

SAMOS: “WE FEEL IN PRISON ON THE ISLAND”

UNLAWFUL DETENTION AND SUB-STANDARD CONDITIONS IN AN EU-FUNDED REFUGEE CENTRE

RESEARCH
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Artwork by an adolescent living in the Samos CCAC © Amnesty International/Samos Volunteers

Although the European Commission funded new reception centres for asylum-seekers on the Aegean islands promising “better conditions”, racialized people on the move living in the Samos centre face obstacles accessing basic service and experience systematic, arbitrary de facto detention. The EU must ensure that the implementation of the new EU Migration and Asylum Pact does not result in similar abuses.

1. EXECUTIVE SUMMARY

Since 2020, the European Commission supports Greece with the establishment and operation of the “Closed Controlled Access Centres” (CCAC), designed to replace the “hotspots” for asylum seekers on the Aegean islands. This briefing discusses the concerning human rights situation in the Samos CCAC, focusing on the period of July 2023 to January 2024, when increased arrivals led to a situation of overcrowding in the centre, exacerbating the existing shortcomings in the provision of basic services to residents, who are racialized people mostly from Middle Eastern and African countries. The briefing acknowledges that since February 2024, the number of residents of the Samos CCAC decreased, and the population has since been within capacity limits.

Amnesty International is particularly concerned about the systematic use of “restrictions of freedom” (ROF), provided for under Article 40 of Greek Law no. 4939 of 2022 (the “Asylum Act”), on new arrivals in the CCAC, as well as about the flawed implementation of this measure and its discriminatory outcomes. By law, ROFs prevent residents, who are racialized asylum seekers, from leaving the CCAC for up to 25 days from entry, exposing them to unlawful and arbitrary de facto detention and, especially in the period under consideration, the risk of experiencing inhuman and undignified living conditions.

This briefing addresses how, despite supporting the establishment and operation of CCACs, the European Commission has to date failed to remedy the Greek authorities’ long-standing failures. It presents how the experience of the Samos CCAC should serve as a warning sign for the EU and its member states in their implementation of the new EU Migration and Asylum Pact, which foresees the establishment of similar reception facilities alongside EU external borders and is predicated on the racialized exclusion of people on the move.

This research is based on desk and field research conducted between December 2023 and July 2024, including a visit to the Samos CCAC in December 2023, as part of which Amnesty International delegates met with asylum seekers and representatives of the Greek authorities. Amnesty International also held remote interviews with one resident, Civil Society Organizations (CSOs), the United Nations Refugee Agency (UNHCR) and the International Organization for Migration (IOM) and submitted written requests for information to the Greek authorities and the EU Commission.

THE SAMOS CCAC

The Samos CCAC is a highly securitized site on a remote location of the island. It comprises reception and pre-return detention facilities and features enhanced digital and physical security infrastructures. In April 2024, the Greek Data Protection Authority fined the Greek Ministry of Migration for the use of security systems also operated in the Samos CCAC, due to breaches of data protection legislation.

OVERCROWDING AND INADEQUATE CONDITIONS

In late September 2023, the Greek authorities changed the official capacity of the Samos CCAC from 2,040 reception places (and 960 places in the pre-return detention facility) to 3,650, without any apparent intervention to increase accommodation spaces. From July 2023, the CCAC started to receive increased arrivals, with the population reportedly reaching 4,850 people in October 2023. The site remained overcrowded for the majority of time between September and January 2024. Some residents were housed in non-residential spaces in sub-standard conditions.

Insofar as they disproportionately impact racialized people, the inadequate conditions of living in the CCAC resulting from overcrowding and obstacles to accessing basic services, are manifestations of racial discrimination, prohibited under international law.

The Greek National Commission for Human Rights (GNCHR) estimated that as of 7 February 2024, 600-700 people were housed in non-residential, administrative buildings. In December 2023,

Amnesty International delegates witnessed dozens of people accommodated in a canteen in inadequate conditions and heard reports by other residents saying that they had been housed in a common outdoor area or administrative buildings. Delegates also observed and heard reports of shortcomings regarding living conditions in residential containers, as well as concerns from some residents about the lack of privacy and insecurity in the CCAC. Amnesty International heard of cases where people in vulnerable situations who were held in degrading conditions were only transferred to a safe accommodation after the intervention of the CSO ‘Human Rights Legal Project’ (HRLP).

INADEQUATE PROVISION OF WATER AND MEDICAL SERVICES

The long-standing shortages in running water in the CCAC persisted from July 2023, negatively impacting residents’ ability to attend to personal hygiene and sanitation. In February 2024, the authorities informed the GNCHR that water was only available two to four hours per day. In May 2024, the authorities told the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that residents received three litres of drinking water per day. Temporary solutions to increase water supply remain inadequate to meet CCAC’s needs.

The CCAC has lacked a permanent medical doctor since its opening. The medical staff supporting the CCAC as of May 2024 – under the Greek Public Health Organization “EODY” – lacks specialized staff providing sexual and reproductive care despite women making up 20% of the CCAC’s population. The resource limitations experienced by the public hospital in Vathi further impacts CCAC’s residents’ access to healthcare. NGOs reported cases of scabies and skin conditions, connecting them with the running water shortages, inoperative laundry services, and overcrowding.

The EU-funded project under which EODY provides services, “PHILOS II”, was set to be superseded in the first semester of 2024 by the “Hippocrates” Project, also EU-funded, to be managed by IOM and implemented in collaboration with medical actors and service providers. As of 25 June, the implementation of the project was pending, while reports indicated that EODY staff’s contracts would expire on 30 June 2024. It remains unclear how the continuity of medical services will be ensured.

LACK OF SUPPORT FOR RESIDENTS IN VULNERABLE SITUATIONS

Under Greek, EU and international law, asylum seekers falling into certain categories or experiencing conditions of vulnerability are entitled to special reception conditions and procedural guarantees. However, access to these conditions depends on the prompt identification of their needs, which can be hampered by the limited healthcare resources in the CCAC.

People seeking asylum on the Aegean islands tend to be processed through the “fast-track border procedure”, which provides for shorter time-limits and lower procedural rights. Under the law, people in vulnerable situations should be transferred to the regular asylum procedure if they cannot be adequately supported through the fast-track one. The Greek authorities failed to answer Amnesty International’s request for data about these transfers.

HARSH RESTRICTIONS IMPOSED ON UNACCOMPANIED MINORS

Unaccompanied minors (UAMs) in the Samos CCAC are accommodated separately from the general population, in a “safe area”. As of Amnesty International’s visit of December 2023, UAMs were subjected to heavy restrictions of movements including a ban on leaving the CCAC or the safe area to visit the general population area – except to attend school. As of February 2024, the CSO Zeuxis accompanies children on leisure and educational activities outside of the CCAC. Restrictions on UAMs’ movement might constitute an undue interference with their right to liberty and security and their freedom of movement and are at odds with international standards on the detention of children for migration purposes, which state that the detention of children is strictly prohibited.

SYSTEMATIC USE OF RESTRICTIONS AMOUNTING TO DETENTION

Residents of the CCAC – including people in vulnerable situations – are systematically subjected to “restrictions of freedom” orders (ROF) allowing their confinement within the CCAC for a maximum of 25 days from their entry, to conduct reception and identification procedures, though in practice this time limit is often exceeded. Under the law, affected residents can only leave the CCAC temporarily “for serious health reasons”. Amnesty International considers ROF to exceed the bounds of a legitimate “restriction of freedom of movement” and to amount to an unlawful deprivation of liberty.

Although ROF orders are seemingly “race-neutral” and affect all new entrants of the CCAC, they almost exclusively affect racialized asylum seekers, raising issues under Greece’s obligations that “the implementation of legislation does not have a discriminatory effect on non-citizens”. The containment regime produced by the systematic imposition of ROFs affects predominantly racialized people on the move, furthering a practice of racialized exclusion of migrants and refugees at Europe’s borders.

Under international law, the legal qualification of a measure is not decisive to whether it amounts to detention in practice. Under the European Convention on Human Rights (ECHR), the difference between deprivation of liberty and restriction of freedom of movement is “one of degree or intensity” and depends on the person’s “concrete situation”. In determining whether a measure constitutes detention, the jurisprudence of the European Court of Human Rights (ECtHR) and the UN Working Group on Arbitrary Detention (WGAD) considered elements including the quality of the accommodation, the possibilities for movement, access to services and outside communication, and the presence of supervision. Residents of the CCAC experience issues in several of these areas.

Furthermore, especially during times of overcrowding in the centre, the living conditions of residents under ROF in the CCAC may also have amounted to inhuman and degrading detention conditions, in breach of the prohibition of torture or other ill-treatment.

CSOs have also reported a practice whereby the authorities offered residents to waive their rights to reception and other assistance in Greece in exchange for being allowed to leave the CCAC and the island. This practice may be incompatible with the international standards whereby a violation of the prohibition of torture or other ill-treatment can occur where inadequate detention conditions are imposed “for the purpose of deterring, intimidating or punishing” people, or “coercing them into withdrawing their requests for asylum, subsidiary protection or other stay”.

UNLAWFUL AND ARBITRARY DETENTION

ROFs imposed on Samos CCAC residents also fail to comply with the principles of exceptionality, legality, necessity and proportionality and non-discrimination of migration detention. Article 40 provides that residents can be restricted for a maximum of 25 days since entry. The law provides that an initial five-day restriction is imposed to all new residents without consideration of less-invasive alternatives, which are only explored in cases of a successful objection to a decision to extend the ROF by a further 20 days.

EU law and the jurisprudence of the Court of Justice of the EU is clear that the continuation of detention is unjustified if caused by delays in administrative procedures that are not due to the applicant’s conduct. Information shared by the Greek authorities, and reports of the EU Commission Task Force between July and November 2023 indicate that delays in registration procedures in Samos and possibly elsewhere were the result of staff shortages and failures in the systems used by the authorities, suggesting that the use and systematic extension of ROFs is not justified. As of May 2024, the authorities maintained that the staff supporting registration procedures in facilities across Greece was enhanced. However, issues persist regarding the provision of language interpretation services in the country.

SHORTCOMINGS IN THE IMPLEMENTATION OF RESTRICTIONS

Amnesty International's and CSOs' observations also indicate that ROFs are implemented in a manner inconsistent with Greek law. The testimonies of 10 people interviewed by Amnesty International indicate that they were unable to leave the centre once the 25 days had passed since their entry. The GNCHR similarly noted that as of February 2024, around 70-80 people were in this situation. The CPT found that 1,801 people were unregistered and most of them prevented from exiting beyond 25 days.

Despite evidence of restrictions lasting longer than 25 days, and while the law states that "if procedures have not been completed by [25 days], restrictions must be lifted", in May 2024 the authorities told Amnesty International that there was no case where restrictions were lifted for this reason.

The initial ROFs apply to all residents, and extension decisions also appear to be overwhelmingly applied to new arrivals to the CCAC, in contrast with the international standards on the exceptional nature of the detention of asylum seekers and the need to consider people's individual circumstances based on a detailed case-by-case assessment.

CSOs observed that in several cases residents are restricted for over 25 days without a ROF being issued, or based on a ROF that is issued late, or is backdated. This conflicts with EU law rules whereby information to detained applicants must be provided "immediately" and in writing. Processing times and length of detention have however improved in 2024.

The ECtHR has granted interim measures in two cases involving residents detained in the CCAC.

THE EU'S ROLE IN CCACS

The European Commission funds the construction and operation of CCACs and supports the Greek authorities through a 'Task Force for Migration Management'. The cooperation between Greek authorities and EU bodies enhances both Greece's role as a "testing ground" for EU migration policies and the responsibilities of the EU for any resulting violations.

The Task Force is designed to operate in line with the principles underpinning the 2024 Pact on Migration and Asylum, which enacts a comprehensive reform of EU law in this area. Amnesty International consistently expressed concern that the Pact would weaken access to asylum and increase the risk of human rights violations and de facto detention, as several instruments under the Pact heavily rely on the use of restrictive measures to keep people in specific facilities or areas, usually close to the border.

For instance, during the identity, security and other checks to which people are subjected over the new "screening" phase, they must remain available to authorities, who are allowed to resort to detention if deemed necessary. In the context of the "asylum border procedure", applicants also risk being subjected to restrictions on their movement, as they must reside "at or in proximity to the external border or transit zones" or other locations for up to 12 weeks, plus an additional 12 weeks if followed by return border procedures.

The misuse of "restrictions of freedom" in Samos provides a window into the likely implementation of the Pact, offering a crucial opportunity for EU institutions and member states to correct the course of the new policies.

The Commission also needs to ensure greater scrutiny of Greece's compliance with EU law. It remains unclear whether the Commission has advanced the infringement proceedings opened against Greece in January 2023, on concerns regarding the compliance with EU law of Article 40 of Law 4939/2022, regulating ROF.

CONCLUSIONS AND RECOMMENDATIONS

Under the pretext of restricting people's freedom to conduct identification procedures, Greek authorities have implemented a regime of systematic, de facto detention of the predominantly racialized residents of the Samos CCAC, in breach of international and EU law. Conditions experienced by residents between September 2023 and February 2024 may also have breached the prohibition of torture or other ill-treatment. Despite its significant role in the creation and operation of CCACs, the EU Commission has failed to take decisive action to ensure Greece's compliance with EU law.

The Greek authorities must urgently ensure that Article 40 of the Asylum Act, allowing for ROFs, is repealed and must refrain from introducing measures with a similar effect. They must ensure that migration detention, especially for identification purposes, is only used exceptionally and in compliance with international standards. They must halt, across Greece, the migration detention of children and other people in vulnerable situations. In view of the serious shortcomings reported in this briefing, the authorities must urgently release information and data, disaggregated by race or ethnic origin, to allow the scrutiny of the use of ROF in Samos, particularly from July 2023 to January 2024. They must also publish data about the exemption from the fast-track border procedure of people with specific needs or in vulnerable situations.

The Samos CCAC must urgently be equipped with adequate staff and resources to ensure that reception, identification and asylum procedures are completed without undue delay and people in vulnerable situations are promptly identified, assisted and granted dedicated accommodation conditions. In the short and long term, solutions must urgently be implemented to allow the adequate and consistent provision of basic services, notably healthcare and water. People whose health conditions cannot be treated on the island must be promptly transferred to adequately resourced facilities.

Living conditions across the Samos CCAC's residential and non-residential units must be brought in line with European and international standards. Authorities must halt the accommodation of residents in non-residential areas or in otherwise sub-standard conditions. Considering the difficulties faced by the Samos CCAC when confronted with increased arrivals, emergency accommodation arrangements ensuring residents' basic rights must be prioritized.

The placement of UAMs in CCACs should be avoided. Pending their transfer to adequate accommodation, UAMs in the Samos CCAC should have increased opportunities for education and leisure activities and for spending time outside the safe area in conditions of security and safety.

NGOs, lawyers, UN and monitoring bodies and other service providers must have effective and unhindered access to the CCAC.

EU institutions should seriously scrutinize the systematic use of ROFs in Samos in the context of the national implementation of the Migration Pact, and introduce targeted safeguards to ensure that the new legislation does not result in violations of fundamental rights. In their implementation of new instruments, member states must avoid widespread detention, de facto detention, or systematic restrictions of freedom.

The European Commission should strengthen its scrutiny of Greek policies and practices in the CCACs and advance the infringement proceedings opened against the country in relation to the legislation on ROFs.

2. METHODOLOGY

This briefing is based on desk research, remote interviews and field research conducted between December 2023 and July 2024. It builds on an overview of Greek, EU and international law and standards, and reports published by civil society organizations (CSOs), Greek, international, and regional human rights bodies on the conditions of asylum seekers and migrants in the Samos “Closed Controlled Access Centre” (CCAC) and in Greece. Amnesty International delegates visited Samos, including the CCAC, in December 2023, meeting with groups of asylum seekers including from Syria and Palestine and conducting detailed interviews with 14 individuals (four women and ten men). In some cases, people interviewed lived in the CCAC with members of their families, including children. During the visit, delegates met with representatives of the reception and asylum authorities and medical services operating in the CCAC, and local CSOs. At the time of the visit, the population of the CCAC stood at over 3,600 people.

Amnesty International representatives held virtual meetings and exchanged written information with representatives of CSOs, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization of Migration (IOM). In January 2024, they held one remote interview with a male Syrian resident of the CCAC. Amnesty International representatives also reviewed documents and data shared by CSOs about restrictions of freedom of movement in the CCAC.

Pseudonyms have been assigned to all CCACs resident interviewed. Other personal details have been changed or omitted to protect their identity and privacy, according to residents' wishes.

On 27 March and 12 April 2024, Amnesty International submitted written requests for information to representatives of the Greek asylum and reception authorities. A written response of 9 May 2024 from the Secretary General for Reception of Asylum Seekers mainly answered our requests in the letter of 12 April. Our letter of 27 March has not received any response to date. On 22 July 2024, we shared our findings ahead of publication with the Greek authorities.

On 14 June, we requested information from the European Commission about their implementation of the suggestions in the 2023 EU Ombudsman decision on the Commission’s efforts to ensure compliance with fundamental rights in Greek reception facilities. We also requested updates on the infringement proceedings initiated against Greece regarding domestic legislation allowing the restriction of freedom of CCAC’s residents. On 16 July 2024, a response was received from the Acting Director-General of the Directorate for Migration and Home Affairs and Head of the Task Force Migration Management, Beate Gminder. Responses to all queries above are reflected, as relevant, in the briefing.

In this research, the term “CCAC” or the “centre” is used to refer to the reception areas within the Samos centre, which officially consists of separate areas for the “general population”, “unaccompanied minors”, and “vulnerable groups, single parent families, women”.¹ The term “CCAC” is not used to refer to the pre-removal detention facility, “PROKEKA”, which is also present on the premises of the CCAC, in a separate section from residential areas.

The artwork that illustrates this briefing and other publications accompanying the research was created by people who had lived or were living in the Samos CCAC during May 2024. The artwork was made in workshops held as part of a collaboration between Amnesty International and the CSO ‘Samos Volunteers’ and shares personal perspectives, feelings, and experiences of life in the CCAC. Samos Volunteers is a CSO that offers informal education, clothing distributions and psycho-social support to people in refugee and migrant communities in Samos. The art workshops were attended by

¹ Official webpage of the Greek Ministry for Migration and Asylum, at: <https://migration.gov.gr/en/nea-kleisti-elegchomeni-domi-samoy-enimerotiko/>

individuals who visit Samos Volunteers' community centres, as well as people attending the LGBTQI+ support group. The workshops were an open invitation for people to respond to prompts including: "How do you feel living in the Samos camp?"; "What would you like to change in Samos?"; "What do you hope for in the future?", using art as a form of expression that crosses boundaries of language and culture. Personal details of the authors of the artwork are included, changed, or wholly omitted depending on their wishes.

Amnesty International would like to thank all the people living in the CCAC who trusted us with their testimony, as well as the CSOs Samos Volunteers, Human Rights Legal Project, I Have Rights and Avocats Sans Frontières for providing crucial information about living conditions and deprivation of liberty of CCAC's residents.

3. THE SAMOS CCAC

In 2020, fires destroyed the infamous Moria camp on the Greek island of Lesbos, one of five "hotspot" facilities on the Aegean islands. Hotspots were used to host predominantly racialized asylum seekers and migrants, who would generally arrive via sea from Türkiye and largely remain bound to the islands as result of the "geographical restriction" Greek authorities impose on them in their implementation of the EU-Türkiye migration deal.² As of September 2020, the main nationalities on the islands included Afghanistan, Syria, Somalia, Palestine and the Democratic Republic of the Congo.³ Over the years, people in the hotspots were frequently exposed to overcrowding, insecurity and abysmal living conditions,⁴ consistently denounced by human rights organizations and civil society.⁵

In 2020, the European Commission started supporting Greece with the construction and operation of new "Closed Controlled Access Centre" (CCACs) (Κλειστή Ελεγχόμενη Δομή [Κ.Ε.Δ.]), also referred to as "Multi-Purpose Reception and Identification Centres" (MPRICs), replacing the hotspots.⁶

In 2021, the first CCAC (hereinafter also "the centre") was established in Samos,⁷ in an isolated elevated area approximately 6.5 km from the main city,⁸ Vathi where most of the civil infrastructure, services and CSOs are based.

