

What's in a name? The reality of First "Reception" at Evros

AIDA FACT-FINDING VISIT IN GREECE



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Acknowledgements

This report was written by Kris Pollet and Hélène Souprios-David (European Council on Refugees and Exiles - ECRE) with the support of Maria Patri and Vasiliki Tsipoura (Greek Council for Refugees - GCR).

The visit to Greece was conducted as part of the Asylum Information Database (AIDA) project (www.asylumineurope.org) which provides up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions and detention in currently 16 EU Member States. This report must be read together with the AIDA Country Report on Greece.

ECRE would like to thank the Greek Council for Refugees and in particular Maria Patri and Vasiliki Tsipoura for their invaluable assistance in the preparation of and during the visit. ECRE also would like to thank the Greek authorities in Athens, Alexandroupolis and Orestiada, UNHCR Athens, Alexandroupolis and Orestiada, Metadrasi and Arsis for their cooperation and the information provided during and after the visit.

A special thanks to David Watt for proofreading and Azzam Daaboul for formatting the report.

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Cover picture: Living unit for Syrians, Fylakio First Reception Centre, December 2014.

February 2015

The Asylum Information Database is funded by the European Programme on Integration and Migration (EPIM).

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1. Introduction

The situation for migrants and asylum seekers in Greece was brought into the spotlight in the period 2008-2010 when the country appeared unable and unprepared to respond to the needs of the increasing number of people arriving. While Greece had become one of the main entry points to the EU in that period, the country was and continues to be repeatedly condemned by the European Court of Human Rights (ECtHR) for failing to respect migrants' and asylum seekers' fundamental rights.¹ In the landmark judgment of *M.S.S v. Belgium and Greece*, the Court held that, because of the deficiencies in the asylum procedure, the lack of reception conditions and the detention conditions in Greece, the transfer of asylum seekers by other EU Member States under the Dublin Regulation to Greece amounted to inhuman and degrading treatment.² Currently all transfers under the Dublin Regulation to Greece remain suspended and recently UNHCR renewed its call to Member States to continue to refrain from returning asylum seekers to Greece.³

The European Union started to invest significant financial resources in building the Greek asylum system through the launch of the Greek Action Plan on Asylum and Migration Management (hereinafter Greek Action Plan), adopted in August 2010 and many efforts have been made to effect change in Greece. This includes emergency support provided by EASO within the context of the EASO-Greece Operating Plans Phases I and II signed in April 2011 and March 2013, which focused on a number of prioritised areas, such as training of the new services, the improvement of reception of asylum seekers and the management of EU funds related to asylum and reception.⁴ From the establishment of EASO and until 2014, support of the implementation of the Greek Action Plan was a priority in EASO's annual work programme.⁵ Moreover, financial support to the Greek asylum system was also provided by the Norwegian government as part of the European Economic Area Agreement grants in the area of asylum and migration.⁶ However, as is also illustrated through this report, progress is slow and there is still a long road ahead before full compliance with Greece's obligations under EU asylum law and international human rights law will be guaranteed.

The reform of the Greek asylum and migration management system included the establishment of a new specialised body in charge of processing asylum applications, the Asylum Service; a new Appeals authority; as well as a body responsible for first "reception" of third country nationals intercepted crossing the border irregularly, the First Reception Service. This report focuses both on the operation of the First Reception Centre, managed by the First Reception Service, that was established in March 2013 in Fylakio near the town of Orestiada in the Evros region, at the land border with Turkey, and also on the functioning of the Regional Asylum Offices in Southern Evros (Alexandroupolis) and Northern Evros (Fylakio). Under the Greek Action Plan First Reception Centres have a key role in ensuring access to international protection as they should guarantee the swift identification of those who want to apply for international protection and referral to the asylum authorities and adequate reception conditions, taking into account their specific vulnerability. Another First Reception Centre is being constructed on the island of Lesvos and is expected to become operational in the beginning of 2015,⁷ while two First Reception Mobile Units are operating on the islands of Lesvos and Samos.⁸

This report presents the main findings of a visit to the Evros region carried out between 1 and 5 December 2014 by ECRE. During this visit, the ECRE delegation conducted over 15 interviews with the authorities and other stakeholders and visited the premises of the First Reception Centre and the Detention Centre in Fylakio, where interviews were also conducted with asylum seekers and migrants. Interviews were conducted with the following individuals and institutions: the Director of the Asylum Service, the Regional Asylum Office Southern Evros, the Regional Asylum Office Northern Evros, the Director of the First Reception Service, the Director of the Fylakio First Reception Centre, UNHCR Athens, UNHCR staff in Alexandroupolis and in Orestiada, ARSIS Alexandroupolis, the Greek Council for Refugees, as well as

1 See for example ECtHR, *Rahimi v. Greece*, Application No 8687/08, Judgment of 5 April 2011; *R.U. v. Greece* Application no. 2237/08, Judgment of 7 June 2011; *Ahmade v. Greece*, Application no. 5520/09, Judgment of 25 September 2012; *Barjamaj v. Greece*, Application no. 36657/11, Judgment of 2 May 2013; *A.F. v. Greece*, Application no. 53709/11, Judgment of 13 June 2013; *C.D. and others v. Greece*, Application no. 33441/10, 33468/10 and 33476/10, Judgment of 19 December 2013; *B.M. v. Greece*, Application no. 53608/11, Judgment of 19 December 2013; *Herman and Serazadishvili v. Greece* Application no. 26418/11 and 45884/11, Judgment of 24 April 2014; *de los Santos and de la Cruz v. Greece*, Application nos 2134/12 and 2161/12, Judgment of 26 June 2014; *A.E. v. Greece*, Application no. 46673/10, Judgment of 27 November 2014; *AL.K.v. Greece*, Application no. 635421/11, Judgment of 11 December 2014; *Mohamad v. Greece*, Application no. 70586/11, Judgment of 11 December 2014.

2 ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Judgment of 21 January 2011.

3 UNHCR, *Greece as a Country of Asylum. UNHCR Observations on the Current Situation of Asylum in Greece* (hereinafter 'Greece as a Country of Asylum'), December 2014.

4 For an overview of the key priorities in the EASO-Greece Operating Plans and the interim assessment of their implementation, See EASO, *EASO Operating Plan for Greece - Interim Assessment of Implementation*, Valletta Harbour, 28 July 2014.

5 This is no longer marked as a key priority in the EASO Annual Work Programme 2015.

6 See EEA Grants Norway Grants, *Asylum and Migration, Greece (June 2013)*.

7 It should be noted that the establishment of a third First Reception Centre with a capacity of 120 places is foreseen under the Greek Action Plan in the region of Attiki. See Council of the European Union, *Greek Action Plan on Asylum and Migration Management. Executive Summary. Progress Report January – May 2013*, 10327/13, Brussels, 3 June 2013, p. 3.

8 SWD(2014) 316 final, *Commission Staff Working Document on the Assessment of the implementation of the Greek Action Plan on Asylum and Migration Management* (hereinafter 'Assessment Implementation Greek Action Plan', Brussels, 6 October 2014, p. 6.

migrants and asylum seekers in the First Reception Centre and the Fylakio Detention Centre.

Information acquired through those visits and interviews is complemented with information obtained through further email exchanges with the mentioned stakeholders and desk research on the situation in Evros. The visit was organised in close cooperation with the Greek Council for Refugees, an ECRE member organisation. During the visit to the Fylakio First Reception Centre and Detention Centre, the ECRE delegation was accompanied by a lawyer of the Greek Council for Refugees who provides legal assistance to third country nationals in need of international protection detained in the Fylakio Detention Centre.

This report is divided into five sections. Following the introduction in Section One, **Section two** provides general background information with regard to the general situation and the evolution in the number of apprehensions of migrants, asylum seekers and refugees in the Evros region and the efforts undertaken at national and EU level, including through the Frontex Operation Poseidon Land to strengthen the border controls at the land border with Turkey. **Sections three and four** discuss the role and organisation of the First Reception Service as well as the role of the Regional Asylum Offices in the Evros Region more specifically. **Section five** provides an analysis of the general set up and structure of the First Reception Centre in Fylakio and of the procedure of identification and referral, the respective roles of the First Reception Service and the Regional Asylum Service and the conditions in the centre. Starting from a brief analysis of the legal framework governing the First Reception Service, this section raises a number of concerns with regard to the registration of asylum applications, the lack of sufficient procedural guarantees for individuals kept in the centre to challenge the deprivation of their liberty in the centre and the prison-like conditions in the centre. A **sixth** and final section of the report deals with the role of the Detention Centre in Fylakio prior to the transfer of migrants apprehended at the border or elsewhere in the region to the First Reception Centre and as a pre-removal centre following identification and referral procedures at the First Reception Centre. It focuses in particular on the conditions in the Fylakio Detention Centre. Sections five and six include a number of specific recommendations to the Greek authorities.

2. Asylum in Greece: General Context

Trends in arrivals

While the Greece - Turkey land border used to be the main entry point into the EU for asylum seekers and migrants in 2010, smuggling routes have since shifted towards the more dangerous sea routes, including because of the reinforcement of border controls and the erection of a 10,5 km fence at the part of the land border with Turkey not marked by the Evros river in 2012. In this regard, it should be noted that 2014 saw the highest recorded numbers of migrants arriving in the EU across the Mediterranean. According to UNHCR, 218,000 people tried to reach Europe by crossing the Mediterranean Sea in 2014, often risking their lives.⁹ It is estimated that close to 3,500 lost their lives in Mediterranean Sea crossings.

After a decrease in 2013, the number of arrivals of migrants in Greece sharply rose again in 2014: over 75,000 persons were apprehended by the Greek police and coast guards in 2014, a 79.4% increase compared to 2013.¹⁰ Apprehensions at the sea border with Turkey totalled 43,518 while apprehensions at the land border amounted to 1,914 in 2014. Apprehensions in the region of Evros remain much lower than before 2012, even though numbers almost doubled between 2013 and 2014.¹¹ While a breakdown by nationality and by region of the border is not available, general statistics show that Syrians ranked first among the persons apprehended for irregular entry and stay in Greece in 2014 with a total of 32,520 persons, followed by Albanians (16,751), Afghans (12,901), Pakistanis (3,621) and Somalis (1,876).¹² However, this trend is not reflected in the number of asylum applications, as only 786 Syrians applied for asylum in Greece in 2014, despite the fact that Syrian nationals benefit from an accelerated determination procedure and a recognition rate close to 100%.¹³ Syrians do not apply for asylum for a number of reasons, including the limited prospect for rebuilding their lives in Greece, a country suffering from a severe economic crisis. The fact that many Syrians do not want to apply for asylum in Greece for fear of being stranded in the country raises fundamental questions about the functioning of the Common European Asylum System and the remaining restrictions in the free movement of persons obtaining international protection in one Member State within the EU, which go beyond the scope of this report. Nevertheless, ECRE believes that this once more illustrates the urgency of replacing the Dublin system with a fair system of responsibility-sharing and taking the necessary steps to ensure the mutual recognition of positive asylum decisions and the transfer of protection statuses within the EU.

