asylum seekers in and around the RIC in Vathy is out of control and **diminishes every concept of human dignity of the persons living in these areas**. Due to the geographical restriction imposed on them as a result of the EU-Turkey Statement, the delays in Dublin family reunification procedures and the lack of adequate accommodation places for unaccompanied minors and other vulnerable asylum seekers to be transferred in mainland Greece, the situation in the islands is asphyxiating. Based on official data on the occupancy/capacity rate at the Eastern Aegean Islands,[115] there were 41.897 refugees/migrants at the islands whereas the official capacity of hosting and accommodation facilities was 8.816 places. In Samos, while the RIC was

designed to host up to 648 persons, on January 2021 inside and around it live in containers, tents and makeshift schacks 7.208 persons. In addition, within the ESTIA program run by the UNCHR, 282 persons were accommodated in Samos in apartments. Metadrasi hosted also 20 people (18 vulnerable and 2 places for transit) in its Shelter.

2. Applicants for international protection are obliged to **live under dire or even undignified living conditions** during the processing of their international protection claims, which can take **up to several months or years.** For instance, the GNCHR delegation spoke with a DRC national who resides outside the camp and claimed to be there for 14 months, pending his asylum application.

3. The standard procedure for newcomers was to be transferred by the Hellenic Police at the RIC and go through identification procedures (screening, debriefing, fingerprinting, registration, pre-identification of vulnerabilities, medical check, information sessions etc). Once concluded, they were being informed by the First Reception Service that there are no available accommodation places. At that point, they had to exit the camp and make their own arrangements for shelter. In practice, based on testimonies from residents and locals, a "*constructor is willing to help th em build their own makeshift shacks with cement or woods within the forest ("jungle area")*". Given that the informal camp had extended inside the forest area, the competent authorities expressed their intense concern in case of a fire. At the time of the visit, there were no open accommodation places in ESTIA apartments or the Shelter of METAdrasi even for the most vulnerable ones, such as an underage girl with her infant living inside the camp. The GNCHR's delegation met also a woman who had recently given birth staying inside the RIC with her few weeks old baby.

4. Regarding meals, breakfast, lunch and dinner was being provided for all registered people (7208) and not just the residents of the RIC. However, the GNCHR noted that many refugees/ migrants also cook (in gas cookers) or buy (with money received from CASH program) their own food.

5. For cleaning and sanitation, the Ministry of Defense provides services to those residing inside the camp. There are chemical toilets and taps with running clean water. NGO's have installed chemical toilets and taps to secure safe potable water to the population residing outside the camp. On the day of the GNCHR's visit, mostly women but also adults with children were carrying non-stop barrows water containers from the taps inside or outside the camp to their tents. Women were also doing laundry in mop buckets. Volunteers, residents and NGO personnel help collect all garbage from different "jungle neighborhoods" at the south entry, where the municipal garbage truck passes every second day to collect waste. On the day of the visit of the GNCHR, there was an uncontrolled sewage leaking at the south entry and excessive waste on both sides. Refugees/migrants moved around wearing flip flops (in winter time) in order to avoid contamination of their "homes" from the polluted waters. Finally, there is only one laundry service free of charge, for asylum seekers in Vathy, operated by an NGO.

6. There is **a big gap in the provision of health and psychological services**. Only one doctor was assigned with vulnerability assessments for applicants based on appointments which were scheduled after several months. Primary health care was provided by the General Hospital of Samos which was severely understaffed (for instance, there is only one pediatrician) and no interpretation services were provided. Another supervising doctor (for medical and psychosocial services) was present in the camp; however, he did not treat patients. Neither psychologists nor social workers were available to the refugee/migrant population. At that time, the National Public Health Agency had an open call for 3 doctors and 3 psychologists (for a short term employment contract). In addition, medicines of any kind were not available in the camp due to a recent fire in the warehouse. The GNCHR recorded an outbreak of scabies amongst asylum seekers. Children had also been suffering from breathing problems, diarrhea and skin problems - even bites from mice. Similar incidents were reported in the press.

7. **Access to formal education was almost non-existent** regarding the refugee and migrant population residing in Vathy. Only children aged between 6-15 years living in urban settings such as the ESTIA apartments were allowed to enroll in the morning classes of public schools, alongside Greek citizens. Around 40-60 children were currently enrolled in primary and secondary schools. For the children living in or outside the RIC, their only option was the enrollment in the Reception Facilities for Refugee Education (DYEP), i.e. afternoon preparatory classes for all school-age children aged 4 to 15. For children at preschool age (4-5), a Nursery School operated in the RIC with 35 registered pupils. For the children at school age (6-15), classes take place in the afternoon in public schools designated for this use by the Minister for Education. However, although a relevant Ministerial Decision had been issued since October 2019, these DYEP never started to operate. The reason was that no recruitment process for

teachers to be employed in DYEP of Samos had taken place. The children who lived in the hotspot (around 1500) in practice had access only to non-formal education provided by various NGOs.

8. The most alarming finding was the **lack of control by the authorities over a large part of the "jungle"**, where the informal camp outside the RIC is extended and frequently security incidents are noted, such as violent confrontations and injuries among rival communities, extortion from traffickers or other organized groups, arson for reasons of trespassing of forest land or other reasons, rapes of women and minors, incidents of domestic violence and human trafficking. These criminal activities are organized or isolated and their victims usually do not report the actions in question due to the lack of a supporting mechanism (e.g. victim hosting centres other than the RIC) and mechanisms to facilitate access to justice (such as providing interpretation services to the Police Department). Despite the presence (mainly at the entrances of the RIC) of police forces 24/7, residents inside and outside the RIC (and personnel as well) have a strong feeling of insecurity, especially at night, when lighting is not sufficient. During the period of the visit of the GNCHR delegation to the RIC, there was no control of entrance and exit from the RIC. The only premises that were guarded were the First Reception offices, the Regional Asylum Office and the places occupied by international organisations, the Hellenic Police and the interpreters.

9. According to the information collected during the GNCHR's monitoring visit, 330 unaccompanied children (UAMs) were registered by the RIC of Vathy, out of which 65-70 boys and 7 girls resided in "safe zones" (one for boys and one for girls) inside the camp and 2 unaccompanied infants resided in the arrivals area (where the Police/Frontex has a container). For the rest of them (boys and girls), their residence was unknown. Based on NGOs' information, the container of the unaccompanied girls was too small to host all of them and therefore, they took turns to sleep inside it. The remaining girls slept outside the container in plain air, irrespectively of the weather conditions. METAdrasi had offered them sleeping bags. At night, there was a security guard for the "safe zone". However, UAMs were free to enter and leave at any time whatsoever (there was no curfew), while UAMs have reported that adults visited them at night. Extortions from smugglers and rapes of UAMs residing outside the camp had been reported. During the GNCHR's visit in Samos, a "safe area" program of IOM and METAdrasi had just been launched, whereby enter and exit in the "safe zone" of unaccompanied boys will be controlled by IOM's staff.

The UNCHR appealed to European States to open up places for their relocation as a matter of priority and speed up transfers for children eligible to join family members, given the extremely risky and potentially abusive conditions faced by unaccompanied children in Vathy.[116] The **CoE's Commissioner for Human Rights**, after her visit to the reception facilities of Samos described the situation as follows: "On Samos, families are chipping away at rocks to make some space on steep hillsides to set up their makeshift shelters, often made from trees they cut themselves. This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival".[117]

Other organisations, such as Refugee Support Aegean visited Samos at the same time, talked with residents at the RIC and reported the unbearable situation.[118] The Greek Council of Refugees sought interim measures from the European Court of Human Rights, under Rule 39 of the Rules of Court, regarding five unaccompanied teenagers, asylum seekers, who were living for many months in the Reception and Identification Center (RIC) and in the "jungle" of Samos Island. The ECtHR indicated to the Greek authorities that the applicants be timely transferred to a centre for unaccompanied minors and to ensure that their reception conditions are compatible with Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) and the applicants' particular status.[119]

The Public Prosecutor in charge – who is also by law the temporary guardian of unaccompanied minors- had visited the "safe zone" area of unaccompanied boys and noticed deficiencies in infrastructure (leaking roofs, damaged floors etc). Certain UAMs had next-of-kin in the camp and they have addressed the Court to grant them their care (pending cases). Other UAMs had families in another EU country and their applications for family reunification were pending for too long.

