



SAMOS HOTSPOT

INFERNO AT THE GREECE-TURKEY BORDER

Mission Report 2019

April 2020

gisti, groupe
d'information et
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FOREWORD

On Friday 28th February 2020, Turkish President Recep Tayyip Erdogan decided unilaterally to suspend the EU-Turkey deal of 2016, which, over the past four years, transformed five Greek islands in the Aegean sea into open prisons for migrants, the infamous ‘hotspots’. Already, Turkey had repeatedly used this agreement as a blackmailing device, threatening to re-open its borders with the EU. Finally, this threat was carried out in response to criticism from European leaders following a Turkish invasion of Syria and the loss of thirty Turkish soldiers in a Russian bombing. Following this, thousands of exiles, most of them traveling in buses chartered by the Turkish authorities, rushed to the land and sea borders, facing heavy violence from the police and Greek army which had been deployed immediately to prevent people crossing the border.

Under the guise of ‘protecting Europe’s borders’¹, the Greece-Turkey border has become the scene of numerous human rights violations, including gross violations of personal dignity, physical integrity, and the right to life. Violence at the land and sea borders has reached a peak. By refusing entry to European territory for people seeking asylum, and by suspending the registration of asylum requests, Greece, with the support of the EU which sent the European Frontex agency as reinforcement, rides roughshod over the principle of non-refoulement, cornerstone of the Geneva Convention. As noted by the United Nations Special Rapporteur on extrajudicial executions, denouncing "a situation of absolute lawlessness", "Greece plays a role as cruel as that played by Turkey or the rest of the European states, because the crisis is (...) rooted in the lack of vision and courage of European leaders".²

Since March 2020, a new catastrophe has struck the Greek hotspots. In addition to the intolerable overcrowding, lack of food and sanitary infrastructures (drinking water, showers, toilets), inadequate accommodation in tents (which has resulted in several deaths each year due to hypothermia), and to the frequent fires which ravage the island camps, the threat of Covid-19 has been added to this deadly mix. On 22nd March 2020, Greek authorities announced mandatory confinement of people living in migrant camps, including the hotspots. Given that levels of overcrowding make preventing spread of the virus virtually impossible in these sites, such measures can only serve to deliberately expose camp residents to a serious and imminent threat of infection³.

This report exposes the humanitarian crisis and situation of lawlessness which already existed for people seeking asylum trapped on Samos at the end of 2019, thus pre-dating the collapse of the EU-Turkey deal and Covid-19 pandemic. At the time of publication, the present reality serves only to reaffirm how the ‘hotspot approach’, feted by the European Commission as the solution to putting an end to the so-called ‘migrant crisis’, has instead ‘created a monster’⁴.

April 2020

1 [Tweet from Charles Michel](#), President of the European Council, 1st March 2020.

2 « [Réfugiés : la Grèce est dans une situation de non-droit absolu](#) », *Mediapart*, 3rd March 2020.

3 Migreurop, 3rd April 2020 « [De « la guerre contre le virus » à la guerre aux exilé·e·s : les réponses sécuritaires au Covid-19 exacerbent les violences aux frontières](#) ».

4 La Cimade, 3rd March 2020, « [Frontière Grèce-Turquie : de l’approche hotspot au scandale de la guerre aux migrant.es](#) ».

SUMMARY

Introduction	4
I – Vathy Hotspot	8
1. Location	8
2. Topography	8
3. Living Conditions	11
4. Movement and Access to the Camp	18
5. Arbitrary Detention on Arrival	19
6. NGOs : Responsive and Responsible	21
7. A Weary and Divided Local Population	22
8. The Fate of Unaccompanied Minors	23
9. The New Camp	25
II – Intensification of Rights Violations in the Hotspots	26
1. The Right to Asylum	26
a. Consequences of the Accelerated Border Procedure	26
Geographic Restrictions	26
The Role of EASO in Greece	27
Procedural Deadlines	29
b. The Safe Third Country Concept : Problematic Method for Nationality Sorting	31
An Ad Hoc and Discriminatory Mechanism	32
Turkey – Safe Third Country ?	33
2. Vulnerability : A Tool for Managing Migratory ‘Flows’	35
a. The Concept of Vulnerability in Greek Law	35
b. The Failure to Identify and Protect Vulnerable Persons	36
Insufficient Means	37
Unqualified Staff	37
Poor Communication	37
3. The Problematic Treatment of Unaccompanied Minors	38
a. Legal Principles and Framework	38
b. Failures in Samos	42
4. Lack of Access to Legal Advice and Breach of Right to an Effective Remedy	43
a. Legal Framework	43
b. Situation in Samos	44
Conclusion	47
Annexes	49

Introduction

‘B’, Syrian, student, 22 years old

Encountered during a gathering of people at the edge of the camp during clashes on Monday 14th October, 2019 following the earlier fire: “I have been here for a month, there are rats and snakes. I would rather live amidst war in my country than in this camp”.

Summer 2019 was marked by a distinct increase in arrivals of *boat people* to the Greek islands closest to Turkey⁵, an augmentation nonetheless incomparable to numbers in 2015. In October 2015, at the height of sea arrivals, the United Nations High Commissioner for Refugees (UNHCR) recorded 211,663 people landing on the Aegean islands (including more than 10,000 on October 20th alone). Fast-forward to September 2019, considered as the "peak" of more recent arrivals, and the UNHCR counted 10,551 people arriving⁶. Trapped on the islands, certain of which were transformed into "hotspots" by the European Union in 2015, people are forced to survive in deplorable living conditions in camps comprising a mix of ‘containers’(rigid, purpose-built isobox structures) and cramped, sprawling jungles of tents and makeshift shelters.

Overnight on the 14/15th October 2019, a fire took hold of the Samos Vathy camp, destroying around 600 shelters and leaving hundreds of people stranded and in a situation of even greater destitution (if this were possible). A few weeks earlier, in the hotspot of Moria, on the island of Lesbos, a fire had killed a woman and a child and sparked clashes among migrants. At the end of August, again in Lesbos, a 15-year-old Afghan boy died from stab wounds sustained during fighting⁷.

It is in this context that Gisti carried out an observation mission on the island of Samos from 12th to 19th October 2019.

At the same time, the situation for people trapped on the Greek Aegean islands drew the attention of Council of Europe Commissioner for Human Rights, Dunja Mijatović, who observed: “*It is an explosive situation. There is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited. People queue for hours to get food and to go to bathrooms, when these are available. (...) This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival.*”⁸. Addressing the Greek authorities, she said,

5 From north to south : Lesbos, Chios, Samos, Leros, Kalymnos, Kos, Symi et Rhodes.

6 UNHCR, [Operational portal, Refugee situations](#).

7 Le Monde, 4th October 2019, « [Migration : Les bos, un échec européen](#) ».

8 Council of Europe Commissioner for Human Rights, 31st October 2019, « [La Grèce doit transférer d’urgence les demandeurs d’asile qui se trouvent sur les îles de la mer Égée et améliorer les conditions de vie dans les structures d’accueil](#) ».

“Urgent measures are needed to address the desperate conditions in which thousands of human beings are living”, before emphasising that “if not urgently and adequately addressed, these abysmal conditions, combined with existing tensions, risk leading to further tragic events”⁹.

Unfortunately, Dunja Mijatović’s fears became a reality over the following months. In November 2019, in Moria camp, Lesbos, a 9-month-old infant died of "severe dehydration"¹⁰, while a few days later, a Syrian man in his forties died in the Vial camp, on the island of Chios as a result of neglect and lack of access to care¹¹. At the beginning of December, a fire started by a gas explosion in a container in the Karatepe camp on Lesbos caused the death of an Afghan woman¹². At the end of December, a 31 year old Iranian man hanged himself in the detention centre of the Moria hotspot, again on Lesbos¹³.

Overnight, on Thursday 31st October 2019, the Greek Parliament, composed of a majority of right-wing conservative ‘New Democracy’ representatives following their victory in the July 2019 elections, adopted a controversial new law making conditions for people seeking asylum on Greek territory even tougher¹⁴. Notably, the law increased the applicability of geographic restrictions, under which migrants are prohibited from leaving the islands during their asylum procedure. The new policy also devolves competence to conduct asylum interviews to police officers, places restrictions on appeal rights, facilitates establishment of a ‘safe country’, and imposes mandatory detention on those refused asylum¹⁵. A long way off the “urgent measures” called for by the Council of Europe Commissioner for Human Rights, Dunja Mijatović...

In May 2016, two months after the signing of the EU-Turkey Declaration, following a visit to Lesbos and Chios, Gisti reported on the dreadful consequences the deal was having on people arriving by sea from Turkey to the Greek islands¹⁶.

This report led to the submission of 51 applications for Syrian, Afghan and Palestinian nationals residing in the Vial and Souda camps, located on the island of Chios, to the European Court of Human Rights (ECtHR) for breach of rights protected by the European Convention on Human Rights (ECHR)¹⁷, in particular relating to their living conditions. In their decision of October 3rd 2019, the Court concluded that the detention conditions of the applicants residing in the camps did not constitute inhumane and degrading treatment, on the grounds that, for the Souda camp, the open

9 *Ibid.*

10 [Infomigrants, 18th November 2019.](#)

11 [Infomigrants, 29th November 2019.](#)

12 [Infomigrants, 5th December 2019.](#)

13 [Kombini, 6th January 2020.](#)

14 Asylum Law n° 4540/2018.

15 [The New Humanitarian, 4th November 2019.](#)

16 Gisti, « [Accord UE-Turquie : la grande imposture. Rapport de mission dans les « hotspots » grecs de Lesbos et Chios](#) », July 2016.

17 Articles 3, 5 § 1, 5 § 2 et 5 § 4 European Convention on Human Rights.

nature of the camp mitigates any potential harms relating to overcrowding¹⁸.

However, during the three years between filing the application and the Court handing down the decision, conditions deteriorated drastically, drawing frequent and repeated denunciation by activists, NGOs, international organizations, parliamentarians and the press¹⁹.

Returning to Greece three years after the first mission, Gisti intended not only to provide updated testimony on the explosive situation put in place by Greece under pressure from the European Union, which impacts migrant people and local island communities, but also to highlight the serious rights violations currently taking place.

This report reflects observations made by members of the investigative mission carried out by Gisti, enriched and supplemented by observations from a mission carried out on a voluntary basis for the Migreurop network from May to October 2019.

The first part of the report focuses on evidence collected between October 14 and 21, 2019. The second part documents the principal rights violations suffered by people confined to the Greek hotspots, in particular those people trapped on Samos. Breaches are identified with regard to domestic Greek law, European law and international law, and relate in particular to the right to asylum, the rights of the child, recognition of vulnerabilities, the right to legal assistance, and the right to an effective remedy.

This report was written by Claire Bruggiamosca and Maël Galisson, members of the Gisti mission which took place from October 14 to 21, 2019 on the island of Samos, as well as Mathilde Albert, volunteer for Migreurop within the association ASF-France in Samos from May to October 2019, in collaboration with Domitille Nicolet, co-founder and coordinator of the “Legal center Samos” for Avocats sans frontières France.

Original version in French available at: www.migreurop.org

English version: Jessica Hambly, Research Fellow in Law, Australian National University and former volunteer “Legal Centre Samos”

18 Kaak and Others v. Greece, n°34215/16, § 78, 3rd October 2019 ; See Gisti report : « [Pour la Cour européenne des droits de l’Homme, tout va bien dans les hotspots grecs](#) ».

19 For further information on hotspots, see [reports and articles available on Gisti website](#) (in French).

Testimony of S., Palestinian refugee from Syria

"My name is S. and I am a Palestinian from Syria. My grandparents were forced to leave Palestine in 1948. Since then, we have been living in the Yarmouk camp, on the outskirts of Damascus.

The war in Syria affected everyone. Assad's regime, supported by Iranians, Russians and Hezbollah's militia, bombed our camp and destroyed our homes. They forced us to leave our homes after a siege that lasted eight years. During the siege, we were deprived of electricity, water and food. People couldn't find food; they ate cats and dogs. Then, after the siege, we were forced to leave our homes in Damascus and move to Aleppo by Turkish and Russian soldiers.

We stayed in a camp called Dir Balout, north of Aleppo, for a year and three months. In this camp, we lived in tents and suffered a lot from the living conditions (heat, rain, floods because of the proximity of the camp to a river). So we decided to flee this camp and go to Turkey using smugglers.

I stayed in Izmir for 20 days. Our suffering was not over until we found a house in Izmir. All these crossings from Damascus to Izmir cost us a lot of money. We spent a lot of dollars. Everyone took advantage of our situation: the Syrian smugglers, the Turks, etc. All of them took advantage of people like us.

Then we crossed to Greece. The Greek coast guard took us to an island called Samos. The Greek police gave us a temporary identity card and said to us: "See this mountain in front of you? Go and set yourselves up somewhere", without giving us any blanket, clothes or anything, except a police paper that would allow us to get food in the mornings, afternoons and evenings.*

At each meal, we had to wait between three and four hours for our turn. All that time just to get bread for the children and tiny meal rations for your family. All the services here are very bad: no doctors, no medicine, no tents, not enough toilets, people sleep on the streets.