Building an Asylum System in Greece: progress made – gaps remaining

In recent years considerable efforts have been undertaken to establish a functioning asylum system in Greece. As mentioned above, the reform of the Greek asylum and migration management system included the creation of a new specialised body in charge of processing asylum applications, the Asylum Service; a new Appeals authority and a body responsible for first “reception” of third country nationals intercepted crossing the border irregularly, the First Reception Service.¹⁴

Whereas until June 2013 asylum applications had to be registered and examined by the Hellenic Police, this is now under the responsibility of the Asylum Service, a specialised department established by Law 3907/2011 under the Ministry of Public Order and Citizens Protection.¹⁵ Asylum applications lodged after 7 June 2013 are examined by the Asylum Service while those lodged prior to that date are still examined by the Police at first instance.

The Asylum Service opened its office in Athens on 7 June 2013 and comprises five Regional Asylum Offices (Athens-Attica, Northern Evros-Fylakio, Southern Evros-Alexandroupolis, Lesvos and Rhodes) and three Mobile Units (in the detention centre of Amygdaleza, Patras, and Thessaloniki)¹⁶ which register and process asylum applications. An additional eight Regional Asylum Offices are foreseen in the law. Each Regional Office is responsible for asylum applications made in a certain region of Greece, except the Athens office, which is responsible for all applications that are not under the jurisdiction of any of the other Regional Offices.

9 UNHCR, *UNHCR appeals to EU for beefed up Mediterranean search and rescue capacity as at least 29 deaths are reported off Lampedusa*, 10 February 2015.

10 Greek Police, *Apprehended irregular migrants, illegal entries and stays, data from the Police and Port Authorities*, January 2015 (Συλληφθέντες μηνόμοιοιμετανάστες, γιαπαράνομηείσοδο & παραμονή, Από Αστυνομικές και Λιμενικές Αρχές). The exact number of people apprehended is 77.163 for the period January to December 2014.

11 Greek Police, *Table of apprehended irregular migrants for illegal entry and stay, data from the Police and Port Authorities* (by region), January 2015 (Πίνακας συλληφθέντων λαθρομεταναστών για παρανομη είσοδο & παραμονή από αστυνομικές & λιμενικές αρχές).

12 Greek Police, *Table of apprehended foreigners, for illegal entry and stay, by nationality, 12 months 2014*, January 2015 (Πίνακας συλληφθέντων αλλοδαπών για παρανομη είσοδο & παραμονή, ανα υπηκοότητα, από αστυνομικές & λιμενικές αρχές, 12 μήνο 2014).

13 Greek Asylum Service, *Statistical data January to December 2014*.

14 The First Reception Service is discussed separately in section 3.

15 Law 3907/2011 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third country nationals” and other provisions (in [Greek](#), in [English](#)). It was amended by law 4249/2014.

16 There used to be a mobile unit in the detention centre of Komotini but that centre closed in October 2014.

The creation of a specialised Asylum Service and decentralised offices has without any doubt resulted in considerable improvements, notably with respect to the accessibility and quality of the first instance of the asylum procedure.¹⁷ On the basis of a Memorandum of Cooperation, UNHCR provides legal and technical support to the caseworkers of the Asylum Service with a view to building their capacity and improving and maintaining the quality of decision-making as part of quality assurance of the asylum process. Such support is provided to all the Regional Asylum Offices and, as a result, UNHCR staff is present both in the Regional Asylum Office of Southern and Northern Evros.

The 2011 law also established a new Appeal Authority, which coordinates the work of independent Appeals Committees, responsible for examining appeals against negative decisions or decisions to grant subsidiary protection by the Asylum Service. It was initially envisaged that 19 Appeals Committees would be established, but the number was reduced to 10 since September 2014. In addition, from June to mid-September 2014, the Appeal Committees did not function at all because the legality of the procedure of appointment of their members was contested and later challenged before the Council of State.¹⁸

Progress was also made in addressing the backlog at the appeal stage of the procedure, according to the European Asylum Support Office (EASO), which reported a significant reduction of the backlog of appeals with 15,528 cases out of 52,000 pending appeal cases under the old procedure removed from the backlog.¹⁹ At the end of September 2014, it was reported that 37,306 cases remained pending at second instance of the old asylum procedure.²⁰

However, whereas progress was made to a certain extent in these areas, important gaps remain in Greece's asylum system. Reception conditions for asylum seekers remain extremely problematic for asylum seekers in Greece today as the reception capacity is largely insufficient in light of the number of asylum seekers present on the territory. While close to 9,500 persons applied for asylum in Greece in 2014,²¹ there are about 1,100 places available in reception centres and apartments.²² The lack of reception places, including for particularly vulnerable asylum seekers such as unaccompanied children and victims of torture, is worrying as it often results in prolonged periods of detention in substandard conditions and people having to fend for themselves.²³

Despite the above-mentioned progress made with regard to the quality of the asylum procedure, delays in the registration of asylum applications both in Athens and the Regional Asylum Offices continue to exist. According to the Director of the Asylum Service, its first priority is to maintain the current policy of ensuring that those applying for asylum in Greece receive a first instance decision within three months from the registration of their application. As a result it is not possible for the Asylum Service to register every potential asylum seeker immediately as this would be impossible to handle by the Asylum Service with its limited resources.²⁴ While 150 to 250 people present themselves on a daily basis in Athens, the Office is able to register only about 30 applications per day.²⁵ A new pilot project was launched in August 2014 whereby persons wanting to apply for asylum can ask for a registration appointment through Skype (in French, English, Arabic Farsi and Dari), an initiative that is in principle welcomed by refugee organisations.²⁶

However, those who are not able to register their application are not provided with any written proof of their intention to apply as the policy of the Asylum Service is to register the asylum applications insofar as there is capacity to process asylum applications within a reasonable time. According to the Director of the Asylum Service, the previous practice of the Hellenic Police to issue appointment slips to asylum seekers before their application was actually registered resulted in abuses as those documents were often passed on or sold on the black market.²⁷

In ECRE's view, the approach described above potentially exposes refugees and other persons in need of international protection to *refoulement*. Not having had the opportunity to register their asylum application and lacking any proof of the fact that they presented themselves at the Asylum Service for the purpose of registering their claim, asylum seekers are at risk of being arrested by the Police and removed without their need for international protection being examined. Moreover, such an approach is in breach of Article 6 of Directive 2013/32/EU on common procedures for granting

17 See AIDA, *Country Report Greece - Registration of the Asylum Application*, Update August 2014.

18 See a *Public Statement* on this issue published on 30 October 2014 by the Greek National Commission on Human Rights.

19 See EASO, *EASO Operating Plan for Greece. Interim Assessment of Implementation* (hereinafter 'EASO Interim Assessment Greece'), 28 July 2014, p. 9.

20 European Commission, *Staff Working Document on the Assessment of the implementation Greek Action Plan on Asylum and Migration management*, 6 October 2014, SWD(2014) 316 final, p. 11

21 Greek Asylum Service, *Statistical data January to December 2014*.

22 According to the European Commission, 1160 places were available as of September 2014, while the latest UNHCR report mentions a total number of 1063 by the end of October. See European Commission, *Assessment Implementation Greek Action Plan*, p. 12 and UNHCR, *Greece as a Country of Asylum*, p. 19.

23 As discussed below, the absence of a well resourced reception system in Greece jeopardizes the successful operation of the first reception model in practice to a large extent. See sections 5 and 6 of this report.

24 Interview with Mrs. Maria Stavropoulou, Director of the Asylum Service, 4 December 2014.

25 See AIDA, *Country Report Greece, Registration of the Asylum Application*, Update August 2014.

26 According to UNHCR, a total of 215 appointments had been scheduled by 17 October 2014. See UNHCR, *Greece as a Country of Asylum*, p. 17.

27 Interview with Mrs. Maria Stavropoulou, 4 December 2014.

and withdrawing international protection, which requires Member States to register an asylum application no later than three working days after the application is made with a possible extension to six or 10 working days.²⁸ The latter was acknowledged by the Director of the Asylum Service but she maintained that this provision was impossible for Greece to implement in practice as it would immediately result in a new backlog. Moreover, countries such as Pakistan and Bangladesh are now in the top 5 countries of origin of asylum seekers, and as nationals from those countries are likely to submit manifestly unfounded asylum applications, according to the Director, it is important to ensure that those who need international protection are able to access the asylum system.

ECRE is extremely concerned about the approach adopted by the Greek Asylum Service and the delays it can generate for asylum seekers to access the asylum system in Greece. Whereas ECRE acknowledges the importance of issuing quality first instance decisions to asylum seekers within a reasonable time and the progress made by the Asylum Service in this respect, this should not undermine individuals' access to the asylum procedure and protection from *refoulement*. It is extremely worrying that the need to avoid additional backlogs in the asylum statistics seems to take priority over the right to asylum as laid down in Article 18 of the Charter of Fundamental Rights of the European Union.

Making immigration detention truly exceptional in Greece?

The detention of asylum seekers and irregular migrants, often for prolonged periods of time and in substandard conditions and without effective access to judicial remedies has been standard practice in Greece.

Following three tragic deaths in detention centres in Greece, the new Greek government announced on 17 February 2015 a range of measures that, if implemented, would be an important step towards reducing the use of immigration detention in Greece.²⁹ Those measures include the immediate release of vulnerable persons and referral to reception accommodation, the release of asylum seekers as well as persons whose detention exceeds six months, the immediate implementation of measures to substantially improve detention conditions and the use of alternative measures to detention.³⁰ Moreover, the government announced the revocation of the Ministerial Decision allowing for the prolongation of detention for the purpose of removal beyond 18 months, in violation of the maximum detention period of 18 months laid down in the EU Return Directive as interpreted by the Court of Justice of the European Union (CJEU) and the immediate release of people who have been detained more than 18 months.

ECRE welcomes the announcement of the Greek Government as an important step in the right direction. Effective and swift implementation of these measures is urgently needed to make detention of asylum seekers and migrants truly exceptional and reduce the human suffering that inevitably results from detention, as illustrated also in sections five and six of this report.

28 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) (hereinafter recast Asylum Procedures Directive), OJ 2013 L 180/60.

29 See, Ministry of Citizen Protection, Press release of Deputy Ministers for Citizen Protection and Administrative Reconstruction Mr Giannis Panousis and Mrs Anastasia Christodouloupoulou on Detention Centres (*Δελτίο Τύπου των Αναπληρωτών Υπουργών Εσωτερικών και Διοικητικής Ανασυγκρότησης κ. Γιάννη Πανούση και κας Αναστασίας Χριστοδουλοπούλου σχετικά με τα Κέντρα Κράτησης*), 17 February 2015 and UNHCR.

30 See UNHCR, *UNHCR welcomes the envisaged changes in the administrative detention of third country nationals*, 19 February 2015.

3. The First Reception Service

The First Reception Service (FRS) was established by Law 3907 of 26 January 2011 together with the Asylum Service, within the Ministry of Citizen Protection and operates directly under the authority of the Minister of Citizen Protection. The mission of the First Reception Service is described in Article 6 of Law 3907/2011 as “to effectively manage the flow of illegally entering third-country nationals in the country under conditions that respect their dignity by including them in the procedures of First Reception”.³¹

From its institutional set-up it is clear that the First Reception Service’s main role is to organise the screening and referral of third country nationals entering the territory irregularly in order to ensure their prompt referral to the relevant procedures and authorities within Greece. In addition to the Central First Reception Service, the law provides for the establishment of First Reception Centres and temporary or mobile First Reception Units. The First Reception Centre in Fylakio was the first to open on 19 March 2013 but as mentioned above, the objective is to open a total of four First Reception Centres. At the time of ECRE’s visit there were also mobile First Reception Units operating in Lesbos and Samos.