The lack of an effective guardianship system – the implementation of the new guardianship system is still pending since 2018 and the program of Metadrasi had been halted- caused a series of practical problems regarding their representation and increased dramatically their vulnerability and risk of being exploited or trafficked. Based on information received from the UNHCR, since June 2019, 29 migrant children had been reported missing, for whom the authorities were duly informed.

In March 2020, following the crisis on the Greek-Turkish border and after the visit of the EU Commissioner to Greece and the announcement of immediate support measures, a pilot program (from April 2020) began **relocating unaccompanied minors** from Greece to other European countries on a voluntary basis. The aim is to relocate a total of 1.600 children to 11 EU countries and Norway who have expressed interest. Following the Moria fire in September 2020, all 408 unaccompanied minors living in the camp were relocated to safe shelter at mainland and will be relocated to other EU countries. By the end of September 2020, all 1.790 unaccompanied minors were relocated from the RICs of the Eastern Aegean Islands to appropriate shelters in mainland Greece. The Special Secretariat for the Protection of Unaccompanied Minors had launched in 2021 the initiative of a national tracing and protection mechanism for unaccompanied children in precarious conditions together with the UNCHR Office in Greece.[120] This mechanism will substantially contribute to the prevention of missing children.

In **Lesvos,** the Moria camp was the largest (informal) refugee camp in Europe, hosting 12.646 asylum seekers, more than four times its hosting capacity.[121] On 8th September 2020, a fire broke out in Moria which destroyed the largest part of the camp and its infrastructures.

The GNCHR noted in a Statement[122] that the fire in Moria occurred as part of an escalating violent upheaval, a situation which has been recorded by the Greek National Commission since 2018.[123]

The suffocating conditions in RICs of the Eastern Aegean islands came

as a result of European and national entrapment policies for newly arriving migrants at EU external borders in conjunction with the prolonged asylum procedures, undignified living conditions and the lack of integration policies for the day after.

The outbreak of the fire at the Moria RIC put in danger the lives of thousands of people – among them many children and persons with chronic diseases – who were left without shelter, food or water. Considering the overcrowding as well as the aggravated conditions in the area because of the confirmed coronavirus cases and the difficult weather conditions, the GNCHR, mindful of the best interests of all residents in Lesvos called on the Greek State **to immediately take all necessary measures to secure a decent accommodation, basic necessities and the provision of health care to the thousands of asylum seekers who remain trapped in Lesvos**. Special care should be taken with those, who have been diagnosed with covid-19, for whom effective access to healthcare is of paramount importance to safeguarding their right to life. Any measures taken should consider the protection of health and safety of both host refugee population and the islanders. In cases of emergency, common sense and respect for human rights must prevail without any fear and exclusion rhetoric. The entrapment policy towards applicants for international protection in the Eastern Aegean islands is a no way out and their *de facto* detention in closed reception centers does not constitute a sustainable solution.

The GNCHR concurred with the CoE's Commissioner for Human Rights, who underlined that "Greece needs concrete and substantial steps to be taken from other Council of Europe member states [...] Greece and

its partners must fix the structural problems of a migratory policy that has caused so much unnecessary human suffering".[124] Therefore, the Greek National Commission addressed both the European Union and the United Nations and asked them **to turn the Moria disaster into an opportunity**. In particular, Moria must not be seen as an isolated case but rather as an opportunity for a new, human-rights-oriented and sustainable European asylum and migration policy. We need a comprehensive deal for a proportional distribution of international protection applicants among Member States with a view to preserving European values and the fundamental rights acquis of Europe and prevent new Moria camps.

The President of the GNCHR, addressing the UN Human Rights Council during its 45th session, stated that ***"we need to work tirelessly together to reduce and eventually eradicate the roots of such human misery. We must alert the international community on the need to adopt sustainable development policies to break the vicious circle of forced migration and –fulfilling the promise of the Global Compact on Migration– to collectively address migration in a holistic way, notably through lawful avenues, as part of the human experience".***[125]

After the destruction of the Moria camp, all asylum seekers were transferred to a temporary camp in Mavrovouni of Lesvos ("Moria 2.0"). Greek Council of Refugees and Oxfam in Lesbos Bulletin described the living conditions in this tent-based accommodation as poor and not suitable for prolonged periods of stay. There was a lack of basic necessities such as heating, warm water and laundry facilities.[126] In December, the Ministry for Migration and Asylum installed more toilets and showers with hot water. However, during winter time the camp was frequently flooded. In April 2021, the infrastructure of the camp had been improved, however there are still challenges with the camp's electricity, water supplies and sewage system.[127] The Greek Government has signed an agreement with the European Commission to build a new up-to-standard reception center on the island of Lesvos by early September 2021.[128]

With the **outbreak of Covid-19 in Greece**, a number of measures have been adopted by the Government in order to confront the pandemic, with a direct impact on the enjoyment of human rights by all those living within the Greek territory.

The GNCHR in its relevant *Report*[129] stressed out that restrictive measures aiming at combating the spread of the pandemic should not undermine respect for human rights and rule of law, nor discriminate, but take into account the special needs of the particularly vulnerable groups. In all of the plenary sessions, during the pandemic period, issues of refugee and migrant protection were examined. The GNCHR considered that the situation in the Reception and Identification Centers, residences and accommodation facilities, remained critical, while structural problems continued to exist. The overpopulation and the complete lack of hygiene and medical services, combined with limited access to healthcare and basic services, **aggravated the risk of Covid-19 infections**. Prevention was almost impossible as social distancing measures could not be applied. According to the State's official position, protective measures (restrictions on the movement of RIC residents, control of entry of third parties to the RICs, controlled transition of RIC residents to city centers, suspension of operation of

informal training structures, cessation of activities in closed indoor areas, etc.[130]), are stricter than the ones foreseen for the general population.

The General Secretariat for the Reception of Asylum Seekers drew up in March 2020 the Operational Plan "Agnodiki" as a general national plan, providing guidance to the Administrations of the RICs on the islands and to the Open Centers of Hospitality in the mainland. As a justification for the specific measures, it states: "*In the light of the COVID-19 pandemic, the population of asylum seekers currently accommodated in the Reception and Identification Centers of Eastern Aegean islands, as well as the population correspondingly accommodated in open accommodation centers in mainland Greece, are part of the general population of the country, however their spatial planning conditions of living, namely the concentration of a large number of people in the same region requires more specific measures in the area of evacuation and isolation, for healthcare reasons of maximum protection both of the health of the population and of the general population*".