² Amnesty International, *Greece: A blueprint for despair - Human rights impact of the EU-Turkey deal*, 14 February 2017, Index Number: EUR 25/5664/2017, www.amnesty.eu/wp-content/uploads/2018/10/EU-Turkey_Deal_Briefing_Formatted_Final_P4840-3.pdf

³ UNHCR, Aegean Islands Weekly Snapshot, 07 - 13 September 2020, <https://data.unhcr.org/en/documents/details/79009>

⁴ Among others: Refugee Support Aegean (RSA), Detention and Reception Conditions, at: <https://rsaegean.org/en/detention-and-reception-conditions/#Hotspots>

⁵ Among others: Council of Europe [CoE] Commissioner for Human Rights, "Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities", 31 October 2019, at: www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities; Human Rights Watch, "Asylum Seekers' Hell in a Greek 'Hotspot'", 30 November 2017, www.hrw.org/news/2017/11/30/asylum-seekers-hell-greek-hotspot; International Rescue Committee (IRC), *The Cruelty of Containment: The Mental Health Toll of the EU's 'Hotspot' Approach on the Greek Islands*, 17 December 2020, www.rescue.org/eu/report/cruelty-containment-mental-health-toll-eus-hotspot-approach-greek-islands.

⁶ European (EU) Commission, Task Force Migration Management, landing page: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/task-force-migration-management_en#documents; EU Commission, "Construction of new reception centres", https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/migration-management-greece/construction-new-reception-centres_en; EU Commission, "Commissioner Johansson's first visit to Greek islands", 3 May 2021, https://home-affairs.ec.europa.eu/news/commissioner-johanssons-first-visit-greek-islands-2021-05-03_en

⁷ Infomigrants, "Greece opens first refugee holding camp on Samos island", 20 September 2020, www.infomigrants.net/en/post/35152/greece-opens-first-refugee-holding-camp-on-samos-island

⁸ Greek National Human Rights Commission (GNCHR/EEDA), *EEDA on-site visit to Samos: The reception conditions at the Samos KED do not comply with the basic standards*, 9 April 2024, p. 2, www.nchr.gr/ta-nea-mas/1735-epitopia-episkepsi-eeda-sti-samo-mi-symfones-meta-vasika-protypa-oi-synthikes-y-podoxis-stin-ked-samou.html

The CCAC is equipped with a rigid system of containment and surveillance, including double barbed wire metal fencing, CCTV throughout the facility, and the 24/7 presence of patrolling police and privately contracted security officers.⁹ In 2021, Amnesty International denounced the prison-like structure of the CCAC and the unlawful detention of some of its residents.¹⁰

The residents' movements in and out of the centre is managed through the "Centaur" and "Hyperion" digital systems.¹¹ CSOs have expressed concerns about the surveillance systems in Samos,¹² while the EU Fundamental Rights Agency is reported to have recommended a "thorough impact assessment" on Centaur.¹³ In April 2024, the Greek Data Protection Authority (DPA) fined the Greek Ministry of Migration for its use of "Centaur" and "Hyperion" in relation to the "Data Protection Impact Assessments" conducted by the Ministry, which were found to be "substantially incomplete and limited in scope".¹⁴ The DPA also noted that "serious shortcomings" remain in the "compliance with certain provisions of the [General Data Protection Regulation, or GDPR]."¹⁵



⁹ Amnesty International, "Greece: Asylum seekers being illegally detained in new EU-funded camp", 2 December 2021, www.amnesty.org/en/latest/news/2021/12/greece-asylum-seekers-being-illegally-detained-in-new-eu-funded-camp/; The Greek Ombudsman, *The Challenge of Migration Flows and Refugee Protection, Reception Conditions and Procedures*, May 2024, p. 41-45, https://migrant-integration.ec.europa.eu/library-document/greece-challenge-migration-flows-and-refugee-protection_en; GNCHR report, above in full, p.4.

¹⁰ Amnesty International, "Greece: Asylum seekers being illegally detained in new EU-funded camp", above in full.

¹¹ Respectively defined as an "integrated digital system for managing electronic and physical security" and an "integrated entry-exit control system with reader in combination with fingerprint". See: European Data Protection Board, "Ministry of Migration and Asylum receives administrative fine and GDPR compliance order following an own-initiative investigation by the Greek SA", 15 April 2024, www.edpb.europa.eu/news/national-news/2024/ministry-migration-and-asylum-receives-administrative-fine-and-gdpr_en. See also: RSA, "What is happening today in the refugee structures on the Aegean islands", <https://rsaagean.org/en/ccac-aegean-islands-greece/> citing: "Instruction Manual for the Entry-Exit Management of Closed Controlled Access Centres - Ministry of Migration and Asylum, General Secretariat of Reception, Reception and Identification Service, Directorate of Reception and Identification Centres & Closed Controlled Access Centres on the islands, Version 1.2 II March 2022".

¹² See: RSA, "Disgraceful living conditions in the 'state-of-the-art' Closed Controlled Access Centre (CCAC) of Samos", 6 February 2024, <https://rsaagean.org/en/disgraceful-conditions-samos-ccac/>; Balkan insight, "Like 'Being in Prison': Will EU's AI Safeguards Apply to Asylum Seekers?", 23 February 2024, <https://balkaninsight.com/2024/02/23/like-being-in-prison-will-eus-ai-safeguards-apply-to-asylum-seekers/>; I Have Rights (IHR), *The De Facto Detention of Asylum Seekers on Samos*, 23 February 2023, p.3, https://ihaverights.eu/wp-content/uploads/2023/02/detention_report_full.pdf

¹³ Pulitzer Centre, "Greek Data Watchdog to Rule on AI Systems in Refugee Camps", 30 October 2023, <https://pulitzercenter.org/stories/greek-data-watchdog-rule-ai-systems-refugee-camps#:~:text=Official%20warnings%20for%20Greece%20to,and%20the%20Centaur%20project%20specifically>

¹⁴ European Data Protection Board, "Ministry of Migration and Asylum receives administrative fine and GDPR compliance order following an own-initiative investigation by the Greek SA", above in full. Pulitzer Centre, "Greek Data Watchdog to Rule on AI Systems in Refugee Camps", above in full. DPA, Ex officio investigation into the development and installation of the "Centaurus" and "Hyperion" Programs by the Ministry of Migration and Asylum regarding the control of reception and accommodation structures for third-country nationals", <https://www.dpa.gr/el/enimerwtiko/prakseisArxis/aytepaggelti-ereyna-gia-tin-anaptyxi-kai-egkatasasi-ton-programmaton>. DPA Decision of 2 April 2024, www.dpa.gr/sites/default/files/2024-04/13_2024_anonym.pdf

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Language regarding the SA's decision from: European Data Protection Board, "Ministry of Migration and

3.1 OVERCROWDING AND INADEQUATE LIVING CONDITIONS

“We are facing mental health issues. I escaped from the war. We left Syria to have a better future [...] not [to be] here in unsafe, unclean [conditions], difficult for all reasons. I left my family back home and now I feel punished here.”

Anwar, a man from Syria, in the CCAC since October 2023

CAPACITY AND OVERCROWDING

Since July 2023, the Samos CCAC experienced a significant increase in arrivals, leading to a situation of overcrowding for most of the time between September 2023 and January 2024.¹⁶ As of early September 2023, the CCAC’s official reception capacity was 2,040 people, yet in that month alone over 3,000 people had been newly registered in the centre.¹⁷ CSOs report that the population of the CCAC reached 4,850 people in October 2023.¹⁸ As of December 2023, residents of the CCAC were people from Syria, Palestine, Somalia, Sierra Leone and Sudan.¹⁹

In addition to reception areas, the CCAC includes a pre-removal detention centre (“PROKEKA”),²⁰ with a capacity of 960 people, which was reportedly used to host residents.²¹ On 28 September 2023, amid the increased arrivals, the authorities changed the official reception capacity of the CCAC to 3,650, which exceeds the combined capacity of the reception areas and the PROKEKA.²² To Amnesty

Asylum receives administrative fine and GDPR compliance order following an own-initiative investigation by the Greek SA”, above in full. Original in Greek at: DPA, Decision of 2 April 2024, above in full.

¹⁶ Based on official data of the Ministry of Citizen Protection on the occupancy of the CCACs. The CCAC’s population went from 582 on 30 July, to 1,574 on 30 August, to 4,250 on 30 September. July: <https://www.scribd.com/document/662167737/NSP-Eastern-Aegean-30-07>; August: <https://www.scribd.com/document/668291707/NSP-Eastern-Aegean-30-08-23>; September: <https://www.scribd.com/document/675018310/NSP-Eastern-Aegean-30-09>. The population stayed at over 4,000 people at the end of October, and was just below the new capacity of 3,650 between mid-November and the end of December 2023. At the end of December and consistently through January capacity was exceeded. See data between 18 November and 29 December: <https://www.scribd.com/document/685844990/NSP-Eastern-Aegean-18-11>, <https://www.scribd.com/document/687001894/NSP-Eastern-Aegean-23-11-23> <https://www.scribd.com/document/688582733/NSP-Eastern-Aegean-29-11> <https://www.scribd.com/document/696116466/NSP-Eastern-Aegean-29-12-23>. At the end of December and throughout January capacity was just under 4,000: <https://www.scribd.com/document/681317255/NSP-Eastern-Aegean-30-10-23>, <https://www.scribd.com/document/696116469/NSP-Eastern-Aegean-30-12-23>, <https://www.scribd.com/document/702927306/NSP-Eastern-Aegean-31-01-24>

¹⁷ Based on in-person interview with CCAC’s authorities in Samos, 18 December 2023.

¹⁸ Border Violence Monitoring Network (BVMN), Monthly report of October 2023, <https://borderviolence.eu/app/uploads/BVMN-Monthly-Report-October-2023.pdf>

¹⁹ UNHCR, Greece: Aegean Islands Weekly Snapshot 04 - 10 Dec 2023, at: <https://reliefweb.int/report/greece/greece-aegean-islands-weekly-snapshot-04-10-dec-2023-enel>

²⁰ Official webpage of the Greek Ministry for Migration and Asylum, cited above.

²¹ In April 2024, a report by the Greek National Commission for Human Rights (EEDA), stated that (unofficial translation from Greek): “The increase in beds is attributed by the Administration to the addition of beds from PROKEKA that were given for use in the FRC [First Reception Centre] as well as to the difference between the nominal and actual capacity of the Structure”, noting however that “the new declared capacity does not correspond to the sum of FRC and PROKEKA capacity (a total of 3,000 seats against 3,650 declared hosting positions)”. GNCHR/EEDA, *EEDA on-site visit to Samos: The reception conditions at the Samos KED do not comply with the basic standards*, above in full, p.6. The use of the PROKEKA for reception purposes is confirmed by the EU Commission Taks Force Migration Management correspondence obtained by the NGO “I Have Rights” through a document access request and shared privately with Amnesty International. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), noted that as of their visit the PROKEKA sections were accommodating 600 persons and “already in a state of disrepair, especially the sanitary facilities”: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Greek Government on the visit to Greece carried out by the CPT from 20 November to 1 December 2023, 12 July 2024, p.34, <https://rm.coe.int/1680b0e4e1m>.

²² Official statistics of the Ministry for Migration and Asylum indicating the new capacity of the CCAC, as of 28 September 2023: <https://www.scribd.com/document/674786088/NSP-Eastern-Aegean-28-09>, GNCHR/EEDA report, above in full, p.6.

SAMOS: “WE FEEL IN PRISON ON THE ISLAND”

UNLAWFUL DETENTION AND SUB-STANDARD CONDITIONS IN AN EU-FUNDED REFUGEE CENTRE

Amnesty International

International’s understanding, the new capacity of CCAC was determined despite there being no structural intervention made to practically increase accommodation spaces.²³ To date, the Greek authorities have not answered Amnesty International’s request to clarify how the expanded capacity was achieved.²⁴ While the CCAC was hosting around 4,000 people in January 2024, since February, population levels have remained under the new capacity limit.²⁵

The inadequate conditions of living in the CCAC resulting from overcrowding and obstacles to accessing basic services, discussed have a disproportionate effect on racialized asylum seekers, and, as such, are manifestations of racial discrimination, prohibited under International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).²⁶

NON-RESIDENTIAL ACCOMMODATION

CSOs expressed concern that the CCAC’s new capacity “includes spaces that are unfit to accommodate people”, noting that residents were housed in non-residential “kitchens and classrooms, without beds, mattresses, proper bathrooms, kitchens or any form of privacy”.²⁷ At the time of Amnesty International visit, the CCAC’s management staff acknowledged that “some people” were accommodated in “administrative buildings” and “canteens”.²⁸

Amnesty International’s delegation visited an indoor canteen that was accommodating dozens of people, including families with children who were staying with unrelated adults, in overcrowded and inadequate conditions. Only a few of them had mattresses, whilst others appeared to be sleeping on the floor. In this area, residents’ right to privacy was further undermined by the presence of CCTV cameras. People in this area said they had arrived one or two weeks earlier.

In different residential areas of the centre, Anna, a woman with a baby who had been living in the CCAC since late September 2023, said she also spent four days in an indoors canteen with around 200 others. Anwar, a man from Syria in the CCAC since early October 2023, said he spent 10-15 days in a “kitchen” served by two toilets and no showers, as part of a group of around 70 people.

Other residents said that they had previously resided in an open-air “kitchen” which we understood to be a space in the middle of common kitchen containers. Hamza, a man from Palestine, and Khaled, a man from Syria, interviewed together, described their experience. Both had been in the centre for around two months. Hamza recalled that, upon entering the centre, he had been taken to a “temporary accommodation area” and then to an outdoor area, that he referred to as the “kitchen”. He said that he spent a week there without a mattress before being able to move into a container. He recalled: “In the ‘kitchen’ there were 251 people, mixed nationalities, men women and children with no privacy...we built a tent, under the ‘kitchen’ roof, where we slept. We were six single men sleeping

²³ NGOs expressed concerns about the change in the official capacity of the Samos CCAC. See: RSA, Joint Statement, “Not again in 2024: Call for upholding human rights in the Samos Closed Controlled Access Centre”, 31 January 2024, <https://rsaagean.org/en/joint-statement-samos-ccac/>

²⁴ Written request of 27 March 2024, to the Ministry of Migration and Asylum and others, on file.

²⁵ As per official data of the Ministry of Citizen Protection: as of 31 January (3,989 residents): www.scribd.com/document/702927306/NSP-Eastern-Aegean-31-01-24, 29 February, (2.910 residents) www.scribd.com/document/709777616/NSP-Eastern-Aegean-29-02-24, 30 March (2.640 residents), www.scribd.com/document/718940980/NSP-Eastern-Aegean-30-03, 30 April (2.365 residents), www.scribd.com/document/728342532/NSP-Eastern-Aegean-30-04, 30 May (2.344 residents), www.scribd.com/document/737973284/NSP-Eastern-Aegean-30-05

²⁶ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965, UN Committee on the Elimination of Racial Discrimination (CERD) General recommendation XIV on article 1, paragraph 1, of the [ICERD], A/48/18, 15 September 1993; UN Human Rights Council, Advancing racial justice and equality by uprooting systemic Racism, Report of the Human Rights Council Advisory Committee, Fifty-fourth session, 11 September–6 October 2023, A/HRC/54/70, 8 August 2023; UN CERD, CERD General Recommendation XXX on Discrimination Against Non Citizens, 5 August 2004

²⁷ RSA, Joint Statement, “Not again in 2024”, above in full.

²⁸ In person meeting with CCAC’s authorities of 18 December 2023.

in the same tent”. Khaled similarly reported spending around 10 days in the “kitchen” in October 2023.

The Greek Ombudsman noted in a report of April 2024, that from September 2023, they started receiving reports of substandard living conditions in the Samos CCAC.²⁹ Following a visit on 7 February 2024, the Greek National Commission for Human Rights (GNCHR), estimated that as of their visit, 600-700 people were housed in administrative buildings. It noted that these conditions of accommodation “even temporary”, “do not meet the standards of [the Reception Conditions Directive]”.³⁰

Following a visit to the Samos, Lesvos and Kos CCACs between 20 November and the first of December 2023, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also witnessed a situation of severe overcrowding in Samos, stating that “many foreign nationals, including families with children, sleeping on the floor in the canteen areas of various sections or in prefabricated containers intended for teaching purposes”. The CPT expressed concern that when arrivals to CCACs increase, “the systems break down quickly and many persons find themselves being subjected to treatment which could be described as inhuman and degrading”, noting that this was the situation witnessed in Samos.³¹

The EU Reception Conditions Directive, which lays out standards on the accommodation of asylum seekers – paying consideration to the special needs of people in vulnerable situations – allows states to exceptionally “set modalities for material reception conditions” that differ from those provided under the Directive in cases where housing spaces are “temporarily exhausted”.³² Yet, this is only permissible for a period that shall be “as short as possible” and ensuring that residents’ “basic needs” are met. Living conditions observed by Amnesty International in the indoor canteen area, as well as those described in the testimonies of residents who were accommodated in other non-residential areas, do not meet these criteria.

As will be discussed below, people under restrictions of freedom in Samos were exposed to unlawful, de facto detention. As such, their living conditions must be assessed against the stricter standards applying to detention, rather than those applying to open reception sites.

As of 29 May, the authorities claim that the use of non-residential areas for accommodation purposes has stopped.³³

RESIDENTIAL CONTAINERS

The CCAC is organized in different accommodation types, including independent containers with bathrooms and kitchenette, and larger containers with a hallway layout comprised of dormitory-style bedrooms with shared bathroom and shower facilities.³⁴ In a section of the centre, residents in a container comprising of larger rooms with private bathrooms, described experiencing situations of

²⁹ The Greek Ombudsman, *The Challenge of Migration Flows and Refugee Protection [...]*, above in full, p. 31.

³⁰ Greek National Human Rights Commission report, above in full, p. 6. The report notes that: “hundreds of people live in overcrowding, in a common space without guaranteeing any privacy and security [...] nor proper accommodation (most of them sleep on the floor on blankets and boxes, no bed and no mattress) while there is no shower in the area and adequate access to sanitary facilities” (unofficial translation from Greek).

³¹ 2024 CPT report, above in full, p. 34.

³² Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), of 26 June 2013, Art. 18.9(b).

³³ Response of the Greek Government to the report of the CPT on its visit to Greece from 20 November to 1 December 2023, Response of the Ministry of Migration and Asylum, 29 May 2024, CPT/Inf (2024), p.32, <https://rm.coe.int/1680b0e4e4>. The Greek authorities also discuss contingency plans for emergency accommodation needs, stating that “basic planning guidelines for emergency needs” have been formulated, covering: “the procedures of a) emergency increase in accommodation capacity, b) emergency increase in registration and movement capacity, c) access to financial resources for emergency needs, d) safety stock maintenance in non-food items” among other issues. P. 32 of the Response of the Greek Government to the CPT report, above.

