Greece's adherence to the CEAS minimum standards on reception and the European Court of Human Rights

By

Alexandros Chrysomallos

A Thesis submitted to The Department of Balkan, Slavic and Oriental Studies & The Department of International and European Studies University of Macedonia

In Partial Fulfillment of the Requirements for the Degree of Master of Arts in Human Rights and Migration Studies

Supervisor: Konstantinos Tsitselikis, Professor and Dean of Department of Balkan, Slavic & Oriental Studies

Thessaloniki 31.05.2023

Abstract

Greece faced a reception crisis in the aftermath of the mass influx of refugees in 2015, amplified after the Balkan route's closure and the application of the safe third country concept in the asylum procedures. Deficiencies in the Greek reception system led to poor living conditions for asylum seekers, which were exacerbated after the implementation of the hotspot approach in the eastern Aegean islands. While the country was making legislative amendments to transpose and implement the Common European Asylum System rules on reception with a great delay, the treatment of asylum seekers and refugees raised concerns over the adequacy of the afforded material conditions and Greece's adherence to relevant State obligations. This study aims to examine the types and levels of the afforded reception conditions to asylum seekers in practice and compare them to the minimum standards deriving from the recast Reception Conditions Directive. To the latter, research on the relevant EU and international legal framework will precede. After exploring the factual situation on the ground, an analysis of relevant ECtHR case law will follow, to respond to whether the socio-economic type of rights to shelter and healthcare are justiciable and to assess the extent to which litigation against critical living conditions before the Strasbourg Court can be effective.

Keywords

Reception conditions, European Court of Human Rights, living conditions, human dignity, degrading treatment.

The undersigned hereby declares that this thesis is entirely my own work and it has been submitted to the Department of Balkan, Slavic and Oriental Studies, and the Department of International and European Studies in partial fulfillment of the requirements for the degree of Master of Arts in Human Rights and Migration Studies. I declare that I respected the Academic Integrity and Research Ethics and I avoided any action that constitutes plagiarism. I know that plagiarism can be punished with revocation of my master's degree.

Alexandros Chrysomallos

Contents

Table of Cases

European Court of Human Rights

A.D. v. Greece, no. 55363/19, 4 April 2023

D. v. the United Kingdom, no. 30240/96, ECtHR 2 May 1997

Gäfgen v. Germany, no. 22978/05, ECtHR 1 June 2010

H.A. and others v. Greece, no. 19951/16, ECtHR 28 February 2019

Hirsi Jamaa and Others v. Italy, no. 27765/09, ECtHR 23 February 2012

Ilias and Ahmed v. Hungary, no. 47287/15, ECtHR 21 November 2019

Khlaifia and Others v. Italy, no 16483/12, ECtHR 15 December 2016

Kudla v. Poland, no. 30210/96, ECtHR 26 October 2000

M.S.S. v. Belgium and Greece, no. 30696/09, ECtHR 21 January 2011

Menesheva v. Russia, no. 59261/00, ECtHR 9 March 2006

Moldovan and others v. Romania, nos. 41138/98 and 64320/01, ECtHR 12 July 2005

N. v. the United Kingdom, no 26565/05, ECtHR 27 May 2008

N.H. and others v. France, nos 28820/13, 75547/13, 13114/15, ECtHR 2 July 2020

Sharifi and others v. Italy and Greece, no. 16643/09, ECtHR 21 October 2014

Sufi and Elmi v. the United Kingdom, nos. 8319/07 and 11449/07, ECtHR 28 June 2011

Tarakhel v. Switzerland, no. 29217/12, ECtHR 4 November 2014

Thimothawes v. Belgium no. 39061/11, ECtHR 4 April 2017

Wemhoff v. Germany, no. 2122/64, ECtHR 27 June 1968

European Court of Justice

CJEU, Case C-179/11 Cimade and Groupe d'information et de soutien des immigrés (GISTI), Judgment of 27 September 2012

CJEU, Case C-79/13 Federaal agentschap voor de opvang van asielzoekers (Fedasil) v. Selver Saciri and OCMW Diest, Judgment of 27 February 2014

Constitutional Court of Austria

VfGH, Decision E 3297/2016, 7 July 2017

List of abbreviations

APD - Asylum Procedures Directive

CCAC - Closed Controlled Access Center

CEAS - Common European Asylum System

CFR - EU Charter of Fundamental Rights

CJEU - Court of Justice of the European Union

CPT - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

ESTIA - Emergency Support to Integration and Accommodation

Geneva Convention – United Nations 1951 Convention relating to the Status of Refugees

IOM - International Organization for Migration

RCD - Reception Conditions Directive

RIC - Reception and Identification Center

UDHR - Universal Declaration of Human Rights

UNHCR - United Nations High Commissioner for Refugees

Introduction

The right of asylum seekers and refugees to protection is enshrined in major international legal instruments and constitutes an essential element across most human rights regimes. The right to protection and dignified living conditions relates primarily to and derives from the fundamental right to human dignity, which is the first right the Universal Declaration of Human Rights refers to. On a European level, the right to human dignity is at the top of the rights the Charter of Fundamental Rights of the European Union seeks to promote within the territory of the EU (Article 1). It is also related to the protection afforded by Article 3 of the European Convention on Human Rights on a Council of Europe level. Article 3 ECHR provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment" and can therefore create positive obligations upon States. The latter also constitutes customary law, according to the established case law of the European Court of Human Rights.

Within the European Union, extensive secondary law provisions protect the right to dignified conditions of asylum seekers by setting a list of provisions for the minimum standards on reception. Although harmonised standards across the EU primarily seek to limit secondary migration movements within the Union, the rights to housing, healthcare, education and integration could indeed be considered suitable for potentially creating a common protection regime across member states. The respective rights have been further enhanced and guaranteed with the adoption of the EU recast Reception Conditions Directive (recast RCD).

Nonetheless, the response to the unprecedented surge in arrivals of asylum seekers in the EU in 2015 and onward revealed systemic shortcomings concerning the reception systems of specific member states. From the outsourcing of the provisions on reception conditions in Greece, where the civil society and international organisations were tasked with fulfilling activities related to state obligations, to violations of the ECHR as indicatively in the case of M.S.S. v. Belgium and Greece, the deficiencies in reception were inconceivable.

Five years after the delayed transposition of the recast RCD provisions in the Greek legal order and twelve years following the aforementioned judgment, a systematized assessment of the current level of Greece's compliance with the Common European Asylum System (CEAS) with regards to the minimum standards is missing.

1. Purpose of study and research questions

The Greek refugee reception system reached its limited capacity in 2015. About 847,000 migrants arrived in Greece in 2015, compared to 34,442 in 2014 (IOM, 2016). Homelessness, inability to access healthcare services, administrative detention in sub-standard conditions, and residency in camps with disrupted food and water provision may raise issues of infringement of the right to dignity and the rights deriving from Article 3 ECHR. At the same time, the Strasbourg Court, also due to its emerging constitutional role, was repeatedly asked to intervene by applying the Rule 39 interim measures against Greece so as for the latter to abstain from or to take action, according to its positive obligations under Article 3, and provide protection. In some instances, applicants have requested an examination of merits and asked compensation for non-pecuniary damages. Most of the relevant cases are pending by the time of the drafting of this thesis.

My study has a dual purpose. First, I will explore whether Greece has complied with major guarantees of the European Reception acquis, and more specifically, to the minimum standards on the material reception conditions. Afterwards, the study will focus on assessing whether critical issues on the treatment of the subject rights, especially with regards to accommodation and healthcare, could be considered as reaching the severity threshold of article 3 ECHR, based on systematised and relevant jurisprudence of the Strasbourg Court, also considering the specific CEAS minimum standards that Greece might not be fully compliant with.

This thesis seeks to bring into dialogue a topic that has primarily been discussed in individual petitions before the ECtHR. It is an effort to link existing knowledge of the situation-the living conditions of asylum seekers in Greece- in a framed context in time and conditions to specific minimum standards Greece has to fulfil. In the end, it will briefly compare the findings to the set case-law standards of the ECtHR in the scope of the Article 3 of the Convention.

Thus, my research questions have been shaped to the following:

What are the minimum standards on the material reception conditions of the CEAS recast RCD and what is their relation to the right to human dignity? Has Greece complied with them, especially considering housing and healthcare, following the Directive's transposition into national law? Which were the actual living conditions asylum seekers faced in the different types of accommodation, including in island hotspots? Are these relevant under the realm of the Strasbourg Court? To which extent has a breach of the relevant minimum provisions of the

Directive also given rise to a violation of Article 3 of the European Convention of Human Rights?

2. Methodology and structure

The legal framework will be elucidated in the first Chapter. In order to contemplate the particular provisions of the EU recast RCD and their relation to fundamental rights, a broad exploration of the EU and international human rights acquis is required. Therefore, the legal analysis will lead to the construction of the right to dignity and the prohibition of torture and inhuman and degrading treatment, based on legal research of the legislation and secondary legal sources. This will be presented in a rather normative way, seeking to include, among others, the researcher's interpretation of critical points concerning the historical background.

The second Chapter will analyse the factual situation on the ground as it has evolved since 2015. This will inevitably include research on the characteristics and vulnerability of the persons arriving at the shores of the eastern Aegean islands and the Evros land border crossing to determine the kind of their special protection needs. This part of the study will primarily focus on the situation asylum seekers, refugees and rejected applicants of international protection faced when Greece's obligation to protect starts. To fulfil this purpose, a part of the second Chapter will be dedicated in the exploration of the exact legislative measures taken to prevent or alleviate situations that may have given rise to violations of the rights enshrined in the recast RCD. A multidisciplinary approach will be adopted to explore the causal nexus between poor living conditions and the occurring hardship, drawing on principles of sociology and analysis of torturing scales.

Finally, a brief systematic analysis of the Court's jurisprudence will follow in Chapter III to determine the relevant rules of the Court on issues around the minimum threshold of severity and the margin of appreciation, not only to further define the relationship between the non-compliance to the CEAS and a breach of article 3 ECHR but to also assess the extend to which living conditions are justiciable before the Strasbourg Court. The conclusions of the thesis hypothesis will finally be based on a deductive reasoning analysis, where the analysis of empirical and factual data from Chapter II will be compared to the present Court's standards in Chapter III. Eighteen cases will be analysed, and the relevant documents will be retrieved from the HUDOC database.

Chapter I: Overview of the legal framework

1. The right to human dignity

The right to human dignity is enshrined in most human rights instruments. It prohibits state interference in a person's private sphere (Jones, 2012, p. 284), and its core meaning constitutes the protection of humanity (Dupré, 2013, p. 324-325). The respect of the right to dignity, which is essentially translated to dignified living conditions for applicants of international protection, is relevant to the scope of this analysis not only as such but as it is considered a prerequisite for a fair and efficient asylum procedure (ECRE 2015, p. 4). As a general rule, the right to human dignity requires a sufficient standard of living for a protection-seeker, one that respects the intrinsic worth of mankind (Velluti, 2016, p. 10). In practice, the right to dignity of a person seeking asylum entails state positive obligations to provide basic needs for applicants of international protection, such as secured accommodation and minimum healthcare (ECRE 2015, p. 32).

The right to human dignity is not only enshrined in most human rights instruments; it is also read in and governs essential case-law of the ECtHR and the CJEU, even though not explicitly defined by the two Courts. As described above, the UDHR refers to the right of all human beings to dignity in its first Article. In Article 25 (1), the forms that the right to dignified standards can take are specified as

> *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

In paragraph 2 of the same Article, the safeguarding of the increased protection needs of mothers and children is stipulated.

The inherent dignity of all human beings is recognised as the foundation of freedom, justice and peace in the world, in the Preambles of the UN Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR). Whereas the first approaches the right to dignity in parallel to the right to liberty, the latter Covenant dedicates

its Article 11 to present the areas and ways of enjoyment of the right in relation to housing, clothing, food and living conditions concretely, similarly to the UDHR.

In the European area, the legally binding Charter of Fundamental Rights refers entirely to the right to dignity in its first Article. This Article serves as a general clause to protect and safeguard human dignity and influence the content and implementation of future Union law and policy, and EU institutions are called to respect and protect the dignity of a person across all areas of the EU (Jones, 2012, p. 286). The right to housing and healthcare is also recognised by the Charter (Articles 34, 35) as a more specific expression of the right to dignity. Along with the absolute nature of the right to dignity of the CFR, the Article could be used similarly to Article 14 ECHR as a freestanding right that can be combined with other articles to form successful claims (Jones, 2012, p. 287).

Although many of the articles of the CFR resemble the wording of the ECHR, there is no correlating article in the latter for the right to human dignity. Relevant case law suggests that this right is read in Article 3 ECHR in the context of the prohibition of inhuman and degrading treatment. For instance, in Moldovan and others v. Romania, where the Court accepted that Romania was violating Article 3 and Article 14 in conjunction with article 6 and 8 of the Convention, it held that the treatment afforded to the applicants was *diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement,* and that

> *the living conditions of the applicants and the racial discrimination to which they had been publicly subjected […] constitute an interference with their human dignity which […] amounted to degrading treatment within the meaning of Article 3 of the Convention.*[1]

This case, which is nonetheless connected to a 1993 pogrom in Romania, is directly related to the present study as it deals with the core of the right to adequate living conditions and housing. The rebuilt houses of the applicants were uninhabitable, and rain was pouring in from the roofs. A detailed analysis of relevant ECtHR case law will follow in Chapter III.

The right to housing and an adequate standard of living is also included in the European Social Charter's Article 31. Here again, the right to housing, clothing and food are described as forms, or manifestations, for the enjoyment of the right to a dignified living situation. From the above, the notion of an adequate standard of living becomes evident. It encompasses the guarantee of

1 Moldovan and others v. Romania, nos. 41138/98 and 64320/01 para. 113

basic rights, from physical and mental health to subsistence and general well-being (Velluti, 2016, p. 8).

2. The Common European Asylum System

There are three systems for the protection of human rights in the EU legal system. By the entry into force of the Treaty of Lisbon, the amended Treaty on European Union (TEU) establishes a three-part system for the protection of human rights within the EU legal order: the Charter of Fundamental Rights, the (future) accession of the European Union to ECHR, and the fundamental rights as general principles of the Union's law (Peers, 2006, p. 132).

The "Common European Asylum System" concept does not derive from the Treaty on European Union. The Treaty of Maastricht gave, at first, competencies in the broader fields of asylum and immigration policy to the European Union.[2] The notion of harmonised rules on asylum, in particular, was introduced in 1999 by the European Council in its Tampere Conclusions as the aim of this legislation, based on which the Union's legislator included at first the Qualification Directive, the Procedures Directive, the Reception Directive and the Dublin Regulation in the Common European Asylum System, as their Preambles reveal (Battjes, 2006, p. 195). The European Council's Tampere conclusions reiterated the fundamental right to seek asylum and the commitment of the Union to the Geneva Convention and that

> *A common approach must also be developed to ensure the integration into our societies of those third-country nationals who are lawfully resident in the Union.*[3]

The first of the two parts of the harmonisation of the CEAS minimum standards was concluded in 2005, and the second in 2013. On the CEAS substantive scope and legal basis, Article 78 (2) of the Treaty on the Functioning of the European Union (TFEU) stipulated the standards, elements and procedures that the CEAS shall comprise. However, the CEAS should not be seen in a legal vacuum. Not only has the European Court of Human Rights contributed significantly to the protection of asylum seekers in Europe, but also primary international legal instruments, such as the Geneva Convention and the 1967 Protocol, have shaped its provisions (Lavrysen, 2012, p. 199). General principles of law are incorporated into the CEAS as well. The Court of

2 Art. K.1 (1) (3) Treaty of Maastricht (TFEU), Title VI Provisions on cooperation in the fields of Justice and Home Affairs

3 European Parliament Presidency Conclusions Tampere European Council 15 and 16 October 1999, para 4.

Justice has interpreted since the late 1960s that human rights are protected within the EU legal order as "general principles of law" (Peers, 2006, p. 116).

Undeniably, a functioning CEAS would alleviate Member States from carrying out some of the more complex administrative tasks and would contribute to improving the image and perception of the EU on the international plane vis-a-vis the protection of human rights (Velluti, 2014a, p. 15). It can be simultaneously argued that while the Reception Conditions Directive is essentially a humanitarian instrument, its underlying aim was to harmonise the reception conditions with a further goal to limit secondary movements of asylum seekers within the EU (Lavrysen, 2012, p. 217). The argument that secondary movements undermine an otherwise harmonised asylum procedure due to a disparity in reception conditions among Member States has been supported by the EU Commission COM/2001/181 proposal's explanatory memorandum[4] and is reiterated in Recital 8 Directive 2003/9/EC. Peers had asserted that there was little to no evidence as to whether the secondary movements are made on this basis, indicating nevertheless that compatibility of minimum standards on reception with international human rights standards would dictate that standards are kept sufficiently high (Peers, 2006, p. 306).

2.1 Directive 2003/9/EC – Proposal and adoption

The Reception Conditions Directive is the legal instrument of secondary European law with the most significance for the present study in that it lays down minimum standards for the reception of asylum seekers in the Member States. Directive 2003/9/EC was the first to establish common minimum standards in this regard, with specific provisions on certain rights of asylum seekers in the Member States, such as employment, access to education, healthcare and freedom of movement. The Asylum Working Party is responsible for discussing the EU's approach to countries of origin and transit and providing guidance on the external dimension of the EU's asylum and migration policy. The working party's French delegation submitted in June 2000 a discussion paper on the conditions for the reception of asylum seekers, urging for harmonised reception arrangements in Europe (Peers, 2006, p. 300). Reception conditions were discussed at the Council meeting in December 2000. After a series of bilateral consultations with Member States and the UNHCR, the Commission published its proposal for a Directive,[5]

4 Explanatory memorandum to Commission's COM(2001)181 proposal for a Council Directive on minimum standards on the reception of applicants for asylum in Member States, 3 April 2001, p. 6

5 European Commission, proposal no. COM/2001/181

which was well received by Member States (Ibid.). Previous efforts for an agreement on harmonised procedures on minimum reception guarantees by the European Council in 1995 under the Spanish Presidency and in 1998[6] were to no avail. The Council finally adopted the Directive on 27 January 2003, and the Member States had to transpose it by 6 February 2005. The Commission followed infringement procedures against Greece, as the Member State failed to transpose the Directive ahead of the expiry of the deadline.