Let journalists come and see how Greece treats people here! As if they were animals! All this is against human rights! I have been here in these unbearable conditions for two months. Nobody came to do my asylum interview. A doctor examined my heart and gave me an appointment in a month and a half. At the hospital, they postpone all appointments to two or three months later. Even with money, you can't see a doctor or go to the hospital. We do not know what to do, we wait, we can't do anything except wait for God's help and mercy. "

Vathy, Samos, 18th October 2019

* Document provided by the Reception and Identification Center (RIC) upon arrival on the islands.

I - The Vathy Hotspot

1. Location

Samos' hotspot, or "Reception and Identification Center (RIC)" as it is officially known, is located no more than 500 meters northeast of the centre of the island's small capital city, Vathy. Nestled up on the hillside, it replaces a former military base. The RIC is surrounded by chain-link fences topped with layers of barbed wire. The main areas of the camp and its entrances are under constant video surveillance.

Designed to house 648 people, in mid-October 2019²⁰ the Vathy camp had almost 5,859 residents. These people are mainly from Syria and Afghanistan, while other nationalities include Iraqis and Palestinians, as well as people from the African continent, the majority of whom come from the Democratic Republic of the Congo (DRC). Among the population, around 50% are adult men, 21% adult women, and 29% children (of which 17% boys and 12% girls)²¹.

The Greek Ministry of Immigration and Asylum²² has responsibility for the Vathy hotspot, which is administered on the ground by the camp director Maria-Dimitra Nioutsikou.

2. Topography

The "official" Vathy camp comprises 3 zones (see photo of the camp plan):

- A "**lower section**", which extends from the main entrance to the police and guard station, consisting of eight levels from the top to the bottom of the hill, six levels for accommodation and two for toilets and showers. Each level of accommodation has between seven and ten containers. The northern part of this lower zone is dedicated to the police station and offices of Frontex, Interpol, the UNHCR, International Organization for Migration (IOM), and the European Asylum Support Office (EASO), as well as the camp medical team and Praksis (Greek NGO working in the field of development, humanitarian and medical aid).

- In the "**upper section**" of the camp there are seven levels: five for accommodation and one for the distribution of food.

20 Hellenic Republic Ministry of Citizen Protection General Secretariat for Migration policy, reception and asylum service, *National Situational Picture regarding the Islands at Eastern Aegean Sea*, October 2019.

21 [UNHCR, Samos Weekly Snapshot, 7-13 October 2019.](#)

22 Created for the first time in 2015 by the government of Alexis Tsipras (Syriza), the "Ministry of Migration Policy", as it was known, was abolished in July 2019 following election of the conservative government of Kyriakos Mitsotakis. For six months, the migration portfolio was integrated into the Ministry of "Citizen Protection" before a specific "Ministry of Immigration and Asylum" was again created in January 2020.

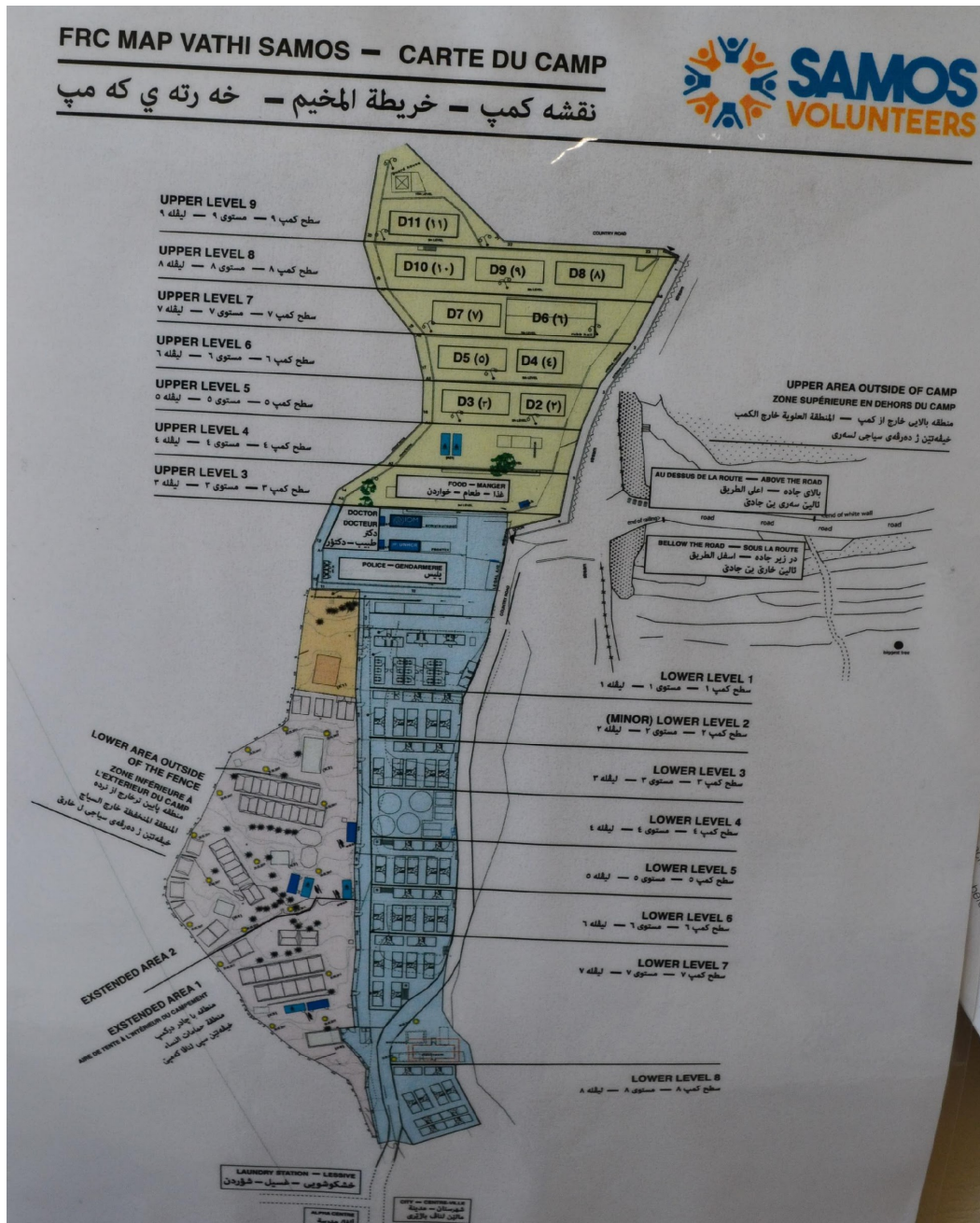
- An "**extension section**", located to the west of the lower section, in which several dozen tents have been installed by the camp administration, along with some toilet blocks. The extension is surrounded by two-metre-high fencing.

The upper and lower sections of the camp are surrounded by fencing 2.5 meters high, reinforced by layers of barbed wire.



Video surveillance cameras are placed in certain strategic locations (entrances and around the camp). The camp has two entrances: one to the south, located at the bottom of the lower section, which gives access to the city centre; and one to the east, located at the junction between the lower and upper sections, through which employees of the institutions present on site can enter. A road traverses the camp, joining these two entrances. A police checkpoint is situated at each entrance.

Nonetheless, the reception capacity of the official camp is a tiny proportion of the actual number of people held there. As a result, a large informal camp (or 'jungle'), consisting of 'Quechua' branded tents, self-built shelters and other makeshift dwellings, has developed across the hillside, to the east and west of the fenced camp.



Map of the Camp

Communication from the camp administrators to residents is generally over loudspeaker. At frequent intervals throughout the day, messages are conveyed in different languages, summoning people to the various offices or giving information regarding camp operations. Speakers are located only in the ‘official’ part of the camp, and their audible range is limited. As a result, many people living in the ‘jungle’ section of the camp do not receive messages or news. Thus, while those situated in the interior of the camp face constant noise from the announcements, those in the peripheral sections are precluded from accessing key information. The use of loudspeakers not only reinforces the carceral dimension of the camp, but also represents an ineffective means of communication.

3. Living Conditions

Living conditions for people held on Samos are **extremely unsafe and unsanitary**. The ‘official’ camp infrastructure is stretched far beyond capacity. In early October 2019, Doctors Without Borders (MSF – *Médecins sans Frontières*) estimated approximately 1,200 people were accommodated in this part of the camp initially intended for 648 people²³. In the jungle, people survive in tents, shelters built from salvaged materials (pallets, sheets, UNHCR tarpaulins, etc.), or even, for some of those furthest from the camp, in abandoned houses or buildings. These shelters provide barely any protection against the elements (heat, humidity, cold), or from the reptiles (including several species of large snakes) and rodents which also inhabit the hillside. Migrants are expected to source their own clothes and living essentials such as mattresses, blankets, duvets and tents. Donations and distributions from NGOs are insufficient, resulting in a black market emerging for the sale of blankets and other basic necessities for survival.

The Greek army distributes meals three times a day. On average, people are forced to wait three to four hours to be given an often small, poor quality, portion of food. The vast majority of people interviewed for this report complained about the quality and quantity of food distributed. The menu remains more or less the same each day:

- *Morning* : Fruit + juice (35 ml) + bread/pastry item (plastic wrapped - see photo below) + 1,5 litre water bottle (to last the whole day).



23 Interview with Erimi Papanastasiou, Coordinator of Samos mission, *Médecins sans frontières Suisse*

- *Lunch* : a portion of rice with fish or chicken (photo below), or pasta with meatballs + fruit + slice of bread.



- *Evening* : slice of pizza or rice with boiled eggs + fruit + slice of bread.

Sometimes people would wait in line for three hours, only to be told there was nothing left. The thrice-daily food queue generates significant tension, and regularly sparks violent altercations.

To avoid waiting in line, and rather than relying on the poor quality and insufficient quantity of food distributed by the authorities, those that can afford it often choose to contribute to communal shopping and/or collective cooking. However, most people cannot survive this way on the small monthly stipend handed out by the UNHCR – 90 euros which, in reality, due to the bank withdrawal fees, is closer to 80 euros per month, or 2.60 € per day.

In Samos, access to water is restricted for migrants, and even non-existent in certain areas of the jungle, despite distributions made by NGOs and the installation by Doctors Without Borders (MSF – *Médecins sans Frontières*) of a few water points in September 2019. A long hose pipe runs along the ground (see photo), with a tap at one end, but no sink or facility for retaining water. Uncollected water runs down into the lower parts of the jungle. Previously, people collected water from sources outside the camp, which were later analysed by MSF and found to be unsafe for drinking and dangerous to health.



Hose pipe providing water to the camp

The water points set up by MSF are still insufficient to meet requirements for adequate access to water. People collect water in plastic bottles or – if they are lucky - storage drums they have found. They do laundry on the floor, or try to wash themselves (without any privacy). As a result, those who can afford to buy water from traders in the city or on the black market.

There are no washing or toilet facilities in the jungle section of the camp. The sanitary blocks installed in the official camp were designed to meet the needs of 648 people, and are therefore now in an appalling state, with no doors or windows, no locks, extremely dirty, blocked toilets and sinks, etc.



Toilets

As a result, people seeking asylum in Samos are unable to wash regularly, and are forced to go to the toilet either in highly unsatisfactory, unhygienic circumstances, or wait, hoping to gain access to public toilets or shops in downtown Vathy. Access to sanitation is therefore extremely poor. This poses significant public health challenges, in particular relating to transmission of disease and epidemics of a dermatological nature (such as scabies), in addition to numerous other health risks.

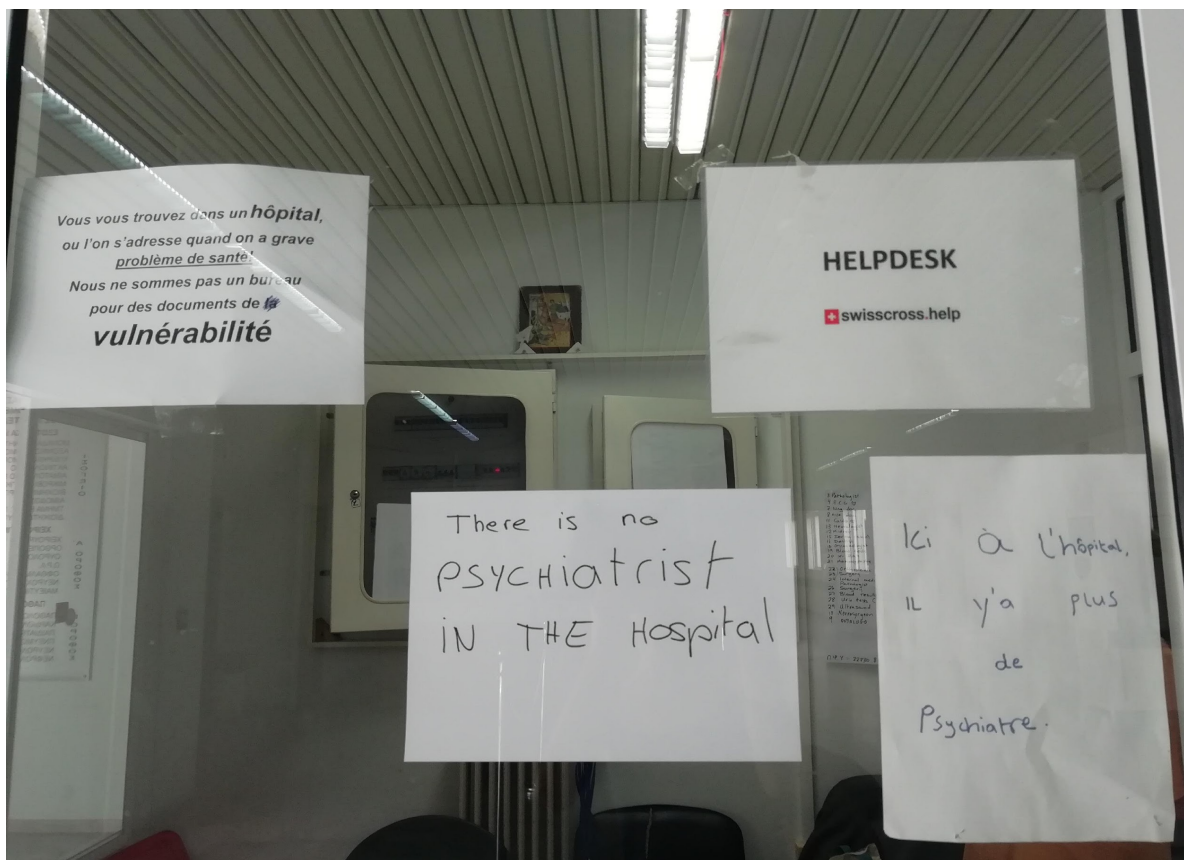
Waste management in the jungle part of the camp is non-existent. Two skips were installed at the southern entrance to the camp, but there is no garbage collection organised by the central camp administration. Two associations, Samos Volunteers and Movement on the Ground, carry out these types of activities, but are clearly unable to take full responsibility for cleaning the entire camp on a regular basis. As a result, the ground is strewn with litter of all kinds, and over time some areas of the jungle have become open rubbish tips, attracting rats and other vermin.



