

**Fifth Joint Submission
of the International Commission of Jurists (ICJ) and of the European Council on
Refugees and Exiles (ECRE)**

**to the Committee of Ministers of the Council of Europe
in the case of
M.S.S. v. Belgium and Greece (Application no. 30696/09) and related cases**

March 2016

The International Commission of Jurists (ICJ) and the European Council on Refugees and Exiles (ECRE) are pleased to present to the Committee of Ministers of the Council of Europe this fifth submission under Rule 9.2 of the *Rules of Procedure* of the Committee of Ministers, in accordance with its supervisory role on execution of judgments of the European Court of Human Rights and, in particular, in the implementation of the general obligations arising from the judgment *M.S.S. v. Belgium and Greece*.

The ICJ and ECRE have already presented written submissions in this case on 20 May 2012, 25 February 2013, 22 May 2014 and 2 March 2015. Further to our previous submissions, the ICJ and ECRE wish to bring to the attention of the Committee of Ministers recent information on the state of the asylum procedure, reception conditions and detention practices, which are likely to be of importance to the supervision of the execution of the *M.S.S. v. Belgium and Greece* ruling. The following submission does not provide an exhaustive analysis of the current challenges faced by the Greek asylum system, but instead focuses on:

1. Ongoing obstacles to accessing the asylum procedure, namely concerning registration before the Asylum Service, the operation of appeals bodies, as well as the likely application of the “safe third country” concept regarding Turkey;
2. The state of Greece’s reception system, with a view to properly assessing its capacity to accommodate asylum seekers and migrants on its territory; and
3. Updated information on the lawfulness and conditions of immigration detention, including new risks of detention stemming from nationality-profiling and the establishment of “hotspots” at points of arrival.

Preliminary Observation: EU interventions relating to the execution of the *M.S.S. v Belgium and Greece* judgment

Almost five years following the *M.S.S. v. Belgium and Greece* ruling, the European Commission announced on 23 September 2015 its intention “to prioritise the normalisation of the situation [in Greece] and a return to the Dublin system within the next six months”, through a commitment to “restoring normalcy and taking all measures in Greece needed so that Dublin transfers to Greece can be reinstated within six months”.¹ This was reiterated in a follow-up Communication on 14 October, detailing the Commission’s evaluation process. The Commission would assess the situation in

¹ European Commission, *Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*, COM(2015) 490, 23 September 2015, 11-12.

Greece by 30 November 2015 and, if all conditions were met, would recommend a reinstatement of Dublin transfers to the European Council either in December 2015 or in March 2016.² A Recommendation to Greece was adopted on 10 February 2016,³ setting out urgent measures that should be implemented by Greece in the areas of reception capacity, living conditions, access to the asylum procedure, appeals and staffing of authorities, with a view to the possible resumption of some Dublin transfers. The Commission intends to submit its own assessment of the legality of Dublin transfers in June 2016.⁴ The Recommendation clarifies that national and European judicial authorities remain responsible for assessing the conditions asylum seekers and migrants are exposed to in Greece, with a view to evaluating whether the application of the Dublin Regulation would amount or not to a risk of arbitrary *refoulement*.

The ICJ and ECRE wish to draw the attention of the Committee of Ministers to these developments at the European Union level. While welcoming the renewed level of commitment of the EU institutions in assisting Greece in its efforts to meet its obligations under the *M.S.S.* judgment, the ICJ and ECRE express concern that the pace of the process and the political pressure to resume transfers may give rise to cosmetic rather than effective reforms. To ensure an effective implementation of *M.S.S.* and related judgments, reforms are needed that go far beyond the mere short-term impact of emergency actions.

1. The asylum procedure and protection from arbitrary *refoulement*

1.1. Access to asylum procedure and registration

At the time of writing, the Asylum Service had established 7 Regional Asylum Offices (RAOs) in Attica, Lesbos, Samos, Northern Evros, Southern Evros, Rhodes and Thessaloniki, while three Asylum Units operate in Amygdaleza, Patra and Xanthi. Remaining offices, that Greek authorities have committed to establish, are yet to be set up, including at main points of arrival such as Chios and Leros, which have witnessed 30,316 and 8,208 arrivals respectively between 1 January and 10 March 2016.⁵ In light of this, access to the asylum procedure is not effectively ensured to all persons within Greek jurisdiction.

At the same time, the Regional Asylum Office in Attica, which handles the majority of applications for international protection,⁶ faces particular difficulties in guaranteeing swift access to the asylum procedure.⁷ In order to improve access to the procedure by minimising queues outside the RAO of Attica, the asylum service inaugurated a new system to fix appointments for registration through Skype. The registration system set up has encountered shortcomings in practice, as a number of persons have reported to NGOs unsuccessful attempts to book an appointment by Skype.⁸ As of February 2016, Skype slots to book registration appointments in Attica are only available three hours per week at best (for relocation, Farsi/Dari speakers) or even one hour per week for certain languages (Bengali, Albanian).⁹ For the main languages of asylum seekers present in Greece (English, Arabic,

² European Commission, *Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration*, COM(2015) 510, 14 October 2015, 12.

³ European Commission, *Recommendation addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C(2016) 871, 10 February 2016.

⁴ European Commission, *Back to Schengen – A Roadmap*, COM(2016) 120, 4 March 2016, 8.

⁵ UNHCR, *Refugees/Migrants Emergency Response: Mediterranean*, 10 March 2016.

⁶ In 2015, out of a total of 13,197 applications, 7,835 (almost 60%) were registered in Attica: Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>. In the first two months, 1,541 out of a total 2,641 claims country-wide were registered in Attica: Asylum Service, *Statistics February 2016*, available in Greek at: <http://bit.ly/1TYwc2Z>.

⁷ AIDA Country Report Greece: Fourth Update, November 2015, 25-26.

⁸ *Ibid.*

⁹ Asylum Service, *Schedule of registration of applications for international protection*, 1 February 2016, available in Greek at: <http://bit.ly/1TelcQ3>.

French, Farsi, Dari, Urdu, Punjabi and Bengali), communication through Skype is required in order to be able to book an appointment to register an asylum application.¹⁰ This is highly problematic, as it excludes the possibility to register in person before the relevant RAO, thereby posing an undue obstacle to initiate the asylum procedure.

Lack of access or the creation of undue obstacles to access to international protection procedures, as identified in the *M.S.S.* judgment by the European Court of Human Rights, significantly enhances the risk of arbitrary *refoulement*, whether direct or indirect, as a potential applicant for international protection may not be able to present his or her situation and thereby avoid expulsion. For the same reasons, this situation makes the remedy provided by the asylum procedure ineffective for the purposes of Article 13 ECHR, as applicants are not guaranteed effective access to it.

