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THE NEW CLOSED-CONTROLLED ACCESS CENTRES IN GREECE:

Samos as a testing ground for the EU migration policies

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Abstract

In October 2021, the first of the new generation of Closed-Controlled Access Centres was opened on Samos, Greece, entirely funded by the European Union. The new model for the reception of asylum seekers has been presented as a modern, safe and durable solution for hosting in a dignified way asylum seekers and migrants seeking international protection.

This research aims at understanding how the European Union policy framework in terms on migration and asylum materialises at the borders of Europe, with a focus on closed-controlled access centre on Samos, and what are the effects for the fundamental rights of its residents. An in-depth examination of the European Union migration *acquis* since the 2015 “refugee crisis” will expose the severe pitfalls of the European Agenda on Migration and of selected reforms of the New Pact of Asylum and Migration in responding to migration challenges. Subsequently, we will conduct human-rights based assessment of the CCAC, with a focus on freedom of movement, integration, access to legal aid, asylum, healthcare, and the impact of surveillance on the right to private life and mental health. The assessment results will demonstrate that, despite the undeniable material improvements, the new reception model fails to uphold the fundamental rights of its residents. On the contrary, the ever-restrictive policies and practices, implemented with financial and operational support of the EU, replicate the long-standing systemic deficiencies of the Greek reception and asylum system, reinforcing the evidence that a strategy of containment and deterrence of migration is being prioritised over the protection of displaced people.

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TABLE OF CONTENTS

Abstract.....	2
Acknowledgements.....	3
LIST OF ABBREVIATIONS.....	6
INTRODUCTION	8
A. RESEARCH GOALS	8
B. QUESTIONS AND HYPOTHESES	10
<i>B.a. Research Questions</i>	<i>10</i>
<i>B.b. Main hypotheses</i>	<i>10</i>
C. RESEARCH AXES	11
<i>C.a. Methodology.....</i>	<i>11</i>
<i>C.b. Structure.....</i>	<i>12</i>
I. THE EU POLICY OF CONTAINMENT AND DETERRENCE AT THE BORDERS OF EUROPE.....	13
A. CONTEXTUALISATION OF THE MIGRATION ‘CRISIS’ IN EUROPE	13
B. THE 2015 EU AGENDA ON MIGRATION: INTRODUCTION, EVOLUTION AND SHORTCOMINGS OF THE HOTSPOT APPROACH IN GREECE	18
<i>B.a. Introduction of the hotspot approach.....</i>	<i>19</i>
<i>B.b. EU-Turkey Statement: an ill-fated implementation in Greece</i>	<i>20</i>
<i>B.c. “Fast-track” border procedure: restricting fundamental rights and procedural guarantees.....</i>	<i>22</i>
<i>B.d. Geographical restriction of movement: a fabricated humanitarian catastrophe</i>	<i>24</i>
<i>B.e. Emergency of an infrastructure for the containment of displaced people.....</i>	<i>27</i>
C. THE NEW PACT ON ASYLUM AND MIGRATION 2020: A CONCERNING EXACERBATION OF THE CONTAINMENT AND DETERRENCE MODEL	28
<i>C.a. Asylum and Migration Management Regulation: a paradoxical nexus between solidarity and returns.....</i>	<i>29</i>
<i>C.b. Addressing ‘mixed migration flows’: a flawed and restrictive approach.....</i>	<i>30</i>

<i>C.c. New Pre-Screening and Amended Asylum Procedures Regulation: restricting protection, safeguards and fair process</i>	32
(1) <i>Pre-entry screening: indiscriminate containment for all TCNs</i>	32
(2) <i>Standard de-briefing form: from screenings to asylum referrals</i>	35
(3) <i>Safe third country: preserving a dangerous approach</i>	37
<i>C.d. Protecting borders, restricting protection</i>	38
II. THE FIRST CLOSED-CONTROLLED ACCESS CENTRE ON SAMOS: DIGNITY IN A PRISON-LIKE FACILITY	40
A. METHODOLOGY	43
B. HUMAN-RIGHTS BASED ASSESSMENT	45
<i>B.a. Freedom of movement</i>	46
(1) <i>Prohibition of exit</i>	46
(2) <i>Prohibition of entry</i>	51
<i>B.b. Integration</i>	52
<i>B.c. Access to legal aid and right to asylum</i>	54
(1) <i>Access to legal aid</i>	54
(2) <i>New arrivals and access to information</i>	56
(3) <i>Vulnerability assessment</i>	58
(4) <i>The safe third country criterion</i>	58
<i>B.d. Right to health</i>	61
(1) <i>Access to healthcare</i>	61
(2) <i>Vulnerability assessment</i>	64
<i>B.e. Impact of surveillance on the right to private life and mental health</i>	67
(1) <i>The impact of surveillance</i>	67
(2) <i>Layers of violence in the CCAC</i>	69
C. ASSESSMENT RESULTS	70
CONCLUSIONS	76
Bibliography	81

LIST OF ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
AMIF	Asylum, Migration and Integration Fund
AMMR	Regulation on Asylum and Migration Management
APD	Asylum Procedures Directive
ASF	Advocats Sans Frontières
CCAC	Closed Controlled Access Centre
CEAS	Common European Asylum System
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EODY	National Organisation for Public Health
ERS	Emergency Relocation Scheme
ESTIA	Emergency Support to Integration and Accommodation
EU	European Union
EUAA (ex EASO)	European Union Agency for Asylum
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Border and Coast Guard Agency
GAS	Greek Asylum Service
GCR	Greek Council for Refugees
HRLP	Human Rights Legal Project
IGO	Intergovernmental Organisation
IOM	International Organisation for Migration

IPA	International Protection Act
ICRC	International Committee of the Red Cross
JMD	Joint Ministerial Decision
MPF	Migration Policy Framework
MPRIC	Multi-Purpose Reception and Identification Centre
MS	Member State
MSF	Médecins Sans Frontières (MSF)
NGO	Non-Governmental Organisation
PHC	Primary Health Care
PoC	Person of Concern
PROKEKA	Pre-removal centre
RIC	Reception and Identification Centre
RIS	Reception and Identification Service
STC	Safe Third Country
TCN	Third Country National
TEU	Treaty on European Union
TFEU	Treaty of the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

INTRODUCTION

A. RESEARCH GOALS

In October 2021, the European Union (EU) and Greece inaugurated on Samos the first of five Multi-Purpose Reception and Identification Centres (MPRICs) due to open on the Aegean Islands, entirely funded by the Asylum, Migration & Integration Fund (AMIF). The facility has been presented as the first of a new generation of *closed-controlled access* centres (CCACs) that will purportedly provide for the dignified reception of displaced people in a safe and modern environment and enable a fair and efficient processing of asylum claims. An ‘important milestone’¹ for the management of migration in the EU, and a long-awaited ‘turning of page for Greece’ that was ‘much needed in the islands’.²

The last years of the migration “crisis”, and its associated challenges, have proven the ineffectiveness and inhumanity of the reception and asylum system in Greece. Highlighted, in particular, are the severe pitfalls and shortcomings of the Common European Asylum System (CEAS) and the Dublin system. The implementation of the CCACs, in connection with the legislative reforms of the New Pact on Migration and Asylum (herein the New Pact) if approved, seem to aim at standardizing and expanding the application of dangerous and inefficient practices and procedures, *inter alia* the hotspot approach, accelerated border procedures and mass detentions at external borders.

Erected in an isolated location, and highly securitized, the CCAC of Samos has already been equalled to a prison and referred to as a ‘dystopian nightmare’³ by civil society organisations and humanitarian actors. Furthermore, a growing number of reports have cited illegal *de facto*

¹ EU Home Affairs, ‘The New Reception Centre in Samos’ <<https://twitter.com/euhomeaffairs/status/1439905947254730755>> accessed 5 July 2022.

² Notis Mitarachi, Greek Minister of Migration and Asylum. See European Commission, ‘Opening of the First New Reception Centre on Samos – Zervou’ (September 2021) <https://ec.europa.eu/home-affairs/news/opening-first-new-reception-centre-samos-zervou-2021-09-28_en> accessed 5 July 2022.

³ Patrick Wieland, MSF Field Coordinator on Samos. See ‘MSF Reaction to New Prison-like Centre on Samos, Greece’ (*Relief Web*, September 2019) <<https://reliefweb.int/report/greece/msf-reaction-new-prison-centre-samos-greece>> accessed 5 July 2022.

detention practices, social exclusion, violations of residents' rights and procedural safeguards, and, ultimately, the severe impact on their physical and mental wellbeing.⁴

In this context, the present study aims at examining the EU migration policy framework since the start of the 2015 “refugee crisis”, with a focus on the EU Agenda on Migration (herein the Agenda) and selected relevant reforms of the New Pact. The policy analysis will examine the context to explore how the proposed reforms could materialize in the new generation of closed-controlled reception centres and what effects they would have for the protection of the rights of displaced people.

The “novelty” measures of the New Pact will be analysed against the recent implementation of migration policies in Greece. Moreover, we will challenge the measures' relevance and capacity to bring about long-awaited improvements while complying with fundamental rights standards and obligations.

Being the first of its kind, a scrutiny of the legal aspects and operational functioning of the newly opened CCAC is timely and relevant. This is especially pertinent when considering the plans for the implementation of similar structures on other Aegean islands and the foreseen expansion of the new Greek model for the reception of people seeking asylum in other European countries.⁵

⁴ See for example: Greek Council for Refugees (GCR) and OXFAM, ‘Update on Lesbos and the Aegean Islands’ (2022) <<https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2022-03/CGR-Oxfam-Lesbos%20Bulletin-March-2022.pdf>>; Europe Must Act (EMA) and Samos Advocacy Collective (SAC), “‘All I Want Is to Be Free and Leave’ Life in the Closed Controlled Access Centre in Samos’ (2021) <<https://reliefweb.int/attachments/eb25b87f-1e78-35b4-8171-6c7593dadf77/Report%20SAC-EMA-10.pdf>>; Still I Rise NGO, ‘Growing Behind Barbed-Wire: Self-Evaluation of the Experience Living in the CCAC Samos’ (2022) <https://www.stillirisngo.org/site/assets/files/1290/report_samos_v05-eng.pdf> accessed 8 June 2022.

⁵ Andriani Fili, ‘Modelling UK Reception on Greece’s Failed Reception System’ (*Oxford Law Faculty*, 19 April 2022) <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2022/04/modelling-uk>> accessed 2 July 2022.

B. QUESTIONS AND HYPOTHESES

B.a. Research Questions

The research aims to respond to the following questions: (I) *What are the main novelties proposed in the New Pact on Migration and Asylum? To what extent does the Pact tackle the 2016 Agenda on Migration failures and current migration challenges? Is the focus on curbing illegal migration through enhanced border control and externalisation likely to uphold the fundamental rights of protection seekers?*

(II) *Can the newly opened CCAC on Samos be considered a replicable model for the modern, safe and dignified reception of asylum seekers? What are the conditions of residents in terms of freedom of movement, integration, access to legal aid, asylum, healthcare and surveillance impact on private life and mental health? What are the effects such a model is likely to produce in the long-term?*

B.b. Main hypotheses

Considering these questions, the research will argue that the New Pact, instead of representing an aspired ‘fresh start on migration’, presents a restrictive evolution, and an institutionalised framework of legal policies and operational practices that attempts to block, control and channel human mobility with legal, spatial and temporal restrictions.⁶

Instead of effectively reducing irregular migration, this EU restrictive approach seems to expose people on the move to multiple levels of human rights violations, while removing their agency and severely curtailing their access to asylum. The solutions proposed in the reform package do not appear to be able to address the complex challenges frontline countries face when confronted with migratory pressure. Additionally, the new model where ‘security and border control priorities prevail’⁷ may foster narratives of the criminalisation of migration, and

⁶ Martina Tazzioli and Glenda Garelli, ‘Containment beyond Detention: The Hotspot System and Disrupted Migration Movements across Europe’ (2020) 38 *Environment and Planning D: Society and Space* 1009, 6–7.

⁷ Giuseppe Campesi, ‘Seeking Asylum in Times of Crisis: Reception, Confinement, and Detention at Europe’s Southern Border’ (2018) 37 *Refugee Survey Quarterly* 44, 44.

create a system oriented to the return of as many asylum seekers as possible, rather than their protection.

The CCAC of Samos appears to be the testing ground of the strategy of containment and deterrence of migration designed by the EU and implemented in Greece. The purported aim of the new reception model of giving ‘back the lost dignity to people seeking international protection’ seems to translate in practice into, *inter alia*, unlawful restrictions of movement, social exclusion, lack of access to basic services, extreme surveillance and an absence of procedural safeguards.

C. RESEARCH AXES

C.a. Methodology

To a large extent, the study is based on desk research. The first chapter will be adopting an historical and political approach to the subject matter. The evolution of the EU migration policy framework (MPF) post 2015 will be delineated through extensive literature review and lastly, relevant reforms proposed by the New Pact will be scrutinised. When pertinent, case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) will be referred.

The human rights-based assessment of the Samos CCAC will be conducted contrasting the available official data from relevant governmental authorities against a variety of available literature and resources, i.e., reports from grassroots Non-Governmental Organisations (NGOs), Intergovernmental Organisations (IGOs), monitoring bodies and press articles. A field trip to Samos informed the analysis with primary research, developed through a series of semi-structured interviews with NGO and humanitarian workers. Several difficulties on the ground invalidated the initial plan of interviewing residents of the CCAC; to fill this gap relevant data from NGOs and researchers was acquired and incorporated in the analysis.

Additionally, the first-hand knowledge of the context and relevant stakeholders acquired during one year of field work on Samos in 2020 will be highly relevant for the purpose of the research.

C.b. Structure

The thesis is divided into two parts. The first chapter will aim at producing a comprehensive understanding of the current European policy framework in the field of migration and asylum. For this purpose, we will present the main changes introduced by the Agenda and its practical consequences, with a focus on the Greek context. The policy-analysis of relevant reforms proposed by the New Pact will highlight the existence of critical issues and the potential for its restrictive approach to violate human rights of people seeking international protection.

In the second chapter, we will conduct a human rights-based assessment of the newly opened CCAC on Samos, with a focus on freedom of movement, integration, access to legal aid and right to asylum, right to healthcare, and the impact of surveillance on the right to private life and mental health. The objective of the assessment is to challenge the current practice and to expose the potential failures of the CCAC model in upholding the fundamental rights of displaced people.

I. THE EU POLICY OF CONTAINMENT AND DETERRENCE AT THE BORDERS OF EUROPE

A. CONTEXTUALISATION OF THE MIGRATION ‘CRISIS’ IN EUROPE

‘Migration has always been a fact for Europe – and it will always be. Throughout centuries, it has defined our societies, enriched our cultures and shaped many of our lives. And this will always be the case.’⁸

As recognized by the President of the EU Commission (herein the Commission), Ursula von der Leyen in her State of the Union Address in 2020, human mobility has been a natural and constant phenomenon throughout time, contributing to shaping the global societies we live in. Several factors, namely, *inter alia*, globalization, a record high number of conflicts and wars,⁹ the global climate crisis, rampant poverty and inequality exacerbated by the COVID-19 pandemic, will continue to impel and likely increase human mobility, whether by choice or forcibly, in pursuit of better living conditions and environments.

As confirmed by global data from the International Organization for Migration (IOM), in 2021 approximately 281 million people were living in a different country than their country of birth, representing 3,6% of the global population, compared to 153 million in 1990 and 95 million in 1970.¹⁰ Of the total 2021 figure, a record high number of 27,1 million refugees worldwide have crossed borders to seek international protection.¹¹

In Europe, the debate on migration is long-standing, and was, relatively recently, ignited by the establishment, in 1999, of the Tampere Conclusions and the creation of an Area of Freedom,

⁸ Ursula von der Leyen, ‘State of the Union Address 2020: Building the World We Want to Live in: A Union of Vitality in a World of Fragility’ (2020) 20 <https://ec.europa.eu/info/sites/default/files/soteu_2020_en.pdf> accessed 4 July 2022.

⁹ International Institute for Strategic Studies (IISS), ‘The Armed Conflict Survey 2021’ (2021) 1 <<https://www.iiss.org/publications/armed-conflict-survey/2021/armed-conflict-survey-2021>>.

¹⁰ International Organization on Migration (IOM), ‘Interactive World Migration Report 2022’ (2022) <<https://www.iom.int/wmr/interactive>> accessed 3 June 2022.

¹¹ United Nations High Commissioner for Refugees (UNHCR), ‘Global Trends Report 2021’ (2022) 2 <<https://www.unhcr.org/publications/brochures/62a9d1494/global-trends-report-2021.html>> accessed 4 July 2022.

Security, and Justice (AFSJ) within the EU.¹² In 2004, the implementation of the Schengen Protocol through the entry into force of the Treaty of Amsterdam marked the ‘birth of the European External Border as an institution and European policy field’,¹³ enabling the establishment of internal open borders and freedom of movement for Union’s citizens.

At the same time, the Tampere Conclusions reaffirmed the need to guarantee fair standards of treatment for Third Country Nationals (TCNs) legally accessing the EU¹⁴ and to grant protection to individuals fleeing persecution, war or serious harm in their country of origin,¹⁵ as enshrined in the 1951 Geneva Convention relating to the Status of Refugees (herein the Geneva Convention). Migration and asylum ceased to be exclusively under the competence of the Member States (MSs) in the decade of 1990. This was a by-product of the construction of a Europe without internal frontiers, thus enabling the free movement of goods, persons, services and capital.

The abolition of internal borders shifted the focus to the ‘strengthening of external border controls, and cooperation in the field of asylum and immigration as compensatory measures’.¹⁶ Migration and asylum were no longer solely the responsibility of MSs, hence, the CEAS was created, a policy framework aiming to establish a comprehensive and unified European approach to migration and asylum. Regulated by a set of five legislative instruments, the CEAS is built around three main goals: setting uniform standards for equal treatment of asylum seekers, harmonising procedures and shared-responsibility mechanisms among member states and strengthening the cooperation with third countries.¹⁷ Since its creation, the CEAS has undergone several reform periods that have attempted to address its suitability and

¹² ‘Tampere European Council 15-16.10.1999: Conclusions of the Presidency’ <https://www.europarl.europa.eu/summits/tam_en.htm#union> accessed 11 June 2022.

¹³ Bernd Kasperek, ‘Complementing Schengen: The Dublin System and the European Border and Migration Regime’, *Migration Policy and Practice* (2016) 61.

¹⁴ ‘Tampere European Council 15-16.10.1999: Conclusions of the Presidency’ (n 12) Section A.III Fair treatment of third country nationals.

¹⁵ *ibid* Section A.II A Common European Asylum System.

¹⁶ Council of the European Union, ‘Valletta Summit, 11-12 November 2015 Political Declaration’ <https://www.consilium.europa.eu/media/21841/political_decl_en.pdf> accessed 4 July 2022.

¹⁷ European Commission, ‘Common European Asylum System’ <https://ec.europa.eu/home-affairs/policies/migration-and-asylum/common-european-asylum-system_en> accessed 11 June 2022.

effectiveness within the EU response to the evolving geopolitical context and challenges both internally and externally.