³⁴ For a detailed breakdown of the layout of the CCAC, also see CPT report, above in full, p. 38.

severe overcrowding and inadequate conditions. Tom, a man who had been living in the centre for three months, said that the room where he and his child were staying was shared with 20-25 people. “Initially there were families and babies, now all men. My child is the only child between all adults”. His room had only one bunk bed, and the floor was covered in mattresses without bedsheets, and residents seemed to be using sleeping bags. Hadi and Jabir, men from Syria, and Karim, a man from Palestine, living in the same container, said that around one and a half months prior to Amnesty International’s visit, they were sharing their room between 23 people and that there were no mattresses or beds in the room upon their arrival.

In one of the dormitory-style containers, the shared bathrooms were in very poor conditions with several toilet cubicles lacking door handles and apparent water leaks on the floor. According to residents, another section visited by Amnesty International accommodated 300 people and was served by only three functioning toilets.³⁵ In September 2023, the CSO ‘Human Rights Legal Project’ (HRLP) was in contact with an individual who reported being held in a “sub-section” of the CCAC with no beds. In October, HRLP requested interim measures in the case of a woman with young children living “in a room which used to be a classroom”, without a bathroom, where they slept on the floor with 40 more people, including adult men. The applicants were moved to a container, leading the European Court of Human Rights (ECTHR) not to grant HRLP’s request. The case is pending before the Court on claims of arbitrary detention and inadequate living conditions.³⁶

Some residents talked about a sense of insecurity, a lack of privacy and about the authorities’ failure to accommodate families separately from unrelated single adults.³⁷ Ameer, a man from Palestine, said that he had been in the CCAC with his wife and children for around three months as of our visit. He expressed concern as his family was living in a container where unrelated single men were also being accommodated, saying: “children sleep early, and if there are conflicts between single men it affects us, it wakes us up... It is unsafe for my kids, they cannot go to the toilet alone, I need to accompany them. Most of the time my children pee themselves because they are afraid to go out at night”.

3.2 INSUFFICIENT SUPPLY OF RUNNING WATER

“When we arrived in the camp there was water for three hours per day. People couldn’t take showers at the same time. We put water in a jug. We are taking showers as it was done 70 years ago.”

Bilal, from Palestine, in the centre since late September 2023.

ACCESS TO RUNNING WATER

Living conditions in the CCAC are further exacerbated by long-standing shortages affecting the running water supply in the centre. CSOs have reported the issue since 2022, but the situation

³⁵ Group interview with several residents. The CPT also noted the presence of some sanitary facilities in a state of disrepair in section B and C (the pre-return detention section). CPT report, above in full, p38.

³⁶ Written consultations with HRLP, in March, June and July 2024.

³⁷ Residents’ concerns about safety and privacy have been reported by the NGO I Have Rights (IHR): I Have Rights, *“They are killing minds”, Life in the Samos Closed Controlled Access Centre*, <https://ihaverights.eu/wpcontent/uploads/2023/06/They-are-killing-minds-Life-in-the-Samos-Closed-Controlled-Access-Centre-.pdf>. Recently, the CPT reported that across CCACs visited “there had been a few allegations of sexual assault and sexual harassment” and noted that “there was an inadequate number of staff to supervise the accommodation sections, notably at night”. CPT report, p. 35.

continues in 2023-2024.³⁸ The authorities told Amnesty International that running water is provided with different frequency across different areas of the centre, specifying that Section A of the CCAC was served by running water for 24 hours a day, whilst Sections B and C lacked running water between 00:00 am to 06:00 am.³⁹ While the supply has fluctuated over time, based on NGOs reports and residents' accounts, it seems to remain inadequate to the needs of the population.⁴⁰

During our visit to the CCAC, the management authorities confirmed that since November 2023, trucks were contracted to provide water to the centre and mentioned that the construction of a second water pump was being considered to increase water flow to the centre. The GNCHR's report noted that the "drilling yields 40-60 cubic meters of water per day while the structure needs are estimated by the Administration at 240-300 cubic meters of water".⁴¹ According to their report, the arrangement with contractors ended on 15 January 2024, and additional water has since been provided temporarily by the Fire Department, in insufficient quantity to the total needs of the CCAC.⁴²

Whilst some residents told us that the provision of water had improved at times, others said that it was insufficient. A man living in Section B said that a week prior to our visit, running water was only available for two to four hours a day. Another resident of Section B stated that in December 2023, water was only available for four to five hours a day and around mid-January 2024, this decreased to only two hours a day. In February 2024, the authorities told the GNCHR that water was only available two to four hours per day.⁴³

On 29 May, the Greek authorities informed the CPT that water was controlled between August and "the first months of 2024" and that an "international tender" was being completed for the supply of water in the CCAC until the end of 2024.⁴⁴ Yet, as of mid-July, the CSO 'I Have Rights' (IHR) reports that residents that they are in contact with still experience restrictions in the provision of water.⁴⁵

PERSONAL HEALTH AND HYGIENE

The inadequate supply of water negatively impacts residents' ability to attend to personal hygiene and sanitation. CCAC's authorities told Amnesty International that since September 2023 washing machines are not operational in the centre.⁴⁶ This, combined with the overcrowding, raises serious concerns about sanitation standards.⁴⁷

Some residents told Amnesty International about the limited amount of hygiene products they received in the CCAC. Tom, a man in the centre with his child, said: "We can't wash clothes anywhere. When we arrived, we only received one blanket, one soap and two rolls of toilet paper". Hadi, Jabir and Karim, mentioned above, similarly recounted: "We were not given toothbrush, only

³⁸ In person interview of 18 December 2023. Also: International Rescue Committee (IRC) and IHR, Contribution to the European Ombudsman's strategic inquiry into how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece Submission by the (IRC) and (IHR), January 2023, <https://www.ombudsman.europa.eu/pdf/en/167053>: "CCAC's first year of operation, residents have had their access to water severely limited or completely cut off for two extended periods. This is due to unresolved issues with the only water pump that reaches the camp. Firstly, in May 2022, people were left without access to running water for 17 days. [...] Secondly, from October 2022 until the time of writing, water cuts are taking place between 2:30pm - 5:30pm each day and between 11pm - 5am each night". Regarding 2024, see: RSA, "Disgraceful living conditions in the 'state-of-the-art' Closed Controlled Access Centre (CCAC) of Samos", above. Also, ECRE Greece Country Report, 2023, p. 200

³⁹ From in person interview with CCAC's authorities. For details of the CCAC's layout see: <https://migration.gov.gr/ked-samoy-kleisti-elegchomeni-domi-samoy/>

⁴⁰ On the issue of water shortage see also: Are You Syrious, "Special from Greece: 43 Million Euros for no water, 19 May 2022, <https://medium.com/are-you-syrious/ays-special-from-greece-43-million-euros-for-no-water-9a27b897ae38>

⁴¹ https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Ekthesi_Samos_2024.pdf

⁴² https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Ekthesi_Samos_2024.pdf

⁴³ EEDA/GNCHR report, p.7. Also: CPT report, p. 34.

⁴⁴ Greek Ministry for Migration and Asylum's response to the CPT, above in full, p. 30.

⁴⁵ Written exchange with IHR, 18 July 2024.

⁴⁶ In person interview with CCAC's authorities of 18 December 2023. According to information available to Amnesty International, washing machines in the UAMs' safe zones are operational.

⁴⁷ See also: RSA, "Not again in 2024", above.

soap and a blanket [...] They gave us one soap for two rooms". A man in the CCAC with his family including children, said they had not received "diapers or hygiene products" for almost two months. He notes: "we buy diapers when we have money, cheaper diapers, and my child had a skin reaction. We didn't change diaper all day because we don't have enough".

Ameer from Palestine noted: "Water in the bathroom is dirty and discontinuous. Me and my wife share the toilet and bathroom with a lot of people including single men. There are lots of cockroaches, I am asking just detergent so that we can clean for ourselves. My kids got lice in the hair and cockroaches move on them while they sleep. Kids wake up at night and find the cockroaches walking on them and it is traumatic".

United Nations bodies highlight that "according to [the World Health Organization, WHO], between 50L and 100L of water per person per day are needed to ensure that most basic needs are met...Access to 20-25L per person per day represents a minimum, but this amount raises health concerns because it is insufficient to meet basic hygiene and consumption requirements".⁴⁸ UNHCR standards sets the amount of potable water that should be available in emergency situations at 7.5-15L per person per day.⁴⁹ According to the GNCHR, Samos residents are only given "1.5 liters of drinking water per day".⁵⁰ In May 2024, the authorities told the CPT that residents received three litres of drinking water per day.⁵¹ Furthermore, CSOs noted that the extensive metal fencing and lack of shaded areas in the CCAC, contributes to very high temperatures in the centre,⁵² which increases the need for access to water.

In their communications with the Greek authorities, Amnesty International asked to clarify the daily running water coverage across the CCAC and steps taken to address the issue in the short and long term, but no response was received to date.

3.3 SEVERE LACK OF MEDICAL SERVICES

MEDICAL STAFF AND FACILITIES

Despite the large population, the CCAC has lacked a permanent medical doctor since being opened.⁵³ In December 2023, the authorities informed us that a doctor seconded by the army temporarily worked in the centre, and that doctors from the local Samos hospital provide services on a voluntary and non-stable basis. Since 2022, the CSO 'Médecins Sans Frontières' (MSF) supports the provision

⁴⁸ United Nations Human Rights, Office of the High Commissioner for Human Rights, UN Habitat, World Health Organization, The Right to Water, Fact Sheet no. 35, <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet35en.pdf>, also quoted by RSA, Disgraceful living conditions in the 'state-of-the-art' Closed Controlled Access Centre (CCAC), above in full.

⁴⁹ UNHCR, WASH in Emergencies, <https://emergency.unhcr.org/emergency-assistance/water-sanitation-and-hygiene/wash-emergencies>

⁵⁰ GNHRC report, above in full, p.8. See also: Human Rights Legal Project -Report to the National Commission for Human Rights Samos, 21 September 2023 Object: Report on the current situation in the Closed Control Access Centre of Samos, citing Samiakon Vima, "CCAC of Samos, Dangerous Increase of Migrants", 18 September 2023, shared privately with Amnesty International.

⁵¹ Response of the Greek Government to the report of the CPT, above in full, p.30.

⁵² HRLP, Report on the current situation in the Closed Control Access Centre of Samos, above in full.

⁵³ Interview with EODY representative in the Samos CCAC, 18 December 2023. See among others: ECRE Greece Country Report, 2023 update, p. 53, https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-GR_2023-Update.pdf and Greek Council for Refugees & Oxfam International Submission Inquiry on Fundamental Rights in the EU-funded Migration Facilities on the Greek Islands Case OI/3/2022/MHZ , p.13, www.ombudsman.europa.eu/pdf/en/167055

of medical and psychological services in the CCAC through a mobile clinic.⁵⁴ Difficulties have been reported regarding the recruitment of doctors in the CCAC.⁵⁵

As of Amnesty International's visit, the Hellenic National Public Health Organization (EODY), then in charge of medical and psychological care in the CCAC, had a staff of eight including one psychologist, and four nurses.⁵⁶ Their staff did not include specialized staff providing sexual and reproductive health, including midwives, despite women making up 20% of the CCAC population.⁵⁷ It must be recalled that the World Health Organization's (WHO) Sustainable Development Goals "index threshold" sets the "indicative minimum density" in terms of need of health workers at "4.45 doctors, nurses and midwives per 1000 population".⁵⁸

A representative of EODY told Amnesty International's delegates that only one of the seven clinics in the CCAC was in use due to the lack of staff.⁵⁹ The delegation saw a clinic/medical room being used by residents for accommodation purposes, and a large seemingly brand-new clinic equipped with a dentist's chair, which appeared not to be in use. The existence of unused medical facilities across the CCAC stands in stark contrast with the medical needs of residents, exacerbated by the resource shortages experienced by the public hospital in Vathi.⁶⁰

On 9 May 2024, the Greek reception authorities, informed us that while a doctor was still not permanently present, the support of "an additional doctor" was "foreseen through a 6-month project that will be implemented by the Hellenic Red Cross".⁶¹ While the prospective recruitment of a doctor is a somewhat positive development, we regret to note that the brief duration of the project risks to perpetuate the inconsistent provision of medical service in the CCAC.

ACCESS TO HEALTHCARE

While the CCAC has been significantly decongested after February 2024, the provision of medical and psychological services remains deeply inadequate. The discussed shortcomings, combined with the water shortages, and residents' limited access to the public hospital, highlights the urgent need for permanent solutions to increase and adapt the provision of medical services in the CCAC, making it consistently and sustainably available.

⁵⁴ MSF, "Closed centres for refugees on Greek islands exacerbate psychological trauma", 30 November 2022, www.msf.org/closed-centres-refugees-greek-islands-exacerbate-psychological-trauma; MSF, *In plain sight: the human cost of migration policies and violent practices at Greek sea borders*, 2 November 2023, www.msf.org/plain-sight-migration-policies-greek-sea-borders. NGOs reported that in 2023, MSF was denied access to the CCAC. IRC and IHR Submission to the EU Ombudsman inquiry, above in full.

⁵⁵ EU Parliament, Question for written answer E-001573/22 to the Commission, 26 April 2022, [www.europarl.europa.eu/RegData/questions/reponses_qe/2022/001573/P9_RE\(2022\)001573_EN.pdf](https://www.europarl.europa.eu/RegData/questions/reponses_qe/2022/001573/P9_RE(2022)001573_EN.pdf). In February 2023, a tender was issued for the hiring of a general doctor and paediatrician in Samos, for a duration of three months Subject: Call for expressions of interest for the cooperation of the National Public Health Organization with doctors with APY status, 14 February 2023:

<https://eody.gov.gr/wp-content/uploads/2023/02/%CE%A8%CE%95%CE%A9546%CE%9C%CE%97%CE%A85-1%CE%A67.pdf>

⁵⁶ In a letter of 9 May 2024, the Greek Secretary General for the Reception of Asylum Seekers, informed us that the EODY team also included two EUAA case management team and one health visitor: "The Medical Screening and Psychosocial Support Unit has one (1) psychologist and two (2) personnel EUAA case management team, four (4) nurses, one (1) health visitor". The CPT report notes shortcomings in the use of medical resources, stating that "two of the nurses were involved in purely administrative tasks [...] and a third nurse was used as a patient escort", for people transferred to the local hospital, while "the remaining nurse was responsible for new patient triages and urgent medical issues within the CCAC". CPT report, p. 43.

⁵⁷ UNHCR, Aegean Islands Weekly Snapshot 22 - 28 January 2024 (Greek version), <https://data.unhcr.org/en/documents/details/106412> and Fenixaid and others, "Unlawful detention and worsening conditions: Over 4,000 asylum seekers unlawfully detained on Samos and Lesbos", 19 September 2023, <https://www.fenixaid.org/articles/unlawful-detention-and-worsening-conditions-over-4-000-asylum-seekers-unlawfully-detained-on-samos-and-lesvos>

⁵⁸ WHO, Health workforce requirements for universal health coverage and the sustainable development goals - Human resources for health observer series no 17, <https://iris.who.int/bitstream/handle/10665/250330/9789241511407-?sequence=1#:~:text=Their%20relative%20importance%20to%20the,and%20midwives%20per%201000%20population>

⁵⁹ The CPT also observed unused medical centres and proposed to the authorities that they be put into use. "as a first day triage screening for all new arrivals prior to their allocation to an accommodation area". CPT report, above in full, p. 44.

⁶⁰ Samos24, Employees' Association: Shortage of doctors at Samos General Hospital, 29 January 2024, https://t.ly/OAJt_

⁶¹ Letter from the Greek Secretary General for the Reception of Asylum Seekers Stellina Siarapi, of 9 May 2024, above.

International Human Rights law clearly established that “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, [...] minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services” and must abstain “from enforcing discriminatory practices as a State policy”.⁶² International standards recognize asylum seekers as people in conditions of “additional vulnerability”, and “with specific needs that require the State to take particular steps to ensure their access to sexual and reproductive information, goods and healthcare”.⁶³

In February 2024⁶⁴ and September 2023,⁶⁵ the ECtHR indicated interim measures in two cases involving female residents of the CCAC and their children, ordering, among other things, that they be provided with medical care.

In 2024 the ECtHR found that the inadequate provision of specialized medical care to a resident with hepatitis B in the facility which preceded the CCAC in Samos – the so-called “Reception and Identification Centre” – constituted a violation of the prohibition of ill-treatment.⁶⁶

In 2021, the European Committee of Social Rights, ruling on a case involving the living conditions of migrant and asylum-seeking children in Greek facilities, recalled that “access to health care must be ensured to everyone without discrimination”, and “requires that the number of health care professionals and equipment must be adequate”. While the Committee’s decision covers a period before the establishment of the Samos CCAC, some of the concerns expressed resonate with the present-day conditions there. The Committee notes that “the most commonly treated illnesses” among the children affected in the case, “are linked to their living conditions”, which, in the island facilities, were characterized by “overcrowding, sanitation and hygiene conditions”.⁶⁷

In Samos, CSOs have reported cases of scabies and skin conditions, connecting them with the running water shortages, absence of laundry facilities, and overcrowding,⁶⁸ MSF has noted an “increase in contagious skin conditions, particularly scabies” stating that these “have become, by far, the main issue” treated by their teams in Samos since August 2023. They also state that these conditions “could be prevented by, or solved with, proper hygiene and access to running water”.⁶⁹

An EODY representative in the CCAC stated that in cases of people affected by injury or chronic conditions for which treatment is not available on Samos (including sexually transmitted infections, HIV, digestive disorders and gastric issues, ophthalmology, cancer), EODY requests the patient’s transfer to mainland Greece to access specialized care.⁷⁰ The EODY representative could not comment on the exact frequency of transfers but stated that these are carried out “as soon as

⁶² See also the recommendations of the GNHRC and CPT. UN Economic and Social Council, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), E/C.12/2000/4, UN Committee on Economic, Social and Cultural Rights (CESCR), 11 August 2000, para. 34 <https://www.refworld.org/legal/general/cescr/2000/en/36991>

⁶³ General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 01 May 2016, E/C.12/GC/22, Para 31.

⁶⁴ IHR, Degrading conditions in Samos CCAC: The European Court of Human Rights grants Interim Measures, 7 February 2024, <https://ihaverights.eu/european-court-of-human-rights-grants-interim-measures/>

⁶⁵ Consultation with HRLP of March 2024.

⁶⁶ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984, Article 16. UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) : resolution / adopted by the General Assembly, A/RES/70/175, 8 January 2016, Rule 13; *W.A. v. Greece*, no. 21997/20.

⁶⁷ European Committee of Social Rights, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits, para. 223.

⁶⁸ RSA, “Disgraceful living conditions in the ‘state-of-the-art’ [CCAC] of Samos”, above. The New Humanitarian, “‘This is inexcusable’: What’s behind deteriorating conditions in Greek island asylum camps?”, 4 December 2023, www.thenewhumanitarian.org/news-feature/2023/12/04/inexcusable-whats-behind-deteriorating-conditions-greek-island-asylum-camp

⁶⁹ MSF, *Death, Despair and Destitution*, February 2024, p.56 www.msf.es/sites/default/files/2024-02/Migration_Report_FINAL_cprsd.pdf

⁷⁰ In person interview of 18 December 2023.

possible". In January 2023, MSF reported that "people in need have faced administrative delays of up to several months for transfers to hospitals on the Greek mainland", including in cases in need of urgent hospitalization and "lifesaving drugs such as antiretrovirals (ARVs) for HIV".⁷¹

Insofar as people in the CCAC under restrictions of freedom are in conditions amounting to detention, standards on healthcare applying to them are stricter. The failure to provide treatment to detained people with serious health conditions, such as the ones listed, can result in a violation of the prohibition of torture and other ill-treatment.⁷²

According to the GNCHR report of April 2024, "health services provided in the structure are from exceptionally insufficient to non-existent."⁷³ With difficulty only emergency cases are dealt with and are referred to Samos General Hospital". The CPT similarly rated healthcare services in the CCAC as "extremely poor". It recommended that all CCACs be equipped with "one full-time doctor and three nurses for every 500 persons", ensure "good access to gynaecological and paediatric services", and called for the creation of "contingency plans" to confront the population's needs during increased arrivals.⁷⁴

The authorities failed to answer Amnesty International's request for information on the number of cases where, since June 2023, residents had their geographic restriction lifted to receive medical care on the mainland and on the steps taken to ensure the permanent presence of medical doctors and increase the capacity of healthcare personnel able to deliver urgent sexual and reproductive care.