The Reception Conditions Directive set out basic rights and guarantees related to reception procedures. Regarding the scope of the Directive, it seeks to ensure the full respect for human dignity and the application of Articles 1 (human dignity) and 18 (right to asylum) of the Charter (Recital 5). Applicants and beneficiaries of subsidiary protection were excluded, as follows by Article 2(b). For practical reasons, a legal analysis of only the currently applicable recast RCD will follow in section 2.2. The overview and evaluation of the first step of the transposition and implementation of the initial Directive by member states will follow instead. This will lead to constructive conclusions, particularly when comparing them to the implementation of the recast RCD in Chapter II and the relevant discussion on states' interpretative discretion in Chapter I.2.1

2.2 Directive 2003/9/EC – Implementation issues

The application of the Directive revealed systematic deficiencies in reception systems across Europe, and the implementation of its provisions varied significantly. UNHCR noted a deviation from the purpose of the RCD to its final form. The Council had adopted standards lower than those proposed by the Commission and supported by the European Parliament and as a result asylum seekers enjoy different reception conditions across Europe. The UN Refugee Agency pointed to the inefficiency of the Directive to provide adequate living conditions also to persons staying unlawfully on a State's territory, by citing a relevant complaint submitted before the European Committee of Social Rights (no. 47/2008) and further indicated issues of adequacy of the provided guarantees on living conditions, which should be compatible to the Article 11 ICESCR (UNHCR, 2012, p. 3).

As part of its obligation by Article 25 of the Directive, the European Commission delivered a report to the Council and the European Parliament, to give an overview of the transposition

6 The Austrian Presidency urged for an agreement for a system of European solidarity in asylum and immigration, European Council Austrian Presidency conclusions, 1998, para. 85.

and application of the Directive by Member States, and to "identify possible problematic issues".[7] The report offers the possibility to compare the harmonisation (or lack thereof) of protection standards to asylum seekers in Europe, for the years after the adoption of the RCD. The Commission asserted that the predicted fear of lowering the previous standards of assistance for Member States offering by then an increased level of protection prior to the transposition, has yet to materialise (ibid., p. 10). It was noted that serious problems existed regarding the applicability of the RCD in all premises hosting asylum seekers, as many Member States did not apply its provisions in detention centres, such as Belgium and Italy, or transit zones, such as Austria (ibid, p. 3).

On the procedural rights, the Commission found that, although the information provision was flawless, the information was only provided in a few languages and that there was a severe derogation from the applicable time frame of Article 6 for registration and issuance of documents, especially for detained applicants (ibid, p. 4). As for the material reception conditions problems occurred, interestingly, with States that provided only financial assistance and not with those where accommodation was provided in kind, as the provided financial allowance did not commensurate with the minimum social support granted to nationals (ibid., p. 6). The Commission admits that no gaps were observed concerning the right to freedom of movement for asylum seekers, due to the broad discretion afforded to Member States by the Directive, and most had granted the right to free movement for their entire territory (ibid., p. 7). The Commission further noted that automatic detention without an evaluation of the situation of the person is contrary to the Directive and must be seen as an exception to the general rule of free movement (ibid), and thereby detention of vulnerable persons as a last resort (ibid., p. 10). The Odysseus Academic Network had conducted a study on the implementation of the Directive, by comparatively inspecting the results of the harmonisation procedure in each Member State. The study divides Member States in three groups, depending on whether the transposition of the Directive led to the adoption of standards that are less or more favourable than before or Member States in which the transposition left standards unchanged. The study considers that the positive effects of the transposition overshadow its adverse effects in general, also since the level of standards offered by the Directive was too low (Odysseus Academic Network 2006, p. 114).

7 Report from the Commission to the Council and to the European Parliament On the Application of Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers Brussels, 26 November 2007 COM (2007) 745 Final

With the aim to provide greater equality in protection and higher common protection standards and degree of solidarity between EU Member States, the Commission started working on a series of amendments to the first CEAS Directives, following its Green Paper on the future of the CEAS.[8] In December 2008, the recast proposal COM(2008)815 was presented, and the European Parliament adopted its position in May 2009.[9] In June 2011, as no final agreement was reached on the text in the Council of Ministers, an amended recast proposal of the Directive was published. The European Parliament endorsed the political agreement of the Council of Ministers in June 2013, as part of the EU asylum package for the second phase of the CEAS (Velluti, 2014a, p. 63). The final text of the recast RCD revised to a great extent the provisions of the previous Directive.

2.3 The recast Directive 2013/33/EU

Following its deprecatory evaluation report, the Commission proposed the recast Reception Conditions Directive. The proposal was considered as ensuring the centrality of the Refugee Convention and upholding the rights of asylum seekers (O'Nions, 2014, p. 155), but received several amendments and two years of downgrading of standards as it lacked the support of the Council. The Member States were particularly concerned that heightened common standards might abuse national asylum systems (ibid.).

The scope of the Directive is extended to all applicants of international protection, in all places and stages of the procedure, including procedures under the Dublin III Regulation.[10] The Directive lays down substantive rights for applicants of international protection and specific procedural rules. Among the most important provisions, it grants the right to adequate information before and after the registration of an asylum application, sometimes within a specific time frame (Article 5-fifteen days), in detention,[11] and upon reduction or withdrawal of reception conditions ("individual decisions" - Article 20). Article 6 of the Directive provides a rigid time frame for and typology of the documentation of an application. The period within which Member States may restrict asylum seekers' access to employment is reduced to 9 months.[12] Article 7 sets out the general rule of free movement within the territory of a host

8 Commission proposal COM(2007)301 on the future Common European Asylum System, 6 June 2007.
9 European Parliament, European Parliament legislative resolution of 7 May 2009 on the (recast) proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers, 7 May 2009, P6_TA-PROV(2009)0376
10 Article 3 Reception Conditions Directive 2013/33/EU
11 Article 10(5) Reception Conditions Directive 2013/33/EU
12 Article 15 Reception Conditions Directive 2013/33/EU

Member State, to then provide exception of the general rule in Article 7(2)(3). Similarly, Article 8(1) reiterates the general rule of prohibition of detention of asylum seekers and Article 8(3) lists six exceptions to the rule.

The rules and modalities of material reception conditions are described in Articles 17 and 18, and their cessation in Article 20. In Article 18, the Directive limits the grounds for providing different modalities for material reception conditions. It sets a requirement for access to healthcare and dignified standards in case of reduction or withdrawal of the conditions. The Directive was transposed with a great delay and in different stages into Greek law and issues have been raised regarding the correct transposition of specific provisions.

3. Recast RCD standards – Minimum, common or most favourable?

A discussion on the quality and level of the minimum standards of the recast RCD is essential. With the further development of CEAS, a shift in wording from "minimum" to "common" standards is noted, emphasising the harmonisation approach rather than adherence to a minimum. The Union's legislators set the level of the afforded standards to a "minimum" to make a tangible effort to harmonise reception conditions and asylum procedures. Although reception conditions cover a broad range of entitlements that may be qualified as rights by international human rights law instruments, the notion of rights, let alone fundamental rights, is absent from the definition of reception conditions in the recast RCD (Silga, 2018, p. 99). Emphasis should be placed on the "minimum" nature of the preconditions of standards. The reduction of these standards as set in the final text of both Directives is indicative by the adopted wording: The reference of the Commission's initial proposal to the well-being of the applicant was removed by the Council, as was the reference to the need for the standard of living to be sufficient for the protection of fundamental rights (Peers, 2006, p. 304).

Nonetheless, concerns were raised over the Commission's proposal as well, particularly concerning the right to free movement, reduction and withdrawal of reception conditions, healthcare and financial assistance (ibid.). It is also argued that the reference to "common" policies in CEAS should be adequate and sufficient to signal a departure from the lowest level of standards of all EU Member States for the more suitable "more favourable standards", which is nevertheless explicitly included in most CEAS Directives (Velluti, 2014a, p. 30). Adherence

to the correct term is not minor, as "most favourable standards" allow Member States to go beyond the general rule (ibid.) and offer more enhanced or suitable standards.

3.1 The afforded margin of interpretative discretion to States

The harmonisation of the asylum standards in the EU has been considered to interfere with the notion of the autonomy of Member States to specify the provisions of the Directives when transposing them, by making them compatible with sometimes conflicting domestic legislation, and ultimately with the notion of national sovereignty. The margin of appreciation for the states in this sensitive area related to border management or national security has often been raised during the legislative process by Member States reluctant to amend the national concepts of protection. They argue for a wide margin of appreciation also in issues where no distinct European position exists and broader value judgments have to be made (Thym et al., 2022, p. 20). This is particularly indicative in the recast RCD, in leaving states the margin of discretion to detain asylum seekers in prison facilities[13] and also in the detention grounds of Article 8(3), where the Union's legislator departs from the rule of the prohibition of detention of asylum applicants of paragraph 1, to then set a list of detention grounds. The approach pursued by the Commission through its first recast proposals was to suggest ways to minimise the margin for divergent interpretation of the CEAS Directives provisions, through a higher degree of harmonisation of the protection standards (Velluti, 2014a, p. 32). However, the excessive use of the term "may" in specific provisions allow not only for different interpretations but even for the curtailment of the given rights in practice. After all, by allowing states a wide margin of discretion, CEAS runs the risk to be built in subsidiarity (O'Nions, 2014, p. 131), and its standards to reach unacceptable low levels (ECRE 2015b, p. 30).

3.2 The implications of the wide margin of discretion in the cessation of material provisions

The recast RCD also leaves states a wide margin of discretion in the withdrawal or reduction of material reception conditions in Article 20(1). The material provisions can be withdrawn for a number of reasons, the list is yet exhaustive and applies in exceptional and duly justified cases. Namely for violent behaviour in accommodation facilities,[14] misconduct regarding

13 Article 10(1)(a) Reception Conditions Directive 2013/33/EU
14 Article 20(4) Reception Conditions Directive 2013/33/EU

reporting duties,[15] and the concealment of financial resources of the applicant.[16] The Directive allows Member States to abstain from providing reception conditions when a person has unjustifiably not lodged an asylum application,[17] and when a subsequent application has been submitted.[18] As for the latter, the Directive does not specify if the reduction or withdrawal of material support is allowed for the examination of the admissibility of the subsequent application, which could be in alignment with a similar provision of the CEAS to prevent an "abusive" use of the right to submit subsequent applications, or if it also applies during the in-merits examination of the application.

However, a reduction or withdrawal of the material support does not exclude the possibility of a breach of the right to the human dignity of a protection seeker. Insofar as this leads to conditions below adequate standards of living, it is clearly not consistent with the requirements of human rights law (Velluti, 2014a, p. 65). The Directive inserted in Article 20(5)(6) the obligation to issue a decision upon making a proportionality test and only upon issuing an individual decision regarding the individual situation of the person concerned. The mere reference to the obligation to ensure access to healthcare and dignified living conditions to those with reduced or withdrawn provisions in Article 20(5) leaves room for derogation of the rule of the protection of human dignity and can lead to the provision of sub-standard conditions in practice. This provision is open to different interpretations and might not adequately reflect the established case law under Article 3 ECHR and the Recital 35 recast RCD wording for full respect of human dignity (Velluti, 2016, p. 7).

As a preliminary point, deficiencies in the level of protection that the recast RCD provides may also lead to a breach of rights deriving from the European Convention on Human Rights. Peers argues that a failure to provide social and legal assistance to asylum seekers that leaves persons in destitution, and without permission to work, can potentially breach Articles 3 and 8 of the European Convention (Peers, 2006, p. 305).

EU Courts' judgments give some specificity to the extent of standards States are obliged to provide. In Saciri and Others,[19] while dealing with the provisions of the initial RCD, the Court stressed that the monetary amount must be sufficient to meet the basic needs of asylum seekers,

15 Article 20(1)(b) Reception Conditions Directive 2013/33/EU
16 Article 20(3) Reception Conditions Directive 2013/33/EU
17 Article 20(2) Reception Conditions Directive 2013/33/EU
18 Article 20(1)(c) Reception Conditions Directive 2013/33/EU

19 Federaal agentschap voor de opvang van asielzoekers v. Selver Saciri and Others, no. C-79/13, para. 46

including a dignified standard of living.[20] The Court went beyond, and pointed to the need to ensure minimum standards, even if material reception conditions are provided in the form of financial allowances as part of the assistance scheme provided to nationals.[21] Financial assistance as an alternative modality was not an option of the initial RCD. The Court's conclusion was reiterated in the recast RCD Article 2(g) but, in contrast to the above decision, Article 17(5) gives the discretion to States to grant "less favourable treatment" compared to nationals, aiming to ensure nationals a standard of living higher than the one prescribed for applicants (Silga, 2018, p. 104). Given that the financial or material assistance provided to nationals also seeks to cover a standard of living for them, granting a benefit at a level lower than what is necessary to ensure similarly dignified conditions could be breaching Article 17 of the Charter (ECRE, 2015b, p. 20).

20 Ibid., para. 48
21 Ibid., para. 50

Chapter II: Types and levels of the afforded material reception conditions in Greece

In this chapter, I will present elements of the reception of asylum seekers in Greece from 2015 onward that raise compliance issues with the legal framework analysed in the first chapter. As a preliminary note, Greece's practice will be compared primarily with the CEAS standards rather than with the Greek law, as the non-implementation of the CEAS provisions does not necessarily lead to a violation of national law, for example where the former have been incorrectly transposed. The legal and factual circumstances that will be presented will be grouped into two broad categories, following the major rights recognised under the CEAS recast RCD and which are strongly interrelated to the right to human dignity. First, the enjoyment of the right to housing and to material reception conditions of Articles 17 and 18 will be examined. Then, a discussion on issues of access to healthcare in Article 19 and Article 17(2-4) will follow.

As to the territorial and chronological scope of the examination of the conditions, this will include the early reception phase, from the entry of the asylum seeker into the Greek territory and the expression of her/his willingness to asylum up to the registration of the asylum application and the potential transfer to a reception facility. The living conditions in the East Aegean Islands' Reception and Identification Centers (RICs) will inevitably be examined due to their particularities. In this regard, the conditions and standards of the ESTIA housing programme will be analysed separately, effectively enabling a comparison to those in the RICs and the Closed Controlled Access Centers (CCACs).

1. Who is an asylum seeker, and why the lodging time of an application matters?

Before analysing individual rights, it is fundamental to clarify the definition of the rights' subject, the asylum seeker. Even though several provisions of the 1951 Convention apply to asylum seekers, the Convention does not provide a legal definition or mention them explicitly. With the term "asylum seeker", I refer to the legal term that describes the person who applies for international protection. By reading Articles 2(h) of Directive 2011/95/EU and 2(b)(c) of the APD in conjunction, an asylum applicant is a third-country national or a stateless person who has made a request for protection from a Member State and who can be understood to seek

refugee status or subsidiary protection status, and does not explicitly request another kind of protection. It should be noted that the time point at which the application is considered as filed is not of secondary importance, as it defines when the set CEAS rights become applicable and can be invoked. Member States often argue before the ECtHR that there is no obligation to provide reception conditions, as the asylum application has yet to be lodged, often implying a supposed unwillingness of the person to apply for asylum. While the timely interpretation of the willingness for asylum of the third-country national who enters the country might be understandably tricky and not straightforward, available tools to register the simple willingness to asylum exist.

Although the definition of an asylum seeker as a person who can be considered as applying for international protection of the Article 1(b) L 4939/2022 coincides with the above definition, the increasingly invoked by Greek authorities Article 69(3) L 4939/2022 creates problems: The article provides that the asylum application is deemed as lodged from the date of full registration of Article 69(1) and (2) and therefore bound to a specific -written- procedure, adding in this way an additional precondition.

A problem, in addition to this, is that, especially for those entering through land borders in Greece, there was no standardised procedure to transfer them and register their asylum application. Although all preceding asylum laws[22] provided that third-country nationals who are either found to stay illegally in the territory or entering irregularly shall undergo reception and identification procedures, during which their asylum applications are registered, the practice deviated from the above procedure in the mainland. On the eastern Aegean islands, where border procedures apply, asylum seekers were routinely transferred to the RICs or CCACs. On the mainland, on the other hand, protection seekers were travelling from the Evros border crossing further, as there was no space for them in the overcrowded Fylakio RIC, as will be analysed in Chapter II.2.2. For them, the above provisions were never implemented. They were eventually registered as asylum seekers at a later point before regional asylum offices. As delays in registrations were significant, these persons were effectively excluded from the provision of material conditions. Nevertheless, this maintenance of and interplay between two different legal frameworks and practices on the islands and the mainland are attributed to the EU-Turkey agreement, which created two zones, where refugees face two different kinds of reality (Tsitselikis, 2019, p. 163).

22 Article 9(1) L 4375/2016, Article 39(1) L 4636/2019, Article 38(1) L 4939/2022

By not considering the expression of the willingness to asylum immediately as a submitted asylum application, a member state might also be violating Article 6 recast RCD, according to which documents proving the status of an asylum seeker are issued within three days from the lodging of the application. This time limit was inserted in Article 6(2) Law 4686/2020 but has been lessened compared to the requirement of the Directive, as it refers to the simple registration, the so-called pre-registration. This provision is currently in force under Article 69(2) of L 4939/2022.

Greece started implementing a new registration procedure in the mainland in 2022, following the issuance of the Ministry of Migration and Asylum Circular 411695/24-11-2021 for the implementation of Article 39(1) L 4939/2022. The new system does not meet the requirements of the APD either. While the asylum seeker has to submit his will to apply for asylum through an online platform, which also grants a full registration appointment, the document that the system returns mentions that this should not be considered an asylum application. The issue has been recently addressed to the Administrative Court of first instance of Kavala (Dpr164/2023, 7 February 2023), which ordered that the asylum seeker, who was arrested and detained pending his return, should be released, as he "acquired the status of an asylum seeker" by entering the online platform and submitting a registration application (para. 5).