While the opening of the First Reception Centre in Lesbos is foreseen for 2015, the location of the two other First Reception Centres has not been decided yet. With those additional First Reception Centres, a total of 4,000 to 5,000 persons a year could pass through the First Reception system. This would also depend on the nationalities arriving, as currently Syrians, for instance, only have to spend a very short time in the First Reception Centre. Mobile Units are deployed on a temporary basis, depending on where there is a need for additional support because of a particular influx. The mobile unit operating in Lesbos was receiving on average 30 third country nationals a day at the time of the ECRE visit but it could be envisaged that the mobile units could in the future process about 20,000 persons per year.³²

According to the law, all third country nationals who are arrested while entering the country in an irregular manner must be subjected to so called “First Reception procedures”, which include five main activities: (1) verification of identity and nationality; (2) registration; (3) medical examination and the provision of necessary care and psycho-social support; (4) the provision of proper information on their rights and obligations and in particular about international protection and (5) the identification of those belonging to vulnerable groups in order to ensure their access to the proper procedure.³³

The First Reception Service is also responsible for the referral of third country nationals to the competent authorities after having determined the appropriate procedure for the individuals concerned. This means that those wanting to apply for international protection must be referred to the Regional Asylum Office which is responsible for the region concerned, those belonging to vulnerable groups must be referred to the Ministry of Solidarity and Social Welfare and the third country nationals who do not apply for international protection and are not considered as vulnerable, are referred to the Hellenic Police for their return or readmission.

It is important to recall, as already highlighted above, that the final piece of the First Reception Model, adequate open reception facilities adapted to the special needs of asylum seekers and vulnerable persons and in particular unaccompanied children, is still largely missing in practice in Greece. The number of open reception places for asylum seekers across the country remains disproportionately low in light of the number of arrivals in Greece. The Director of the First Reception Service informed ECRE that a draft Ministerial Decision provides for the creation of three new centres for unaccompanied children (two in Athens (Penteli and Ilio) and one in Sparta), the management of which will be subcontracted to NGOs. At the time of writing, this Ministerial Decision was not yet published.

The lack of reception capacity in open facilities is one of the main reasons why the current first reception system, as implemented in Evros, remains largely dysfunctional. Asylum seekers who go through the procedure in the First Reception Centre of Fylakio are then, in most cases, directly transferred to the adjacent Fylakio Detention Centre,³⁴ where they can be subjected to prolonged detention in substandard conditions and with limited access to free legal assistance.

In addition, no open centres exist for those wanting to return to their country of origin on a voluntary basis. According to the Director of the First Reception Service efforts to find accommodation for these persons had not been successful in the past.³⁵ According to the Director, efforts continue to identify an appropriate location for an open centre for those wanting to return voluntarily but this is also complicated by the negative attitude of local communities and municipalities in many cases vis-à-vis third country nationals.

31 See the [English translation](#) of Law 3907 of 26 January 2011. (Unofficial translation by UNHCR Athens).

32 Interview with Mr. Nikas, Director of the First Reception Service, 5 December 2014.

33 Article 7(1) Law 3907/2011.

34 This may also in some cases include vulnerable persons, including unaccompanied children, as is illustrated by GCR’s legal interventions in such case in the past months.

35 An example was the attempt by IOM and the First Reception Service to create an open centre with a capacity of 100 places for persons wanting to return voluntary in Aghia Varvara (in Athens) with a budget of 4 million euros. Whereas the centre would also provide meals and other services, such as health care, to local Greek population as well, it met with opposition of the local authorities and the plan was abandoned. Interview with Mr. Nikas, 5 December 2014.

ECRE acknowledges the challenges the Greek authorities are facing in establishing sufficient capacity to offer adequate reception conditions in open facilities to all asylum seekers and unaccompanied children and other vulnerable groups of third country nationals, in particular in times of severe financial crisis and the efforts undertaken to remedy this situation. However, the existence of a severe economic crisis and the presence of large numbers of asylum seekers and irregular third country nationals cannot absolve States from their obligations under Article 3 of the European Convention on Human Rights (ECHR)³⁶ and their obligation under the EU asylum *acquis* to ensure that material reception conditions for asylum seekers provide an adequate standard of living, which guarantees their subsistence and protects their physical and mental health.³⁷ The example of Fylakio described below, shows that without a functioning referral mechanism and sufficient reception capacity in place to accommodate those going through the process, the First Reception model adds to prolonged detention and results for some of the individuals concerned in no less than a Kafkaesque nightmare. Therefore, further efforts are urgently needed to create significant additional places in open reception centres and facilities for unaccompanied children in order to avoid such situations.

36 See ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696, Judgment of 21 January 2011, par. 223.

37 See Article 17(2) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (hereinafter 'recast Reception Conditions Directive'), OJ 2013 L 180/96.

4. The role of the Regional Asylum Offices in the Evros Region

There are currently two Regional Asylum Offices operating in the Evros region, one in South Evros, located in Alexandroupolis and one in Northern Evros, located within the First Reception Centre of Fylakio, near Orestiada.

The office of Southern Evros Alexandroupolis became operational in July 2013. It is currently only responsible for handling asylum applications from people who are not detained. The Office also used to process asylum applications made by persons detained in the pre-removal detention centre of Komotini but that detention centre closed in mid-October 2014. The Office has eight members of staff: five caseworkers, one person responsible for the registration of asylum applications and two administrative staff members. At the time of ECRE's visit, on average 15 to 20 asylum seekers presented themselves every day but the Office is able to register about four persons a day. As is the case in Athens, those who cannot be registered are not provided with any document showing their intention to apply for asylum and may be arrested by the police and detained. According to a representative of the Regional Asylum Office, this is not a problem in practice as the police "knows" they are asylum seekers and does not arrest them.³⁸

From June 2013 to September 2014 a total of 880 asylum claims were registered at the Alexandroupolis Office (789 men, 91 women and 27 unaccompanied children). The main nationalities are Pakistan (308), Afghanistan (206) and Bangladesh.³⁹ From January to November 2014, the Office registered 830 applications for international protection.⁴⁰ The caseworkers conduct about four interviews a week, of two to three hours each, which means that the Regional Office organises about 80 interviews a month. At the time of ECRE's visit, decisions were issued within maximum two months from the interview and the Office manages to take between 70 and 80 decisions a month. Interpretation is provided through the NGO Metadrasi, generally by teleconference, although it can happen that interpreters are physically present in the office for some weeks or months. From May to August they had an Urdu interpreter physically present at the office but this is no longer the case because of a lack of capacity of Metadrasi.

The Regional Asylum Office of Northern Evros which started operating in July 2013 is, according to the law, responsible for all asylum applications made in North Evros. However, in practice it deals exclusively with applications of persons who apply for international protection from the First Reception Centre, from the Fylakio Detention Centre or any other detention centre, border or police station in the Evros region. It is not possible for asylum seekers to present themselves at the Office spontaneously, without having been apprehended by the Police first. The Office has a total of five staff members: three persons in charge of registration, one case worker and the head of the office. It normally has one additional caseworker⁴¹ and they are therefore currently being supported by two caseworkers from the Asylum Service in Athens who perform interviews via teleconference. The Northern Evros Office usually registers 8 to 15 applications per week and conducts two to three interviews per day. The statements of persons declaring that they want to apply for international protection are transmitted to the Office by the First Reception Centre or the Police and recorded in a common database. Asylum seekers are then brought to the office for the official registration of their application for international protection. In cases where their asylum application was not registered within 15 days and they have been transferred to the Fylakio Detention Centre prior to their registration, registration of the asylum claims takes place in the Fylakio Detention Centre by staff of the Regional Asylum Office. As in the Regional Asylum Service Office of Southern Evros, interpretation is provided by the NGO Metadrasi, in almost all cases via teleconference.⁴²

Since the Regional Asylum Office became operational in Fylakio on 11 July 2013, it registered 475 asylum applications as of 2 December 2014.⁴³ Within this period, 45 decisions granting refugee status, 49 decisions granting subsidiary protection status and 164 decisions rejecting the application for international protection were taken. In 27 cases the asylum application was withdrawn, and the Dublin procedure was initiated in 12 cases. The Appeal Authority had taken 17 positive decisions and 60 negative decisions on appeals lodged against first instance decisions taken by the Office. By the end of November 2014, 171 asylum interviews were pending and in total 278 asylum interviews had been conducted. The main nationalities applying for asylum in Fylakio are Afghanistan, Iraq, Iran, Bangladesh and Pakistan.⁴⁴

38 Interview with A. Boutas, Regional Asylum Office Southern Evros, 2 December 2014.

39 Statistics provided during the interview with Mr. Boutas.

40 Asylum service, Asylum statistics [January to November 2014](#).

41 At the time of the ECRE visit, that person was on leave until the end of 2014.

42 An interpreter for Urdu and Punjabi was to be physically present at the Office the week following ECRE's visit. The interpreter would be present for one week and would only be used for the purpose of registration. The staff estimated that it would enable them to register up to 30 applications.

43 Statistics provided during the interview with representative of the Regional Asylum Office Northern Evros.

44 Other nationalities applying for international protection are Turkey, Mongolia, Tibet, China, Algeria, Morocco and India.

5. The Fylakio First “Reception” Centre

The First Reception Centre (FRC) is located just outside Fylakio, a little village of about 500 inhabitants in Northern Evros, close to the land border with Turkey and Bulgaria. The First Reception Centre opened its doors on 19 March 2013 and is situated immediately next to the Detention Centre of Fylakio. Whereas the centre is called a “reception” centre, those accommodated in the centre are not allowed to leave the centre without permission and are, according to the law, subjected to a “restriction of their freedom”.⁴⁵ Moreover, as described in more detail below, notwithstanding the fact that the First Reception Centre is managed by the First Reception Service, the centre is secured with barbed wire and is permanently guarded by the Hellenic Police.

In ECRE’s view, whereas it is acknowledged that the material conditions in the First Reception Centre are better than those in the neighbouring Detention Centre, it is clear that the regime in the First Reception Centre is essentially one of detention as well because the individuals accommodated there are without exception deprived of their liberty during their stay in the centre. In this respect, the name of the centre is misleading but as this is the name officially referred to in the legislation, this report will continue to refer to it as the First Reception Centre. However, as persons are effectively detained in the centre, all the procedural safeguards with regard to the detention of asylum seekers and irregularly residing third country nationals laid down in EU asylum and immigration legislation, Article 5 ECHR and the relevant jurisprudence of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) and the EU Charter of Fundamental Rights must be complied with in practice by the Greek authorities. Throughout this report, reference will be made to those standards where relevant. In its jurisprudence relating to detention cases, the ECtHR has consistently emphasised that the factual situation in question is decisive to determine whether a person is deprived of their liberty which is governed by Article 5 ECHR or is subjected to a mere restriction on freedom of movement, governed by Article 2 of Protocol No. 4 to the ECHR.⁴⁶ In this regard, the qualification of deprivation of liberty in the FRC as “restriction of freedom” in the law is as such not decisive, nor the relatively short period of stay in the Centre. What matters, according to the ECtHR, is whether a person is *de facto* deprived of their liberty, which is to be established on the basis of an assessment of a range of criteria, including the type, duration, effects and manner of implementation of the measures restricting the individual’s liberty.⁴⁷ In ECRE’s view, the situation of the individuals held in the First Reception Centre of Fylakio at the time of its visit described below without any doubt meets the definition of deprivation of liberty as established in the jurisprudence of the ECtHR.