The lack of an effective registration system is all the more problematic since persons in need of international protection who do not manage to lodge their application are not protected from arrest, detention and deportation.¹¹ Finally, there are serious concerns as to the compatibility of this system with the procedural guarantees set up under the recast Asylum Procedures Directive,¹² and in particular the “effective opportunity” to lodge an asylum application guaranteed under its Article 6(2).

The staffing of the Asylum Service is also an issue of concern.¹³ In view of significant increase in the Eurodac registration of entrants,¹⁴ as well as border control measures taken by its neighbouring countries, the likelihood that migrants arriving in Greece will transit to other countries without filing an asylum application is significantly lower in 2016 as compared to 2015, when out of 856,723 persons arriving by sea in the country,¹⁵ only 13,197 (about 1.5%) applied for international protection.¹⁶ Considerably higher numbers of applicants should be expected in the course of this year, thereby requiring more robust staffing of the Asylum Service.

Finally, push backs at the Greek-Turkish border continue to be reported, with a number of incidents documented in 2015. There have been testimonies from persons that had actually reached the Greek territory and expressed their intention to seek asylum, but were nonetheless pushed back by the border guards.¹⁷

¹⁰ *Ibid.*

¹¹ See e.g. Administrative Court of Thessaloniki, Case No 467/2014, deeming a person who submitted an asylum claim to a non-competent authority as illegally staying on the territory and falling within pre-removal detention until his identity was confirmed. A summary may be found at the European Database of Asylum Law (EDAL) at: <http://bit.ly/22ebRgy>.

¹² 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, OJ 2013 L180/60.

¹³ European Commission, *Recommendation addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, para 2.

¹⁴ Eurodac fingerprinting rates have stepped up from 8% in September 2015 to 78% in January 2016: European Commission, *Annex to the Communication on the state of play of implementation of the priority actions under the European Agenda on Migration: Greece – State of play report* (hereafter “Second Hotspot Progress Report on Greece”), COM(2016) 85, 10 February 2016, 3.

¹⁵ UNHCR, *Refugees/Migrants Emergency Response – Mediterranean*.

¹⁶ Greek Asylum Service, *Asylum Statistics 2015*, available at: <http://bit.ly/1OukycW>.

¹⁷ AIDA Country Report Greece: Fourth Update, 30-33.

The ICJ and ECRE submit that the persisting obstacles to accessing the asylum procedure before the Asylum Service leave asylum seekers at serious risk of deportation without an individual assessment of their risk of being sent to a country where there are substantial grounds for believing that they would be subject to treatment contrary to Articles 2, 3, 5 or 6 ECHR, in violation of the principle of *non-refoulement*. These obstacles, coupled with the insufficient staffing of the Asylum Service that can generate long delays in the asylum procedure, and allegations of push-backs towards Turkey, are also evidence that the remedies in cases of potential arbitrary *refoulement* are often ineffective and therefore do not meet the standard of Article 13 ECHR.

1.2. The application of the “safe third country” concept in respect of Turkey

The “safe third country” provisions contained in the recast Asylum Procedures Directive, allowing for the dismissal of asylum applications from persons transiting through such a country as inadmissible in an accelerated procedure,¹⁸ have not been applied by the Asylum Service so far.¹⁹ However, following the announcement by the Greek government on 5 February 2016 of its intention to declare Turkey a “safe third country” for applicants for international protection,²⁰ it is likely that the legal provisions transposing Article 27 of the 2005 Asylum Procedures Directive will be activated in respect of persons transiting through Turkey.²¹ Accordingly, claims from such applicants are likely to be dismissed as inadmissible on that basis.

Civil society organisations, including ECRE²² and the ICJ,²³ have strongly condemned the presumption that Turkey is a “safe third country” on the basis of several shortcomings in protection. Beyond its failure to guarantee adequate reception conditions and a well-functioning asylum procedure,²⁴ due to its geographical limitation to the 1951 Refugee Convention, Turkey does not enable persons coming from non-European countries to apply for and enjoy refugee status in accordance with the Convention, but only to be recognised as “conditional refugees” and thereby benefit from a right of temporary residence, without automatic access to the labour market. Syrian nationals are subject to separate treatment under a temporary protection regime, under which, however, access to the labour market remains to be guaranteed in practice.

Instances of arbitrary *refoulement* have been recently documented by organisations including Amnesty International and Human Rights Watch,²⁵ mainly focusing on reported violations along the Turkey-Syria border, but also highlighting allegations of unlawful returns at other land borders. These reports, while mainly entailing allegations that illustrate the shortcomings of Turkey’s “temporary protection” regime for refugees from Syria, also generally indicate alleged practices in detention

¹⁸ Article 33 recast Asylum Procedures Directive.

¹⁹ AIDA Country Report Greece: Fourth Update, November 2015, 72.

²⁰ Kathimerini, ‘Hot spot work intensifies as Greece agrees to recognize Turkey as “safe” country’, 5 February 2016, available at: <http://bit.ly/1PdC2KY>.

²¹ Article 20(1) Presidential Decree 113/2013.

²² ECRE, ‘ECRE strongly opposes legitimising push-backs by declaring Turkey a “safe third country”’, 29 January 2016, available at: <http://bit.ly/1OVcmmh>.

²³ ICJ, ‘EU-Turkey deal puts human rights at risk’, 21 March 2016, available at <http://www.icj.org/eu-turkey-deal-puts-human-rights-at-risk-warns-icj/>.

²⁴ For a detailed account, see AIDA Country Report Turkey: First Update, December 2015.

²⁵ Amnesty International, “Europe’s Gatekeeper: Unlawful Detention and Deportation of Refugees in Turkey”, 16 December 2015, <http://bit.ly/1NwziRu>; Amnesty International, ‘Fear and Fences: Europe’s Approach to Keeping Refugees at Bay’, 17 November 2015, <http://bit.ly/1T45UKa>; Amnesty International, “Struggling to Survive: Refugees from Syria in Turkey”, 20 November 2014, <http://bit.ly/1mgkl3n>; Human Rights Watch, “Turkey: Syrians Pushed Back at the Border”, 23 November 2015, <http://bit.ly/1MwO6Wo>; Human Rights Watch, “Syria/Turkey: Landmines Kill Civilians Fleeing Kobani”, 2 December 2014, <http://bit.ly/1LvKola>; Human Rights Watch, “Turkey/Azerbaijan: Journalist Deported, Imprisoned”, 24 April 2014, <http://bit.ly/1kgvio9>.

facilities and border regions that do not comply with the rule of law framework and basic procedural safeguards from arbitrariness established by Law on Foreigners and International Protection.²⁶

At the same time, the Turkish reception system for applicants for international protection falling outside the temporary protection regime for persons fleeing Syria falls far short of meeting the needs of its asylum seeker population. State-provided accommodation in reception centres hosts a maximum of 850 persons, while no financial assistance is provided to applicants in order to ensure their subsistence.²⁷ The ICJ and ECRE note that, based on this situation, Turkey would fail the test to be designated a “safe third country” under Article 27 of the 2005 Asylum Procedures Directive, which is applicable under Greek law.