Such poor living conditions have a highly detrimental impact to the health of all migrants held on Samos, which is further heightened by the lack of any functioning healthcare system within the camp. There are two practicing doctors in the Vathy camp, only one of whom has competency to sign vulnerability papers (see below). The medical team is made up of five nurses, a midwife, a cultural mediator, a military doctor (who also has no competence to sign vulnerability certificates), two social workers and, in principle, a psychologist. The latter was not present for (at least) several months. If camp residents require consultations or treatment at Samos-Vathy's only hospital, such access may only be granted via an appointment made through the camp doctor.

By November 2019, with more than 7,000 residents in the camp, access to medical services, and in particular appointments with the single doctor qualified to offer consultations for people with specific 'vulnerability' needs, required hours upon hours of queueing and waiting. Some people felt their only way of getting an appointment was to sleep in front of the medical container.

Even if, eventually, someone is granted access to the hospital via a 'doctor's note' from the camp doctor, there is still no access to a psychiatrist. Moreover, a climate of suspicion reveals itself as soon as someone sets foot inside the hospital reception, with notification that: *"You are in a hospital, which deals with serious health problems. We are not an office for vulnerability documents"*.



Only one paediatrician works at Samos-Vathy Hospital, with two vacancies that had remained unfilled for a year and a half (at the date of the Gisti mission).

This extremely limited access to healthcare has serious consequences for the health of migrants on Samos. The NGO “Med’EqualiTeam”, interviewed during this investigative mission, noted numerous infections linked to poor living conditions in the camp, including viral, bacterial and dermatological diseases (scabies, infections, bedbugs). The volunteers at this NGO also observed cases of malnutrition.

Another serious issue, intensified by the unsafe camp environment, relates to increased risk of Sex and Gender Based Violence (SGBV), and more specifically violence against women and LGBTQ people (harassment, assaults, rapes).

While people are forced to stay on the island, such grossly inadequate living conditions compound the extreme stress experienced by people throughout the asylum process, and serve only to aggravate physical and mental health issues. This is especially concerning given the ubiquity of pre-existing mental illness and past trauma suffered.

X., Refugee from Democratic Republic of the Congo

“We are here on the island of Samos, in Greece. We are refugees, but we do not live in good conditions. The camp does not function very well. Some people are here for 15 months, 18 months, 11 months, and not a single one has got ‘the card’ (i.e. refugee status). We’ve done our “little interview”, our “big interview”, and we still haven't had ‘the card’. Living conditions here are not good. After registering with the police, they just leave you to sort yourself out. It is you who must find a shelter to sleep under. But there is no space. It is very difficult to get food. Normally, this Samos camp should hold 700 people. But they went way beyond this: there are at least 7,000 people... That is why, yesterday, we took things into our own hands. The authorities are incapable and incompetent. This morning you were there at the camp, you saw what happened. The fire burned... Now we are on the street... We are refugees, we need help... ”

Vathy, Samos, 17th October 2019

4. Movement and Access to the Camp

Originally, Vathy was conceived as a closed camp for "*holding any migrant entering Europe for the first time via the Greek-Turkish maritime border in administrative detention for a maximum of three months*"²⁴. On June 3rd 2016, a riot within the camp led to destruction of the barriers, which were never reinstalled. Since then, camp residents have been able to enter and leave (relatively) freely, and are not (generally) forced to remain within the confines of the camp. However, that is not to say the camp is open to 'outsiders'; authorisation is required for entry.

On several occasions, Gisti members involved in the Samos observation mission emailed the camp director, Maria Dimitra Noutsikou, asking for an interview and authorisation to enter the camp. These requests went unanswered. Local NGO coordinators confirmed that their access to the camp was strictly controlled, and most did not have authorisation to enter. A number of journalists, in particular non-Greeks, also said they had not been granted permission to enter the camp despite numerous requests²⁵.

Shortly after Gisti observers left Samos, on October 31st 2019, Damien Carême (Member of the European Parliament) was arrested and detained by Greek police for attempting to observe what was happening inside the Vathy camp²⁶.

This demonstrates the practical impossibility for scrutiny and oversight of the hotspot by civil society (including NGOs and other organisations, journalists) and/or elected officials.

Under Article 27 of Greek Law 4375/2016²⁷ on the 'Establishment and Staffing of the Directorate for Reception', competency lies with the Operational Coordination Department to:

'contact and cooperate with the Ministry of Labour, the Ministry of Defence, the General Secretariat for Welfare, the General Secretariat for Civil Protection and any other competent public body or service, with Independent Authorities, international organizations, with NGOs, other actors of civil society and legal persons for the purpose of managing humanitarian aid,(...)

However, despite this, it remains virtually impossible for civil society (organisations / NGOs / journalists) to exercise any scrutiny over the hotspot.

24 Babels (2018). *Méditerranée : des frontières à la dérive*, Le passager clandestin, Lyon.

25 [Mediapart, 31st October 2019.](#)

26 [Kombini, 31st October 2019.](#)

27 Law n° 4375/2016 relating to the organisation and functioning of the Greek Asylum Service, Appeal Authority, Reception and Identification Service, and adoption into Greek Law of Directive 2013/32/UE (Procedures).

5. Arbitrary Detention on Arrival

On Friday 18th October, around 10:30 am, the two Gisti observers present on Samos witnessed the **arrival at Samos-Vathy port of a Greek coastguard rescue operation**. The coastguard vessel was returning from rescuing several dozen people, including families with young children, who were all now gathered on the deck of the ship. On disembarking from the boat, the people spent a short amount of time on the quayside before being escorted into the coastguard building located at the port around noon.

Shortly after the boat came in, a UNHCR representative came to meet the new arrivals along with two translators and a Metadrasis employee.

Initially, survivors were kept for several hours in a small, cramped courtyard adjacent to the coast guard building. Later, some people were taken to holding cells inside. Others, including women and children, were told to stay sitting on the ground of the narrow terrace to the rear of the building. Gisti observers noted that people had been marked with numbers and letters on their hands (16A, 10A, etc.).



Photo of the courtyard where the people were held

People were held overnight, either in cells or outside on the terrace. Around 7 p.m. Gisti members observed food being distributed. The atmosphere was intense and highly charged: one coastguard communicated only by shouting commands in English or Greek, when it was clear that none of the people being detained understood what was going on or what he was shouting.

By 10 :30 am the next morning, all those who had arrived the previous day were still being held at the coastguard station.

In a report published on 19th February 2019, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) heavily criticised detention conditions at most Greek police stations and border guard facilities, noting that these sites were unsuitable for detaining people longer than 24 hours:

‘As regards the provision of health-care services to immigration detainees, the CPT concludes, once again, that it was inadequate. In particular, in most of the detention places visited, the Committee noted chronically insufficient numbers of health-care staff and deficient interpretation services. Even the most basic medical equipment and medication was lacking; medical screening on arrival was not carried out systematically; and access to a doctor was still not effective in practice.’²⁸

Concerning detention of children, the CPT recalls:

‘that the detention of children with their parents in police detention facilities – police and border guard stations, pre-removal centres or RICs – can have a negative psychological effect on a child’s development and well-being, particularly when the child is young. The CPT reiterates its recommendation to end the routine detention of children with their parents in police establishments upon their arrival in the country, and urges the authorities to pursue their efforts to increase significantly and rapidly the number of dedicated open (or semi-open) shelter facilities for unaccompanied children.’²⁹

To remedy these failures, the report makes a series of recommendations which, in light of the treatment observed and outlined above, are clearly far from being heeded.

²⁸ [CPT Report](#) p. 5.

²⁹ *Idem.*

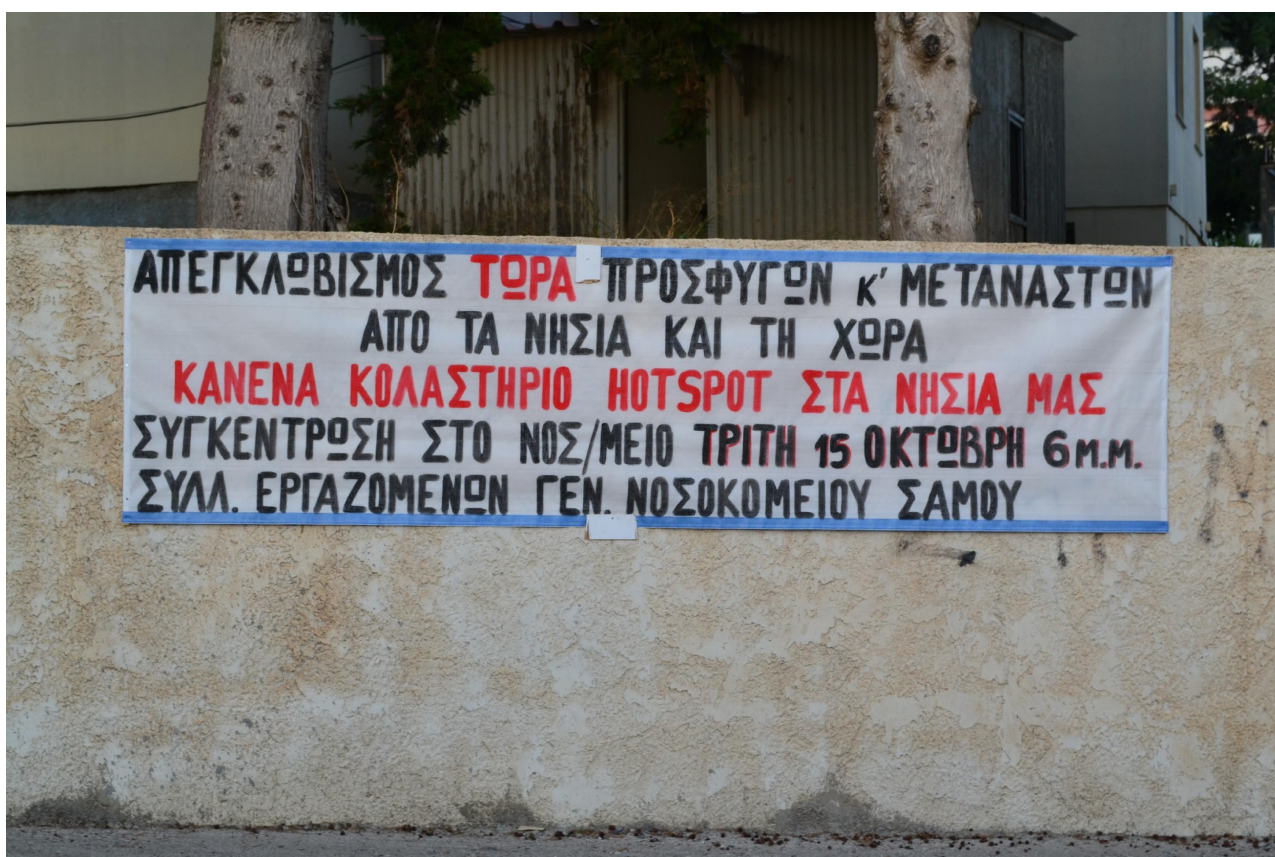
6. NGOs : Responsive and Responsible

From interviews conducted with coordinators of NGOs active on the ground in Samos (cf. Annex 1, list of contacts), there was significant concern voiced as to the possibility of being able to continue their work. These organisations are heavily relied on by migrants held on Samos, and provide vital services, indeed alleviating pressure on the Greek state for provision of a number of basic public services (access to fundamental rights, support for minors). These organisations cited substantial difficulties faced working alongside local (camp management, town hall) and national authorities. Indeed, as an illustration of the insecurity felt by these organisations, several coordinators mentioned recent inspection visits undergone by NGOs active on the island by Greek authorities. These inspections were intended, purportedly, to verify conditions of work, health and safety for employees and volunteers. However, in practice they were clearly being used as a form of deterrence and intimidation.