5.1. A free ride on the detention carousel

In 2014, the First Reception Centre in Fylakio received third country nationals arrested with respect to the irregular border crossing or irregular presence on the territory by the Hellenic Police Directorate of Eastern Macedonia and Thrace, Evros, Komotini and Samothraki Island. However, in 2013 the centre also received persons who were apprehended on other Greek islands⁴⁸ to alleviate the pressure on those islands as they were confronted with large numbers of arrivals and a lack of reception capacity. According to the Director of the First Reception Centre, whereas the centre has a maximum capacity of 240 places, so far the highest number of persons accommodated in the centre was 220 at a time, meaning that until then there had been no instances of overcrowding. At the time of ECRE’s visit to the FRC, about 60 to 70 persons were present, according to the Director.⁴⁹

Whereas, according to the law,⁵⁰ the third country nationals apprehended in the region should be transferred immediately to the First Reception Centre, in practice the individuals concerned are usually held for two days or longer in police stations or detention centres before they are actually transferred to the First Reception Centre in Fylakio.⁵¹ According to the Director of the FRC, this is the minimum period necessary to allow the First Reception Centre to prepare for their arrival and to ensure a proper and smooth functioning of the first reception procedures and in particular to arrange for the relevant interpretation and catering services to be available at the moment of their arrival at the First Reception Centre. It also allows the FRC to be informed in advance of the number of third country nationals that will be transferred

45 See Article 13(2) Law 3907/2011.

46 See, for instance, ECtHR, *Austin and Others v. United Kingdom*, Applications nos. 39692/09, 40713/09 and 41008/09, Judgment of 15 March 2012, par. 57 and *Medvedyev and Others v. France*, Application no. 3394/03, Judgment of 29 March 2010, par. 73.

47 See, for example, ECtHR, *Nolan and K. v. Russia*, Application no. 2512/04, Judgment of 12 February 2009, par. 96. In this case, the Court also held that “[T]he difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance”. See ECtHR, *Nolan and K. v. Russia*, par. 93.

48 Mainly Lesbos and Samos.

49 Interview with Mr. C. Christakoudis, Director of the First Reception Centre of Fylakio, 3 December 2014.

50 According to Article 121 (13) of law 4249/2014, “the Police or coastguard director, after conducting the case file of the arrest of the third country national, directly hands the person over to the competent administrative authority, in order for the first reception procedure to start in accordance with Law 3907/2011” (own translation).

51 In practice the total period of detention in the police station and in the Fylakio Detention Centre before transfer to the First Reception Centre varies and in some cases can take up to 7 days.

to the Centre, the languages they speak and the day of their apprehension.⁵² However, this means that in practice, those persons are detained by the Hellenic Police, either in police stations or border crossing points or in the Fylakio Detention Centre, until it is possible for the First Reception Centre to receive them.⁵³ It should be noted that, until now, the delays in referral to the First Reception Centre were never related to the centre reaching its full capacity, but the additional time needed to ensure that interpretation and/or medical services are available.

There seems to be no proper legal basis for the continued detention of those persons prior to their transfer to the First Reception Centre beyond the initial period of 48 hours of detention by the Hellenic Police.⁵⁴ According to the Director of the First Reception Centre in Fylakio, the detention of people prior to being transferred to the FRC is based on a Memorandum of Understanding with the Hellenic Police, which is not public. Asked about the content of the Memorandum of Understanding, the Director of the First Reception Service explained that it determines the specific roles and responsibilities of the First Reception Centre and the Hellenic Police with regard to the transfer of third country nationals to the FRC.⁵⁵ It deals both with the period prior to the transfer of the individuals concerned to the FRC and with the role of the Hellenic Police on the premises of the First Reception Service.

Once identification and screening procedures are performed in the FRC, third country nationals should be either transferred to detention centres or to open reception centres depending on their individual circumstances and status. However, the vast majority of the persons subjected to the first reception procedures at the FRC, with the exception of Syrians, Eritreans, Somalis and some other African nationalities,⁵⁶ is sent to the Fylakio Detention Centre either for the completion of their asylum procedure or for the purpose of their return. Hence, in practice, third country nationals arriving in the Evros region often find themselves in a detention carousel as they are first detained in a police or border station or in the Fylakio Detention Centre awaiting their transfer to the FRC, are then subject to detention in the FRC while the first reception procedures are being conducted and are finally referred to the Fylakio Detention Centre again or another detention centre for either their removal, the completion of their asylum procedure or because there is no appropriate open accommodation available (such as in the case of unaccompanied children who are often sent to the detention centre in Paranesti Drama pending their referral to appropriate accommodation).

Moreover, prior to ECRE's visit there had been temporary suspensions of the contracts concluded between the First Reception Centre and the NGO Medical Intervention (Med.In), which is responsible for the provision of health care and carrying out medical screenings as part of the identification procedures carried out at the First Reception Centre. A similar problem occurred in 2014 with regard to the company providing the catering for the persons held in the First Reception Centre. The contracts were suspended because the First Reception Centre was unable to pay Med.In and the catering company for their services. According to the Director of the First Reception Service this was due to the complexity of the funding which caused a gap in the financial planning for 2014. The application for funding of the First Reception Centre in Fylakio was made under the EEA grant in August 2012 and, because of administrative and bureaucratic hurdles, the process was delayed beyond the period of six months that was initially foreseen. As a result, the First Reception Centre started operating with a budget that was transferred from the central First Reception Service Office but this led to financial gaps in the budget, meaning that in January 2014 the First Reception Centre started operating with no funding.



Medical unit container, Fylakio First Reception Centre, December 2014

- 52 Information provided by the FRC by email.
- 53 According to the police authorities this also means that they have to issue a detention order when 48 hours have passed since the case file of the arrest was conducted and the Director of the First Reception Centre has not yet informed the police authorities whether the newly arrived migrants can be received in the First Reception Centre.
- 54 As irregular entry is a criminal offence under Greek law, the Public Prosecutor has to decide within 48 hours whether the irregular entry will be prosecuted or not. However, as a rule, at least at the borders, the Public Prosecutors in Greece do not prosecute for this reason, which means that in practice nothing prevents the migrants apprehended from being referred immediately to the FRC.
- 55 ECRE asked the First Reception Service to share a copy of the Memorandum of Understanding both during the meeting with Mr. Nikas in Athens and in an email to the Director of the First Reception Centre. During the meeting, Mr. Nikas explained that he could not share the Memorandum without permission of the Hellenic Police but that he would verify whether this could be shared. At the date of publication of this report, ECRE had not received an answer to its request.
- 56 For these nationalities the authorities aim to release the individuals concerned directly from the FRC after a formal 'referral to the Hellenic Police'. See below.

This resulted *de facto* in the closure of the centre for some time in August and November 2014 as it was no longer possible for the Head of the First Reception Service to guarantee that all first reception procedures would be carried out within 15 or 25 days and that the individuals concerned would be accommodated with dignity and in full respect of their fundamental rights in accordance with the law. To date it remains unclear to ECRE how long precisely the First Reception Centre was not able to receive persons because of this financial problem. According to the Director of the First Reception Service, the Centre in Fylakio was closed for “approximately one week” in November and “a couple of days” in August, without being able to provide the exact number of days during which the centre was not operational. Also the Director of the First Reception Centre was not able to provide an exact number of days.

In those cases, the practical consequence was that the persons who should have been accommodated in the First Reception Centre first, were in practice held in the Fylakio Detention Centre pending their transfer to the FRC.

During its visit at the FRC, the ECRE delegation met with a group of about 20 Syrians. They explained that they had been transferred to the FRC from the Fylakio Detention Centre on 2 December 2014, the day before ECRE visited the centre. They stated that they had been detained in the Fylakio Detention Centre for 20 days after having been apprehended by the police.⁵⁷ This is in contradiction with the current policy of the Greek authorities not to detain Syrians as they cannot be returned to Syria for the time being. Since April 2013 a new policy was introduced in Greece to suspend the return orders issued to Syrians apprehended for irregular entry or stay, immediately and for 6 months.⁵⁸ Therefore, Syrians should not be detained in Greece, even though they still have to go through first reception procedures and thus through the FRC in Fylakio. In practice, since September 2014 they usually do not stay long in the FRC. The Director of the FRC explained that the procedure obliges him to formally refer them to the Hellenic Police, as the competent authority to decide whether third country nationals should be detained or not. In practice, once the first reception procedures are completed they are released by the Hellenic Police on the same day of their ‘referral to the Fylakio Detention Centre’ by the Director of the FRC.⁵⁹ In practice, no Syrians have applied for asylum in the FRC in recent months.

5.2. Information, Identification and Referral: first reception procedures in practice

Immediately after the arrival of the third country nationals in the First reception Centre (FRC), they are registered and the identification procedure starts. The identification procedure is conducted by staff of the Hellenic Police who are seconded for that purpose to the FRC and who have received training on identification, including from Frontex. After their fingerprints are taken, their name and nationality are determined through an interview for which interpretation by phone is available through the services of Metadrasi. The FRC accepts the nationality as determined by the Police and never challenges the outcome of this determination. The persons arriving at the FRC are allowed to keep their documents with them at all times unless they explicitly ask the staff of the FRC to keep their documents for them in a secure place, in which case they receive a receipt.⁶⁰

According to the Director of the FRC, the determination of a person's nationality can in some cases take a few days. The persons concerned have no separate possibility to challenge the determination of their nationality by the Police as the outcome of such determination is not notified to them in a separate decision. According to the information leaflet of the FRC, procedures also include the assessment of the third country nationals' identity, but it is unclear as to what this entails exactly. The procedure of identification at the FRC is conducted by the Hellenic Police and is carried out before the registration of a possible asylum application.⁶¹ The same procedure is followed with regard to all persons arriving, regardless of whether they intend to apply for international protection or not and includes in any case a verification of the authenticity of documents. It is unclear whether this includes contacting the authorities of the country of origin of the persons concerned but it is important to note that with regard to documents received during the detention in the Fylakio Detention Centre, the verification procedure includes contacts with the authorities of the country of origin regardless of whether the person concerned expressed a wish to apply for asylum.

In ECRE's view, it is in any case crucial that at that stage of the procedure, verification of nationality does not include any contacts with the authorities of the country of origin of the individuals concerned. With regard to persons who have applied for international protection or have expressed the intention to do so, contacting the diplomatic representation of the country of origin of the persons concerned at that stage seriously jeopardises Greece's compliance with its obligations under the 2005 Asylum Procedures Directive and the recast Asylum Procedures Directive not to disclose information regarding individual applications for international protection, or the fact that an application has been made to the alleged

57 This was also confirmed by the Director of the First Reception Centre during the visit.

58 Hellenic Police Headquarters – Aliens Directorate, Directions Protocol No 71778/13/511278, 9 April 2013.

59 In his ‘referral decision’ the Director of the FRC formally recommends the release of the individual in the case of Syrians and other nationalities which cannot be returned or because of their vulnerability. Information provided by the FRC via email.

60 Information provided by the FRC via email.

61 See section 4.3 and the specific concerns with regard to the delays in the actual registration of the asylum application.

actor(s) of persecution or serious harm.⁶² It could also have very serious consequences for the security of persons who wish to apply for international protection at a later stage in the first reception procedure or their family members that are still in the country of origin as they may be fleeing persecution or serious harm by state actors and in any case claim that they cannot obtain protection against persecution or serious harm from the authorities of their country of origin.