The ICJ and ECRE are concerned that the stated reliance on the designation of Turkey as a “safe third country” is likely to lead to the rejection of applications as inadmissible and the return of asylum seekers to Turkey, without the individual assessment of any risk of direct or indirect arbitrary *refoulement*. This outcome is highly likely considering the inadequacies of State-provided reception facilities to applicants for international protection in Turkey, the reported deficiencies of the Turkish asylum system and recent credible reports of arbitrary *refoulement* from Turkey. This situation would fail to meet the obligations of Greece to implement the *M.S.S.* judgment with regard to the prohibition of indirect and direct arbitrary *refoulement*, and the right to an effective remedy, under Articles 3 and 13 ECHR.

1.3. Appeals

The ICJ and ECRE reiterate their previously expressed concerns over the Greek asylum appeal procedure before the Appeals Committees operating under the Appeals Authority.²⁸ More particularly, the handling of appeals under the “new procedure” governed by Presidential Decree 113/2013 continues to be largely conducted without a personal hearing of the applicant. Throughout their operation in 2015, the Appeals Committees reached 6,502 decisions solely upon examination of the file, and only summoned 229 persons for a hearing.²⁹

At the end of September 2015, the Appeals Committees operating under the Appeals Authority ceased their operation due to the expiry of their members’ mandate.³⁰ As a result, no appeals have been examined or decisions issued since November 2015,³¹ thereby rendering access to an effective remedy illusory for the time being.

At the same time, the long-standing backlog of appeals under the “old procedure” regulated by Presidential Decree 114/2010 is yet to be resolved. As at 31 August 2015, as many as 23,324 appeals were pending before the Appeals Committees of the “old procedure”.³² According to the Greek Forum of Refugees, a significant number of Afghan asylum seekers have had pending asylum applications for long periods of time going up to thirteen years, and are still awaiting a decision on their appeals.³³ It is therefore highly likely that a significant number of persons who applied for international protection in Greece prior to June 2013, including potential Dublin returnees, continue to face obstacles to exercising their right to an effective remedy.

²⁶ See AIDA Country Report Turkey: First Update, December 2015, 33.

²⁷ *Ibid*, 73, 76.

²⁸ See ICJ and ECRE, *Third Joint Submission to the Committee of Ministers of the Council of Europe in the case of M.S.S. v. Belgium and Greece*, May 2014, 5 et seq.

²⁹ AIDA Country Report Greece: Fourth Update, November 2015, 44.

³⁰ Recital 18 Commission Recommendation to Greece on Dublin transfers.

³¹ Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>.

³² AIDA Country Report Greece: Fourth Update, November 2015, 6.

³³ Greek Forum of Refugees, ‘Οι ξεχασμένοι του ασύλου, χρόνια αστάθειας και απώλεια ελπίδας για οποιοδήποτε μέλλον’, February 2016, available in Greek at: <http://bit.ly/1VMTW9p>.

In accordance with the right to an effective remedy guaranteed in international human rights law, a remedy must be prompt, effective, accessible, impartial and independent, must be enforceable, and lead to cessation of or reparation for the human rights violation concerned.³⁴ In certain cases, the remedy must be provided by a judicial body,³⁵ but, even if it is not, it must fulfil the requirements of effectiveness and independence. The remedy must be effective in practice as well as in law, and must not be unjustifiably hindered by the acts of State authorities.³⁶ In cases of *non-refoulement* to face a risk of torture or ill-treatment, the absolute nature of the rights engaged further strengthens the right to an effective remedy³⁷ and means that the decision to expel must be subject to close and rigorous scrutiny.³⁸

The right to an effective remedy also requires review of a decision to expel, by an independent and impartial appeals authority, which has competence to assess the substantive human rights issues raised by the case, to review the decision to expel on both substantive and procedural grounds, and to quash the decision if appropriate. The European Court of Human Rights has held that judicial review constitutes, in principle, an effective remedy, provided that it fulfills these criteria.³⁹ The appeal procedure must be accessible in practice, must provide a means for the individual to obtain legal advice, and must allow a real possibility of lodging an appeal within prescribed time limits.⁴⁰ In *non-refoulement* cases, an unduly lengthy appeal process may render the remedy ineffective, in view of the seriousness and urgency of the matters at stake.⁴¹

To provide an effective remedy, the appeal must be suspensive of the expulsion measure from the moment the appeal is filed, since the notion of an effective remedy requires that the national authorities give full consideration to the compatibility of a measure with human rights standards, before the measure is executed.⁴² A system where stays of execution of the expulsion order are at the

³⁴ See, generally, ICJ, *Practitioners' Guide No. 2, The right to a remedy and to reparation for gross human rights violations*, Geneva, 2006, 46-54.

³⁵ *Ibid.*, 49-54.

³⁶ *Muminov v. Russia*, ECtHR, Application No. 42502/06, Judgment of 11 December 2008, para. 100; *Isakov v. Russia*, ECtHR, Application No. 14049/08, Judgment of 8 July 2010, para. 136; *Yuldashev v. Russia*, ECtHR, Application No. 1248/09, Judgment of 8 July 2010, para. 110-111; *Garayev v. Azerbaijan*, ECtHR, Application No. 53688/08, Judgment of 10 June 2010, paras. 82 and 84.

³⁷ *Agiza v. Sweden*, CAT, CAT/C/34/D/233/2003, Judgment of 20 May 2005, para. 13.8.

³⁸ *Jabari v. Turkey*, ECtHR, Application No. 40035/98, Judgment of 11 July 2000, para. 39.

³⁹ *Vilvarajah and Others v. United Kingdom*, ECtHR, 45/1990/236/302-306, Judgment of 26 September 1991, para. 99; *Isakov v. Russia*, ECtHR, *op. cit.*, fn. 34, para. 137; *Yuldashev v. Russia*, ECtHR, *op. cit.*, fn. 34, para. 110-111; *Garayev v. Azerbaijan*, ECtHR, *op. cit.*, fn. 34, paras. 82 and 84; *Al-Nashif v. Bulgaria*, ECtHR, Application No. 50963/99, Judgment of 20 June 2002, para. 133. See also, *C.G. and Others v. Bulgaria*, ECtHR, Application No. 1365/07, Judgment of 24 April 2008, para. 56.

⁴⁰ *M.S.S. v. Belgium and Greece*, ECtHR, Application No. 30696/09, Judgment of 21 January 2011, para. 318.