The GNCHR highlighted that **the Operational Plan in question did not follow the instructions to address pandemics in camps as set out by the competent international organisations**.[131] Finally, it should be noted that during the first wave of the Covid-19 pandemic in Greece there have been no cases among the population hosted in the RICs of the islands, although isolated cases had been reported in other areas of the islands. At the few accommodation centers of the mainland, where cases have occurred, the latter have been effectively addressed by the State and did not spread to the other residents of the RIC or the surrounding residents. A decisive factor for preventing the spread of COVID-19 infection in hotspots was the decision of the competent Authorities to transfer a significant number of refugees from the islands to mainland (vulnerable asylum seekers, including approximately 200 elderly persons and 1,730 persons with chronic diseases). **In 2020, over 33.617 transfers from the different islands to the mainland have taken place**.[132]

It should be noted that the measures restricting the movement of residents in RICs were successively being extended[133] although lifted for the rest of the population, raising doubts as to the respect of the proportionality principle. In a relevant Press Release, 26 organisations argued that the prolongation of the restriction measures to all accommodation centers was arbitrary and not based on scientific evidence.[134] Some organisations have even documented deterioration in the mental health of applicants for international protection, while movement restriction hindered their access to vital services (medical, legal, etc.) outside the facilities where they reside. The GNCHR has pointed out that measures to address the pandemic **need to have a legal basis, be proportionate and limited in time**. Decisions should be continuously re-assessed with a balancing of the rights involved, as what is proportionate at the beginning of the pandemic can be disproportionate over time, and then the measure should be mitigated or abolished.

The GNCHR reiterated that there is an urgent need, especially under the threat of the current pandemic, for the best possible management of migration and refugee flows with respect for human

life and dignity and called upon the competent State authorities to set as priority the following measures:

1) the immediate transfer of all vulnerable persons from the islands to safe and suitable accommodation on the mainland;

2) the ensuring of minimum living standards in Reception and Identification Centers and Accommodation Centers;

3) the strengthening of the Reception and Identification Centers and the Accommodation Centers with interpreters, intercultural mediators, Guardians for unaccompanied minors, social workers and support for the proper operation of facilities; and

4) the maintenance of special procedural guarantees when considering applications of vulnerable asylum seekers.

During 2020, refugee and migration flows were decreasing due to the Covid-19 pandemic. In relation to 2019, the total number of residents in hotspots decreased by 60%. By the end of 2020, 14848 people were living in RICs at land and sea borders. In Kos and Leros, the decrease reached 79% and 76% accordingly. There is still an overcrowding in Samos and Chios. The construction of a Closed Controlled Structure has progressed in Samos and is expected to be completed shortly in Kos and Leros.

The GNCHR in its *Statement*[135] had expressed its concern about the **increase in incidents of violence, racist attacks, hate speech and xenophobia on the islands of the Eastern Aegean**.

In March 2020 violent incidents and clashes between police forces and residents were observed, as a result of the Government's decision to build new closed centers through land property requisition, despite the objections of local authorities and without previously relieving the congestion on islands due to asylum seekers staying in the overcrowded open structures[136]. I

n addition, the GNCHR is aware, through the Racist Violence Recording Network, of specific racist and xenophobic attacks against newly entering refugees and migrants, employees in international organisations, NGOs and civil society actors, as well as journalists.[137]
The immediate termination of the entrapment of asylum seekers on the islands and their transfer to the mainland constitutes a compelling need, not only for reasons of respect for fundamental rights, but also in order to ensure the fragile social peace of the reception societies.

Finally, regarding the special reception needs of vulnerable people, the GNCHR, in its *Observations*[138] on the draft Law 4540/2018, made specific legislative proposals, which are congruous with the purpose of the Directive and to which the Greek legislator had not paid attention, such as: a) the introduction of an explicit reference to the obligation to provide material reception conditions to minors from third countries, regardless of their status (applicants for international protection or not); and (b) special care for persons with disabilities and/or chronic illness, for whom material reception conditions must not be interrupted or restricted.

On the basis of the Law 4540/2018, the Greek State partly followed the above GNCHR Recommendations and provided that: a) minors shall receive special reception conditions after their identification and not after the lodging of an application for protection, as is the case for other beneficiaries; and b) the restriction or termination of the material

reception conditions shall be on an individual and objective basis, taking into account the specific situation of the person, in particular for vulnerable persons (including those suffering from severe or incurable illness and disabled persons) and access to medical care may not be interrupted or restricted.

Articles 57 and 58 of the Law 4636/2019 maintained the same status for minors and vulnerable persons. However, the GNCHR in its *Comments*[139] on the Draft Law 4636/2019 indicated that lesbians, homosexuals, transgender, bisexual, queer and intersex (LGBTI), who should be identified by reception services and accommodated appropriately in reception and hosting structures, given the increased risks that these people evidently face,[140] should also be included in the persons in need of special reception conditions.

The GNCHR *calls upon the Greek State*:

1. to intensify its actions for the **immediate end of the entrapment** of applicants for international protection in the Eastern Aegean islands by lifting the geographical limitation imposed on them and by transferring those who still live in RICs to mainland to ensure the immediate decongestion of the islands. Priority should be given to vulnerable applicants for international protection, unaccompanied minors and recognized refugees for whom a sustainable autonomous solution must be offered;

2. to review the ineffective policy of imposing geographical limitations in the Eastern Aegean Islands and **to abolish this burdensome measure.** Nevertheless, any geographical limitation shall be based on an individual assessment and be imposed by a reasoned administrative decision, providing also the applicants with a right to effective judicial protection, given the nature of the measure, i.e. the restriction of their freedom of movement;

3. to proceed without further delay to the **signing and immediate ratification of f Protocol No. 4 to the European Convention on Human Rights**, which, among others, prohibits the collective expulsion of aliens and guarantees the freedom of movement, allowing for the imposition of lawful restrictions thereon under specific terms;

4. to act immediately and continue the effort **to increase accommodation places in mainland Greece in centers suitable for long-term residence of applicants for international protection**, with special care for families, the various categories of vulnerable people such as the disabled and the chronically ill, the single-parent families, the unaccompanied minors and victims of violence. In this context, the *GNCHR proposes particularly* the establishment of **medium-sized** (in terms of accommodation capacity) **Accommodation Centers, within residential areas,** which facilitate the integration of refugees in the Greek society. At the same time, the GNCHR points out that the undertaking of the ESTIA II program by the Ministry of Migration and Asylum results, on the one hand, to the establishment of a smooth transition procedure for the management of the program by the UN High Commissioner for Refugees and, in the meantime, the need for the timely recruitment of sufficient,

permanent staff of various specialties (psychologists, legal, social workers, medical and paramedical staff, logistics staff, etc.) to support the needs of applicants for international protection. Furthermore, the GHNCR calls on the Ministry to strengthen with staff and resources **the program of renting apartments and hotels**, which ensure the conditions of a decent living;

5. to **issue** without further delay the **Rules of Operation for all Accommodation Centers**[141] and to staff the services of the General Secretariat of Reception and Identification and of the Reception Centers with qualified staff, in view also of the new competence to register applications for international protection based on L. 4636/2019. Given the coronavirus pandemic and the growing need for health services, the GNCHR advises the State to give immediate priority to the strengthening of reception and accommodation centers with medical and paramedical staff as well as administrative personnel and social workers ((interpreters, intercultural mediators, plumbers, electricians, housekeeping staff and managers for the proper operation of facilities);

6. **to review the restrictive measures on circulation** and other protective measures against the spread of Covid-19 in RICs and Accommodation Centers **in the light of the principle of proportionality** and in balance with other fundamental rights of refugees and migrants and with emphasis on decongestion of RICs on the Eastern Aegean islands;

7. to adopt **concrete measures for the protection of vulnerable groups**, the safeguarding of the rights of applicants for international protection **with disabilities and chronic diseases** and the operation of reception and accommodation centers aware of **LGBTQI issues**[142].

4. Human Rights Accountability at the Borders

Indispensable component of every human rights system is an accountability mechanism to address violations of set norms and offer redress to victims. Accountability is the cornerstone of a human rights framework, itself a system of checks and balances that governs the relationship between "duty bearers" in power and "rights holders" affected by their actions. However, monitoring mechanisms in place need to be vested with specific characteristics and institutional guarantees of independence, adequate powers, resources and transparency in their operation in order to contribute to the accountability of duty bearers. An effective investigation of alleged violations is a prerequisite for an accountability mechanism. Also, the achievement of tangible results in victim's lives, the redress itself. Border zones are not exempted from the application of human rights law and therefore state authorities' actions at borders shall equally be subjected to scrutiny for possible misconduct.