According to the law, the third country nationals in the FRC are subjected to a restriction of their freedom, although in ECRE's view this is in reality detention for the reasons set out above. This is notified to the third country nationals concerned by a decision of the Director of the FRC. The individuals concerned are informed about the possibility to challenge this decision on the restriction of freedom of movement in the Court of Alexandroupolis but in practice this almost never happens, mainly because of the difficulties third country nationals face in accessing free legal assistance.⁶³ However, according to the Director of the FRC, so far the appeal against such decision was successful in one case.

Maximum duration of stay in the First Reception Centre

According to the law, a referral note to the competent authority must be issued within a period of 15 days from the admission of the third country national to the first reception procedures. This period may be extended with maximum ten days in exceptional circumstances, which are not specified in the law. This means that the first reception procedures must be concluded within maximum 25 days from the arrival of the third country nationals in the FRC and that a referral is made to the competent authorities, i.e. the Regional Asylum Office in the case that a person wishes to apply for international protection, IOM in case a person wishes to return voluntarily, the National Center of Social Solidarity (EKKA) in case of a person belonging to a vulnerable group or the Hellenic Police if the person is subject to forced return. The final referral decision is taken by the Director of the First Reception Service.

According to the Director of the FRC, so far the FRC manages to finalise all activities of first reception within 15 days and on average migrants stay for 12 to 13 days in the FRC, with the exception of unaccompanied children. In those cases, because of the lack of available places in open reception facilities and as it proves impossible for EKKA to find suitable accommodation within such a time period, their stay in the FRC is extended by another 10 days. Until September 2014, EKKA generally managed to identify suitable accommodation for unaccompanied children within 20 days. However, since September 2014 this had no longer been the case and therefore they had to transfer unaccompanied children again to detention centres, including the Fylakio Detention Centre. As the law does not allow for any prolongation of stay beyond 25 days under any circumstances, it is not possible to prolong the stay of any third country national in the FRC beyond that maximum period of time.

It should be noted that those expressing the wish to apply for international protection are no longer under the responsibility of the Director of the FRC once their application is registered by the Regional Asylum Office (RAO) as at that moment the screening under the first reception procedure is completed. However, in practice, the RAO is not capable in most cases to register the application within 15 days, which means that they are referred by the Director of the FRC to the Fylakio Detention Centre as an irregular migrant.⁶⁴ This is because, as they are not registered as applicants for international protection yet, those persons are still considered as irregular migrants and therefore are under the responsibility of the Hellenic Police and are sent to the Fylakio Detention Centre. For those persons an expulsion order and a detention order for an initial period of six months is taken by the Hellenic Police, pending the registration of the asylum application by the RAO, which can take several weeks. As soon as the individual's asylum application is officially registered by the RAO, the latter issues a recommendation to detain the applicant, in most cases on the basis that this is needed for a 'speedy completion of the asylum procedure'. At this moment, the expulsion order is withdrawn and a new detention order for a period of 90 days is issued by the Hellenic Police.

Moreover, according to the Director, the stay in the FRC is extended to 25 days only for vulnerable persons and if an asylum application was not registered within 15 days, there is no point in prolonging the stay in the centre with another 10 days as the RAO would not manage to complete the registration of the asylum application within the maximum time limit of 25 days.

Information

During their stay at the FRC, third country nationals receive information from UNHCR with regards to the procedure to apply for international protection and from the International Organisation for Migration (IOM) with regard to the possibility for voluntary return. UNHCR first provides information during a group session upon arrival, on the premises of the FRC, and people can then request individual meetings with UNHCR staff who are present daily in the Centre. Group sessions are organised according to the language spoken by the persons concerned. During its visit the ECRE delegation was able to briefly observe two collective information sessions. The groups consisted of about 15 to 20 persons who were

62 See Article 22(a) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005 L 326/13 and Article 30(a) recast Asylum Procedures Directive.

63 See below for further details on access to legal assistance.

64 It is positive that the referral order mentions whether the person expressed the wish to apply for international protection or not. However, as explained below in section 5.3, the person concerned does not receive a copy of this referral order, which undermines legal certainty.

provided with basic information about the possibility to apply for international protection and the rights and obligations of applicants during such a procedure. One information session was conducted while an Arabic interpreter was physically present. In the other session, the information was provided making use of phone interpretation provided by Metadrasí.⁶⁵ The mandate of UNHCR at the FRC is strictly limited to the provision of information with regard to the asylum procedure and to providing support to the Regional Asylum Office with regard to maintaining the quality of the interviews and decisions.⁶⁶ UNHCR staff at the FRC does not have a mandate to make recommendations to the Regional Asylum Office in individual cases and all its activities are coordinated with UNHCR Athens.

In addition, a brochure entitled 'Basic Information for People Seeking International Protection' published in June 2013 by the Asylum Service is distributed to all asylum seekers.⁶⁷ This publication, known as the 'blue book', includes a fairly detailed description of the different steps in the asylum procedure in 20 languages, including English, French, Arabic, Albanian, Farsi, Swahili and Russian. Copies of this publication were available to the detainees in the Fylakio Detention Centre and in the FRC at the time of the ECRE visit. However, this publication mainly relates to the Greek asylum procedure in general and contains very little information on the situation of those applying for or wishing to apply for international protection from the FRC or from the Fylakio Detention Centre specifically.⁶⁸ As discussed below, submitting an asylum application from the FRC or the Fylakio Detention Centre has a number of legal and practical consequences for the individuals concerned, in particular with regard to their prolonged detention, and the formal registration of the application implies a recommendation of the Regional Asylum Service on the necessity of such detention.

Furthermore the persons arriving in the Centre should receive a 4-page information leaflet with general information explaining the internal rules of the FRC, a smaller information leaflet with general information about the procedures conducted and their rights and obligations during their stay in the FRC and a 19-page brochure explaining in more detail the first reception procedures, migrants' rights and obligations as well as the rules of the centre. ECRE received an English version of those information leaflets in Athens from the Director of the First Reception Service but the provision of such leaflets was not mentioned by the Director of the FRC nor did the ECRE delegation observe such leaflets during its visit.

In ECRE's view, the written information on the asylum procedure provided in the FRC should be updated to include a specific section dedicated to the registration and examination of the application for international protection, the various procedural steps this involves, the role of the Regional Asylum Office's recommendation as to the necessity of the applicant's detention after the procedure in the FRC and the possibilities to challenge their detention before a Court.

ECRE welcomes the existing practice of organising collective information sessions on international protection delivered by UNHCR and the possibility of individual information sessions to those interested in additional information.

Identification and referral of unaccompanied children

The identification of vulnerable persons is also part of the first reception procedures carried out at the FRC and involves the medical unit of the FRC. The medical unit is also responsible for an initial age assessment of unaccompanied young persons whose age is uncertain. Normally, the medical staff at the FRC includes one doctor, one nurse, one social worker and one psychologist deployed by the NGO Medical Intervention seven days a week. Due to the financial problems discussed above, none of them was present at the time of ECRE's visit to the FRC.⁶⁹ According to the Director of the FRC, third country nationals are referred to the medical unit for age assessment only in case of serious doubt about the age claimed at the time of the registration. In such cases, the medical team consisting of the doctor and the psychologist examines the individual and either issues a recommendation about the person's age or, in case of doubt, recommends a further X-ray examination at hospital. During the meeting with the ECRE delegation, the Director of the FRC estimated that, since October 2013, 20 to 25 persons were referred to hospital for a further medical examination, while between 200 and 250 individuals were considered as children by the medical unit and subsequently a request was made to the National Centre of Social Solidarity (EKKA) to find appropriate accommodation for the unaccompanied children concerned. Detailed statistics about the number of unaccompanied children referred by the FRC are however

65 In a meeting with the UNHCR staff, it was explained that collective information sessions by UNHCR last relatively long.

66 Currently the UNHCR activities with regard to the quality of decision-making of the Regional Asylum Office include the observance of asylum interviews and reviewing decisions taken to identify possible weaknesses as well as good practice and discuss cases with the staff of the Regional Asylum Office where necessary. At the time of ECRE's visit, the UNHCR staff member responsible for quality-related activities had only started one month earlier and only had experience of working with one staff member of the Regional Asylum Office.

67 The information provided in English is presented in bullet point format and deals with the following topics: when and where to submit an application for international protection; withdrawal and implicit withdrawal or abandonment of an international protection application; the examination procedure; obligations and rights of international protection applicants, the right to appeal and the appeal procedure, detention and subsequent applications for international protection.

68 For further details see sections 5.2, 5.3 and 6 below.

69 According to the Head of the FRC, Medical Intervention was about to resume its activities starting 5 December 2014.

not available.⁷⁰

The shortage of suitable accommodation for unaccompanied children, as highlighted earlier, remains a major issue, which means that the referral of unaccompanied children from the FRC is often delayed. The exact number of places for unaccompanied children in Greece is unknown as they are part of the total number of about 1,100 places in open reception facilities.⁷¹ However, it is clear that the limited capacity in the various structures set up to host unaccompanied children is largely insufficient to accommodate the considerable number of unaccompanied children arriving in Greece.⁷²

As a consequence, as mentioned above, as of September 2014, those identified in the FRC as unaccompanied children are transferred back in some cases to a detention centre where they have to wait until EKKA has identified a place in a reception facility for children. Those young persons who are identified as unaccompanied children in the FRC are transferred back to the Fylakio Detention Centre. The Director of the FRC informs the Public Prosecutor, who is, according to the law responsible for them as a temporary guardian and consequently designates the police administration of the Detention Centre in Fylakio as responsible for their accommodation pending referral to an open reception facility. Because of the delays in referring unaccompanied children to such facilities, the Hellenic Police refers the unaccompanied children to the Paranesti Drama Detention Centre, as this centre is supposed to have more “suitable conditions” for children. However, in the past, unaccompanied children have been detained in the Fylakio Detention Centre as well. In any case, it seems that even unaccompanied children may find themselves in the same detention carousel as described above.

A group of 41 unaccompanied children from Afghanistan were apprehended on the island of Chios between 6 July and 20 August 2014. They were subsequently sent to the Komotini detention centre (former facilities of the police academy) and when the Komotini Centre was closed they were sent to the Fylakio Detention Centre on 8 October 2014, where they were detained for about a month, before they were transferred to the First Reception Centre (FRC) on 10 and 11 November 2014. After having undergone the identification procedure at the FRC and having stayed in the FRC for 25 days on the basis of an order “to restrict their freedom of movement”, they were sent to the detention centre of Paranesti-Drama, because of a lack of available places at the time in specialised reception facilities for unaccompanied children. The vast majority of those unaccompanied children were still in the Paranesti Drama Detention Centre on 23 December 2014, according to information gathered by the Greek Council for Refugees.