Fearing that their aims and objectives could be undermined, NGOs have sometimes felt it necessary to avoid speaking out too publically (for example via social networks or the media), instead prioritising ongoing provision of their services and activities supporting migrants on the island. This was the case following the October fires in the camp. Indeed, many organisations mobilized in the face of inertia on the part of the camp administration and local elected officials. It was NGOs who opened the doors of their premises to shelter people for several nights following the fires. The organisation ‘Still I Rise’ welcomed around 200 people over the nights of October 14th to 16th, 2019. During this time one pregnant woman sheltering there went into labour and gave birth during the night of October 15th. Around one hundred people were taken care of by the organisation ‘Baobab’ during the night of October 14th to 15th, 2019, and the following night closer to two hundred people sought shelter there again, the majority of whom were women and children.

7. A Weary and Divided Local Population

During their observation mission, Gisti members were confronted with two notable examples illustrating **diverse opinions of the inhabitants of Samos, and, more specifically, the population residing in Vathy town**, vis-à-vis the situation of migrants on the island. On the evening of Tuesday 15th October, a demonstration took place at the initiative of the Samos hospital employees' union. A banner hung on the wall of the hospital demanded 'closure of all hotspots and freedom of movement for migrants detained on the Greek islands'.



Between 150 and 200 people gathered at the hospital for the demonstration. They marched from the hospital on the Western edge of town to Pythagoras Square, one of the main public meetings spaces in central Vathy, where several union officials took turns to speak. While most speeches were in Greek, the final speech was given in English. The union representative addressed migrants held on Samos: *'We are sorry for your [living] conditions. We call for the closure of all hotspots and the possibility for you to continue your journey. We are not your enemies. We stand by your side.'*

That same week, on Saturday 19th October 19, another demonstration took place, this time at the initiative of the mayor of Vathy. Demonstrators demanded the immediate transfer of the thousands of migrants present on the island to mainland Greece or to other European countries³⁰. One of the banners read: *'Frontex, do your work, protect European borders!'* (see photo). Claiming that migrants *'threaten the peaceful life of the inhabitants of Samos'*, the mayor of Vathy called for another demonstration two days later, indicating that it was necessary to

*'decongest, here and now, to strengthen the security of the citizens of Samos in their daily life, to ensure more effective surveillance of our borders, the closure of the Samos reception center... and the acceleration of the procedure for granting asylum to those who really deserve it'*³¹.

The population of Samos had, since 2015, been seen to show solidarity with migrants arriving³². But the policy of confining people on the island presented serious challenges to the generosity and goodwill of local people, and generated strong feelings of hostility towards the Greek state and European Union.

8. The Fate of Unaccompanied Minors

The number of lone children in the Vathy camp is difficult to calculate. Organisations in Samos (Still I Rise and ASF France) and the UNHCR estimate there were around 380 unaccompanied minors in Samos last October.

Level 2 of the camp is dedicated to unaccompanied minors. One of the six containers on that level is reserved for girls. Containers are each designed to house six people, but approximately 70 children reside in Level 2 – so nearly double the capacity. Responsibility for the children lies with camp managers, the Greek government and two associations, Metadrasi and Praksis, who take charge of the first reception of unaccompanied minors.

The remaining 310 or so unaccompanied minors live in tents, in the jungle, in the unsanitary conditions described above. For children and adults alike, the time taken to register an asylum application in Samos is getting longer and longer. For unaccompanied children, the process is often extended further by an additional age assessment phase. However, throughout the process there are no specific care or education programmes organised by the camp administration or by the Greek authorities on site. No unaccompanied young persons are enrolled in Greek schools³³. It is the organisation 'Still I Rise' which provides school education for these children.

30 Greek Reporter, 20th October 2019, "Situation on Samos Deteriorates as Migrant Flows Continue to Arrive".

31 Greek Reporter, 21st October 2019, "[Greece's Samos at Boiling Point as Mayor Calls for Demonstration Against Overcrowding](#)".

32 Babels (2018) *Méditerranée : des frontières à la dérive*, Le passager clandestin, Lyon.

33 Some children were previously allowed to attend Greek primary schools on the island, but at different times to Greek children. This access to education was stopped following objections from Greek parents.

The case of S., from Sierra Leone, born 30/08/2002

On September 7th 2019, when he landed on Samos, S. presented a photocopy of his birth certificate to the Greek authorities: 'I told the police that I was 17 years old and I showed them my birth certificate. They told me "no", and that I was 19 years old.'

When the Greek authorities registered S.'s personal data, the date of birth recorded did not match the photocopy of his birth certificate. According to the Greek authorities, S. was born on 08/30/2001 and not 08/30/2002. This means he was registered as an adult on arrival in Samos.

The consequence of this is S. was left alone to find himself a tent space, and was given no care or access to services for unaccompanied minors. When he arrived, he had been handed a document in Greek, with no translation or explanation. This is verified by the absence of any interpreter signature on that document. His asylum claim had still not been registered. His medical check was scheduled to take place on 21st November 2019, over two months after his arrival (see photo below).



9. The New Camp

At the end of November 2019, the Greek government announced that it would close migrant camps currently in operation on the Greek Aegean islands, and replace them with closed camps with larger reception capacities³⁴. Indeed, the law adopted by the Greek Parliament in November 2019 allows for the possibility of widespread detention, extendable for up to 18 months (Article 46) and based on this, the creation of closed reception centres (Articles 116 and 39).

Since the beginning of September 2019, work has been underway to build a new RIC (reception and identification center) on the island of Samos (see photo below). The location of this new camp is geographically extremely isolated, further up into the mountainous inland region, an hour's walk from the next village (Mytilene) and almost two hours from downtown Vathy. Even putting aside concerns relating to deprivation of liberty of asylum seekers, access to healthcare, which is already extremely poor when the hospital is just meters from the camp, will become even more inadequate. NGOs will have to re-organise and make significant changes if they are to ensure continuity of their services in the new location. The organisations interviewed in the course of this mission all agreed that information regarding the new camp was patchy and unclear.



34 Le Monde, 20th November 2019, « [La Grèce va fermer ses trois plus grands camps de migrants près des côtes turques](#) ».

II- Intensification of Rights Violations in the Hotspots

1. The Right to Asylum

Two key factors threaten the rights of people disembarking on the Greek islands in need of international protection: (a) on the one hand, abuse of a so-called ‘accelerated procedure’ which applies a framework of ‘geographical restriction’ to the hotspots; (b) and on the other hand, the use of the safe third country concept as it is applied to Turkey. In the context of the agreement concluded between the EU and Turkey in March 2016 (the EU-Turkey Declaration), the combination of the abovementioned factors, in addition to treatment of so-called ‘vulnerable’ people (see below, III), gives rise to a particularly complex procedure for examining protection claims lodged in the Greek islands, characterised by serious failings in respect of the right to asylum and associated rights.

a. Consequences of the Accelerated Border Procedure

Greek Law 4375/2016 introduced the ‘accelerated border procedure’. Initially envisaged as a temporary and extraordinary measure set to last six months, the accelerated procedure has been renewed multiple times and was still in force during the Gisti mission, in November 2019. However, as will be seen, the functioning of this procedure is anything but fast. Moreover, the justification for the procedure, as exceptional and thus necessitating derogation from ordinary law, poses serious risks to the rights of people in need of protection.

Key implications of the accelerated border procedure are: (1) ‘geographical restrictions’ imposed on all people arriving and claiming asylum in the hotspots; (2) the role of the European Asylum Support Office (EASO); and (3) very short deadlines within which decisions ought to be reached. Below, we see the impact of these measures on the rights of asylum applicants in Samos.

Geographic Restrictions

Geographical restriction is a confinement technique imposed in the context of the EU-Turkey Declaration, and integrated into Greek law through Article 41 (1) (d) (iii) of Law 4375/2016. It restricts freedom of movement of people claiming asylum to the hotspot, thus prohibiting onward travel to mainland Greece.

After receiving a number of complaints from migrants contesting their confinement to the hotspots, the Greek Council of State ruled on 17th April 2018 that the policy of geographical restriction, as it was being automatically applied to each new arrival on the Aegean islands, was discriminatory where it led to an ‘unequal concentration’ of people seeking asylum in certain parts of the country (the five hotspot islands), which imposed a ‘significant burden’ on those regions. In response to this ruling, which had the effect of annulling the policy, the Greek Parliament then amended the relevant legislation twice, effectively restoring the policy of geographical restriction. In May 2018, Law 4540/2018 transposed the Recast European Reception Conditions Directive in order to provide a more solid legal basis for the system, and then, in June 2019, Law 4609/2019³⁵ invested competency in the Minister for Migration Policy to take decisions in matters of geographical restriction³⁶.

Geographic restrictions are automatically imposed on arrival, rather than being applied after individual examination of a person’s claim and situation. According to Article 7 (3) of Law 4540/2018, violation of geographic restrictions will lead to withdrawal of material reception conditions (i.e. the right to accommodation and monthly allowance). In practice, it also often leads to detention (three months in a large number of cases), and sometimes also to criminal proceedings.

The Role of EASO in Greece

Another key import of the accelerated border procedure is, in contrast with the ‘normal’ procedure for examining asylum applications, registration of the application and notification of the decision and all other procedural aspects may be conducted by the Greek police or armed forces. This can be particularly problematic for asylum seekers who have suffered previous trauma at the hands of police or armed forces (which could have occurred in their country of origin and/or during their journey). In Samos, up until September 2019, just one person was responsible for registration of all asylum applications. Faced with the increase in arrivals from mid-August, nine additional agents were assigned to register applications, the majority of whom were police officers.

Article 60 of Law 4375/2016 permits EASO personnel to assist the Greek Asylum Service ‘on an exceptional basis’ in the event of ‘third country nationals or stateless persons arriving in large numbers and applying for international protection at the border’.

EASO is a European Agency created in 2010 with a mandate to support Member States of the European Union when they encounter particular difficulties in maintaining their asylum system. In Greece, an amendment to the law introduced in June 2016³⁷ permitted EASO staff to carry out asylum application interviews in the accelerated border procedure. The May 2018 reform extended this involvement by allowing EASO officers to participate in interviews as part of the regular procedure. Since August 2018, EASO officers have conducted interviews as part of the normal procedure. Over the course of 2018, EASO deployed 175 protection officers from other EU Member States across Greece, as well as 91 locally recruited officers, 29 vulnerability experts, 2 Dublin experts and 2 experts in country of origin information (COI) research³⁸.

35 Article 62 of Law n° 4609/2019 amending article 7 of law n° 4540/2018.

36 ELENA, ECRE, *The living conditions for migrants and refugees on the Eastern Aegean islands*, 2019.

37 Article 80(13) L4399/2016.

38 GCR, ECRE, *Country report : Greece*, AIDA, 2018 Update, p. 24.

In 2018, the EU Ombudsman highlighted concerns that EASO was potentially acting beyond its mandate in Greece, notably due to the role played in making final decisions on asylum applications. The Ombudsman opinion refers to Article 2 (6) of the EASO Founding Regulation³⁹, according to which ‘EASO is not competent to rule on individual requests for international protection presented by the competent authorities of the Member States in the field of asylum’⁴⁰. This opinion follows a complaint lodged by the European Center for Constitutional and Human Rights alleging that, in Greek hotspots, EASO was acting far beyond its competency⁴¹. In practice, under border procedures as applied on the Aegean islands, after having carried out an interview, the EASO caseworker writes an opinion (‘concluding remarks’) and recommendation for decision which is passed to the Greek Asylum Services. The latter then makes the decision on the application without having ever met the applicant.

EASO opinions include the following information:

- summary of the applicant's statement
- vulnerability assessment
- summary of key facts
- credibility assessment
- assessment of the risk of persecution or serious harm.

The conclusion of the opinion is a recommendation setting out whether the concept of "safe third country" (see below, ‘b’) can be applied to the present case, and whether the claim for refugee status or subsidiary protection should be accepted. In practice, the vast majority of recommendations transmitted by EASO to the Greek Asylum Service are adopted by the latter, even though the drafting of an opinion and recommendation in this way is not provided for by Greek law. Through its agencies, the European Union therefore exercises a form of control and interference in Greek asylum policy. The Greek Asylum Service has also stressed that participation of EASO experts in the procedure is of significant political importance to the implementation of the EU-Turkey agreement, not only by the Greek state but for the European Union as a whole⁴².

39 Regulation 439/2010.

40 European Ombudsman, 5th July 2018, Decision in case 735/2017/MDC on the European Asylum Support Office’s (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, paragraphe 33.

41 For further information : ECCHR, Case report, March 2018, « EASO’s involvement in Greek Hotspots exceeds the agency’s competence and disregards fundamental rights ».

42 Information provided by Greek Asylum Service, 10th July 2019 (cf. note 59 page 12 of report « Le rôle des opérations d’EASO dans les systèmes d’asile nationaux »).