The year of 2015 saw a dramatic increase in arrivals of people fleeing from violent conflict areas, particularly from Afghanistan, Syria, and Iraq. Often, many from this demographic, resort to seek protection through perilous and *illegalized* journeys because of the striking absence of safe and legal routes to access the EU. Shocking images flooded the media during the so-called “refugee/migrant crisis” presenting displaced people perishing in their pursuit of safety, the crossing of multiple borders by foot or stranded in infamous camps suffering from the appalling and undignified conditions. The migration influx sparked a European-wide public outcry and prompted the EU to acknowledge the inadequacy of its MPF.

The events that unfolded in the following seven years made the manifold layers of the “refugee crisis” surface. Firstly, an institutional crisis emerged from the failure to agree upon the 2016 Agenda on Migration (herein the Agenda) reform package. The inherent limits both within the legal design and implementation modalities of the EU migration *acquis* made the presence of a structural ‘solidarity deficit’¹⁸ between MSs increasingly evident.

Secondly, a humanitarian crisis responded to with short-sighted emergency-driven measures, such as the hotspot approach. Combined with the aforementioned European migration policies, the EU response has fuelled, if not co-constructed, the issue rather than solve it. The failure of the Dublin system and of the responsibility-sharing mechanisms across MSs put a lethal strain on already inadequate reception and asylum systems in frontline countries such as Greece, with the devastating consequences epitomized by the situation in the infamous Moria refugee camp on Lesbos.

Thirdly, a crisis of human dignity, a core EU value enshrined in the EU Charter of Fundamental Rights (herein the Charter) and in the Treaty on the European Union (TEU). The manifestations of these ill policies and actions are shown through the immense human suffering displaced people are continuously experiencing as a consequence of policies aiming at containing them in sub-standard, often inhumane, reception conditions across member states, and particularly

¹⁸ Daniel Thym, ‘The “Refugee Crisis” as a Challenge of Legal Design and Institutional Legitimacy’ (2016) 53 Common Market Law Review 1545, 1550.

in border areas. In addition to the physical and spatial conditions culminating in degrading treatment, indefinite periods of waiting in the current asylum system inflict a further layer of violence and deprivation on the daily lives of protection seekers.

The fourth facet of the crisis concerns protection. The EU response to migration has been primarily focused on containing human mobility through policies oriented at differentiating between “true” or “legitimate” refugees and “bogus” asylum seekers – the so-called “illegal” or “economic” migrants. The system undermines the core principle of the right to asylum, and is produced by, and further exacerbates, discriminatory narratives of stigmatization of people on the move. Under the guise of ensuring MSs sovereignty, guaranteeing stability for their citizens, and protecting them from a politically constructed “invasion” threat,¹⁹ the EU restrictive policies have produced a severe deterioration of the social and political conditions of refugees and migrants across, and beyond, Europe. This discriminatory “double-standard” has become even more apparent with the unfolding conflict in Ukraine. MSs have been granting protection in a matter of days to millions of people fleeing the country, whilst asylum seekers from Africa, Asia and the Middle East continue to endure the effect of policies designed to keep them outside or at the fringes of the EU whilst deterring prospective migrants to come.

Lastly, the approach of the EU regarding cooperation with third countries highlights a crisis of responsibility. In fact, in recent years we have seen an increase in third country solutions, oriented at outsourcing migration management to non-EU countries, involved at the origin or in transit along migration routes. Under the scope of addressing ‘the root causes of irregular migration and forced displacement’,²⁰ the externalisation of borders has become a key strategic aim of the EU and with this aim new architectures of border surveillance have emerged. As the cases of EU bilateral agreements with Libya and Turkey illustrate, the attempt to curb illegal migration by expanding the European external border control to peripheral countries has translated as a disregard for their extremely worrying record of violations of ‘human dignity,

¹⁹ The ‘invasion’ discourse is countered by migration statistics. According to UNHCR data, in 2021 less than 10% (almost 2,5 million) of all the world’s refugees were living in the EU. The share of refugees in the EU is 0.6% compared to its total population. The majority of refugees from Africa and Asia do not come to Europe, but rather move to neighbouring countries. See European Commission, ‘Statistics on Migration to Europe’ <https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en> accessed 4 July 2022.

²⁰ Council of the European Union (n 16) 2.

freedom, democracy, equality, the rule of law and respect for human rights'.²¹ These being the very founding principles upon which the Union was created.

To date, the profound political tensions and ideological divisions across MSs persist and, particularly, the stark opposition of some countries to compromise towards frontline countries in sharing the brunt of responsibility they sustain. The study will discuss how the Agenda and the 2020 New Pact on Asylum and Migration (herein the New Pact), formulated with the intent of offering a 'fresh start'²² in migration management that would overcome the shortcomings of the CEAS, failed to address the legislative stalemate. While the focus of the Agenda was to provide immediate relief to the burden imposed by the sudden migratory pressure on frontline countries, the New Pact appears to have incorporated the emergency-driven response into its reforms. The proposed additional tools seem aimed at controlling and curbing irregular migration, rather than increasing the protection of asylum seekers. In the meantime, legal migration channels and pathways to protection (e.g. resettlement schemes) remain scarce and difficult to access. This represents a missed opportunity for the EU to show an efficient and human-centred way to manage migration.

In this chapter we will trace the evolution of EU legislation and its current state of play in the areas of migration, asylum and return, since the mass refugee influx of 2015. It will focus on the effects of the MPF implementation in Greece. The first section of the study will contextualise and assess the 2015 Agenda and analyse the shortcomings of the hotspot approach. The second section will provide an overall assessment of selected amended and new proposals of the New Pact, based on relevant existing literature and compared against the international and European human rights standards and refugee protection criteria.

²¹ Art. 2. Consolidated version of the Treaty on European Union (TEU) 2012.

²² European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum 2020.

B. THE 2015 EU AGENDA ON MIGRATION: INTRODUCTION, EVOLUTION AND SHORTCOMINGS OF THE HOTSPOT APPROACH IN GREECE

The term European “refugee crisis” is normally used to refer to the exceptionally large number of TCNs who arrived in the middle of the 2010s in Europe to seek asylum, often undertaking lengthy and dangerous routes, as well as to the tragic number of deadly shipwrecks happening in the Mediterranean Sea.²³ According to the United Nations High Commissioner for Refugees (UNHCR), at the peak of the crisis in 2015 more than 1 million people entered the EU territory – of which around 850,000 entered in Greece alone.²⁴ By 2016, approximately 1,2 million asylum applications had been lodged.²⁵ The sudden mass influx occurred through certain migration routes; in Italy by sea and in Greece by both sea and land. These countries became the main access points resulting in unprecedented migratory pressure on the EU – and particularly on these frontline countries. The situation that then unfolded has been regarded as one of the greatest humanitarian crises in Europe since World War II.²⁶

In response to these arrivals, the European Commission (herein the Commission) presented in the European Agenda on Migration in May 2015. The proposal offered a set of priority actions aimed at providing immediate relief to the emergency in the short-medium term as well as policy reforms that would ensure a proper and unified migration management in the long term. Hence, the policy piece focused on four pillars: reducing the incentives for irregular migration; saving lives and securing the external borders; implementing a strong common asylum policy; and introducing a new policy on legal migration.²⁷ The following sections will focus on presenting an analysis of the Agenda’s main policy changes and the consequences of the

²³ The official number of deaths or missing people following shipwrecks in the Mediterranean Sea is 3,771 in 2015 and 5,096 in 2016. The total number to date since 2014 is 24,449. Data from ‘UNHCR Operational Data Portal, Refugee Situation’ <https://data.unhcr.org/en/situations/mediterranean#_ga=1.122368009.309748693.1485291701> accessed 11 June 2022.

²⁴ *ibid.*

²⁵ Eurostat, ‘Annual Asylum Statistics’ <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Annual_asylum_statistics> accessed 11 June 2022.

²⁶ Laurence Peter, ‘Migrant Crisis: Five Obstacles to an EU Deal’ *BBC News* (3 September 2015) <<https://www.bbc.com/news/world-europe-34105989>> accessed 13 June 2022.

²⁷ ‘Managing Migration Better in All Aspects: A European Agenda on Migration’ (*European Commission*, 2015) <https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4956> accessed 15 July 2022.

implementation within Greece, in light of the containment and deterrence hypotheses underlying the research.

B.a. Introduction of the hotspot approach

One of the key measures introduced by the Agenda to alleviate the migratory pressure in frontline countries was the so-called “hotspot approach”. Located on the Aegean islands of Lesbos, Samos, Kos, Chios and Leros, as well as in southern Italy, the hotspots were designed to be temporary transit sites for the identification and registration of displaced people arriving, irregularly or through search and rescue operations. In addition to the first-screening objective, the centres introduced a “social sorting apparatus” intended to enable the discrimination between asylum seekers in clear need of protection and “bogus” asylum seekers²⁸ - i.e., irregular migrants whose claim is unfounded and hence with no right to protection. In the hotspots, Greece and Italy were provided with ways to channel recognised asylum seekers either into the asylum system, to facilitate relocations of some through an emergency responsibility-sharing mechanism,²⁹ and detain the others until their returns would be processed. Therefore, the establishment and well-functioning aspects of the hotspots system was not only operationally linked to the proposed Emergency Relocation Scheme (ERS) and effective Returns plan, but also a precondition for achieving the aim to relieve migratory pressure from frontline MSs.

However, the result of these measures proved to be far from what the EU had envisaged. Between 2015 and 2017, the ERS provided for a temporary derogation from the Dublin Regulation No 604/2013 (herein Dublin III), under which the first country of application is responsible for examining it. Candidates from a nationality with a demonstrated asylum recognition rate of at least 75% were made eligible for transfer, providing for an envisaged total number of 160,000 people. Two years after its implementation, only 34,705 asylum seekers had been relocated (of which 21,999 from Greece), a substantially lower number than

²⁸ Campesi (n 7) 45.

²⁹ Adopted by the Council through two legally binding decisions (Council Decisions 2015/1523 and 2015/1601). See European Parliament, ‘Hotspots at EU External Borders’ 3 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652090/EPRS_BRI\(2020\)652090_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652090/EPRS_BRI(2020)652090_EN.pdf)>.

the initial goal.³⁰ Despite the mandatory nature of the scheme, several countries did not comply with their legal obligations.³¹

In practice, the restrictiveness of the relocation criteria increased the complexity of the asylum claims, and resulted in an extended permanence of applicants within the Greek reception system, and embroiled in lengthy return procedures. Compounded by severe structural and administrative deficiencies, the measure enhanced instead of relieved the strain inflicted on the Greek asylum and reception infrastructure. The failure that accompanied the ERS implementation led to its closure in 2017.³²

B.b. EU-Turkey Statement: an ill-fated implementation in Greece

Under the scope of enhancing the cooperation with third countries, on 18 March 2016, the EU signed a deal with Turkey, known as the EU-Turkey Statement (herein the Statement), which had an extreme impact on the functioning of Greek hotspots. As stated in the agreement: ‘All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey [...] in full accordance with EU and international law, thus excluding any kind of collective expulsion. [...] Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey.’³³ Additionally, the Statement provided for the resettlement of Syrians from Turkey to the EU on a 1:1 scheme, according to which for every Syrian national being returned to Turkey from Greece, another Syrian would be resettled in the EU.³⁴

³⁰ *ibid.*

³¹ Czechia, Hungary and Poland refused to uphold their obligations regarding the relocation scheme. In April 2020 a judgement by European Court of Justice (ECJ) found the refusal to be against EU law. See Court of Justice of the European Union (CJEU), ‘By Refusing to Comply with the Temporary Mechanism for the Relocation of Applicants for International Protection, Poland, Hungary and the Czech Republic Have Failed to Fulfil Their Obligations under European Union Law - Poland’ (*Relief Web*, 2020) <<https://reliefweb.int/report/poland/refusing-comply-temporary-mechanism-relocation-applicants-international-protection>> accessed 16 June 2022.

³² Griffin Shiel, ‘The Emergency Relocation Scheme: A Burden Sharing Failure’ (2021) 3 NEXTEUK Policy Paper Series <[https://www.qmul.ac.uk/nexteuk/media/nexteuk/documents/NEXTEUK-Griffin-MAR21-\(FusionnC3%83%C2%A9\)-copie.pdf](https://www.qmul.ac.uk/nexteuk/media/nexteuk/documents/NEXTEUK-Griffin-MAR21-(FusionnC3%83%C2%A9)-copie.pdf)> accessed 11 July 2022.

³³ Council of the European Union, ‘EU-Turkey Statement, 18 March 2016’ <<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>>.

³⁴ *ibid.*

The main objective of the agreement was hence to hamper the flux of irregular migrant crossings from Turkey to the Aegean islands by introducing a regulated mass deportation mechanism based on the concept of *safe third country* (STC). Parallely boosting the resettlement of Syrians in clear need of protection to European countries. The consequences of the agreement were profound and manifold.

Firstly, as established by the agreement and in line with the Asylum Procedures Directive 2013/32/EU³⁵ (APD), prior to deportation, all migrants had to be registered and provided the right to apply for asylum. The Statement managed to curb the number of arrivals in practice, but at the same time had the effect of increasing the number of applications filed by prospective asylum seekers in Greece. This is due to the fact that only claiming asylum would avoid immediate return to Turkey. The Greek Asylum Service (GAS) had hence to process each application in order to proceed with deportation in case of a negative decision.

Consequently, the Statement enacted a radical shift in the nature of the hotspots in Greece. If initially they were meant as temporary sites of transit to allow for filtering applicants and the swift transfers to the Greek mainland, or returns, in reality the Statement forced Greece to accommodate applicants for the entire duration of their asylum procedure. The result was the creation of a system oriented to the containment and return - rather than protection – of as many individuals as possible.³⁶

³⁵ European Parliament and Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection 2013.

³⁶ Josepha Close, 'The EU Policy of Containment of Asylum Seekers at the Borders of Europe: (1) The Hotspot Approach' [2022] International Law Blog <<https://internationallaw.blog/2022/04/04/the-eu-policy-of-containment-of-asylum-seekers-at-the-borders-of-europe-1-the-hotspot-approach/>> accessed 20 April 2022.

B.c. “Fast-track” border procedure: restricting fundamental rights and procedural guarantees

Secondly, under EU pressure to ‘reduce [Greek] standards and minimize the guarantees of the asylum process [...] to the lowest possible under the EU [Asylum Procedures] directive’,³⁷ a few days after the Statement Greece introduced a new *fast-track* border procedure.³⁸ The procedure was meant as a temporary measure to be applied to all applicants subjected to the Statement – i.e., individuals that arrived on the Aegean islands after 20 March 2016. The accelerated procedure drastically reduced the length of the asylum process to a maximum of two weeks, allowing applicants just one day for the preparation of their first instance interview, and a maximum of two days to submit additional evidence before the appeal.³⁹

The lack of clear accessible information, free, or affordable, legal aid and interpretation combined with the complexity of the Greek asylum system and an ever-changing legislation had harsh consequences on the ability of applicants to submit their claim. Nonetheless, the extremely abbreviated time limitations remained mandatory and could not be extended under any circumstances. Failure to meet the deadline entailed that their application would have been rejected. Contrary to the applicants, by general principle, authorities are not compelled to comply with the timelines imposed by the law.

In practice, despite the introduction of the accelerated alley, the shortcomings of the GAS in combination with the continuous high numbers of arrivals and the lack of qualified or available

³⁷ Maria Stavropoulou, Head of the Greek Asylum Service. See John Psaropoulos, ‘Greek Asylum System Reaches Breaking Point’ (*The New Humanitarian*, 31 March 2016) <<https://www.thenewhumanitarian.org/news/2016/03/31/greek-asylum-system-reaches-breaking-point>> accessed 11 July 2022.

³⁸ Art. 60(4). Hellenic Republic, Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC 2016 [4375/2016].

³⁹ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece’ (2019) 88–91 <https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_gr_2019update.pdf> accessed 14 June 2022.

professionals within the hotspots,⁴⁰ hampered the efficiency of the asylum system. Therefore, many applicants were forced to undergo extensive containment or detention periods in inadequate facilities.

Although, in principle, accelerated processing is legal, the extreme lack of procedural guarantees and safeguards available to asylum seekers under the Fast-track Procedure attracted many criticisms. The European Council for Refugees and Exiles (ECRE) denounced it as ‘an extremely truncated asylum procedure with fewer guarantees’,⁴¹ while the Greek Council for Refugees (GCR) emphasized that ‘the significant limitations to the guarantees provided to persons in need of international protection are not in compliance with the obligations of the Greek authorities as they arise from all the rules of national, European and international law and cannot be justified even if prescribed by the Statement.’⁴²

Although initially meant as a temporary emergency procedure, to be applied for six months, and in disregard of the wider concerns mentioned, the measure was repeatedly renewed. Since 2020 it has been further expanded to cover all border and airport/port transit zones in Greece.⁴³ In practice, the accelerated procedure is to date arbitrarily implemented depending on the nationality and profile of the applicant. It is important to highlight that the discriminatory

⁴⁰ The length of the asylum procedure depends not only on the number of arrivals and the circumstances of each case but also on the capacity of the caseworkers and interpreters, as well as on the availability of space to conduct interviews on each island. See European Union Agency for Fundamental Rights (FRA), ‘Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on Fundamental Rights in the “Hotspots” Set up in Greece and Italy’ (Publications Office 2019) FRA Opinion 3/2019 7–8 <<https://data.europa.eu/doi/10.2811/818523>> accessed 14 June 2022.

⁴¹ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece’ (n 39) 88.

⁴² Greek Council for Refugees (GCR), ‘The observations of the Greek Council for Refugees on Law 4375/2016’ <<https://www.gcr.gr/index.php/el/news/press-releases-announcements/item/551-oi-paratiriseis-tou-esp-epi-tou-nomou-4375-2016>> accessed 14 June 2022.

⁴³ As per Art. 90(3) of the International Protection Act which replaced Law 4575/2016. Hellenic Republic, Law 4636/2019 on International Protection and Other Provisions / International Protection Act (IPA) 2019.

element of this practice is not provided by EU and national law,⁴⁴ and violates the principle of non-discrimination as set out in Article 3 of the Geneva Convention.⁴⁵

In 2019, the total average duration of an asylum procedure until the first-instance decision amounted to over seven months,⁴⁶ with subsequent appeals extending it by an additional five to six months.⁴⁷ Consequently, in 2020 the asylum system had amassed a backlog of almost 100,000 asylum applications, leaving thousands of people awaiting their fate in overcrowded camps.⁴⁸

B.d. Geographical restriction of movement: a fabricated humanitarian catastrophe

The introduction of the EU-Turkey Statement was accompanied in the Aegean islands by the imposition of a geographical restriction of movement issued by the Police Authorities and the GAS. Under the restriction of liberty, all applicants subject to the Statement, excepting vulnerable persons and family reunification cases under Dublin III, were *de facto* detained in the hotspots for the entire duration of the asylum procedure. The measure was widely criticised, both nationally and internationally. Given the impossibility for the authorities to manage such high numbers of people in closed facilities, it was replaced by an obligation to reside in the hotspots and not leave the island,⁴⁹ and it still applied to date.

The indiscriminate and mass imposition of the geographical restriction has been regarded as the main cause of the humanitarian catastrophe that unfolded on the islands since 2016. This

⁴⁴ Yiota Masouridou and Evi Kyprioti, ‘The EU-Turkey Statement and the Greek Hotspots: A Failed European Pilot Project in Refugee Policy’ (The Greens / European Free Alliance in the European Parliament 2018) 17 <<http://extranet.greens-efa-service.eu/public/media/file/1/5625>> accessed 11 July 2022.