Under the EU Commission's proposal of the new Pact on Migration and Asylum, independent national monitoring mechanisms of fundamental rights are envisaged for addressing violations during the mandatory screening procedure at borders.[143] The GNCHR works currently for the formulation of specific proposals to the Greek Government in relation to the package of legislative proposals by the EU

Commission. On 12th May 2021, the Sub-Commission for the protection of human rights to aliens convened a special hearing of stakeholders on the new EU Pact on Migration and Asylum with particular focus on asylum procedures and the right to an effective appeal, border security and search and rescue missions, solidarity mechanisms for relocation of beneficiaries of international protection, the mechanism of crisis management for refugees and migrants and screening procedures at EU external borders. At a regional level, the GNCHR as member of the European Network of NHRIs has already contributed to the formulation of 10 concrete recommendations in relation to the establishment and functioning of monitoring mechanism at borders.[144]

4.1 A system for human rights accountability at the borders

Greece has land borders with Turkey, Bulgaria, North Macedonia and Albania and sea borders with Turkey, Cyprus, Egypt, Libya, Italy, Albania. At land borders, border guards[145] and military personnel are present whereas at sea the Hellenic Coast Guard is competent for ensuring public order, preventing and combatting crime, maritime safety and security, search and rescue at sea etc. Frontex operates in the Greek sea borders with Turkey,[146] the Greek land borders with Turkey[147] and the Albanian borders with Greece.[148]Each of these bodies has its own internal oversight mechanism to decide upon reported incidents of human rights violations by their officers.[149] Based on information received from the Hellenic Police, indeed there were few reported incidents of pushbacks in the past and after thorough internal investigation, the cases were closed.

Recently no new complaints had been submitted to the police authorities, according to the authorities. Based on information that the GNCHR has, only two cases were investigated in 2020 by the Hellenic Police and four cases by the Greek Prosecutor. No case of pushback has ever resulted in a trial before a Court. Most of them are rejected as unsubstantiated or are still pending (for years). Regarding Frontex's monitoring mechanisms, the Director in a meeting of the Parliamentary Committee on Civil Liberties, Justice and Home Affairs had mentioned six Serious Incident Reports during 2020, out of which two were evaluated as substantiated and were communicated to the Greek authorities asking for information.[150]

In addition, the Greek Ombudsman under its capacity as the National Mechanism for the Investigation of Arbitrary Behavior has investigated numerous reports on cases of alleged push backs at land borders which were submitted either by the victims themselves or by representatives of the victims, usually non-governmental organisations. Its investigation is ongoing.

Given the above, the GNCHR noting **a lack of effective investigations on alleged incidents of pushbacks** has proposed the following:

1. The Greek State shall effectively investigate allegations of informal pushbacks, disproportionate use of force and lethal injuries, underlining that any failure to do so not only contravenes international human rights obligations binding Greek authorities but also exposes the country under international human rights law.
2. The Greek State shall bring those responsible for any such illegal act to justice.

3. The Greek State shall ensure, through the use of technological equipment and other ways of operational action, the collection of objective data available to the police and judicial authorities for the effective investigation of complaints on pushbacks.

4. The Greek State shall ensure an effective cooperation with the judicial authorities as required in the context of investigations of complaints on pushbacks.

5. Frontex shall ensure that its operations at the EU external borders with Turkey comply with the *non-refoulement* principle and the duty to rescue persons in distress at sea.

6. National Human Rights Institutions shall be strengthened in their role as independent human rights monitoring bodies at EU borders.[151]

Regarding other kind of human rights violations at borders, mainly related to **living conditions or detention**, both domestic and international courts have exercised their competence. It is noteworthy that in certain cases, the Greek courts have acquitted asylum seekers from criminal charges relating to a violation of the restriction order imposed on them upon entry into the Greek territory through Leros (an Aegean Island). The ratio of the relevant decision was that circumstances precluding wrongfulness under Greek Penal Law (state of necessity) were applicable in their case, taking into account the threatened damage, i.e. the preservation of their personal health and integrity, if they had stayed in the island.[152] In addition, the Council of State had annulled in 2018 the measure of geographical restriction due to lack of sufficient justification.[153] However, the Administration quickly reacted to the above decision by replacing the annulled Decision by a new one, more substantiated this time but with the same terms (a measure of geographical restriction imposed indiscriminately to all newcomers at the Aegean Islands as before).

The ECtHR has dealt with a significant number of cases against Greece related to the conditions in which asylum seekers were held in the Reception and Accommodation Centers on the Greek Aegean Islands and their compatibility with Articles 3 and 5 of the ECHR.[154] In addition, in urgent cases, most lawyers of asylum seekers seize the ECtHR to indicate interim measures under Rule 39 of the Rules of the Court. Interim measures have been granted, regarding mainly vulnerable asylum seekers and unaccompanied children, for whom an immediate transfer to appropriate facilities at mainland was ordered.[155] The GNCHR has noted that, to its knowledge, Greek administrative and judicial authorities always comply with the ECtHR's interim measure orders or final judgments.

4.2 NHRIs' mandate and work at the borders as human rights defenders

Under its revised founding Law 4780/2021, the GNCHR is expressly designated as the National Human Rights Institution in Greece (art. 10 (2)). Its mission is: a) The constant monitoring of the matters pertaining to human rights protection, the informing of the public and the advancement of research in this connection; b) The exchange of experiences at supra-national and international level with similar bodies of other States, the European Union or international organisations, such as the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE)

and the United Nations; and c) The formulation of policy proposals on matters concerned with its object.

Public services must assist the work of the Commission. In order to fulfil its mission, the Commission may conduct on-the-spot investigations, as well as seek from both public services and individuals, any information, document or any other element relating to the protection of human rights. The President may take cognizance of documents and other elements, which are classified as confidential, unless they are affiliated with national defense, state security and international relations of the State.

The GNCHR as an NHRI has a general duty of monitoring the compliance of Greece with international human rights standards and reporting on findings. It does not hold an NPM mandate. Therefore, the GNCHR conducts monitoring visits occasionally as per the case. On asylum and migration matters, it has conducted monitoring visits at borders in 2011, 2016 and 2020. Its investigations were facilitated by central and local authorities as well as by other actors in the field, such as the UNHCR. The GNCHR's delegations did not encounter any obstacles on accessing premises or any refusal to cooperate or give information and relevant documents as per the case.

4.3 Enabling environment for work of other human rights defenders at the borders

With respect to NGOs active in Greece in asylum, migration and social inclusion matters, there is an obligation, since 2016, to be registered in a special "Register of Greek and Foreign Non-Governmental Organizations (NGOs)", operating under the Ministry for Migration and Asylum. However,

by virtue of Laws 4636/2019 and 4686/2020,[156] the requirements for registration and certification of these NGOs became stricter, involving also the registration of their members and employees (physical members) for anti-laundering purposes.

According to an *Opinion by the Expert Council on NGO Law* of the Council of Europe which reviewed the legislation in place, the above requirements "give rise to problems of compliance with the rights in Articles 8 and of the ECHR" because of a lack of legitimacy, proportionality and legal certainty.