PROVISION OF MEDICAL SERVICES

EODY operations in the CCAC were financed as part of the PHILOS II project, under the Greek Ministry of Health, funded by the EU Commission in the amount of EUR 25.3 million.⁷⁵ PHILOS II was set to be superseded by the "Hippocrates" Project, in the first semester of 2024, under the remit of the Ministry of Migration and Asylum,⁷⁶ and also EU-funded.⁷⁷ The president of EODY workers' union told Greek media that on 14 June, EODY workers were informed that their contracts would end on 30 June 2024, and not at the end of July, as per the extension that EODY had proposed to workers in May 2024.⁷⁸ In a meeting with Amnesty International on 25 June 2024, IOM representatives confirmed that the organization had been designated to run the Hippocrates project in collaboration with medical actors and service providers, but that contracts with the Ministry had not yet been signed and the "inclusion decision" for the project had not been issued, so the project could not be

⁷¹ Medecins Sans Frontieres, contribution to the EU Ombudsperson Strategic Inquiry OI/3/2022/MHZ, January 2023, www.ombudsman.europa.eu/pdf/en/167051

⁷² See International Commission of Jurists, Administrative Detention of Asylum seekers, European Judicial Training project, March 2018, and ECtHR rulings in *Nogin v. Russia*, no. 58530/08 (on diabetes), *Aleksanyan v. Russia*, no. 46468/06 and *Salakhov and Islyamova v. Ukraine*, no. 28005/08 (on HIV), *Kaprykowski v. Poland*, no. 23052/05, *Khudobin v. Russia*, no. 59696/00 (on epilepsy)

⁷³ GNCHR report, p.8.

⁷⁴ CPT report, p. 43. The CPT observed the triage process of newly arrived residents, noting that it was conducted too rapidly, and "was carried out by a nurse 'from memory' – there was no formal checklist or triage template – and negative findings or psychological problems were not recorded". The CPT report includes example of individual cases where vulnerabilities that were not adequately addressed.

⁷⁵ EU Parliament, Question for written answer E-003570/2023, Conditions of National Public Health Organisation employees engaged in 'Philos' Programme, 6 December 2023, and relevant answer at: www.europarl.europa.eu/doceo/document/E-9-2023-003570_EN.html and the webpage of the "Tamey" Programme: <https://tamey.gov.gr/>

⁷⁶ Ibid. See also: [Workers and refugees in despair together I](#) EFSYN

⁷⁷ Information at: <https://rm.coe.int/comments-submitted-by-greece-on-greivio-s-final-report-on-the-implement/1680ad46c5>, and https://www.europarl.europa.eu/doceo/document/E-9-2023-003570-ASW_EN.pdf

⁷⁸ EFSYN, Workers and refugees in despair together, 18 June 2024, www.efsyn.gr/ellada/ygeia/437052_ergazomenoi-kai-prosfyges-se-apognosi-apo-koinoy

implemented yet.⁷⁹ It is unclear how the Greek authorities will ensure that there is no gap in the provision of medical services between the conclusion of PHILOS II and the start of Hippocrates.⁸⁰

A tender published on IOM's website, foresees the deployment of a 21-person medical staff in the Samos CCAC, including three full-time pathologists, and two full-time midwives.⁸¹ IOM confirmed to Amnesty International that while they aimed to implement the provisions in the tender, the number of staff deployed may change in the implementation of the project depending on the population levels in the sites.⁸²

3.4 LACK OF SUPPORT FOR RESIDENTS IN VULNERABLE SITUATIONS

VULNERABILITY ASSESSMENT

Under Greek law and EU and international standards,⁸³ residents falling into certain categories or experiencing conditions of vulnerability are entitled to special reception conditions. Under Greek law, these include, among others, “unaccompanied or accompanied minors [...] persons with disabilities, the elderly, pregnant women, single-parent families with minor children, victims of human trafficking, people with serious illnesses, people with intellectual and mental disabilities and people who have suffered torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of genital mutilation”.⁸⁴

In the Greek asylum process, a vulnerability assessment is carried out “during the registration and medical control procedures” and is independent of asylum determination procedures,⁸⁵ but an applicant's condition of vulnerability is “taken into account throughout the process”, “even if it becomes apparent at a later stage of the [asylum procedure]”.⁸⁶ People's access to dedicated conditions in practice depends on the authorities' ability to promptly and effectively identify those with special reception needs.⁸⁷ In the CCAC, this is hindered by the serious shortcomings in the availability of healthcare services, as well as interpretation (discussed in the next sections). In their response to our letter of May 2024, the Greek authorities failed to provide data on the composition of the staff tasked with vulnerability assessments and if and how the capacity of such staff was enhanced in view of the increased arrivals.⁸⁸

SUPPORT FOR VULNERABLE RESIDENTS

CSOs International Rescue Committee (IRC) and I Have Rights (IHR) expressed concerns that vulnerability assessments can “only be done by a state-appointed doctor”, who are not permanently present in the CCAC.⁸⁹ IHR also notes that in 2022, out of the 42% of their beneficiaries who “met the

⁷⁹ Interview with representatives of IOM, of 25 June 2024.

⁸⁰ According to the authorities' response to the CPT, above in full, p. 34, until the implementation of Hippocrates “the existing medical services are assisted by military doctors and doctors from local hospitals, by staff of [EODY] who organize missions to places with staff shortages and/or increased needs, and by civil society organizations, at the request of the Ministry”, with the support of EUAA in the identification and referral of vulnerabilities. It is unclear how these arrangements are concretely implemented in the Samos CCAC.

⁸¹ IOM procurement notice - “Provision of Medical and Psychosocial Services in accommodation facilities throughout Greece for one (1) year with the possibility of extension for two (2) years”, 27 February 2024, at: <https://greece.iom.int/do-business-us-procurement>

⁸² Interview with representatives of IOM, of 25 June 2024

⁸³ EU Reception Conditions Directive, Article 17, 18.3 and 23

⁸⁴ Article 2, lett. λγ and Article 72 of of Law 4939/2022

⁸⁵ Art 62 of Law 4939/2022

⁸⁶ Art 62. 3 of Law 4939/2022

⁸⁷ On the negative impact of inadequate medical services on the identification of vulnerabilities in Greece see: ECRE and ICJ v. Greece, Collective complaint before the European Committee of Social Rights of the Council of Europe, para. 51 and subsequent.

⁸⁸ Letter of the SG on reception of 9 May. According to the letter: “upon arrival there is a first medical screening (triage) where the initial identification of medical vulnerabilities and people needing special reception conditions is conducted. Further, during the Information Provision stage, people needing special procedural guarantees, unaccompanied children, single parents and the like, are identified and registered accordingly. Also, the Medical Screening and Psychosocial Support Unit staffed by [EODY] personnel conducts the medical examination (medical record) and identifies those in need of medical assistance, vulnerable groups-hidden vulnerabilities and people needing psychosocial support. All these cases are followed up and further referred to competent actors, when necessary, by the Medical Screening and Psychosocial Support Unit and the EUAA case management team”.

⁸⁹ IRC and IHR, Contribution to the European Ombudsman's strategic inquiry, above in full, p.8.

legal category of vulnerability in Greece”, “[o]nly 33% [...] were in contact with the CCAC psychologist before their full asylum interview”.⁹⁰ The European Council of Refugees and Exiles (ECRE) reports that 15% of the 55,875 registered by the Greek Reception and Identification Service (RIS) across Greece in 2023 were registered as vulnerable.⁹¹ The CPT reported the presence of “large numbers” of residents in conditions of vulnerability in Samos “held [...] without being identified and allocated to appropriate accommodation areas”.⁹²

HRLP notes that the lack of vulnerability assessments can negatively impact the health and safety conditions of the CCAC, as “applicants with communicable diseases risk remaining undetected or unable to seek medical treatment for several weeks after arrival which causes a serious risk of contagion”.⁹³ HRLP told Amnesty International that they alerted the CCAC authorities to several people in vulnerable situations accommodated with the general population, including in the case of a man with epilepsy accommodated in inadequate conditions, and who had not been seen by a doctor for over two weeks since his arrival.⁹⁴ The CSO repeatedly and unsuccessfully requested the authorities to grant him appropriate medical care and to conduct a vulnerability assessment.⁹⁵

In August and September 2023, HRLP also flagged to the authorities cases involving 19 unaccompanied minors (UAMs) who were held with adults. The UAMs were registered and rapidly transferred to the UAMs’ “safe area” after the CSO’s intervention.⁹⁶

The CPT has identified the establishment of adequate vulnerability assessment procedures and of medical screenings upon arrival as a priority in its requests to the Greek authorities, who are requested to comply within one month.⁹⁷

⁹⁰ Ibid.

⁹¹ ECRE Greece Country Report, 2023 update, p. 175.

⁹² CPT report, p. 5

⁹³ HRLP, Report to the GNCHR, 21 September 2023, shared privately with Amnesty International

⁹⁴ The individual was ultimately registered early October, after which he was able to access adequate medical care.

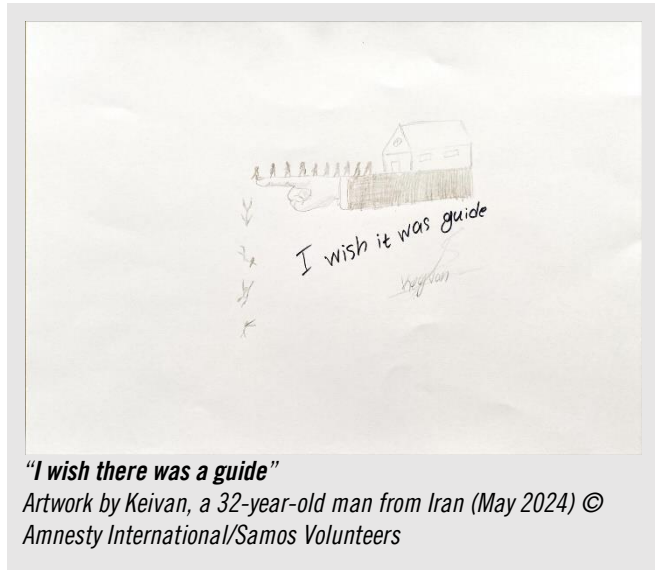
⁹⁵ HRLP -Report to the National Commission for Human Rights Samos, 21 September 2023 Object: Report on the current situation in the Closed Control Access Centre of Samos

⁹⁶ Consultation with HRLP, March 2024.

⁹⁷ The CPT recommended a “two-step screening process”, including an initial check upon arrival, and a later screening to ensure the identification of “psychological distress, mental health needs and other vulnerabilities”. A second priority request was the creation of a “properly regulated accommodation policy”. CPT report, p. 44. The authorities told the CPT that as of April 2024, the “unified information system” of the CCACs has a function to obtain “detailed description of the residents per housing unit, their family composition, and vulnerability information, in connection with their housing unit allocation”, to facilitate the identification “of residents who should not be cohabitating within the same housing unit, or even Center sector”. They also maintained that “guidelines for allocating residents into housing units according to their family composition and other special characteristics are now fully observed”. Greek authorities’ response to the CPT, p. 31.

SPECIAL PROCEDURAL GUARANTEES

The identification of vulnerabilities is also relevant for granting special procedural guarantees in the asylum procedure, as per Article 72 of Law 4939/2022 (the “Asylum Act”), to those in need of them due to factors including “age, sex, sexual orientation, gender identity, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence”. International protection applicants in facilities on the Aegean islands, including Samos, are generally processed through the so-called “fast-track border procedure” under Article 95.3 of the Asylum Act,⁹⁸ which provides for a quicker asylum procedure and lower procedural rights.⁹⁹ While people who meet the conditions of vulnerability are not automatically exempt from this procedure,¹⁰⁰ those who are found in need of special procedural guarantees must be granted “adequate support” and protective measures throughout the asylum process. If such support cannot be provided under the fast-track procedure, their asylum case should be processed under the regular procedure.



“I wish there was a guide”

Artwork by Keivan, a 32-year-old man from Iran (May 2024) © Amnesty International/Samos Volunteers

The shortcomings of the vulnerability assessments in the Samos CCAC and lack of corresponding data casts doubt over the application of these safeguards and are likely to run contradictory to international standards around the treatment of persons with specific needs. In April 2024, Amnesty International requested information from the Greek authorities on the number of cases where applicants were transferred to the regular asylum procedure in view of their need for special procedural guarantees since June 2023 but did not receive any response. ECRE confirmed that across Greece data on people exempted from the border procedure “on grounds of vulnerability and need for special procedurals [...] in 2023 are not available”.¹⁰¹

3.5 HARSH RESTRICTIONS IMPOSED ON UNACCOMPANIED MINORS

“SAFE AREAS”

In 2020, Greece finally repealed the much-criticized law allowing the “protective custody” of unaccompanied minors (UAMs), which allowed their de facto detention, often pending transfer to adequate accommodation.¹⁰² UAMs reportedly continue to be detained in Greece, “in most cases for very for short periods”.¹⁰³ UAMs who are seeking asylum and residing in CCACs live in “safe areas”, separate from the general population. In a number of facilities, the operation of ‘safe areas’ is or has been supported by IOM. On Samos, the ‘safe area’ was supported under the project MERIMNA III, run by IOM, between March 2023 and January 2024, and implemented with the CSO Zeuxis. Since

⁹⁸ Article 95 para. 3 of the Asylum Act. The law implements the provisions of the EU asylum procedures directive, which discusses special procedural guarantees under recital 29 and 30, Article 24 and 31. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180/60 - 180/95; 29.6.2013, 2013/32/EU, 29 June 2013.

⁹⁹ ECRE Greece Country Report, 2023 update, p. 53

¹⁰⁰ ECRE Greece Country Report, 2023 update, p. 94

¹⁰¹ Ibid., p. 115.

¹⁰² Previously regulated under Art.118 of Presidential Decree 141/1991. ECRE Greece Country Report, 2023, above in full, p. 232. Human Rights Watch, “Ending Child Detention in Greece is Possible”, 4 August 2020, www.hrw.org/news/2020/08/04/ending-child-detention-greece-possible,

¹⁰³ ECRE Greece Country Report, 2023, above, p. 232.

February 2024, Zeuxis is the sole responsible for the safe area program on Samos and other islands.¹⁰⁴

The CPT has opposed the placement of children in CCACs altogether, saying these sites “are not appropriate places for holding children, due to their carceral design and insufficient staffing levels and support offered”.¹⁰⁵

RESTRICTIONS ON UAM

UAMs in the Samos CCAC appear to be held under very restrictive, detention-like conditions in the “safe area”. In August 2023, Border Violence Monitoring Network noted that UAMs in Samos had been kept in the safe area “for 22 hours a day” for over a year, and only since that month had they allowed to enter the general population section between 1 and 8 pm.¹⁰⁶ Information shared with Amnesty International by the CCAC authorities in December 2023 suggests that UAMs had been able to leave the “safe area” between 14:00 and 18:00/19:00 until November 2023, but since then, “for their safety”, they were no longer allowed to leave the area except to attend school, under the supervision of the CSO ‘ARSIS’, following an incident where one child went “missing” from the centre.¹⁰⁷

As of 16 July, the safe area hosted 54 UAMs.¹⁰⁸ IOM informed Amnesty International that the rules for exiting safe areas are imposed by the CCAC’s Reception and Identification Service (RIS) and implementation differs depending on the orders of CCAC’s directors.¹⁰⁹ Since February 2024, the CSO Zeuxis accompanies children on leisure and educational activities outside of the CCAC.¹¹⁰

The further tightening of living conditions of UAMs, based on decisions of the CCAC’s authorities that seem to lack clarity or predictability and in the apparent absence of a reasoned or individualized decision, might constitute an undue interference with their right to liberty and security and their freedom of movement. Under the Asylum Act, “minors” can be detained in exceptional circumstances, “as a last resort, always in their best interest, when it is proven that alternative and less restrictive measures cannot be applied”.¹¹¹ Their time in detention should not exceed 25 days.¹¹²

The complete removal of UAM’s ability to spend time in the general population area of the CCAC in November 2023 suggests that restrictions are imposed arbitrarily, serving the aim of facilitating authorities’ management of the “safe area” through increased containment, rather than the UAM’s best interest.¹¹³

¹⁰⁴ Interview with IOM representatives of 16 April 2024 and other written exchanges; IOM, Supporting Unaccompanied migrant children at the Greek borders (MERIMNA II), <https://greece.iom.int/supporting-unaccompaniedmigrant-children-greek-borders-merimna-ii>; Zeuxis, Safe Areas for Unaccompanied Migrant Children (Samos, Leros, Chios and Kos islands), www.zeuxis.org.gr/en/what-s-new/news/653-safe-areas-for-unaccompanied-migrant-children-samos,-leros,-chios-and-kos-islands.html

¹⁰⁵ CPT report, above in full, p. 41.

¹⁰⁶ Border Violence Monitoring Network (BVMN), Monthly Report, August 2023, <https://borderviolence.eu/reports/balkan-regional-report-august-2023/>

¹⁰⁷ In person interview with CCAC’s authorities on 18 December 2023.

¹⁰⁸ In the interview of 16 April 2024, IOM informed Amnesty International, that between August-October 2023, a high number of UAMs was present in the island facilities, including due to the lack of places in long-term accommodation and gaps in the availability of healthcare staff to issue certificates allowing children’s transfer.

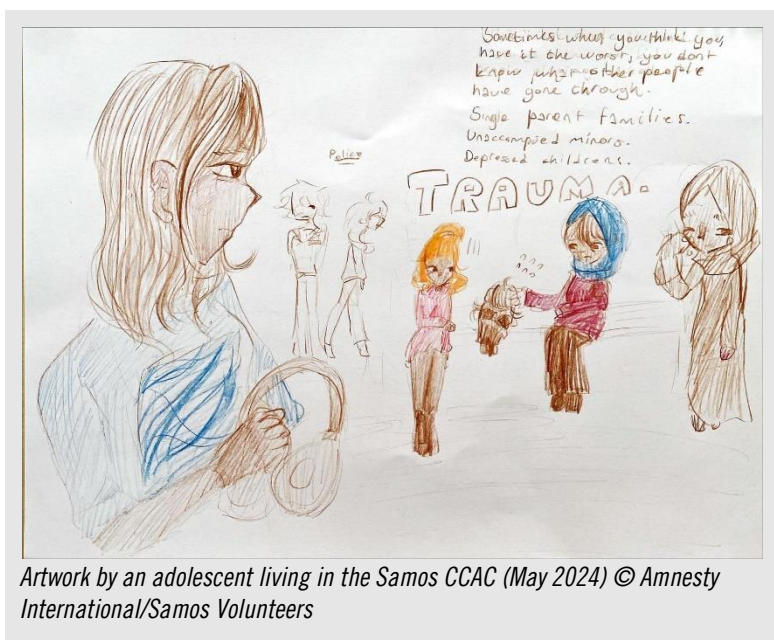
¹⁰⁹ Interview with IOM representatives of 16 April 2024.

¹¹⁰ See also: CPT report, p.40.