⁴¹ *Ibid.*, para. 320.

⁴² *Jabari v. Turkey*, ECtHR, *op. cit.*, fn. 34, para. 50; *Conka v. Belgium*, ECtHR, Application No. 51564/99, Judgment of 5 February 2002, para. 79; *Gebremedhin v. France*, ECtHR, Application No. 25389/05, Judgment of 26 April 2007, paras. 58, 66; *Muminov v. Russia*, ECtHR, *op. cit.*, fn. 34, para. 101; *Concluding Observations on France*, CAT, UN Doc. CAT/C/FRA/CO/3, 3 April 2006, para.7; *Concluding Observations on Belgium*, CCPR, UN Doc. CCPR/CO/81/BEL, 8 December 2004, para. 21; *Concluding Observations on Morocco*, CCPR, UN Doc. CCPR/CO/82/MAR, 1 December 2004, para. 13; *Concluding Observations on Uzbekistan*, CCPR, UN Doc. CCPR/CO/83/UZB, 26 April 2005, para. 12; *Concluding Observations on Thailand*, CCPR, *op. cit.*, fn. 244, para. 17; *Concluding Observations on Ukraine*, CCPR, UN Doc. CCPR/C/UKR/CO/6, 28 November 2006, para. 9; *Concluding Observations on Libyan Arab Jamahiriya*, CCPR, UN Doc. CCPR/C/LBY/CO/4, 15 November 2007, para. 18; *Concluding Observations on Belgium*, CAT, UN Doc. CAT/C/BEL/CO/2, 19 January 2009, para. 9; *Concluding Observations on Yemen*, CAT, UN Doc. CAT/C/YEM/CO/2, 19 November 2009, para. 22; *Concluding Observations on Belgium*, CAT, Report of the Committee against Torture to the General Assembly, 58th Session, UN Doc. A/58/44 (2003), p. 49, paras. 129 and 131: the Committee expressed concern at the "non-suspensive nature of appeals filed with the Council of State by persons in respect of whom an expulsion order has been issued". The Council of States in Belgium is the Supreme Court in administrative matters. See also, *Concluding Observations on Cameroon*, CAT, UN Doc. CAT/C/CR/31/6, 5 February 2004, para. 9(g); *Concluding Observations on Monaco*, CAT, UN Doc. CAT/C/CR/32/1, 28 May 2004, paras. 4(c) and 5(c);

discretion of a court or other body are not sufficient to protect the right to an effective remedy, even where the risk that a stay will be refused is minimal.⁴³

Due to ongoing barriers to the effective operation of the Appeals Committees examining claims under the “new procedure”, including the fact that they are currently inoperative, as well as persisting delays in the clearance of the backlog of appeals under the “old procedure”, applicants for international protection do not enjoy practical access to an effective remedy in case of potential violations of the principle of *non-refoulement*. This is in breach of Greece’s obligations to implement the *M.S.S.* judgment, specifically as regards the Court’s findings under Articles 3 and 13 ECHR.

2. Reception conditions

An assessment of Greece’s capacity to afford appropriate living conditions to asylum seekers in compliance with Article 3 ECHR standards needs to take into consideration its legal obligations relating to reception conditions, as clarified by the Court in *M.S.S.*⁴⁴ These are outlined in the recast Reception Conditions Directive.⁴⁵ Its predecessor, the 2003 Directive,⁴⁶ has been transposed into Greek law by Presidential Decree 220/2007. Pursuant to this legal framework, accommodation provided to asylum seekers must be such as to guarantee an adequate standard of living.⁴⁷

On 25 October 2015, during a High Level Conference on the Eastern Mediterranean – Western Balkans route gathering selected leaders from EU Member States and Western Balkan countries (Albania, Austria, Bulgaria, Croatia, FYROM, Germany, Greece, Hungary, Romania, Serbia and Slovenia), Greece committed to increasing its reception capacity to 30,000 places by the end of 2015 and to supporting UNHCR in providing rent subsidies for another 20,000 places.⁴⁸ The 30,000 figure was set as a general target, without detailing what type of reception facilities should be established in Greece and thus whether the increase in capacity would be aimed at better hosting the newly arrived for brief time-periods (“first-line reception”) or at creating appropriate conditions for asylum seekers staying in the country (“second-line reception”) in accordance with the recast Reception Conditions Directive.

The European Commission later explained that the five registration and screening areas (“hotspots”) established on the Aegean islands of Lesbos, Chios, Samos, Leros and Kos would make up a total of 7,000 places,⁴⁹ available to host migrants upon arrival in the country. On 10 February 2016, the Commission reported an overall capacity of 17,628 places, including 7,181 on the five “hotspots” and an additional 10,447 places on the mainland.⁵⁰ On 16 March, the Commission deemed that the

Concluding Observations on Mexico, CAT, UN Doc. CAT/C/MEX/CO/4, 6 February 2007, para. 17; *Concluding Observations on South Africa*, CAT, UN Doc. CAT/C/ZAF/CO/1, 7 December 2006, para. 15; *Concluding Observations on Australia*, CAT, UN Doc. CAT/C/AUS/CO/3, 22 May 2008, para. 17; *Concluding Observations on Azerbaijan*, CAT, UN Doc. CAT/C/AZE/CO/3, 8 December 2009, para. 22; *Concluding Observations on Canada*, CAT, UN Doc. CAT/C/CR/34/CAN, 7 July 2005, para. 5(c). See also, *C.G. and Others v. Bulgaria*, ECtHR, *op. cit.*, fn. 510, para. 62.

⁴³ *Conka v. Belgium*, ECtHR, *op. cit.*, fn. 38, paras. 81-85.

⁴⁴ *M.S.S. v. Belgium and Greece*, ECtHR, *op. cit.*, fn. 36, para. 250.

⁴⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L180/96.

⁴⁶ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ 2003 L31/18.

⁴⁷ Article 18 recast Reception Conditions Directive; Article 12 Presidential Decree 220/2007.

⁴⁸ European Commission, *Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action*, IP/15/5904, 25 October 2015.

⁴⁹ European Commission, *Progress Report on the Implementation of the hotspots in Greece* (hereafter “First Hotspot Progress Report Greece”), COM(2015) 678, 15 December 2015, 13.

⁵⁰ European Commission, *Annex to the Communication on the state of play of implementation of the priority actions under the European Agenda on Migration: Greece – State of play report* (hereafter “Second Hotspot Progress Report on Greece”), COM(2016) 85, 10 February 2016, 8.