1.1 Applicants of family reunion equally eligible for material reception conditions

On the other side, Greece is not using the argument that asylum applicants in the family reunification procedure under Dubin are not stricto sensu asylum seekers in order to cease the provision of reception conditions for them. From a legal standpoint, this would not have been lawful in any way, as the Court of Justice has already ruled on it in case C-179/11.[23] The case regarded the legality of a French Circular which excluded asylum seekers under Dublin procedures from enjoying the RCD allowances. The Court held that the provisions apply and that refugees under family reunification procedures should have access to the minimum reception conditions of the Directive until their final transfer to another Member State. In a statement addressed to the Court for a preliminary ruling for the same case, UNHCR points to the minimum requirement for the enjoyment of the rights under the RCD, that of having lodged an asylum application, stating that "there is nothing to suggest that persons in the Dublin

23 CJEU, Case C-179/11 Cimade and Groupe d'information et de soutien des immigres (GISTI)

procedure would be excluded from the scope of the Reception Conditions Directive" (UNHCR, 2011, p. 9). Under the fourth ground for the justification of its position, UNHCR stressed that the RCD provisions should apply to prevent a degrading treatment which could result even from the deprivation of the reception conditions for a limited period (Ibid., p. 10). As also in the CJEU ruling, UNHCR stresses that provisions only cease when the person is transferred from the initial Member State. The Member State responsible for the asylum application also becomes the State obliged to provide reception conditions (Ibid., p. 11).

2. The level of the provided material reception conditions in the form of housing

A presentation of the transposition timeline of the recast RCD into the Greek legal order will precede the factual analysis of its implementation. As also with the Directive 2003/9/EC, where the Commission had to take actions against Greece for its late transposition with the Presidential Decree 220/2007, 2 years after the initial deadline, it has taken almost five years for Greece to harmonise its reception acquis to the minimum standards of the recast RCD. Two years after the entry into force of law 4375/2016, which transposed the Directive 2013/32/EU and only selectively the Articles 8-11 of the recast RCD for detention conditions, Law 4540/2018 came into force. The latter transposed fully most provisions of the recast RCD, often word by word.

The transposition came at a critical point in the reception conditions regime in Greece. At the beginning of 2018, the reception system became quickly overburdened by a new influx of refugees. The Presidential Decree 220/2007 did not provide the flexibility to devise a new system of providing living conditions in other in-kind forms, namely financial assistance. Relevant to this sub-chapter is the rights to material reception conditions and relevant rules of Articles 17,18 of the recast RCD, as transposed in Articles 17(1) and 18 of L 4540/2018. For the reasons described above, it is evident that it is the fulfilment of the material reception conditions that will ensure human dignity and basic subsistence and the right to the human dignity of asylum seekers, while inversely viewed, their deprivation might lead to undignified treatment and a violation of Article 3 ECHR (UNHCR 2011, p. 8).

According to Article 17(1) L 4540/2018, material reception conditions might be provided either in-kind or in the form of financial assistance. The in-kind provision can take the form of premises at a border transit zone, reception facilities or private houses rented by state

authorities and implementing partners, as Article 18(1) stipulates. The law sets out two indispensable, albeit vague, qualitative criteria for the nature of material reception conditions to ensure the dignity of applicants: material conditions must ensure an adequate standard of living that guarantees their subsistence and physical and mental health,[24] and provides for the consideration of gender, age and vulnerability for referral to a suitable accommodation.[25] The European Commission has sent a letter of formal notice[26] to Greece in late 2022, opening an infringement procedure against Greece for failing to transpose in a fully conform manner a set of provisions of the recast RCD.

2.1 The situation in RICs – Legal Preconditions

For assessing the adequacy of the provisions in Greece, an overview of the actual conditions in the primary housing forms under Article 18(1) recast RCD is necessary, i.e. the conditions in RICs and ESTIA apartments. In general, island RICs and ESTIA programme apartments have been the predominant forms of reception since 2015 (ECRE 2021, p. 152), and large-scale camps have been turned into the sole form of reception since the closure of ESTIA in 2022.

Following the signing of the EU-Turkey deal in March 2016, Greece implemented the "hotspot approach", presented as a strategy by the EU Commission in the European Agenda for Migration in 2015. The approach envisioned the establishment of large camps as the dominant form of housing (Kourachanis, 2019, p. 225). Under the General Secretariat, the First Reception and Identification Service was, in the beginning, responsible for establishing reception and accommodation structures in Greece, according to the then-applicable Article 8 L 4375/2016.

For those who entered Greece by sea, staying in the RICs of the Eastern Aegean islands was not a choice, as Greece applied the option of Article 7(1) of the Directive for the geographical restriction of asylum seekers. Namely, there is a dual imposition of the geographical restriction for asylum applicants. First, the Hellenic Police, pursuant to Article 78 L 3386/2005, restricts the movement of the third-country national within the geographic limitation of the island or the RIC. This geographical restriction is embedded in the deportation order. This practice is highly problematic and raises compliance issues with Article 7(3) recast RCD insofar as it is applied

24 Article 17(1) L 4540/2018
25 Article 18(2)(c) L 4540/2018
26 EU Commission, letter of formal notice to Greece, no. INF(2022)2156

automatically without previous individual assessment, without a proportionality test, and when imposed indefinitely (ECRE, 2021, p. 159). The following geographical restriction in the context of the asylum procedure used to be initially imposed with a Greek Asylum Service Director's decision in 2017 and with consecutive ministerial decisions later (Ibid.). Following the phasing-out of the fast-track border procedure, to which the confinement of asylum seekers within islands ran as an adjunct, the geographical restriction cannot be lawfully applied anymore (ERBB et al., 2022, p. 8).

For applicants subjected to the above restriction, the provision of accommodation is mandatory within the area indicated by the individualised restriction order, i.e. within the RICs and CCACs. In contrast, any violation of the restriction leads to the termination of the reception conditions.[27] The obligation to stay within the RIC to receive material support and accommodation is not only of theoretical interest: It will be demonstrated in Chapter III that staying in a place under the continuous supervision of the State might lower the threshold of severity for a violation of Article 3 ECHR.

2.2 The living conditions in reception centres

On the actual conditions, besides problems related to the restriction of the freedom of movement, residents of RICs faced problems with safety, exposure to adverse weather conditions, hygiene and problems with the recognition of their vulnerability, which resulted in their inability to access specific procedural guarantees and the provision of specialised support. The overcrowding in these RICs has exacerbated the above conditions. The problem of overcrowding in RICs has been established as a factor that aggravates the living conditions to such an extent that it can be cumulatively considered to be of such gravity that they are considered ill-treatment. For reasons of brevity and availability of academic literature, the conditions at the former Moria RIC, at Fylakio RIC and those in the CCAC of Samos will be examined.

Living conditions within the camps have been described as constituting an offence to human dignity (Tsitselikis, 2019, p. 167). Along with the inadequate conditions in detention and the chaotic situation in reception and identification centres, the UN Special Rapporteur on the human rights of migrants made a scathing comment on the "blatant" overcrowding after an official mission in Greece in 2017, where families were forced to stay with single men

27 Article 7(3) L 4540/2018

(UNHRC 2017, p. 9). The Rapporteur also noted that more than 4.000 people were sleeping at that time in tents on the concrete floor in the Olympic stadium of Elliniko and more than 10.000 in small tents in dismal open conditions, including families and children, in the informal camp settlement in Idomeni in northern Greece. On RICs and official and unofficial camps on the mainland in general, it was found that people were staying in substandard living conditions, with inadequate food and health care, which led to anxiety and depression among the migrant population (Ibid. p. 10). The shortage of suitable accommodation has led, moreover, to unaccompanied children being placed in protective custody in detention, which can nevertheless lower the threshold at which treatment may be classified as cruel, inhuman or degrading (Ibid. p. 16).

In terms of quantitative data, in February 2020, shortly before the fire in Moria camp, which resulted in the mass transfer of asylum seekers to the mainland for the decongestion of the islands of the eastern Aegean, a total of 38,091 people were staying in the five island RICs (Ministry of Migration and Asylum, 2020). Nineteen thousand three hundred thirty-three people were staying in Moria alone (Ibid.). The Special Rapporteur's reference to a shocking number of the then 3000 residents of the camp in 2017, namely 1,000 people more than the official capacity (UNHRC 2017, p. 9), demonstrated a suffocating situation.

Above all, and taking into consideration the COVID-19 pandemic, overcrowded camps like Moria pose particular risks to refugees, and COVID-19 further threatens the stability and security due to the widespread dissatisfaction channelled into tensions and clashes with the authorities, owing to the lack of opportunities and protection from the virus (Bohnet & Rüegger, 2021, p. 9), but undoubtedly also to confinement measures that are taken to prevent the spread of the virus.

2.2.1 The Lesvos Moria RIC

Moria RIC had been a place where its residents' bodily integrity and safety were endangered. Fourteen persons died only during the last four years of the camp's operation, of which six children. Among them, eight died because of fire or explosions or inhalation of smoke, three due to violent assault incidents, one child died of dehydration, and another was trampled (Pérez-Sales et al., 2022, p. 5). The supervising authorities did not offer any protection against violence and bullying, even when it regarded unaccompanied children, who were often seriously traumatised (UNHRC, 2017, p. 16). The safety situation for women was particularly

treacherous. Women avoided using the toilets as insecure due to the lack of illumination and locks (Korhonen, 2020, p. 29). In some cases, women reported having resorted to wearing diapers at night (OXFAM, 2019, p. 6). Some were not left to go to school unaccompanied, and a general sense of impunity for violence was prevalent, as police assistance for security incidents was absent (HRW 2019).

However, even indoors, adverse weather conditions posed dangers for Moria camp inhabitants. Especially persons that were living in tents, large rub-halls and makeshift structures had to withstand enormous amounts of rainfall and snow, while temperatures often slipped below zero (OXFAM 2019, p. 7). Moreover, there was no provision for heating and hot water for the majority of the population. Open fires with plastic bags and bottles were the only way to keep warm in winter, and the lack of hot water led parents to wash even their newborns outside in the cold (OXFAM, 2019, p. 7-8).

The sanitation needs of Moria RIC's residents were largely forgotten. Sewage leaks, open defecation and unsanitary latrines were the cause of public health hazards (Korhonen, 2020, p. 5). It has also been shown that the minimum sanitation standards of the so-called "sphere system", which stipulates the minimum with which a population can survive and recover from an emergency, were not met in the case of Moria camp (Ibid., p. 6). At the same time, the overall management of the camp was in disarray, with the responsibilities of the different State and municipality actors being indistinguishable (Ibid., p. 10). Especially for children, the camp posed increased health hazards. Medicine Sans Frontieres (MSF) reported that many children were treated for hygiene-related conditions that generally increased the rate of childhood illnesses when children had scarce access to adequate healthcare (MSF, 2018). UNHCR emergency sanitation standards provide that in the first emergency phase, there should be at minimum one toilet per fifty persons. In the area called "the olive groove", where the camp had expanded due to overcrowding, one toilet corresponded to 200 individuals and a shower for 506 (RSA, 2020). The lack of proximity to the toilets and the uneven and rough ground did not allow women with disabilities to reach them (HRW, 2019). Particularly indicative of the situation is that in September 2018, the camp director notified the Ministry that the camp would have to close if uncontrollable amounts of excreta were not cleaned up promptly (Korhonen, 2020, p. 16). Following the notice, Lesvos health inspectors visited the place. They reported overflowing garbage bins, broken sewage pipes and the infamous uncontrolled wastewater spillage at the camp entrance, a condition described as unsuitable and dangerous for life (ibid., p. 16-17). Things have gotten worse after the outbreak of COVID-19. The first confirmed case

in Lesvos raised immediate concerns about the virus entering the Moria camp's vulnerable social setting, as the COVID-19 pandemic has turned these places into so-called ticking bombs, with infectious diseases that could easily wreak havoc, given the social and physical conditions in such socially constructed places (Raju & Ayeb-Karlsson, 2020, p. 1). The lack of proper water infrastructure contributed to this, as in some sections of the camp, more than 1,300 persons were sharing one water tap (Korhonen, 2020, p. 5). Moria camp has been described as a place where a pandemic outbreak is perilous. It directly threatened refugees' health due to overcrowded housing and prevalent comorbidities among the refugee population (Bohnet & Rüegger, 2021, p. 7).

The screening procedure for the identification of vulnerable persons was inefficient in the Moria RIC. The delays in carrying out vulnerability assessments due to the inability of the authorities to cover the entire population of the camp in a timely manner resulted in vulnerable groups staying detained in bad conditions, and in practice, only those with solid proofs of vulnerability were identified as such (UNHRC, 2017, p. 10). Human Rights Watch collected evidence suggesting that girls and women who would typically fulfil the vulnerability criteria were not screened for months, among them survivors of gender-based violence, pregnant women, new mothers and children under 18, probably attributed to staff shortages (HRW, 2019). The authorities failed to meet the GBV standards, as set by the Inter-Agency Standing Committee (IASC). Besides general safety indicators that were not fulfilled, separate accommodation was not provided, as discussed above, in contravention of the proposed essential actions for reducing the risk of SGBV (IASC, 2015, p. 187).

The adverse conditions in which they were placed increased the incidents of mental health issues among the population of Moria camp. Even though the prevalence of mental health conditions is generally higher in the refugee population compared to the general population, imposed conditions of adversity, detention, living in institutional accommodation with uncertain residency status and restricted access to services and opportunities can empirically support as affecting the mental health of the persons who face them (van de Wiel et al., 2021, p. 2). The study focused specifically on the residents of Moria camp and examined the relationship between the length of stay in the camp with mental health indicators (ibid.). Using front-line quantitative data provided by an NGO in the field, the study concludes that the adverse conditions in Moria camp had led to a deterioration in mental health, although without providing evidence of a causal relationship between the length of stay and mental health crises (Ibid, p. 7-8). The poor and unsafe living conditions, challenging refugee status determination

procedures and the lack of mental health services at the camp level are found to be strong contributing factors (Ibid., p. 8). Another cross-sectional study analysed the conditions in the Moria RIC based on the torturing environmental scale, which measures interpersonal violence, emotional distress and legal safeguards (Pérez-Sales et al., 2022, p. 1).

Similarly to the Istanbul Protocol, a principle is followed in the study to evaluate the reliability of torture. It goes beyond the stricto sensu definition of torture and includes, in a holistic approach, conditions that could cumulatively meet the criteria of the legal definition of the United Nations. Although the study's findings should be approached with slight caution, as most of the data are self-reported by the victims, the general trend that emerges is groundbreaking and suggests that quite deplorable conditions were faced by Moria RIC residents. On the attacks on sexual integrity, nearly half of the women and 9% of men reported having suffered sexual abuse, 19% of women were threatened with the dissemination of photographic material of sexual nature, while virginity tests were regularly conducted for marriage arrangements in the camp between Afghans, without authorities' efforts to prohibit these practices (Ibid., p. 6). Racist attacks and stigmatisation by individuals or state authorities were reported by 42% of the sample, with examples being racist raids by the police, public xenophobic statements, or discrimination by the police (Ibid.). The study found that the Moria camp constituted an example of a torturing environment and of inhumane living conditions from a medico-psychological analysis (Ibid. p. 8-9).

One would wonder why NGOs were not able to provide protection to asylum seekers to get over significant difficulties. Civil society actors played a crucial role in supporting Greece to fulfil the State obligations vis-a-vis applicants of international protection, but their services were, in practice, often disrupted. Especially in the early emergency phases, the network of NGOs and volunteers in Lesvos provided invaluable support, hence considered by some as uncoordinated and spatially unbalanced (Afouxenidis et al., 2017, p. 31). The implementation of a securitisation acquis prevented NGOs from delivering their mandate and deliverables, as they were perceived as not being in conformity with dominant security concerns and targeted as counterproductive (Ibid., p. 33).

The new camp set up at the Mavrovouni area after the fire in Moria RIC soon confirmed the established security doctrine, perhaps at the expense of ameliorating the living conditions. The Mavrovouni camp did not offer uninterrupted access to running water, its residents could not freely access psychological and legal services, and the conditions were described as precarious, with people having to live in flimsy tents pitched too close to the sea (OXFAM 2020, p. 1). The

worst elements of Moria RIC seem to be replicated in Mavrovouni, with sanitation and living conditions remaining sub-standard (MSF, 2021, p. 1, 16).

2.2.2 The Fylakio RIC

The Fylakio RIC in Evros started to operate in 2013. It used to be the only closed facility on the mainland, and people entering it were subject to a "restriction of freedom" applied as a de facto detention measure (GCR, 2020, p. 44). It was often overcrowded, with people staying in poor quality food conditions, a lack of communication of residents with the outside world, and a lack of hot water. At the same time, unaccompanied minors often stayed in mixed containers with adults (Heinrich Böll Stiftung, 2021, p. 35–37). The need for the new registration procedure imposed by the aforementioned Ministry's Circular no. 411695/24-11-2021 confirmed the inadequacy of the Fylakio RIC to process asylum applications for many years: While all asylum seekers entering from land borders had to go through the Fylakio RIC, and while transfers from the islands involved anyway persons with already filed asylum applications as they were previously geographically restricted, most of the mainland applications were carried out by other asylum offices in the mainland, in derogation of the procedure of Article 38(1) L 4939/2022, which suggests in reverse that the Fylakio RIC could not accommodate more asylum seekers, as newcomers were leaving from the area to major urban centres unregistered. According to official statistics, more asylum applications were registered in 2020 before the asylum offices of Attiki, Piraias and Alimos (7418) than in Fylakio RIC and Orestiada Autonomous Asylum Unit (Ministry of Migration and Asylum, 2020b, p. 1) (RSA, 2021). Nevertheless on the same note, the practice of the authorities to direct new arrivals to detention facilities instead of the Fylakio RIC was also confirmed by UNHCR (GCR, 2020, p.45).

Although, according to the reception and identification set procedures, third-country nationals have to be transferred immediately to the Fylakio RIC upon detection and apprehension, most used to pass through an informal procedure, during which they were staying in "pre-RIC detention" in a warehouse type building at Alexandroupoli for one to three nights (RSA and Proasyl, 2020, p. 4). The detention conditions in the warehouse were reported as unhealthy, with people held in mixed detention in inadequate space, often sleeping on the ground (Ibid.). An admission at Fylakio RIC did not guarantee the asylum registration of the asylum seeker. Testimonies suggest, on the other hand, that in cases of extreme vulnerability, such as advanced

pregnancy, asylum registrations were timely processed (Ibid.). Due to the overwhelmed Reception and Identification Service (RIS) at that time, a referral to another reception facility was rarely happening for reasons that have to do with the particular interpretation of the definition of the asylum application in Greece, as analysed in Chapter II.1.