¹¹¹ Law 4939 of 2022, Article 52

¹¹² Law 4939 of 2022, Article 52

¹¹³ The CPT has remarked that “the excessive security and barbed wire fencing make the CCACs unsuitable for accommodating children and persons in a vulnerable situation”.



Artwork by an adolescent living in the Samos CCAC (May 2024) © Amnesty International/Samos Volunteers

International law and standards clearly establish that detention of children for migration purposes can never be in their best interest.¹¹⁴ United Nations experts have called EU member states to “explicitly prohibit” this practice in their national legislation.¹¹⁵ Amnesty International concurs that countries should eradicate the migration detention of children, in law and practice, under all circumstances.

The Greek Ombudsman expressed concern about UAMs in Samos and recommended “to increase the time that children are allowed to be outside the safe zone, as well as outside the

facility, for specific recreational activities”, “enhance the opportunities for recreational activities” in the safe area and “redesign the space to be more child-friendly”.¹¹⁶ The CPT reported that as of their visit, “many [UAMs] had been held in the ‘safe zone’ since early/mid-September 2023”, and “the lengths of stay were prolonged as the procedures to assign a relative of a [UAM] already in the CCAC as a guardian took time to complete”.¹¹⁷ Based on information available to Amnesty International,¹¹⁸ since February 2024 the time that UAMs spend in the safe area was reduced from 40-45 to 25 days.

4. SYSTEMATIC USE OF RESTRICTIONS AMOUNTING TO UNLAWFUL AND ARBITRARY DETENTION

Amnesty International is deeply concerned about the systematic use of so called “restrictions of freedom” (hereinafter “ROF orders”) on residents of the Samos CCAC, who are predominately racialized asylum seekers. These restrictions are provided for under Article 40 of the Asylum Act, which allows for the confinement of residents within the premises of the CCAC for maximum of 25 days from when their entry, to conduct reception and identification procedures.¹¹⁹ Restrictions are

¹¹⁴ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, para. 5. [CoE]: European Court of Human Rights, Unaccompanied migrant minors in detention, January 2018, www.refworld.org/jurisprudence/caselawcomp/echr/2018/en/120152; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990, General Assembly resolution 45/113, www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty. See also the recommendations on UAMs in the Greek Ombudsman’s report, cited above in full.

¹¹⁵ UN Office of the High Commissioner of Human Rights, Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say 02 May 2024, <https://shar.es/agucl0>.

¹¹⁶ Greek Ombudsman’s report, p. 145.

¹¹⁷ CPT report, above in full, p. 40.

¹¹⁸ Interview with stakeholder who wished to remain anonymous

¹¹⁹ ECRE Greece Country Report, 2023, p.58. See also the authorities’ reply to the Report, responding to the claim that ROFs amount to de facto detention, stating that: “This is a de jure restriction of freedom, during reception and identification proceedings, and after submission of an asylum application in a RIC [...]” https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-GR_Right-of-Reply_2023-Update.pdf

imposed through a first ROF order issued “within five days of their entry” and, should procedures not be completed “by the end of the five-day period”, they are extended until the completion of procedures for an additional period that cannot exceed 25 days from a person’s entry. In relation to asylum seekers, if the examination of their asylum claim has not been completed by the end of the 25-day-period, the Asylum Act provides that restrictions are lifted, subject to the application of Article 50, which regulates legality and conditions of their detention.¹²⁰

People in vulnerable situations are not automatically exempt from ROFs but should be granted “special care”.¹²¹ The law does not expand on how such care is to be provided, and the Greek authorities did not respond to Amnesty International’s request in this sense. Reception authorities can grant residents a permit to exit the CCAC exceptionally and for serious health reasons”.¹²²

Prior to the 2022 Asylum Act, residents of the Samos CCAC were prevented from leaving the centre on untransparent and illegitimate legal grounds, for example if they lacked a valid asylum card.¹²³ In 2021, Amnesty International considered that affected residents were in conditions amounting to illegal detention.¹²⁴

As a result of ROF orders, residents of the CCAC are seriously limited in their ability to access services outside, including the local hospital or private medical services. They cannot leave the centre to perform daily chores, such as purchasing groceries, hygiene products, medicines, or attend leisure or education activities organized by CSOs.

Furthermore, as will be discussed below, the implementation of ROFs is deeply flawed, leading residents to being de facto detained for prolonged periods of time, outside the limits of Article 40.

ROF orders imposed on residents of the CCAC amount to detention and are incompatible with international and EU human rights standards both in their theoretical configuration and in their practical implementation.¹²⁵

Although ROF orders are seemingly “race-neutral” and affect all new entrants of CCAC, they almost exclusively affect racialized asylum seekers, raising issues of discriminatory effects, which are contrary to the ICERD. The UN Committee on the Elimination of Racial Discrimination (CERD), in its general recommendation No. 30, stated that states must ensure “the implementation of legislation does not have a discriminatory effect on non-citizens”.¹²⁶

The system of containment implemented in Samos and other CCACs through ROFs affects racialized people on the move disproportionately, and as such has also the effect of furthering a practice of

¹²⁰ Law 4939 of 2022, Art 40 lett c

¹²¹ Law 4939 of 2022, Art 40

¹²² Law 4939 of 2022, Art 40 lett a

¹²³ Formally known as “International protection applicant's card”. See explanatory page of the Ministry for Migration and Asylum: <https://migration.gov.gr/en/gas/diakikasia-asyloy/meta-tin-aitisi/#:-:text=card%20with%20you,-.The%20international%20protection%20applicant%20card%20is%20a%20temporary%20document%20that,expiry%20date%20at%20the%20latest>

¹²⁴ Amnesty International, *Greece: Asylum seekers being illegally detained in new EU-funded camp*, above. Also: Greek Council for Refugees (GCR), “The Administrative Court of Syros ruled unlawful the measure of prohibiting the exit of an Afghan asylum seeker from the new Closed Controlled Access Facility of Samos (CCF Samos)”, 20 December 2021, <https://www.gcr.gr/en/news/press-releases-announcements/item/1867-the-administrative-court-of-syros-ruled-unlawful-the-measure-of-prohibiting-the-exit-of-an-afghan-asylum-seeker-from-the-new-closed-controlled-access-facility-of-samos-ccf-samos>.
20.12.21 https://asylumineurope.org/reports/country/greece/asylum-procedure-and-registration/reception-and-identification-procedure/#_ftn51 and Administrative Court of Syros, Decision No AP 36 /17-12-2021, [unofficial translation of relevant extracts by GCR] at: <https://bit.ly/3KroeO1>

¹²⁵ ECRE Greece Country Report, 2023, above, p. 55

¹²⁶ CERD, General Recommendation 30, above, para. 7.

racialized exclusion of migrants and refugees at Europe's borders, who have been routinely isolated and exposed to inadequate conditions on the Aegean islands since the EU-Türkiye migration deal.

4.1 “RESTRICTIONS OF FREEDOM” AMOUNT TO DETENTION IN INADEQUATE CONDITIONS

The legal qualifications of measures preventing people's exits under the label of “restriction of freedom” formally differentiate these measures from “detention” («κράτηση»¹²⁷). Under the EU Reception Conditions Directive, member states can restrict asylum seekers' movements “within an area assigned to them”, which “shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive”.¹²⁸

The United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) expressed concern over the tendency of national authorities to resort to alternative labels when describing migration detention, noting that “[t]he term “detention” is rarely used, and its renaming is usually intended to prevent those measures from receiving scrutiny, thereby avoiding procedural safeguards that should be applied before and during any deprivation of liberty”.¹²⁹ The CMW notes that migration related detention, “refers to any situation in which a person is deprived of liberty on grounds related to that person's migration status”, irrespective of how the measures or facilities used are classified, and that the definition covers people in “closed reception facilities”.¹³⁰

It is hence necessary to consider whether, irrespective of their formal qualification, the configuration and implementation of ROFs are compatible with the scope allowed under EU law and other instruments for a measure to be considered a legitimate restriction of freedom of movement.

The European Convention on Human Rights (ECHR), to which Greece is a party, regulates the deprivation of liberty and the restriction of freedom of movement under Article 5 and Article 2 of Protocol No. 4, respectively. According to the jurisprudence of the ECtHR, the difference between these situations “is merely one of degree or intensity, and not one of nature or substance”. To determine if someone has been deprived of their liberty, consideration must be paid to their “concrete situation” and to the “type, duration, effects and manner of implementation of the measure in question”.¹³¹ The legal qualification is not in itself decisive.¹³²

The historic case of *Guzzardi v. Italy* laid important principles to this end, finding that a deprivation of liberty can result from the cumulative and practical effects of a restrictive measure, even in situations that do not fall under the classic definition of detention. In the case, the applicant was under the measure of “special supervision” as part of criminal proceedings against him and was subjected to an order of “compulsory residence” in a “hamlet” on an Italian island. The applicant lived “principally in the company of other persons subjected to the same measure and of policemen”, and in a state of “strict” and “almost constant” supervision. The court found that while none of the factors of his stay, individually, amounted to a deprivation of liberty, they did raise such issue if considered “cumulatively and in combination”. For its assessment the Court considered, in addition to the quality of

¹²⁷ Law 4939 of 2022, Art 1.

¹²⁸ Reception Conditions Directive, Article 7.

¹²⁹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 5 (2021) on migrants' rights to liberty and freedom from arbitrary detention and their connection with other human rights, para 12-13

¹³⁰ *Ibid.*, para. 14.

¹³¹ Among others, *Khlaifia and others v. Italy*, no. 16483/12, para. 64.

¹³² UNHCR understands the “detention” of asylum seekers as the “deprivation of liberty or confinement in a closed place which an asylum seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities”. UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, para .5, www.refworld.org/policy/legalguidance/unhcr/2012/en/87776

accommodation and the possibilities for movement, the applicant's access to medical services, work, and recreational activities. These considerations bear resemblance with the situation in Samos.

The ECtHR ruling in the case of *Khlaifia* also offers parallels with restrictions in the CCAC. The Court found that the 12-day confinement of migrants from Tunisia in a reception centre and on two ships, amounted to a deprivation of liberty. It reported that in the centre the applicants were “under surveillance” and, both there and on the ships they were “prohibited from leaving”.¹³³

The UN Working Group on Arbitrary Detention (WGAD) found that people in two camps hosting asylum seekers in Iraq, were “effectively deprived of their liberty without any legal justification”¹³⁴ and that conditions were “synonymous with those in a detention centre, as residents have no freedom of movement, nor interaction with the outside world”. While the circumstances of the camps cannot be equated to those in Samos, including in that people held there lacked access to remedies or legal justification, the WGAD noted that the residents were “prohibited from leaving the camp and deprived of the opportunity to receive visits from family, friends, and supporters” and that “the means to communicate regularly and freely with the outside world is restricted”.¹³⁵

Several factors considered relevant by the ECtHR and the WGAD in cases where they concluded that a measure constitutes detention, are also present in the Samos CCAC. Residents subjected to ROFs are prevented from exiting the centre, and confined in a highly militarized facility, set in an isolated spot. Their principal opportunity to exit the centre is in cases of “serious health reasons”. The centre is surrounded by double barbed wire metal fencing, and residents’ movements are constantly monitored through the CCTVs present throughout and 24/7 presence of patrolling officers. MSF reports patients residing in the CCAC said “that the securitised environment made them feel that they were being punished for seeking safety”.¹³⁶ Discussing Greek CCACs, the European Ombudsman has noted that “[t]he external fencing and surveillance infrastructure do not create a physical environment conducive to wellbeing and are, rather, reminiscent of detention facilities”, and that “[t]he external and internal fences may also have negative health (including mental health) consequences on vulnerable migrants and those who have fled difficult circumstances. It is questionable how respect for human dignity and protection of the best interests of the child and of vulnerable individuals can be ensured if residents are forced to stay in such an environment”.¹³⁷

Following its visit to Samos and other CCACs, the CPT has explicitly qualified the “restriction of freedom” as amounting “[i]n practice...to a deprivation of liberty, as it is systematically applied to all new arrivals”, until their full registration.¹³⁸

In the past, in the rulings in *J.R. and others*¹³⁹ and *OSA and others v. Greece*,¹⁴⁰ the ECtHR found that the applicants’ stay in the Vial centre on the island of Chios, while the site was used as a “closed facility”, between 20 March 2016 and 21 April 2016, amounted to detention. At the time, the Government had claimed that people in Vial were not detained, but – similarly to the situation in

¹³³ *Khlaifia and others v. Italy*, no. 16483/12, para. 65.

¹³⁴ Human Rights Council Working Group on Arbitrary Detention Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012 No. 32/2012 (Iraq), 23 November 2012, A/HRC/WGAD/2012/32, para. 30, and expanding upon earlier opinion No. 16/2012, para. 16, A/HRC/WGAD/2012/32, para. 31

¹³⁵ *Ibid.* Para. 30

¹³⁶ Medecins Sans Frontieres, contribution to the EU Ombudsperson Strategic Inquiry OI/3/2022/MHZ, January 2023, www.ombudsman.europa.eu/pdf/en/167051

¹³⁷ EU Ombudsman, Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece, 7 June 2023, para. 48, www.ombudsman.europa.eu/en/decision/en/170792. The CPT also called for the removal of barbed wire on the perimeter fences of accommodation areas. CPT report p. 33.

¹³⁸ CPT report, p. 10. The GNCHR also notes “the waiting time” spent by CCACs residents without being able to leave the camp, “until the start of registration procedures” also amounts to de facto detention. Unofficial translation from Greek. GNCHR report, p.12.

¹³⁹ *J.R. and others v. Greece*, Application no. 22696/16. Similar findings in *Kaak and others v. Greece*, no. 34215/16.

¹⁴⁰ *O.S.A. and others v. Greece*, no. 39065/16

Samos – were under “restrictions for a maximum period of twenty-five days for the purposes of the identification and registration procedure”, and that the centre was otherwise open.¹⁴¹

In September 2023, CSOs also reported that upon entry in the CCAC, residents were initially further restricted to separate sub-sections of the centre, known as “temporary accommodation zones”. CSOs including MSF denounced that people in these areas lacked “access to any services, including medical support”.¹⁴² On 18 December 2023, CCACs’ authorities told Amnesty International that residents would spend two days in the “pre-registration”, or “temporary reception area”.¹⁴³

As discussed, for the majority of the time between September 2023 and January 2024, residents have experienced conditions of overcrowding, leading groups to be accommodated in administrative buildings in sub-standard conditions. The increased number of residents put a further strain on the already insufficient running water and the severely lacking medical services, which exacerbated poor living conditions and the negative effects of the deprivation of liberty.¹⁴⁴ As such, people under ROF in the Samos CCAC, especially between September 2023 and January 2024 may have been exposed to inadequate detention conditions, which can amount per se to a violation of the prohibition of inhuman or degrading treatment.¹⁴⁵

According to UN standards, in cases of “arbitrary detention and inadequate conditions”, the threshold for detention to breach this prohibition “can be reached very quickly, if not immediately, for migrants in a situation of increased vulnerability”.¹⁴⁶ This is particularly relevant in the Samos CCAC, in view of the discussed shortcomings in the authorities’ ability to identify and adequately care for people in vulnerable situations.

As some of the challenges affecting people’s living conditions in Samos are the result of systemic or long-standing unresolved issues – such as the lack of adequate medical services or running water – it is also useful to recall the UN Special Rapporteur on torture’s remark that “any detention regime that, as a matter of deliberate policy or *as a consequence of negligence, complacency or impunity*, subjects or exposes migrants to treatment or conditions of detention grossly inconsistent with universally recognized standards [...] is incompatible with the prohibition of torture and ill-treatment, *regardless of economic or budgetary considerations*”[emphasis added].¹⁴⁷

It should be noted that living conditions in reception centres on the Aegean islands have been found to violate Article 3 ECHR, even in situations where people were not deprived of their liberty. In *W.A. v. Greece*, the ECtHR found a violation of Article 3 in connection with the living conditions prevailing in 2019-2020 in the then “Reception and Identification Centre” of Samos, noting event reports of “severe overcrowding, lack of access to medical and sanitary facilities” among other issues.¹⁴⁸

¹⁴¹ O.S.A. and others v. Greece, para. 37.

¹⁴² Fenixaid and others, Unlawful detention and worsening conditions, above in full. According to IHR, as of 29 February 2024, temporary accommodation zones were no longer used.

¹⁴³ In person interview of 18 December 2023.

¹⁴⁴ UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 18.

¹⁴⁵ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26 February–23 March 2018, A/HRC/37/50, para. 19. See also para. 26. See also: *ECtHR, Kalashnikov v. Russia*, no. 47095/99, paras. 92-103.

¹⁴⁶ A/HRC/37/50, above in full, para. 27

¹⁴⁷ A/HRC/37/50, para. 19, citing ECtHR, *MSS v. Belgium and Greece*, no. 30696/09, para. 233; and others.

¹⁴⁸ *W.A. v. Greece*, no. 21997/20, para. 11 (part of the group case: *A.R. and others v. Greece*, nos. 59841/19, with *M.A. v. Greece*, no. 15782/20). In *M.A.*, an asylum seeker in a vulnerable situation was accommodated in an overcrowded reception centre on the Aegean Island of Chios. The ECtHR noted that “the impact of the RIC’s overcrowding by 400 to 500% had a deleterious effect on his living conditions and access to medical and sanitary facilities”, para. 10, finding a violation of Article 3. The ECtHR found violations of Article 3 with references to the situation of pregnant women in the Samos RIC in *M.B. v. Greece*, no. 8389/20, *M.L. v. Greece*, no. 8386/20, and *A.D. v. Greece*, no. 55363/19

Based on the above factors, considered in combination and in their cumulative effect, Amnesty International considers the living conditions of CCAC's residents experiencing ROF, amounts to a deprivation of liberty and, at times between September 2023 and January 2024 may also have breached the prohibition of torture or other ill-treatment.¹⁴⁹ The CPT and CSOs reached similar conclusions.¹⁵⁰

Furthermore, the Special Rapporteur on torture notes that “grossly inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by States [...] for the purpose of deterring, intimidating or punishing migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay”.¹⁵¹ UNHCR detention guidelines state that “detention that is imposed in order to [...] dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms” and it is not “permitted as a punitive [...] measure”.¹⁵²

The instrumentalization of detention conditions with the aim of extracting concessions from asylum seekers is particularly relevant in Samos, where in recent times, both the CSO IHR and the GNCHR,¹⁵³ reported a practice by the authorities whereby residents are offered the opportunity to waive their rights to reception and other assistance in Greece in exchange for being allowed to leave the CCAC and the island. According to GNCHR, applicants receive information by interpreters regarding the consequences of such choice but “according to testimonies, these are not fully understood”. The GNCHR also noted that “given the reception/living conditions that prevail in the [CCAC]”, demanding residents to waive their rights including the provision of material conditions, shelter and financial benefits in Greece in order to leave the centre is “disproportionate”¹⁵⁴ IHR reported that “people in the CCAC have been told: ‘you can leave Samos but you must sign away your rights’”¹⁵⁵

While different than those listed by the Special Rapporteur, the purpose pursued by this practice – in the particular context of the Samos CCAC – appears inspired by similarly punitive and harmful reasons. As they have full knowledge of and control over the conditions people experience in the CCAC, the authorities’ offer appears disingenuous.¹⁵⁶ This practice requires immediate scrutiny, as it may already be resulting in people being transferred on mainland Greece out of desperation, with incomplete information over their prospects¹⁵⁷ and inadequate means to fend for themselves.

¹⁴⁹ Also considering that ROFs should be considered to amount to arbitrary detention, which is a relevant factor to the finding that detention is in breach of the prohibition of ill-treatment, as discussed below at p.36.