Western Balkan Summit target had been met by Greece, as its reception capacity rose to **40,351 places**, which are expected to become 46,351 when two centres are expanded.⁵¹ When compared to the situation described by the previous reports in December and February, however, the Commission's figures reveal meaningful and concerning discrepancies. As the information provided by the Commission in its various publications relating to the implementation of the European Agenda on Migration and the situation in Greece risks misrepresenting the actual reception conditions and capacity in Greece and therefore blur the assessment of the execution of the *M.S.S.* judgment by Greece in practice, the relevant Commission publications are discussed in detail below.

2.1. *The distinction between reception and detention*

A critical conceptual distinction to be primarily drawn in the context of Greece's capacity is the one between open accommodation and detention. Firstly, the Commission's latest Hotspot Progress Report includes pre-removal detention facilities in the total count of reception places, thereby adding 5,359 places to the total count. This amounts to a misrepresentation of reception capacity in Greece.

Moreover, "hotspots" established on the Aegean islands comprise First Reception Centres managed by the First Reception Service (soon Reception and Identification Service), as per their domestic legal basis.⁵² These are likely to be modelled based on the First Reception Centre of Evros, which has been operational since 2014 and – contrary to its title – hosts migrants and asylum seekers in a state of detention,⁵³ given the degree of intensity of restrictions to the free movement of residents.⁵⁴ It should be noted that the First Reception Centre of Evros is presented by the Commission as an "open reception facility" rather than detention facility.⁵⁵

In fact, the soon to be amended legal framework of reception and identification procedures clarifies that migrants are subject to "restriction of freedom of movement" within the premises of these centres.⁵⁶ Insofar as the degree and intensity of the restrictions to their freedom of movement effectively deprive migrants of their liberty, these structures should be viewed as detention rather than reception facilities in both legal and practical terms. In that respect, the Commission's assessment of "reception capacity" in the hotspots, which stood at 9,933 places on 4 March 2016, should therefore be revisited.⁵⁷ The Hotspot Progress Report on Greece already distinguishes reception from detention capacity, as it refers to a "pre-removal [detention] capacity" of 5,359 places. Under an appropriate understanding of the conditions prevailing in First Reception Centres, capacity in the "hotspots" – as in Evros – is therefore misrepresented as reception capacity.⁵⁸

⁵¹ European Commission, *Greece – State of play report* (hereafter "Fourth Hotspot Progress Report Greece"), COM(2016) 165, 16 March 2016, 17. Note, however, a contradictory statement by German Chancellor Angela Merkel: <http://reut.rs/1LHaFKO>.

⁵² Joint Ministerial Decision 2969/2015 "Establishment of First Reception Centres and temporary Accommodation Facilities for asylum seekers and vulnerable groups of third-country nationals", Official Gazette 2602/B/2-12-2015. For Chios and Samos, see also Joint Ministerial Decision 6634/1-147524, Official Gazette 10/B/8-1-2016. See also Article 6 Law 3907/2011, as proposed for amendment in February 2016: <http://bit.ly/1MkDuaX>.

⁵³ For a discussion, see ECRE, *What's in a name? The reality of first "reception" at Evros*, February 2015, available at: <http://bit.ly/1GfXlzk>.

⁵⁴ See to that effect *Guzzardi v. Italy*, ECtHR, Application No. 7367/76, Judgment of 6 November 1980, para. 93; *Stanev v. Bulgaria*, ECtHR, Application No. 36760/06, Judgment of 17 January 2012, para. 115.

⁵⁵ Information provided via email by the Asylum Unit, DG HOME, 16 February 2016. See also Third Hotspot Progress Report, 17.

⁵⁶ Article 12(2) Law 3907/2011, as proposed for amendment in February 2016.

⁵⁷ European Commission, *Second Hotspot Progress Report on Greece*, 10 February 2016, 8.

⁵⁸ See to that effect AIDA Country Report Greece: Fourth Update, November 2015, 98.

2.2. Actual capacity to accommodate asylum seekers

Beyond the misrepresentation of detention facilities as reception structures, a comparison of the different figures provided by the European Commission in the three Hotspot Progress Reports reveals a number of disparities (see Annex I). Particularly as regards reception in the mainland, the first Hotspot Progress Report made a questionable reading of “second-line reception” capacity in Greece, mentioning a total of 2,900 places in Elaionas, Elliniko and Palaio Faliro, all located in the wider region of Athens.⁵⁹ However, it needs to be highlighted that none of the aforementioned structures may properly be considered as a centre apt to secure “second-line” reception of asylum seekers:

- ❖ “Elaionas” refers to a temporary accommodation centre for the newly arrived, established at the end of the summer of 2015 to host approximately 600 persons. Similar to observations on the “hotspots” above, this centre was managed by the First Reception Service and was originally foreseen to operate until 31 December 2015.⁶⁰ Under a new Joint Ministerial Decision, the centre will continue to operate as a temporary accommodation facility until 31 March 2016.⁶¹ Following the recent reform of the Greek reception system, it is expected to operate as a Temporary Hosting Facility (Δομή Προσωρινής Φιλοξενίας) for persons who have not applied for asylum.⁶²
- ❖ “Palaio Faliro” refers to an Olympic Games Tae Kwon Do stadium which started operating as temporary accommodation centre for refugees and migrants in November 2015.⁶³ The Palaio Faliro Tae Kwon Do stadium took over from the (now closed) Olympic Games gymnasium in Galatsi (Παλαί Γαλατσίου).⁶⁴ In mid-December, however, plans were made for the transfer of residents to another facility in order for the stadium to be available for sports events.⁶⁵ After this transfer, Palaio Faliro stopped operating as an emergency accommodation centre.
- ❖ “Elliniko” refers to an Olympic Games hockey field where migrants and asylum seekers were transferred in mid-December 2015 from the Palaio Faliro stadium.⁶⁶ Two new sites, a baseball pitch and the “departures building”, are also used as of the end of February 2016. The functioning of Elliniko is not governed by an establishment act.⁶⁷

The classification of Elaionas, Palaio Faliro and Elliniko as second-line reception facilities is undoubtedly a misrepresentation of their framework, if any, and function in practice. Regrettably, the

⁵⁹ European Commission, *First Hotspot Progress Report Greece*, 13.

⁶⁰ Greek Joint Ministerial Decision 3/5262 “Establishment of open reception facility for asylum seekers, vulnerable groups of third-country nationals in Elaionas, Attica”, Official Gazette 2065/B/18-09-2015.

⁶¹ Greek Joint Ministerial Decision 3/8784 “Extension of operation of open reception facility for asylum seekers, vulnerable groups of third-country nationals in Elaionas, Attica”, Official Gazette 2906/B/31-12-2015.

⁶² Articles 6 and 8 Greek Law 3907/2011, as proposed for amendment in February 2016.

⁶³ See e.g. in.gr, ‘Στο γήπεδο του Τάε Κβον Ντο θα φιλοξενούνται οι πρόσφυγες και μετανάστες’, 23 November 2015, available in Greek at: <http://bit.ly/239PW87>.