In addition, the system for appointing legal guardians for unaccompanied children applying for international protection remains largely dysfunctional in Greece. According to the law, when an unaccompanied child applies for international protection, the Public Prosecutor is informed and acts as a temporary legal guardian, pending the appointment of a permanent guardian by the Court. In practice, however, public prosecutors do not have the capacity to process the many cases that are being referred to them and there is no pool of permanent guardians. Therefore, in many cases unaccompanied children only have a legal guardian on paper as many Public Prosecutors in Greece do not have the capacity to take proactive steps necessary to ensure that their rights are respected in practice. Local NGOs and social services may act as legal guardians but resources and capacity are limited in light of the numbers of unaccompanied children arriving in Greece recently. Moreover, in some cases those organisations accommodating unaccompanied children may be exposed to legal action undertaken by the Public Prosecutor in the case that unaccompanied children abscond from the accommodation, which may act as a disincentive for organisations to engage in the reception of unaccompanied children of a certain age. This is the case, for instance, with the Director of ARSIS, an NGO that runs a reception facility for unaccompanied children in Alexandroupolis, which ECRE was able to visit. As a result of the legal action undertaken against the Director by the Public Prosecutor competent for the region of Alexandroupolis in six cases of unaccompanied children who absconded from the ARSIS centre, the organisation decided to exclusively accept very young children, who are unlikely to abscond.⁷³

At the time of ECRE's visit, there were no unaccompanied children, identified as such, present either in the FRC or in the Fylakio Detention Centre, but it was confirmed by the Director of the FRC that unaccompanied children are transferred to the FRC on a regular basis. However, there are cases where persons who were initially determined to be adults in the FRC and sent to the Fylakio Detention Centre, or were determined to be adults by the Hellenic Police in the Detention Centre, who manage to prove at a later stage that they are below 18. At the time of ECRE's visit, the Greek Council for

70 ECRE only received detailed statistics with regard to the number of requests for accommodation for unaccompanied children by the Attica Regional Office for the second half of 2013 and 2014. Between 1 June 2013 and 31 December 2013 the Attica Regional Asylum Office (Athens) made 103 requests for accommodation to EKKA with regard to unaccompanied children, while 191 such requests were made in 2014. Information provided by the Asylum Service in Athens.

71 In August 2014 the following organisations had special reception facilities for unaccompanied children: Agioi Anargiroi, Anogia, Markinitza Volos, Mission Athens Archdiocese, Oreokastro, Society of Minors Care Isavron, Volos Agria, Future Nostos Moshato, Arsis Alexandroupolis. See AIDA, *Country Report Greece - Types of Accommodation*, Update August 2014.

72 According to UNHCR in 2013 1,150 children were referred to EKKA for a total of 400 bed spaces available. Whereas 99% of those referrals were addressed, there are no statistics as to the average waiting period for the actual transfer to the accommodation for children. Moreover, the rate of absconding from children's reception facilities continues to be “worryingly high” according to UNHCR. See UNHCR, *Greece as a Country of Asylum*, p. 23. According to the Director of the FRC about 1000 individuals had been determined as unaccompanied children in Greece since January 2014.

73 Interview with the Director of ARSIS Shelter for Unaccompanied Minors, 2 December 2014.

Refugees was assisting six cases of persons in the Fylakio Detention centre whose age was in the process of being assessed by either the Hellenic Police or the Regional Asylum Office.

It is ECRE's position that children should never be detained, as detention can never be in their best interest and has devastating effects on their development. ECRE urges the Greek authorities not to transfer any children to detention centres after completion of first reception procedures in the First Reception Centre.

Under no circumstances should unaccompanied children be accommodated in the Fylakio Detention Centre, as the conditions are below standards and not suitable for children. ECRE urges the Greek authorities to take the necessary measures to establish sufficient places in reception accommodation that is adjusted to their specific needs. Meanwhile emergency measures must be taken to ensure that no unaccompanied child needs to be transferred to the Fylakio Detention Centre during the time necessary for the National Centre of Social Solidarity (EKKA) to find appropriate accommodation for the children concerned.

Age assessment procedures at the First Reception Centre must be evaluated and strengthened to reduce the risk of children being wrongly considered as adults. In case of doubt concerning the applicant's age, the authorities must assume that the applicant is under 18.

5.3. The registration and examination of applications for international protection

Third country nationals who indicate that they wish to apply for international protection are referred to the Regional Asylum Office for Northern Evros, which has an office on the premises of the First Reception Centre. As mentioned above, the Regional Asylum Office is, according to the law, responsible for all asylum applications made in Northern Evros, but in practice it deals exclusively with asylum applications of persons who apply for international protection from the FRC, from the Fylakio Detention Centre or any other detention centre, border or police station in the Evros region.

Delays in registering and examining applications for international protection

The delays in registering applications for international protection by the Regional Asylum Service's Office for Northern Evros are considerable. The objective stated in the law is for the Office to register and examine applications for international protection within the maximum duration of stay in the FRC, i.e. within 15 days from the admission of the individual concerned to the first reception procedures, in exceptional cases extendable by another 10 days. However, in practice this is not possible due to a number of logistical problems and the lack of capacity and resources of the Regional Asylum Office. According to the Head of the Regional Asylum Office the capacity to register applications for international protection depends heavily on the availability of interpreters through the services of Metradasi, whereas technical problems related to the teleconference interpretation may also slow down the registration process. All this resulted in the Office only being able to register between 8 and 15 asylum applications per week at the time of ECRE's visit.⁷⁴

As a result, it is not possible to register applications for international protection made from the FRC within the time frame of 15 or 25 days in most cases and it never occurs that the application is effectively examined within that time frame, as is stipulated in the law. This has particularly grave consequences as this means that in practice all persons applying for international protection from the FRC are eventually sent to the Fylakio Detention Centre, when the Regional Asylum Office considers that detention is necessary on one of the grounds of detention allowed under the law. As the Regional Asylum Office for Northern Evros seems to adopt a policy whereby detention is systematically considered necessary, except in the case of unaccompanied children,⁷⁵ as discussed below, this leads to a situation where persons applying for international protection are systematically detained and in many cases for prolonged periods of time. The registration of an application for international protection as such can already take up to several months.⁷⁶ The policy of the Regional Asylum Office is to prioritise the registration and examination of those applications that are made by persons who are present at the FRC, but once those people are transferred to the Fylakio detention centre or any other detention centre, their applications are not considered a priority anymore.

According to the Northern Evros Office, a total of about 40 to 50 persons were awaiting the registration of their asylum application as of 3 December 2014 but they were expecting to be able to register a higher number of applications the week following ECRE's visit thanks to the physical presence of an Urdu interpreter from Metadrasi at the FRC that week.

As is the case with the registration of asylum applications of persons who are not in detention, persons who express their wish to apply for international protection in the First Reception Centre but whose registration is delayed do not receive any document proving that they want to apply for international protection. As they are only considered as asylum seekers

⁷⁴ The quoted number refers to the total number of registrations of applications made both from persons staying at the FRC and in the Fylakio Detention Centre. Interview with representatives of the Regional Asylum Office for Northern Evros, 3 December 2014.

⁷⁵ However, it should be noted that unaccompanied children nevertheless are being detained in practice pending their transfer to accommodation that is suitable for children because of the lack of reception accommodation for unaccompanied children in Greece. See above, section 5.2.

⁷⁶ See UNHCR, *Greece as a Country of Asylum*, p. 18.

once their application is officially registered, this means that from a legal perspective they find themselves in the same situation as those who are referred to the Hellenic Police for the purpose of removal. A positive development is that the Regional Asylum Office for Northern Evros and the Hellenic Police share a database recording pending registrations using a colour code. This allows the Hellenic Police to verify at any time whether or not a person may be returned or not. In addition, the referral order issued by the Director of the First Reception Centre after the completion of the first reception procedures and which is communicated to the Hellenic Police Authorities mentions whether the person expressed the wish to apply for asylum (without being registered as such yet). However, whereas this is included in their personal police file, the individuals concerned do not receive a copy of this file.

The same applies to those persons wishing to apply for international protection from the Fylakio Detention Centre. Whereas a specific form is available for them to state their wish to apply for international protection, the detainees do not receive a copy of this form, which is kept in their personal file by the Hellenic Police. Because of the delays in the registration of their asylum application by the Regional Asylum Office, this often causes anxiety for the persons concerned as they fear that their form may get lost.

Providing the persons concerned with a document clearly stating their wish to apply for international protection would clarify their legal situation and add to their protection against *refoulement*, which could result from technical or administrative errors in the common database or mistakes in the handling of the personal files of the detainees by the Hellenic Police.

ECRE is extremely concerned about the serious delays in registering applications for international protection which lead to the prolonged and unnecessary detention of asylum seekers in substandard conditions. All necessary measures should be taken to ensure that registration of asylum applications takes place within 15 days and to ensure that those applying for international protection who are without sufficient means of subsistence can be accommodated in open reception facilities in accordance with the standards laid down in the EU asylum *acquis*.

ECRE welcomes the fact that measures are being taken to avoid that those wanting to apply for asylum are mistakenly subjected to return procedures pending the registration of their asylum application, but calls on the Greek authorities to provide those persons with a document stating their capacity as a person awaiting the registration of their asylum application. This would further enhance legal certainty both for the asylum seekers concerned and for the authorities and provide more effective protection from *refoulement* at a very limited additional administrative cost.

Recommendations of the Regional Asylum Office on the detention of asylum seekers

The Regional Asylum Office for Northern Evros systematically issues a 'recommendation' to the Hellenic Police on the necessity to detain persons applying for international protection. According to the law,⁷⁷ detention of asylum seekers and irregularly staying third country nationals should always be a measure of last resort, should only occur where less coercive measures cannot be applied effectively, only on the grounds laid down in law and specifying the grounds for detention for those applying for international protection and those applying while already being in detention in each individual case.⁷⁸ In practice the Office mainly recommends the continued detention of asylum seekers making use of two grounds: (i) for the purpose of further establishing the nationality or identity of the person in case they are unable to submit any official documents or (ii) for the purpose of the speedy completion of the examination of their asylum application. Whereas no detailed statistics regarding the use of either of the two grounds are available, the Head of the Office confirmed that the second ground is mostly used in their recommendations. No separate statistics are available either with regard to the number of recommendations issued by the Regional Asylum Office and the number of cases in which it is recommended that detention is not necessary. Nevertheless, according to the Director of the First Reception Centre, in almost all cases where the Regional Asylum Office is not able to examine the asylum application within the time period of 15 days, it issues a recommendation that detention is necessary for the speedy completion of the examination of the application. Moreover, also where the person is already in detention, the Regional Asylum Office issues a recommendation to continue the detention for the purpose of the speedy completion of the asylum procedure. This results in the systematic detention of

⁷⁷ See Article 30(1) of Law 3907/2011.

⁷⁸ See Article 12 Presidential Decree 113/2013.

asylum seekers without a proper assessment of the individual circumstances of the person concerned.⁷⁹

The actual decision to detain is in all cases taken by the Hellenic Police, which is the only authority competent to issue detention orders. As a consequence, the recommendation relating to the necessity of the continued detention of the individual is as such not binding on the Hellenic Police, which can at any time decide to release or detain the person concerned.

However, in practice, the Hellenic Police almost systematically follows the recommendation of the Regional Asylum Office with regard to the necessity of the detention of persons who have applied for international protection. This places an important responsibility on the Regional Asylum Office with regard to ensuring that detention is effectively used only in exceptional circumstances and as a measure of last resort.