⁴⁵ Convention relating to the Status of Refugees 1951.

⁴⁶ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece’ (n 39) 93.

⁴⁷ European Court of Auditors, ‘Asylum, Relocation and Return of Migrants: Time to Step up Action to Address Disparities between Objectives and Results’ (2019) Special Report 24/2019 48 <https://www.eca.europa.eu/Lists/ECADocuments/SR19_24/SR_Migration_management_EN.pdf>.

⁴⁸ ‘Close to 100,000 Asylum Applications Still Pending in Greece’ (*InfoMigrants*, 11 August 2020) <<https://www.infomigrants.net/en/post/26556/close-to-100000-asylum-applications-still-pending-in-greece>> accessed 14 June 2022.

⁴⁹ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece’ (n 39) 144–148.

saw thousands of people forced to live for months – or years at times, in inadequate infrastructures originally designed for short-term stays, with most of them living in tents or makeshift shelters exposed to harsh climate conditions.⁵⁰ Despite the efforts of the Greek government to increase reception capacity, living conditions in the hotspots deteriorated dramatically over the years, characterized by constant and severe overcrowding, inadequate food and water supply, lacking sanitation and hygiene facilities, all posing serious risks to the health and safety of asylum seekers.

For years, human rights, humanitarian and advocacy organizations have been calling for the removal of the geographical restriction. These organisations have been denouncing the inhuman and degrading nature of the hotspots' conditions and the severe breaches of a wide array of fundamental rights of asylum seekers, including right to human dignity, rights of the child, right to liberty and security amongst others.⁵¹

In 2011, before the introduction of Dublin III, the landmark judgement of the European Court of Human Rights (ECtHR) in the case *M.S.S. v Belgium and Greece*⁵² had found Greece in violation of Art. 3 of the European Convention on Human Rights (ECHR), stating that: '[...] the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity [...] It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.'⁵³

The importance of this judgement was three-fold. Firstly, the ECtHR held that failure to satisfy basic-socio economic needs can amount to a violation of Art. 3 (ECHR) and hence set a standard of treatment of asylum seekers in the Council of Europe area. Secondly, the judgement exposed, in reference to the Greek system, the 'detrimental effect of dysfunctional asylum

⁵⁰ Council of Europe, 'Greece Must Urgently Transfer Asylum Seekers from the Aegean Islands and Improve Living Conditions in Reception Facilities' (*Commissioner for Human Rights*) <https://www.coe.int/en/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities> accessed 15 June 2022.

⁵¹ European Union Agency for Fundamental Rights (FRA) (n 40) 35–45.

⁵² *MSS v Belgium and Greece [GC]* [2011] ECtHR App no 30696/09.

⁵³ *ibid.*

procedures'⁵⁴ on asylum seekers. Lastly, it challenged the presumption that MSs participating in Dublin always comply with their human rights obligations and thus created a precedent for effectively suspending Dublin transfers to Greece until reception conditions and asylum system improved.⁵⁵

In 2011, *N.S. v Secretary of State for the Home Department and M E and Others*, the Court of Justice of the European Union (CJEU) referred to the *M.S.S. v Belgium and Greece* case and reiterated the prohibition for MSs to transfer an asylum seeker to the MS “responsible” for its application where ‘systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision’.⁵⁶

Despite the persistence of grave deficiencies in the treatment of asylum seekers in the hotspots and the explicit prohibition by the CJEU, to date, MSs and Schengen Associated Countries persist in sending thousands of Dublin return requests to Greece.⁵⁷ As established in 2016 by the Commission Recommendation (EU) 2016/2256,⁵⁸ transfers are performed under the provision from the Greek Dublin Unit of individual guarantees that returnees would be treated in accordance with the EU asylum *acquis*.

⁵⁴ G Clayton, ‘Asylum Seekers in Europe: M.S.S. v Belgium and Greece’ (2011) 11 Human Rights Law Review 758, 764.

⁵⁵ ‘M.S.S. v. Belgium and Greece, Application No. 30696/09’ (*ESCR-Net*) <<https://www.escri-net.org/caselaw/2015/mss-v-belgium-and-greece-application-no-3069609>> accessed 5 July 2022.

⁵⁶ Para 94 *N S v Secretary of State for the Home Department and M E and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [2011] ECJ Joined cases C-411/10 and C-493/10.

⁵⁷ Refugee Support Aegean (RSA), ‘Dublin Returns to Greece’ (October 2021) <<https://rsaegean.org/en/dublin-returns-to-greece/>> accessed 6 July 2022.

⁵⁸ European Commission, ‘Commission Recommendation (EU) 2016/2256 of 8 December 2016 Addressed to the Member States on the Resumption of Transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council’ <<http://data.europa.eu/eli/reco/2016/2256/oj/eng>> accessed 6 July 2022.

B.e. Emergency of an infrastructure for the containment of displaced people

As demonstrated through the analysis, the EU Agenda on Migration and the implementation of the EU-Turkey Statement have failed to address their proposed goals: ineffective relocation and assistance from EU agencies in border control have demonstrated to be insufficient in guaranteeing a European migration policy ‘based on solidarity’ and a unified EU asylum system ‘fair towards third country nationals’.⁵⁹ On the contrary, the priority actions meant to provide short-term relief worsened the emergency in frontline countries, and resulted in grievous and far-reaching humanitarian and human rights issues. Policy reforms meant to ensure a harmonized and worthy management of migration in the long term only exacerbated the pre-existing shortcomings of the CEAS and exposed a political crisis between MSs with regards to solidarity and European values.

The hotspot approach appears to be a ‘border control device’⁶⁰ at the intersection between reception policies and border management. Its implementation created the conditions for the Commission to experiment in Greece a strategy of containment of migration at the EU external borders, prevention of secondary movements towards Europe and deterrence of prospective migrants. This is based on legal mechanisms and operational practices that attempt to block, control and channel mobility with legal, spatial and temporal restrictions⁶¹, resulting in a chilling-effect that remove migrants’ agency while deterring them from exercising their rights.

⁵⁹ As enshrined in Art. 67(2) TFEU: “[The Union] shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.”, See Treaty on the Functioning of the European Union 1993 (OJ C).

⁶⁰ Campesi (n 7) 69.

⁶¹ Tazzioli and Garelli (n 6) 6–7.

C. THE NEW PACT ON ASYLUM AND MIGRATION 2020: A CONCERNING EXACERBATION OF THE CONTAINMENT AND DETERRENCE MODEL

The considerable shortcomings of the European response since 2015 have led many commentators⁶² to reconsider the nature of the ‘refugee crisis’ as a crisis of the EU MPF and of the aspired but failed cohesion among MSs. The Agenda was met with harsh political discord, and after four years of intense negotiations the institutions failed to reach any agreement. On the advent of the COVID-19 pandemic and the subsequent global health crisis, the political stalemate on these reforms crystallized. Meanwhile, the situation on the ground, particularly in Greece, increasingly deteriorated. Months of lockdown in the unhealthy and miserable conditions of the islands’ Reception and Identification Centers (RICs) led to tensions among the camp residents. This pressure manifested into arsons, riots and general upset. On the 8 September 2020, after the first COVID-19 cases were detected in Moria, a devastating fire broke out,⁶³ burning to the ground the infamous “worst refugee camp on earth” that had over the years become the physical representation of the EU migration management failures.

On the 23 September 2020, only a few weeks after the incident, the EU Commission President Ursula von der Leyen presented the New Pact on Migration and Asylum (herein the New Pact). It was a long-awaited policy that aimed at reconciling political divisions, while remedying the outright dysfunctionalities and structural shortcomings of the last reform package. Instead of following the practice of adopting five-year programs,⁶⁴ the New Pact is presented through a

⁶² See for example Salvatore F Nicolosi, ‘Addressing a Crisis through Law: EU Emergency Legislation and Its Limits in the Field of Asylum’ (2022) 17 *Utrecht Law Review* 19, 19–21.; New Keywords Collective, *Europe / Crisis: Introducing New Keywords of “The Crisis” on and of “Europe”* (Near Futures Online 1 “Europe at a Crossroads”, 2016) <http://nearfuturesonline.org/wp-content/uploads/2016/01/New-Keywords-Collective_11-1.pdf>; Polly Pallister-Wilkins, ‘Interrogating the Mediterranean “Migration Crisis”’ (2016) 21 *Mediterranean Politics* 311, 1–4.

⁶³ Helena Smith, ‘Lesbos Refugee Camp Fire Forces Thousands to Evacuate’ *The Guardian* (9 September 2020) <<https://www.theguardian.com/world/2020/sep/09/lesbos-refugee-camp-fire-forces-thousands-to-evacuate>> accessed 17 June 2022.

⁶⁴ The Tampere Conclusions were followed by the Hague Program (2005), the Stockholm Program (2010) and the EU Agenda on Migration (2015).

Commission Communication⁶⁵ and complemented by a set of nine instruments - five legislative proposals⁶⁶ and four recommendations⁶⁷ - which to date are still in negotiation.

Notwithstanding the strong emphasis that celebrated the Pact as a ‘change of paradigm’,⁶⁸ the focus on curbing illegal migration, externalization of borders, deterrence and returns, combined with the persistent legal migration policy deficit, instead reveals a lack of solution of continuity with the Agenda.

In the following sections, we will scrutinize some of the legislative acts introduced by the New Pact. Additionally, we will explore how its key priorities and provisions were built on long-lasting and consistently ineffective policies and practices, which the “new” approach seemingly ignores. Furthermore, the analysis will gauge the adherence of the proposals with fundamental rights as enshrined in the EU Charter of Fundamental Rights (herein the Charter).

C.a. Asylum and Migration Management Regulation: a paradoxical nexus between solidarity and returns

The principles of solidarity and fair sharing of responsibility, as enshrined in Art. 80 TFEU,⁶⁹ is purported to be at the core of the ‘fresh start on migration’⁷⁰ proposed by the New Pact. After the failed attempt of the ERS to implement solidarity based on fixed quotas, the ‘flexible yet mandatory solidarity’ mechanism envisaged by the New Pact’s Asylum and Migration Management Regulation (AMMR) effectively broadens the scope of Art. 80 TFEU, offering

⁶⁵ European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum (n 22).

⁶⁶ 1) New Screening Regulation; 2) Amended proposal revising the Asylum Procedures Regulation; 3) Amended proposal revising the Eurodac Regulation; 4) Asylum and migration management regulation; 5) Crisis and force majeure Regulation.

⁶⁷ 1) Migration preparedness and crisis blueprint; 2) Recommendation on resettlement and complementary pathways; 3) Recommendation on search and rescue operations by private vessels.

⁶⁸ European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum (n 22).

⁶⁹ Art. 80. Consolidated Version of the Treaty of the Funding of the European Union (TFEU) 2012.

⁷⁰ European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum (n 22).

the option to choose between relocation, returns, financial assistance and vaguely defined capacity building measures.⁷¹ In practice, MSs would be relieved from mandatory relocation obligations, instead being allowed to exercise their responsibility to provide international protection in the form of financial and administrative assistance in the returns of migrants to the country of origin, the so-called “return sponsorship”. Relocation and returns, two elements with opposite nature, have therefore been equated. This erodes the concept of *consensus* inherent to the New Pact and in fact allows for antagonistic approaches to coexist under the same guise of solidarity.⁷²

Moreover, the widely criticized structural unevenness of the Dublin III *first country of application* criterion persists. The list of criteria is expanded in Art. 20 AMMR and consists of the best interests of a child, family reunification, residence or visa permit, educational qualification or diploma of an institute in a MS and country of first entry.⁷³ The last criterion has largely shown its failure in addressing the socio-economic and administrative strain imposed onto frontline MS confronted with exceptional migratory flows. Its retention can hardly be seen as producing a different and fairer outcome under the future regulation.⁷⁴

C.b. Addressing ‘mixed migration flows’: a flawed and restrictive approach

The New Pact is set to tackle the issue of *mixed migration flows*, a concept strongly emphasized throughout each legislative reform and instrument. In fact, when presenting the proposals, the Commission argued that in the years after the 2015 “refugee crisis” a shift in the composition of arrivals could be observed towards a prevalence of “irregular migrants”, intended as TCNs

⁷¹ Evelien Brouwer and others, ‘The European Commission’s Legislative Proposals in the New Pact on Migration and Asylum’ (Policy Department for Citizens’ Rights and Constitutional Affairs 2021) PE 697.130 17 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf)>.

⁷² Philippe De Bruycker, ‘The New Pact on Migration and Asylum: What It Is Not and What It Could Have Been – EU Immigration and Asylum Law and Policy’ (*Special series of posts on the New Migration Pact*, 15 December 2020) <<https://eumigrationlawblog.eu/the-new-pact-on-migration-and-asylum-what-it-is-not-and-what-it-could-have-been/>> accessed 12 May 2022.

⁷³ Gursimran Bakshi, ‘Adieu Dublin! But What’s next?’ (*European Law Blog*, 23 November 2020) <<https://europeanlawblog.eu/2020/11/23/adieu-dublin-but-whats-next/>> accessed 17 June 2022.

⁷⁴ Brouwer and others (n 71) 16.

who are ‘unlikely to receive protection’.⁷⁵ The notion of mixed flows underpinning the Pact is constructed on the analysis of the nature and number of arrivals over a relatively short time span (2015-2019). As highlighted by the Commission Staff Working Document accompanying the New Pact, in this period the average EU recognition rate at first instance considerably decreased, falling from a peak of 56% in 2016 to only 30% in 2019.⁷⁶ According to the Commission, this figure demonstrates the increase in arrivals of “bogus” asylum seekers. The choice of this parameter as a basis for the new tools and legislative proposals results in a manifoldly flawed approach.

Firstly, using the first instance indicator disregards the considerable amount of negative decisions that are successfully challenged in the appeal stage, considering which the share of positive recognition would be significantly higher.⁷⁷ Secondly, the use of an EU-wide average figure doesn’t reflect the reality of policy and practice across MSs. Even regarding applications from the same nationality, differences of treatments and recognition rates persist.⁷⁸ Lastly, this method leaves out of account the multifaceted challenges that asylum seekers face in regard to access to protection, justice and effective remedies, as highlighted for example in the 2018 report by the Special Rapporteur on the human rights of migrants.⁷⁹

⁷⁵ European Commission, Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 2020 1.

⁷⁶ European Commission, ‘Commission Staff Working Document Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC)2003/109 and the Proposed Regulation (EU)XXX/XXX [Asylum and Migration Fund]’ 20 <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020SC0207>> accessed 22 June 2022.

⁷⁷ According to Eurostat, in 2019 30% of the total number of appeal decisions (91,030) were positive.

⁷⁸ For many citizenships, the outcome depended strongly on where the application was lodged. For example, recognition rates for Afghan nationals ranged from 32 % in Belgium to 97 % in Switzerland. Almost all applicants from Turkey were granted international protection in the Netherlands, Norway and Switzerland, compared to just 51 % of Turks lodging an application in Germany and 26 % in France. See European Asylum Support Office, ‘EASO Asylum Report 2020: Annual Report on the Situation of Asylum in the European Union.’ (Publications Office 2020) 72 <<https://data.europa.eu/doi/10.2847/531878>> accessed 22 June 2022.

⁷⁹ ‘Report of the Special Rapporteur on the Human Rights of Migrants’ (2018) A/73/178/Rev.1 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/298/96/PDF/N1829896.pdf?OpenElement>> accessed 22 June 2022.

Therefore, the definition and application of the concept of mixed flows reflects the New Pact's restrictive approach towards migration, and underestimates the role of its policies in co-constructing situations of TCNs "irregularity". Additionally, it reflects a perspective of discriminatory treatment against TCNs from certain African and Asian countries, whose right to asylum and fair process will be severely affected were the proposals of the New Pact to be introduced.⁸⁰

C.c. New Pre-Screening and Amended Asylum Procedures Regulation: restricting protection, safeguards and fair process

(1) Pre-entry screening: indiscriminate containment for all TCNs

As part of the five legislative acts contained in the New Pact, the Commission proposed a Regulation introducing a screening of third country nationals at the external borders⁸¹ (herein the Screening Regulation or the Regulation). Within the efforts to create a 'new comprehensive approach to migration and mixed flows'⁸² the Regulation sets up a new *pre-entry screening*. This new EU-wide operational migration tool sets up mandatory identification of 'all third country nationals who are present at the external border without fulfilling the entry conditions as referred to in the Schengen Borders Code or after disembarkation, following a search and rescue operation'.⁸³ The proposal aims at increasing the security within the Schengen area while strengthening control on any person apprehended at an unauthorized external border crossing regardless of their intent to seek international protection.⁸⁴ The mandatory procedural steps of the screening consist of:

⁸⁰ Sergio Carrera and others, 'European Union Policies on Onward and Secondary Movements of Asylum-Seekers and Refugees: A Critical Mapping of the EU's Migration Management Complex' (2022) 1 <<https://www.pubaffairsbruxelles.eu/opinion-analysis/european-union-policies-on-onward-and-secondary-movements-of-asylum-seekers-and-refugees/>> accessed 2 July 2022.

⁸¹ European Commission Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (n 75).

⁸² *ibid* 2.

⁸³ *ibid* 1.

⁸⁴ European Commission Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (n 75) Art. 1.

- a) a preliminary health and vulnerability check;
- b) an identity check against information in European databases and security checks;
- c) Registration of biometric data (i.e., fingerprint data and facial image data) in the appropriate databases;
- d) A security check through a query of relevant national and Union databases, in particular the Schengen Information System, to verify that the person does not constitute a threat to internal security.⁸⁵

To a significant degree, the Screening Regulation proposes an institutionalization of the border control practices already implemented within the hotspot approach and discussed in the controversial European Commission non-paper on ‘controlled centres’.⁸⁶ Unlike the fast-track border procedure, envisaged as a temporary measure to assist frontline countries since the 2015 mass flows, the new mechanism is conceived to introduce such practices as EU-wide standards for all TCNs’ unauthorized entries. By doing so, the proposal *de facto* erases the thin line between people seeking international protection and migrants provided for by the Geneva Convention the ECtHR jurisprudence.⁸⁷ By applying the same procedure indiscriminately to both categories, the Regulation in practice may have the effect of equalling asylum seekers to migrants, effectively disregarding the special protection needs of the former.⁸⁸

As stated in Art. 6(1) of the Regulation, the screening shall be performed ‘at locations situated at or in proximity to the external borders’ and ‘taking into account geography and existing

⁸⁵ *ibid* 2. Art. 9, 10, 14(6), 11 and 12.

⁸⁶ European Commission, ‘Non-Paper on “Controlled Centres” in the EU – Interim Framework’ <<https://www.visegradgroup.eu/download.php?docID=429>> accessed 23 June 2022.

⁸⁷ The Geneva Convention and the latter ECtHR case-law provide for a special treatment with regard to entry and stay of asylum seekers, intended as a particularly vulnerable category of migrants in need of special protection.