As can be seen from the table below, EASO’s involvement in Greece is unique in that it is present at all stages of the asylum procedure⁴³ :

THE ROLE OF EASO OPERATIONS IN NATIONAL ASYLUM SYSTEMS

AREAS OF EASO SUPPORT TO NATIONAL AUTHORITIES BY OPERATION				
Area of support	GR	IT	CY	MT
Registration	✓	✓	✓	✓
Dublin procedure	✓	✓	✗	✓
Examination of asylum applications at first instance	✓	✓	✓	✓
<i>Conduct of first instance interviews</i>	✓	✗	✓	✓
<i>Drafting of opinions for first instance decisions</i>	✓	✗	✓	✓
Appeal	✓	✗	✗	✗
Reception system	✓	✓	✓	✗

Source: *Operating Plans Greece 2019; Italy 2019; Cyprus 2019; Malta 2019.*

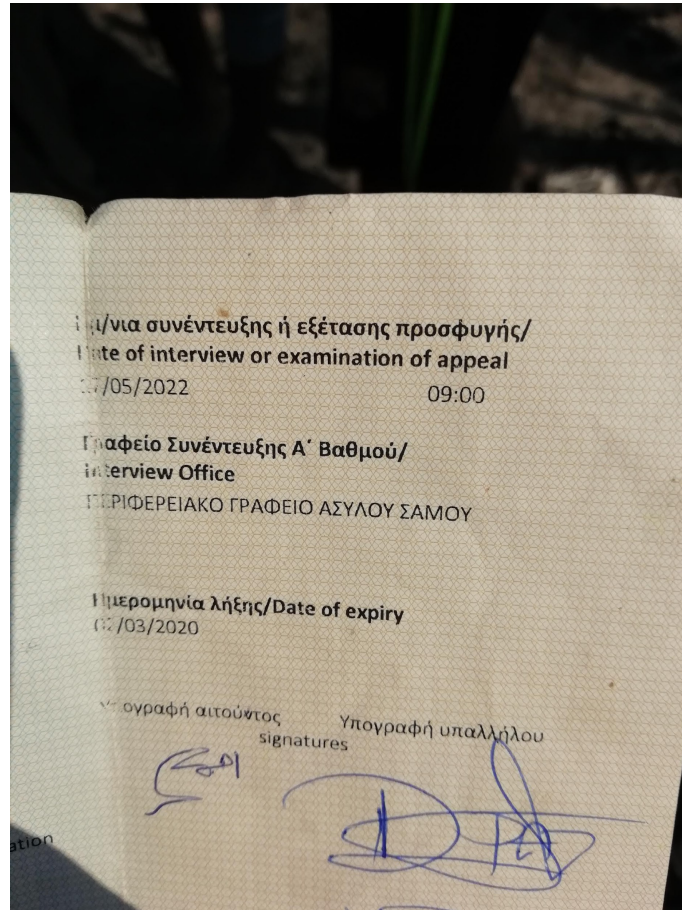
Procedural Deadlines

Local NGOs and other organisations expressed concerns over implementation of the accelerated border procedure due to the extremely short procedural deadlines. By law, processing of asylum applications should be concluded within a period not exceeding two weeks; decisions must be made within one day of the interview, with the applicant notified at the latest one day after this. In the event of a rejection decision, appeals must be lodged within five days, and should be examined no less than two days, but no more than three days, after being registered.

Such short deadlines seriously threaten the quality of examination of asylum applications and undermine respect for the rights of asylum seekers. And yet, in practice, operation of the so-called ‘accelerated’ procedure in the Greek Aegean hotspots is shown to last months, and even years, during which time people are kept in situations of severe legal precarity and material insecurity.

In the case of Samos, considering the situation in the weeks preceding and following the date of the Gisti visit, it was observed that since mid-August 2019, new arrivals on the had not yet been given a date for full registration of their asylum applications. For most of these people, registration did not take place until November, three months after their arrival, and the date allocated for their asylum interviews was often in 2021 or 2022, two or three years later ...

⁴³ Report published on 29th November 2019, *The Role of EASO Operations in National Asylum Systems*, p. 6.



Example shows interview date in May 2022

Experience has shown that, in practice, such far off dates are somewhat fictitious, and interviews are later brought forward. But even then, generally it is still not less than one year after the arrival of the person on the island. What is more, people are often notified of this change at very short notice, a couple of days before the new interview date, which poses serious difficulties for people to obtain legal assistance to prepare for (and potentially be represented at) the interview, as is their right under the Recast European Asylum Procedures Directive⁴⁴. After the interview, it is common for people to have to wait at least six months for a decision from the Greek Asylum Service.

The Directive recalls that Member States must ensure decisions are taken within a reasonable time, and permits accelerated border procedures so long as decisions are taken *‘without prejudice to an adequate and complete examination being carried out and to the applicant’s effective access to basic principles and guarantees provided for in this Directive.’* This is far from the case in the Aegean islands, where the accelerated procedure is deployed as a means for the authorities to confine and restrict movement of people seeking asylum for indeterminate lengths of time, during which infringements of fundamental rights continue to worsen.

⁴⁴ Directive 2013/32/UE, of 26th June 2013

b. The Safe Third Country Concept : Problematic Method for Nationality Sorting

'Besides the fact that differentiation of applicants according to nationality is an underlying premise of the fundamental right to asylum, the use of nationality as determinative of the method through which claims for international protection are examined undermines the critical importance of making an individual assessment according to the specific circumstances of each refugee'⁴⁵.

The European Procedures Directive provides that an asylum application is 'inadmissible' (and therefore does not justify an examination on the merits by the authorities of the state where it is presented) when 'a country which is not a Member State is considered as a safe third country for the applicant'⁴⁶. The definition of a 'safe third country', set out in article 38 of the same directive, was inserted into Greek Law 4375/2016 of April 3rd 2016. According to Article 56, paragraph 1 of the Greek law :

A country shall be considered as a safe third country for a specific applicant when all the following criteria are fulfilled:

- a. the applicant's life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion,*
- b. this country respects the principle of non-refoulement, in accordance with the Geneva Convention,*
- c. the applicant is in no risk of suffering serious harm according to Article 15 of Presidential Decree 141/2013,*
- d. the country prohibits the removal of an applicant to a country where he/she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law,*
- e. the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Geneva Convention and*
- f. the applicant has a connection with that country, under which it would be reasonable for the applicant to move to it.*

There is no pre-established list of safe third countries at European level or in Greek law. However, the agreement concluded in March 2016 between the EU and Turkey (the EU-Turkey Declaration) points towards de facto recognition of Turkey as a 'safe third country', a designation which is intended to apply for nearly all people arriving on the Greek islands and seeking asylum, regardless of eligibility for refugee status or other forms of protection, as set out in the declaration:

'All new irregular migrants who leave Turkey to reach the Greek islands from March 20, 2016 will be returned to Turkey. This will be done in full compliance with EU law and international law, thus excluding any form of collective expulsion. All migrants will be protected in accordance with applicable international standards and respecting the principle of non-refoulement.'

45 Marie-Laure Basilien-Gainche, « Surveiller & Bannir. Approche foucauldienne des camps comme hétérotopies », in M. Beulay, A.L. Chaumette, L. Dubin et M. Eudes (dir.), *Encampés, de quel(s ?) droit(s) ?*, Institut pour la justice et la démocratie, Lextenso/LGDJ, Paris, 2020.

46 Law n° 4375/2016, article 56(1).

To give the impression of conformity with principles of international and EU refugee law, the EU-Turkey Declaration specifies:

‘Migrants arriving in the Greek islands will be duly registered and any asylum request will be dealt with individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with the United Nations High Commissioner for Refugees (UNHCR). Migrants who do not claim asylum or whose asylum request has been found to be unfounded or inadmissible in accordance with the above-mentioned directive will be returned to Turkey.’

An Ad Hoc and Discriminatory Mechanism

The combination of the safe third country concept as set out in the Procedures Directive and Greek law along with the EU-Turkey Declaration has led to the establishment, in the Greek island hotspots, of a sorting process of asylum seekers along nationality lines.

Effectively, the procedure differs depending on whether an applicant is Syrian, or whether they belong to nationalities with particularly high or low recognition rates for international protection (i.e. where the average protection rate is greater or less than 25% based on EU-wide statistics).

- Syrian claims are examined with regard to the concept of a safe third country. That is, from the perspective of eligibility to stay in Greece, rather than on the merits of the claim. This means that only Syrians who can prove that they would not be safe if returned to Turkey, or who fall under the category of so-called ‘vulnerable’ people (see below) are seen as having ‘admissible’ protection claims for examination in Greece under normal procedure.
- Asylum claims from persons belonging to nationalities with a low rate of recognition of international protection are examined under the accelerated procedure on the merits.
- For persons of non-Syrian nationality with a high average protection rate, claims are examined on both admissibility and merits ("merged procedure").

This method of sorting, which consists of applying different procedures depending on nationality, has no legislative basis, either in European law or in Greek law. It was initially set up as a pilot project - the ‘low country profile project’ - in October 2016 on the island of Lesbos. Yet the provisional period continued well beyond this initial phase and was actually extended to other islands⁴⁷. In establishing such a framework, clearly differentiating between asylum-seekers according to their nationality, this method violates the principle of non-discrimination enshrined in article 3 of the 1951 Geneva Convention relating to the status of refugees⁴⁸.

47 The asylum procedure applied in the hotspots is set out in [this table](#).

48 Article 3 Non-discrimination : “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin”

Turkey – Safe Third Country ?

In May 2019, the NGOs *Refugee Support Aegean* (RSA) and *Pro Azyl* urged EASO to release a document they had been sent in draft form, entitled ‘*Country information pack: the asylum system in Turkey*’, owing to its essential content relating to the Turkish asylum system⁴⁹. According to these NGOs, the document provides evidence that Turkey cannot be considered a safe third country.

The EASO document outlines the four types of protection for asylum seekers provided for under the Turkish system:

- ‘Temporary protection’ for Syrians
- ‘Conditional refugee status’ for non-European and non-Syrian people
- ‘Refugee status’ for Europeans
- ‘Subsidiary protection’ Syrians not included.

According to the Directorate General for Migration Management, which reports to the Turkish Interior Ministry, 114,537 people claimed international protection in 2018⁵⁰. These figures relate to Iraqi, Afghan, Iranian, Somali, Pakistani, Palestinian, Yemeni, Uzbek and Turkmen claims. In addition, 3,628,120 Syrian nationals were granted temporary protection in 2018. Official figures do not include any protection claims from people of African origin, except Somalis, which is indicative of the situation for Africans in Turkey. In the EASO document on asylum in Turkey (mentioned above), nationals of African countries are grouped together (‘persons from the African continent’, ‘Africans’) rather by reference to individual states or nationalities⁵¹.

This erasure of people from different African countries in the Turkish data is particularly worrying because it does not prevent EASO from carrying out admissibility assessments on these people based on the safe third country concept. The situation is all the more worrying as there is a lack of transparency in the way the Greek Asylum Service and EASO conduct interviews. For example, in Samos, up until the beginning of summer 2019, people of Congolese and Cameroonian origin were not asked about the admissibility of their asylum request with regard to the concept of a safe third country. Then, from August 2019, EASO began examining asylum claims of a significant number of people of Congolese origin including spending several hours on questions relating to Turkey.

49 For further information see RSA website.

50 ECRE, *Country report : Turkey*, AIDA, update 2018, p. 9.

51 EASO, *Country Information Pack ; The Asylum system in Turkey*, Last updated 15th June 2016, p. 32.

In 2018, the European Ombudsman highlighted her concerns about this procedure, accepting ‘*that there are genuine concerns about the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted*’⁵². The statistics cited by Turkish authorities, the lack of information relating to protection of people of African origin, and testimonies from the latter as to the high levels of racism and discrimination suffered in Turkey, in addition to widespread deportations to countries like Syria or Afghanistan, are all evidence that Turkey cannot be considered a safe third country.

In practice, the number of people returned from the Greek hotspots to Turkey is low. The policy is deployed in a seemingly discriminatory manner (for a number of migrants from countries from Sub-Saharan Africa) and without considering the risks actually incurred by people of Syrian or Afghan origin, since Turkey is likely to deport them to their countries of origin, despite the known risks⁵³.

Decision-making models used to declare claims from Syrian applicants in Greece inadmissible in 2019 were the same as those which had been established in 2016. The identical and repetitive character of such decisions betrays the fact that they were not taken following any genuine individual assessment, and do not take into account the geopolitical and legislative developments in Turkey which occurred since 2016. Thus, while it has been alleged that, since 2019, Turkey has repeatedly violated the principle of non-refoulement for people of Syrian origin, Greek authorities continued to carry out admissibility examinations and apply the safe third country concept.

52 European Ombudsman, 5th July 2018, Decision in case 735/2017/MDC on the European Asylum Support Office’s (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, paragraph 46.

53 ECRE, 13th April 2018, “Turkey responds to increasing arrivals of Afghans with mass deportation”; Amnesty International, 25th October 2019 « Des réfugiés illégalement déportés vers la zone de guerre syrienne ».