⁶⁴ FRA, *Weekly data collection on the situation of persons in need of international protection: Update 8*, 16-20 November 2015, available at: <http://bit.ly/1lqJ6ZQ>, 26.

⁶⁵ See e.g. Greek Ministry of Interior and Administrative Reconstruction, ‘Joint Statement of Alternate Minister for Migration and Mayors of Elliniko-Argyroupoli, Glyfada and Alimos on the temporary hosting of refugees and migrants’, 15 December 2015, available in Greek at: <http://bit.ly/1P6wQIm>; I Efimerida, ‘Την Πέμπτη οι πρόσφυγες στο Ελληνικό – έτσι θα είναι οι χώροι’, 16 December 2015, available in Greek at: <http://bit.ly/1V1jzCH>.

⁶⁶ See e.g. Greek Ministry of Interior and Administrative Reconstruction, ‘Joint Statement of Alternate Minister for Migration and Mayors of Elliniko-Argyroupoli, Glyfada and Alimos on the temporary hosting of refugees and migrants’, 15 December 2015, available in Greek at: <http://bit.ly/1P6wQIm>; I Efimerida, ‘Την Πέμπτη οι πρόσφυγες στο Ελληνικό – έτσι θα είναι οι χώροι’, 16 December 2015, available in Greek at: <http://bit.ly/1V1jzCH>.

⁶⁷ Iefimerida.gr, “Νέος καταυλισμός προσφύγων στο Ελληνικό -Εστησαν σκηνές στο γήπεδο του baseball”, 29 February 2016, available in Greek at: <http://bit.ly/1Lk0FYh>.

Commission failed to specify in its February and March 2016 reports that Elaionas and Elliniko have been revised as first-line reception facilities.

Even more concerning is the ambiguous projection of figures by the fourth Hotspot Progress Report in March. The Commission mentions 23,388 places in “open reception facilities”, in which it regroups among others the hockey stadium in Elliniko and the rub hall and tent camp in Eidomeni, without specifying their capacity in detail.⁶⁸ The camp in Eidomeni, for instance, is not counted by Greek authorities as a reception facility, as seen below. It should be highlighted that these so-called “open reception facilities” cannot be considered as sites guaranteeing applicants for international protection an adequate standard of living, as per the recast Reception Conditions Directive.⁶⁹ This distinction is upheld in the Hotspot Progress Report.

Moreover, the inclusion of pre-removal detention facilities in the country’s overall reception capacity is equally misleading when portrayed as “reception”.⁷⁰

The latest progress report by the European Commission mentions **40,351 reception places**. However, due to the reasons outlined above, this figure rests on a highly misleading representation of Greece’s reception capacity. It is also contradicted by statistics published by the Greek Coordination Authority for the Management of the Refugee Crisis four days later, which estimate the country’s maximum capacity at **35,660 places** (see Annex II).

Moreover, as far as the additional 20,000 places in hotel vouchers and rent subsidies are concerned, UNHCR reported to have secured 1,000 places as of the end of 2015,⁷¹ while a commitment for a further 12,150 places was agreed for 2016 through the establishment of 150 hotel vouchers and 2,400 apartments.⁷² As of 4 March 2016, a total of 2,788 places had been made available by NGO Praksis through hotel vouchers and apartments.⁷³ These places too, however, seem to be primarily directed towards persons eligible for relocation under the two Relocation Decisions adopted in September 2015,⁷⁴ who are expected to stay in Greece for short periods of time pending their transfer to another Member State.⁷⁵ Asylum seekers falling outside the scope of the Relocation Decisions are therefore likely to find themselves unable to benefit from both newly established reception places and UNHCR’s rent subsidy programme. In that respect, the figures projected by the Commission run the risk of misrepresenting the reality of reception capacity in Greece.

As highlighted by civil society organisations, persons applying for international protection in Greece can find stable accommodation in one of the country’s 17 reception centres, whose total capacity was

⁶⁸ European Commission, *Fourth Hotspot Progress Report Greece*, *op. cit.*

⁶⁹ Article 18(1) recast Reception Conditions Directive.

⁷⁰ Contrast European Commission, *Progress Report on the Implementation of the Hotspots in Italy* (hereafter “Hotspot Progress Report on Italy”), COM(2015) 679, 15 December 2015, 10. Under the “reception capacity” heading, the report only mentions SPRAR, CARA and CAS.

⁷¹ European Commission, *Progress following Western Balkans Route Leaders’ Meeting: Eleventh Contact Points Video Conference*, IP/16/30, 8 January 2016.

⁷² European Commission, *Progress following Western Balkans Route Leaders’ Meeting: Thirteenth Contact Points Video Conference*, IP/16/148, 22 January 2016.

⁷³ European Commission, *Third Hotspot Progress Report Greece*, 17.

⁷⁴ Council Decisions (EU) 2015/1523 and 2015/1601 of 14 and 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L239/146 and L248/80. Under the two decisions, a total of 160,000 persons in clear need of international protection are to be relocated from Italy and Greece to other EU Member States within a two-year period.

⁷⁵ See to that effect European Commission, ‘Joint Declaration on the support to Greece for the development of the hotspot / relocation scheme as well as for developing asylum reception capacity’, STATEMENT/15/6309, 14 December 2015.

estimated by the Commission at **1,221 places** on 16 March 2016.⁷⁶ A table of second-line reception facilities for asylum seekers and unaccompanied children in Greece is provided in Annex III.

The number of second-line reception places remains far short of meeting the needs of Greece's asylum seeker population. Last year, **13,197 asylum applicants** were registered in Greece but only **3,876** were **accommodated** in the reception system.⁷⁷ Existing risks of inadequate housing or destitution are liable to be exacerbated if the number of applicants for international protection increases in 2016, as anticipated following the closure of the Greek-FYROM border.

Under a correct assessment of reception capacity vis-à-vis persons undergoing an asylum procedure in Greece, the number of available reception places necessary to guarantee an adequate standard of living in line with Article 18 of the recast Reception Conditions Directive remains far short of meeting the accommodation needs of asylum seekers entering the country. Persons applying for international protection in Greece therefore run risks of homelessness and destitution, contrary to Greece's obligations for the implementation of the M.S.S. judgment, and, in particular, to the Court's findings on living conditions under Article 3 ECHR.