These provisions will have a significant chilling effect on the work of the civil society which "*may produce a worrying humanitarian situation, given the significant needs of this very vulnerable population and already existing gaps in the significant needs of government and others, and the continued violence and judicial harassment such NGOs face, including criminalisation of aspects of their work*".[157] The UN Committee against Torture has expressed serious concerns about consistent reports of intimidation and harassment of human rights defenders and humanitarian workers and volunteers, recommending that the Greek refrains from detaining and persecuting humanitarian workers and volunteers as a means of intimidating them or discouraging them from delivering vital emergency assistance to refugees and migrants.[158]

In this regard, it has recently alarmed the State on the escalating situation in the islands, where the Racist Violence Recording Network recorded specific racist and xenophobic attacks against newcomers, refugees and migrants, international organisations' employees, NGOs, CSOs as well as journalists. [159]

During the reporting period, criminal charges have been initiated against NGO members for formation and joining a criminal organisation, espionage, violation of state secrets and violations of the Immigration Code.[160] The public statements of authorities on these cases triggered reactions from national and international NGOs denouncing targeting and criminalization of HRDs helping refugees and migrants.[161] The criminal cases are still pending before the Greek courts. The GNCHR closely monitors all developments in the field contributing to the promotion and protection of other human rights defenders.[162]

Notes

[1] The President of the Parliamentary Committee on Institutions and Transparency and the representatives of the Ministries participate in the work of the GNCHR without a right to vote.

[2] For the full list of GNCHR's Members, please visit the site of the GNCHR www.nchr.gr .

[3] Ombudsman/National Human Rights Institutions Declaration on the Protection and Promotion of the Rights of Refugees and Migrants, Declaration on the Protection and Promotion of the Rights of Refugees and Migrants, 25.11.2015. Par. 5 of Commitments reads as follows: "[...]For that purpose, the Ombudsman/National Human Rights Institutions commit to: [...] 5. Condemn and oppose publicly the violation of migrants' or refugees' rights and encourage the spirit of tolerance and compassion for refugees and migrants, including ensuring their protection in reception centers and other accommodation facilities".

[4] For an overview of the GNCHR positions on refugee and migrant issues, visit www.nchr.gr, where the total of the Commission's decisions and positions are published [in Greek].

[5] GNCHR adopts the Mytilini Declaration for the Dignified Treatment of all the Missing and Deceased Persons and their Families as a consequence of Migrant Journeys, 7.2.2019.

[6] See www.rvrn.org

[7] A significant number of the NGOs participating in the RVRN are devoted to promoting and protecting the rights of migrants and refugees, such as Generation 2.0 RED, Greek Forum of Migrants, Greek Forum of Refugees, Group of Lawyers for the Rights of Migrants and Refugees, Melissa Network etc.

[8] Press Release GNCHR/UNHCR: Conference in Athens highlights importance to invest in integration for refugees in Greece, 24.12.2019.

[9] Deutches Institut fur Menschenrechte, Greek National Commission for Human Rights, Republic of Croatia Ombudsman, The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Joint Statement: The situation at the EU external borders and the future European asylum policy, April 2020.

[10] GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State, Description of the issues discussed in the Plenary Meetings during the lockdown, Meetings of 8th, 22nd, 29th of April and of 6th May 2020, June 2020.

[11] Briefing Note: UNHCR says asylum situation in Greece is 'a humanitarian crisis', 21.9.2010

[12] United Nations Committee against Torture, Concluding observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7;

[13] Report of the Working Group on Arbitrary Detention on its visit to Greece, 29 July 2020, A/HRC/45/16/Add.1.

[14] United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Greece, 29 October 2019, CRPD/C/GRC/CO/1.

[15] The scheduled periodic visit in Greece took place in 2019 while ad hoc visits were more often; in 2015, two times in 2016, in 2018 and in 2020 (https://www.coe.int/en/web/cpt/greece).

[16] Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, CPT/Inf (2020) 35.

[17] GNCHR, Proposals for the Reception of Asylum Seekers and their access to asylum procedures, 6.6.2002.

[18] GNCHR, Ratification of the Protocol for the Implementation of Article 8 of the Agreement between the Government of the Hellenic Republic and the Government of the Republic of Turkey on Combating crime, Especially Terrorism, Organized Crime, illicit drug trafficking and illegal Immigration, 31.1.2002.

[19] GNCHR, Decision on the Situation of Aliens Trying to Enter Greece via the Aegean and the Practices of the Greek Coast Guard, 10.4.2008.

[20] The UN Committee Against Torture, the UN Working Group on Arbitrary Detention, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Council of Europe's Commissioner for Human Rights have raised concerns over reported incidents of pushbacks.

[21] Reports, information and complaints submitted by the Hellenic League for Human Rights, the Greek Council for Refugees and Amnesty International which are GNCHR's Members but also from Refugee Support Aegean, Human Rights 360, HIAS and ARSIS.

[22] In June 2017, the Hellenic League for Human Rights a complaint was submitted before the Prosecutor of the Supreme Court Prosecutor regarding push-backs incidents against Turkish nationals during the period of May-June 2017. More recently, the Greek Council for Refugees submitted a criminal report to the Prosecutor of the Supreme Court, together with a file with information concerning allegations of illegal, informal and violent push-backs of refugees from the Evros region, which also concern Turkish citizens, in particular during the period from 27.4.2019 until 19.6.2019. See the relevant Press Release [in Greek] and the text of criminal complaint in English, published by Statewatch.

[23] In addition to the Division of Internal Affairs of the Hellenic Police which has initiated investigation proceedings, the Greek Ombudsman commenced on 9 June 2017 an *ex officio* investigation for alleged illegal push backs to Turkey by the Greek authorities, of Turkish citizens who had entered Greece seeking international protection. See relevant decision [in Greek].

[24] GNCHR's Statement on complaints regarding illegal pushbacks in Evros, 22.7.2017 [in Greek].

[25] GNCHR's Statement on complaints regarding informal pushbacks at the region of Evros, 29.11.2018.

[26] GNCHR, Reference Report on the Refugee and Migrant Issue, Part A, September 2019 [in Greek].

[27] In June 2020 the International Organisation for Migration (IOM) and the UN High Commissioner for Refugees (UNHCR) have publicly called Greece to investigate the late reports on push backs at the Greek-Turkish borders. In particular, the IOM is deeply concerned about persistent reports of push backs and collective expulsions of migrants, in some cases violent, at the European Union (EU) border between Greece and Turkey. IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey, 11.6.2020. The UNCHR has continuously addressed its concerns with the Greek government and has called for urgent inquiries into multiple reports of push backs by Greek authorities at the country's sea and land borders, possibly returning migrants and asylum seekers to Turkey after they had reached Greek territory or territorial waters. UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey, 12.6.2020. UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers, 21.8.2020.

[28] The UN Committee Against Torture, in its Concluding Observations (September 2019) in follow up of the examination of the seventh periodic report of Greece underlined: "the Committee is seriously concerned at consistent reports that the State party may have acted in breach of the principle of *non-refoulement* during the period under review. In particular, the reports refer to repeated allegations of summary forced returns of asylum seekers and migrants, including Turkish nationals [...] of the Evros region, with no prior risk assessment of their personal circumstances. UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7.

[29] The UN Working Group on Arbitrary Detention, in follow up to its visit in Greece (December 2019) has stressed that: "the Working Group was informed that some newly arrived persons in the Evros region are arrested, detained in very poor conditions, and summarily returned across the Greece-Turkey land border without being given the opportunity to apply for international protection in Greece". Following these, the Working Group urged the Government "to ensure that such practices, including any possible acts of violence or ill treatment that has occurred during such incidents, are promptly and fully investigated". Working Group on Arbitrary Detention, Preliminary Findings from its visit to Greece (2 - 13 December 2019).

[30] In March 2020, the Council of Europe Commissioner for Human Rights stated: "regarding the situation in the Aegean Sea, I am alarmed by reports that some people in distress have not been rescued, while others have been pushed back or endangered. I recall that the protection of the lives of those in distress at sea is one of the most basic duties which must be upheld, and that collective expulsions constitute serious human rights violations. Council of Europe, Commissioner for Human Rights, Statement: Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3.3.2020.