Referral pathways for child protection issues were well established. However, the referral of Gender-based violence (GBV) cases was not systematised and was always dependent on the RIS focal points, who were generally untrained in GBV (Diotima, 2019, p. 31). Testimonies indicated that there was no efficient medical monitoring of persons in need inside the Fylakio RIC, which led to the refusal to provide medical services (RSA and Proasyl, 2020, p. 5, 7), while the National Public Health Organisation (NPHO) was severely understaffed, with only one doctor in the RIC (GCR, 2020, p. 23). Even though similar conditions applied as in Moria RIC, with the nonexistent or late identification of vulnerabilities due to the shortage in medical staff, still 731 out of the 14,257 registered asylum seekers were identified as belonging to a vulnerable group in 2019 (GCR, 2020, p. 44). Conditions, in general, were deplorable, as asylum seekers were being held in dank cells in the dark, and housing failed to meet basic standards, such as having toilets and locking doors (HRW, 2018). With the exception of lawyers from the ARSIS association, who offered legal aid services to unaccompanied children, state-free legal aid was not easily accessible (Diotima, 2019, p. 31). Another reason that hindered access to asylum, and subsequently the access to relevant rights and guarantees, was the lack of interpretation services in specific languages. Farsi and Dari-speaking individuals could only access the asylum procedure by email, and for some, this resulted in delays in registration of more than six months (Ibid., p.10). For interpretation needs in the RIC, the NGO METAdrasi provided limited interpretation, insufficiently covering the constantly arising needs (Diotima, 2019, p. 32).

Many risked losing the option to apply for family reunion with family members in other EU Member States due to the applicable deadlines, as they were advised to move on to Athens upon the expression of the family reunification request (Ibid., p. 10-11). Unaccompanied children often remained more extended than 25 days in protective custody in Fylakio RIC without adequate medical and social services in mixed accommodation with other families and adults (GCR, 2020, p. 45). The average waiting time of the 371 registered and detained unaccompanied children in 2019 was six months (Ibid.). Fylakio RIC could not host all new arrivals with a capacity of 282 persons. There are indications that the RIC was at its capacity

in 2022 as well, also due to the delays in setting up the new registration procedure in the mainland (MIT, 2022, p. 11).

2.2.3 The Samos Closed Controlled Access Center

The Closed Controlled Access Center of Samos Island is particularly interesting due to the very recent establishment of such closed facilities in the eastern Aegean Islands. The situation in the preceding camp of Samos in Vathy was sub-standard. The water inside the official RIC was not safe to drink, and asylum seekers depended on the private actors' courtesy to have access to this vital resource (MSF, 2021, p . 16), while the centre was excessively overcrowded with 7.200 housed people -10 times over its official capacity- resulting in people living in makeshift tents in inhumane conditions (OXFAM and GCR, 2022, p. 3). At the same time, the facility hosted a very vulnerable population. Many survivors of sexual violence were residing at the site (MSF, 2021, p. 11), and more than one-third were suffering from post-traumatic stress disorder (Ibid., p. 8).

The CCAC on Samos opened in September 2021 and was built from EU funds (OXFAM and GCR, 2022, p.1). It is built on a remote hillside and is completely isolated from public services. It represents the epitome of total control and securitisation, with barriers to the civil society to provide protection - conditions proven to be determinant factors to the deterioration of the mental health of detainees (MSF, 2021, p. 24). For a long time, residents of the closed-controlled centre had scarce access to adequate healthcare services. The Medical and Psychological Unit of RIS, the unit that is tasked to perform the relevant vulnerability assessment as part of the mandatory reception and identification procedures, was staffed with nurses, social workers, and psychologists but no doctors (OXFAM and GCR, 2022, p. 5). Patients in need of treatment or examination had to either be referred to the General Hospital of the island or to a military doctor visiting the area sporadically, while conditions of medical staff shortages were also affecting locals (Ibid.).

What exacerbates the problems of both access to healthcare and the deterioration of the health and mental health status of asylum seekers in Samos CCAC are the prison-like conditions of the centre. While there is a dedicated place inside the CCAC which will be used as a Pre-Removal Detention Center in future, the restrictive measures taken in the "open" section of the centre also resemble detention conditions. This claim does not include only the question of whether or under which legal preconditions the imposed 25-day restriction of movement could

be classified as detention but also regards the adopted measures of surveillance and of the imposed restrictions for exiting the centre.

The Greek Police and a private security company are constantly guarding the camp, surrounded by two rows of barbed wire, with additional fences between different areas, including around the kindergarten (OXFAM and GCR, 2022, p. 3). To enter and exit the site, persons must go through turnstiles, magnetic gates, and x-rays using a two-factor access control system with an electronic card and a fingerprint. At the same time, a failure to comply with the specific time frame within which the absence from the camp is permitted can lead to a decision to terminate the material reception conditions (Ibid.). The measure of employing private security companies to guard a reception centre was assessed as correlating to the increase of safety levels in reception centres by some measurements, albeit contributing to a securitised and oppressive environment (UNHRC, 2022, p. 5). While recommendations are included in the direction of strengthening the security companies' capacity to respond to incidents of Sexual Exploitation and Abuse and, in general, to intercultural sensitivity (Ibid., p. 6), following its visit to Greece, the above-cited UN Working Group found the use of new technologies, such as cameras with motion sensors and algorithms for prediction of behavioural and other threats, as disproportional and infringing the rights of freedom, movement and privacy of the residents of the centre (UNHRC, 2022, p. 7). In addition to the feeling of oppression created by these surveillance measures and the measures restricting the freedom to a certain place and time that resemble de-facto detention practices, the way the electronic means of entering the camp has been implemented has led to a de facto unlawful detention in many instances: Since November 2021, the entrance and exit of the CCAC, but also the provision of the material reception conditions per se, is dependent on the possession of the electronic smart card of the asylum applicant (OXFAM and GCR, 2022, p. 4).

The problem regarded persons in reception and identification procedures who have not yet been issued an asylum card and, therefore an applicant's smart card, and persons still in the asylum procedure, for whom an asylum card cannot be issued due to a recent practice of the Greek asylum service. The latter refers to applicants who have appealed a first-instance rejection and those who have applied for a subsequent application (Ibid.). Although the above practice is difficult to be challenged in the absence of an administrative decision ordering the detention of the person, GCR objected against the detention of an asylum applicant whose asylum application was pending before the Appeals' authority. With the decision AP36/17-12-2021, the administrative Court of Syros accepted the objections and ordered the lifting of the applicant's

prohibition to exit the Samos CCAC. By also referring to the right of freedom of movement of applicants of international protection, the Court found that the imposed CCAC Director's exit ban was illegal, in lack of a decision ordering his detention on the exhaustively listed grounds of article 46 L 4636/2019, which preconditions were not met.

2.3 The ESTIA programme

The Emergency Support to Integration and Accommodation Programme (ESTIA) was created as a response to the emerging need for accommodation places with dignified conditions following the closure of the so-called "Balkan Route" in March 2016 (UNHCR, 2021, p. 2,3). It consisted of two pillars, the first being the creation of 20,000 accommodation places in apartments, and the second the Cash Assistance programme, not only for those accommodated in ESTIA but also for all asylum seekers throughout Greece (ibid.). Initially, the ESTIA was planned to host asylum seekers who would then be relocated to other EU Member States. However, as the need for housing remained, it was developed into a scheme for hosting vulnerable asylum seekers to provide, among others, psycho-social and mental health support (ibid., p. 4). The main scope at its inception was to improve living conditions and develop social integration opportunities for asylum seekers (Kourachanis, 2019, p. 222). In practice, the programme soon became the main accommodation alternative for vulnerable persons for whom conditions in the camps were unsuitable. The programme's services have been considered by UNHCR, which ran the programme for its most extended duration, as invaluable in that it hosted a significant number of persons with severe medical conditions and persons who had survived torture or violence (UNHCR, 2021, p. 4). The official figures are indicative: Funded by the European Union with a total of 743 million euros, the programme offered a maximum of 27,088 accommodation places in 2018. It hosted some 73,000 persons until 2021, whereas more than 200,000 benefited from the second pillar of the programme, Cash Assistance (Ibid., p. 9). The programme was handed over to the Greek authorities gradually since 2020 to enable the Greek State to align with its obligation to provide minimum support and comply with EU secondary law (Tramountanis et al.,2022, p. 33). Despite its admittedly positive assessment, the main critique points of the programme and its management were the lack of social integration prospects for ESTIA residents, the dire living conditions in some cases and the role of the programme in legitimising other forms of housing.

Not all ESTIA partners had exerted the necessary commitment to keep the apartments in good condition, which, in some cases, have fallen short of decent living conditions. For instance, some apartments in Ioannina city were reported to have serious humidity problems without proper heating and basic amenities, such as a washing machine (Tramountanis et al., 2022, p. 29). The lack of an exit strategy, as mentioned earlier, led to the overcrowding of the programme and the deterioration of the living conditions of its beneficiaries, as the number of those entering the programme was increasing, without a proportionate number leaving it (Kourachanis, 2019, p. 230). The occupancy rate of the programme was, at most times, as high as 98 per cent (Ibid., p. 225).

Partly due to the inherited problems from the phase of the designing of the programme in an emergency situation which led to constant changes in financial sources and the number of beneficiaries of the assistance (Kourachanis, 2019, p. 226), the programme did not have a clear social integration scope. The ESTIA programme had never provided good linking of the provided housing to the limited social integration policies, which was reflected in the minority state involvement in the programme, in the first place, due to its unwillingness to tackle the phenomenon of extreme poverty among also asylum seekers, a dimension widely observed in the literature on social integration policies across Europe (Ibid., p. 227). Along with this, the ESTIA was criticised for failing to foresee subsequent stages concerning social integration. Namely, the programme did not include an exit strategy and did not foresee its residents' next step towards full housing autonomy (Ibid., p. 228). The latter is partly attributed to the always-changing legislative environment, where the rules and time for the exit of recognised refugees from the programme were continuously changing with consecutive Ministerial Decisions, reflecting what has eloquently been described by Tsitselikis, that insecurity of law caused by the intense volatility of EU/Greece policies gradually became a state of normality (Tsitselikis, 2019, p. 171). Although this analysis goes beyond the scope of this discussion, the Helios programme of the International Organization of Migration has not been proven suitable to enable a smooth transition from the ESTIA. Besides the fact that Helios was designed to include only beneficiaries who previously resided in official accommodation facilities[28] effectively excluding recognised refugees who were outside official structures, the programme failed to become the programme to accommodate the integration needs of those exiting the

28 Residence either in one of the accommodation schemes of the Greek Reception System or in specific shelters at the time of notification of the asylum-granting decision constitutes the third eligibility criterion for enrollment in the programme. See, for instance, the 2022 Helios project regulation handbook, p. 2, available at: https://bit.ly/3MhNk6a [accessed on 10/05/2023]

ESTIA. Firstly, Helios did not have the capacity to house the ESTIA population, while a small section entered the programme in reality (Kourachanis, 2022, p. 280). Secondly, the programme did not contribute to the social integration of refugees, partly due to its philosophy and inadequacies in planning and implementation (Ibid., p. 288).

Another legitimate critique issue was that programmes such as the ESTIA offered indirect legitimisation to accommodation options with sub-standard conditions, such as the RICs, and to the non-provision of adequate protection to the "non-vulnerable". As to the latter, the prioritization of vulnerable groups undermines, in this context, the rights accessibility and care for the "non-vulnerable" young men, for example, who are at large vulnerable also without the appropriate status recognition (Tsitselikis, 2019, p. 167). Agreeing that the ESTIA programme is designated for housing the vulnerable, it paradoxically divided the -already to some extent vulnerable- asylum seekers into vulnerable and non-vulnerable. For Kourachanis, the programme's eligibility criteria that were based on extreme vulnerability resulted in the "relativisation" of asylum seekers as a vulnerable group, normalising in such a way the accommodation in camps (Kourachanis, 2019, p. 229).

Besides the received criticism, the programme offered, as discussed above, at least minimum reception conditions and chances for social integration, supporting the State in fulfilling its obligations towards asylum seekers. It is through this prism in which the final closure of the programme should be seen: To the extent to which the literature and international organisations agree that the programme was set up to help the country meet obligations towards vulnerable asylum seekers no longer able to renounce, the closure of ESTIA might reversely signal Greece's non-compliance with the obligation to provide minimum reception standards to the vulnerable. The closure of the programme was not adequately justified. After acknowledging the programme's important role in the "de-congestion" of island RICs, during the meeting for the programme handover in 2020, the Minister announced the plan to increase the ESTIA accommodation places from 25,500 to 40,000 until 2021 (Ministry of Migration and Asylum, 2020c). Shortly after the above assurances, the gradual phase-out of the programme was decided "due to the improved management of the migration issue" (Ministry of Migration and Asylum, 2022), leaving unanswered the question of where vulnerable persons would be accommodated from then on.

Days before the closure of the programme, five EU parliamentarians submitted question no. E-003726/2022 to the Commission, requesting information on the countermeasures against the apparent deterioration of the reception conditions for asylum seekers and on actions to be

pursued by the Commission to enforce Greece's compliance with fundamental rights. This question also raised Greece's failure to comply with obligations deriving from the recast RCD for evicting vulnerable asylum seekers from the programme.

3. The cessation of financial assistance and the resulting food crisis in camps

The overnight interruption of the cash programme to asylum seekers outside accommodation structures preceded the sudden closing down of the ESTIA programme. This cash assistance for the "self-accommodated" population, which ceased in July 2021, amounted to 150 euros per person with a reduction of the total per capita assistance for multi-person households. The amount of 150 euros per person was less than the 200 euros per person of the national social solidarity income (currently valid under the name "minimum guaranteed income"), as Greece had made use of the discretion given by the recast RCD Article 17(5), i.e. to grant less favourable treatment to applicants compared to those afforded to nationals. The cessation of the cash assistance to the "self-accommodated" is estimated to have affected approximately 25,000 asylum applicants (ECRE, 2022). Those affected have either been directed to camps or have ceased receiving any material or in-kind assistance.

The reasons for the cessation of the cash assistance to the "self-accommodated" who were, for various reasons, pursuing their accommodation with their own means or were left homeless are unknown. The Ministry's announcement concealed vital elements of the previous practice to the extent to which it implies that the suspension of benefits was due to the lack of verification of the physical presence of the beneficiary (Ministry of Migration and Asylum, 2021). In particular, the confirmation of the presence of the recipients of the assistance was regular and obligatory also previously required and had been implemented in accordance with the set provisions.[29]

The sudden cessation of financial assistance to those living outside formal housing structures was followed by the temporary cutting of the provisions of financial assistance also to those living in official accommodation once the UNHCR Cash assistance programme was handed over to the Greek authorities. As a result, a food crisis followed. A joint open letter was sent by civil society organisations to Greece's officials and the EU Commission in October 2021,

29 See, for instance, Article 2(2) of Ministerial Decision 16987/2020

stressing, among other things, that asylum seekers turn to social services and charities for food (IRC, 2021). The letter, which also focused on changing the withdrawal rules of assistance for recognised refugees, received an immediate positive response. The EU Commissioner on Migration and Home Affairs, Johansson responded with a letter,[30] urging Greece "to ensure all persons, particularly the vulnerable, receive basic means of subsistence, notably, food and hygiene products". Taking a step forward, the Commissioner called Greece to provide all persons, irrespective of status, access to provisions of the CEAS and the EU Charter of Fundamental Rights. The Commissioner stated that the Commission had already raised the issue of discontinuation of material assistance, such as food, for rejected applicants and protection status holders. The letter also included recommendations for the access of beneficiaries of international protection to sustainable integration systems to ensure a fluid transition to the status of the refugee and integration.

4. The legality of the withdrawal of reception conditions

The closure of the ESTIA programme and the cessation of financial assistance to those outside official accommodation facilities constituted a withdrawal of material reception conditions for those affected. The procedure for the reduction or withdrawal from the provisions is stipulated in the third Chapter of the recast RCD, which was believed to have ameliorated the relevant safeguards in comparison to the rules of the initial RCD (Velluti, 2016, p. 7). However, the wide margin of discretion afforded to the Member States to withdraw or reduce the reception conditions below an adequate living standard might be inconsistent with the requirements of human rights law (Velluti, 2014a, p. 65) and does not adequately reflect established case law under Article 3 ECHR (Velluti, 2016, p. 7).

Specifically, Article 61(1) L 4939/2022 provides that the material reception conditions may be reduced or withdrawn in exceptional and specifically justified cases in case of an abandonment of the accommodation, non-compliance with the duty of cooperation, submission of a subsequent application, concealment of financial resources, and violation of the operating rules of the accommodation centre. Paragraph 5 of the same Article obliges states to issue an individualised, objective and reasoned decision, taking into consideration the specific

30 Ylva Johansson, Ares S(2021)8048555, 7 December 2021, available at: https://bit.ly/3Jyt7V4

vulnerabilities of the person. According to the same paragraph, the material reception conditions are not interrupted before the issuance of the individualised decision.

The eviction from the ESTIA and the cessation of the Cash assistance constitute clearly a withdrawal of the set provisions of the law and the Directive, while the eviction from the ESTIA with a vague offer of the opportunity of a transfer to a camp constitutes at least a reduction of the provisions to the comparably lower standards of a camp accommodation. The discussion of whether such an eviction amounts to a reduction or a withdrawal of conditions is not relevant for the present analysis insofar as both procedures are subject to an individualised decision with strict and exhaustive grounds, as presented above, and always require a degree of wrongdoing from the side of the beneficiary. The legal preconditions for the reduction or withdrawal of the material reception conditions after the closure of both the ESTIA and cash assistance programmes have not been met. Five members of the European Parliament have submitted a question[31] under rule 138 before the EU Commission on the matter. Expressing their estimation that the programme's closure will lead to tens of thousands of evictions and the deterioration of the access of persons to health and education, the MEPs asked the Commission whether these evictions comply with Greece's obligations to take into account the applicants' vulnerabilities in providing suitable reception conditions. While statistics on the reduction or withdrawal figures of last year remain unclear (ECRE, 2022), information suggests that most notifications of offers of a transfer from an ESTIA apartment to a camp were conducted orally (RSA, 2022), and the same is believed to have occurred with the actual evictions. It is further noteworthy that, in the absence of a written individualised decision at hand, the persons affected cannot easily challenge the reduction or withdrawal of the reception conditions by submitting an appeal before administrative courts, as explicitly provided in Article 118(1) L 4939/2022.