¹⁵⁰ CPT report, p. 4. NGOs PICUM and GCR have argued that the restrictions under Article 40, amount, in practice to deprivation of liberty and advocated for their inclusion “in the scope of article 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: PICUM and the Greek Council for Refugees, Joint Submission to the Draft general comment No. 1 on places of deprivation of liberty (article 4) of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment April 2023, p. 3, www.ohchr.org/camps/default/files/documents/hrbodies/spt-opcat/cfis/gc1-art4/submission-spt-gc-article4-PICUM-GCR.pdf; IHR, *The De Facto Detention of Asylum Seekers on Samos*, above in full, p. 52.

¹⁵¹ A/HRC/37/50, para.19

¹⁵² UNHCR, Detention Guidelines, para. 32

¹⁵³ EEDA/GNHRC report, above in full, p.13. I Have Rights, Twitter post, 9 February 2024, at: https://x.com/IHaveRights_/status/1755863545785274682. Also, ECRE Greece Country Report, 2023, p. 202

¹⁵⁴ GNCHR Report, p.13.

¹⁵⁵ I Have Rights, Twitter post, 9 February 2024. https://x.com/IHaveRights_/status/1755863545785274682

¹⁵⁶ See by analogy on the principle of good faith of restrictive conditions in detention, A/HRC/37/50, above in full, para 43. See similar concerns in the GNCHR Report, p.13, cited in full above: “Given the reception/living conditions that prevail in the KED of Samos, the EEDA emphasizes that the requirement for asylum seekers to waive their rights to the provision of reception, housing, financial conditions asylum seekers in the KED of the Greek islands, in violation of his guarantees aid or other material provision, as these are guaranteed by national legislation, in order for them to be able to legally leave the KED of Samos, it is disproportionate” (unofficial translation from Greek).

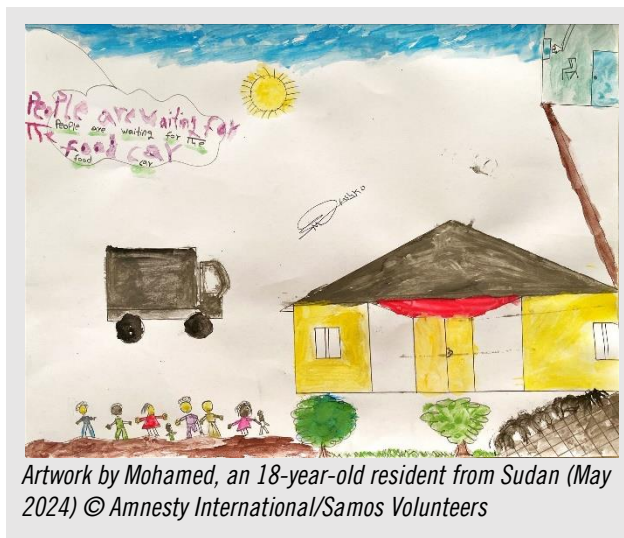
¹⁵⁷ According to the GNCHR report, applicants exposed to this practice are: “informed of the consequences of signing the responsible declaration with an interpreter, but these are not fully understood by the applicants according to testimonies”, GNCHR report p. 13.

4.2 VIOLATION OF THE PROHIBITION OF UNLAWFUL DETENTION

“Restrictions of freedom” imposed on Samos residents also fail to comply with the standards for detention to be lawful under international human rights law. The right to liberty and the related prohibition of arbitrary detention are enshrined in numerous human rights treaties. Migration-related detention can only be used in specific and the most exceptional of circumstances, as a measure of last resort. It must not be arbitrary,¹⁵⁸ and must comply with the principles of legality, necessity, proportionality and non-discrimination.

Detention orders must be based on a detailed assessment of individual circumstances, considering people’s histories and special needs.¹⁵⁹ Routine or automatic migration related detention is, by definition, arbitrary, and therefore unlawful.¹⁶⁰ Finally, migration detention should never be imposed on children.¹⁶¹ In view of their protection needs,¹⁶² asylum seekers are granted additional guarantees in the context of their detention, in line with the principle of non-penalisation under Article 31 of the 1951 Geneva Convention.¹⁶³

An initial five-day ROF is imposed on all new arrivals of the Samos CCAC. Article 40 of the Asylum Act does not provide for the automatic consideration of less-invasive alternatives to ROFs, in contrast with Article 8 of the EU Reception Conditions Directive. Alternatives can only be ordered by a Judge where, further to an objection raised by a resident about the extension of the ROF, such measure is found to be unlawful.¹⁶⁴



¹⁵⁸ On standards on arbitrariness see: A/HRC/37/50, para 73; Article 6 of the EU Charter of Fundamental Rights. Article 9 of the International Covenant on Civil and Political Rights. According to the ECtHR jurisprudence, to ensure that detention is not arbitrary, it “must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued”. See: *A. and Others v. the United Kingdom*, no. 3455/05, para 164, *Mikolenko v. Estonia*, no. 10664/05, para. 60. According to the UN Human Rights Committee, “The notion of ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.” HRC General comment No. 35, above in full, para. 12.

See also Court of Justice of the EU, C-528/15 - *Al Chodor and Others*.

¹⁵⁹ International Covenant on Civil and Political Rights (ICCPR), Arts 2 and 9(1); HRC, General Comment 35; ECHR, Art. 5(1); UNHCR Detention Guidelines, Guidelines 1, 2 and 3. EU Charter of Fundamental Rights of the EU, Article 47; Asylum Procedures Directive, Article 26; Reception Conditions Directive, Articles 8 and 9: detention measures may be employed “on the basis of an individual assessment” and “if other less coercive alternative measures cannot be applied effectively”. See also: Convention Relating to the Status of Refugees (Refugee Convention), Art. 31; UN Committee on the Elimination of Racial Discrimination, General Recommendation 30 on Discrimination against Non-Citizens; ECHR, Art. 5(1); UNHCR Detention Guidelines, Guidelines 1, 2 and 3. EU RCD (Article 8), detention measures may be employed “on the basis of an individual assessment” and “if other less coercive alternative measures cannot be applied effectively”. A/HRC/37/50, para 73.

¹⁶⁰ A/HRC/37/50, para. 21, 24.

¹⁶¹ See: A/HRC/37/50, para. 73. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/GC/4-CRC/C/GC/23, 16 November 2017, para. 5.

¹⁶² The ECtHR recognizes asylum seekers as members “of a particularly underprivileged and vulnerable population group in need of special protection”, *M.S.S. v. Belgium and Greece*, no. 30696/09, para. 251. See also: UNHCR Detention Guidelines.

¹⁶³ UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, Art. 31. UNHCR Detention Guidelines.

¹⁶⁴ Law 4939 of 2022, Art. 40 lett. b

One of the limited grounds on which the detention of asylum seekers is allowed under EU and international law, is “to determine or verify [their] identity or nationality”.¹⁶⁵

Amnesty International considers that migration detention aimed at verifying people’s identity can only be considered necessary and proportionate if used for a few hours, immediately after people’s arrival in the country, in order to: record their entry, determine their identity (or record the impossibility to verify their identity), and (where applicable) register a claim for asylum.¹⁶⁶

The Greek Reception and Identification Service (RIS) considers the identification of residents complete only when an “international protection applicant card” (asylum card) is issued,¹⁶⁷ but CCAC’s authorities told Amnesty International, that residents are allowed to exit the CCAC after 25 days if they have been issued a “police note”, which is issued following their first interview with RIS and the police.¹⁶⁸

IHR told Amnesty International that in their experience, police notes are issued together with the first ROF,¹⁶⁹ but that this generally happens days or weeks since people’s entry (see 4.3 ‘Shortcomings in the implementation of restrictions’ below). IHR stated that the 25 days after which people are allowed to exit the CCAC are calculated based on the date on the police note, rather than on the time of people’s of arrival to the CCAC, contrary to the requirements of the law. IHR also maintains that the authorities’ practice towards people who lack “asylum cards” after 25 days have expired since the first ROF order is “unpredictable”, and residents “are only able to leave if the guard on the gate allows them to”.¹⁷⁰

Based on EU law and the jurisprudence of the CJEU, detention used “to determine or verify” the applicant’s identity or nationality may be justified by the person’s individual conduct.¹⁷¹ The CJEU notes that: “an applicant may be subject to such a measure only where he has failed to communicate his identity or nationality or the identification papers justifying that, notwithstanding his obligation to cooperate”.¹⁷² This provision must be read together with Article 9 of the Reception Conditions Directive, partly reflected by Article 50 of the Greek Asylum act,¹⁷³ which clarifies that the administrative procedures “relevant to the grounds for detention [...] shall be executed with due diligence” and “delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention”.¹⁷⁴ Thus, EU law is clear that a person’s detention is no longer justified if issues with the completion of the relevant procedures can be attributed to the authorities.

Reports of the EU Commission Task Force dated July-November 2023, obtained by the CSO IHR, present clear indications of the challenges experienced by the CCAC authorities when confronted with

¹⁶⁵ Reception Conditions Directive, Articles 8-11

¹⁶⁶ See also UNWGAD, Revised Deliberation No. 5 on deprivation of liberty of migrants, para 12

¹⁶⁷ This is confirmed in the 9 May 2024 response of the General Secretary (GS), which states: “Generally speaking, reception and identification procedures are considered completed for the purposes of Article 40, after the full registration of the application for international protection”

¹⁶⁸ In person interview with CCAC’s authorities of 18 December 2023. Also: IRC and IHR, Contribution to the European Ombudsman’s strategic inquiry, p. 6, above in full.

¹⁶⁹ Written exchange with IHR, 24 June. See also: IHR, The De Facto Detention of Asylum Seekers on Samos, 23 February 2023. https://ihaverights.eu/wp-content/uploads/2023/02/detention_report_full.pdf

¹⁷⁰ IHR written exchange of 22 June 2024.

¹⁷¹ Article 8(3) and Article 9.1 of the Reception Conditions Directive; CJEU, *K. v Staatssecretaris van Veiligheid en Justitie* - Case C-18/16. In this sense see also: See also: IHR, The De Facto Detention of Asylum Seekers on Samos, p. 12; Council of Europe, Administrative Detention of Migrants and Asylum Seekers, November 2023; ECRE, Duration of detention, Greece, 10 July 2024, <https://asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/duration-detention/>

¹⁷² *K. v Staatssecretaris van Veiligheid en Justitie*, para. 42.

¹⁷³ Law 4939 of 2022, Article 50.5.

¹⁷⁴ Reception Conditions Directive, Article 9.

increased arrivals, and how this impacted the registration procedures.¹⁷⁵ According to the data, arrivals to Samos went from 232 in July 2023, to 1,191 in August, 3,285 in September and 1,439 in October. The number of unregistered people in the CCAC grew from zero in July 2023 to half the population of the centre in mid-to late August 2023 and plateaued at around or over two-thirds of the population until early November.¹⁷⁶ For most of this time, the CCAC was reported to have insufficient interpreters, with only six or seven interpreters operating depending on the period, instead of the eight provided by contract. Between 21 August and 18 September 2023, no interpreters were reportedly available for Somali people, who were at times the largest population.¹⁷⁷

The lack of staff is consistently mentioned as a reason for the backlog in registrations. Additional staff to support registration and identification was only present between 18 September and 2 October 2023. More permanent support by the EU Asylum Agency (EUAA) was only provided from 23 October.

The GNCHR report also notes how shortages in the interpretation staff affected registration, stating that in October 2023, 729 Afghans were not registered due to the lack of a Farsi interpreter.¹⁷⁸

In May 2024, the Greek authorities informed Amnesty International that the interpretation staff was “enhanced” by “signing an updated framework agreement with [CSO] Metadrasi”, with EUAA interpreters providing additional support to registration staff. They stated that nine interpreters supported RIS procedures and nine the Asylum procedures.¹⁷⁹

During Amnesty International’s visit of December 2023, the CCAC authorities acknowledged that the shortage of staff working on registration affected the processing time of police notes.¹⁸⁰ They noted that while registration previously took over 25 days, at the time of the meeting, procedures were completed on time thanks to an increase in the police and RIS staff. In May 2024, the authorities confirmed that the increase of RIS personnel supporting registration had led to the “elimination of the

¹⁷⁵ Based on the EU Task Force reports, confidentially shared by IHR. The reports were released with the disclaimer: “[...] the aforementioned documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Migration and Home Affairs. They solely reflect the services interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.”

¹⁷⁶ Based on EC TF reports: 11 September: CCAC population: 2996. Unregistered population: 2124; 25 September: CCAC population: 3965. Unregistered population: 2864. 9 October: CCAC population: 4163. Unregistered population: 3236. 24 October: CCAC population: 4075. Unregistered population: 3407. 6 November: CCAC population: 3889. Unregistered population: 2958.

¹⁷⁷ Ibid.

¹⁷⁸ GNHRC report, p.12, above in full.

¹⁷⁹ According to the authorities, as far as RIS procedures are concerned, interpretation staff include: three Arabic interpreters, one French-Arabic, two Farsi-Dari, one Krio, one Sorani-Arabic and one Somali. As far as asylum procedures are concerned: four Arabic interpreters, one Lingala -French, two Farsi-Dari, one French-Arabic, one Krio. Letter of the Greek Secretary General for the Reception of Asylum Seekers, of 9 May 2024. Only days after the letter of the Ministry, Metadrasi announced that as of 15 May, the provision of interpretation services in reception centres across the country would stop, citing the “expiration of the agreement with the Ministry of Migration and Asylum” and reporting a that a delay in the renewal of the agreement for the provision of support to the Asylum Service meant that interpretation services were not provided since 29 April 2024. Metadrasi denounced the Ministry’s protracted failure to pay its workers and called for the renewal of the contracts. See: Metadrasi, Facebook announcement, 14 May 2024, www.facebook.com/photo/?fbid=792859512946094&set=a.461882352710480. The failure to pay, as of the post, lasted for a duration of nine months insofar as its agreement with the Asylum Service is concerned, and for five months insofar as the Reception and Identification Service is concerned. See also: Civil Society Joint Statement, Lack of interpretation services lengthens existing delays to access asylum and leaves people without protection, 29 May 2024, <https://shorturl.at/xfXCY>. The Ministry rebutted the organization’s claims, stating that payments are “implemented normally”: MoMA, announcement of 17 May 2024, <https://migration.gov.gr/anakoinosi-3/>; Media reports have since reported that the Ministry has acknowledged delays in payments to Metadrasi and other contractors. Kathimerini, “EU interpreters fill METAdrasi’s gaps”, 18 May 2024, www.kathimerini.gr/society/563030617/diermineis-tis-e-e-kalyptoyn-ta-kenatis-metadrasis/

¹⁸⁰ In person interview of 18 December 2023.

backlog of unregistered persons, with the current number of unregistered people being less than 20 (that are among cases that arrived during the past five days)".¹⁸¹

Authorities also noted that the scheduling of asylum interviews affects the time of full registration (i.e. through the issuance of an asylum card) of residents, as the system used ("Alkioni II") requires a date for the asylum interview to complete the registration of the asylum application, upon which the asylum card is issued.¹⁸² The EU Commission representatives reported unresolved issues with the functioning of the software Alkioni II as of July 2023, according to the documents obtained by IHR. In May 2024, the Greek authorities informed Amnesty International that insofar as the "reported delays" of the Alkioni II system are concerned, "in order to avoid delays, and until its issues were resolved, registration staff filled the registration form manually, and then uploaded it to Alkioni II".¹⁸³ The response fails to expand on the issues experienced by the system and when and how they were resolved.

It is clear based on the above that for an extended period between 2023 and 2024, the shortage of RIS staff and interpreters, combined with the increased arrivals and the issues with the functioning of the Alkioni II system, caused delays in registration procedures in Samos. In this context, the use and systematic extension of "restrictions of freedom" on people in the CCAC appears to be caused by the Greek authorities' inability to conduct procedures within reasonable time limits, rather than a lack of cooperation from residents. This fact appears to place ROF used in Samos during this time outside of the "strictly circumscribed" legal limits within which detention of asylum seekers is permissible under EU law, according to the CJEU.¹⁸⁴

4.3 SHORTCOMINGS IN THE IMPLEMENTATION OF RESTRICTIONS

Based on the experience of residents who spoke to Amnesty International,¹⁸⁵ and reports of Samos CSOs, the main issues regarding the implementation of ROFs include: i. the excessive length of detention and detention without legal basis, ii. the systematic use of restrictions without consideration for individual circumstances or vulnerabilities; iii. procedural irregularities, such as the failure to issue ROF orders or their late or retroactive issuance, iv. accountability and access to remedies.¹⁸⁶

EXCESSIVE LENGTH OF RESTRICTIONS

Testimonies of ten people living in the CCAC interviewed during Amnesty International's visit, some of whom with family members, including young children, indicate that they were unable to leave the centre for periods exceeding 25 days since their entry permitted under Greek law.

Hamza, a Palestinian from Gaza, said that his "first and second fingerprinting", which is connected to the issuance of the "police note", "were done after 50 days", after his arrival to the CCAC. Bilal, also a Palestinian from Gaza, similarly suggested that his police note was only issued around 40 days after his arrival.

¹⁸¹ Letter of the Greek Secretary General, of 9 May 2024. See also: Response of the MoMA to the CPT report. Para. 2 and 8, where the Greek Migration and Asylum Ministry (MoMA) maintains that following the capacity reinforcement has led to procedures being completed within 25 days and that "all technical and procedural issues that in some cases caused delays in the delivery of documents were resolved in such a way so as to prevent such issues from arising again in the future". The response says that such reinforcement was done "immediately" but does not clarify the exact timeframe nor clarifies which "technical and procedural issues" were solved. The authorities also mentions the emergency deployment of additional EUAA staff in support of registration activities until the end of 2024.

¹⁸² ITW in person of 18 December 2023. ECRE Greece Country Report, 2023 update, p. 65.

¹⁸³ Letter of the Greek Secretary General for the Reception of Asylum Seekers, of 9 May 2024.

¹⁸⁴ K. v Staatssecretaris van Veiligheid en Justitie, para. 41.

¹⁸⁵ Amnesty International consulted the Samos-based legal NGOs "I Have Rights" and "Human Rights Legal Project" about the implementation of these restrictions in the CCAC.

¹⁸⁶ Based on exchanges with IHR and HRLP. See also: Fenixaid and others, Unlawful detention and worsening conditions, above, IRC and IHR Submission to the EU Ombudsman, above in full, and BVMN, Monthly report of October 2023.

Anwar, from Syria, is in the CCAC since early October, reported receiving his “police papers”, 37 days after his arrival. Nasser, a man from Syria, who arrived in the CCAC in early October, said his police paper was issued around two months later, and his asylum card around month after.

Four residents of the centre, two women and one man, in the CCAC since 1 September, and another woman, who arrived on 9 September, said that they received their asylum cards on 7 November, and referred to another document, which we assume to be the police note, issued after 35-36 days since their arrival. Anna, a single woman with a young child, said her police note was issued almost two months after her arrival.

Amnesty International researchers also spoke with a group of over ten men, including Palestinians, who lived in the same section of the centre. Some said that most of them did not receive a “police paper” until their 70th day in the CCAC.

In a different area of this section, Karim, a man from Palestine said that he had been in the CCAC for three months and received his “police papers” after 62 days since his arrival and his asylum card after 73 days. “We feel in prison on the island”, he commented. Tom, a man with a child, said that he was in the CCAC since the end of September 2023, and only allowed to exit the CCAC for two weeks at the time of our interview.