2. Vulnerability : A Tool for Managing Migratory ‘Flows’

‘The notion of vulnerability raises ethical and political questions linked to the assessment of suffering in the processing of asylum claims, and the extent to which it plays a role in reception policies’⁵⁴

a. The concept of vulnerability in Greek law

The concept of ‘vulnerability’, in relation to people seeking asylum, is invoked in the European asylum directives (both the Reception Directive and the Procedures Directive), requiring Member States to adopt specific protection measures for ‘vulnerable’ persons. This questionable concept thus introduces a method for categorising asylum seekers arriving in Europe, while seeming to overlook the fact that all persons arriving may be in a situation of vulnerability owing to traumatic journeys and sea crossings, in addition to events suffered in their countries of origin. Nonetheless, to fully understand the processes at play in the hotspots, it is necessary to consider the legal implications of ‘vulnerability’ as set out in Greek law, which itself follows the definition set out in the Reception Directive.

Article 14 of the 2016 Greek law sets out seven categories of people to be recognized as ‘vulnerable’: a / unaccompanied minors, b / people with disabilities or suffering from a serious or incurable disease, c / the elderly, d / pregnant women or women who have recently given birth, e / single parents with minor children, f / victims of torture, rape or other significant forms of psychological, physical or sexual violence or victims of any other form of exploitation, people suffering from post-traumatic stress, especially survivors or families of victims of a shipwreck, g / victims of human trafficking⁵⁵.

Article 20 (1) of the law of May 22nd 2018 (L4540 / 2018), which transposes the Reception Directive into Greek law, redefines the list of vulnerable people, and although it is presented as indicative rather than exhaustive, the new list does not mention people suffering from post-traumatic stress.

Identifying ‘vulnerability’ may be done at two stages: either at the start of the procedure, during the person’s first medical appointment, or during the processing of their asylum claim. A medical and psychological assessment is carried out by the staff of the *Center for Disease Control and Prevention*, known by the acronym ‘KEELPNO’, which reports to the Greek Ministry of Health. This assessment results in a ‘categorization of vulnerabilities’. Category A means that the person is recognized as vulnerable within the meaning of Article 20 (1) of law 4540/2018 (see above). Category B means that the person has significant health problems which require special attention, but does not come within the list of vulnerable persons as defined in the law. Finally, category C indicates that the person has no health problems.

54 Elodie Boublil and Laure Wolmark, « <https://journals.openedition.org/revdh/3502> », *La Revue des droits de l’homme* [Online], 13 | 2018, online 5th January 2018.

55 Law n° 4375/2016, article 14 (8).

The main consequence of recognizing someone as ‘vulnerable’ is that the person’s claim is no longer considered within the accelerated border procedure. Instead, the claim is processed under the regular asylum procedure. This means: geographic restrictions are lifted so the person may travel to the mainland; the person is no longer at risk of being sent back to Turkey; examination of the claim will focus only on reasons for leaving the country of origin; and the asylum interview must be adapted to suit the specific needs of that person. It should be noted that under the Greek law, ‘vulnerability’ status and lifting of geographic restrictions does not necessarily entail transfer to the mainland⁵⁶. However, the lack of suitable facilities and infrastructure for adapting adequately to the needs of ‘vulnerable’ persons means vulnerability is often seen as synonymous with transfer to mainland Greece, even if, in practice, this can often take many months to organise.

In 2018, out of 25,540 people admitted to Greek territory following admissibility interviews carried out in the five hotspots, 21,020 of these were recognized as ‘vulnerable’⁵⁷. In other words, more than eighty per cent of the people held on the Aegean islands were recognized as requiring special procedural guarantees, which seems to undermine any case for confining them to the hotspots.

In Samos, as in the other Greek hotspots, vulnerability assessment often gives rise to breaches of protection duties owed to the persons concerned, primarily relating to slowness of the procedure, lack of resources, and lack of trained staff and competent personnel.

b. The Failure to Identify and Protect Vulnerable Persons

The legislative framework does not provide for a specific time limit within which the medical examination and vulnerability assessment ought to be carried out. In fact, Article 50 of the 2016 law indicates only that the assessment must be made within a ‘reasonable period of time’⁵⁸ following registration of the claim. Such vagueness gives rise to practices which cannot be said to uphold guarantees owed to applicants in these circumstances. For example, in Samos, some migrants who arrived on the island in mid-August 2019 were still awaiting assessments three months later. Reasons for such a long delay are mainly linked to lack of medical and other qualified personnel, including interpreters.

56 Law n° 4375/2016, article 14(8), “persons belonging to vulnerable groups can remain in Reception and identification centres in special areas until completion of the procedures [...] Reception and identification Services shall take special care to cater for the particular needs and the referral of families with children under the age of 14, especially infants and babies”.

57 AIDA, ECRE, *Fast-track border procedure (Eastern Aegean islands)*, 2018, p. 4.

58 Law n° 4375/2016, article 50, *Applicant in need of special procedural guarantees*, “The receiving authorities shall assess within a reasonable period of time after an application for international protection is made, [...] whether the applicant is in need of special procedural guarantees, especially when there are indications or claims that he/she is a victim of torture, rape or other serious forms of psychological, physical or sexual violence”.

Insufficient Means

The PHILOS programme - ‘Emergency health response to the refugee crisis’ - was designed by the European Union to support the Greek health system in coping with increased demand following migrant arrivals in 2015. According to KEELPNO, 3.4 million euros were granted in 2015 by the International Security Fund (ISF) to fund health facilities in the Aegean islands⁵⁹. In 2016, the PHILOS 1 programme was launched, funded by the Asylum, Migration and Integration Fund (AMIF). Yet, despite these resources being made available, the scheme’s ability to deploy sufficient personnel to meet the needs on the islands was, and remains, a failure. A significant portion of the budget allocated by European funds under PHILOS 1 and 2 was used to cover existing budgetary shortfalls in Greek hospitals, without consideration of meeting additional migrant health needs on the islands.

Unqualified Staff

Not only is there a general lack of medical professionals on the island, those that are present often lack the necessary skills for dealing with the needs of people seeking asylum. For example, doctors and psychologists are not specialized or experienced in treating people with trauma, or victims of torture or sexual violence. And yet, Article 23 of Greek law 4540/2018 requires that medical certificates for victims of torture and / or sexual violence be issued by health professionals at the public hospital, the military hospital or by a qualified doctor from a public health institution. Doctors Without Borders (MSF – *Médecins sans Frontières*) has staff competent to draw up such certificates, but owing to the abovementioned legislative provision, their certificates cannot be taken into account by the reception and asylum authorities in vulnerability assessments. As a result, there is a lack of any medical certification process or organised care for survivors of trauma, torture and sexual violence.

Poor Communication

In addition to the lack of qualified personnel for carrying out assessments, two other barriers contribute to failures in identifying and responding to vulnerabilities: the lack of interpreters for certain languages (notably Pashto and Somali) and the fact that the only doctor competent to carry out initial medical examinations is a man. Many women (and some men) feel unable to report their experiences of (sexual) violence to a man, who is often accompanied by a male interpreter. The first medical examination, which can be a crucial determinant of how the rest of a person’s procedure will evolve, is therefore, in many cases, not a true reflection of the person’s physical and psychological state.

These shortcomings in hotspot health procedures have serious consequences for asylum claims. It is not uncommon that, due to difficulties cited above, applicants do not mention their health problems or trauma suffered until many months after their arrival. This leads decision-making authorities to doubt the veracity and credibility of their suffering. There seems to be a problematic expectation

⁵⁹ RSA, Pro Azyl, *Structural failure: Why Greece’s reception system failed to provide sustainable solutions*. June 2019

that people seeking asylum must always give a full and true account, regardless of the conditions under which interviews or examinations are carried out.

These compound failures cause further deterioration of the physical and mental health of people kept on the island. A study by MSF, Epicenter and the London School of Hygiene and Tropical Medicine reports that 96.5% of the population surveyed in the Samos camp suffers from moderate or severe psychosomatic disorders. The report also notes that the main stressors encountered among refugee populations in Samos are living conditions, waiting, bureaucratic complexity, the feeling of discrimination (particularly strong among non-Syrians), and the absence of educational or professional activities⁶⁰.

A further major problem is the lack of transparency and access to information. Indeed, it is very difficult for both lawyers and asylum applicants to understand how the vulnerability assessment is carried out, and under what timeframe. The vulnerability assessment report (which indicates whether the person is Category A, B or C) is never provided to asylum seekers themselves. People who have a lawyer (a small minority) may obtain a copy by requesting access to their asylum file. This level of complexity and opacity generates significant stress for people trapped on the island.

3. The Problematic Treatment of Unaccompanied Minors

a) Legal Principles and Framework

The International Legal Framework and Caselaw of the European Court of Human Rights

Under Article 20 of the Convention on the Rights of the Child (CRC): *‘A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.’*⁶¹

The Parliamentary Assembly of the Council of Europe has addressed issues relating to the arrival, reception and return of unaccompanied children in Europe. Resolution 1810 (2011) of the Assembly recalls in particular the primacy of the best interests of the child principle, the primacy of status as a child over that of ‘migrant’, the importance of the establishment of a system of guardianship in addition to legal, social and psychological assistance, and the prohibition of the detention of children.

The European Court of Human Rights (ECtHR) mainly refers to these two legal authorities when ruling on the care of unaccompanied children by States parties.

60 Clément Perrin, « Samos, une île grecque au service d’une politique de dissuasion migratoire » *in* Babels, *Méditerranée : des frontières à la dérive*, Le passager clandestin, October 2018.

61 [Convention on the Rights of the Child, 20 November 1989.](#)

For the ECtHR, it has become settled case law that the extremely vulnerable situation of unaccompanied children takes precedence over their status as foreign nationals with irregular migration status⁶². The Court has also observed, in a case brought against the Greek State, that unaccompanied minors fall into the ‘*category of the most vulnerable people in society*’ and that an obligation to protect and care for these children is incumbent on States⁶³.

In 2018, the ECtHR thus condemned France for violating Article 3 of the CRC with respect to the lack of care for minors during the dismantling of the Calais jungle camp. The Court made this finding on grounds that States have positive obligations to protect and take care of unaccompanied minors flowing from the aforementioned legal sources⁶⁴.

In 2019, the Court considered the living conditions of unaccompanied minors in the informal Idomeni camp on the Greek-Macedonia border during 2016. Under Greek law, the competent public prosecutor must be informed immediately of the presence of unaccompanied minors, in order to implement appropriate protection measures. This procedure not having been applied, the Court noted that:

*“61. The applicants thus lived for one month in the Idomeni camp in an environment unsuited to their status as adolescents, be it in terms of security, housing, hygiene or access to food and healthcare, and in a level of insecurity that is not appropriate for their young age. In view of this finding, the Court is not convinced that the authorities did everything that could reasonably be expected of them to meet the obligation to care for and protect the applicants mentioned above, which is incumbent on the Respondent State with regard to persons who are particularly vulnerable on account of their age.”*⁶⁵

The Court found a violation of Article 3 of the Convention on grounds that “... *these circumstances raise questions about respect of the obligation to protect and care for unaccompanied foreign minors by the respondent State*”⁶⁶.

In reaching these conclusions, the Court relied on the CPT report⁶⁷ (quoted above) which urged the Greek authorities to substantially increase the number of open (or semi-open) accommodation centers intended specifically for unaccompanied minors, and undertake wholesale review of their policy regarding detention of unaccompanied minors, whether for reception and identification or for protection purposes.

On 10th October 2019 the Court ruled on interim measures under article 39 of the Convention with regard to the inhumane and degrading treatment suffered by twenty unaccompanied minors while detained in Greek police stations. The Court called for transfer of these children to suitable

62 ECtHR, N.T.P. and others v. France, n°[68862/13](#), § 44, 24th May 2018.

63 ECtHR, Rahimi v. Greece, n°[8687/08](#), § 74, 5th July 2011.

64 ECtHR, Khan v. France, n°[12267/16](#), § 44, 28th February 2019.

65 ECtHR, SH.D. and others v. Greece, Austria, Croatia, Hungary, Macedonia, Serbia and Slovenia, n°14165/16, § 61, 13th September 2019.

66 *Ibid.*, § 60.

67 Cf. *supra*, notes 25 and 26.

accommodation centers so that their reception conditions would be compatible with article 3 of the Convention. No guardian had been appointed and they had not been informed of the duration or reasons for their detention⁶⁸.

However, alleged violations of article 3 presented in the case of Kaak and others against Greece were not accepted by the Court on grounds that:

'- The unaccompanied minor applicants were placed in the safe zone of the VIAL camp where supply of meals and other basic necessities was separate from the rest of the camp population (...)

- 72. In a letter addressed to the Court on 16th June 2016, the applicants mention that when they were registered in the VIAL camp, they declared that they were 19 years old.⁶⁹'

The Court concluded that it was *'not convinced that the authorities did not do everything that could reasonably be expected of them to meet the obligation to care for and protect the applicants (...)'*⁷⁰.

European Law

Article 21 of the Reception Directive also explicitly lists unaccompanied minors as coming within the categories of vulnerable persons⁷¹.

Under Article 24 of that Directive, relating specifically to the rights of unaccompanied minors, Member States must *'as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive.'* Moreover, the minor must immediately be informed as to appointment of the representative, and the latter must *'perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end.'*⁷².

68 Arsis, 10th October 2019, « [The ECHR grants interim measures putting an end to the detention of unaccompanied minors in police stations](#) ».

69 ECtHR, Kaak and others v. Greece, n°34215/16, § 67 et § 72, 3rd October 2019.

70 *Ibid.*, § 73.