Non-observance of the rules for the reduction and withdrawal from the reception conditions has relevance to the compliance of the State to further obligations, besides the compliance with secondary EU law. Specifically, it can be argued that the right to good administration and the right to be heard of Article 41 of the European Charter of Fundamental Rights is relevant to the failure to respect the above proceedings, as Member States need to abide by them when adopting decisions that fall within the scope of EU law, and as asylum law and policy is clearly within the remit of EU law (Velluti, 2016, p. 13). It should also be mentioned that while Greece has faced difficulties in complying with the above rules, other Member States are still

31 Question for a written answer no. E-003726/2022

struggling with their transposition in their national legal order. In Italy, for example, the reduction of material conditions is not provided at all in the law, in comparison to the withdrawal procedure provided by the Legislative Decree 142/15, raising questions as to the conformity of the State to the recast RCD to this regard (Silga, 2018, p. 106).

5. Access to healthcare – Emergency healthcare as the minimum standard

The fulfilment of medical needs and unhindered access to the health system is inextricably linked to the right to human dignity. The Geneva Convention on Refugees provides in Article 23 for equal treatment of refugees to nationals in terms of access to public relief. Provisions on access to mental and physical healthcare constitute the core of the recast RCD and are included in the broad notion of the material reception conditions. As the sufficiency of the material reception conditions is linked and is dependent on whether they guarantee subsistence and an adequate standard of living,[32] the access to healthcare and medical assistance can be understood as also a criterion of the level and quality of the provided conditions. The health and mental health of detained vulnerable applicants shall be a primary concern for national authorities, and specific provisions guarantee increased state obligations for mental health care and rehabilitation for children victims of abuse.[33] The level of healthcare EU Member States are obliged to provide to asylum seekers is stipulated in Article 19 recast RCD: Emergency care and essential treatment of illnesses and serious mental disorders shall be provided (para. 1). For applicants with special reception needs there should be "necessary medical or other assistance", "including appropriate mental health care where needed" (para. 2).

To determine who requires "necessary medical assistance", a vulnerability assessment of applicants with special reception needs must precede. Chapter IV of the recast RCD governs the provisions for the classification of vulnerability and treatment of vulnerable applicants. Besides the separate categories applied to minors, unaccompanied minors and victims of torture and violence, the general categories of those considered vulnerable are listed in Article 21 recast RCD. The list is considered to be exhaustive, as only those vulnerable persons, as per Article 21, may be considered as having special reception needs.[34] For the vulnerability of the person to be taken into consideration, the vulnerability assessment of Article 22 must be

32 Article 17(2) recast RCD
33 Geneva Convention Article 23(4)
34 Article 22(3) Reception Conditions Directive 2013/33/EU

conducted. Member States are afforded the flexibility to integrate the assessment procedure into existing national procedures or not, while the assessment does not have to take the form of an administrative procedure (para. 1). As for the time frame for the initiation of the assessment, this has to start "within a reasonable period of time after an application for international protection is made" (para. 1).

For unaccompanied minors, special provisions apply. Article 24(1) deals with matters of representation of minors to enable them to exercise their rights. The Directive, which laid down in Article 24(1) specific criteria for the appointment and obligations of the representative of the child, sets out the rule of the best interest of the child that should govern all procedures and decisions for the child in Article 23(1) and 24(1) and includes an exhaustive list of places where they shall be placed during the entire stay at the Member State in Article 24(2).

At first glance, the recast RCD seems to provide better possibilities for accessing healthcare compared to the initial RCD of 2003. The now explicit inclusion of essential treatment of serious mental disorders in Article 19(1) with a broad set of safeguards for vulnerable persons has been welcomed by the literature (Velluti, 2014a, p. 64). Tsourdi sheds light on the background of the extension of the provisions to "serious mental disorders", stating that this was a compromise between the EU Parliament and the Council, where the latter was against its inclusion (Thym et al., 2022, p. 1631). Furthermore, the wording on the obligation to provide only emergency medical care is unfortunate. The deterioration of an applicant's health condition, which needs adequate and not emergency care, is a situation that is encountered regularly. Equally to the accommodation provisions, the concern is that this provision will lead to unacceptably low levels of afforded medical care for protection seekers (Velluti, 2016, p. 5). Specifically, it is considered that the meaning of emergency care refers with certainty at least to accidents, acute illnesses, unavoidable surgeries, and pain-relieving measures (Thym et al., 2022, p. 1630), but the question arising is what else is deemed to be covered under the "essential treatment of illnesses"?

As national healthcare systems often provide for standardised healthcare coverage via the insurance scheme of the Member State, it is still being determined whether the legislator wished to set out a -comparable to national- standard or only very basic health services (Ibid. p. 1631). Tsourdi casts doubt over the meaning of the provision insofar as the practice in different Member States varies considerably, given that Member States are left with the task to organise and deliver healthcare according to national practices, according to Article 168 TFEU (Ibid.). Simultaneously, the term "necessary medical or other assistance" on the special provisions to

persons with special needs is too vague and hence equally problematic. On the one hand, it is uncertain what type of treatment the "other assistance" could include, while the determination of the "necessary" treatment is -contrary to an adequate or suitable- difficult to assess in individual cases, leading perhaps to great discretion and low harmonisation effects within Member States (Ibid.). On the other, a three-year comparative study of the implementation of the conditions of the initial RCD suggests that all Member States of the study complied with the obligation to apply at least emergency care, and others, such as Austria and Germany, had further expanded the categories of care which asylum seekers are entitled to (Odysseus Academic Network 2006, p. 68).

5.1 The practice in Greece

The reasons why asylum seekers in Greece need unhindered access to healthcare for physical and mental illnesses are apparent. Chapter II has discussed that the RICs and CCACs on islands and the mainland have been eloquently described as torturing environments, meeting even the criteria of the relevant scientific scale. The lacking availability of medical actors and the strong dependency of the protection schemes on the preparedness of civil society medical actors were also discussed above. It should be further noted that structural deficiencies, such as the lack of medical personnel in camps, lead to poor or delayed vulnerability assessments. Likewise, the increased State obligations vis-a-vis vulnerable protection seekers cannot be easily fulfilled.

In the Greek reception context, particular focus has to be laid on the enjoyment or hindrances upon access to the right to healthcare in practice. A focus will be given to the administrative barriers to access healthcare, namely the issuance of the relevant social security numbers and of a residence permit in the case of recognised refugees. For applicants of international protection, Article 59(2) L 4939/2022 provides that applicants are issued a Provisional Aliens Insurance and Healthcare Number (PAAYPA) for accessing the health services of Article 33 of Law 4368/2016. The latter law was a breakthrough in the access of the uninsured to the health system, a category of persons growing geometrically with the onset of the economic crisis.

There are specific indicators concerning the lacking capacity of the Greek healthcare system that raise concerns over its potential to reach the threshold for the "emergency" type healthcare of Article 19 recast RCD. A 2015 study has shown that the total health expenditures dropped to 31,9% from 2009 to 2013 in Greece due to the imposed austerity measures and as part of a health reform programme aiming to keep public health expenditure low (WHO, 2015, p. 3).

During this period of depression of the health economy, the reimbursement status of various drugs was withdrawn, and some expensive examinations that had previously been covered were removed from the health insurance coverage scheme (Ibid., p. 4). At the same time, charges in public hospital outpatient departments increased from 3 to 5 euros and a 25 euro admission fee was introduced and revoked in 2014 (Ibid., p. 5). As these measures were applied horizontally, vulnerable groups were particularly affected. A chart of the self-reported unmet needs for the years 2008 to 2013 has shown that unemployed and low-income households could not cover medical examination needs at an increasing rate (Ibid., p. 6). The research also shows that migrants, who have traditionally had a low level of understanding of the provided services, had a high rate of unmet medical needs (62.3%). At the same time, long waiting times, the health system's complexity, and language barriers were causally related to these unmet needs (Ibid., p. 73). The situation is aggravated for asylum seekers who do not speak Greek. As discussed above, emergency healthcare for uninsured persons, the category to which unemployed asylum seekers belong, constitutes foremost of out-patience care and admission to emergency hospital stations where the availability of interpretation services is scarce. This is primarily due to the lack of interpreters and cultural mediators in most public healthcare facilities (ECRE, 2021, p. 190), although interpretation and teleconference interpretation were grossly provided by NGOs and funded by the EU Commission's DG HOME programme.

At the end of 2019, another development effectively hindered asylum seekers' access to healthcare. For reasons of unclear authorities' competence as to its issuance, public officials refused to issue social security numbers (AMKA) to asylum seekers (ECRE, 2021, p. 190), the only document that could provide, until 2019, access to healthcare services. The Ministry of Labor and Social Security revoked[35] the Circular[36] for the provision of AMKA, “applauding” this way the emerging public servants’ refusal to issue social security numbers to non-Greek citizens. Amnesty International has researched the issue and captured the problems in practice for patients in need of treatment. In particular, it was clear that, without an AMKA, patients admitted to hospitals would not have access to antiretroviral treatment if they were discharged (Amnesty International, 2020, p. 37).

The problem was supposed to be solved by the then forthcoming L 4636/2019, which came into force in January 2020, but another obstacle came to prolong the administrative barriers to the enjoyment of minimum emergency medical care provisions for up to one year and beyond.

35 Ministry of Labour and Social Affairs, Circular Φ.80320/οικ.31355/Δ18.2084/11-07-2019
36 Ministry of Labour and Social Affairs, Circular Φ80320/οικ.28107/1857/20-6-2019

Namely, the stipulated with Article 55 L 4636/2019 dedicated provisional health insurance number for asylum seekers (PAAYPA) could not be issued in practice for already registered asylum seekers, as the renewal of their asylum cards was only virtually taking place,[37] according to relevant consecutive Ministerial Decisions, as COVID-19-related measures to limit turnout at public services were applied. As a result, only 35% of the ESTIA scheme residents were holding a PAAYPA number by the end of December 2020, while the system was said to be operational by January 2020 (Ibid., p. 191). Civil society organisations raised the issue to the Greek Ombudsman, whose eloquent interventions requested the immediate issuance of a PAAYPA to all applicants with a valid asylum card.[38] It goes without saying that since the issuance of PAAYPA depends on the issuance of the asylum card, unregistered asylum seekers and applicants with police notes cannot enjoy access to Greece's healthcare system (ECRE, 2021, p. 191).

A relatively recent issue that also constitutes a procedural obstacle to the access of recognised refugees to a number of rights, especially to healthcare, was the problem with issuing residence permits (ADET). In particular, a PAAYPA does not grant access to healthcare to recognised refugees as it is valid only until a final decision of the asylum application, according to Article 59(2) L 4939/2022, and is thus revoked upon receipt of the international protection status. Beneficiaries of international protection are entitled to an AMKA,[39] for the issuance of which an ADET is a prerequisite, according to Circular 80320/42862/Δ18.2718/2019 of the Ministry of Labour and Social Affairs. However, beneficiaries of international protection faced significant problems with the issuance of an ADET in 2022, which the Greek Asylum Service attributed to an ongoing technical problem (RSA, 2022) that hindered the issuance of asylum seeker cards.[40] It should be noted that such technical problems are explicitly not allowed to lead to the applicant's detriment, as explicitly provided by Article 75(9) L 4939/2022. Following relevant complaints to the Greek Ombudsman and interventions thereof, the JMD 605869/2022 was issued, and the problem was gradually resolved.

37 The PAAYPA number was only issued upon the physical renewal of the asylum-seekers card

38 See, for instance, Ombudsman interventions protocol no. 294463/16706/2021, 298080/26591/2021

39 Articles 9,11 JMD 717/2020

40 The submission of a copy of a valid asylum-seeker card is a prerequisite for the issuance of the residence permit (ADET), according to Article 1(1) JMD 513542/2022

Chapter III: Litigation against critical reception conditions before the ECtHR

In this Chapter, I will explore the extent to which the critical living conditions described in Chapter II that lead, to some extent, to a violation of the rules set out in the recast RCD Directive as presented in Chapter I, could also amount to a breach of the rights of Article 3 of the European Convention on Human Rights. The two apparent issues that need to be discussed first are that the Convention does not include explicit provisions for the socio-economic type of the rights to shelter and healthcare, nor does it refer to the right to asylum and relevant rights that derive from the CEAS.

1. The justiciability of socio-economic rights before the ECtHR and the margin of appreciation

Although litigation strategies before the ECtHR against critical living conditions are increasingly effective in leading to the imposition of certain positive obligations to states, indicating that violations of the rights of asylum seekers to humane and dignified living conditions are directly relevant to the ECHR, the Convention primarily protects civil and political freedoms and not rights related to the provision of shelter and healthcare. This stems from historical reasons going back to the period of the drafting of the Convention and partly due to the firm stance the Court has exerted jurisprudentially.

Nevertheless, legal strategies aim at an increasing rate to test the scope of positive obligations under Articles 2,3 and 8 ECHR, to provide means to vulnerable groups to alleviate destitution, such as basic health and welfare services (Palmer, 2009, p. 2). Besides, in some instances, for ECHR rights to have a practical effect, affirmative state duties to provide socio-economic freedoms must be adopted. This conforms with the Court's principle, that the interpretation of the law has to be the most appropriate in order to realise the aim and achieve the objective of the treaty and not that which would restrict the obligations of the parties.[41] Furthermore, the degree of dependence of the individual's vital needs from the State will finally determine the need for the imposition of positive state obligations, which may even interfere with the protection of socio-economic rights to fulfil those state obligations and protection of the

41 Wemhoff v.Germany, no. 2122/64, para. 8

Convention rights. This can apply, for example, in the context of police custody or prison detention, where the non-provision of access to healthcare could lead to the violation of the right to life (Palmer, 2009, p. 2). Finally, a fair proportion of relevant ECtHR decisions argue that even the negatively formulated Article 3 can entail the imposition of positive state obligations to ensure compliance with the Convention (Ibid., p. 7).

The margin of appreciation doctrine is particularly relevant to this discussion. The Court applies this concept when considering the proportionality of a particular interference with a right of the Convention by considering that the State is in a better position to give an opinion on the necessity of a restriction, such as the rights of Article 5 ECHR (Leach, 2017, p. 189), or on the possible ways of protecting the substance of a right. The weight the Court gives to the State's assessment of the imposed restriction varies and depends on the field of the interfering policy. For matters of contentious societal issues, however, such as for critical health issues, as with home births, and for assessing the existence of public emergencies, where specific derogation from Conventions rights are afforded, it is considered that the State has a wider margin of appreciation (Ibid.). This provides a justification as to why the Court was unwilling to create socio-economic sub-rights in the case of M.S.S. v. Belgium and Greece (Clayton, 2011), despite the admitted magnitude of the case in expanding the scope of the Convention in the socio-economic field. Whereas the Court has indeed, in practice, examined the compatibility of EU law to the Convention and indicated positive measures interfering with socio-economic rights,[42] (e.g.), it is far more reluctant to exert control over the compatibility of national law to the ECHR (Ramos, 2015, p. 55). Indicatively, in the case of Ilias and Ahmed v. Hungary, even though the Court raised doubts about the precision and foreseeability of domestic law on the legal basis of their detention, it was hesitant to interpret the law's compliance with the Convention.[43]

The discussion around the breadth of the margin of appreciation in the present case is an important one, as the issues of provision of dignified living conditions to asylum seekers in Greece do interact with national policies and state expenditure on the one hand, and situations of invoking a condition of a public emergency by the State are not novel in the Greek context on the other. However, while the margin of appreciation grants states room for manoeuvring in the fulfilment of their obligations under the ECHR, this room is limited, as the right to dignified treatment is, in principle, non-derogable, according to Article 15 of the Convention. Those who

42 See e.g. M.S.S. v Belgium and Greece and N.H. and Others v. France
43 Ilias and Ahmed v. Hungary, no. 47287/15, ECtHR 14 March 2017, paras.60, 66.

applaud the Court's emerging constitutional role in promoting respect for human dignity take it one step further, arguing that the invocation of the margin of appreciation should not matter for the Court in the first place, as it amounts to an abnegation of the Court's duty to determine the proportionality of the states' conduct in relation to the rights of the Convention (Palmer, 2009, p. 10). Finally, the weight of the principle is subject to an ad hoc assessment of the situation by the Court, while the existence or not of a consensus in the Council of Europe on the appropriate form of protection of the right or the important interest at stake plays a decisive role as to the breadth of the afforded margin of appreciation to states (Leach, 2017, p. 189).

2. Litigation of the CEAS rules before the ECtHR

Chapter II discussed certain flaws with respect to the provisions of the recast RCD in Greece. The factual analysis went beyond exploring specific issues of mistaken transposition of the Directive. The question arising here is whether the Strasbourg Court deals with issues of compliance with EU law in general and whether issues of asylum can fall within the scope of the Court's jurisdiction.

The question of whether the Strasbourg Court can decide upon issues of compliance of state policies to secondary EU law, the CEAS, is not complex. It is now considered that the Court can even exert direct control over primary EU law, where the CJEU has no jurisdiction (Velluti, 2014b, p. 21). Even though the ECHR makes no reference to asylum rights, the Court has, in practice, dealt extensively with issues of asylum, non-refoulment and deportation of asylum seekers, and has developed the bulk of its asylum jurisprudence on the basis of Article 3 ECHR, signalling for some its adoption of a supranational interventionist role on human rights (Ibid., p. 79).

Further, on a potential parallel examination of the implementation of the CEAS, the Court has gradually developed the principle of presuming the "equivalent protection" of fundamental rights under EU law and the Convention, meaning that the protection requirements for ECHR rights are considered as met by the State if it is compliant with EU law (Ibid., p. 81). As thorough as it may sound such an argument, it started losing its power by the Court's own jurisprudence since the Strasbourg Court was called to decide upon issues of compliance with the CEAS Directives. The most prominent ruling that casts doubt on the foundation of the principle of equivalent protection is this of M.S.S. v. Greece and Belgium. As it will be discussed in 4.1 of the present Chapter, the Court decided to go on the ratione materiae of the

case. It examined the situation and the actual conditions, based on numerous reports on the situation in Greece, deeming that compliance with the CEAS legal framework cannot be presumed by its mere adoption by a member state. Thus, issues of violation of the Convention may arise. On a similar topic, Costello progressively argues that, as the Strasbourg Court provides a forum to scrutinise extra-territorial border controls for ensuring the right to asylum, more types of extra-territorial border controls should be subject to the Court's scrutiny (Costello, 2012, p. 338). This would allow, for example, an assessment of the compatibility to the ECHR of expulsions and returns based on the Greek JMD on the Safe Third Country, which based the safety of asylum seekers in Turkey on generalised safety assessments. As the universal value of the international refugee law loses its effectiveness and the basic framework has been shifted to the protection from returning to a "non-safe country" (Tsitselikis, 2019, p. 159) after the EU-Turkey agreement, such a possibility would open further litigation alternatives in the future.