[31] Ministry for the Protection of Citizen, Press release on a website report referring to push backs of refugees/migrants at Evros [in Greek], 30.01.2018. Statements of

the Minister for Citizens' Protection and Minister for Migration and Asylum during the Meeting of the LIBE Committee of the European Parliament on July 6th, 2020 with item on the agenda "The situation at the Greek/Turkish border and respect for fundamental rights". Statements of the Minister for Migration and Asylum at the Greek Parliament on 6.7.2020 during the discussion on the Question nr. 23/12/28.5.2020 of 66 Parliamentarians of the Parliamentary Group of SYRIZA with subject "The policy implemented by the Government in refugee matters is dangerous and ineffective".

[32] ENNHRI, Protecting the rights of migrants during the pandemic: How have NHRIs responded? , 19 October 2020.

[33] Articles 18 par. 4 and 21 of the Law 4780/2021.

[34] See GNCHR's relevant Press release, 18.6.2020.

[35] LIBE Committee of the European Parliament on July 6th, 2020, *op. cit.*

[36] The CPT made a five-day rapid reaction visit to Greece to examine the way in which persons attempting to enter the country and apprehended by the Hellenic Police or Coast Guard have been treated, notably since 1 March 2020, when inter alia the processing of asylum requests was suspended. The visit took place between 13 and 17 March 2020.

[37] Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, CPT/Inf (2020) 35.

[38] An interim report updated up to 31 December 2020 was published on April 2021.

[39] Amnesty International, Report: Caught in a political game: Asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe's failures, 3.4.2020.

[40] The UNCHR Office in Greece recorded credible and direct accounts and brought them to the attention of the responsible authorities. The UNHCR reiterated its call on Greece to refrain from such practices and to seriously investigate these reports. UNCHR concerned by pushback reports, calls for protection of refugees and asylum-seekers, 21.8.2020.

[41] ARSIS-Association for the Social Support of Youth, Greek Council for Refugees, HumanRights360, Report: The new normality: Continuous push-backs of third country nationals on the Evros river, 13.12.2018.

[42] International complaint against Greece's violent pushbacks at the Evros border, 17.11.2020.

[43] ECtHR, L.A. a.o. v. Greece and A.A. v. Greece, Applications nos. 12237/10 12736/20, Communicated Case, 12.05.2020

[44] GNCHR, Statement on the reported practices of push backs, 9.7.2020.

[45] European Network of National Human Rights Institutions (ENNHRI), Stronger human rights monitoring at Europe's borders – why NHRIs are part of the solution, 27.5.2020

[46] GNCHR, Recommendations for an effective protection framework for refugees in

Greece, 8.6.2001.

[47] GNCHR, Position regarding the implementation of the Greek Law for Refugees, 3.3.2005.

[48] For more details see GNCHR, Comments on the Bill by the Ministry for Citizen Protection: "Establishment of Asylum Service and First Reception Service, adjustment of Greek legislation to the provisions of Directive 2008/115/EC 'on common standards and procedures in Member States for returning illegally staying third-country nationals' and other provisions", 15 December 2010 [summary in English].

[49] See also European Court of Justice judgments in *N.S. v. Secretary of State for the Home Department and M.E. and others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, 21 December 2011.

[50] According to UNCHR data, 861.632 people arrived in Greece through sea or land in 2015 and 177.234 in 2016.

[51] Skype was exclusively used for booking an appointment to register an asylum claim with physical presence at the Asylum Service. However, not all third country nationals could benefit from this service –for certain nationalities there was no available interpretation and therefore queuing before the Regional Office was inevitable. In addition, due to the huge demand of access to Skype lines and shortage of administrative personnel and interpreters, access to the asylum was *de facto* restricted. See Campaign for the access to asylum, Open letter to the Asylum Service, 19.5.2016.

[52] By virtue of this pre-registration exercise, 27.592 asylum seekers were pre-registered within 2 months (6.6.2016 – 30.7.2016). See relevant Press Release of the Ministry of Interior, 23.8.2016 [in Greek].

[53] Based on official statistics from the Asylum Service (from 07.06.2013 until 31.12.2019).

[54] This exceptional border procedure was activated for the first time in April 2016 for an initial six months' time. The validity of this provisions was being extended, with successive legislative amendments up to date, although refugee flows have been greatly reduced compared to 2015-2016. Article 80 par. 26 of Law 4375/2016 as amended by article 7 par. 3 of L. 4587/2018. After entry into force of L. 4636/2019, article 90 par. 3 applies. See also AIDA report Greece 2019 update.

[55] According to UNHCR data, there have been 74613 arrivals in Greece by sea or land. UNCHR Operational Portal - Refugee Situations, Mediterranean Situation: Greece, last visited on 26.2.2021.

[56] For further analysis on the GNCHR's positions see GNCHR's Observations on Draft Law of the Ministry for Citizen's Protection "On international protection: provisions for the recognition and status of third country national or stateless persons as beneficiaries of international protection and other provisions" [in Greek only] and GNCHR's Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions" [summary in English]. For the current asylum procedure, visit the official website of the Ministry for Migration and Asylum, Applying for Asylum.

[57] The findings of these monitoring visits were presented and discussed during a public event with the participation of the Co-chairs of ENNHRI's Asylum and Migration Working Group. The GNCHR proposed specific measures to address the urgent and medium-term reception and accommodation needs of refugees in Greece. Analytically see GNCHR Report, Living conditions in hotspots and accommodation sites for migrants and refuges, November 2016.

[58] Greek Legislative Act "Suspension of Asylum Applications", Government Gazette A' 45, 02.03.2020.

[59] GNHCR, Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 5.3.2020.

[60] GNCHR, Press Release: the GNCHR held a hearing of bodies on issues of international protection and social security coverage of refugees, 7.7.2020 [in Greek].

[61] GNCHR, Reference Report on the refugee and migrant issue 2020, op. cit., p. 58 [Greek version].

[62] Law 4674/2020 "Strategic development perspective of the Local Government Organizations, regulation of issues within the competence of the Ministry of Interior and other provisions", Government Gazette 53/A/11.3.2020, Law 4686/2020 "Improvement of migration legislation, amendments of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions", Government Gazette 56/A/12.5.2020, Law 4756/2020 "Measures to support workers and vulnerable social groups, social security regulations and provisions for the support of the unemployed", Government Gazette 235/A/26.11.2020 and Law 4760/2020 "Regulations of penitentiary legislation, provisions for the Provident Fund for Employees in the Security Corps and other provisions of the Ministry of Citizen Protection and the Ministry of Immigration and Asylum", Government Gazette 247/A/11.12.2020.

[63] See amendments to par. 26 of Article 80 of the Law 4375/2016. With the latest amendment introduced by Article 7 par. 3 of the Law 4587/2018, the validity of Article 60 of the Law 4375/2016 was extended until the 31st of December 2019.

[64] The Greek Council of State in its judgment nr. 2347/2017 examined whether the EASO personnel may lawfully according to the Greek constitution, national legislation and EU Regulation conduct asylum interviews. It stated that the Greek legislator expressly authorized the EASO personnel (art. 60 par. 4(b) of L. 4375/2016) to conduct personal interviews, whereas EU Regulation 439/2010 provided for "operational support" including "technical assistance… in relation to the examination and management of asylum files" in member states whose national asylum systems are under pressure (art. 2 paras. 2, 5-6,10,13,14,15 and 18 of the Regulation).

[65] GNCHR's Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions", 23.04.2020 [summary in English].

[66] UNHCR, Global Consultations on International Protection, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 31 May 2001, par. 50, UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice, March 2010, pp. 87-88.

[67] Observations by Lawyers from the Register of Lawyers of the Asylum Service on the implementation of Law 4636/2019 submitted to the GNCHR on 14.9.2020.

[68] European Union Agency for Fundamental Rights (FRA), Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy, 04.03.2019.

[69] AIDA Country report on Greece, last updated: 30/11/2020. See in particular the Chapter on Asylum Procedures/Guarantees for vulnerable groups/identification.