⁸⁸ Lyra Jakuleviciene, ‘Pre-Screening at the Border in the Asylum and Migration Pact: A Paradigm Shift for Asylum, Return and Detention Policies?’ in Daniel Thym and Odysseus Academic Network (eds), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Nomos Verlagsgesellschaft mbH & Co KG 2022) 84 <<https://www.nomos-elibrary.de/index.php?doi=10.5771/9783748931164>>.

infrastructures’, suggesting that it may only be carried out in existing hotspots.⁸⁹ Read in conjunction with Art. 4, which affirms that the authorization to enter the territory can be granted only after the conclusion of the screening, the provisions provide the conditions for a situation commonly regarded as *fiction of non-entry*. In such legal fiction, normally happening in border or transit areas, states may attempt to deny jurisdiction and connected safeguards, and to resort to detention.⁹⁰ However, under international law the nature of state territory and the obligation to comply with human rights standards cannot be withdrawn in the exercise of state power.⁹¹

As previously explained, in most cases applicants undergoing border procedures in the Aegean Islands’ hotspots are subject to either detention or restrictions in their freedom of movement. Furthermore, they are denied the opportunity to effectively exercise their procedural rights, often whilst being held in overcrowded and undignified living conditions.⁹² Regardless this *de facto* assessment of the legal context materialization, the Regulation provides significant discretion to MSs regarding which measures they wish to adopt in order to prevent entry and which guarantees to choose to accord to TCNs. Even though detention is merely suggested as one option, it is difficult to imagine which other measures MSs could use for containing applicants during the screening procedure. The absence of specific provisions setting clear modalities in case of detention is likely to further enhance the containment model already implemented in the hotspots and thus result in systemic detention, be that formal or *de facto*.

⁸⁹ See Recital 12, European Commission Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (n 75).

⁹⁰ European Council on Refugees and Exiles (ECRE), ‘ECRE Comments on the Commission Proposal for a Screening Regulation COM(2020) 612’ 13 <<https://www.ecre.org/wp-content/uploads/2020/12/ECRE-Comments-COM2020-612-1-screening-December-2020.pdf>> accessed 19 June 2022.

⁹¹ James C Hathaway and Thomas Gammeltoft-Hansen, ‘Non-Refoulement in a World of Cooperative Deterrence’ [2014] SSRN Electronic Journal 53 <<https://www.ssrn.com/abstract=2479511>> accessed 24 June 2022.

⁹² See for example: European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Country Report: Greece, 2020 Update’ (2020) <https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf> accessed 23 June 2022.; and Dutch Council for Refugees (DCR) and others, ‘The Implementation of the Hotspots in Italy and Greece - A Study’ (2016) <<https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>> accessed 23 June 2022.

Moreover, the envisaged aim for a ‘rapid and effective processing’⁹³ is based on the false assumptions that MSs would be able to easily distinguish between asylum seekers and irregular migrants. This ignores the complex reality of protection assessments⁹⁴ as well as the many factors potentially delaying the process (i.e., capacity of the authorities, availability of staff, number of arrivals). On the contrary, the measures will likely constrain people in border areas and increase the pressure on frontline countries’ reception infrastructures.⁹⁵ Future mass migration flows could severely impact reception conditions, and likely amount to inhuman and degrading treatment, as the Greek experience has already shown.

It is doubtful that the estimated financial and operational resources projected for the implementation of the Screening Regulation will be able to balance the administrative and reception strain created. This is especially true when considering border areas subject to high migratory pressure⁹⁶ such as the Aegean islands. As it appears, the pledge for ‘No more Morias’⁹⁷ voiced by the European Commissioner for Home Affairs Ylva Johansson when presenting the New Pact is foreseen to be wholly unrealistic.

(2) Standard de-briefing form: from screenings to asylum referrals

The annex to the Regulation contains a ‘standard de-briefing form’⁹⁸ that the authorities conducting the screening are mandated to fill with relevant information. This form includes information such as personal data, countries and places of previous residence, third countries

⁹³ European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum (n 22).

⁹⁴ Brouwer and others (n 71) 13.

⁹⁵ Giuseppe Campesi, ‘The EU Pact on Migration and Asylum and the Dangerous Multiplication of “Anomalous Zones” For Migration Management’, *The EU pact on migration and asylum in light of the United Nations global compact on refugees: international experiences on containment and mobility and their impacts on trust and rights* (European University Institute 2021) 200 <<https://data.europa.eu/doi/10.2870/541854>>.

⁹⁶ Brouwer and others (n 71) 57.

⁹⁷ EU Debates, eudebates.tv, *No More Morias! EU Commissioner Johansson on Refugee Crisis. EU Migration Pact: No More Lies* (2020) <<https://www.youtube.com/watch?v=CX49DQsbrzg>> accessed 24 June 2022.

⁹⁸ See Annex to European Commission Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (n 75).

of transit, modalities of transit and assistance provided by facilitators in relation to irregular border crossing (Art. 13 Screening Regulation).⁹⁹

For the purpose of a ‘swift handling’ of applications with a view to establish a ‘seamless link between all stages of the migration process’,¹⁰⁰ the Regulation is meant to be read and applied in conjunction with the Amended Proposal for an Asylum Procedures Regulation¹⁰¹ (herein Amended APR). Competent authorities will have to ‘point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure’, as specified both under Art. 14(2) of the Regulation and in Recital 40 of the Amended APR. Despite the lack of specific provisions clarifying how the collection and verification of information during the screening should be handled, it appears clear that the de-briefing form, if applied, will become the main mechanism for the referral of applicants to the relevant procedure - i.e., regular and border asylum procedure, refusal of entry¹⁰² or return procedure.¹⁰³

Under the Amended APR, the fast-track border procedure introduced by the 2016 Proposal for Asylum Procedures Regulation – and implemented in Greece through Law 4375/2016 and the following IPA, is further expanded. It foresees the mandatory accelerated examination in three types of cases: claims considered abusive due to misleading authorities or the withholding of information, applicants constituting a security or public order threat, and lastly, persons whose

⁹⁹ See Recital 12, *ibid.*

¹⁰⁰ *ibid.* 7.

¹⁰¹ European Commission, Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU 2020.

¹⁰² In line with the Schengen Borders Code. See European Parliament and Council of the European Union, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) 2016.

¹⁰³ In line with the Return Directive. See European Parliament and Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals 2008 269.

nationality has a recognition rate below 20%.¹⁰⁴ The latter criterion is a novelty of the Amended APR and its introduction is envisaged as a tool to respond to the purported *mixed flows* issue.

Considering that information such as nationality and security risk would be inferred from the de-briefing form, the screening could automatically activate the accelerated border procedure. This could substantively affect the procedural rights and guarantees available to applicants at the borders. As previously illustrated, this is likely to be the case in Greece, where the lack of access to legal assistance and Non-Governmental Organisations (herein NGOs) services significantly reduces displaced people's chance for adequate defence.¹⁰⁵ Moreover, faster procedures often result in lower successful recognition compared to the regular asylum procedure.¹⁰⁶

(3) *Safe third country: preserving a dangerous approach*

In a similar fashion, Art. 41(2) of the Amended APR provides, in the context of border procedures, for the rejection of applications without examination on the merits based on their inadmissibility pursuant Art. 36(1) in cases of: (a) [first country of asylum], (b) [safe third country] or (c) [subsequent applications without new elements]. The Commission's decision to maintain the STC criterion is particularly controversial, especially in regards to Turkey. In recent years, the country's position with regards to migration management and the treatment of displaced people has consistently deteriorated. This is exemplified with the action taken on February 2020, when the Turkish President Recep Tayyip Erdogan threatened to allow thousands of migrants to cross the Greek border.¹⁰⁷ Furthermore, Turkey has unilaterally suspended transfers under the Statement, *de facto* constraining thousands of people to

¹⁰⁴ See Recital 40(b) European Commission Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (n 101).

¹⁰⁵ European Union Agency for Fundamental Rights (FRA) (n 40).

¹⁰⁶ European Asylum Support Office (EASO), *Border Procedures for Asylum Applications in EU+ Countries*. (Publications Office 2020) <<https://data.europa.eu/doi/10.2847/13976>> accessed 24 June 2022.

¹⁰⁷ On 2 March 2020, the Greek government adopted an emergency legislative decree (Πράξη Νομοθετικού Περιεχομένου, hereinafter "Decree") stripping persons arriving undocumented in the country of the right to seek asylum during that month. Refugee Support Aegean (RSA), 'Rights Denied during Greek Asylum Procedure Suspension' (2020) <https://rsaegean.org/wp-content/uploads/2020/05/RSA_LN_AsymylumSuspension.pdf> accessed 24 June 2022.

indeterminate waiting times in the hotspots. Therefore, the presumption of safety and protection of migrants and refugees is currently not upheld and the inclusion of the criterion is substantially flawed.

The extent to which the criterion will impact applications lies in the real possibility for the applicant to challenge the presumption of safety and exercise their right to appeal.¹⁰⁸ Once more, even though the Amended APR provides for such guarantees under Art. 54(4) and (5), stringent time constraints and the aforementioned procedural limitations provided for in border contexts in Greece will likely render the accessibility to remedies fictitious.

C.d. Protecting borders, restricting protection

As demonstrated in the analysis, the cumulative effect of the operational and procedural devices introduced by the Screening Regulation and the Amended APR rest on the indication that most persons arriving irregularly at border areas ‘neither deserve nor need to undergo substantive examination in normal asylum procedures with the full scope of guarantees’.¹⁰⁹ Considering such assumptions, the containment and deterrence strategy envisaged by the Commission and underpinning the New Pact will likely produce the desired effect; the ordinary asylum procedure will become a privilege for a restricted number of persons, while the need for protection of the vast majority will be overruled by an ever-increasing borders enforcement and protection.

The evolution of the situation at the Greek external borders, and particularly in the Aegean islands, do nothing but confirm that strategies of containment of migrants in conjunction with a strong focus on borders and externalization are unsustainable. Confinement and excessive restriction of liberty have resulted in, and will continue to produce, unnecessary human

¹⁰⁸ Jens Vedsted-Hansen, ‘Border Procedure on Asylum and Return: Closing the Control Gap by Restricting Access to Protection?’ in Daniel Thym and Odysseus Academic Network (eds), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Nomos Verlagsgesellschaft mbH & Co KG 2022) 110 <<https://www.nomos-elibrary.de/index.php?doi=10.5771/9783748931164>>.

¹⁰⁹ European University Institute., *The EU Pact on Migration and Asylum in Light of the United Nations Global Compact on Refugees: International Experiences on Containment and Mobility and Their Impacts on Trust and Rights* (Publications Office 2021) 177 <<https://data.europa.eu/doi/10.2870/541854>> accessed 23 June 2022.

suffering. Displaced people fundamental rights will continue to be violated, in direct contrast with international and European standards. The reforms proposed by the New Pact appear to do little but exacerbate the issues of the current model, and from the analysis conducted do not appear to be able to address the complex challenges frontline countries face when confronted with migratory pressure. Instead of introducing mechanisms that would foster a fairer and more efficient redistribution of such pressure, the analysed policies place a strong emphasis on the shortening of procedural timings and restricting displaced people access to rights and remedies. All considered, this demonstrates a failure to address the multiple implementation challenges and improve the grave systemic deficiencies the Greek system has shown in recent years.

II. THE FIRST CLOSED-CONTROLLED ACCESS CENTRE ON SAMOS: DIGNITY IN A PRISON-LIKE FACILITY

While the hotspot approach was actively being tested in the Aegean islands, effectively resulting in extended containment periods in inadequate facilities for thousands of individuals, a 2017 Staff Working Document from the EU Commission praised its success. The document presented the hotspots as ‘a tangible operational achievement and a concrete example of the principles of solidarity and responsibility in responding to the pressure faced by these Member States.’¹¹⁰

Furthermore, to increase the capacity of the Greek reception and asylum infrastructure, the approach was backed by extensive EU financial support – eventually totalling to €3,53 billions between 2014 and 2020.¹¹¹ In addition to funding, the EU increased the operational deployment of EU Agencies – namely the European Asylum Support Office (EASO) now European Union Agency for Asylum (EUAA), FRONTEX, Europol and Eurojust. The agencies were tasked with the mission to work alongside the Greek authorities in the hotspots and in border areas within their respective mandate.¹¹²

In November 2020, two months after a devastating fire destroyed Moria RIC on Lesbos leaving around 12,000 people without shelter, the Commission committed to improve the situation on

¹¹⁰ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Delivery of the European Agenda on Migration COM(2017) 558’ 12 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0558&from=ES>> accessed 27 June 2022.

¹¹¹ The EU’s financial support to Greece in the period 2014-2020 comes from three EU funds: €2.44 billion from the Asylum, Migration and Integration Fund €450 million from the Internal Security Fund (covering borders, visa and security) and €643.6 million from the Emergency Support Instrument. European Commission - Migration and Home Affairs, ‘Financial Support from the EU’ <https://ec.europa.eu/home-affairs/policies/migration-and-asylum/migration-management/task-force-migration-management/financial-support-eu_en> accessed 27 June 2022.

¹¹² European Commission, ‘Annex I: Explanatory Note on the “Hotspot” Approach’ 1–2 <<https://www.statewatch.org/media/documents/news/2015/jul/eu-com-hotspots.pdf>> accessed 16 June 2022.

the Aegean islands. The priority was to create ‘suitable and futureproof facilities that would be up to EU standards’,¹¹³ based on the guiding principles underpinning the New Pact.

With this intent, a dedicated Task Force Migration Management (TFMM) was set up shortly after, followed by an agreement with the Greek authorities and EU agencies to establish a joint plan for the creation of five new Multi-Purpose Reception and Identification Centres (MPRICs) on the Aegean islands.¹¹⁴ This approach was first endorsed by the European Council in a non-paper from 2017, calling for MSs to voluntarily set up ‘controlled centres [...] to ensure that all TCNs disembarked in the EU are registered and processed in an orderly and effective way that allows differentiating rapidly and securely between irregular migrants, who have no right to stay in the EU, and persons who may be in need of international protection’.¹¹⁵ Under the guidance of Deputy-Director Beate Gminder, the TFMM was tasked with ensuring the relevant EU reception standards were upheld in the new structures.¹¹⁶ The TFMM was also given responsibility to increase the overall efficiency and coherence of the asylum and migration system through the creation of an envisaged ‘seamless link between asylum and return procedures’.¹¹⁷ Therefore, following the guidelines of the New Pact, all asylum-related procedures from registration to pre-removal detention were set to be executed within the premise of the new MPRICs.

In December 2020, under the Asylum, Migration and Integration Fund (AMIF), the Greek government was granted €122 million for the design and construction of Closed Controlled Access Centres (CCACs)¹¹⁸ on the islands of Samos, Leros and Kos. A further €155 million

¹¹³ European Commission, ‘Towards Better Living Conditions: Progress One Year On’ <https://ec.europa.eu/home-affairs/news/towards-better-living-conditions-progress-one-year-2021-09-09_en> accessed 27 June 2022.

¹¹⁴ European Commission, ‘Commission and Greece Agree Joint Plan’ <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2287> accessed 27 June 2022.

¹¹⁵ European Commission, ‘Non-Paper on “Controlled Centres” in the EU – Interim Framework’ (n 86) 1.

¹¹⁶ European Asylum Support Office, *EASO Guidance on Reception Conditions Operational Standards and Indicators*. (Publications Office 2016).

¹¹⁷ European Commission Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (n 101) 3.

¹¹⁸ In Greek, the CCAC are referred to as Κλειστή Ελεγχόμενη Δομή Νήσων (KEDN).

was granted for the CCACs on Lesbos and Chios.¹¹⁹ The decision was met with fierce opposition by local authorities and communities across all islands, which condemned the size of the new ‘superstructures’,¹²⁰ fearing the continuation of the chronic overcrowding issues within the centres.

Nevertheless, the EU and governmental plan proceeded, and on 18 September 2021, the first CCAC was inaugurated on Samos. Around 300 people were transferred soon after the inauguration, resulting in the official closure of the former RIC located in Vathy, Samos’ main city.¹²¹ By December 2021, the CCACs on Kos and Leros were opened, yet the construction works on Lesbos and Chios are suffering substantial delays due to ongoing protests and boycotts from the local population.¹²²

Although the EU Commissioner Johansson guaranteed that the CCACs ‘will not be closed, they will be humane’,¹²³ and the newly opened facility on Samos was regarded as ‘an excellent example of such a new, European approach, as it promises a better, controlled management of migration’¹²⁴ that would ‘offer back the lost dignity to people seeking international

¹¹⁹ ‘Daily News 30/03/2021’ (*European Commission*) <https://ec.europa.eu/commission/presscorner/detail/en/mex_21_1521> accessed 28 June 2022.

¹²⁰ Refugee Support Aegean (RSA), ‘Massive Protests by Islanders Are Challenging the Government’s Narrative on New Prison Structures in the Aegean’ (28 January 2022) <<https://rsaegean.org/en/new-prison-structures-in-the-aegean/>> accessed 12 July 2022.

¹²¹

European Commission, ‘Opening of the First New Reception Centre on Samos – Zervou’ (n 2).

¹²² ‘Greek Islanders Block Ship Full of Construction Materials for Migrant Camps’ (*InfoMigrants*, 10 January 2022) <<https://www.infomigrants.net/en/post/37728/greek-islanders-block-ship-full-of-construction-materials-for-migrant-camps>> accessed 12 July 2022.

¹²³ Ylva Johansson, ‘Spring Is the Best Time to Prepare for Winter – Why I Am Visiting Lesbos Now’ (*European Commission*, 24 March 2021) <https://ec.europa.eu/commission/commissioners/2019-2024/johansson/blog/spring-best-time-prepare-winter-why-i-am-visiting-lesvos-now_en> accessed 28 June 2022.

¹²⁴ ‘Speech by Ms. Beate Gminder at the Inauguration of the First Closed Controlled Structure in Samos Ministry of Immigration and Asylum’ (*migration.gov.gr*, 22 September 2021) <<https://migration.gov.gr/omilia-tis-ms-beate-gminder-sta-egkainia-tis-protis-kleistis-elegchomenis-domis-sti-samo/>> accessed 28 June 2022.

protection’,¹²⁵ the reality in practice presented an antithetical perspective on the conditions people are enduring on a daily basis.

To understand how the strategy of containment and deterrence implemented by the EU MPF materialises at the borders of Europe, this chapter will focus on the CCAC on Samos. In the context of the grave systemic deficiencies of the Greek asylum system exposed in the previous chapter, and being the CCAC the first of its kind to become operative, the analysis aims to give insights about the living conditions, emerging practices and procedures under the new model, and their effects on the rights of its residents. These insights will be held up against the relevant normative framework and human rights standards.

After presenting the research methodology, a human-rights based assessment of the CCAC will be conducted with a focus on freedom of movement, integration, access to legal aid, asylum, healthcare, and the impact of surveillance on the right to private life and mental health.

A. METHODOLOGY

In view of the recent opening of the CCAC, and considering its key location at the European borders, with the possibility that it will serve as model for a new generation of reception and identification centres across Europe,¹²⁶ an up-to-date human rights-based assessment of the facility is considered timely and relevant. Since this study intends to raise awareness on the practical implementation on the ground of policy developments, it was essential to design a research strategy able to convey, as much as possible, a far-reaching portrait of the reality that

¹²⁵ ‘The Minister for Migration and Asylum, Mr. Notis Mitarachi, Inaugurated the New Closed Controlled Access Center in Samos (Greek)’ (*migration.gov.gr*, 18 September 2021) <<https://migration.gov.gr/en/o-y-poyrgos-metanasteysis-kai-asyloy-k-notis-mitarakis-egkainiase-ti-nea-kleisti-elegchomeni-domi-sti-samo/>> accessed 27 June 2022.