3. The absolute character of the prohibition of the violation of Article 3 and the Court's minimum threshold of severity

The Strasbourg Court has consistently reiterated that the prohibition of torture and inhuman or degrading treatment is absolute. This raises the protection of the right to an even higher level since the rights included cannot be subjected to derogation, according to Article 15 ECHR. The meaning of the principle of the absolute protection of the rights of Article 3 is that the two-stage model of the Court's adjudication procedure, the so-called legality test, for seeking whether a restriction of a right is allowed as serving a legitimate aim, is not followed (Smet, 2013, p. 2). This means that no balancing and proportionality of the restriction with the said right is taking place. However, a violation is assumed as far as the minimum threshold of severity is met (Ibid.). The Court has extensively applied the principle in cases of critical living conditions and deportations of asylum seekers.

An exemplary application of the absolute character of the Article's rights by the Court took place in M.S.S. v. Belgium and Greece. Acknowledging the overload of Greece's reception system, which the State also raised in part for disclaiming responsibility, the Court ruled that this could not absolve Greece from its obligations under Article 3 (Leach, 2017, p. 258). The Court referred to the same principle in Gäfgen v. Germany,[44] noting in another paragraph that

44 Gäfgen v. Germany, no. 22978/05, para. 107

exceptions from the rule of the absolute character are not allowed even "in the most difficult circumstances, such as the fight against terrorism and organised crime".[45] The Court deems that poor detention conditions resulting from the financial weakness of the State cannot justify detention conditions contrary to Article 3 ECHR (Leach, 2017, p. 199). Similarly to the Greek context and the case of M.S.S., the Court reiterated in N.H. and Others v. France that *factors arising from an increasing influx of migrants cannot absolve the Contracting States of their obligations under that provision* [Article 3], referring to the principle as "very well-established".[46] For Clayton, however, the Court's diligence to examine whether a violation of the RCD took place in M.S.S. v. Belgium and Greece is nothing more than another form of the (non-permitted) legality test, reducing in a way the absolute character of the right to Article 3 ECHR (Clayton, 2011).

As briefly discussed, the Court has set a threshold to meet, over which the ill-treatment will fall within the scope of Article 3, the so-called minimum level of severity.[47] The severity threshold should be distinct from the threshold of state responsibility and investigation, which relates primarily to Article 2 ECHR and the State's obligation to prevent the violation. The relevant paragraph in the case of Kudla v. Poland sets out eloquently the nature of the threshold of severity as relative and that

> *it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and State of the health of the victim.*[48]

The circumstances and duration of the sustained ill-treatment play a role as well. In Menesheva v. Russia,[49] the fulfilment of the threshold criterion was justified by the victim's age and sex, together with the fact that she was confronted by several male policemen, which made her particularly vulnerable during the several hours of everlasting torture, during which she was beaten up and subjected to violent physical and moral abuse. The above directly suggests that vulnerability plays a role in the required threshold level. However, the nexus between the vulnerability and the lowering of the threshold of severity is unclear. In the case of M.S.S., the Court accepted that asylum seekers, in general, are vulnerable as they are members of a particularly underprivileged and vulnerable population group and that there is a strong

45 Ibid., para. 87
46 N.H. and others v. France, nos 28820/13, 75547/13, 13114/15, para. 157
47 Kudla v. Poland, no. 30210/96, para. 91
48 Ibid.
49 Menesheva v. Russia, no. 59261/00 paras. 61-62

consensus at the international and European level for their need for special protection.[50] However, the Court's case law does not seem consistent on the de facto vulnerability of asylum seekers. Indicatively, in the Thimothawes v. Belgium,[51] where no assessment on the fulfilment of the threshold took place, as it concerned a violation of Article 5(1) ECHR, the Court not only did not accept his factual vulnerability but set a very high standard on the asylum seeker to prove his vulnerability. The Court has established the standard of "beyond reasonable doubt" as the minimum required proof of the allegations of ill-treatment and, thus, of the fulfilment of the threshold criterion. This has been criticised by scholars, particularly in cases of detainees, where the evidence is at often times mainly in the hands of the authorities (Leach, 2017, p. 258). However, for the absolute prohibition of Article 3 to function as such, considerations of proportionality and balancing do not belong to the understanding of the relative nature of the threshold criterion (Smet, 2013, p. 5).

4. Reception conditions-related rights and the ECtHR case law

The ECtHR case law suggests that critical living conditions faced by protection seekers are relevant to the scope of the Article 3 of the Convention. Bringing into the discussion cases against other ECHR signatories facilitates a broader assessment of whether the actual living conditions faced by the alleged victims gave, or not, rise to a breach of Article 3. In this sub-chapter, reference will be made to detention conditions as well, in cases where the Court or the applicants deemed that these interfered with their rights to Article 3 due to the emerging use of the practice of de facto detention in reception centres in Greece.

Being an exploration, as the dissertation title reveals, the following analysis will not lead to an affirmation as to whether Greece systematically treats asylum seekers contrary to Article 3 ECHR. Such an analysis is not feasible as the Court produces particularly contradictory jurisprudence, especially in the case of living conditions-related rights.

50 M.S.S. v. Belgium and Greece, no. 30696/09, para. 251
51 Thimothawes v. Belgium no. 39061/11 para. 79

4.1 Living conditions of asylum seekers both justiciable and potentially relevant to the scope of Article 3 ECHR

Some essential elements of the case of M.S.S. v. Belgium and Greece[52] have been discussed above in an attempt to map the relevant Court's principles and the significance of the judgment in classifying the violation of the reception CEAS provisions as an aggravating factor that has an influential role in assessing a violation of Article 3 ECHR. The Court found that Belgium should have examined in practice whether the applicant would have been treated in conformity with Article 3 in Greece before his transfer, and that neither diplomatic assurances on the treatment of an applicant in the receiving State nor the mere accession to international treaties guaranteeing respect for fundamental rights are in themselves sufficient to ensure adequate protection against the risk of ill-treatment.[53] What matters, is how Greek authorities applied the legislation on asylum in practice.[54]

The judgment of the Grand Chamber becomes very descriptive when it comes to the living conditions faced by M.S.S. when he was in Greece. The Belgian authorities removed the Afghan asylum seeker to Greece, and he alleged to have been subject to treatment prohibited by Article 3 during detention and while living in a park. Upon arrival, he was held in detention, where he did not have access to open air and proper food. On a potential breach of the Convention, while living in a park, the Court disclaimed that Article 3 entails general obligations to states to provide everyone with a home or asylum seekers with financial assistance.[55] At the same time, the Court considered that the obligation to provide decent material conditions and accommodation to asylum seekers has entered into positive law since the adoption of the initial RCD by Greece,[56] and went beyond and assessed whether situations of extreme material poverty can raise issues under Article 3. Reiterating the general rule for the non-exclusion of the possibility to recognise State responsibility in cases of state indifference towards persons with significant dependence on State support,[57] implying that M.S.S. might have fallen into this category due to his vulnerability as an asylum seeker,[58] the Court examined the subject matter of the case: The credibility of the information around his situation of months in extreme poverty without food and hygiene conditions in insecurity and fear of attacks and

52 M.S.S. v. Belgium and Greece, no. 30696/09
53 Ibid., para. 353, 354
54 Ibid., para. 359
55 Ibid., para. 249
56 Ibid., para. 250
57 Ibid., para. 253
58 Ibid., para. 251

robberies was not questioned by the Court since his description coincided with time and place to the situation of a large number of asylum seekers with the same profile.[59] Refuting the Greek government's argument for his personal responsibility for his condition as one of little weight, the Court found that official figures from that period suggest that the reception system could not accommodate the demand for more places. At the same time, adult male asylum seekers had at this time point virtually no chance of getting a place, ending finally in parks or disused buildings.[60]

As an integral part of the judgment, and in order to justify the granting of non-pecuniary compensation and assess the fulfilment of the threshold of severity criterion, the Court concluded that his treatment aroused in him feelings of fear, anguish and inferiority, capable of inducing desperation,[61] to find that there has been a violation of Articles 3 and 13 ECHR by Greece and Belgium. Some scholars took the case of M.S.S. optimistically as the starting point for extending the provisions to destitute rejected asylum applicants who fall outside the ambit of the Reception Directive (Clayton, 2011, p. 766).

Numerous appeals to the Court against the deportation of asylum seekers to EU countries with poor reception conditions standards have been lodged. From a legal standpoint, such cases are interesting, as the Court tries to find a thin line between the margin of appreciation principle and to indicating the implementation of EU law for alleviating a violation of the Convention. Both in the case of M.S.S.[62] and of Tarakhel v. Switzerland,[63] the Court urged that the states had the available means to not return the applicants, rejecting their argument for a legal obligation to transfer the applicants under Dublin, raising the application of the so-called "sovereignty" clause found in Article 3(2) Dublin Regulation. The case of Tarakhel v. Switzerland explicitly concerned the return of an applicant from Switzerland to Italy, where the Court found a breach of Article 3 as well. The Court assessed, inter alia, the lack of capacity in the reception facilities,[64] finding the reception system unable to tackle the entire demand for accommodation and the actual reception conditions at the material time of the judgment,[65] referring to situations of "lack of privacy, insalubrious or violent conditions", and separation

59 Ibid., paras. 254, 255
60 Ibid., paras. 257-259
61 Ibid., paras. 263, 264
62 Ibid., paras. 339, 340
63 Tarakhel v. Switzerland, no. 29217/12, para. 89
64 Ibid., paras. 108–110.
65 Ibid., paras. 111–115.

of families.[66] On the latter, referring to the case of M.S.S., the Court stated that the "special protection" asylum seekers need is particularly important when the persons concerned are children, even when they are accompanied by their parents.[67]

The case of Khlaifia and Others v. Italy[68] is a case where key issues of overcrowding in reception and detention centres presented in previous case law were further developed. The case concerned Tunisian applicants who reached Italy in 2011 and were taken to the island of Lampedusa. Their complaint for a violation of Article 3 was not accepted, in contrast to this of Article 5(1), and the judgment includes insightful conclusions. Overcrowding of a certain level and the lack of space in an institution may be critical factors in assessing the conformity of a given situation with Article 3 and may, in some cases, suffice itself to entail a violation of Article 3.[69] The Court made reference to the general CPT rule of 4 sq. m. of personal space, pointing to its stricter rule of 3 sq. m. of floor surface per detainee as the minimum standard in multi-occupancy accommodation, while the existence, or lack thereof, of specific conditions, such as private toilets, ventilation, provision of basic hygiene, can entail the relativisation of the rule.[70] Although the Grand Chamber was not able to determine the violation of the Convention, it found notable deficiencies in Italy's reception system, such as long waiting lists for accessing the centres, poor living conditions and insufficient space.[71]

In the case of Ilias and Ahmed v. Hungary,[72] the Court also went into examining the proper spacing and sanitation conditions of the centre to conclude on the fulfilment of the threshold of severity criterion. The Grand Chamber referred to the Chamber's analysis of the physical conditions faced by the applicants. It should be noted that both the ECtHR and the CJEU have dealt with the legality, conditions, and classification of the situation at the Röszke transit zone centre on the Hungarian-Serbian border as detention, where the applicants were held. In the present case, the applicants were confined for 23 days in an enclosed area of 110 sq. m.. They were provided with a 13 sq. m. room in a container suited to fit five persons, with sanitary conditions provided outside the room separately.[73] The CPT had gained a favourable impression of the healthcare facilities, and the Court noted that it lacked an indication of poor

66 Ibid., paras. 116–122.
67 Ibid., para. 119
68 Khlaifia and Others v. Italy, no 16483/12
69 Ibid., paras. 164, 165
70 Ibid., paras. 165, 167
71 Ibid., para. 172
72 Ilias and Ahmed v. Hungary, 14 March 2017, no. 47287/15
73 Ibid., para. 85

material conditions.[74] The Court concluded that the satisfactory material conditions, along with the relatively short time of their stay, were not enough to satisfy the threshold of severity criterion of Article 3 and found no violation thereof; at the same time, the Court saw the lack of legal basis for their detention as able to have contributed to their feeling of inferiority, but that this is an inevitable element of the suffering and humiliation involved in custodial measures, but not itself entailing a violation of Article 3.[75]

In the case of N.H. and Others v. France[76] the Court took a similar position to that in the case of the M.S.S.. The situation resembled the situation in Greece where, as analysed in Chapter II.1, asylum seekers have to sustain more extended periods without material reception conditions due to the delays in registration arising from deficiencies of the Greek Asylum Service and due to the mistaken interpretation from Greece of the point in time at which an asylum application is considered as lodged.[77] The three male, unmarried applicants aged between 20 and 40 years old, in good health and with no dependent children[78] claimed that they had not been afforded access to in-kind and financial support and were forced to sleep rough in inhuman and degrading conditions for several months.[79] They submitted that they had lived for more than nine months under bridges, in tents[80] and at riverbanks, in extreme hardship, although they had requested multiple times for accommodation and for their asylum claims to be lodged. Some were assaulted and robbed, and they feared arrests and deportation.

Balancing between the cases of M.S.S. and Khlaifia and Others, the Court reiterated the absolute character of Article 3 but that it would be artificial to examine the events before considering the general context within which they occurred.[81] While, similarly to the case of M.S.S., the Court accepted that no general duty to provide financial aid is derived from Article 3, the issue became relevant to the scope of the Article as the provision of material reception conditions had entered national law, and thus the Court is competent to examine violations of EU rules insofar as they may have infringed rights of the Convention.[82] Making clear that it does so only to assess the impact on the applicant's situation, the Court examined the average asylum registration time (3-5 months), which for applicants N.H. and K.T. was 95 and 131

74 Ibid., para. 86
75 Ibid., paras. 88-90
76 N.H and Others v. France, no. 28820/13
77 See Chapter II.1
78 Ibid., para. 166
79 Ibid., paras. 1, 174
80 Ibid., para. 177
81 Ibid., para. 157
82 Ibid., para. 161, and para. 166 read in reverse

days, respectively.[83] During that time, the applicants could not prove their status, creating a reasonable fear of being expelled, while the fact that they were not allowed to work, according to domestic law, made them wholly dependent on the provisions of the State.[84] The Court accepted the applicants' statements about their difficulties in obtaining food, a place to wash and that they depended on the generosity of private individuals and associations.[85] Finally, the Court found a causal link between the above conditions to their feelings of inferiority, anguish and fear and recognised four of the applicants as victims of degrading treatment.

Although the scope of this analysis is limited to the case law of the ECtHR, reference will exceptionally be made to a very indicative CJEU case mentioned in Chapter I. Namely, in Federaal agentschap voor de opvang van asielzoekers v. Selver *Saciri* and Others,[86] the Court attempted to give tangible meaning to the financial form of material reception conditions, according to the recast RCD. This case is particularly relevant to the Greek context and the cessation of financial assistance to those outside reception facilities discussed in Chapter II.3, in that the Saciri family had requested and not provided accommodation in Belgium. At the same time, state agencies refused to give them financial assistance, too, with the argument that they were not staying in state reception centres. The Brussels Higher Labour Court appealed against a subsequent decision from an agency that decided to grant financial aid indeed and sought clarification from the CJEU. Specifically, the Court pointed out that when a Member State has opted to grant this form of material conditions, these allowances must be provided from the time the asylum application is made and must ensure that the total amount is sufficient to ensure a dignified standard of living adequate for the health, housing, and special needs of the applicants and that the saturation of the reception networks cannot justify a derogation.[87]

On a contradicting judgment to this of the M.S.S. and N.H and Others, where material poverty of asylum seekers -a socio-economic-related condition for the present discussion- played a crucial role in the Court's assessment, in N v. United Kingdom,[88] the Court deemed that the protection of the right to Article 3 does not entail the obligation to states to continue providing medical aid.[89] The asylum applicant from Uganda was HIV-positive and in need of antiretroviral therapy. The judgment has been criticised as failing to apply the usual Article 3

83 Ibid., paras. 169, 170
84 Ibid., paras. 167, 172
85 Ibid., para. 179
86 Federaal agentschap voor de opvang van asielzoekers v. Selver Saciri and Others, no. C-79/13
87 Ibid., para. 46, 50
88 N. v. the United Kingdom, no 26565/05
89 Ibid., para. 49

approach, introducing a balancing approach instead, as it focuses excessively on the economic implications of such an obligation (Clayton, 2011, pp. 768–769). In contrast, the Court took another position in the case of D. v. UK.[90] D. appealed against his removal to his country of origin St. Kitts as he was terminally ill, and any abrupt withdrawal from sophisticated treatment facilities would entail dramatic consequences for his health and life.[91] Explaining that aliens who are subject to expulsion cannot claim any entitlement to remain in order to continue to benefit from medical, social or other forms of assistance, the Court decided positively, as the execution of his decision of removal would lead to a violation of Article 3, given the compelling humanitarian considerations at stake.[92]

At the same time, the level of evidence of poor living conditions plays a crucial role in properly substantiating a violation. In the case of Samatar Jamaa and Others v. Italy[93] the Court based its assessment that the applicants were subjected to particularly precarious conditions as a result of their irregular situation,[94] on UNHCR's reports, and the "mediocre" living conditions in "overcrowding and inadequate sanitary facilities" which were exacerbated by push-back operations.[95] These conditions led the Court to, inter alia, recognise a violation of the applicant's rights to Article 3 by Italy. In the Sharifi and others v. Italy and Greece,[96] it was the absence of such evidence of the duration and the conditions in detention centres that played a decisive role in rendering the claim of the violation of Article 3 as manifestly unfounded, as it was impossible for the Court to make an assessment of the conditions to which the applicants were subjected.[97]

4.2 Recently litigated cases of critical living conditions in Greece

The worsening of the living conditions faced by protection seekers in Greece in recent years and after the implementation of the hotspot approach is reflected in the increase of pending cases before the Strasbourg Court. ECRE warned of the discouragement of litigation actors to continue litigating cases before the ECtHR due to the poor state compliance with the judgments

90 D. v. the United Kingdom, no. 30240/96
91 Ibid., paras. 51,52
92 Ibid., para. 54
93 Hirsi Jamaa and Others v. Italy (Application No. 27765/09).
94 Ibid., para. 125
95 Ibid., para. 108
96 Sharifi and others v. Italy and Greece, no. 16643/09
97 Ibid., para. 189

of successfully litigated cases and due to the Court's emerging reluctance to condemn precarious conditions in some cases (ECRE, 2021b, p. 37).