3. Administrative detention

The scale of resort to administrative detention for migrants and asylum seekers in Greece cannot be fully ascertained on the basis of statistical evidence, as the Hellenic Police does not provide records of detainees for all detention centres.⁷⁸ Evidence from statistics of the Asylum Service on the number of asylum applications lodged from detention point to a slight decrease in the use of detention, yet one far less substantial than anticipated when a change in detention policy had been announced in February 2015.⁷⁹ For example, compared to 2,892 asylum claims lodged in detention in 2014, in 2015 the Asylum Service received 2,543 claims from detainees.⁸⁰

3.1. Lawfulness of detention

From late 2015 onwards, civil society organisations monitoring detention continue to express concerns as to the dubious legality of detention for a number of reasons.⁸¹

Firstly, there are strong indications that an individualised assessment of the necessity and proportionality of the detention measures for asylum seekers is still not systematically applied prior to the issuance of their detention orders. An example of this practice is the fact that, in the majority of cases where detainees applied for asylum in 2015, the Asylum Service has recommended a continuation of detention.⁸² More particularly, the informal introduction of a nationality-based regime by FYROM on the Greek-FYROM border as of November 2015, whereby only nationals of Syria, Afghanistan and Iraq are allowed entry into Macedonian territory, seems to have led to an increase in

⁷⁶ AIDA Country Report Greece: Fourth Update, November 2015, 76-77. As of 30 September 2015, capacity was reported at 1,271 places.

⁷⁷ Information provided by the Greek Council for Refugees, 11 March 2016, based on statistics published by the National Centre for Social Solidarity (NCSS).

⁷⁸ *Ibid*, 6-7. The ambiguity of detention figures is also due to conceptual uncertainty as to which facilities qualify as detention centres, as discussed above.

⁷⁹ See to that effect the Fourth Joint ECRE & ICJ Submission.

⁸⁰ Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>.

⁸¹ Aitima, *Monitoring Immigration Detention – Quarterly Report September-December 2015*, available at: <http://bit.ly/1kZDeGB>; AIDA Country Report Greece: Fourth Update, November 2015, 90 et seq.

⁸² Asylum Service, *Detention statistics 2015*, copy shared with the author. In 2015, the Asylum Service made 1,391 recommendations for continuation of detention and 629 recommendations for release.

the use of detention for specific nationalities,⁸³ A significant number of North African nationals (Moroccans, Algerians and Tunisians) are transferred to the Pre-Removal Detention Centre of Corinth from Athens and the islands. During a visit conducted by the Rights Department (Τμήμα Δικαιωμάτων) of the Syriza political party on 13 January 2016, only nationals of these countries were found in the detention centre, thereby indicating a nationality-profiling policy of detention.⁸⁴ In this regard, it should also be mentioned that persons holding residence permits in Greece, who have travelled onwards to other European countries, have also been reportedly detained upon return to Greece.⁸⁵

Secondly, as far as asylum seekers are concerned, it should be noted that certain grounds for detention, such as the “threat to national security or public order” under Article 12(2)(b) of Presidential Decree 113/2013, are reportedly applied summarily and systematically.⁸⁶ Alternatives to detention are also not applied in any systematic manner,⁸⁷ and no statistical records of alternatives are kept so as to allow for an appropriate evaluation of their use in practice.⁸⁸

Thirdly, the commitment of the Greek government to reduce the maximum duration of detention to 18 months, in line with the time-limit set out in the Return Directive, has not been unequivocally complied with, as the Ministerial Decision 4000/4/59-st/2014, allowing for detention beyond 18 months, has not been formally revoked.⁸⁹

The lack of individualised assessment and consideration of questions of grounds, necessity, proportionality and alternatives to detention is further exacerbated by the framework governing the First Reception Centres set up in the “hotspots”. According to the soon to be amended Article 12(2) of Law 3907/2011, all migrants, including vulnerable persons, are to be systematically confined within the premises of the Reception and Identification Centres for an initial period of three days, which may be extended by a further 25 days. More importantly, as far as procedures taking place on islands are concerned, the necessity of imposing detention seems difficult to justify, as highlighted by the jurisprudence of the European Court of Human Rights.⁹⁰

The ICJ and ECRE are concerned at the reported systematic resort to detention for asylum seekers, especially since, despite numerous measures taken to improve the infrastructure, conditions in many migrant detention facilities still appear to remain degrading (see below), in breach of Article 3 ECHR. Furthermore, it is the ICJ’s and ECRE’s understanding that detention lasting 18 months can never be justified under Article 5(1)(f) ECHR as such a long period cannot be considered reasonable for avoiding unauthorised entry nor for undertaking an effective return. In addition to being unreasonable and disproportionate, extending detention beyond the maximum 18 months limit is not in accordance with applicable EU law – the Returns Directive⁹¹ – which has overriding legal force to domestic law.

⁸³ ECRE, *Wrong counts and locked doors: The reception of asylum seekers and refugees in Europe*, March 2016, Forthcoming.

⁸⁴ ERT, ‘Απαράδεκτες οι συνθήκες στο Κέντρο Κράτησης Μεταναστών Κορίνθου’, 14 January 2016, available in Greek at: <http://bit.ly/1o2m8u9>.

⁸⁵ On one case of return from Norway to Greece, see NOAS, *Asylsøkere som returneres fra Norge til Hellas med gyldig oppholdstillatelse i Hellas*, 11 February 2016, available in Norwegian at: <http://bit.ly/1VGnOEr>.

⁸⁶ Aitima, *Monitoring Immigration Detention – Quarterly Report September-December 2015*, 4; AIDA Country Report Greece: Fourth Update, November 2015, 92.

⁸⁷ *Ibid.*

⁸⁸ AIDA Country Report Greece: Fourth Update, November 2015, 93.

⁸⁹ *Ibid.*, 90.

⁹⁰ See *Louled Massoud v. Malta*, ECtHR, Application No. 24340/08, Judgment of 27 July 2010, para. 68.

⁹¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L348/98, Article 15(5)-(6).

3.2. Conditions of detention

Substandard living conditions continue to prevail in several detention centres. Monitoring reports by the Greek Council for Refugees reveal particularly problematic conditions in the Vathy Detention Centre of Samos (now a “hotspot”), with severe overcrowding (at times there were 1,000 detainees, while the maximum capacity of the centre is 240), lack of beds, poor sanitation and food provision, including lack of specialised nutrition for diabetics and infants.⁹²

The state of detention facilities in the mainland is equally concerning. In Petrou Ralli, sanitary conditions are poor, especially in bathrooms and toilets, while food provision is inadequate.⁹³ As for the Corinth Pre-Removal Detention Centre, findings of poor food, medical care and clothing provision by the Greek Council for Refugees in late 2014⁹⁴ are corroborated by the Syriza Rights Department’s visit in January 2016, which reported that no doctor was present in the centre.⁹⁵

The ICJ and ECRE note that severe overcrowding can amount to cruel, inhuman or degrading treatment either in itself⁹⁶ or in conjunction with other poor conditions of detention.⁹⁷ The cumulative effect of poor conditions may lead to violation of this prohibition.⁹⁸ International guidance stipulates that, except for short periods, detained migrants should be held in specifically designed centres in conditions tailored to their legal status and catering for their particular needs.⁹⁹ Under the particular scheme of Article 5 ECHR, holding a detainee in a facility which is inappropriate in light of the grounds on which he or she is held (for example for the prevention of unlawful entry or pending deportation under Article 5(1)(f)) may also violate the right to liberty.¹⁰⁰

In view of the substandard detention conditions prevailing in pre-removal centres, the ICJ and ECRE submit that the use of administrative detention in Greece for asylum seekers and migrants continues to expose them to risks of ill-treatment contrary to Greece’s obligations for the implementation of the *M.S.S.* judgment, in particular under Article 3 ECHR.