After the registration of their asylum application, which can take several months, asylum seekers usually continue to be detained on the basis that it is necessary in order to complete the examination of their asylum application at least until a first asylum interview has been conducted, which again may take a considerable time after registration. According to Administrative Guidance of the Asylum Service, which has to date not been made public, asylum seekers should be released after the asylum interview in cases where the application is likely to be well-founded.⁸⁰

According to the Regional Asylum Office of Northern Evros, a new policy has recently been adopted. As soon as the asylum seeker is registered by the Regional Asylum Office (in the FRC or in the Fylakio Detention Centre) and if the person has an identity document or has their nationality determined as a result of the first reception procedure and the individual circumstances of the asylum application relate to grounds for international protection, a first assessment is made of the asylum application. If it is considered that the person is likely to be granted international protection, the Regional Asylum Office issues a recommendation not to resume detention in case the person had applied for international protection from the Fylakio Detention Centre. Consequently, the person is either released from the First Reception Centre or a decision is taken to revoke the detention order and the prorogation of the removal order until the asylum procedure is completed. ECRE welcomes this positive development but was not able to verify whether and to what extent this is applied in practice and how the condition that the application must relate to the grounds for international protection is interpreted. Moreover, this does not fundamentally alter the policy to issue in principle a recommendation to continue to detain the applicant for international protection and does not solve the problem of the delays in the registration of the applications for international protection.

ECRE is deeply concerned by the practice of the Regional Asylum Office in Northern Evros to systematically issue recommendations for asylum seekers to be detained during the examination of the asylum application at least until the first asylum interview. The main ground used being the "speedy completion of the examination of an asylum application", it appears that the Regional Asylum Office does not consider detention as a measure of last resort and that its initial recommendations are not based on a case-by-case assessment of the individual circumstances of the asylum seekers concerned as is required under the law and EU and international human rights law.

⁷⁹ The statistics provided by the Asylum Service in Athens on the number of recommendations on continuation of detention by the Asylum Service with regard to those applying from detention in the whole of Greece confirm that recommendations to continue detention are issued in the vast majority of cases. In the period between 1 January 2014 and 30 November 2014 a total of 2,579 persons applied for asylum while being in detention, of which 99 were under 18. The main nationalities were Pakistan, Afghanistan, Bangladesh, Iran, Algeria and Iraq. The Greek Asylum Service issued 1,922 recommendations on continuation of detention; 19 recommendations on discontinuation of detention and 123 revocations of recommendations on continuation of detention. With regard to asylum seekers in detention the average time period between the registration of the asylum application and the issuance of the first instance decision was 68 days (94 days when including both asylum seekers in detention and not in detention). According to the Asylum Service, in many cases the applicant is released before the asylum interview takes place, which means that there is no need to revoke the initial recommendation to continue detention. Also when a positive decision is taken on the asylum application while the person is still in detention, the positive decision is notified to the person, making the revocation of the recommendation to continue detention superfluous. However, the statistics do not specify the exact number of persons who were released before the interview took place or the grounds for such release, nor the average time spent in detention in such cases. Moreover, the fact remains that in the vast majority of cases a recommendation to continue detention is issued by the Asylum Service.

⁸⁰ See UNHCR, *Greece as a Country of Asylum*, p. 29.



Dormitories and courtyard, living unit for Syrians, Fylakio First Reception Centre, December 2014

5.4. Conditions in the First Reception Centre

The First Reception Centre is adjacent to the Fylakio Detention Centre. The site is surrounded by high fences with barbed wires and guarded by the Hellenic Police and is separated from the Detention Centre by barbed wire fences as well.

The site is divided into three sections. In the first section are the offices of the Director of the FRC, the medical unit, the Hellenic Police, UNHCR and IOM. The offices are located in mobile containers and are only freely accessible to the staff working at the FRC.

Migrants arriving in the FRC are accommodated in a second section. This section is divided into four units that are separated by metal fences and that are only accessible through gates guarded 24 hours by the Hellenic Police. A “headcount” of the migrants is carried out by the Hellenic Police three times a day in all the units.

The migrants are separated into different groups and allocated to specific units during their stay at the FRC. One unit is usually reserved for Syrian men, one unit is for men who have expressed the wish to apply for international protection, one unit for vulnerable groups, in particular women and unaccompanied children and one is for all other male third country nationals who do not want to apply for asylum. In the case of families, men and women are separated but the families can meet freely between 4pm and 7pm each day.

Each unit is composed of container rooms including dormitories, a laundry room, a visiting room, a religious room and a leisure room. There are container bedrooms in each unit, with a capacity of 10 persons maximum per room.⁸¹ Each room has two showers and two toilets. The container rooms are not locked and the migrants can leave their rooms during the day as they wish but only within the courtyard of their unit. They are not allowed to visit other units and, whenever they are allowed to leave the unit, for instance to visit one of the offices of the authorities present at the FRC or the medical unit, they are escorted by a policeman. In addition to the container rooms with bunk beds, there are three containers for common use. One container includes the laundry room with a washing machine and a drying machine, the visiting room and the room for religious activities. Another container serves as a room for leisure activities with plastic tables and chairs, a TV, a complaint box and two fixed phones that can be used with a prepaid card and where migrants can receive calls from outside.⁸² The migrants also have their meals in this room. During their stay in the FRC, migrants can keep their mobile phones, including those with a camera as well as MP3 players at all times and any religious items they possess. A third container includes a kitchen and there are also two toilets.

The ECRE delegation was able to visit the unit that was occupied by Syrians at that time. The sleeping rooms were clean and contained two toilets and two showers. In the brief conversations with the ECRE delegation, the Syrians did not have major complaints about the conditions and cleanliness of their rooms, although there appeared to be a problem with the availability of warm water, which the Director of the FRC promised to have fixed as soon as possible. However, it should be noted that the persons concerned only arrived the day before in the FRC after having spent 20 days in far worse conditions in the Fylakio Detention Centre.

As mentioned above, at the time of the visit, there was no medical care available at the FRC because the contract with the

⁸¹ The total size of each unit is 453,24 m², the size of the container rooms is 49 m². Information provided by the Director of the First Reception Centre.

⁸² Which the migrants can purchase from a minimarket which is open in the afternoon.

NGO Medical Intervention had been suspended as the FRC no longer had the financial means to pay for their services.

ECRE interviewed a 30 year-old man from Syria, who arrived in Greece on 3 November 2014 but was arrested by the police and transferred to the Fylakio Detention Centre, where he stayed for 21 days in very bad conditions. He said he had been subjected to torture in prisons in Syria and that he suffered from severe psychological problems and showed a medical prescription. He said that he had asked for a doctor both in the Fylakio Detention Centre and in the FRC but so far he had not been examined by a doctor and he had not received any medication. He also repeatedly stated that he wanted to leave the centre because the situation is very bad for him.

Whereas the conditions at the FRC are better than those in the adjacent Fylakio Detention Centre, as described below, and the Director of the FRC seems to undertake any effort possible to guarantee the dignity of the migrants concerned, ECRE considers the conditions in the centre to be prison-like. As good and laudable the intentions of the staff of the FRC may be, the 24-hour presence of policemen, the guarded gate system at the four units and the barbed wire fences inevitably turn the premises of the FRC into a threatening environment instead of a place of first reception as its name would suggest. It is clearly unsuitable for the accommodation of particularly vulnerable groups such as victims of torture, unaccompanied children and families with children, in particular in absence of adequate health and psychological care.

In view of the FRC's purpose and objectives to ensure registration, identification and orientation to the relevant procedures, ECRE considers the abovementioned measures, including those to further restrict the freedom of movement of migrants within the centre, as unnecessary and disproportionate. It is unclear why such draconian security measures are necessary, in particular as the centre has so far never reached its full capacity.⁸³

In ECRE's view a number of simple measures, such as the removal of the police guards within the premises and the metal fences separating the units inside the centre could already contribute to the creation of an environment that is less analogous to incarceration. Moreover, even if the Greek government wishes to maintain the FRC as a closed centre, ECRE fails to see why it is necessary to have the premises sealed with barbed wire, which inevitably contributes to an aggressive and threatening atmosphere.

ECRE regrets such an approach which contributes to the further stigmatization of asylum seekers, refugees and migrants, and calls on the Greek government to fundamentally revisit the concept of first reception centres. In doing so, the government should take the management, internal organisation and rules of open reception centres as a model instead of the model of detention centres, in particular for individuals who want to apply for international protection, those who cannot be returned to their country of origin for reasons beyond their control and those belonging to particularly vulnerable groups. This should include creating a budget to appoint social workers and civil personnel to ensure the daily management of the FRC instead of the policemen who are currently responsible not only for guarding the main entrance but also the four units within the centre.

In particular where people have been subjected to torture or other forms of serious violence, as is the case for many persons fleeing the war in Syria, lack of access to adequate health care and psychological assistance adds to their vulnerability, while the overall prison-like conditions in the FRC, amplified by the barbed wire fence, are certainly not the appropriate environment to accommodate such persons.

5.5. Access to legal assistance

According to the law third country nationals must have "access to guidance and legal advice regarding their situation" and "shall be able to maintain contact with social agencies and organisations" for the duration of the first reception procedures.⁸⁴ At the time of ECRE's visit, access to free legal assistance beyond the information provided by UNHCR was non-existent in practice. According to the Director of the First Reception Centre migrants are free to contact a lawyer but in reality this almost never happens due to the short duration of their stay at the centre, while no list of lawyers' contact details is provided to the persons arriving in the FRC.

As mentioned above, migrants arriving at the FRC are supposed to be provided with a brochure which includes the contact details of non-governmental organisations that are cooperating with the FRC. This list mentions eight non-governmental organisations, most of them based in Athens, but none of them provide specialised legal assistance to migrants and asylum seekers in Greece. The brochure does not contain a contact address of the bar association or of lawyers specialised in asylum and migration law, which would allow migrants held in the FRC to contact a lawyer themselves regarding the first reception procedures and the deprivation of liberty to which they are subjected.

ECRE member organisation the Greek Council for Refugees (GCR), which provides free legal assistance to asylum

⁸³ According to the Director of the First Reception Service this was necessary to accommodate the concerns of the local community, which contested the establishment of the FRC in its neighbourhood.

⁸⁴ Article 13(3) (f) and (g) Law 3907/2011.

seekers and migrants in Greece as a core activity and has been providing legal aid in the Fylakio Detention Centre on a permanent basis, does not currently have general access to the FRC, unless the lawyer of GCR is directly contacted by a third country national in the FRC and then has access as a private lawyer as explained above.

Article 9(5) of Law 3907/2011 requires NGOs to which first reception services are outsourced to register with the First Reception Service, giving them unlimited access to the FRC. At the same time, third country nationals, while residing in the FRC, have the right of access to legal counseling and legal advice as well as the right to freely contact NGOs.⁸⁵

Therefore, the Greek Council for Refugees, aiming to provide legal assistance in the FRC based on its own funding and not to undertake specific first reception services outsourced by the FRS, has not requested its registration with the FRS, which resulted in restrictions of access of its personnel to the FRC.

85 *Idem.*



Outside view of the Fylakio Detention Centre, December 2014

6. The Fylakio Detention Centre

The ECRE delegation was given access to the Fylakio Detention Centre, which is adjacent to the FRC, and was given the possibility to interview migrants in a separate room. The interviews were held without the centre's staff being present. Due to time constraints, the delegation was only able to speak to two detainees. At the end of the visit, the delegation was allowed to walk through the main corridor, see a 'leisure' room and the outdoor areas, together with a member of the staff of the centre, and to have a look at the conditions in the dormitories without, however, being allowed to enter the dormitories or to speak with the migrants inside the dormitories. The delegation was able to see and enter the room where women and children are accommodated and to see the room used to separate detainees suffering from psychological problems. The delegation was not able to speak to the Head of the Detention Centre or to the staff of the centre, except for brief exchanges with the staff member who showed the delegation the premises. The delegation was not allowed to take any pictures inside.