¹²⁶ As part of the UK Government’s “New Plan for Immigration”, Boris Johnson announced in April that people who arrive in the country will be ‘housed in accommodation centres like those in Greece’. Bea Tridimas, “Invisible People”: UK Adopts Greek Approach to New Asylum “Reception Centres” *Byline Times* (30 May 2022) <<https://bylinetimes.com/2022/05/30/invisible-people-uk-adopts-greek-approach-to-new-asylum-reception-centres/>> accessed 29 June 2022. The UK Secretary of State for Home Affairs, Priti Patel, visited the CCAC on Samos to inform the implementation of similar “reception centres” for asylum seekers in the UK. May Bulman, ‘Priti Patel Visits “Inhumane” Greek Asylum Reception Centre’ *The Independent* (4 August 2021) <<https://www.independent.co.uk/news/uk/home-news/priti-patel-greece-samos-asylum-b1896832.html>> accessed 28 June 2022.

displaced people are facing. With this intention, a qualitative research approach combined with a literature review was opted for.

Considering that the experiences of people residing in the CCAC are a central focus for this investigation, a field trip to the island of Samos was organised. The initial intention was to conduct interviews and focus groups with a select group of camp residents. The restrictions of entry and exit from the facility, which will be further illustrated in the analysis, compounded by the transfers of some residents to mainland facilities according to their asylum procedure decisions, rendered the initial plan unfeasible. Consequently, a series of semi-structured interviews were conducted with humanitarian workers from NGOs instead. A range of NGO workers were selected that, in some capacity, provide services on Samos inside and outside the CCAC, ranging from legal assistance to casework, advocacy, community-based activities and informal education.

To prepare the interviews, recently published reports from NGOs and IGOs, jointly with press articles from relevant international and national media outlets, were analysed. The literature review allowed to identify the main areas of interest, which developed around the following rights:

- i. Freedom of movement
- ii. Integration
- iii. Access to legal aid and the right to asylum
- iv. Access to healthcare
- v. Surveillance impact on private life and mental health

Most of the reports analysed were constructed from primary research, and specifically centred around interviews with CCAC residents; this literature review was paramount in complementing the findings of the research. It supplemented the analysis providing crucial first-hand insights and perceptions of the struggles of people on the move.

Additionally, this paper draws from the personal experience, knowledge and interest of the author. Extensive time was spent on Samos working as a humanitarian, that consequently led to the co-founding of an NGO that provides free legal assistance to migrants and asylum seekers. The repertoire of experience helped inform the research with an enhanced understanding of the special context of the island, its dynamics, and the many overlapping issues at play on the ground.

B. HUMAN-RIGHTS BASED ASSESSMENT

‘The creation of a modern and safe new closed controlled access centre in Samos and the abolition of the [RIC] in Vathy, marks a new period for migration. We keep our promises to the citizens of the islands.’¹²⁷

With these words, the Minister for Migration and Asylum Notis Mitarachi presented the new facility during its inauguration. According to the Greek government, the ‘modern and safe’ centre is upholding asylum seekers fundamental rights in accordance with European standards and relieving the local community from the pressure and safety concerns that the former RIC previously caused in its five years of activity.

The 14,250 square meter compound is located in a remote and isolated area on Zervou hill, approximately 7 km away from the urban area of Vathy. The only public transport available to the compound is by bus, and currently four rides are operated daily. The facility is designed to accommodate 3000 people, and as of June 2022, it hosts 484 people,¹²⁸ making up 23,7% of the total capacity. As established by Art. 6(2) of the General Regulation of Operation of the Closed Controlled Structures, the allocation of asylum seekers is developed according to ‘vulnerability category, ethnic origin, gender and marital status’.¹²⁹ Sections are designed with dedication to specific nationalities (general population), people pertaining to vulnerable groups (i.e., single parent families, people with disabilities, elders, unaccompanied minors)¹³⁰ and rejected applicants in detention awaiting deportation or voluntary returns.¹³¹

¹²⁷ ‘The Minister for Migration and Asylum, Mr. Notis Mitarachi, Inaugurated the New Closed Controlled Access Center in Samos (Greek)’ (n 125).

¹²⁸ ‘NSP Eastern Aegean 27.06’ (*migration.gov.gr*) <<https://www.scribd.com/document/580153599/NSP-Eastern-Aegean-27-06>> accessed 29 June 2022.

¹²⁹ See Art. 6(2) Hellenic Republic, General Rule of Procedure of the Closed Controlled Structures Κλειστές Ελεγχόμενες Δομές 2021.

¹³⁰ Per Hellenic Republic Law No. 4636/2019 Articles 39(5) and 58(1), “vulnerable groups” comprise children, both unaccompanied and in families; direct relatives of victims of shipwrecks; persons with disabilities; older persons; pregnant women; single parents with minor children; victims of human trafficking; persons with serious illnesses; persons with cognitive or mental disabilities; and survivors of torture, rape, or other severe forms of psychological, physical, or sexual violence.

¹³¹ ‘Closed Controlled Access Center of Samos (Greek)’ (*migration.gov.gr*, 22 September 2021) <<https://migration.gov.gr/en/ked-samoy-kleisti-elegchomeni-domi-samoy/>> accessed 29 June 2022.

The design of the CCAC on Samos includes: reception facilities; safe zones for unaccompanied minors and other vulnerable groups; facilities for accommodation and procedural protocols for arrivals; administrative areas; facilities needed to guarantee access to services; leisure and recreational areas; and pre-removal detention centre (PROKEKA).¹³² The accommodation is organised between 240 containers that cover 25 square meters, with a capacity to host between 4 and 8 people each. Additionally, 9 one-storey buildings could accommodate up to 120 people each. Given the low occupancy, only one part of the CCAC is currently in use.

The facility is entirely fenced with NATO-type barbed wire fences and implements a hyper-technological surveillance system and security personnel deployment that allows for the constant monitoring of any activity within and in the proximity to the facility. Through a digital card system, residents can enter and exit the facility. Once operative, the laundry and canteen will be accessible via card identification, while in the meantime asylum seekers are distributed pre-cooked meals twice a day.¹³³

Since the opening of new facility, NGOs, journalists and human rights groups have been denouncing the conditions in which residents are forced to live in. Many of the aforementioned groups have deconstructed this narrative of a modern hosting structure and equated with the common features usually found within an isolated modern prison. Herein, the following sections will provide a detailed assessment of the current facility operations and aim to shed light on the impact these policies and practices have on the fundamental rights of displaced people selected for the assessment.

B.a. Freedom of movement

(1) Prohibition of exit

Since November 2019, the Greek asylum system has been regulated by the International Protection Act (IPA),¹³⁴ which entered into force in January 2020 and since then already underwent further amendments. The IPA has been harshly criticised by UNHCR and human

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ Hellenic Republic, Law 4636/2019 on International Protection and Other Provisions, also known as International Protection Act (IPA) 2019.

rights organisations for the weakening of basic guarantees for persons in need of protection. Several of the introduced provisions could lead to arbitrary detention of asylum seekers and TCNs,¹³⁵ disregarding the principle of proportionality, exceptionality and last resort measure.¹³⁶

As illustrated in the previous chapter, to this day on the Aegean islands TCNs are indiscriminately subjected to a practice of systematic geographical restriction which obliges them to reside in the premises of reception facilities (including the CCACs) until a decision is issued. The IPA specifies that such restrictions can be imposed when ‘necessary for the swift processing and effective monitoring of the applications for international protection or for duly justified reasons of public interest or reasons of public order’. The restriction is imposed by the Head of the Asylum Service and is referenced on the asylum seekers’ identity cards.¹³⁷ The lawfulness of this measure was challenged by GCR in 2019, and a decision on annulment is still pending before the Greek Council of State.¹³⁸

As established by the Rule of Procedure of Closed Controlled Access Centres, persons undergoing the asylum procedure are allowed to enter and exit the facility during specific hours, which are between 8am and 8pm on Samos, as per the decision of the Head of the CCAC. In case of a double breach of the rule, Art. 7 para 2 of the Rule of Procedure provides for the

¹³⁵ Inter alia, L. 4636/2019 expanded the grounds for detention, by introducing the possibility to detain asylum seekers at liberty and not only in view of return/deportation procedures, contrary to the provision of Article 46 para. 2 L. 4375/2016. Moreover, L. 4636/2019 increases the maximum time limit for the detention of asylum seekers to 18 months and thus the total detention period of a third country national within the migration context may reach 36 months (18 months while the asylum procedure + 18 months in view of removal). Greek Council for Refugees (GCR), ‘Submission of the Greek Council for Refugees to the Committee of Ministers of the Council of Europe Concerning the Groups of Cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08)’ <<https://rm.coe.int/09000016809f5506>>.

¹³⁶ As enshrined in Art. 31 of the 1951 Geneva Convention and Art. 8 of the Directive 2013/33/EU. United Nations High Commissioner for Refugees (UNHCR), ‘UNHCR Comments on the Law on “International Protection and Other Provisions” (Greece)’ (*Refworld*, February 2020) <<https://www.refworld.org/docid/5ee3590e4.html>> accessed 30 June 2022.

¹³⁷ ‘Freedom of Movement’ (*Asylum Information Database | European Council on Refugees and Exiles*) <<https://asylumineurope.org/reports/country/greece/reception-conditions/access-and-forms-reception-conditions/freedom-movement/>> accessed 29 June 2022.

¹³⁸ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece 2021’ (2021) 160 <https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf> accessed 27 June 2022.

restriction or termination of residence and material reception conditions, being it monthly in-kind and financial support.¹³⁹ Applicants whose claim are rejected and are awaiting returns or deportation are to be detained in the PROKEKA.

The ‘closed-controlled’ feature of the CCAC in combination with the prison-like environment has been strongly criticized by NGOs and IGOs, because it is feared to reproduce practices of blanket detention. Concern borne from the implications experienced after the introduction of the geographical restriction in 2018. In response to the criticism, the General Secretary of the Reception and Identification Service Manos Logothetis stated that ‘[asylum seekers] are free to come in and go out every day, so this is not a prison’,¹⁴⁰ a reassurance reinforced by the statement of EU Commissioner Johansson ‘[t]hese are facilities that will not be closed, they will be humane’.¹⁴¹

Concerns were substantiated a month after the CCAC was opened. Following an unpublished decision by the Ministry of Migration and Asylum, residents without a valid asylum card were subject to a *prohibition of exit*, a measure enacted for an indefinite amount of time. Persons without a valid asylum card include:

- a. new arrivals after the registration of their asylum application and pending the issuance of their identity card,
- b. persons whose applications have been rejected at second instance who did not lodge or are unable to lodge a subsequent asylum application,
- c. those who have filed a subsequent application until a decision on admissibility is issued,
- d. those whose applications have been rejected at first instance, until they can lodge an appeal.¹⁴²

¹³⁹ Hellenic Republic General Rule of Procedure of the Closed Controlled Structures Κλειστές Ελεγχόμενες Δομές (n 129).

¹⁴⁰ Tridimas (n 126).

¹⁴¹ Johansson (n 123).

¹⁴² Alison Abrahams, ‘Greece: Asylum Seekers Being Illegally Detained in New EU-Funded Camp’ (*Amnesty International*, 2 December 2021) <<https://www.amnesty.org/en/latest/news/2021/12/greece-asylum-seekers-being-illegally-detained-in-new-eu-funded-camp/>> accessed 30 June 2022.

The prohibition went into immediate effect without any prior written communication regarding the relevant administrative decision thereof nor without informing the concerned residents about the legal basis on which the exit ban was being provided. This practice is in direct contradiction with the guarantees committed to within the concerned Greek and EU legislation,¹⁴³ hence amounting to *de facto* detention. According to Amnesty International, the ban deprived around 100 residents of their freedom of movement, approximately 25% of the total number of the CCAC residents.¹⁴⁴

The measure was challenged by GCR, which objected to the *de facto* detention of an Afghan applicant whose subsequent application decision was pending.¹⁴⁵ On the 17 December 2021, the Administrative Court of First Instance of Syros accepted the objections and ordered the lift of the applicant's prohibition to exit. The Court stated that 'especially for international protection applicants who enter without the legal formalities in the island country, this movement is allowed within the relevant island, unless a decision has been taken to lift geographic restriction. [...] detention is only allowed on the basis of a Decision issued by the competent Police Director, as an exception and only for one of the grounds exhaustively prescribed by article 46 of [IPA], a precondition which is also not met, as no decision with such content has been issued. [F]inds that the Head of [Samos]CCAC illegally took the measure in question (exit ban) against the Applicant'.¹⁴⁶

Although the decision demonstrated the arbitrariness and unlawfulness of the practice, reports of *de facto* detention instances continue to date and are having a severe, and adverse, impact on the detained individuals. In relation to his detention, an Afghan asylum seeker, on Samos since 2019, stated 'I just want to go outside. They don't let me. They are keeping me here as a

¹⁴³ As established by Art. 46(4) and (6), transposing Art. 8 and 9 Directive 2013/33/EE. Hellenic Republic Law 4636/2019 on International Protection and Other Provisions / International Protection Act (IPA) (n 43). As well as enshrined in Art. 5(1) and 5(4) ECHR.

¹⁴⁴ Abrahams (n 142).

¹⁴⁵ Greek Council for Refugees (GCR), 'The Administrative Court of Syros Ruled Unlawful the Measure of Prohibiting the Exit of an Afghan Asylum Seeker from the New Closed Controlled Access Facility of Samos' (GCR, 17 December 2021) <<https://www.gcr.gr/en/news/press-releases-announcements/item/1867-the-administrative-court-of-syros-ruled-unlawful-the-measure-of-prohibiting-the-exit-of-an-afghan-asylum-seeker-from-the-new-closed-controlled-access-facility-of-samos-ccf-samos>> accessed 30 June 2022.

¹⁴⁶ Decision No AP 36/17-12-2021 Administrative Court of Syros 2021.

prisoner. [...]at least, [in the former RIC], I was free. I was not living in a cage. At least, I had my freedom to go somewhere.’¹⁴⁷

According to Sae Bosco, Communication and Advocacy Coordinator of Samos Volunteers NGO, the ban appears to be applied in an arbitrary and irregular manner, hindering the capacity of the NGOs on the ground to monitor and follow up on individual cases and then to be able to challenge it in front of a court. Furthermore, ‘NGOs are worried that advocacy efforts would incur the risk of worsening even more the situation for camp residents impacting their already difficult daily lives.’¹⁴⁸ To date, residents intending to leave the CCAC are required to sign up on a list provided by the Administration a day in advance. Reportedly, this practice does not guarantee that the person will be allowed to exit.

As previously stated in point a), new arrivals have been subject to *de facto* detention while waiting to receive the asylum card. According to Ioanna Begiazi, a Human Rights Lawyer at the Human Rights Legal Project (HRLP), the initial identification and screening checks for new arrivals lasts approximately five days, during which people are housed in a dedicated closed section of the CCAC. If previously restrictions on movement were imposed to newly arrived asylum seekers on the basis of mandatory quarantine rules in the context of the national COVID-19 regulations, since the restrictions were lifted at the national level new arrivals continue to be detained for the duration of the screening with no apparent legal basis. The GAS has reportedly used the lack of available asylum cards to justify the delays in issuances, which consequently meant that new arrivals were prohibited from leaving the CCAC for prolonged periods of time.¹⁴⁹

In February 2022, HRLP, Advocats sans Frontières (ASF) and GCR sent a report to the Greek Ombudsperson to denounce the continuation of the unlawful restrictions. The response from the Ombudsperson, which was sent directly to the CCAC Administration, reiterated that the

¹⁴⁷ Greek Council for Refugees (GCR) and OXFAM (n 4) 4.

¹⁴⁸ Sae Bosco, Communication and Advocacy Coordinator, Samos Volunteers NGO. Interviewed by the author (Samos, 6 June 2022).

¹⁴⁹ Ioanna Begiazi, Human Rights Lawyer at the Human Rights Legal Project (HRLP). Interviewed by the author (20 June 2022).

lack of asylum card does not constitute a valid legal basis for the restriction thereof, a decision that nevertheless did not produce to date any change in the illegal practice.¹⁵⁰

(2) Prohibition of entry

GCR reported to have received verbal information from the CCAC Administration stating that a soon to be released national directive will now forbid the entry to the structure for people with negative asylum decisions.¹⁵¹ The information is confirmed by a correspondence from February 2022 between the Samos Advocacy Collective (SAC) and Beate Gminder, Deputy Director General of the TFMM, where the latter states that ‘[...]persons without an asylum seeker status (i.e. persons with a negative decision at second instance and beneficiaries of international protection) have indeed restricted access to the MPRIC. [...] these persons do not have the possibility to re-enter in case they do not have an entry-exit card.’¹⁵²

In case of implementation, this regulation will oblige a significant number of protection seekers to choose between leaving the CCAC and consequently be forced into a state of homelessness and marginalisation, or remain and be detained for an indefinite amount of time in a highly securitised carceral environment. In the latter case, residents would not only be deprived of their freedom of movement, but also of their right to challenge the unlawful containment they are subject to, since the detention measure is applied without issuance of a written communication, in clear violation of Greek, EU and international standards.

Even for recognised refugees and beneficiaries of international protection, the situation does not seem to be safer. After the asylum legislation was amended in March 2020,¹⁵³ the period for recognised refugees to transition between state-provided support to independent leaving was reduced from six months to 30 days. After such period, refugees are required to leave the

¹⁵⁰ Ibid.

¹⁵¹ Alkistis Agrafioti and Greek Council for Refugees (GCR), ‘Newsletter, December 2021 - Prison Conditions and Illegal Detention Practice in the New Closed Controlled Structure of Samos’ <<https://mailchi.mp/9e9227576fff/newsletter-13420657?e=5939f33e2c>> accessed 30 June 2022.

¹⁵² Samos Advocacy Collective (SAC), ‘Correspondence between Samos Advocacy Collective and the European Commission’ (22 February 2022) <<https://drive.google.com/file/d/1Jve-yZpsPSi5n5USLWo-XyFMNno-aPIJ/view>>.

¹⁵³ Article 114 L. 4636/2019, as amended by Article 111 L. 4674/2020.

reception facility, with no continued cash or food assistance.¹⁵⁴ Since long-term comprehensive integration and inclusion programs continue to be severely lacking in Greece, albeit the many years of experienced high migration flows, the risk of homelessness and destitution for recognised refugees is increasingly critical.¹⁵⁵

B.b. Integration

As previously mentioned, exit from the structure is allowed for some residents. Transfers to the city of Vathy are facilitated by a bus service running four times a day. However, a roundtrip ticket costs €3,20, a high cost when compared with the state-provided financial aid of €2,50 per day for a single person and €1,75 for a member of a family of four.¹⁵⁶ Consequently, if residents would want to visit Vathy once a week, the total cost would amount to almost 20% of the average cash allowance received on a monthly basis.¹⁵⁷ To date, free bus tickets are provided by UNHCR to residents with a hospital appointment,¹⁵⁸ and by the grassroots NGO, Just Action, for people needing to access their service.¹⁵⁹ The only available alternative is a 2 hours journey, by foot via a steep hill, to town.