⁹² Greek Council for Refugees, *Mission Report Samos*, September 2015, available in Greek at: <http://bit.ly/1muhjID>. The findings are based on a visit carried out between 22 and 24 June 2015.

⁹³ AIDA Country Report Greece: Fourth Update, November 2015, 101. Information is based on visits by the Greek Council for Refugees in July and September 2015.

⁹⁴ *Ibid*, 100.

⁹⁵ ERT, ‘Απαράδεκτες οι συνθήκες στο Κέντρο Κράτησης Μεταναστών Κορίνθου’, 14 January 2016, available in Greek at: <http://bit.ly/1o2m8u9>.

⁹⁶ *Kantjyrev v. Russia*, ECtHR, Application No. 37213/02, Judgment of 21 June 2007, paras. 50-51; *Labzov v. Russia*, ECtHR, Application No. 62208/00, Judgment of 16 June 2005, para. 44.

⁹⁷ Theo Van Boven, UN Special Rapporteur on Torture, *Annual Report to the Commission on Human Rights*, UN Doc. E/CN.4/2004/56, 23 December 2003, para. 49; *Belevitskiy v. Russia*, ECtHR, Application No. 72967/01, Judgment of 1 March 2007, paras. 73-79.

⁹⁸ *Dougoz v. Greece*, ECtHR, Application No. 40907/98, Judgment of 6 March 2001; *Z.N.S. v. Turkey*, ECtHR, Application No. 21896/08, Judgment of 19 January 2010.

⁹⁹ CPT, *CPT Standards*, CPT/Inf/E (2002) 1 – Rev. 2015 54; Extract from 7th General Report [CPT/Inf (97) 10], para. 29; *European Guidelines on accelerated asylum procedures*, CMCE, Principle XI.7: “detained asylum seekers should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal and factual situation and staffed by suitably qualified personnel. Detained families should be provided with separate accommodation guaranteeing adequate privacy.” See also, *Vélez Loor v. Panama*, IACtHR, Judgment of 23 November 2010, para. 209.

¹⁰⁰ *Aerts v. Belgium*, ECtHR, Application No. 25357/94, Judgment of 30 July 1998, para. 46.

Annex I: Reception capacity in Greece, as estimated by the European Commission Hotspot Progress Reports

Type of reception	Progress report 15 Dec 2015	Progress report 10 Feb 2016	Progress report 4 Mar 2016	Progress report 16 Mar 2016
<i>Hotspots</i>				
First reception	4,500	7,181	5,500 in hotspots 4,433 outside hotspots	5,950 in hotspots 4,433 outside hotspots
<i>Mainland Greece</i>				
First-line reception	0	1,840	17,906 “open reception facilities”	23,388 “open reception facilities”
Assisted voluntary return reception	0	110		
Temporary facilities (Eidomeni)	1,500	1,600		
Second-line reception	2,900 in Athens	1,190	1,221	1,221
Pre-removal (detention)	5,400	5,707	5,359	5,359
Total	14,300	17,628	34,419	40,351

Source: European Commission, *Hotspot Progress Report on Greece*, 15 December 2015, 13; *Second Hotspot Progress Report on Greece*, 10 February 2016, 8; *Third Hotspot Progress Report on Greece*, 4 March 2016, 17; *Fourth Hotspot Progress Report on Greece*, 16 March 2016, 15.

Annex II: Reception capacity and occupancy in Greece, as estimated by the European Commission and Greek authorities

Type of reception	Capacity Progress report 16 Mar	Capacity Greek gov. 20 Mar	Occupancy Greek gov. 20 Mar
<i>Hotspots</i>			
Lesvos	2,600	3,500	4,181
• <i>Moria</i>	1,500	1,500	
• <i>Kara Tepe</i>	1,100	1,500	
• <i>Other</i>	-	500	
Chios	1,100	1,100	1,870
Samos	850	850	1,124
Leros	1,000	1,000	0
Kos	1,000	1,000	62
Total hotspots	5,950	7,450	7,316
Total islands	9,933	7,450	7,316
<i>Mainland Greece</i>			
Open reception facilities	23,388	28,210	40,825
Second-line reception	1,221	Omitted	Omitted
Pre-removal (detention)	5,359	Omitted	Omitted
Total mainland	30,418	28,210	40,825
Total	40,351	35,660	48,141

Information valid as of 20 March 2016.

Sources: Fourth Hotspot Progress Report, 15; Greek Coordination Authority for the Management of the Refugee Crisis, *Overview of refugee flows as of 08:00 on 20 March 2016*, available in Greek at: <http://bit.ly/1XmQ53g>.

Annex III: Second-line reception facilities in Greece

Facility	Location	Maximum capacity
<i>Reception centre</i>		
Agioi Anargiroi	Attica	70
Anogia	Attica	25
Arsis Refugees Shelter	Attica	12 families 8 single-parent families
Doctors of the World Athens	Attica	70
Missions Athens Archdiocese	Attica	20
Red Cross Lavrio	Attica	320
Hospitality Nostos	Attica	70
Future Nostos Moshato	Attica	60 unaccompanied children 14 single-parent families
Society of Minors' Care Isavron	Attica	18
Makrinitza Volos Arsis	Volos	30
Volos Agria	Volos	30
Filoxenio, Arsis, Greek Council for Refugees	Thessaloniki	28
Oreokastro Arsis	Thessaloniki	30
Arsis Alexandroupoli	Thrace	22
Praksis & Red Cross Patras	Patras	30 unaccompanied children 40 families
Praksis & Red Cross	Athens	30
Praksis Petralona	Attica	24
<i>Apartments</i>		
Praksis Stegi Apartments Programme (24 apartments)	Athens, Thessaloniki, Lesvos	120
Total		1,271

Information is up-to-date as of 30 September 2015.

Source: AIDA Country Report Greece: Fourth Update, November 2015, 76-77.

On 16 March 2016, the European Commission reported a total **1,221** places in second-line reception facilities in Greece.