71 Directive 2013/33/UE, 26th June 2013, article. 21.

72 *Ibid.*, article 24.

Greek Law

Under Greek law, Presidential Decree No. 220/2007 defines the obligations of the Greek state towards asylum-seeking minors. Article 19 of this decree, relating to unaccompanied minors, requires competent authorities to take appropriate measures immediately, including informing the competent prosecutor of the presence of unaccompanied minors.

More specifically, within the framework of the accelerated border procedure and under article 27 of Law No. 4375/2016, the director of the reception and identification center is responsible for *'designing and implementing a reception policy for unaccompanied asylum-seeking minors'*⁷³. Responsibility for unaccompanied minors therefore lies with the reception center's management body.

Within the reception department there is a section dedicated to the protection of unaccompanied minors. This sub-department has specific competency for designing and monitoring policy implementation surrounding the reception and social protection of minors, notably in relation to overseeing guarantees relating to legal representation, appropriate living conditions, promotion of family unity and family reunification⁷⁴.

The appointment of a guardian and the age determination procedure:

Under article 45 of Law No. 4375/2016, when an unaccompanied minor makes a request for asylum, a guardian must immediately be appointed to represent that minor and ensure that s/he is informed of the procedure and has the fullest possible understanding. The guardian can attend the asylum interview in order to ask questions or offer observations.

If there is any doubt as to age, the authorities may subject the young person to age determination procedures. The guardian must take all necessary steps to protect the best interests of the child during the age determination procedure. An unaccompanied minor must be informed, in a language s/he understands, of the determination procedure, the methods used, and the consequences in the event of his/her refusal to submit to this examination. He or she is considered to be a minor until the end of the determination procedure. In the event of uncertainty following age determination procedures, the alleged minor should be accorded benefit of the doubt.

Ultimately, the law recalls that respect for the best interests of the child is a primary obligation that should be at the heart of all procedures concerning minors.

⁷³ Law n°4375/2016, article 27 (1).

⁷⁴ *Ibid.*, (2), § c, aa), bb), cc), dd).

b) Failures in Samos

In Samos, unaccompanied minors are the responsibility of the state and, by delegation, the camp management authorities. Two associations are present in the camp to ensure implementation of child protection measures: Metadrasi and Prakis.

Metadrasi is responsible for representing unaccompanied minors in their procedures, and therefore for appointing a guardian. In Samos, the association has only one person authorized to act as a guardian. Given the number of unaccompanied minors present in Vathy (380 on the date of this fact finding mission), it would be impossible for this one person to represent every minor. This significant understaffing means that the sole guardian prioritises minors under the age of fourteen, and young girls, and limits their involvement to overseeing asylum procedures.

Praksis has a team of social workers and one psychologist. Up until September 2019 the team also included a lawyer, but that post remained vacant at the time of this mission. The Praksis team is responsible for unaccompanied minors over the age of fifteen, in particular for helping with family tracing. Unfortunately, this association is also significantly understaffed and cannot cover the needs of all unaccompanied minors in Samos.

Another notable problem is that unaccompanied minors are sometimes registered as adults, even when they have a photocopy of their birth certificate attesting to their minority⁷⁵. This situation has disastrous consequences, because once the presumption of minority has been rejected, it is near impossible to reverse, as we have seen in the judgment of the ECtHR in *Kaak and others v. Greece*⁷⁶.

In view of such shortcomings, the organisation 'Still I Rise' filed a criminal complaint against the camp director and her staff for breaching obligations owed to minors, and attacks on the physical integrity of minors.

Under both Greek and European law, as well as under principles laid down by the European Convention on Human Rights and the case-law of the ECtHR, it is clear that Greek authorities are failing to undertake measures that are necessary and sufficient to fulfil positive obligations in the field of child protection.

⁷⁵ Cf. witness statement, *supra*, section 8.

⁷⁶ ECtHR, *Kaak and others v. Greece*, n°34215/16, § 72, 3rd October 2019.

4. Lack of Access to Legal Advice and Breach of Right to an Effective Remedy

a) Legal Framework

International Legal Framework and Case Law of the European Court of Human Rights

Article 13 of the European Convention on Human Rights sets out the right to an effective remedy:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

The European Court of Human Rights has ruled on violation of this article in the context of asylum procedures in a 2011 decision, where the Court considered that deficiencies in the Greek asylum procedures relating to lack of access to legal information and legal aid constituted a violation of Article 13 of the Convention. The broader findings in this case are applicable to the current situation in Samos.

‘(A)lthough the applicant clearly lacks the wherewithal to pay a lawyer, he has received no information concerning access to organisations which offer legal advice and guidance. Added to that is the shortage of lawyers on the list drawn up for the legal aid system (see paragraphs 191 and 281 above), which renders the system ineffective in practice. Contrary to the Government’s submissions, the Court considers that this situation may also be an obstacle hindering access to the remedy and falls within the scope of Article 13, particularly where asylum-seekers are concerned.’⁷⁷

More recently, in a 2018 decision, the Court considered that Greek authorities had still failed to remedy the lack of access to legal assistance, even though a Presidential Decree issued in the interim period had purported to make up for deficiencies highlighted in the previous decision:

‘79. The Court recalls that in its judgment M.S.S. vs. Belgium and Greece (cited above), it noted failings in the Greek asylum system, as it was at the time of the application of Presidential Decree No. 81/2009, and in particular those deficiencies linked to access to asylum procedures (MSS v. Belgium and Greece, cited above, §§ 300-302, 315, 318 and 320). In this regard, the Court noted in particular the following failings: insufficient information for asylum seekers on procedures to be followed; difficulties in accessing the Attica police station; the lack of reliable communication system between the authorities and asylum seekers; the shortage of interpreters and lack of staff expertise in conducting individual interviews; the lack of legal aid preventing asylum seekers from being

⁷⁷

ECtHR, M.S.S v. Belgium and Greece, n°30696/09, § 319, 21st January 2011.

accompanied by a lawyer, and the excessive length of time taken to issue decisions.

80. *The Court observes that some of its findings in M.S.S. vs. Belgium and Greece (cited above) regarding asylum procedures in Greece remain relevant to the facts of the present case*⁷⁸.

Guarantees of the Right to an Effective Remedy under European Law

Directive 2013/32/EU, the Procedures Directive, provides for access to free legal assistance and representation where the applicant lacks resources⁷⁹.

People seeking asylum shall also be *‘informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2)*⁸⁰.’

Moreover, the Directive requires *‘Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.*⁸¹’ It also sets out the principle of access to an effective remedy⁸².

It is clear from these texts that effective access to free legal assistance and representation is required in appeal procedures.

Greek Law

Article 64 of Law No. 4375/2016 provides that asylum seekers should benefit from legal assistance at all stages of the procedure. At first instance, however, the absence of a lawyer or other counsel does not prevent the asylum interview from going ahead unless their presence is considered essential⁸³. The same provision allows lawyers to access reception and identification centers⁸⁴.

Article 44 of Law No. 4375/2016 provides that, if the asylum application is rejected, relevant information concerning reasons for the rejection decision and the possibility of appeal may be provided by civil society organizations⁸⁵. This provision also requires the possibility of free legal assistance in lodging the request for appeal, under conditions laid down by Law 3226/2004⁸⁶.

78 ECtHR, *A.E.A. v. Greece*, n°39034/12, § 79 et 80, 15th March 2018.

79 Directive 2013/33/UE 26th June 2013, article 21 § 2, a) et b).

80 *Ibid.*, art. 12.

81 *Ibid.*, art. 20.

82 *Ibid.*, art. 20 § 3: *“In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant’s effective access to justice is not hindered.”*

83 Law n°4375/2016, article 64, § 1.

84 *Ibid.*, article 64, § 5.

85 *Ibid.*, article 44, § 2.

86 *Ibid.*, article 44, § 3.

As indicated above, the time limit for appealing a negative first decision is five days from notification of that decision⁸⁷. Appeals have suspensive effect.

b) Situation in Samos

In Samos, the number of lawyers is grossly inadequate to meet demand for legal assistance. Four main organisations have taken on responsibility for informing and supporting people through their asylum procedures, but their capacity remains limited and they cannot compensate for lack of state provision.

At the time of this mission:

- The ASF France team (**Avocats sans Frontières France**) consisted of nine people: two Greek lawyers (paid), four volunteer legal advisers, two volunteer interpreters (Farsi and Arabic), and one coordinator (paid).
- The **Refugee Law Clinic Berlin** team included a coordinator (paid), three volunteer lawyers and two volunteer interpreters.
- Two Greek NGOs - **Metadrasi** and **Greek Council for Refugees** - with a total of four lawyers between them.

However, the complex nature of hotspot accelerated asylum procedures, combined with language barriers, makes legal assistance an essential component of effective access to the right of asylum. Basic information and documents issued to people are written in Greek, as are negative decisions, reasons, and notification of procedures and time limits for appeal, despite barely any asylum seekers able to speak or read Greek.

Lastly, on the island of Samos it is not possible to access a state appointed lawyer at appeal stage, despite the fact that representation at this stage is necessary, and that this part of the procedure is almost always done entirely on written papers⁸⁸.

87 *Ibid.*, article 61, § 1, c).

88 [In contrast to other European jurisdictions, there is generally no oral hearing at the appeal stage - AIDA Greece Report 2018](#), p. 82.

State-funded legal assistance on the islands: 2018	
Location	Number of cases handled

³⁴⁸ Ombudsman, *Return of third-country nationals – Special Report 2017, 2018*, available at: <https://bit.ly/2TG2wjv>.

82

Lesvos	52
Chios	160
Samos	0
Leros	0
Kos	33
Rhodes	160
Total	405

Source: Asylum Service, 26 March 2019.

Given their limited capacity, the four lawyers from Metadrasi and GRC are forced to take on only those appeals from pre-existing beneficiaries, in other words those that they have already assisted at first instance. In theory, it is possible to engage a private lawyer (for those who can afford it). In practice, however, just one lawyer out of the forty registered at the Samos Bar takes on asylum clients. ASF France attempts to contribute to filling this gap by drafting appeal applications and filing requests for additional time to be accorded by the Appeal Board (to give appellants a chance to find a lawyer), but the granting of such a request is discretionary.

In view of the rejection rate for appeals, which stands around 90%, the lack of lawyers and limited scope for NGO/civil society assistance is suggestive of severe impediments to exercise of the right to an effective remedy⁸⁹.

⁸⁹ *Ibid.*, p. 9.

CONCLUSION

In their conclusion to the previous report on the Greek hotspots, in July 2016, Gisti noted:

(...) the vast majority of migrants arriving on the islands of Lesbos and Chios, most of whom are seeking asylum, see their freedom severely restricted (they are prohibited from leaving the islands) while they wait for an ‘admissibility’ interview or, in the event that their asylum claim has been declared inadmissible, while they wait for a decision on appeals against the first decision, which would potentially lead to deportation to Turkey.

The mission highlighted the seriously inadequate living conditions (accommodation, food, access to healthcare) to which the detainees on the islands are subjected - more so in Chios than in Lesbos - as well as administrative and judicial treatment contrary to rights which should be recognized and upheld by the European Union and its Member States⁹⁰.

The report goes on:

*The immediate cause of these failings is attributable to the Greek administration, which is primarily responsible for managing the reception of migrants and asylum seekers on its territory. However, due to the unique combination of circumstances - Greece’s economic difficulties, the Mediterranean migratory context, the effects of European immigration and asylum policy in force for more than fifteen years, and, finally, the agreement between the EU and Turkey signed on 18 March 2016 - **the EU Member States and the Union itself bear responsibility for the ill-treatment and violations of rights suffered by migrants locked up in Greek hotspots.***

The presence of European agencies inside the hotspots only emphasizes this responsibility. This is particularly visible in the case of EASO, the European Asylum Support Office, which is closely involved in the process of examining asylum applications, and therefore in contributing to considerable delays in this area.

It is clear that, three years on, these findings and analysis remain relevant. The situation observed on Samos in 2019 shows that the hotspot approach, presented by the European Commission as a solution to end the tragic shipwrecks in the Mediterranean in 2015, has resulted in the establishment of camps where migrants’ rights are persistently violated. Far from being centers of reception and care in accordance with people’s needs, Greek hotspots such as that on Samos are, in reality, detention camps, far from the gaze of civil society. These hotspot camps are intended to deter people from crossing to Greece to claim asylum, as Jean Ziegler, representative of the United Nations Human Rights Council, suggested, following his visit to Lesbos in spring 2019:

‘Today, hotspots serve a specific purpose: deterrence and terror. It is about instilling such fear that persecuted people will not leave their countries. Information circulates in the world of refugees. Sinister EU bureaucrats hope that this strategy will deter those seeking refuge.

⁹⁰ Gisti, [Accord UE-Turquie, la grande imposture. Rapport de mission dans les hotspots grecs de Chios et Lesbos](#), July 2016.

*Enemies of the "European way of life" or, as the Polish Prime Minister puts it, "a threat to the ethnic purity" of the continent; the persecuted should be horrified by the living conditions in Lesbos and other hotspots. It is by allowing living conditions to develop in ways reminiscent of the terrible legacy of concentration camps that criminals in Brussels aim to stop the flow of refugees*⁹¹.