[70] GNCHR, Observations on the Draft Law of the Ministry for the Protection of Citizen "On International Protection ... and other provisions" (2019), *op. cit.*, pp. 19-20.

[71] Report of the Working Group on Arbitrary Detention on its visit to Greece, 29 July 2020, A/HRC/45/16/Add.1. par. 81.

[72] GNCHR, Report on the EU-Turkey Agreement of the 18th of March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016 (2016); Recommendations of the GNCHR, the Ombudsman, the High Commissioner for Refugees and the Greek Council for Refugees on Migration and Asylum in the light of the Greek Presidency of the EU Council (2002).

[73] GNCHR, Public Statement on the amendment modifying the composition of the Independent Appeals Committees (2016) [in Greek]; GNCHR, Observations on the Draft Law amending Laws 3907/2011 and 4251/2014 and adapts the Greek legislation to the provisions of the Directive 2013/32/EU (2016) [in Greek].

[74] Articles 20 to 23 of Directive 2013/32/EU on the right and terms of legal aid. See also relevant recommendations of the GNCHR in Observations to Draft Law of the Ministry for Migration Policy "Adaptation of Greek legislation to the provisions of Directive 2013/33/EU of the European Parliament and the Council of 26th June 2013 etc (2018) [in Greek].

[75] GNCHR Report, Detention Conditions in Police Stations and Detention Facilities for Aliens, April 2010.

[76] GNCHR/Greek Ombudsman Report, Evaluation of the findings of an autopsy performed in detention centers for aliens at Evros region [in Greek], June 2011. At the same period, the European Committee for the Prevention of Torture has issued a Public Statement following its visit in Greece in 2010 and the inaction from the Greek authorities to address the very serious concerns repeatedly raised by CPT regarding, among others, the safeguarding of decent detention conditions for irregular migrants.

[77] Article 8 of the Directive 2013/33/EU on Reception Conditions and Article 15 of the Directive 2008/115/EC on Returns. European Union Agency for Fundamental Rights, Alternatives to detention for asylum seekers and people in return procedures, October 2015. See also Council of Europe, Steering Committee on Human Rights (CDDH), Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration, CDDH(2017)R88add2, 26.01.2018.

[78] Regarding the issues of detention of asylum seekers, see also GNCHR, Comments on the Bill by the Ministry for Citizen Protection: "Establishment of Asylum Service and First Reception Service, adjustment of Greek legislation to the provisions of Directive 2008/115/EC "on common standards and procedures in Member States for returning

illegally staying third-country nationals' and other provisions" (2010), op. cit.

[79] Report to the Greek Government on the visits carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Greece carried out from 13 to 18 April 2016 and 19 to 25 July 2016, CPT/Inf (2017) 25, par. 29. Report to the Greek Government on the visit to Greece carried out by CPT from 10 to 19 April 2018, Strasbourg, 19 February 2019, par. 83, 96.

[80] The Greek Ombudsman, Return of third country nationals, Special Report 2019.

[81] Committee against Torture, Concluding observations on the seventh periodic report of Greece, par. 20-23.

[82] GNCHR, Information relevant to the implementation of the Convention against Torture (2019), *op. cit.*, p. 23.

[83] See ENNHRI's Asylum and Migration Working Group submission to the Council of Europe's Drafting Group on Migration and Human Rights (CDDH-MIG) – consultation on the draft "Practical Guidance on Alternatives to Immigration Detention", 6.3.2019.

[84] GNCHR, Observations on the draft law of the Ministry for Migration Policy "Transposition into Greek legislation of 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 (recast, L180/96/29.6.2013) and other provisions, Amendment of Law 4251/2014 (A΄ 80) regarding the transposition into Greek legislation of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Amendment of asylum procedures and other provisions", *op. cit.*, etc.. The GNCHR proposed the abolition of the relevant legislative provision

[85] *Rahimi v. Greece*, appl. no 8687/08, judgement of 5th July 2011 and H.A. a.o. v. Greece, appl. no 19951/16, judgment of 28th February 2019.

[86] European Committee on Social Rights, Decision on admissibility and on immediate measures of Complaint 173/2018, 23 May 2019.

[87] Committee against Torture, Concluding observations on the seventh periodic report of Greece, 3 September 2019, UN Doc. CAT/C/GRC/CO/7, par. 23.

[88] GNCHR, Proposals regarding the issue of unaccompanied minors, 2006 Annual Report, p. 151 et seq [in Greek].

[89] Greek Ombudsman, National Prevention Mechanism against Torture and Mistreatment OPCAT, Annual Special Report 2018, p. 38 et seq.

[90] GNCHR, Recommendations for an Effective Protection Framework for Refugees in Greece (2001), p.7. See also GNCHR, Position regarding the Implementation of the Greek Law for Refugees (2005).

[91] Recommendations of the NCHR, the Ombudsman, the High Commissioner for Refugees and the Greek Council for Refugees on Migration and Asylum in the light of the Greek Presidency of the EU Council (2002), p.8.

[92] GNCHR, Comments on the Bill by the Ministry for Citizen Protection: "Establishment

of Asylum Service and First Reception Service, adjustment of Greek legislation to the provisions of Directive 2008/115/EC 'on common standards and procedures in Member States for returning illegally staying third-country nationals' and other provisions (2010).

[93] The first Centers of First Reception operated at Evros in March 2013. Nowadays, there are six RICs operating at borders (Chios, Samos, Fylakio, Leros, Kos, Mytilene) and thirty-three facilities in mainland Greece. Visit the official website of the Ministry for Migration and Asylum, Reception and Identification Service, Operation Units.

[94] On the basis of the Joint Ministerial Decision, no. 2969/2015 (Government Gazette 2602/B/02.12.2015) three First Reception Centers and temporary Accommodation Centers of asylum seekers and vulnerable groups of third-country nationals in the Aegean islands (Lesvos, Kos and Leros) were founded. With a similar Joint Ministerial Decision, no. 6634/1-147524/8.1.2016 (Government Gazette 10/B/08.01.2016) First Reception Centers and temporary Accommodation Centers were founded in the islands of Chios and Samos and with the Ministerial Decision, no. 4D/8484/11.7.2016 (Government Gazette 2177/B/13.7.2016) in the island of Leros as well. In accordance with Article 80 (11) of the Law 4375/2016, all the premises of the First Reception Service were automatically transferred to the Reception and Identification Service, from its entry into operation, while paragraph 14 of the same Article provided that, where the applicable legislation refers to the First Reception Service or First Reception Centres or Mobile Units, it shall be understood as the Reception and Identification Service and its respective regional services, as founded by the Law 4375/2016.

[95] GNCHR Press Release on the prolonged situation at Elliniko, 4.5.2017 [in Greek], GNCHR, Report on the condition of reception and asylum system in Greece , 22.12.2017, GNCHR Statement, The GNCHR expresses its deep concerns about the situation in the Reception Centers of the Eastern Aegean islands and, especially, of Moria in Lesvos, 15.10.2018.

[96] See in detail the GNCHR Report on living conditions in hotspots and accommodation sites for migrants and refugees (2016).

[97] By the end of June 2020, UNCHR created 25792 housing places in the context of the ESTIA program. These were shared in 4646 apartments and 8 buildings in 14 cities and 7 islands in Greece. Overall, from November 2015, 67814 people benefited from the housing program. Out of the total 22578 people hosted today, 6447 are recognized refugees and 51% children. Most of the guests are families of 4 people on average, while one in four have at least one form of vulnerability. ESTIA, Greece Accommodation Update – June 2020, http://estia.unhcr.gr/en/greece-accommodation-update-june-2020/

[98] Ministry of Migration and Asylum, Press Release: The European Funding of 92 million was approved and a contract for the ESTIA II-2020 program was signed, 15.7.2020 [in Greek].