CCAC residents referred to the excessive cost of the bus as one of the main impediments in accessing the city, compounded by occurrences of tensions on the bus because of its reduced

¹⁵⁴ United Nations High Commissioner for Refugees, ‘Greece Must Ensure Safety Net and Integration Opportunities for Refugees’ (*UNHCR*, June 2020) <<https://www.unhcr.org/news/briefing/2020/6/5ed603924/greece-must-ensure-safety-net-integration-opportunities-refugees-unhcr.html>> accessed 13 July 2022.

¹⁵⁵ ‘Refugees in Greece: Risk of Homelessness and Destitution for Thousands during Winter’ (*Refugees International*, 22 December 2020) <<https://www.refugeesinternational.org/reports/2020/12/21/7z5xegmkuq5p3lob24hmxp3l0zy7oc>> accessed 1 July 2022. And ‘Afghans in Greece Feel Abandoned After Getting Asylum’ (*Pulitzer Center*) <<https://pulitzercenter.org/stories/afghans-greece-feel-abandoned-after-getting-asylum>> accessed 1 July 2022.

¹⁵⁶ Greek Council for Refugees (GCR) and OXFAM (n 4) 5.

¹⁵⁷ Greek Council for Refugees (GCR), ‘The New Closed Controlled Structure of Samos: An Isolated “Modern Prison”? (Greek)’ <<https://www.gcr.gr/el/ekdoseis-media/reports/item/1839-i-nea-kleisti-elegxomeni-domi-samou-mia-apomonomeni-sygxroni-fylaki>> accessed 28 June 2022.

¹⁵⁸ Greek Council for Refugees (GCR) and OXFAM (n 4).

¹⁵⁹ Richard Vyse, Project Manager at the Human Rights Legal Project (HRLP). Interviewed by the author (20 June 2022).

capacity compared to the needs, and of the ‘rude’ attitude of bus drivers.¹⁶⁰ Furthermore, the reduced bus capacity has reportedly caused issues for residents who had missed the last bus of the day because it was at capacity and were therefore obliged to sleep outside, with the further consequence of being exposed to the risk of withdrawal of material reception conditions.¹⁶¹

The isolation and challenges in accessing urban centres and its social sphere have a harsh impact on residents’ wellbeing, increasing their marginalisation and social exclusion. In the former RIC, despite the undignified material reception conditions, the proximity to Vathy allowed people to access essential services provided by NGOs, opportunities to engage with the local community, to exercise their agency and to have a vague sense of routine. As stated by T.E., unaccompanied minor from Cameroon residing in the CCAC, ‘[..]I have been for two years in the city. I used to go down to the city to swim...to relieve my stress, I used to talk to people...So I’m not really happy.’¹⁶²

In 2020, the European Commission presented, in direct connection with the New Pact, the Action Plan on Integration and Inclusion 2021-2027, stating that the ‘successful integration of migrants depends both on early action and long-term investment. Providing support to migrants and their receiving communities at the earliest possible moment in the migration process is essential.’¹⁶³ In line with this direction, the current Greek National Strategy for Integration is centred on the creation of a framework for ensuring the participation of local government bodies are involved in integration programs at the local level, on granting access for applicants of international protection to basic services and on fostering their civic participation with the aim of integrating them in the country’s public life.¹⁶⁴

¹⁶⁰ The author was granted access to part of the interviews dataset collected by Still I Rise NGO (n 4).

¹⁶¹ Begiazi (41).

¹⁶² T.E. in John Psaropoulos, ‘New Greek Camp Pushes Refugees out of Sight’ <<https://www.aljazeera.com/news/2021/9/23/samos-greek-camp>> accessed 1 July 2022.

¹⁶³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action plan on Integration and Inclusion 2021-2027 2020 7.

¹⁶⁴ Ministry of Migration and Asylum, ‘Greek Integration Policy’ (21 May 2020) <<https://migration.gov.gr/migration-policy/integration/politiki-entaxis-se-ethniko-epipedo/>> accessed 1 July 2022.

It is difficult to imagine how the EU-funded closed controlled structures could support the realisation of these goals. On the contrary, the current reality portrays a system designed on cumulative challenges and restrictions, where displaced people's access to institutions and services, and positive social interactions with the local community are severely curtailed.

B.c. Access to legal aid and right to asylum

(1) Access to legal aid

Since 2020, the activities of NGOs operating in the field of migration and asylum have been restricted by two Joint Ministerial Decisions,¹⁶⁵ that have established a mandatory registration with strict requirements. The approval of the registration has been deemed to be subject to 'seemingly unlimited discretion'¹⁶⁶ from the authorities and a highly restrictive legal framework. The Council of Europe, the UN Special Procedures and many NGOs within Greece have expressed concern for the subsequent shrinking civic space¹⁶⁷, 'suffocating effect'¹⁶⁸ on civil society and its incompatibility with international and EU law.

For NGOs which are not officially registered, the access to the CCAC requires previous official authorisation at ministerial level, after which the CCAC Head may set additional requirements

¹⁶⁵ Greek L 4662/2020, Gov. Gazette A' 27/07.02.2020; Joint Ministerial Decision (JMD) 3063/2020, Gov. Gazette B' 1382/14.04.2020; Greek L 4686/2020, Gov. Gazette A' 96/12.05.2020; JMD 10616/2020, Gov. Gazette B' 3820/09.09.2020.

¹⁶⁶ European Council on Refugees and Exiles (ECRE), 'Concerning the Lawfulness of Greek Legislation Regulating the Registration of Non-Governmental Organisations (NGOs) on the Registry of NGOs Working with Refugees and Migrants in Greece: Expert Opinion upon Request from the ELENA Coordinator in Greece' 3 <<https://ecre.org/wp-content/uploads/2021/12/Expert-opinion-NGO-Registry-final.pdf>> accessed 3 July 2022.

¹⁶⁷ See Adriana Tidona and Amnesty International, 'Greece: Regulation of NGOs Working on Migration and Asylum Threatens Civic Space'; Refugee Support Aegean (RSA), 'Repression Continued Greece Further Restricts Civil Society Supporting Refugees and Migrants' (2020) <https://rsaagean.org/wp-content/uploads/2020/09/RSA_Comments_New_NGO_Registry-1.pdf> accessed 3 July 2022.; Council of Europe, 'Expert Council on Ngo Law CONF/EXP(2020)4: Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Greek Legislation on Ngo Registration' <<https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d>> accessed 3 July 2022.

¹⁶⁸ 'United Nations Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor: Preliminary Observations and Recommendations' <<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2F2022-06%2FEOM-Statement-Greece-SR-Defenders.docx&wdOrigin=BROWSELINK>> accessed 3 July 2022.

for each visit.¹⁶⁹ On Samos, after the recent decongestion of the reception facility, the majority of the NGOs decided to cease their operations. To date, METAdrasi and Praxis are the only independent legal actors providing assistance to asylum seekers within the CCAC, in partnership with UNHCR. This means that the almost 500 people residing in the facility can access legal aid on site through one full-time lawyer from METAdrasi and two part-time lawyers from Praxis.¹⁷⁰ Although additional free legal aid is available through the services of the NGOs, I Have Rights and ASF, the total capacity of legal actors on the island does not cover the need of the current population, despite the current low CCAC occupancy rate.

No state-provided free legal assistance is available at first instance, nor does the IPA define an obligation to provide it. In 2020 the GAS instituted a Registry of lawyers providing legal representation at the first appeal stage mostly through video conference.¹⁷¹ Nevertheless, as referenced by Alexia Preti,¹⁷² caseworker at the HRLP, applicants are not in direct contact with the state appointed lawyer, as the GAS is responsible for organising the online appointment. After the first consultation, applicants do not have the possibility to re-discuss their case which is concerning if clarification is needed or new elements are acquired.

NGOs have been reporting a high number of cases in which appointed lawyers do not communicate directly with the applicants before filing their appeals, or where applicants are not even aware of being represented by a lawyer. Because of these systematic shortcomings, appeals are often lodged without the inclusion of relevant information, or applicants are informed about the provision of a state lawyer after the 10-days deadline for filing an appeal,¹⁷³ severely hindering their right to fair process and procedural safeguards.

¹⁶⁹ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece 2021’ (n 138) 200.

¹⁷⁰ Ibid. (n 138) 200.

¹⁷¹ Ibid. (n 138) 70-75.

¹⁷² Alexia Preti, Caseworker at the Human Rights Legal Project (HRLP). Interviewed by the author (20 June 2022).

¹⁷³ Greek Council for Refugees (GCR) and European Council on Refugees and Exiles (ECRE), ‘Fast-Track Border Procedure (Eastern Aegean Islands)’ (*Asylum Information Database | European Council on Refugees and Exiles*, 30 May 2022) <<https://asylumineurope.org/reports/country/greece/asylum-procedure/procedures/fast-track-border-procedure-eastern-aegean/>> accessed 3 July 2022.

Additionally, GCR raised that there has been a worrying amount of ‘decisions of poor quality and unjustified rejections’.¹⁷⁴ This happens due to the lack of personnel within the GAS and to the pressurized work environment which, given the serious backlog of claims, demands to process as many applications as possible in the shortest amount of time. This situation would likely be further deteriorate further by the shortening of the procedure proposed in the new Screening Regulation.

As reported by Begiazi, the GAS has recently adopted a new practice that results in mass communications of multiple decisions concerning asylum claims, on the same day. In the context of the limited capacity of legal actors on Samos, as previously referred, such an overload of decisions may result in applicants not being able to meet the 10-day deadline for filing a response.

The logistical challenges of the CCAC system, such as residents’ missing legal appointments because of the aforementioned prohibition of exiting or the expensive, and infrequent, transportation, the bureaucratic procedure for lawyers to meet with clients in the GAS facilities within the CCAC, all represent a source of stress for residents and create obstacles in NGOs community outreach and access to residents in need of legal assistance.¹⁷⁵

These challenges further hinder the capacity of independent humanitarian and human rights organisation to provide assistance, witness and expose potential violations and hold relevant authorities accountable.

(2) New arrivals and access to information

Regarding the provision of information, Art. 69 IPA (as amended by Article 7 L.4686/2020) established that all applicants should be ‘informed, in a language that they understand and in a simple and accessible manner, on the procedure to be followed, their rights and obligations’ and that state-provided interpretation should be available at all stages of the asylum procedure. To date, interpretation is provided by the METAdrasi and by EUAA (previously EASO),

¹⁷⁴ Greek Council for Refugees (GCR) and European Council on Refugees and Exiles (ECRE), ‘Identification - Greece’ (*Asylum Information Database | European Council on Refugees and Exiles*, 30 May 2022) <<https://asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups/identification/>> accessed 1 July 2022.

¹⁷⁵ Begiazi (41).

although the scope of it remains far from sufficient considering the overall needs.¹⁷⁶ As voiced by a CCAC resident, ‘[I]t’s difficult to have people in the camp who inform you about your rights, and who teach you about the [asylum] procedure. We [camp residents] are always trying to look for information about how to do things, it’s to have a minimum knowledge, but the majority of people ignore completely. I didn’t know anything [about the asylum process].’¹⁷⁷

As displaced people, particularly new arrivals, are not aware of the asylum procedure and the application assessment criteria, early access to information and legal counselling is paramount to ensuring they are empowered to inform their claim as best as possible. UNHCR is mandated to assist the Greek Government in the provision of such support and information to new arrivals, and to guarantee the identification of persons requiring special assistance.

As previously outlined, new arrivals are housed in a closed section of the CCAC for the duration of the initial identification process based on alleged quarantine rules. This is prior to having the possibility to access legal assistance through UNHCR referrals. In the absence of a legal basis for the containment, during the screening people are *de facto* detained, without having legal status and legal protection, and are denied access to information on the length of their confinement and to their rights to seek asylum. The situation is further worsened by the denial for UNHCR and NGOs to access the new arrivals section,¹⁷⁸ creating the conditions for potential human rights violations to happen without accountability.

This risk of abuse was highlighted in the interview with Beghazi, which referred to a situation, that occurred in May 2022, when their team was made aware of a case concerning a protection seeker who was apprehended by the authorities after an irregular landing on the shores of Samos, and subsequently brought to the new arrivals section for “quarantine” and identification. The team of Médecins sans Frontières (herein MFS) who was involved in the landing informed HRLP that the Person of Concern (PoC) had allegedly lost their child at sea.

¹⁷⁶ ‘Regular Procedure’ (*Asylum Information Database | European Council on Refugees and Exiles*) <<https://asylumineurope.org/reports/country/greece/asylum-procedure/procedures/regular-procedure/>> accessed 29 June 2022.

¹⁷⁷ Europe Must Act (EMA) and Samos Advocacy Collective (SAC), “‘A Life without Freedom Is Not a Life’: Life in the Closed Controlled Centre in Samos’ (2022) 4 <https://ihaverights.eu/wp-content/uploads/2022/06/2-Camp-Report-SAC-EMA_updated1.pdf> accessed 21 June 2022.

¹⁷⁸ Preti (66).

HRLP tried to access the PoC in order to obtain Power of Attorney and represent the case, but the authorities denied any access or contact with them.¹⁷⁹

In light of the proposed New Pact's Screening Regulation as presented in the first chapter, the legal *fiction of non-entry* would introduce a legal basis for MSs to evade their obligations and effectively introduce a practice of blanket detention for new arrivals. If approved, the Regulation would erode displaced people's rights and safeguards, as provided for by EU and international standards.¹⁸⁰

(3) *Vulnerability assessment*

Most interviewees highlighted serious concerns regarding the shortcomings in vulnerability assessment. While this issue will be a separate subject of analysis in the following section, it is important to note that the lack of timely access to legal assistance hinders the capacity of displaced people to expose their case and potential vulnerability. In addition, staff shortage and procedural mistakes often result in incorrect referrals of vulnerable cases to fast-track border or return procedures. The tightened timelines envisaged in the new Screening Regulation will further expand the risk for inaccurate or accelerated vulnerability assessment, whilst introducing no guarantees for the concerned applicant to appeal against it.¹⁸¹

(4) *The safe third country criterion*

The issue of rejections on the grounds of the STC criterion has also been described as extremely concerning by all the interviewees. The criterion was introduced for the first time vis-à-vis Turkey in the scope of Syrian applicants under the 2016 EU-Turkey Statement. Since June

¹⁷⁹ Begiazi (41).

¹⁸⁰ As reiterated by the ECtHR in the recent *N.D. and N.D. v Spain*, “whenever the State through its agents operating outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual”. Para 51. *N.d and N.t v Spain* [2017] ECtHR App No 8675/15, 8697/15. Also, the asylum *acquis* applies at borders, territorial waters and transit zones (Art. 3 Asylum Procedure Directive, Art. 3(1) Reception Condition Directive).

¹⁸¹ Danish Council for Refugees (DCR), ‘For A Europe That Truly Protects: Joint NGO Policy Brief on the Screening Regulation Proposal’ (2021) 3 <https://drc.ngo/media/xtxjvxq5/greece_eu-pact_screening-policy-brief_summary-eng.pdf> accessed 3 July 2022.

2021, by way of two JMDs,¹⁸² the list of nations for which Turkey is considered a STC was expanded to include Afghanistan, Pakistan, Bangladesh and Somalia. Given that in 2020 67% of the applications lodged in Greece were from applicants originating from these countries, the impact of this measure on the right to asylum was significant. Moreover, in 2020 92% of Syrians, 94% of Somalis and 66% of Afghans were granted refugee status or subsidiary protection when their application was examined on the merits; figures that clearly highlight their protection needs.¹⁸³ As a consequence of the JMDs, in 2021 rejections based on inadmissibility under the STC criterion saw a raise of 126% as compared to the previous year.¹⁸⁴

As highlighted by documents from the Ministry of Migration and Asylum ‘returns under the EU-Turkey Statement have not been made since March [2020] due to Covid-19 [and] despite the lifting of the measures for the pandemic, from 01/06[2020] the requests of missions-returns of the Greek authorities have not been answered.’¹⁸⁵

Art 38(4) of the Asylum Procedures Directive 2013/32/EU (APD), which provides that ‘where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II’,¹⁸⁶ was transposed into Greek law through Article 86(5) of the IPA,

¹⁸² See Ministry of Foreign Affairs and Ministry of Migration and Asylum, JMD 42799/03.06.2021, Gov. Gazette 2425/B/7-6-2021 (Greek) 2021 and; Ministry of Foreign Affairs and Ministry of Migration and Asylum, ‘JMD 458568/15.12.2021, Gov. Gazette 5949/B/16.12.2021 (Greek)’ (*e-nomothesia.gr* | *Τράπεζα Πληροφοριών Νομοθεσίας*, 2021) <<https://www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/upourgike-apophase-oik-458568-2021.html>> accessed 6 July 2022.

¹⁸³ International Rescue Committee (IRC), ‘Input by the International Rescue Committee for the Report of the Special Rapporteur on the Human Rights of Migrants Human Rights Violations at International Borders: Trends, Prevention and Accountability’ (2022) 2.

¹⁸⁴ Greek Council for Refugees (GCR) and European Council on Refugees and Exiles (ECRE), ‘Safe Third Country’ (*Asylum Information Database | European Council on Refugees and Exiles*, 30 May 2022) <<https://asylumineurope.org/reports/country/greece/asylum-procedure/the-safe-country-concepts/safe-third-country/>> accessed 6 July 2022.

¹⁸⁵ Ministry of Migration and Asylum, ‘Report December 2021: International Protection’ (2021) 12 <https://migration.gov.gr/wp-content/uploads/2022/01/Report_A_December-2021_International-Protection.pdf> accessed 6 July 2022.

¹⁸⁶ European Parliament and Council of the European Union Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (n 35).

pursuant to which ‘when the safe third country does not allow the applicant to enter its territory, his/her application should be examined on the merits from the competent Authorities’.¹⁸⁷

Despite the returns to Turkey to not be resumed in the foreseeable future, and against Greek and EU law provisions, rejections on the grounds of inadmissibility under the STC criterion continue with critical consequences. The GAS denies rejected applicants the possibility to examine their applications on the merits, in violation of the IPA, APD and the Geneva Convention. Since readmissions to Turkey are not taking place, people are effectively trapped in the CCAC, where, according to Begiazi, ‘their presence is in some cases tolerated, while in other cases they are unofficially told to leave and not allowed back in’.¹⁸⁸

This situation of legal limbo appears even more pronounced in cases of appeals and subsequent applications, which are repeatedly dismissed on the same grounds of inadmissibility. In 2021, the amendment of Art.89(10) IPA through Greek Law 4825/2021 introduced a fee of 100€ for every person intending to file a subsequent application. In case of a family would apply cumulatively to every member, including minors. As highlighted by Preti, the imposition of such a barrier hinders the possibility of applicants to exercise their right to asylum, especially for large families. The provision is also in direct violation of Art. 6(1) APD which does not provide for the requirement of administrative fees to lodge applications under the EU asylum *acquis*.¹⁸⁹ This guarantee was reiterated in the CJEU judgement on *Ministerio Fiscal v V.L.*, where the Court stated that ‘the act of “making” an application for international protection does not entail any administrative formalities’.¹⁹⁰

¹⁸⁷ Hellenic Republic Law 4636/2019 on International Protection and Other Provisions / International Protection Act (IPA) (n 43).

¹⁸⁸ Begiazi (41)

¹⁸⁹ European Parliament and Council of the European Union Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (n 35).