The GNCHR’s report notes that at the time of their visit, in February 2024, “according to official information” around 70-80 people were prevented from exiting for over 25 days. The CPT similarly noted that as of their visit, “1,801 persons were not fully registered and [...] most of these persons had been deprived of their liberty for periods in excess of 25 days”.¹⁸⁷

DE FACTO DETENTION WITHOUT LEGAL BASIS

According to IHR, in their implementation of Article 40, the authorities fail to comply with the legal requirement to calculate the maximum period of restrictions of freedom (of 25-days) based on residents’ arrival into the CCAC. While IHR notes that the authorities’ practice varies, they state that residents are allowed to exit 25 days after the police note was issued to them (therefore, 25 days after they receive the first five-day ROF order), but that “often people without asylum cards are not permitted to leave even if the 25-day period from the first ROF has lapsed. This leaves people at risk of being de facto detained much longer than 25 days”.¹⁸⁸

Data provided by IHR based on their casework indicates that in several cases of people who were in the CCAC since June 2023, police notes were issued two weeks or even a month or more after their arrival. As a result, according to IHR, in the time between the person’s arrival to the CCAC and the issuance of the police note/first ROF order, residents are “de facto detained, without even a ROF order”, therefore without legal basis.¹⁸⁹

Data shared by IHR regarding 252 cases of people who entered the CCAC between 26 June 2023 and 27 April 2024 indicates that in 109 cases, people who entered between 23 August and 29 December had to wait 25 days or over before the issuance of the police note (and the first ROF order), In over 70 of these, the waiting time was of over 40 days. In a positive development, in 31 cases recorded since February 2024, the waiting time rarely went beyond one week, suggesting a net improvement in processing times.

Data by HRLP concerning 38 cases of people who arrived in September and October 2023 similarly indicate that in the large majority of cases the police note was issued weeks after the applicant’s

¹⁸⁷ Reports of the GNHRC and CPT, p. 12 and 34, in full above

¹⁸⁸ IHR written exchange of 22 June 2024.

¹⁸⁹ Ibid.

entry.¹⁹⁰ Apart from for five people whose stay was between 32 and 37 days, the length of “de facto detention” (i.e. the time between the applicant’s entry and the issuance of a police note) for people in this group ranged between 48 and 61 days (See ‘Non-issuance, late issuance and backdating of restriction of freedom orders’ below).

As of 7 March 2024, HRLP noted that in 2024 they have not been in contact with residents whose detention exceed 25 days.

Amnesty International requested information and data from the Greek authorities on 12 April 2024 about the duration of restrictions on CCAC’s residents between January 2023 and April 2024, as well as information on the number of extensions issued in that period, and the number of instances when restrictions were lifted due to the 25-day period being exceeded. In their response, the authorities failed to provide the data requested, but explicitly stated that there was no case where restrictions were lifted “due to the 25-day period being exceeded”.¹⁹¹

The authorities’ response, read in the light of the above evidence of restrictions of freedom largely exceeding 25 days, suggests the ineffectiveness of the remedies against the excessive duration of restrictions embedded in Article 40, whereby, “if procedures have not been completed by [25 days], restrictions must be lifted”.

SYSTEMATIC USE OF ROF

EU and international law are clear that a person shall not be detained “for the sole reason” that they applied for international protection.¹⁹² The UN Human Rights Committee (HRC) has clarified that migration detention for identification purposes may be applied “for a brief initial period”,¹⁹³ and detaining asylum seekers further “while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual”.¹⁹⁴ It noted that the decision to detain asylum seekers “must consider relevant factors case by case and not be based on a mandatory rule for a broad category”.¹⁹⁵

This is not the case in Samos CCAC, where, based on the letter of the law and the experience of CSOs, restrictions seem to be overwhelmingly applied to all new arrivals CCAC – who are all or predominantly racialized people – failing to consider people’s “concrete situations” and discriminatory outcomes.¹⁹⁶ Under the law, the initial 5-day ROF applies indiscriminately upon arrival. Only the extension decisions must contain “factual and legal justification”, suggesting that such justification is not required for the initial restriction order.¹⁹⁷

IHR noted that, based on their experience, extensions of ROF are also applied to all residents “automatically” and “with the same reasoning”.¹⁹⁸ In their response of 9 May 2024, the Greek authorities seem to confirm this stance, stating that “since January 2023, the majority of new arrivals have been issued 20-day extensions”. Answering Amnesty International’s questions as to the reasons invoked for extensions, they merely state that “[a]ll of extension decisions were issued on the factual and legal basis that the reception and identification procedures have not been completed within five

¹⁹⁰ Information compiled by HRLP in early January 2024 based on data collected between September and December 2023, shared with Amnesty International in March 2024.

¹⁹¹ Response of the GS of 9 May 2024.

¹⁹² Article 8(2) - Directive 2013/33

¹⁹³ HRC General comment No. 35, para. 18.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid., See also UNHCR, Detention Guidelines, guideline 4.

¹⁹⁶ Legal CSOs Refugee Support Aegean (RSA) & Stiftung PRO ASYL argue that even ROFs are applied “automatically and indiscriminately” to CCACs residents. See: RSA & Stiftung PRO ASYL, The state of the Greek asylum system, twelve years since M.S.S. - Submission to the Committee of Ministers of the Council of Europe in the cases of M.S.S. v. Belgium and Greece & Rahimi v. Greece, p. 9, https://rsaeegean.org/wpcontent/uploads/2023/07/RSA_PRO-ASYL_MSS_2023_Submission.pdf.

¹⁹⁷ Law 4939/2022, Article 40 lett a.

¹⁹⁸ Consultation of 29 Feb 2024.

days". In other words, and in the absence of further elaboration from the authorities, the sole reason for the extension appears to be the authorities' failure to complete the procedure.

CSOs IHR and HRLP told Amnesty International that they regularly intervene with the CCAC authorities to raise concerns in individual cases about issues in the use of ROF. Their communications generally challenge the legality of restrictions imposed on their clients, as well as procedural irregularities regarding the issuance of ROF orders, or lack thereof (See 'Lack of access to remedies and accountability' below).

Based on the above, the implementation of ROFs seems inconsistent with the presumption of liberty, the most exceptional nature of migration detention and the requirement that detention decisions must be based on an assessment of individual circumstances and needs. This suggests, once more, that ROF in Samos are applied to residents as part of their routine through reception and identification procedures and without consideration for less-invasive alternatives. As such, the use of ROF also amounts to arbitrary detention.

It should be noted that the "arbitrary character" of detention is one of the factors considered under international human rights law which considered "cumulatively" with others can lead to a violation of prohibited ill-treatment.¹⁹⁹

NON-ISSUANCE, LATE ISSUANCE AND BACKDATING OF RESTRICTION ORDERS

Under the Asylum Act, decisions to extend ROF must be given in writing.²⁰⁰ As mentioned above, CSOs however noted that in several cases, residents are restricted from leaving the centre for over 25 days without a ROF being issued and, in some cases, a written ROF is only issued late, or is backdated.²⁰¹

HRLP shared information with Amnesty International regarding the cases of 38 people in contact with them in September 2023, saying that for at least 24 of them, a formal first ROF was never issued and, for some, the ROF was only issued after the intervention of HRLP's counsels.²⁰² The group which includes people in vulnerable situations, including unaccompanied minors, single women, including with children, survivors of SGBV, survivors of torture, people with serious medical condition.

As discussed above, IHR similarly informed Amnesty International of 109 instances of people entered between August and December 2024, where the waiting time before the issuance of a police note was over 25 days. In 70 of these it was over 40 days and in over 25 cases of around two months. IHR noted that their organization came across back-dated ROF orders for the first time in September-October 2023 but were not aware of this practice in 2024.

The CPT expresses extensive concern about the use of ROF in the absence of registration, stating that "a great number of persons met [in CCACs] remained deprived of their liberty [...] without benefiting from the legal safeguards related to detention". The Committee noted issues including the failure to register applicants or issue them with an asylum card weeks after the expiration of the 25-day period, and the late issuance of the ROF initial and extension decisions, finding that given the tight time frame

¹⁹⁹ A/HRC/37/50, para. 27. See also CPT report, p. 35, para. 112.

²⁰⁰ Law 4939 of 2022, Art. 40, lett. a. While not explicit in the Asylum Act, as an administrative act, the initial 5-day ROF decision also needs to be in writing, in line with Greek administrative law.

²⁰¹ Fenixaid and others, Unlawful detention and worsening conditions, above in full; IRC and IHR Submission to the EU Ombudsman.

²⁰² Based on data compiled by HRLP. Written consultation with HRLP of February 2024. In a submission of 21 September 2023, HRLP reported to the GNCHR seven instances of backdated ROF orders being issued. In these cases, ROF were issued following the intervention of HRLP with the Greek authorities, and ordering the detention of the applicant from the day of arrival). HRLP also reported instances where ROFs were not issued at all within the period under consideration. HRLP Report to the GNCHR, 21 September 2023, shared privately with Amnesty International.

allowed for appeals [three days], “such delayed notification rendered ineffective the safeguard of an appeal”.²⁰³

Asked about the use of back-dated ROFs decisions, the authorities told Amnesty International in May 2024 that in “a limited number of cases” the documentation was indeed issued retroactively “due to technical reasons”, but “immediate action was taken to resolve it, ensuring that it will not reoccur”.²⁰⁴

As discussed above, the late issuance of ROF orders has resulted in applicants being effectively detained, for varying periods of time, in the absence of a written decision. This is not only in violation of Greek law but at odds with European and international standards, including Article 9.4 of the Reception Conditions Directive according to which the information to detained applicants must be provided “immediately” and in writing.²⁰⁵

LACK OF ACCESS TO REMEDIES AND ACCOUNTABILITY

Both IHR and HRLP have repeatedly taken action to report the unlawful restrictions in the Samos CCAC, via administrative, judicial avenues and complaints to human rights institutions.

In two cases, HRLP raised objections against situations of de facto detention in Samos before the Administrative Court of Syros, complaining about the lack of valid grounds for detention in the absence of a ROF order. In response to Amnesty International’s question on the number of cases where objections had been raised to a decision to extend ROF, the Greek authorities incorrectly referred to the two objections raised by HRLP against de facto detention, noting that there had been “two cases where objections were raised [...] against a decision to extend the [ROF]. in both cases the courts did not conclude, since before the issuance of their decision the reception and identification procedures had been completed”.²⁰⁶ In the first of these cases, on 6 October 2023, the HRLP challenged the deprivation of liberty of a woman in conditions of vulnerability and her three minor children, held in the CCAC since 15 September with unrelated men and without bedding. HRLP complained against the failure to issue a written ROF decision, conduct an individual assessment and grant the applicant the “special care” required under the law, claiming that the situation breached the Greek law on the legality and conditions of detention. The Court rejected the application, claiming that the 25 days allowed under the law had not expired but failed to address the other claims made by HRLP. According to HRLP the court failed to address that the applicant had not been issued a ROF order and “wrongfully considered that the detention was legal because it was within the 25 days after the arrival on the island”. The Court ordered that the applicants be transferred to the area of the centre dedicated to single-parent families.

In October 2023, HRLP challenged the 28-day detention of a single woman, in the absence of a detention order. The Court dismissed the case on the grounds that the centre authorities had lifted the restriction of movement on 30 October. However, HRLP noted that the Court claimed to have received the objections on 31 October, whereas the CSO lodged them online on 26 October. HRLP noted that while the CCAC authorities took action to register applicants and improve their living conditions in these cases, “the same measures were not taken for other people in the same group as the applicants, who had arrived by the same boat or on the same day”, suggesting that the intervention of legal CSO was instrumental to putting an end to the violations.

Outside judicial mechanisms, IHR and HRLP also intervened in individual cases of de facto detention by directly contacting the RIS authorities. IHR said it intervened in cases affecting 170 people between September and December 2023. To date, IHR maintains that they have “not received an official response from the RIS in any of these cases”. HRLP said they intervened 23 times in cases

²⁰³ CPT report, p. 35.

²⁰⁴ Letter of 9 May 2024, in full above.

²⁰⁵ Also UNWGAD, Revised Deliberation No. 5 on deprivation of liberty of migrants, para. 33.

²⁰⁶ Letter of 9 May 2024

affecting 140 people between August and November 2023, both regarding instances of “unlawful detention” and the detention of unaccompanied minors with unrelated adults in the “general population area”.²⁰⁷

CSOs also brought challenges to the living conditions and ROF in Samos before the ECtHR. IHR obtained interim measures from the Court in a case where they alleged the automatic detention “in degrading conditions, without an assessment of their vulnerabilities” of a single mother and small child.²⁰⁸ HRLP raised issues of deprivation of liberty in two requests for interim measures filed in 2023.²⁰⁹ One of these cases, where the Court granted interim measures, concerned a female survivor of sexual and gender based violence and her young child with medical needs, both detained in the CCAC for 29 days without registration. Upon arrival, the local hospital had informed the first applicant of the need to be transferred to Athens to ensure that the child received adequate care. HRLP had raised the case to the Greek authorities without success.²¹⁰ Both cases remain pending before the ECtHR.

IHR and HRLP submitted complaints to the Greek Ombudsman on the detention of CCAC’s residents. HRLP also submitted a report on detention and inadequate conditions in the CCAC to the GNCHR.²¹¹

While Samos-based CSOs conduct considerable work to assist residents, their ability to provide services is limited by the restrictions on access to the centre imposed by the Greek authorities on civil society organizations. In 2020, Greece passed regulations introducing Registers of CSOs that operate in the areas of asylum, migration and social integration, and of their members, tightening up the requirements imposed on them to be able to operate in Greece. Amnesty International considered registration requirements to contravene the right to freedom of association.²¹² In the case of Samos, CSO RSA states that “due to non-registration”, CSOs that operated in the CCAC “no longer have access, and offer their services in places outside the CCAC, providing, inter alia, food and clothing”.²¹³ As of February 2023, IHR reported that MSF was also denied access, and “their employees’ registration status [...] was the reason cited for the denial of access”.²¹⁴

Following a visit to Samos and other CCACs, the CPT found residents’ access to lawyers “problematic”, “due to the lack of lawyers on the islands where the CCACs were located, the absence of clear legal advice provided [...] by the management of the CCACs, and limited access to the CCACs by organizations offering legal advice”, leading residents to have “limited possibilities to challenge their detention and removal orders”.²¹⁵

The WGAD states that people’s ability “to be assisted by counsel, both through visits in the place of custody and at any hearing” is relevant to determining whether their detention is arbitrary.²¹⁶

²⁰⁷ Consultation with HRLP, and HRLP Report to the GNCHR, above.

²⁰⁸ IHR, Degrading conditions in Samos CCAC: The European Court of Human Rights grants Interim Measures, 7 February 2024, <https://ihaverights.eu/european-court-of-human-rights-grants-interim-measures/>

²⁰⁹ Consultation with HRLP.

²¹⁰ The second case is discussed at p. 14.

²¹¹ IHR submitted three complaints between June 2022 and October 2023. HRLP submitted complaints on 8 and 21 September 2023. HRLP’s report to the GNCHR is discussed above.

²¹² Amnesty international, Greece: regulation of NGOs working on ,migration and asylum threatens civic space, 31 July 2020, www.amnesty.org/en/wp-content/uploads/2021/05/EUR2528212020ENGLISH.pdf

²¹³ RSA, landing page on the Samos CCAC, <https://rsaegan.org/en/samos-2023/>

²¹⁴ IHR, IHR, The De Facto Detention of Asylum Seekers on Samos, above in full, p. 26 and RSA, overview of the Samos CCAC: <https://rsaegan.org/en/samos-2023/#:~:text=There%20are%20organisations%20that%20were,inter%20alia%2C%20food%20and%20clothing.>

²¹⁵ CPT report, above in full, p. 36.

²¹⁶ HRC, WGAD, Opinions adopted by the [WGAD] at its sixty-fourth session, 27–31 August 2012 No. 32/2012 (Iraq), para. 34 <https://documents.un.org/doc/undoc/gen/g12/182/65/pdf/g1218265.pdf?token=cWbQGfZeRNxctBHMDo&fe=true>. Also, HRC, General comment No. 35, para.144.



5. THE EU'S ROLE IN CCACS

The EU plays a fundamental role in the ideation, operation and monitoring of CCACs in Greece. CCACs were set up to replace the older reception facilities on the Aegean islands following the fires that destroyed the infamous Moria camp in Lesvos in 2020. The EU funded CCACs with 276 million EUR.²¹⁷ The Commission clarified that their establishment “was supported under the 2014-2020 Asylum, Migration and Integration Fund (AMIF) Emergency Assistance Instrument”, and their operation “under the 2021-2027 Home Affairs Funds programmes”.²¹⁸ To assist the creation of CCACs, the Commission established a ‘Task Force for Migration Management’ in charge of working with Greek authorities and EU agencies.²¹⁹ The Task Force’s objectives include the construction of new reception centres “meeting European standards”, to help end overcrowding by “supporting the transfer of vulnerable people to the mainland”, supporting “fast, effective procedures to decide swiftly on asylum applications”, achieving shorter stays on the islands and bringing clarity and certainty to applicants.²²⁰

²¹⁷ EU Commission, Greece - Financial support from the EU, 2014-2020 and 2021-2027: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/migration-management-greece/financial-support-eu_en

²¹⁸ EU Ombudsman, strategic inquiry OI/3/2022/MHZ, Comments of the Commission on the suggestion for improvement of the European Ombudsman on the strategic inquiry on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece, p.4, www.ombudsman.europa.eu/pdf/en/174402.

²¹⁹ EU Commission, Migration: “A European taskforce to resolve emergency situation on Lesvos”, 23 September 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1728; Comments of the Commission on the EU Ombudsman’s inquiry, above.

²²⁰ EU Commission, Migration: “A European taskforce to resolve emergency situation on Lesvos”, above.

The establishment of the Task Force and the EU's support to Greece have been closely tied to the reforms of the EU legislative framework on migration and asylum, the Pact on Migration and Asylum, proposed by the Commission in September 2020. In its announcement on the creation of the Task Force, the Commission explicitly states that this entity would perform its tasks “based on the principles of” and “in line with the framework proposed [...] in the new Pact”. The statement of Commission President von der Leyen reads: “The taskforce brings together the central tenets of the Pact – fairness and efficiency for applicants and greater responsibility for Member States”.²²¹

The Pact enacts a comprehensive reform of the main legislative instruments governing EU migration and asylum policies.²²² The Pact was adopted on 14 May 2024, but its full implementation is expected by June 2026.²²³ Ahead of its adoption, Amnesty International consistently expressed concern that the reform would “put people at heightened risk of human rights violations”, weakening safeguards and access to asylum.²²⁴ We noted that the Pact would “almost certainly cause more people to be put into de facto detention at EU borders, including families with children and people in vulnerable situations”.²²⁵ This scenario, as discussed, is already materializing in the Samos CCAC.

The innovative cooperation formed between Greek authorities and EU bodies through the Task Force and the establishment of CCACs, enhances Greece's role as a “testing ground” and “blueprint” for EU migration policies, as CSOs and researchers have described it in the past.²²⁶ At the same time, the cooperation also enhances the responsibilities of the Commission and EU agencies for shortcomings and resulting violations.²²⁷

Looking at the Pact, parallels with the issues and shortcomings identified in Samos can be traced with reference to provisions in the new Screening,²²⁸ Asylum Procedure and Return Border Procedure Regulations.²²⁹ These instruments regulate the so-called “pre-entry phase” of migration and asylum procedures, as part of which the Pact aims to channel people arriving in the EU through different kinds of asylum or return procedures. In pursuing this objective, these instruments heavily rely on the use of restrictive measures, including requirements on where people must reside and remain during

²²¹ Ibid.