[99] Ministry of Migration and Asylum, Press Release: Program ESTIA continues in 2021 with full European funding, 30.11.2020 [in Greek].

[100] GNCHR Press Release, 31.08.2015.

[101] ENNHRI, Statement on the continuing tragedies in the Mediterranean Sea, a human

rights approach, April 2015.

[102] Indicatively see GNCHR's Statement, The GNCHR expresses its deep concerns about the situation in the Reception Centers of the Eastern Aegean islands and, especially, of Moria in Lesvos (2018).

[103] According to the data from the UNHCR, 74.613 in total entered Greece from the islands and Evros in 2019, in contrast to 50.508 people in 2018.

[104] See the informational data from the Ministry for the Protection of the Citizen about the situation on the islands. According to the National Situational Picture regarding the refugee/migrant issue (30/12/2019), 38465 persons reside in the RICs of the islands of the Eastern Aegean (Lesvos, Samos, Kos, Chios, Leros), which have a capacity of 6.178 places.

[105] See the Positions of representatives of the Greek Council for Refugees, METAdrasi and Human Rights 360 during the hearing of persons and bodies held before the GNCHR on 6.7.2020.

[106] GNCHR, Comments on the Draft Law of the Ministry for the Protection of Citizen "On International Protection: Provisions concerning the recognition and status of third-country nationals or stateless persons as beneficiaries of international protection, a unified status for refugees or persons who are entitled to subsidiary protection and the content of the protection provided, the unification of the provisions for the reception of applicants for international protection, the procedure for granting and withdrawing the status of international protection, the restructuring of the judicial protection of asylum seekers and other provisions" [in Greek] (2019), pp. 18-19. On the alternative to detention measures in asylum procedures, see also UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, p. 41 et seq. (Annex A: Alternatives to Detention), FRA, Alternatives to detention for asylum seekers and people in return procedures, 2015, Council of Europe, Steering Committee for Human Rights (CDDH), Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, 2019.

[107] According to the UN Committee on the Rights of the Child, detention of any child due to his parents' residence status constitutes a violation of the rights of the child and is contrary to the principle of the best interest of the child. The Member States shall, without delay, cease completely or abolish the detention of children on the grounds of immigration. Any form of detention of children for immigration reasons should be prohibited by law and that prohibition should be fully implemented in practice. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, par. 5.

[108] The ECtHR, in two cases of detained unaccompanied minors, granted interim measures against Greece, by indicating their transfer to appropriate accommodation structures. See ARSIS, Press Release: The ECtHR with a new interim measures judgment

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[110] National Center for Social Solidarity, Situation Update: Unaccompanied Children (UAC) in Greece, 15 March 2021.

[111] European Commission, Return Handbook, p.90.

[112] GNCHR, Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions", April 2020.

[113] Council of Europe, Commissioner for Human Rights, Commissioner seeks information from the Greek government on its plans to set-up closed reception centres on the Aegean islands, 3.12.2019.

[114] United Nations Network on Migration, Press Release: Covid-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?, 29.4.2020. Council of Europe, Commissioner for Human Rights, Statement: Commissioner calls for release of immigration detainees while Covid-19 crisis continues, 26.3.2020. UNHCR, Press Release: UNCHR stresses urgent need for States to end unlawful detention of refugees and asylum-seekers, amidst COVID-19 pandemic, 24.6.2020.

[115] The Ministry for Citizen Protection Issues Situational Reports every day. See National Situational Picture regarding the islands at Eastern Aegean Sea.

[116] UNHCR, "Greece must act to end dangerous overcrowding in island reception centres, EU support crucial", 01.10.2019.

[117] CoE Commissioner for Human Rights, Country visit: "Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities", 31.10.2019.

[118] Refugee Support Aegean, "Refugees trapped on Samos: A humanitarian crisis with no end in sight", 17.12.2019.

[119] Greek Council for Refugees, "The European Court of Human Rights provides interim measures to unaccompanied minors living in the RIC and the "jungle" of Samos island", 30.01.2020.

[120] UNHCR, Joint press release: Greece launches national tracing and protection mechanism for unaccompanied children in precarious conditions, 6.4.2021.

[121] According to the official National Situational Picture at the Eastern Aegean Islands on 1.9.2020, 14.712 asylum seekers were being hosted in Lesvos in different accommodation schemes in an island of 114.880 registered inhabitants (a 12,80% of the population).

[122] GNCHR Statement on the fire in Moria and the day after, 11.9.2020.

[123] GNCHR Statement: The GNCHR expresses its deep concerns about the situation in the Reception Centers of the Eastern Aegean islands and, especially of Moria in Lesvos, 15.10.2018.

[124] CoE Commissioner for Human Rights, Statement: Commissioner calls on the Greek authorities to provide adequate support to all those affected by the fire in Moria, 9.9.2020.

[125] GNCHR President, Professor Maria Gavouneli, on a video statement regarding the urgent humanitarian situation after the devastating fire at Moria Camp, Lesvos island, Greece, during the 45th Regular Session of the UN Human Rights Council, 18.10.2020.

[126] GCR, Oxfam, Lesbos Bulletin, Update on the EU response in Lesbos, 3.12.2020.

[127] GCR, Oxfam, Lesbos Bulletin, Update on the EU response in Lesbos, 21.4.2021.

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[129] GNCHR, Report on the need for protection of human rights with regard to the measures taken in response to the Covid-19 pandemic and recommendations to the State, 10.6.2020.

[130] Legislative Decree "*Measures to address the COVID-19 pandemic and other emergency provisions*" (Government Gazette 75/A/30.3.2020), Ministerial Decision, No. D1a/GP int 20030 "*Adoption of measures against the manifestation and spread of coronavirus COVID-19 in the Reception and Identification Centers, to the entire Territory, for the period from 21.03.2020 to 21.04.2020*" (Government Gazette 985/B/22.3.2020), Ministerial Decision, No. 12687/2020 "*Suspension of the public reception service in accordance with the provisions of Article 15 of the Legislative Decree of 11 March 2020* (A' 55)" (Government Gazette 939/B/ 20.3.2020), Ministry of Migration and Asylum, Protective measures [in Greek] against coronavirus at Reception and Identification Centers, Accommodation Centers and Asylum Service, 17.3.2020, Athenian-Macedonian News Agency, Ministry of Immigration: Restriction of movement in the RICs and establishment of closed centers at Samos, Kos and Leros [in Greek], 18.3.2020, Circular of the Ministry of Health D1b/FP int 22792 on "Measures to prevent the spread of SARS-CoV-2 in the accommodation centers of unaccompanied minors", 3.4.2020.

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[135] GNCHR, Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 05.03.2020

[136] Indicatively, see Athenian-Macedonian News Agency, "Machines and Police Force at Chios and Lesvos islands for closed centers –Tension to ports", 25.02.2020 [in Greek].

[137] In detail, see the Press Release of the Racist Violence Recording Network: Serious concern over attacks against refugees and humanitarian workers, 05.03.2020.

[138] GNCHR, Observations on the draft law of the Ministry for Migration Policy "Transposition into Greek legislation of 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 (recast, L180/96/29.6.2013) and other provisions, Amendment of Law 4251/2014 (A΄ 80) regarding the transposition into Greek legislation of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Amendment of asylum procedures and other provisions" (2018).

[139] GNCHR, Comments on the Draft Law of the Ministry for the Protection of Citizen "On International Protection: Provisions concerning the recognition and status of third-country nationals or stateless persons as beneficiaries of international protection, a unified status for refugees or persons who are entitled to subsidiary protection and the content of the protection provided, the unification of the provisions for the reception of applicants for international protection, the procedure for granting and withdrawing the status of international protection, the restructuring of the judicial protection of asylum seekers and other provisions" [in Greek] (2019), pp.18-19.

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