¹⁹⁰ Para 93, *Ministerio Fiscal v VL* [2020] CJEU Case C-36/20 PPU.

Although the Commission has communicated to the Greek authorities that the unconditional application of the fee raises issues in terms of effective access to the asylum procedure,¹⁹¹ and requested the application of Art. 38(4) APD in order to avoid situations of legal limbo,¹⁹² the practice continues to be implemented to date.

The described application of the STC criterion is fostering the creation of a hostile asylum and reception system, that not only severely curtails displaced people's right to access a fair asylum process, but also effectively "illegalizes" and neglects a concerning high number of individuals. As reiterated by UNHCR, the cumulative effect of the application of the STC results in the 'exclusion of people from reception conditions, resulting in inability to have access to dignified living standards and to cater for their basic subsistence needs, including health care and food'.¹⁹³ Ultimately, in case returns would be resumed in the future, the current legal framework in terms of STC would provide for the return of rejected applicants to Turkey, where the current situation could put them at serious risk of persecution or harm, in clear violation of the principle of non-refoulement.

B.d. Right to health

(1) Access to healthcare

'If someone is really sick, he's going to die. Nothing will prevent him from dying... We said everything that was not going well, the baby is coughing, I have medical problems and I asked to be referred to the hospital. They said not.'¹⁹⁴

To address the migration influx of 2016, the Greek Ministry of Health implemented the PHILOS I and II Emergency health response to the refugee crisis, a programme fully funded

¹⁹¹ Ylva Johansson on behalf of the European Commission, European Commission, 'Answer for Question E-005103/21' (*europarl.europa.eu*, 25 January 2022) <https://www.europarl.europa.eu/doceo/document/E-9-2021-005103-ASW_EN.html> accessed 6 July 2022.

¹⁹² European Commission, Directorate General for Migration and Home Affairs, Ref. Ares (2021) 7836311, 17 December 2021.

¹⁹³ 'UNHCR's Position and Recommendations on the Safe Third Country Declaration by Greece' (*UNHCR Greece*, August 2021) <<https://www.unhcr.org/gr/en/22885-unhcrs-position-and-recommendations-on-the-safe-third-country-declaration-by-greece.html>> accessed 2 July 2022.

¹⁹⁴ Europe Must Act (EMA) and Samos Advocacy Collective (SAC) (n 4) 6.

by the AMIF. This was aimed at providing primary health care (PHC), including psychological support, to displaced people across the country. By the end of 2019, Greek Law 4633/2019 entrusted the National Organisation for Public Health (*Εθνικός Οργανισμός Δημόσιας Υγείας*, EODY), a private entity supervised and funded by the Ministry of Health, to implement the PHILOS within the national reception system.

As prescribed by Art. 55 of the IPA, access to necessary health, pharmaceutical, hospital and, where appropriate, psychiatric care is guaranteed through the issuance of a Foreigner's Temporary Insurance and Health Coverage Number (*Προσωρινός Αριθμός Ασφάλισης και Υγειονομικής Περίθαλψης Αλλοδαπού*, PAAYPE). This number is meant to be issued after their initial registration by way of the asylum card.¹⁹⁵ Until present, data regarding the percentage of residents in possession of a PAAYPE number are not publicly available.

In practice, several factors contribute to restrict the actual access to the right to health for protection seekers. On Samos, like the other Aegean islands, the public health sector has continuously been suffering from a lack of resources and personnel. In particular general practitioners and nurses are scarce, which in turn affects the provision and quality of services for both the local and migrant population.¹⁹⁶ The situation is further worsened by the shortage of interpreters and cultural mediators within the public hospital,¹⁹⁷ and compounded by inadequate health knowledge, attitudes and clinical practice with regard to the migrant community health.¹⁹⁸

In the first months of operation, the CCAC medical staff consisted of the EODY Unit, while further basic PHC was provided by the International Committee of the Red Cross (ICRC). In

¹⁹⁵ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), 'Asylum Information Database (AIDA) Country Report: Greece 2021' (n 138) 190.

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.*

¹⁹⁸ World Health Organisation (WHO) and Hellenic Republic Ministry of Health, 'Greece: Assessing Health Systems Capacity to Manage Large Influx of Refugees and Migrants in an Evolving Context' (2020) 18 <<https://apps.who.int/iris/bitstream/handle/10665/337563/9789289055093-eng.pdf>> accessed 8 July 2022.

February 2022, after strong political pressure,¹⁹⁹ the PHILOS II was extended until the end of the year. Nevertheless, and following the termination of the ICRC program on the island, the contract of the only EODY doctor operating in the reception facility expired. Since then, and to date, there has been no appointed doctor in the CCAC, nor available indication on future EODY plans to remedy the deficiency. The lack of proper resources to work in the CCAC, and the ‘strong anti-refugee sentiment’ present on Samos have been regarded as impeding the process of hiring of new staff.²⁰⁰

As of June 2022, a medical professional from the public hospital receives patients twice a week within the structure, alongside a permanent EODY Medical and Psychosocial Unit consisting of 1 psychologist, 1 supervisor, 2 social workers and 4 nurses operating daily from 8.00 to 16.00.²⁰¹ In the remaining hours, emergencies are assessed by the security and police personnel. They determine which cases are urgent and require an ambulance²⁰² or to simply just refer patients to the local hospital.

MSF is presently the only independent medical actor on Samos²⁰³ providing PHC through a mobile clinic located next to the camp three days a week. After the EU-Turkey Statement, MSF decided to suspend the provision of medical assistance inside the Moria RIC, in a clear stand against a ‘system that has no regard for the humanitarian or protection needs of asylum seekers and migrants’.²⁰⁴ Since then, as part of its efforts to advocate for displaced people’s

¹⁹⁹ ‘Thousands of Refugees, Migrants about to Be Left without Healthcare’ (*Ekathimerini*, 25 February 2022) <<https://www.ekathimerini.com/news/1178376/thousands-of-refugees-migrants-about-to-be-left-without-healthcare/>> accessed 8 July 2022.

²⁰⁰ Daphne Panayotatos and Refugees International, ‘The Fallacy of Control: Tightened Asylum and Reception Policies Undermine Protection in Greece’ (2022) 12 <<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/6216a3799be96a3b07de2089/1645650812924/Greece+Report+-+Feb+2022.pdf>>.

²⁰¹ Greek Council for Refugees (GCR) and OXFAM (n 4) 5.

²⁰² Currently, only three ambulances are available on Samos to cover a population of approximately 50,000 people.

²⁰³ Med’EqualiTeam, the other medical NGO who used to run a clinic for the residents of the former RIC of Vathy, refused to support the governmental plan for closed facilities and officially terminated their operations in October 2021.

²⁰⁴ Medecins Sans Frontiere (MSF), ‘Greece: MSF Ends Activities inside the Lesvos “Hotspot”’ (*Médecins Sans Frontières (MSF) International*, 22 June 2022) <<https://www.msf.org/greece-msf-ends-activities-inside-lesvos-%E2%80%9Chotspot%E2%80%9D>> accessed 8 July 2022.

independent access to medical care, MSF has been providing medical care exclusively outside state reception facilities.

Despite the establishment of an informal agreement with Dimitrios Axiotis, Head of the CCAC, several patients were not able to visit MSF's mobile clinic throughout the winter 2021/2022 because of the illegal exit ban. In response to this situation, in April 2022 a medical team was set up and is to date operating within a mobile setting in the CCAC.²⁰⁵

As a result, even within the current CCAC low occupancy, access to healthcare is severely limited and does not cover the needs of the concerned population, in violation of the standards set forth by Art. 17 of the Reception Conditions Directive 2013/33/EU, Art. 35 of the Charter and Art. 23 of the Geneva Convention. As stated by MSF, this worrying gap 'may lead to otherwise manageable medical and mental health conditions deteriorating, becoming more severe and potentially chronic'²⁰⁶ and is already creating severe shortcomings within preventative care, such as routine vaccinations, incorporation of culturally acceptable family planning methods, and responses to outbreaks of disease and illness.

Considering that the PAAYPA is automatically deactivated in case of rejection, applicants whose application is dismissed under the STC criterion are indeterminately deprived of their right to access health care. The situation is especially concerning in cases of emergencies and for people who find themselves in *de facto* detention, hence not able to visit neither the public hospital nor the MSF clinic. Moreover, repeated instances of racist or discriminatory treatment from care providers has been reported.²⁰⁷

(2) *Vulnerability assessment*

All of the interviewees highlighted serious concerns regarding the execution of vulnerability assessments in the CCAC. As prescribed by the IPA, vulnerabilities, including *inter alia* cases of unaccompanied minors, people with disabilities or serious illness, elderly, women in

²⁰⁵ Interviewed by the author (10 June 2022). The interviewee prefers to remain anonymous.

²⁰⁶ Médecins Sans Frontières (MSF), 'Constructing Crisis at Europe's Borders: The EU Plan to Intensify Its Dangerous Hotspot Approach on Greek Islands' (2021) 2 <https://www.msf.org.br/wp-content/uploads/2021/06/msf_greece_report_en_03.pdf> accessed 16 June 2022.

²⁰⁷ Bosco (38).

pregnancy or recent mothers, single-parent families with minor children, and victims of human trafficking (Art. 58(1)), should be assessed by EODY personnel during the identification process in combination with the required medical checks (Art. 39).²⁰⁸ To uphold the dignity of PoCs, vulnerability checks require adequate time and training, and need to be performed in an appropriate environment. As stated by the European Union Agency for Fundamental Rights (herein FRA) in the memorandum for a protection-sensitive planning of the new MPRICs, ‘the individual situation of each person needs to be assessed, [...]. Multiple and not so obvious vulnerabilities need to be taken into account’.²⁰⁹

The practice on the ground is highly divergent from these provisions. Multiple reports highlight the overall inaccessibility, low quality and shortness of vulnerability assessments, the lack of relevant training of medical and psychosocial staff, as well as the absence of communication of results to the applicant.²¹⁰

The IPA provides only for state-appointed medical personnel to perform the vulnerability assessments, while medical records provided by NGOs are not accepted by the GAS. Until present, the EODY Unit cannot guarantee a timely and adequate execution of vulnerability assessments.²¹¹ Starting from April 2022, the MSF mobile unit operating in the CCAC was able to detect a high number of ‘missed’ vulnerabilities, especially concerning cases of female genital mutilation. All the concerned cases had to be referred to the EODY Unit or the public hospital in order to obtain a valid certification of vulnerability, albeit the demonstrated difficulties for residents in accessing both services.²¹²

²⁰⁸ Hellenic Republic Law 4636/2019 on International Protection and Other Provisions / International Protection Act (IPA) (n 43).

²⁰⁹ European Union Agency for Fundamental Rights (FRA), ‘Establishment of Multi-Purpose Reception and Identification Centres: Aide Memoire on Issues to Consider from a Fundamental Rights Point of View’ 2 <<https://fragdenstaat.de/anfrage/fra-role-in-joint-pilot-for-the-establishment-of-a-new-mpric-in-lesvos/598354/anhang/1-aide-memoire-fra.pdf>>.

²¹⁰ European Council on Refugees and Exiles (ECRE) and Greek Council for Refugees (GCR), ‘Asylum Information Database (AIDA) Country Report: Greece 2021’ (n 138) 111.

²¹¹ Vyse (50).

²¹² Interviewed by the author (10 June 2022). The interviewee prefers to remain anonymous.

Consequently, as reported by ASF and HRLP, applicants can either be forced into their first instance interviews without prior evaluation of their potential vulnerabilities,²¹³ or see the interview postponed, often on the same day it was scheduled for, causing significant distress and uncertainty, and impacting the demanding preparatory work already undertaken.²¹⁴

In regard to the results of the assessment, the HRLP team indicated that it usually consists of a noticeably short and standardised evaluation. They often do not touch on relevant issues and lack thoroughness and depth. On the basis of accounts from their clients, Begiazi stated that ‘They were simply asked the question: “How are you?” And the answer was considered as an indicator of the presence of vulnerabilities.’ As previously referred, the assessment may occur before the applicants have been given access to the information and legal support required to understand its importance and consequences for their status.

The cumulative effects of these shortcomings result in a high number of vulnerabilities going undetected. This is especially the case for vulnerabilities that are not easily identifiable, such as people with disabilities that are not immediately evident, survivors of torture and gender-based violence. These forms of assessment take time, trust-building and specific training. As explained by MSF, ‘most people are traumatized upon arrival and are not provided with an opportunity to build the trust and reveal their stories in such a short time’.²¹⁵ Art. 61(1) IPA establishes that medical certificates of violence or torture shall be accepted only when issued by a public hospital, an adequately trained doctor of a public healthcare service provider. As confirmed by MSF and METAdrasi, obtaining certification in case of torture is virtually impossible on Samos due to the lack of capacity and relevant training.²¹⁶

²¹³ Preti (66).

²¹⁴ Advocats sans Frontières (ASF), ‘The Samos Legal Center Newsletter - May 2022’ (May 2022).

²¹⁵ ‘EU/Greece: Pressure to Minimize Numbers of Migrants Identified As “Vulnerable”’ (*Human Rights Watch*, 1 June 2017) <<https://www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable>> accessed 8 July 2022.

²¹⁶ See respectively Medecins Sans Frontiere (MSF), ‘Doctors Without Borders Completes Its Action at the Clinic for Torture Survivors in Athens (Greek)’ (*msf.gr*, 21 December 2021) <<https://msf.gr/magazine/oi-giatroi-horis-synora-oloklironoyn-ti-drasi-toys-stin-kliniki-gia-epizontes-vasanistirion>> accessed 9 July 2022; and METAdrasi, ‘Victims of Torture: From Identification to Protection (Greek)’ (2022) <<https://torturesurvivor.metadrasi.org/wp-content/uploads/2021/12/EKTHESH-SYNHGORIAS.pdf>> accessed 13 July 2022.

The timeframe proposed by the new Screening Regulation to complete the screening, including the required medical checks, highlights a disregard for the systemic deficiencies and challenges in access a fair and adequate vulnerability assessment in Greece. In case of application, the proposal would likely entail a further curtailing of the procedures, with harsh consequences for vulnerable groups.

B.e. Impact of surveillance on the right to private life and mental health

(1) The impact of surveillance

The CCAC infrastructure represents a pilot project for a new model for the reception of displaced people at the EU borders, purported to include ‘all the modern technical and functional infrastructure that [...] guarantee the safe accommodation of the beneficiaries as well as the employees’²¹⁷ and to be reproduced in other border areas.

In many ways, the new accommodation containers equipped with kitchen wares, electrical appliances and wi-fi, alongside the access to improved water, sanitation and hygiene facilities, plus the recreational and sports areas included in the premise represent an unquestionable upgrade from the former Vathy RIC. This widely condemned structure saw at its highest occupancy reach in excess of 8,000 people, who were living in makeshift shelters in appalling conditions amounting to inhumane and degrading treatment.

However, the security apparatus and the carceral design of the centre purport a worrying development for the residents’ living conditions, and align and stem from the securitisation approach of the recent EU MPF analysed in the previous chapter. The facility is surrounded by 3-meter high double NATO-type security fences that allow for police patrols, while internal wire-mesh fences separate the different areas. The entrance and exit are established by a main gate equipped with 94 cameras, 55 turnstiles, 19 x-ray machines, metal detectors and a two-factors identification system, where residents are exposed daily to digital and physical security checks.²¹⁸

²¹⁷ ‘Closed Controlled Access Center of Samos (Greek)’ (n 131).

²¹⁸ Vera Deleja-Hotko and others, ‘The New Moria’ <<https://dasneuemoria.eu/>> accessed 27 June 2022.

Additionally, inside the CCAC a system of 132 CCTV cameras and 7 drones are monitoring every movement and activity 24/7. The security of the structure is complemented with a force composed of 300 local police and 50 private security officers.²¹⁹ The surveillance apparatus is part of the Centaur system, a 37-million euro high-tech security apparatus sponsored by the EU Recovery and Resilience fund and implemented as a pilot project in the CCAC. The Centaur is directly connected with a central control room in the Migration Ministry headquarters in Athens, where screens are constantly monitored by stationed officers. Its artificial intelligence algorithm is programmed to automatically predict and alert on-site security about potential threats through motion and thermal sensors.²²⁰ As explained by Mitarachi, this security infrastructure will serve to ‘prevent violence, to prevent events like we had in Moria – the arson of the camp. Because safety is critical for everyone.’²²¹

However, the deployment of the, previously described, security arsenal is arguably fulfilling its purpose. In the FRA guidelines for the construction of new closed facilities, the Agency openly spoke against the creation of a carceral environment, in order to ‘avoid as much as possible the risk of re-traumatising effects for people who have experienced violence and persecution, barbed wire and prison-like fencing should not be used and ununiformed personnel deployed’. They reiterated the opinion within regards to children, who ‘should not be exposed to prison-like fencing’.²²²

In complete disregard of this view, the centre’s design and function possesses many features of a prison. Every material device located in the centre is intentional and translates into a psychological element of pressure that is constantly being forced onto its residents. This system has severe consequences on the well-being and mental health of the residents. As Bosco referred, ‘no matter whether the monitor is on or off, people have the feeling they’re watched at all times’,²²³ forcing resemblance to the dystopian architecture of the Foucauldian

²¹⁹ Panayotatos and Refugees International (n 200) 11.

²²⁰ Lydia Emmanouilidou and Katy Fallon, ‘With Drones and Thermal Cameras, Greek Officials Monitor Refugees’ (December 2021) <<https://www.aljazeera.com/news/2021/12/24/greece-pilots-high-tech-surveillance-system-in-refugee-camps>> accessed 27 June 2022.

²²¹ *ibid.*

²²² European Union Agency for Fundamental Rights (FRA) (n 209) 1.

²²³ Bosco (38).

Panopticon²²⁴ sinisterly apparent. In such a system, the very idea of freedom is rendered fictitious by an apparatus that imposes control, discipline and order and suppresses every form of individuality and privacy. In fact, cameras are placed in such a manner that allows to record the interior of the containers when doors are open, a direct violation of individuals' right to private life. A violation confirmed in the words of a resident, 'a detention camp or a camp for asylum seekers? We are no longer free to live our private lives.'²²⁵

The process of exiting and entering the camp is described as lengthy and highly stressful. Residents, including children, wait in a line to be physically searched and subjected to a metal detector check, see their possessions scanned by an x-ray device, swipe their asylum card and provide their fingerprints. The constant repetition of such an undignified procedure, accompanied by reports of frequent intimidation from the security officers, reinforces the residents' feeling of incarceration.²²⁶

If at the beginning of its operationalisation the CCAC was welcomed as a more dignified environment by residents, at present they feel increasingly deprived of their agency and laid in parallel to convicted criminals who need monitoring at every step of the way. 'They have a drone that will be passing right throughout the camp. 2-3 drones passing like we are criminals or like we are terrorists.'²²⁷ A feeling that is corroborated for example by the different treatment between residents and NGO workers, who are not subject to the same level of control and security checks both when entering the facility and when moving within its premises.²²⁸ Interestingly, and additionally, kitchen stoves were installed in the containers, but residents are to date not provided with, or allowed to buy, the basic cooking equipment for alleged security reasons.²²⁹

(2) *Layers of violence in the CCAC*

²²⁴ Michel Foucault, 'Panopticism', *Discipline & Punish: The Birth of the Prison* (Vintage Books 1995).