The recent case of H.A. and Others v. Greece,[98] concerned the conditions of the unaccompanied minor applicants in Border Guard and police stations and the safe zone of the camp of Diavata outside Thessaloniki. The nine applicants from Syria, Iraq and Morocco were held in protective custody in 2016 between 21 and 33 days and claimed that all procedures were undertaken without consideration of their age. They claimed to have been ill-treated by police officers and that their requests to see a doctor and consult a lawyer were not facilitated. The Court reiterated its general rule that periods of detention in police stations between one and three months are principally contrary to Article 3 due to the very nature of the police stations as intended to hold persons for short periods.[99] The Court found that the conditions in the police stations, which the applicants described as appalling, with having to sleep on the floor with dirty blankets, with poor-quality food, in overcrowded, poorly ventilated and lit cells, were in alignment with the findings of the Greek Ombudsman and the CPT.[100] The Court found a violation of Article 3 in respect of the conditions in police stations but not in respect of those in the Diavata safe zone. Repeating its controversial[101] the statement, as in the case of Khlaifia and Others v. Italy, of having to also take into consideration the unprecedented migration and humanitarian crisis and the overburdened reception and accommodation system for unaccompanied minors in Greece during the material time of 2015-2016, the Court found no act or omission by the state contrary to Article 3.[102] The Court repeated that the centre was an open structure where applicants could enter and exit at will and that the intervention of UNHCR did not express any criticism of the conditions.[103]

The living conditions in the RIC of Samos in 2019 were the subject matter of the very recent judgment A.D. v. Greece.[104] The case concerned a six-month pregnant asylum seeker who arrived in Samos in August 2019 and resided in the Samos RIC for approximately four months. The Court had accepted the applicant's interim measures application, and she complained about living in a tent outside the RIC, without access to sanitary conditions and having to witness

98 H.A. and others v. Greece, no. 19951/16
99 Ibid., para. 166
100 Ibid., paras. 167-170
101 The approach was criticised as seemingly inserting a legality test in the otherwise absolute prohibition of the violation of Article 3.
102 H.A. and others v. Greece, no. 19951/16, paras. 173-175
103 Ibid.
104 A.D. v. Greece, no. 55363/19

violent clashes.[105] Although the Greek government stated that she had not sustained any abuse during her stay in the RIC and that the applicant's housing conditions became quickly adequate, even though accepting that the accommodation system was overwhelmed, the Court based its judgment mainly on reports of organisations and third-party interveners. UNHCR and Defence for Children International found the centre falling short of medical support, hygiene and sanitation, with a lack of designated places for persons with specific needs.[106] Most of the actors mentioned above described the centre and its surrounding areas as overcrowded, without control by the authorities, with several incidents of violent confrontations from traffickers and other organised groups, where families had to chip away at rocks to make space to set up makeshift shelters.[107] The Court disregarded the government's argument for the non-exhaustion of domestic legal remedies and found a violation of Article 3, as the reception conditions in the RIC and the informal settlement area were incompatible with the right to an adequate standard of living.[108]

Numerous applications concerning the living conditions of asylum applicants in Greece in 2019 and 2020 have been lodged and are pending before the Strasbourg Court. Conclusions cannot be drawn so far, but the description of the cases and the questions of the Court to the parties in cases where applicants complained of degrading and inhumane treatment are indicative of the situation. From the cases where the Court had applied Rule 39 in respect of the applicants, Z.H. and M.M. against Greece[109] concerns a three-month pregnant woman with her three-year-old daughter who complained that, even though they had expressed their willingness for asylum, they lived in the streets for months without accommodation and food. The case of A.B. against Greece[110] concerned also a pregnant woman at an advanced stage who stayed in the Pyli hotspot on the island of Kos. The case of N.A. against Greece[111] concerns one of eight joined cases of pregnant women at the time of the lodging of the application with the Court who were living in the forest outside the hotspot of Samos or in containers inside the RIC. In the -joined with seven other cases- case of A.R. against Greece,[112] the applicants complained about their living conditions in the hotspots of Kos, Samos, Chios, and Lesvos, claiming that they suffered from health problems. The Court asked the parties whether the applicants' living conditions

105 Ibid., para. 5
106 Ibid., paras. 13-16
107 Ibid., paras 17-20
108 Ibid., paras. 35-37
109 Z.H. and M.M. v. Greece, no. 63074/19
110 A.B. v. Greece, no. 19614/20
111 N.A. v. Greece, no. 11216/20
112 A.R. v. Greece, no. 59841/19

constituted inhuman and degrading treatment with the meaning of Article 3 and whether the applicants were subjected to medical monitoring and treatment appropriate to their State of health.

4.3 Undignified treatment stemming from the disparities in the protection of beneficiaries of subsidiary protection both justiciable and unjustified

Most cases referenced above concerned applicants and beneficiaries of international or subsidiary protection. The Strasbourg Court accepted that issues of material poverty and critical living conditions of protection seekers could fall within the scope of treatment contrary to Article 3, regardless of the status they have applied for or been granted. At the same time, the non-implementation of CEAS rules that have entered positive law is an aggravating factor. However, disparities in the EU between the rights and freedoms of applicants and beneficiaries of subsidiary protection in comparison to those of applicants and beneficiaries of international protection remain, creating potentially treatment conditions falling under the scope of a violation of Article 3 ECHR.

The legislative disparities between the two statuses have historical reasons and stem from a false presumption. Although the initial scope of the CEAS was the creation of a uniform asylum status, the initial and recast Qualification Directives introduced and maintained two different protection regimes. They have permitted states to afford less favourable standards and entitlements to beneficiaries of subsidiary status.[113] It is argued that the legislative differences derive from the general assumption of a shorter duration of the status and needs of the subsidiary protection due to the temporary nature of the grounds justifying it (Salomon, 2021, p. 608), namely the poor security situations or armed conflicts. This assumption was also reflected in the Commission's proposal for the recast Qualification Directive (Ibid., p. 609). It was later dismissed in its 2009 proposal for the recast Directive, where limitations were proposed to be removed, as unjustified.[114]

In practice, the two statuses differ in a few sets of rights, such as the type and minimum duration of travel documents and residence permits, and the initial exclusion of beneficiaries of subsidiary protection from the scope of the more favourable provisions of the Family Reunification Directive that apply to refugees (Ibid., p. 641).

113 See, for example, Recitals 14, and 45 of recast Qualification Directive
114 EU Commission, Proposal for a Qualification Directive 2011

The relative to this thesis distinction in the rights of beneficiaries of subsidiary protection concerns the treatment in relation to their access to the labour market and the freedom of movement and social welfare. The different treatment in this regard has gradually been diluted. However, it is noteworthy that beneficiaries of subsidiary status in Belgium, for instance, required extra formalities to access the labour market, compared to refugees who could access it without requiring a work permit (ECRE, 2021b, p. 23). The differentiation was abolished in 2019, and beneficiaries have the right to work de jure, based on their residence permit, except for those willing to work as an entrepreneur (ECRE, 2021c, p. 159). Similarly, Switzerland required, until recently, persons with temporary admission -the equivalent type of status in Switzerland- an employment authorisation (Ibid.). On the freedom of movement and social welfare, Austria used the discretion left to States by Article 29(2) of the Recast Qualification Directive. It applied differential treatment concerning the level of social assistance among the two statuses. This differentiation remains, and holders of subsidiary protection status have only the right to Basic Care. This small benefit cannot ensure coverage of a person's basic needs (ECRE, 2021d, p. 156), with some federal provinces refraining from providing this minimum benefit at all, providing, in contrast, only 'core benefits' (Ibid.). This was the subject matter of a complaint from a beneficiary of subsidiary protection heard before the Austrian Constitutional Court in 2017.[115] The Court went from reiterating the presumption that the status of subsidiary protection is of a provisional nature,[116] to decide that national legislators have the leeway to choose to grant beneficiaries of subsidiary protection benefits only to the extent absolutely necessary due to the provisional nature of their temporary right of residence.[117] Moreover, Germany, Austria and Switzerland were either planning to or used to implement a restriction of freedom to those holding subsidiary status in need of social assistance (ECRE, 2021b, p. 23). The CJEU was called to answer preliminary questions in similar cases on the conformity of national law to the Qualification Directive and referred to the uniform status of protection (Salomon, 2021, p. 624).

This sub-chapter does not seek to add any particular argument to the discussion since the few existing yet gradually reduced differences between the two statuses concern primarily rights related only to a lesser degree to rights relevant to reception conditions,[118] as discussed above,

115 VfGH, Decision E 3297/2016, 7 July 2017
116 Ibid., para. 2.2.3.2.
117 Ibid., para. 2.2.4.
118 The scope of the recast RCD was extended to include applicants of subsidiary protection, according to Recital 13 and Article 2(a).

and are even less evident in the territorial scope of this study, Greece, where there is seemingly equal treatment concerning the provision of material reception conditions. The discussion on the unnecessary and admittedly unjustified coexistence of an "inferior" protection regime, compared to that of the refugee status, is beyond the scope of the present thesis. However, this study shows that, whenever the unequal treatment of applicants and beneficiaries of subsidiary protection leads to critical living conditions and undignified treatment in breach of Article 3 ECHR, litigation before the ECtHR will inevitably continue to be the legal avenue to be sought, as the Court has developed a solid jurisprudence where no differentiation is made between the two statuses, as discussed in Chapter III.4.

Nevertheless, litigation before the ECtHR has been used effectively also in cases of expulsion of beneficiaries of subsidiary protection due to the very identical concept of the protection offered to persons fearing serious harm, the subsidiary status, and Article 3 ECHR. The definition of the subsidiary protection in Articles 2(f) and 15 of the Qualification Directive actually borrows the Strasbourg Court's risk assessment criteria for non-removal cases, the existence of substantial grounds to believe that there is a real risk of serious harm (Ginés Martín, 2021, p. 20). It is argued that the Court took a standalone position in this regard, in lack of a political incentive to harmonise the legal situation of de facto non-removable refugees fully, and developed a significant body of nonrefoulement case law, which has then itself shaped the subsidiary protection status in the EU (Salomon, 2021, p. 614). The question of whether the protection afforded by Article 15(c) of the Qualification Directive and Article 3 ECHR is equivalent was the subject matter in the case of Sufi and Elmi v. the United Kingdom.[119] The Court noted that Article 3 may offer comparable protection with the one of the Directive, and the threshold set by both provisions may be met, in exceptional circumstances, in consequence of a situation of general violence of great intensity.[120]

119 Sufi and Elmi v. the United Kingdom, nos. 8319/07 and 11339/07
120 Ibid., para. 226

Conclusions

Greece faced an unprecedented reception crisis in 2015. The situation of asylum seekers in the country has not drastically improved since then, despite Greece's efforts to transpose the recast Reception Conditions Directive into the domestic legal order, with a significant delay, and the EU's funding of a reception acquis based on the infamous hotspot approach. Implementing accelerated border procedures with the simultaneous restriction of movement of asylum seekers in hotspots exacerbated the critical living conditions, especially for the vulnerable. On the Greek mainland, conditions were similarly appalling. Most asylum seekers were travelling unnoticed from the Evros border crossing to urban centres, where administrative barriers, and the interpretation of the time point when the asylum application is considered registered by Greek authorities, rendered them ineligible for material assistance. Litigation before the European Court of Human Rights has proven efficient in raising critical living conditions that result in undignified treatment. At the same time, non-compliance with EU secondary law has often played a decisive role in the Court's assessment (i.e., M.S.S. v Belgium and Greece, N.H. and Others v France). As the Court increasingly indicates positive obligations upon States for similar cases due to its emerging constitutional role, easing off its deferential approach to State sovereignty and the afforded margin of appreciation, it becomes more evident that poor reception conditions fall under the scope of Article 3 ECHR.

The research aim has been to assess the level of Greece's compliance with the CEAS rules on reception, especially considering the specific state duties to provide asylum seekers with access to shelter and healthcare, and to show the extent to which critical living conditions of asylum seekers in Greece are relevant under the realm of the Strasbourg Court. To support this thesis's first theme, the analysis focused on the specific material reception conditions provisions of the CEAS recast RCD and their connection to international legal instruments, as the analysis suggested that the relevant provisions on reception had not been developed in a legal vacuum but in line with the right to human dignity. Afterwards, to assess the level of Greece's compliance with the provisions, factual research was conducted on the living conditions in various forms of accommodation and in administrative barriers to the access to healthcare. For the second thesis argument, a systematic ECtHR case law analysis followed to determine the Court's standards in cases where litigants appealed against critical living conditions.

The CEAS recast Reception Conditions Directive pushed for increased harmonization of protection standards within the EU and extended its scope to include applicants and beneficiaries of subsidiary protection. Even though it was appraised as ensuring the centrality

of the Refugee Convention, the analysis indicates that it falls short of establishing common standards on reception. On the one hand, the Directive left a wide margin of interpretative discretion to the Member States. Putting the harmonization of the procedures as a priority at the expense of protection, the recast RCD had even provided exhaustive yet broad grounds for the detention of asylum seekers. On the other, the focus was laid on the establishment of "minimum" and "common" standards, leaving aside in most instances the opportunity for States to provide "most favourable" ones, and questions were raised as to whether the implementation of the Directive finally entailed a lowering of the provided standards across the EU. A field where the margin of discretion to States poses further compatibility issues to primary human rights legal instruments is the cessation of material reception conditions. The analysis in Chapter I has suggested that the permitted rules on the reduction and withdrawal of the reception conditions might lead to sub-standard treatment, effectively going against its own scope.

Greece has transposed the recast Directive with a great delay but has done so meticulously, often inserting the provisions word by word in domestic legislation. Even though issues of correct transposition exist, it is instead the implementation in practice that deviates from the set standards in Greece. In II.1., the analysis focused on the time point when the asylum application is considered as submitted. By wrongly interpreting the law provisions -inserting in practice a written legal precondition to the asylum application- Greece has rendered requests for material assistance inadmissible, deeming that the persons have not yet fallen under the ambit of the relevant reception provisions. The thesis argument in Chapter II.2.2. that the Fylakio RIC was at most times overburdened and did not guarantee an asylum registration, resulting in persons leaving from the Evros border crossing towards urban centres, where material support was unavailable due to the above interpretation of the time point of the asylum application, is supported by empirical and publicly available data.

While the law provides different forms and levels of material reception conditions, the Reception and Identification Centers, the Closed Controlled Access Centers and the ESTIA scheme have been the dominant form of housing for asylum seekers in Greece. Owing to the implementation of the hotspot approach and the restriction of movement of newcomers within the Eastern Aegean Islands' hotspots, the critical living conditions in these facilities were exacerbated. Drawing conclusions from multidisciplinary studies, the second Chapter presented an appalling reality on the ground. Adverse weather conditions, overcrowded tents and rub halls in the RIC of Moria seem to have had an outstanding share in the deterioration of

the mental health of its residents. The discussion depicts an uncontrolled situation where the safety and physical integrity of women and gender-based violence survivors were at risk, and children lacked proper access to healthcare. The situation was compared to international standards and scales on gender-based violence, sanitation, and torture. The second Chapter discussed legitimate criticism points towards NGOs. Even though admittedly spatially unbalanced, the NGOs were tasked with delivering most of the State duties under increased pressure due to the securitisation approach. The conditions in Samos CCAC were researched, as this form of accommodation will soon dominate all Eastern Aegean Islands. From a legal standpoint, the situation in Samos CCAC poses different concerns than those of Moria RIC, but equally problematic. UN human rights experts have described the Center as a securitised and oppressive environment as, along the "Nato-type" fence and the biometric modalities for entering and exiting the site, security cameras are tracking the behaviour of the residents with specially developed algorithms.

On the contrary, the ESTIA accommodation scheme was shown to serve the scope of improving the living conditions of vulnerable protection seekers. Even though the programme was criticized as failing to provide for an exit strategy and a smooth transition to social integration, the study focused on a different legitimate criticism the programme received by scholars; splitting asylum seekers into vulnerable and non-vulnerable for determining the admission criteria, the programme seemed to provide legitimization to the other forms of accommodation, where living conditions were dire. With the exception of the ESTIA programme, Greece generally did not comply with the minimum reception standards of the CEAS. The way the country handled the closure of the ESTIA, the transition of the Cash assistance to national authorities, and the cessation of the financial assistance to those staying outside official accommodation strengthens the argument. An analysis of the legality issues of the termination of the above provisions is found in Chapter II. 3 and 4, and continues with problems in the handover of Cash assistance that resulted in a food crisis in the camps. Similarly, Chapter II. 5 discusses the level of healthcare Member States are obliged to afford asylum seekers and how these materialized in Greece, where good practices regarding access to healthcare have been followed since 2016, despite the magnitude of the economic crisis in state expenditure in this field. However, administrative barriers have hindered the access of asylum seekers to adequate healthcare in recent years, and the analysis of the technical errors in the issuance of the PAAYPA provisional healthcare number and the residence permits (ADET) suggests that the authorities were either unwilling or unable to provide adequate solutions.

The analysis of the Strasbourg Court case law suggested that the socio-economic type of rights of asylum seekers to shelter and healthcare are directly relevant to the scope of the Convention's Article 3. However, the Court has a firm stance on the margin of appreciation afforded to States. Different factors play a decisive role in the Court's assessment: The degree of dependence of the individual by the State, the field of interfering policy and the consensus for an issue at a Council of Europe level are factors determining the weight the Court gives to the State's assessment on the adopted restriction of a right. However, the Court's reluctance to interfere with national policies and create socio-economic sub-rights in the case of M.S.S. v Belgium and Greece did not restrict the Court from finding that the threshold of severity had been met in this case. This is nevertheless justified by the Court's own rules, namely that a legality test is not permitted in cases of a violation of Article 3 due to the absolute and non-derogable nature of the rights included.