91 Jean Ziegler, *Lesbos, la honte de l'Europe*, Seuil, 2020.

Annex 1 : Chronology of Events in Samos (14th-20th October 2019)

Monday 14th :

In the evening, Vathy town centre, a fight between Afghan and Syrian refugees breaks out. Three young people are seriously injured. Information spreads and soon after, scuffles broke out in the southwest part of the camp and *jungle*. Garbage cans were set on fire and groups of refugees gathered on the road below the camp. Greek police intervene. A few hours later, a fire started, still in the southwestern part of the camp and *jungle*. Hundreds of people flee the flames and take refuge in downtown Vathy. Some are hosted by the various NGOs present on the island, but the majority find themselves sleeping on the streets or on the quays of the port. Meanwhile, firefighters intervene to stop the fire. Contrary to what some media reports indicate, this seemed to be the only action taken by a public actor during that night, to our knowledge.

Indeed, the camp residents were unanimous: during the fire, there was no formal or organised evacuation of the jungle; people fled the flames on their own, without any assistance.

Tuesday 15th :

Refugees and journalists go to the camp to see the consequences of the fire. Technicians restore electricity. The fire affected more than 600 shelters, straddling the southwest *jungle* and the extended area of tents. Hundreds of people are left with no shelter. Some people are trying to recover possessions that have not disappeared in the flames, others are already trying to put up a shelter with what is left. Many people leave the camp (or *jungle*) for fear of another fire, or reprisals between communities, or because they have nothing left. They are heading for downtown Vathy. By the evening, there are several hundred people set to spend the night outside on Themistocle Sofoulis square. Among them, a group of several dozen Syrians is organizing a sit-in. Displaying signs and placards, these refugees - men, women and children - denounce their deplorable living conditions and demand "open cards" in order to be able to reach the mainland. The response of the Greek authorities is simply to dispatch additional police forces⁹². In the aftermath of the fire, food was not distributed (according to one refugee: "They are punishing us").

Wednesday 16th:

In the camp, victims of the fire seem to have been abandoned. Some continue to clear the rubble while others try in vain to rebuild a shelter. Many lost what little they had, including their papers and records relating to their asylum process. In the middle of the afternoon, a demonstration made up of about fifty African refugees leaves the camp, heading towards the port. Protesters demand an end to violence, insecurity in the camp and "freedom for Africans". About a hundred meters away, the occupation of Themistocle Sofoulis square by about 200 people continues. Like the previous evening, around 7 p.m., a sit-in is organised by Syrian exiles. "*We are not safe here*" and "*We want to leave this island*" are slogans written hastily in French or English on flimsy cardboard signs carried by the demonstrators.

Thursday 17th:

Several camp services, including food distribution and the asylum administration offices, are officially closed today. The mayor of Samos issues a press release communicating saying that "the island has reached breaking point"⁹³.

Friday 18th :

Mid-morning, camp staff are parked on the vacant lot used as a soccer field in front of the 'secondary' camp entrance. Demonstrations took place at the main entrance of the camp, which led to the closure of the ICR. Then, several hundred Afghan refugees tried to leave the camp through the main entrance to go and demonstrate in central Vathy. They are stopped by a line of police. The latter cannot resist the mass of demonstrators for long, and are quickly overwhelmed. Seeing the arrival of police reinforcements, the procession stops on the vacant lot facing the camp. They re-organise themselves: on one side, the women, on the other, the men, and in front, in the middle, children, who start to brandish placards. "*Our tents have burned down*", "*We are not safe*", "*Justice*", "*Open the European borders*", "*Why is Greece keeping refugees on the islands?*" A group of demonstrators is preparing to carry out a "live" broadcast of the rally on social networks. One of them speaking out and explaining the reasons for the protest. A group of African refugees, until

92 Ekathimerini, 15th October 2019, « [Samos migrant camp fire leaves hundreds in the street](#) ».

93 Ekathimerini, 17th October 2019, « [Samos mayor warns island at breaking point after migrant camp fire](#) ».

now only spectating, began to participate in the protest. First shouting slogans (“Free” “Free the Africans”), then singing, and the start of a procession towards the reinforced cordon of police. The tension is mounting but does not escalate to clashes. The rally lasts a few hours (see videos).

In a media announcement, Minister of Citizen Protection Michalis Chrysochoidis announces that by the end of 2019, 20,000 people will be transferred from the Greek islands to the mainland⁹⁴.

Saturday 19th :

Dozens of Samos residents parade through the streets of downtown Vathy to denounce what is happening on the island. Protesters demand the immediate transfer of thousands of refugees on the island to the mainland or other European countries⁹⁵. One of the banners reads: "*Frontex, do your work, protect European borders*".

Monday 21st :

In the evening, 700 refugees are transferred by ferry from Samos to the mainland⁹⁶. Nearly 6,000 people are still stranded on the island, living in extremely precarious conditions in the Vathy jungle camp.

94 Ekathimerini, 18th October 2019, « [Minister says 20,000 refugees to be transferred from Greek islands by year-end](#) ».

95 Greek Reporter, 20th October 2019, « [Situation on Samos Deteriorates as Migrant Flows Continue to Arrive](#) ».

96 Mediapart, 31st October 2019, « [Sur l'île de Samos, une poudrière pour des milliers d'exilés confinés à l'entrée de l'UE](#) ».

Annex 2 : List of Interviewees

Domitille Nicolet, Co-founder and Coordinator, *Legal Centre Samos, Avocats sans frontières France*

Dimitris Ghoulis, Lawyer (Samos Bar)

Erimi Papanastasiou, Coordinator of Samos mission, *Médecins sans frontières Suisse*

Nausikaa Reimers, Logistics manager and coordinator, *A drop in the ocean*

Jasmine Doust, Co-founder and Coordinator, *Samos Volunteers*

Alexandra Bogos, Coordinator, *Refugee Law Clinic Berlin*

Sophie Gedeon, Founder and Coordinator, *Med'EqualiTeam*

Giulia Cicoli, Co-founder and Coordination Team Member, *Still I rise*

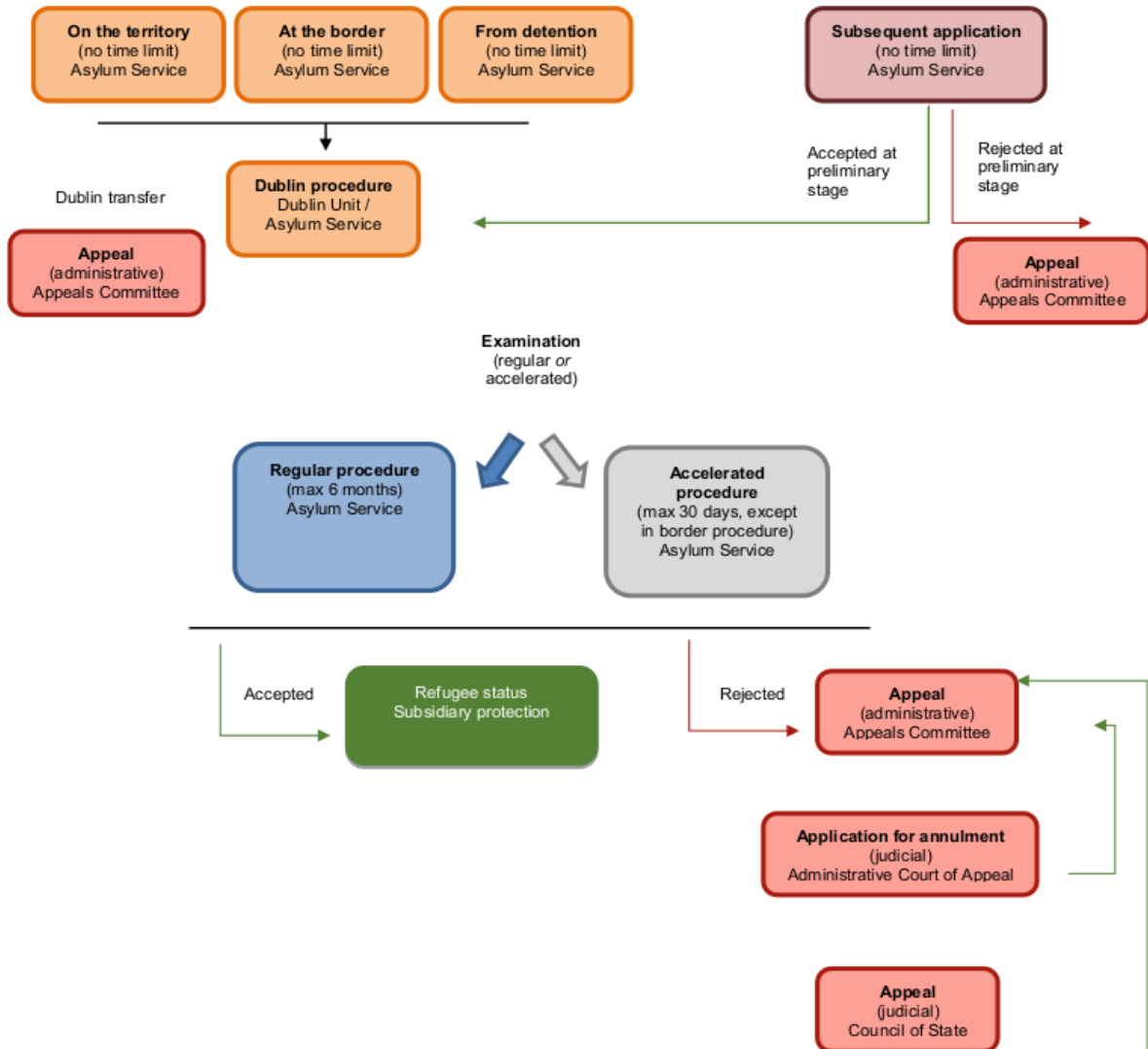
Annex 3 : Flowcharts of Asylum Procedures (AIDA Report 2018)

Asylum Procedure

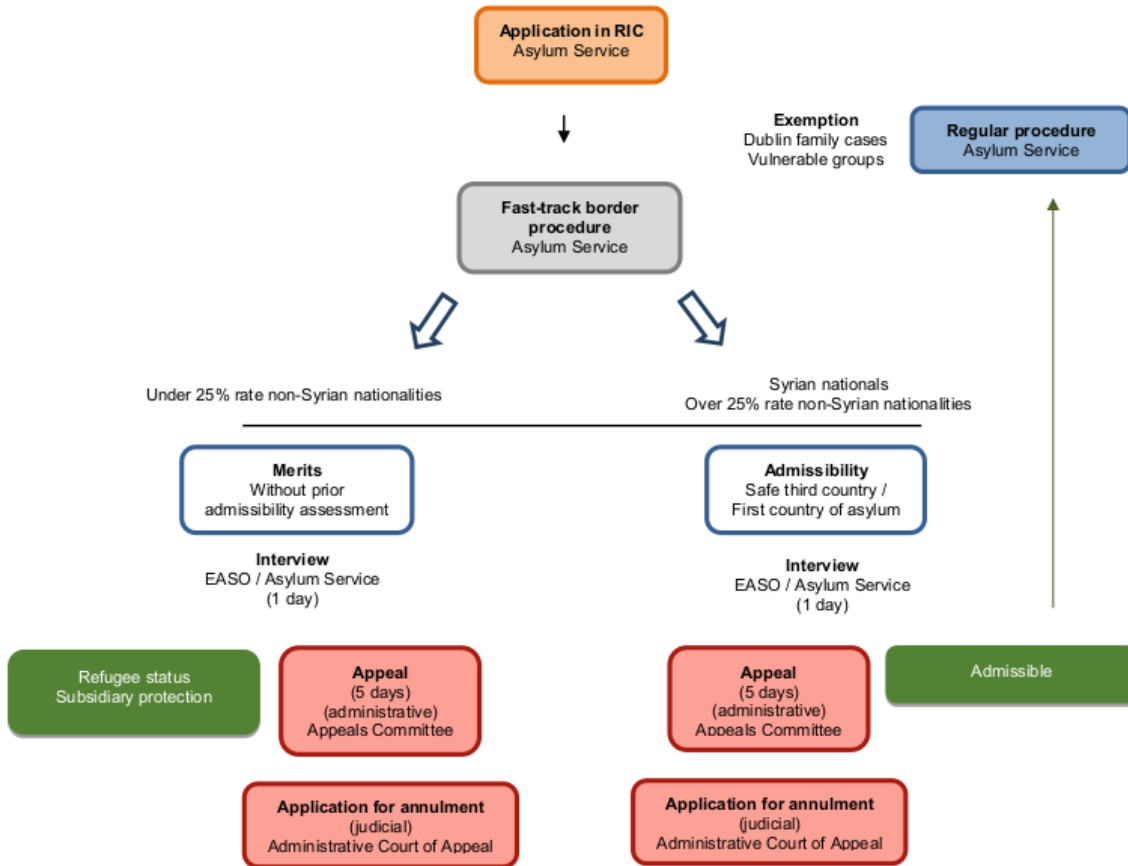
A. General

1. Flow chart

1.1. Applications not subject to the EU-Turkey statement



1.2. Fast-track border procedure: Applications on the Eastern Aegean islands subject to the EU-Turkey statement



The procedure is also outlined in a flowchart published by the Asylum Service: <http://bit.ly/2GGBkHR>.

Annex 4 : Map of Organisations in Samos