²²⁵ Europe Must Act (EMA) and Samos Advocacy Collective (SAC) (n 177) 5.

²²⁶ Still I Rise NGO (n 4) 9–10.

²²⁷ Europe Must Act (EMA) and Samos Advocacy Collective (SAC) (n 177) 5.

²²⁸ Begiazi (39).

²²⁹ Vyse (46).

The hyper securitized and monitored environment implemented with the aim to ‘prevent bad things from happening’²³⁰ does not appear to render the centre a place where protection seekers feel safe. As Bosco referred, episodes of domestic and gender-based violence, both psychological and physical, continue to occur at a worrying rate and dramatically fail to be detected, albeit the extensive presence of security personnel and devices.²³¹

Despite the CCAC currently being at approximately 15% of its capacity, residents are not hosted in conditions that provide them with the required protection from the abovementioned risks. For vulnerable groups such as single women, LGBTQI+ individuals and families, overcrowded and mixed-gender and nationality spaces can create a violence-prone environment and increase, instead of mitigate, the potential for incidents and severe deprivation of privacy. As confirmed by a resident’s testimony, ‘That place [the camp] is not safe for women. Sometimes they even mix single women and single men [in the same container].’²³²

Police officers deployed to enhance the safety and protection of the residents have been reportedly abusing them both verbally and physically. While reports of violence between residents are dismissed when reported to the authorities,²³³ several residents referenced of oral eviction notices, police incursions in containers and episodes of arbitrary detention in degrading conditions for several days. Reportedly, these episodes have been connected to the PoCs’ legal actions taken against their prohibition of exit.²³⁴ These episodes of “revenge tactics” from the authorities intensify their feelings of fear, mistrust and hopelessness, further and critically deteriorating their mental health.

C. ASSESSMENT RESULTS

The purpose of this assessment was three-fold. Firstly, it aimed at framing the current lived experience displaced people are facing in the new CCAC. Secondly, it intended to inspect the

²³⁰ Anastasios Salis, Head of Information and Communications technology at the Greek Migration and Asylum Ministry, who is responsible for the supervision of the Centaur system. See Emmanouilidou and Fallon (n 220).

²³¹ Bosco (38).

²³² Europe Must Act (EMA) and Samos Advocacy Collective (SAC) (n 177) 6.

²³³ *ibid.*

²³⁴ Greek Council for Refugees (GCR) and OXFAM (n 4) 4.

impact of policies and the difference, if any, to the practice on the ground. Lastly, in light of the possibility for the CCAC to become an EU-wide example for the reception of displaced people, the research was addressed at understanding the suitability of this new model, and its compliance with EU law and international human rights standards. The following paragraphs will present the findings in relation to the research axes that guided the assessment.

In regards to freedom of movement, the CCAC marks the beginning of a new reception system, where asylum seekers are divided into categories with different usability of the premise and restrictions of movement according to their procedural status. The geographical restriction indiscriminately imposed on all TCNs upon arrival since the introduction of the hotspots in 2016 is still in place. In addition, starting from November 2021, and until present, measures of *de facto* administrative detention are arbitrarily imposed on applicants not in possession of a valid asylum card. Despite the judgement of the Court of Syros confirming the unlawfulness of the practice, and the intervention of the Greek Ombudsperson, an alarming number of residents continue to be deprived of their liberty of movement and have their procedural rights violated. Furthermore, the measure is having a plethora of consequences on the PoCs, including curtailed access to legal aid, healthcare and widespread deterioration of mental health. Instances of “revenge tactics” – including violence and evictions – enacted by police authorities against applicants who legally challenged their detention further exacerbate the already concerning situation. The IPA, in force since 2020, introduced extensive provisions for detaining applicants, reinforcing the possibility for detention to be applied in the CCAC arbitrarily, as a first resort and not last resort, and for extended periods of time, in direct violation of international human rights standards, including Art. 5 ECHR and the principles of the Geneva Convention and the 1967 Protocol. The disregard for asylum seekers’ fundamental rights and guarantees as enshrined in EU and international law, in combination with the carceral and hyper-securitised environment, demonstrate that a strategy of excessive containment is implemented in the CCAC. Additionally, the containment of asylum seekers and the seemingly indefinite waiting time in the CCAC, resulting from the restrictive asylum procedures, indicate the intention of the Greek government to deter prospective migrants to arrive.

The remote location of the CCAC severely affects the integration process of the migrant community and reinforces the condition of “invisibilisation” experienced in the facility. Strict rules for entry and exit, the distance from the main city and the prohibitive costs of transportation prevent asylum seekers from accessing basic public and NGO services in Vathy.

Furthermore, these issues directly hinder displaced people's ability to enjoy public spaces, chances of civic participation and interaction with the local community. Instead of addressing the grievances the local community endured over the years of EU and Greek migration mismanagement, the CCAC proceeded with the implementation of further physical and practical barriers that determine integration to be virtually impossible. The marginalisation of the migrant community fosters the process of *othering* and the prevalence of negative connotations associated with human mobility. Therefore, the new reception model does not provide the conditions to successfully implement the guidelines proposed by the EU Action Plan on Integration and Inclusion 2021-2027, which is an integral part of the New Pact, and it directly contradicts the provisions of the Greek National Strategy for Integration.

In terms of access to legal aid in the CCAC, the total capacity of legal actors on the island cannot cover the needs of the resident population despite the current low occupancy rate. Since the implementation of two JMDs in 2021, the national legal framework concerning NGOs operations severely restricts independent humanitarian and human rights organisations' access to and provision of services in the CCAC, and is incompatible with EU and international law. As a result, and as confirmed by the assessment, it creates an environment where human rights violations can occur without the necessary monitoring and accountability mechanisms.

The fundamental right to enjoy asylum and access to fair process for displaced people in the CCAC has been critically curtailed, both in theory and practice, by the introduction of the IPA in 2020 and further amendments. Furthermore, the long-standing systemic deficiencies of the Greek asylum system continue to compromise all stages of the asylum process, which, albeit the decrease in the number of applications over the last two years, is still showing significant administrative delays. As uncovered by the analysis, the lack of training and shortage of personnel, compounded by difficulties in accessing information and legal support, impact asylum seekers' ability to successfully complete and submit their claim. Concurrently, the disproportionate burdens and strict requirements imposed on applicants to be able to appeal against rejections *de facto* compromise their right to an effective remedy, as enshrined in international and EU law. While under the STC criterion, the examination of applications on the merits is systematically denied, in violation of the IPA, APD and the Geneva Convention, the introduction of an administrative fee for the appeal violates the conditions for accessing asylum, as provided for under the EU asylum *acquis*. The cumulative effects of these provisions and practice demonstrates that the new reception and asylum model implemented

by the Greek government within the CCAC, and with full EU support, jeopardises displaced people's access to international protection. Ultimately, it legitimises their excessive containment and manifests a clear intention to deter prospective migrants.

Regarding the right to health, the assessment demonstrates that the access to medical care for residents of the CCAC is severely compromised. Since the opening of the CCAC, the EODY Unit, responsible for the provision of both essential and urgent care, has been consistently understaffed. A situation epitomized by the fact that, to date, no doctor is present in the facility and by the absence of plans to increase capacity. Additionally, the only local hospital on the island does not have the capacity nor resources to adequately address the needs of both the local and migrant community; the latter requiring tailored training and clinical practice, both entirely absent. This systemic gap in the governmental health provision translates in a heavy dependency on the support from NGOs, which is currently provided by MSF but still not sufficient to cover the needs of the migrant population, contravening the standards set forth by the national legislation, the EU *acquis* and international law. In this context, the identification of vulnerabilities, when accessible, is critically impeded, and characterised by noticeably rushed, superficial and homogenised procedures. As a consequence, vulnerable groups in the CCAC, including people with disabilities, victims of torture, and survivors of sexual and gender-based violence, are neglected by the system and forced to endure living conditions that may further aggravate their vulnerability, all the while being at risk of deportation. The increasing addition of barriers to access health care and receive satisfactory vulnerability assessments in the CCAC demonstrates a constant shift toward the government's priority of returns, rather than protection, of as many asylum seekers as possible.

Despite the FRA guidelines on the construction of new facilities explicitly recommending to avoid the creation of a carceral environment, the CCAC design resembles in all respects a prison. In fact, the centre is equipped with a hyper-technological security apparatus which, in conjunction with the perpetual presence of police and private guards, firmly controls the entrance, exit, and all the activities within the premise of the reception facility. The assessment revealed that the extreme surveillance and militarisation of the facility does not correspond to an increase in the safety and wellbeing of the residents. On the contrary, this system of ubiquitous control has severe and manifold consequences on the rights of displaced people. Firstly, and as confirmed by FRA, uniformed personnel and carceral features contribute to the re-traumatisation of displaced people who have previously experienced violence and

persecution. Secondly, physical body checks and overt digital surveillance, in combination with the condition of confinement and the lack of social interactions, increase the residents' feelings of isolation, while depriving them of their privacy and chances to exercise agency. Thirdly, the carceral environment fosters the stigmatisation of the migrant community, reinforcing the nexus between migration and criminality. Lastly, the extreme surveillance does not guarantee the safety of residents, who continue to experience different forms of violence in the CCAC, both in the hands of other asylum seekers and, more concerning, of the supervising authorities. The cumulative effects of this system critically deteriorate the mental health and wellbeing of displaced people, making it a dangerous model to replicate.

Ten months after its operationalisation, the dissonance between how the CCAC of Samos is presented by the EU and the Greek government towards the general public and the reality on the ground exposed by our study presents a highly concerning indicator of the situation of fundamental rights and dignity of displaced people on the borders. In regard to dignity, the recast Reception Conditions Directive 2013/33/EU leaves a considerable margin of discretion in defining the 'dignified standard of living'²³⁵ that asylum seekers should enjoy in reception facilities. Yet, its provisions set standards concerning *inter alia* information and counselling, detention, healthcare, response to special reception needs and training of staff,²³⁶ all of which concur to uphold the dignity of asylum seekers within national reception systems. And all of which, regrettably, have been and continue to be not complied in the CCAC. Despite the undeniable material improvements in the conditions of shelters, the increased access to water, sanitation and hygienic facilities, and the installation of wi-fi and playgrounds, our assessment demonstrates that the new generation of reception facilities being piloted in the CCAC fails to uphold all the fundamental rights of displaced people analysed. On the contrary, the ever-restrictive new policies and practices, implemented with financial and operational support of the EU, replicate the long-standing systemic deficiencies of the Greek reception and asylum system and reproduce the 'detrimental effect of dysfunctional asylum procedure'²³⁷ highlighted by the ECtHR in the landmark judgement *M.S.S. v Belgium and Greece*. Ultimately, the

²³⁵ See Recital (11) and (35). European Parliament and Council of the European Union Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (n 35).

²³⁶ European Asylum Support Office (n 116) 8.

²³⁷ Clayton (n 54) 764.

assessment of the CCAC reinforces the evidence that a strategy of containment, marginalisation and deterrence is being prioritised over the protection of displaced people.

CONCLUSIONS

The EU migration policy framework finds itself in a dire state of crisis which the migratory influx of 2015, and the situation that from then unfolded, has managed to unequivocally expose, in all of its shortcomings and failures. The case of Greece exemplifies the epitome of such a crisis: the common EU responsibility towards the management of migration has translated into policies focused on the containment and deterrence of displaced people. On the Aegean islands, the testing ground of such policies, their pursuit of protection has been met with inhumane and degrading treatment and severe violations of their fundamental rights.

In our study, we outlined the main responsibility of the Agenda as establishing the hotspot approach, a milestone in the recent years' management of migration at the European borders. The "social sorting apparatus" implemented in the hotspots introduced the process of the discrimination between asylum seekers in clear need of international protection and "bogus" asylum seekers. This novel mechanism, in combination with the EU-Turkey Statement, accelerated border procedures and the geographical restriction of movement, redefined the Greek reception system and infrastructure, transforming the hotspots into a 'border control device'²³⁸ and fabricating a humanitarian catastrophe on the Aegean islands. The implementation of these measure created the conditions for the Commission to test in Greece a strategy of containment of migration at the EU external borders, prevention of secondary movements towards Europe and deterrence of prospective migrants.

While the hotspot approach was praised as 'a tangible operational achievement and a concrete example of the principles of solidarity and responsibility', MSs failed to agree on the proposals set forth by the Agenda. In this context, the 2020 New Pact on Migration and Asylum attempted to reconcile political divisions and remedy the outright dysfunctionalities and structural shortcomings of the former reform package. Our analysis of some of its guiding principles and policies exposed the failure of the New Pact in implementing the "fresh start on migration"

²³⁸ Campesi (n 7) 69.

envisaged by the Commission. While the new Asylum and Migration Management Regulation provides a way for MSs to choose between the opposite elements of relocation and return sponsorship, effectively eroding the concept of consensus and solidarity, the theory of mixed migration flows underpinning the New Pact reflects a discriminatory and restrictive approach towards migration and international protection. Concurrently, elements of the new Screening Regulation and Amended APR reinforce the prioritisation of border enforcement and returns above access to international protection, rendering it a privilege for a restricted number of displaced people. Overall, our analysis revealed that the proposals of the New Pact fail to address the complex challenges frontline countries face when confronted with migratory pressure and the ‘solidarity deficit’²³⁹ among MSs. On the contrary, the New Pact appears to endorse and expand the hotspot strategy of containment and deterrence of migration, which further deteriorated the grave systemic deficiencies of the Greek system thus causing unnecessary human suffering.

Contextual to the New Pact, and following a devastating fire that destroyed Moria RIC on Lesbos and left around 12,000 people without shelter, the Commission and the Greek authorities established a joint plan for the creation of new Multi-Purpose Reception and Identification Centres (MPRICs). A grand total of €277 million of EU funds was granted for the construction of five new generation reception facilities on the Aegean islands, €47 million of which was allocated for the centre on Samos. The first Closed-Controlled Access Centre (CCAC) was operationalised on Samos in September 2021, and regarded as ‘an excellent example of such a new, European approach, as it promises a better, controlled management of migration’²⁴⁰ that would ‘offer back the lost dignity to people seeking international protection’.²⁴¹

The human-rights based assessment of the CCAC was centred around freedom of movement, integration, access to legal aid, right to asylum and to healthcare, and the impact of surveillance on the right to private life and mental health. The research revealed the existence of a stark

²³⁹ Thym (n 18) 1550.

²⁴⁰ ‘Speech by Ms. Beate Gminder at the Inauguration of the First Closed Controlled Structure in Samos Ministry of Immigration and Asylum’ (n 124).

²⁴¹ ‘The Minister for Migration and Asylum, Mr. Notis Mitarachi, Inaugurated the New Closed Controlled Access Center in Samos (Greek)’ (n 125).

dissonance between the EU and the governmental narrative of a modern and dignified reception facility notwithstanding the lived reality of displaced people in the CCAC. While undeniable material improvements concerning shelters, access to water, sanitation and hygienic facilities and leisure amenities have been observed, the assessment demonstrated the failure of the CCAC to comply with EU and international standards in regard to all the rights previously analysed.

Despite judicial interventions, an alarming number of residents continue to be deprived of their liberty of movement and have their procedural rights violated, with consequences that include restrictions of the already limited access to legal aid, healthcare and the widespread deterioration of their mental health. While the remote location and accessibility issues of the CCAC severely affects the integration process of the migrant community and reinforces its condition of “invisibilisation” and marginalisation, the surveillance apparatus fails to protect the residents from violence occurrences and affects their private life and mental health. The long-standing systemic deficiencies of the Greek asylum system, compounded by new restrictive national legislation, continue to affect all stages of the asylum process, ultimately compromising the right to enjoy asylum. Systemic gaps in the governmental health provision persist, albeit the support provided support from NGOs; as a result, the right to health is critically affected, especially for vulnerable groups which are forced to endure living conditions that may further aggravate their condition.

The ‘suitable and futureproof facilit[y] that would be up to EU standards’²⁴² is in fact an isolated and highly securitised reception structure, where the prison-like environment, the dominant omnipresence of surveillance and control, and overt, recurrent violations of human rights hardly fit with a dignified and humane treatment of displaced people. The vastly substantial investments in the surveillance apparatus of the CCAC, in combination with the increasingly restrictive asylum legislation, reveals the extent to which the EU and the Greek government have shifted towards repressive migration policies. Furthermore, the practice of *de facto* detention arbitrarily applied in the CCAC, compounded by the overall expansion of the grounds for detaining asylum seekers enacted by recent Greek legislation, demonstrates the growing criminalisation approach to migration and the underlying intent to deter it. Ultimately,

²⁴² European Commission, ‘Towards Better Living Conditions’ (n 113).

the persistent and flagrant absence of accessible channels and pathways for legal migration in the EU migration policy framework seems to indicate an overall discouragement of the legitimacy and value of human mobility.

‘We all have different audiences, different narratives. In Greece people are very tired with this refugee story and they blame us for making centres that are so big. Others complain that they’re small and the fencing is too severe but we have to be prepared. We have to have a contingency plan and be ready for the next emergency.’²⁴³

Reception facilities should always be a last resort temporary solution until durable and locally integrated alternatives for refugees and asylum seekers are established. Nevertheless, even when temporary, reception centres should provide minimum standards to guarantee the right to a life with dignity, and encompass the fundamental principle of participation and active involvement of the residents.²⁴⁴ Our analysis of the EU and Greek migration policy framework and its implementation shows a concerning departure from this approach. Considering that the assessment was conducted while the CCAC was only at approximately 15% capacity, it is difficult to imagine how this new model could uphold the rights and dignity of displaced people in case of future mass migratory influx. After the government took over the EU funded Emergency Support to Integration and Accommodation (ESTIA) programme from UNHCR at the end of 2020 and shortly after began to gradually reduce its capacity, in February 2022, the complete closure of the ESTIA accommodation was announced and is scheduled to happen by the end of the year.²⁴⁵ As it stands, the CCACs will be the exclusive form of first-line reception facilities in Greece. A response to migration that, consistent with the last years’ EU and Greek

²⁴³ Manos Logothetis, General Secretary of the Reception and Identification Service in Greece. See Helena Smith, ‘Why Greece’s Expensive New Migrant Camps Are Outraging NGOs’ *The Guardian* (19 September 2021) <<https://www.theguardian.com/world/2021/sep/19/why-greeces-expensive-new-migrant-camps-are-outraging-ngos>> accessed 6 July 2022.

²⁴⁴ United Nations High Commissioner for Refugees (UNHCR), ‘A Guide to International Refugee Protection and Building State Asylum Systems’ <<https://primarysources.brillonline.com/browse/human-rights-documents-online/a-guide-to-international-refugee-protection-and-building-state-asylum-systems;hrdhrd1021201810210068>> accessed 15 July 2022.

²⁴⁵ European Council on Refugees and Exiles (ECRE), ‘Greece: ESTIA Melt Down Continues – Criminalisation, Crack-Downs and Pushbacks Still the “Welcome” for People in Search of Protection’ (2022) <<https://ecre.org/greece-estia-melt-down-continues-criminalisation-crack-downs-and-pushbacks-still-the-welcome-for-people-in-search-of-protection/>> accessed 15 July 2022.

government's approach, systematically restricts the scope of international protection. It may be that this represents the real crisis of migration in Europe.

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