The cases of M.S.S. and of N.H. and others v France make clear that the CEAS standards are especially relevant in the litigation against critical living conditions, as the Court found the States directly responsible for the situation of the applicants, as the recast RCD provisions have entered into positive law. Their violation was an aggravated factor when assessing the State's conduct. Nevertheless, it has been shown that the existence of the CEAS is not permitted to falsely act protectively upon States when they return asylum seekers to other Member States under Dublin Regulation procedures. The mere adoption of the CEAS by a Member State does not ensure that the conditions have been ameliorated. Going against its rule of the "equivalent protection", namely that fundamental ECHR rights are deemed secured insofar as a Member State has adopted relevant EU law, the Court stated in the cases of M.S.S. and of Tarakhel v Switzerland that the States should have examined the conditions in ground and have raised the application of the "sovereignty" clause before returning the applicants. Not only socio-economic related rights but also critical reception conditions of asylum seekers are justiciable before the ECtHR. This is further evident by the expansion of the Court's case law in this regard. Relevant cases are increasingly granted priority and referred to the Grand Chamber, whereas the Court often goes into the ratione materiae of the case, examining, for instance, issues of overcrowding in Greek hotspots and the consequences of delays in the asylum registrations.

This thesis seeks to contribute to the discussion on the breadth of CEAS standards on reception, the actual living conditions in Greece, and the justiciability of critical living conditions before the ECtHR. Monitoring the implementation of the CEAS in different Member States should

continue. The followed hotspot approach in Greece and the implementation of accelerated border procedures have served as a blueprint for policymakers at an EU level on the ongoing negotiations for the new Pact on Migration and Asylum. Having an understanding that implementing such policies had devastating consequences in the lives of protection seekers in Greece, human rights defenders will be able to design litigation strategies that tackle future challenges.

Acknowledgments

Completing this thesis was a challenging and tedious task. I want to express my sincere gratitude to my supervisor, Professor Konstantinos Tsitselikis, for guiding, supporting, and being patient with me throughout the process. Additionally, I am grateful for the support of my significant other and of my parents, who provided me continuous encouragement in completing this dissertation.

References

Afouxenidis, A., Petrou, M., Kandylis, G., Tramountanis, A., & Giannaki, D. (2017). Dealing with a Humanitarian Crisis: Refugees on the Eastern EU Border of the Island of Lesvos. *Journal of Applied Security Research*, *12*(1), 7–39. https://doi.org/10.1080/19361610.2017.1228023

Amnesty International. (2020). *Resuscitation required. The Greek health system after a decade of austerity.* Available at: https://www.amnesty.org/en/documents/eur25/2176/2020/en/ [accessed 13 April 2023]

Battjes, H. (2006). "Bibliography". In *European Asylum Law and International Law*. Leiden, The Netherlands: Brill | Nijhoff. doi: https://doi.org/10.1163/ej.9789004150874.i-689.81

Bohnet, H., & Rüegger, S. (2021). Refugees and Covid-19: Beyond Health Risks to Insecurity. *Swiss Political Science Review*, *27*(2), 353–368. https://doi.org/10.1111/spsr.12466

Clayton, G. (2011). Asylum Seekers in Europe: M.S.S. v. Belgium and Greece. *Human Rights Law Review*, *11*(4), 758–773. https://doi.org/10.1093/hrlr/ngr037

Costello, C. (2012). Courting Access to Asylum in Europe: Recent Supranational Jurisprudence Explored. *Human Rights Law Review*, *12*(2), 287–339. https://doi.org/10.1093/hrlr/ngs011

Diotima Center for Gender Rights and Equality. (2019). *Accessibility and barriers to Gender-Based Violence Services for refugee and migrant girls, boys, women and men in Greece. A*vailable at: https://diotima.org.gr/en/final-report-research-on-accessibility-and-barriers-to-gender-based-violence-services-for-refugee-and-migrant-girls-boys-women-and-men-in-greece/ [accessed 13 April 2023]

Dupré, C. (2013). *Human Dignity in Europe: A Foundational Constitutional Principle.* European Public Law, Vol. 19, 324-325. https://doi.org/10.54648/euro2013020

Equal Rights Beyond Borders (ERBB) et al. (2022). *The state of the border procedure on the Greek islands. Available at: https://directus.equal-rights.org/assets/91a1b04f-f718-444f-b9bb-3582b4bb72a8.pdf [accessed 13 April 2023]*

European Commission. (2007). *Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.* Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003L0009 [accessed 13 April 2023]

European Council on Refugees and Exiles (2021b) *Asylum in Greece: A situation beyond judicial control? ECRE's assessment of opportunities for and obstacles to the use of legal challenges to support compliance with EU asylum law in Greece*, *European Country of Origin Information Network*. Available at: https://www.ecoi.net/en/document/2053842.html (Accessed: May 5, 2023).

European Council on Refugees and Exiles (2021c) *Country report: Belgium 2021 Update* Asylum Information Database. Available at: https://asylumineurope.org/wp-content/uploads/2022/04/AIDA-BE_2021update.pdf (Accessed: May 5, 2023)

European Council on Refugees and Exiles (2021d) *Country report: Austria 2021 Update* Asylum Information Database. Available at: https://asylumineurope.org/reports/country/austria/ (Accessed: May 5, 2023)

European Council on Refugees and Exiles (ECRE). *(*2015) *Information note on the recast reception conditions directive, 4-32. A*vailable at: https://ecre.org/ecre-information-note-on-the-recast-reception-conditions-directive/ [accessed 13 April 2023]

European Council on Refugees and Exiles (ECRE). (2015b) *Reception and Detention Conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU*. Available at: https://www.refworld.org/pdfid/5506a3d44.pdf [accessed 13 April 2023]

European Council on Refugees and Exiles (ECRE). (2022). *Forms and levels of material reception conditions.* Available at: https://asylumineurope.org/reports/country/turkiye/reception-conditions/access-and-forms-reception-conditions/forms-and-levels-material-reception-conditions/ [accessed 13 April 2023]

Ginés Martín, D. (2021). In Limbo: Divergent Conceptualisations of Ill-treatment by European Courts and the Creation of Non-removable Migrants [Text/html,PDF]. *European Papers - A Journal on Law and Integration*, *2021 6*, 11731192. https://doi.org/10.15166/2499-8249/518

Greek Refugee Council (GCR). (2020). *Submission of the Greek Council for refugees to the committee of ministers of the Council of Europe* concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08). Available at: https://www.gcr.gr/media/k2/attachments/SUBMISSION_OF_THE_GREEK_COUNCIL_FOR_REFUGEES_2020.pdf [accessed 13 April 2023]

Heinrich Böll Stiftung (HBS). (2021). Προστασία σε συνθήκες επισφάλειας. Available at: https://gr.boell.org/el/2021/04/05/prostasia-se-synthikes-episfaleias [accessed 13 April 2023]

Human Rights Watch (HRW). (2019). *Greece: Camp Conditions Endanger Women, Girls Asylum Seekers Lack Safe Access to Food, Water, Health Care.* Available at: https://www.hrw.org/news/2019/12/04/greece-camp-conditions-endanger-women-girls [accessed 13 April 2023]

Human Rights Watch. (2018). *Greece: Inhumane Conditions at Land Border. Pregnant Women, Others 'At-Risk' Lack Health Care, Support.* Available at: https://www.hrw.org/news/2018/07/27/greece-inhumane-conditions-land-border [accessed 13 April 2023]

Inter-Agency Standing Committee (IASC). (2015). *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action.* Available at:

https://gbvguidelines.org/wp/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf [accessed 13 April 2023]

International Organization for Migration (IOM). (2016). *IOM Counts Latest Mediterranean Arrivals in 2016.* Available at: https://www.iom.int/news/iom-counts-latest-mediterranean-arrivals-2016 [accessed 13 April 2023]

International Rescue Committee. (2021). *Joint open letter: Denying food - instead of receiving protection people go hungry on EU soil.* Available at: https://www.rescue.org/eu/press-release/joint-open-letter-denying-food-instead-receiving-protection-people-go-hungry-eu-soil [accessed 13 April 2023]

Jones, J. (2012). Human Dignity in the EU Charter of Fundamental Rights and its Interpretation Before the European Court of Justice. *Liverpool Law Review*, *33*(3), 281–300. https://doi.org/10.1007/s10991-012-9121-9

Korhonen, K. E. (2020). *Sanitation in Moria: The Sphere minimum standards and sustainability in a protracted crisis*. Retrieved from http://urn.kb.se/resolve?urn=urn:nbn:se:uu:diva-414595

Kourachanis, N. (2019). From camps to social integration? Social housing interventions for asylum seekers in Greece. *International Journal of Sociology and Social Policy*, *39*(3/4), 221–234. https://doi.org/10.1108/IJSSP-08-2018-0130

Kourachanis, N. (2022). *Implementing Refugee Integration Policies in a Transit Country: The HELIOS Project in Greece*. *European Journal of Homelessness 16(1): 273-292*

Lavrysen, L. (2012). European asylum law and the ECHR: An uneasy coexistence. *Goettingen Journal of International Law*. https://doi.org/10.3249/1868-1581-4-1-LAVRYSEN

Leach, P. (2017) *Taking a case to the European Court of Human Rights Paperback - Philip Leach - Oxford University Press*. Available at: https://global.oup.com/academic/product/taking-a-case-to-the-european-court-of-human-rights-9780198755418 (Accessed: 17 May 2023).

Medecins Sans Frontieres (MSF). (2018). *Overcrowded, dangerous and insufficient access to healthcare in Moria. A*vailable at: https://www.msf.org/greece-overcrowded-dangerous-and-insufficient-access-healthcare-moria [accessed 13 April 2023]

Medecins Sans Frontieres. (2021). *Constructing crisis at Europe's borders, The EU plan to intensify its dangerous hotspot approach on Greek islands.* Available at: https://www.aerzte-ohne-grenzen.de/sites/default/files/2021-06/msf-report-greece-constructing-crisis.pdf [accessed 13 April 2023]

Ministry of Migration and Asylum. (2020). E*νημερωτικό σημείωμα Φεβρουάριος 2020.* Available at: https://bit.ly/404cB7o [accessed 13 April 2023]

Ministry of Migration and Asylum. (2020c). *Εγκρίθηκε η Ευρωπαϊκή Χρηματοδότηση ύψους 92 εκ και υπεγράφη σύμβαση για το Πρόγραμμα ESTIA II-2020 | Υπουργείο Μετανάστευσης και Ασύλου*. https://migration.gov.gr/egkrithike-i-eyropaiki-chrimatodotisi-ypsoys-92-ek-kai-ypegrafi-symvasi-gia-to-programma-estia-ii-2020/

Ministry of Migration and Asylum. (2020b). *Καταγεγραμμένοι Πολίτες Τρίτων Χωρών/ Ανιθαγενείς (ανά τόπο καταγραφής και φύλο).* Available at: https://bit.ly/4142Szn [accessed 13 April 2023]

Ministry of Migration and Asylum. (2021). *Καταργείται από 1/7//21 το οικονομικό βοήθημα σε αιτούντες διεθνή προστασία που δε στεγάζονται σε δομές ευθύνης του Υπουργείου Μετανάστευσης και Ασύλου ή συνεργαζόμενους με το ΥΜΑ φορείς.* Available at: https://migration.gov.gr/katarghsh-oikonomikou-voithimatos-se-aitoyntes-poy-de-stegazontai-se-domes-toy-ypoyrgeioy/ [accessed 13 April 2023]

Ministry of Migration and Asylum. (2022). *Ολοκληρώνεται το πρόγραμμα στέγασης "ESTIA II" το 2022 | Υπουργείο Μετανάστευσης και Ασύλου*. https://migration.gov.gr/oloklironetai-to-programma-stegasis-estia-ii-to-2022/

Mobile Info Team (MIT). (2022). *Blocked from the system, Voices of people excluded from the asylum procedure on mainland Greece, Crete and Rhodes.* Available at: https://www.mobileinfoteam.org/blockedfromthesystem [accessed 13 April 2023]

O'Nions, H. (2014). *Asylum - a right denied: A critical analysis of European asylum policy*. 1-264. Available at: https://www.researchgate.net/publication/288354398_Asylum_-_a_right_denied_A_critical_analysis_of_European_asylum_policy

Odysseus-Academic network for legal studies on immigration and asylum in Europe. (2006). *Comparative overview of the implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States.* Available at: https://www.refworld.org/docid/484009fc2.html [accessed 13 April 2023]

OXFAM and Greek Council for Refugees. (2022). *Lesvos Bulletin, Update on Lesbos and the Aegean Islands, by the Greek Council for Refugees & Oxfam.* Available at: https://reliefweb.int/report/greece/lesbos-bulletin-update-lesbos-and-aegean-islands-greek-council-refugees-oxfam-march-7 [accessed 13 April 2023]

OXFAM. (2019). *Vulnerable and abandoned.* Available at: https://www.oxfam.org/en/research/vulnerable-and-abandoned [accessed 13 April 2023]

OXFAM. (2020). *Update on the EU 'hotspot' Moria 2.0, by the Greek Council for Refugees & Oxfam.* Available at: https://www.oxfam.org/en/press-releases/conditions-moria-20-camp-are-abysmal-say-gcr-and-oxfam [accessed 13 April 2023]

Palmer, Elizabeth, *Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights* (December 15, 2009). Erasmus Law Review, Vol. 2, No. 4, pp. 397-425, 2009, Available at SSRN: https://ssrn.com/abstract=1542674

Peers, S. (2006). *EU immigration and asylum law: Text and commentary*. Martinus Nijhoff Publishers.

Pérez-Sales, P., Galán-Santamarina, A., Zunzunegui, M. V., & López-Martin, S. (2022). *Refugee Camps as Torturing Environments—An Analysis of the Conditions in the Moria Reception Center (Greece) Based on the Torturing Environment Scale.* International Journal of Environmental Research and Public Health, *19*(16), Article 16. https://doi.org/10.3390/ijerph191610233

Raju, E., & Ayeb-Karlsson, S. (2020). COVID-19: *How do you self-isolate in a refugee camp?* International Journal of Public Health, *65*(5), 515–517. https://doi.org/10.1007/s00038-020-01381-8

Ramos, J. R. (2020). *The right to liberty of asylum- seekers and the European Court of Human Rights in the aftermath of the 2015 refugee crisis*. Universidad de Granada. DOI: 10.17103/reei.39.10

Refugee Support Aegean (RSA). (2020). *Moria nightmare. A*vailable at: https://rsaegean.org/en/moria-nightmare/ [accessed 13 April 2023]

Refugee Support Aegean and Proasyl (RSA and Proasyl) (2020). *"In this place we have to protect ourselves" – Malakasa Camp.* Available at: https://rsaegean.org/en/quot-in-this-place-we-have-to-help-ourselves-quot-malakasa-camp/ [accessed 13 April 2023]

Refugee Support Aegean. (2022). *Refugees without identification documents. The Greek Asylum Service must urgently resolve technical problems.* Available at: https://rsaegean.org/en/refugees-without-identification-documents/ [accessed 13 April 2023]

Salomon, S. (2021). Constructing Equality in EU Asylum Law. *International Journal of Refugee Law*, *33*(4), 608–644. https://doi.org/10.1093/ijrl/eeac012

Silga, J. (2018). The fragmentation of reception conditions for asylum seekers in the European Union: Protecting fundamental rights or preventing long-term integration? *Freedom Security & Justice: European Legal Studies*, *3*. https://doi.org/10.26321/J.SILGA.03.2018.05

Smet, S. (2014). The 'absolute' prohibition of torture and inhuman or degrading treatment in Article 3 ECHR: Truly a question of scope only? In E. Brems & J. Gerards (Eds.), *Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights* (pp. 273-293). Cambridge: Cambridge University Press. doi:10.1017/CBO9781107337923.017

Thym, D., Hailbronner, K., & Arévalo, C. (Eds.). (2022). *EU immigration and asylum law: Article-by-article commentary* (Third edition). C.H. Beck ; Nomos ; Hart.

Tramountanis, A., Linardis, A., Mouriki, A., Kondyli, D., Papaliou, O., & Varouxi, C. (2022). *Humanitarian assistance and social protection responses to the forcibly displaced in Greece*. Available at: https://odi.org/en/publications/humanitarian-assistance-and-social-protection-responses-to-the-forcibly-displaced-in-greece/

Tsitselikis, K. (2019). *Refugees in Greece: Facing a Multifaceted Labyrinth*, International Migration, 57(2), pp. 158–175. Available at: https://doi.org/10.1111/imig.12473.

UNHCR (2011). *statement on the reception conditions of asylum-seekers under the Dublin procedure. (no date) UNHCR. Available at: https://www.unhcr.org/media/30647 (Accessed: 17 May 2023).*

UNHCR (2012). United Nations High Commissioner for Refugees—Bureau for Europe. *Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers*. (COM (2011) 320 final, 1 June 2011)

UNHCR. (2021). *ESTIA programme-A home away from home.* Available at: https://data.unhcr.org/en/documents/details/88995 [accessed 13 April 2023]

United Nations Human Rights Council (UNHRC). (2017). *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece.* Available at: https://digitallibrary.un.org/record/1299243 [accessed 13 April 2023]

United Nations Human Rights Council (UNHRC). (2022). *End-of-mission statement by Sorcha MacLeod and Carlos Salazar Couto, members of the UN Working Group on the use of mercenaries and private military and security companies on their visit to the Hellenic Republic.* Available at: https://www.ohchr.org/en/press-releases/2022/12/un-human-rights-experts-call-greece-strengthen-oversight-private-security [accessed 13 April 2023]

Van de Wiel, W., Castillo-Laborde, C., Francisco Urzúa, I., Fish, M., & Scholte, W. F. (2021). Mental health consequences of long-term stays in refugee camps: Preliminary evidence from Moria. *BMC Public Health*, *21*(1), 1290. https://doi.org/10.1186/s12889-021-11301-x

Velluti, S. (2014a). *Reforming the Common European Asylum System—Legislative developments and judicial activism of the European Courts*. Springer Berlin Heidelberg. https://doi.org/10.1007/978-3-642-40267-8

Velluti, S. (2014b). *The relationship between the ECJ and the ECtHR: the case of asylum.* In: Human rights in Europe: the influence, overlaps and contradictions of the EU and ECHR. Routledge, London, pp. 156-187. ISBN 9780415825993

Velluti, S. (2016). The revised Reception Conditions Directive and adequate and dignified material reception conditions for those seeking international protection. *International Journal of Migration and Border Studies*, *2*(3), 203. https://doi.org/10.1504/IJMBS.2016.077640

World Health Organization (WHO). (2015). *Barriers and facilitating factors in access to health services in Greece.* Available at: https://www.euro.who.int/__data/assets/pdf_file/0006/287997/Barriers-and-facilitating-factors-in-access-to-health-services-in-Greece-rev1.pdf [accessed 13 April 2023]