²²² Pact on Migration and Asylum, Legislative files in a nutshell, 4 June 2024, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum/legislative-files-nutshell_en

²²³ EU Commission, Setting out a plan to put the Migration and Asylum Pact into practice, 12 June 2024, https://commission.europa.eu/news/setting-out-plan-put-migration-and-asylum-pact-practice-2024-06-12_en#:~:text=The%20Commission%20presented%20today%20the,force%20on%2011%20June%202024.

²²⁴ Amnesty International, “EU: Migration and Asylum Pact reforms will put people at heightened risk of human rights violations”, 4 April 2024, www.amnesty.org/en/latest/news/2024/04/eu-migration-asylum-pact-put-people-at-risk-human-rights-violations/

²²⁵ Amnesty International, “EU: Migration Pact agreement will lead to a ‘surge in suffering’”, 20 December 2023, www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/

²²⁶ A Chatham House report focusing on the situation in Lesbos states: “the Pact crystallized Lesbos's role as a testing ground for EU asylum and migration policies – often at the expense of human rights and the rule of law.” Chatham House, *Lesbos: How EU asylum policy created a refugee prison in paradise*, 20 January 2023, [/www.chathamhouse.org/2022/07/lesbos-how-eu-asylum-policy-created-refugee-prison-paradise](http://www.chathamhouse.org/2022/07/lesbos-how-eu-asylum-policy-created-refugee-prison-paradise). Also: Vittoria Catalfamo, The New Closed-Controlled Access Centres in Greece, Samos as a testing ground for the EU migration policies, <https://repository.gchumanrights.org/bitstreams/c6b3a39c-ed76-4873-9d5f-a5982ba15dd2/download>; Oxfam, “EU Migration Pact: A house of cards”, 18 December 2023, www.oxfam.org/en/press-releases/eu-migration-pact-house-cards. Statewatch, The EU Migration Pact: a dangerous regime of migrant surveillance, 10 April 2024, www.statewatch.org/news/2024/april/the-eu-migration-pact-a-dangerous-regime-of-migrant-surveillance/. CPT report, p. 9, para. 18.

²²⁷ See: EU Ombudsman, Decision in strategic inquiry OI/3/2022/MHZ and relevant documentation; HIAS, *The role of the European Commission in the implementation of the EU asylum acquis on the Greek islands*, January 2023, https://hias.org/wp-content/uploads/Greece-RSA_HIAS_EU-Ombudsman_submission.pdf.

²²⁸ Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817. On this: Joint NGO report, RSA and others, *The Workings of the Screening Regulation Juxtaposing proposed EU rules with the Greek reception and identification procedure*, January 2021, https://rsaagean.org/wp-content/uploads/2021/01/Screening_Greece_Correlation.pdf. And RSA, *New Pact on Migration and Asylum - Impermissible regression of standards for asylum seekers*, July 2024, p. 11 and 40, https://rsaagean.org/wp-content/uploads/2024/07/RSA_NewPact_Comments_EN.pdf

²²⁹ Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148, Art. 5 and 8. On this see also: RSA, *New Pact on Migration and Asylum*, above.

the procedure, and (de facto) detention, to keep people in specific facilities or geographic areas, usually close to the border.²³⁰

Through the screening phase, which should last a maximum of seven days when conducted at external borders, people undergo health, vulnerability, security and identity checks, have their biometric data registered, and are channelled through the different procedures, including international protection and return procedures. During this time, people are under a “fiction of non-entry”, meaning that they are not considered to have entered the territory of the state.²³¹ ECRE considers the screening procedure to mirror “the reception and identification procedure in Greece”.²³² While detention is not presented as a default measure in screening procedures, people must remain available to authorities during the procedure and states are allowed to resort to detention if deemed necessary.²³³

Similarly, the Asylum Procedures Regulation²³⁴ provides that states can, and in some cases must,²³⁵ examine certain asylum applications through the “asylum border procedure”, as part of which applicants risk being subjected to restrictions on their movement. The procedure requires applicants to reside “at or in proximity to the external border or transit zones” or “in other designated locations within its territory” for their duration,²³⁶ which should be a maximum of 12 weeks.²³⁷ The requirement to remain under these conditions can be extended by an additional 12 weeks if the asylum procedure is followed by return border procedures.²³⁸

Border procedures are thus intrinsically premised on an idea of containment and isolation of asylum seekers. United Nations experts have denounced how “there is a risk that, under screening and border procedures, [migration detention] becomes a consistent practice at EU external borders”.²³⁹

Similarly to people in the fast-track border procedure in Samos who are subjected to “restrictions of freedom” (i.e. de facto detention, as established in the previous chapter), people in vulnerable situations – including families with children – are not automatically exempt from the border procedure. The Regulation states that the border procedure should not be applied or should “cease to apply” if “the necessary support cannot be provided to applicants with special reception needs, including

²³⁰ Study requested by the European Parliament's Directorate for Citizens' Rights and Constitutional Affairs, Policy Department for Citizens' Rights and Constitutional Affairs, The European Commission's legislative proposals in the New Pact on Migration and Asylum, particularly p. 79-80, and recommendations p.171, [www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf), Galina Cornelisse, “The Pact and Detention: An Empty Promise of ‘certainty, clarity and decent conditions’”, 6 January 2021, <https://eumigrationlawblog.eu/the-pact-and-detention-an-empty-promise-of-certainty-clarity-and-decent-conditions/>, Evangelia (Lilian) Tsourdi, The new Screening and Border procedures: Towards a seamless migration process?, June 2024, <https://library.fes.de/pdf-files/bueros/bruessel/21268.pdf>; ICJ, <https://www.icj.org/wp-content/uploads/2021/06/Detention-in-the-EU-Pact-proposals-briefing-2021-ENG.pdf>

²³¹ European Council, Timeline - Migration and asylum pact, <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eu-migration-asylum-reform-pact/timeline-migration-and-asylum-pact/>; Vasiliki Apatzidou, The Complex Landscape of Asylum Border Procedures in the new Asylum Procedures Regulation, 25 June 2024, <https://europeanlawblog.eu/2024/06/25/the-complex-landscape-of-asylum-border-procedures-in-the-new-asylum-procedures-regulation/>; ECRE, An analysis of the fiction of non-entry as appears in the Screening regulation, September 2022, <https://ecre.org/wp-content/uploads/2022/09/ECRE-Commentary-Fiction-of-Non-Entry-September-2022.pdf>

²³² ECRE, *Reception, detention and restriction of movement at EU external borders*, July 2021, p. 42 https://eu.boell.org/sites/default/files/2021-07/ECRE%20e-paper%202021_FINAL_rev.pdf

²³³ The Regulation's preamble states that states “should lay down in their national law provisions to ensure the presence of those third-country nationals during the screening in order to prevent absconding” and that “[w]hen it proves necessary and on the basis of an individual assessment of each case, Member States may detain a person subject to the screening”. On this point, reference should be made, by analogy, to the remarks made by Galina Cornelisse on an earlier version of the Regulation, regarding the use of detention during the screening procedure: Galina Cornelisse, “The Pact and Detention: An Empty Promise [...]”, above.

²³⁴ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, Art. 43

²³⁵ *Ibid.*, Art. 45

²³⁶ *Ibid.*, Art. 54

²³⁷ *Ibid.*, Art. 51

²³⁸ *Ibid.* Recital 68

²³⁹ UN Office of the High Commissioner for Human Rights, Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say, 2 May 2024, www.ohchr.org/en/press-releases/2024/05/child-immigration-detention-must-be-prohibited-following-adoption-eu

minors”, or to those “in need of special procedural guarantees”, at the location where procedures are carried out. However, as discussed regarding Samos, the effectiveness of these safeguards is strictly dependent on the state’s ability to offer an adequate and prompt identification of vulnerabilities, which is not always possible given resource constraints or geographic locations, among other factors.

Finally, the Return Border Procedure Regulation also heavily relies on containment, allowing the authorities to impose a requirement on people whose asylum applications were rejected to reside “for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones” or other locations.²⁴⁰ They can also use detention “as a measure of last resort”.²⁴¹

The policy of “restrictions of freedom” introduced by Greek law, and its implementation in EU-funded centres, such as the Samos CCAC, provides a window into the likely implementation of the Migration Pact in practice, and offers a crucial opportunity for EU institutions to correct the course of the new policies. Detailed safeguards and guidelines are needed to ensure that the new or vastly expanded procedures introduced by the new instruments do not result in widespread detention and other violations of fundamental rights.

At the same time, greater scrutiny is needed from EU institutions and bodies to ensure the compliance of Greek policies and practice with EU law. In July 2022, the EU Ombudsman opened an inquiry into the Commission’s role in the monitoring of fundamental rights in EU-funded migration facilities in Greece, including Samos.²⁴² The Ombudsman’s decision of June 2023 included a series of suggestions for the EU Commission to improve its efforts to ensure compliance, some of which the Commission explicitly agreed to. These included actions aimed at improving transparency in the Task Force’s engagement with civil society and Greek authorities.²⁴³ Importantly, the Commission agreed to the suggestion to conduct and make public a “fundamental rights impact assessment” of the existing CCACs, working with Greek authorities and EU agencies. On 16 July, the EU Commission told Amnesty International that the assessment had been assigned to the Fundamental Rights Officer of the Greek Ministry for Migration and Asylum and was expected for publication in 2025, as well as that the Commission and the EU Fundamental rights agency had supported the process.²⁴⁴ The Greek Ombudsman and the Greek Council of Refugees expressed concerns about the independence of the Greek Fundamental Rights Officers.²⁴⁵

²⁴⁰ EU Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148 “Return Border Procedure Regulation”, 32024R1349, 14 May 2024, Art 4. The duration of residence requirements (Article 4.2) during the border return procedure can be extended by six weeks in situation of “crisis”.

²⁴¹ Regulation (EU) 2024/1349, Art 5. The border return procedure also allows the “consecutive detention”, for return purposes, of people who were already in detention during the asylum border procedure (Article 5.4).

²⁴² EU Ombudsman, Decision in strategic inquiry OI/3/2022/MHZ.

²⁴³ In its comments, the Commission commits to “work towards establishing a more structured way of cooperating with civil society organisations active in the field of migration in Greece including making information publicly available”. The Ombudsman also suggested that “The Commission should urge the Greek authorities to publish their fundamental rights impact assessment and personal data impact assessment of the surveillance system in the [CCACs]”, and make it public on its website. The Commission maintained that the Greek authorities conducted such assessment prior to the “full deployment” of EU-funded surveillance tools on the islands’ facilities. See: Comments of the Commission on the suggestion for improvement of the European Ombudsman, above.

²⁴⁴ Response of 16 July 2024 from the Acting Director-General of the Directorate for Migration & Home Affairs and Head of the Task Force Migration Management, Beate Gminder, on file. The Commission also discusses the state of the implementation of other suggestion, noting, among others, that “the operational conclusions of all the Steering Committee meetings held so far have been made available following access to documents requests”. Despite the Ombudsman suggestion to publish minutes of meetings with CSO and of meetings of the steering committee between the Task Force and the Greek authorities, the EU Task Force website remains overall sparse: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/task-force-migration-management_en#documents

²⁴⁵ EU Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee), Draft Mission Report, following the LIBE mission to Athens, Greece, 6 to 8 March 2023, p. 11 www.europarl.europa.eu/cmsdata/272031/DraftmissionreportGreece_EN.pdf; GCR, Greek Council for Refugees contribution to project of joint statement on the notion of short-term enforced disappearance, August 2023, p.4. www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/short-term-disap/submission-short-term-ED-CED-WGEID-cso-gcr-en_0.pdf

In January 2023, the European Commission initiated infringement proceedings against Greece on concerns that “the provisions of Article 40 of Law 4939/2022”, relating to the “restrictions of freedom” imposed on CCACs residents, “do not comply with the requirements of Articles 8 and 9 of the [Reception Conditions] Directive”.²⁴⁶ Reports suggest that the EU’s Letter of Formal Notice initiating proceedings, is also based on concerns that Greek law “transposes the European directive inadequately in relation to the detention of unaccompanied minors and vulnerable groups”.²⁴⁷ On 29 May, the Greek authorities informed the CPT that the EU Commission did not react to their response to the letter of formal notice, of 22 March 2023.²⁴⁸ It is unclear whether the Commission has decided to issue a reasoned opinion in this case, thereby advancing infringement proceedings.

²⁴⁶ EU Commission, Letter of Formal Notice “INFR(2022)2156”, 26 January 2023, https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142. Also: RSA, Registration of asylum applications in the new mainland RIC in Greece, February 2023, p.10 https://rsaagean.org/wp-content/uploads/2023/02/RSA_Registration_RIC_Mainland_EN.pdf – and Gov Watch, “EU Commissioner Johansson: Greece violates EU law on refugees”, 10 February 2023, <https://gowatch.gr/en/finds/epitropos-paraviaseis-tis-enosiakis-nomothesias-gia-toys-prosfyges-apo-tin-ellada/>

²⁴⁷ Ibid.

²⁴⁸ The authorities also maintain that an amendment is being prepared to reform Article 52 of the Asylum Act regarding the “detention of families at the border”. Response of the Ministry of Migration and Asylum to the CPT report, above, p. 31.



“My Life to Freedom”

Artwork by Tasneem, a woman from Sudan (May 2024) © Amnesty International/Samos Volunteers

“The presence of refugees remains a testament to their resilience in the face of difficulties, while they face many challenges. They continue to build a new life and better future, refugees need support to alleviate their suffering. They deserve, respect, appreciation and the opportunity to build a new life.

Top-left: This is the forest in Turkey when crossing the border. This is the worst part because it ruins your health and mentality. All you think about is to cross the border. You might expect the police, you might even go to prison and face deportation back to your country before you make the crossing.

Bottom-left: This part has different fates – you might make it to Samos or you might be violently pushed back to Turkey. People here can face death in the sea.

Bottom-right: This is the shock. You think you will find a very nice situation, but everything is the opposite. It’s prison. They say this is Europe, this is freedom – but it is not like this.

Top-right: This is the dream. This is the good life. Everyone dreams for this moment – to have your own house, your own life, no more troubles, forget your suffering.

This is all related to hope. Each stage you hope for the next stage. And in the end, you hope to have a good life for you and your family.”

6. CONCLUSIONS AND RECOMMENDATIONS

In view of their content and impact on the rights of residents of the CCAC, restrictions of freedom under Article 40 of the Asylum Act, amount to de facto detention. These measures are applied systematically to all residents, without consideration of people's individual circumstances or of less invasive alternatives. They fail to guarantee the procedural safeguards owed to people in detention, and to prevent racially discriminatory impacts. As such, they constitute an unlawful deprivation of liberty.

In Samos, the experience of residents of the CCAC at times between September 2023 and January 2024 clearly show that, aside from their legal configuration, the implementation of these measures was also flawed, and carried out in a manner inconsistent with international and European standards and principles on migration detention. The authorities' inability to cope with increased arrivals, combined with long-standing failures in the provision of basic services in the site, compounded the violations of rights to which residents have been exposed, to the effect that people's de facto detention during this period may have breached the prohibition of torture or other ill-treatment. Despite its involvement in the construction and operation of CCACs, the EU Commission has failed to take decisive action to ensure Greece's compliance with EU law in Samos or elsewhere in Greece. For these reasons, Amnesty International issues the following recommendations:

TO THE GREEK AUTHORITIES ACROSS FACILITIES IN GREECE

- Publish data, disaggregated by race or ethnic origin, on the number of applicants exempted from the fast-track border procedure on account of their condition of vulnerability or needs.
- Ensure that migration detention, especially for identification purposes, is only used exceptionally and in compliance with international and European standards. Urgently halt, in law and practice, any form of deprivation of liberty for migration purposes of recognized refugees, children, families, pregnant people, people with disabilities and survivors of trafficking.
- Take measures so that, in their design or implementation, migration policies, including the use of detention or other measures affecting people's liberty or movement, do not result in racial discrimination.

REGARDING RESTRICTIONS OF FREEDOM IN THE SAMOS CCAC

- Urgently repeal Article 40 of the Asylum Act. Halt any practice resulting in people being de facto detained in the CCAC in the absence of legal basis and refrain from introducing any such practice in the future.
- Refrain from accommodating minors, accompanied and unaccompanied, in CCACs, as they are not adequate facilities for their reception.
- Ensure that reception, identification and asylum procedures are completed without undue delay. Take steps to guarantee the adequate staffing of asylum and reception and identification services, including insofar as interpretation support is concerned.
- Clarify the reasons invoked for the extension of restrictions of freedom imposed on Samos CCAC residents, particularly for the period of July 2023 to January 2024.
- Provide detailed data, disaggregated by race or ethnic origin, on how much time elapses between residents' arrivals to the Samos' CCAC and the issuance of the first ROF orders and of "police notes", particularly for the period of July 2023 to January 2024, as well as data on the issuance of back-dated ROF orders that are issued retroactively.

REGARDING RECEPTION AND ASYLUM STANDARDS AND IN THE SAMOS CCAC

- Urgently create long-term solutions to ensure the adequate and consistent provision of running water across the CCAC. Pending permanent solutions, ensure conditions that

guarantee the minimum amount of running water per person recommended by the WHO, and residents' access to functioning laundry facilities and personal hygiene products.

- Halt the practice of accommodating residents in administrative and non-residential areas of the CCAC. To cope with increased arrivals that are likely to exceed the capacity of the CCAC, authorities should create emergency accommodation arrangements that guarantee residents' basic rights.
- Take urgent steps to create safe areas to accommodate all residents experiencing conditions of vulnerability and provide them with reception conditions adequate to their needs.
- Ensure that UAMs are promptly transferred to adequate accommodation outside CCACs. Pending their transfer, increase opportunities for UAMs to safely exit the safe area and spend time in the general population area of the CCAC. Expand the availability of leisure and educational activities within the CCAC, and opportunities for UAMs to regularly access activities outside the CCAC, under the supervision of child protection actors.
- Take steps to renovate residential, non-residential areas and WASH facilities across the CCAC that are in state of poor maintenance or disrepair.
- Take urgent steps to ensure the long-term increase of healthcare personnel operating in the CCAC, with a focus on medical doctors, sexual and reproductive care providers, child specialists and mental health professionals. Interventions should ensure the consistent provision of healthcare with consideration to the demographics and needs of residents.
- Pending the implementation of the Hippocrates project, explore temporary solutions to enhance the provision of healthcare services and ensure continuity of the services.
- Increase the capacity of appropriately trained reception, healthcare and interpretation staff assigned to conduct vulnerability assessments, to ensure residents' timely access to targeted material reception conditions and procedural guarantees.
- Ensure the prompt transfer to adequately resourced facilities on mainland Greece of residents with health conditions that cannot be adequately treated in the CCAC or in the public system.
- Grant effective and unhindered access to the CCAC to civil society organizations, lawyers and other actors whose service are essential to the realization of residents' rights as well as to UN agencies and independent monitoring bodies.

TO THE EU INSTITUTIONS AND MEMBER STATES

- EU institutions should seriously scrutinize the systematic use of “restrictions of freedom” in the Samos CCAC and its impact in the context of the national implementation of the Migration Pact by Greece, and the Commission's development of gap analyses and needs assessments to inform implementation plans.
- EU institutions should introduce detailed safeguards and guidelines to ensure that the powers introduced by the new instruments under the Pact do not result in violations of fundamental rights. When implementing screening and border procedures as foreseen in the Pact, member states should take every step to avoid widespread detention, de facto detention, or systematic restrictions of freedom, as witnessed in the Samos CCAC.
- The European Commission should strengthen its scrutiny of Greek policies and practices in the CCACs. It should fully comply with the suggestions in the Ombudsman's decision of June 2023.
- The Commission should advance the infringement proceedings opened in January 2023 against Greece in relation to the compliance of Article 40 of Law 4939/2022, relating to the “restrictions of freedom”, with the Reception Conditions Directive.

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