A detailed analysis of the legal framework of detention of asylum seekers and irregular migrants is beyond the scope of this report and therefore this section is limited to a brief description of the conditions in the centre based on interviews with detainees in the Fylakio Detention Centre and the delegation's observations during the visit as well as the information on the conditions in the centre provided by the Syrians interviewed at the FRC.

The Fylakio Detention Centre (also known as Special Holding Facility) is established in former military barracks and is managed by and under the authority of the Hellenic Police. It has a maximum capacity of 350 places and at the time of the visit about 200 persons were detained, according to the policeman accompanying the delegation. The concrete building comprises five dormitory-cells for men, one for unaccompanied children, one smaller cell for vulnerable cases and one cell for women and children.

The dormitories are behind bars and are essentially large cells with a gate, each comprising between 50 and 60 bunk beds, toilets and showers.⁸⁶ The cell for "vulnerable cases" is much smaller than the other dormitories and only includes mattresses directly placed on the floor. The dormitories are very dark and humid with limited natural light except from a barred window close to the ceiling. They are separated from the corridor by metal bars and from each other by concrete walls. Detainees cannot exit unless they receive express permission. The corridor has a number of TV screens, that were showing Greek channels at high volume during the time of the visit, and that detainees can watch from their dormitories through the bars. At the time of the visit, detainees had insulated their beds with cardboard against the cold, a topic which the detainees interviewed all complained about. The ECRE delegation also noted that the temperature in the centre was low, and this was worsened by the general dampness of the facility. According to the Greek Council for Refugees (GCR)

⁸⁶ The ECRE delegation was not provided with detailed information as regards the exact number of toilets, showers and beds. As the delegation was not allowed entry to the different dormitories/cells for single men, the conditions of the toilets, showers and beds could not be verified.

and some detainees interviewed, hot water in the showers is only available for one hour in the morning and one hour in the evening. In addition, some detainees do not have a pair of shoes or socks suitable for the winter period.

There is a courtyard for outside exercise which is surrounded by barbed wire and has a basketball court. The detainees explained to ECRE that they have access to the courtyard twice a day for 1,5 hours in the morning and 1,5 hours in the afternoon, weather conditions permitting. Detainees need to spend the rest of the day in their dormitory, except when they are allowed to access the leisure room which is in a heated container and where they can go for 40 minutes to 1 hour in small groups. There they also have access to shaving equipment and hot beverages. However, it is unclear how frequently detainees are allowed to go to this leisure room.

Detainees interviewed complained about the quality of the food provided and, although women with small children and babies are regularly detained, and were detained at the time of ECRE's visit, the Detention Centre is not able to provide baby food or baby milk.

Detainees are allowed to use and keep their mobile phones, if they have no camera, but one of the detainees complained that there is a bad signal in the centre, while in some places in the centre it is only possible to connect to the Bulgarian mobile phone network, which makes it very expensive for detainees to make phone calls. Landline phones that can be used with a phone card and that can receive calls from abroad are also available but GCR noted that many detainees cannot afford to buy those cards.

Both the migrants interviewed and GCR confirmed that there is no doctor present in the detention centre and that detainees receive only paracetamol for any medical complaint they have. Detainees are only very rarely transferred to the closest hospital for further medical treatment, but no interpretation is provided, making communication with the medical staff extremely difficult or impossible. However, it should be noted that after ECRE's visit psychologists, social workers and Arabic interpreters were made available by the Ministry of Public Order as of 8 December 2014 for a period of six months.

A.M., a 22 year-old man from Afghanistan who had been in detention in Greece for almost 18 months at the time of the visit, of which 16 months in the Fylakio Detention Centre, described the situation in the centre as horrible and said that many of the detainees were on the verge of a nervous breakdown because of the conditions in the centre. He complained about the bad food, the lack of clothing and blankets and the lack of privacy and the fact that in his dormitory only one of the three showers was actually working. He stated that at times up to four detainees had to share one bed because of the lack of sufficient blankets. He stated that during the almost 16 months he had spent in the detention centre he had been given new clothes only twice.

He had been arrested while trying to reach Greece by boat and was detained first in Lesbos, transferred to Samos where he was detained for about 25 days, was then taken to the detention centre in Amygdaleza for a period of 6 days and finally arrived in the Fylakio Detention Centre in June 2013 where he had been detained ever since. A.M. applied for asylum but his application was rejected and the appeal failed. He submitted a new asylum application on 6 November 2014 but was still awaiting the registration of this new asylum application. According to Greek law, it is not possible to register a subsequent asylum application until two months after the first appeal is rejected as there is still a possibility to appeal before the Administrative Court. A.M. did not want to lodge a further appeal but wanted to submit a new asylum application as soon as possible as he thought this would be faster than awaiting the outcome of the onward appeal procedure. As the registration of asylum applications from the Fylakio Detention Centre is not considered a priority by the Regional Asylum Service in Northern Evros, A.M. was facing further prolongation of his already excessively long period of detention in Greece. At the age of 22, A.M. had already spent almost 1,5 years of his life in detention in Greece in unacceptable conditions.⁸⁷

At the time of ECRE's visit the cell reserved for unaccompanied children was empty. It is situated in between two cells for single adult men and has the same design and characteristics as the other cells described above. Shortly before ECRE's visit a group of 41 unaccompanied children had been detained in the Fylakio Detention Centre for about a month, prior to their transfer to the First Reception Centre (see section 5.2. above) and one of the detainees ECRE interviewed confirmed that there are often unaccompanied children in the centre. Also the Head of the Regional Asylum Office for Northern Evros confirmed to ECRE that "unfortunately it can happen that unaccompanied children have to spend time in detention, including in the Fylakio Detention Centre, because of the lack of reception places for unaccompanied children".⁸⁸

Effective access to quality free legal assistance and to an effective remedy is a crucial safeguard to protect individuals from arbitrary detention. In practice, access to free legal assistance is very limited as there is only one lawyer deployed by the Greek Council for Refugees who provides such assistance in the Fylakio Detention Centre in very difficult circumstances. This is clearly insufficient to meet the needs of the detainees in the centre, who as a result often remain

⁸⁷ A.M.'s subsequent asylum application was registered in mid-December and he was subsequently released by the Hellenic Police having reached the maximum detention period of 18 months.

⁸⁸ Interview with the Regional Asylum Office Northern Evros, 3 December 2014.

without proper legal assistance in particular to challenge their detention, or in the case of asylum seekers, the negative decision of the Asylum Service. Moreover, at the time of writing it was uncertain whether GCR would be able to continue such services after 28 February 2015, as the organisation has no funding to cover a lawyer on a permanent basis in the Evros region beyond this date. In addition, GCR has access to only one interpreter, who is able to cover Pashto, Farsi and basic Turkish and therefore cannot communicate with all detainees that may need or request legal assistance. Legal assistance provided by pro bono lawyers is scarce. Furthermore, there is no prompt and regular *ex officio* review of the necessity of the detention order or its continuation by a court. Detention can be challenged under a special procedure before the Administrative Court, but the European Court of Human Rights in the case of *Housein v. Greece* found that this procedure does not meet the requirements under Article 5(4) ECHR as it does not sufficiently guarantee a review of the lawfulness of the detention in light of all the conditions laid down in Article 5(1) ECHR.⁸⁹

In a recent report, following a visit in April 2013, concerning the conditions in prisons as well as the various facilities in Greece where asylum seekers and irregularly entering or residing migrants are detained, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) concluded that the “Fylakio Special Holding Facility also continues to provide totally unsuitable conditions for long-term detention of irregular migrants”. It is also stated that “if this centre is to remain open, the number of persons held must be drastically reduced and at least one of the large cells should be converted into an association room with a television and board games and books (an association room for women could be established in the room between them and the health-care service). Further, the cells should be left unlocked for the most part of the day and access to the large yard made possible for several hours a day. In addition, activities should be offered (sport, recreational, vocational, language classes)”.⁹⁰

The establishment of a container room for “leisure activities” seems to go in the direction of the CPT’s suggestion to create an “association room” but, as mentioned above, detainees are only allowed access to this room in small groups and for limited periods of time. However, at the time of the ECRE visit cells were locked for most of the day while overall the conditions were substandard and unsuitable for the detention of migrants for more than a few days.

Whereas some efforts seem to have been taken to enhance access to leisure activities, ECRE considers that, overall, the conditions in the Fylakio Detention Centre are below standard and therefore unsuitable for, in particular, long-term detention of migrants and asylum seekers.

ECRE reiterates its position that children should never be detained as detention can never be in their best interest. In light of the totally inappropriate conditions in the Fylakio Detention Centre, ECRE urges the Greek government to immediately stop the detention of unaccompanied children in the centre.

Given the substandard conditions in the cell for women and children and the lack of appropriate health care and psychological assistance in the centre, ECRE urges the Greek authorities to immediately stop detaining women and children and those individuals belonging to particularly vulnerable groups such as victims of torture and other forms of serious violence in the Fylakio Detention Centre.

The Greek authorities should take proactive steps to ensure that access to quality free legal assistance in the Fylakio Detention Centre is ensured in practice, including by providing funding to NGOs in order to enhance their capacity to provide such assistance.

89 ECtHR, *Housein v. Greece*, Application no. 71825/11, Judgment of 24 October 2013 (French only), par. 81-84. See also, AIDA, *Country Report Greece – Procedural Safeguards and Judicial Review of the detention order*, Update July 2014.

90 CPT, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013*, 16 October 2014.

7. Conclusion

This report provides further insight into the operation of the Regional Asylum Offices in Northern and Southern Evros and the First Reception Centre and the conditions in the Fylakio Detention Centre with a particular focus on the interplay between the various actors involved.

The establishment of the Regional Asylum Offices in Southern and Northern Evros and the First Reception Centre (FRC) in Fylakio are key aspects of the Greek Action Plan on Asylum and Border Management. As the First Reception Centre is the first of its kind and the establishment of two further First Reception Centres on the Aegean islands is planned, it constitutes a test case, both from the perspective of the practical and logistical challenges it entails and the approach in handling the first arrival of irregular migrants and asylum seekers.

The concept of First Reception Centres as a means to organise the referral of those entering the territory irregularly to the relevant procedures in a way which is effective and respects the fundamental rights and human dignity of the individuals concerned certainly has the potential to contribute to a more orderly and rights-based management of mixed migration flows.

However, this report shows that where this is not supported by sufficient capacity in open reception accommodation and efficient cooperation between the competent authorities, including for persons belonging to vulnerable groups with special needs, in practice such a system results in a detention carousel for the individuals concerned and may lead to violations of their fundamental rights.

Despite its name, individuals held in the FRC find themselves deprived of their liberty and, although the conditions are better than in the adjacent Fylakio Detention Centre, they have limited access to legal assistance in practice, except for the information provided by the UNHCR staff deployed on the premises of the FRC. The presence of Hellenic Police Officers as guards in the centre, the use of barbed wire fences and the restrictions of movement within the centre create prison-like conditions.

Finally, this report highlights how the delays in the registration of asylum applications made from the FRC and the Fylakio Detention Centre lead to the prolonged detention of applicants for international protection in substandard conditions.



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