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## REPORT The Vastria CCAC

**To:** Now You See Me

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**Regarding:** The Vastria CCAC: a legal report

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## 1. INTRODUCTION

### 1.1. The situation

On 20 November 2019, the Greek government announced that it would convert the open reception and identification centres (RICs) for asylum seekers on the Aegean islands of Leros and Kos into ‘closed facilities’. At the same time, it would build new ‘closed facilities’ on the Aegean islands of Samos, Lesbos and Chios, closing the existing open RICs on these islands.<sup>1</sup> After this announcement, the term ‘Closed Control Access Centres’ (CCACs) has been introduced by the Greek government to describe these new facilities.<sup>2</sup> CCACs aim to register and identify asylum seekers, while also providing them with accommodation and material support.<sup>3</sup>

As of 20 June 2023, three CCACs are operational - on the islands of Samos, Leros and Kos.<sup>4</sup> Since November 2022, the existing RICs on Lesbos (Mavrovouni) and Chios (Vial) have already been officially renamed into CCACs.<sup>5</sup> However, the structures on Lesbos and Chios that were originally intended to serve as the CCAC facilities are still under construction.<sup>6</sup> On Lesbos, this structure is currently being built in the region of Vastria, which is 30km far from the city of Mytilene, which is the administrative, social and cultural centre of Lesbos, and located in a flammable pine forest.<sup>7</sup>

The Greek CCACs have faced substantial criticism. CCACs have, for example, frequently been denounced by civil society, international NGOs, EU bodies and Greek members of society for being ‘prison-like’.<sup>8</sup> One quote from Amnesty International is especially illustrative of the situation:

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<sup>1</sup> Council of Europe, Office of the Commissioner for Human Rights, Letter to Minister of Citizen Protection of Greece and Alternate Minister for Migration Policy (25 November 2019) <<https://rm.coe.int/letter-to-the-greek-minister-of-citizen-protection-and-the-alternate-m/168098efe3>> accessed 10 July 2023.

<sup>2</sup> Hellenic Republic: Ministry of Migration and Asylum, ‘R.I.C and C.C.A.C’ <<https://migration.gov.gr/en/ris/perifereiakes-monades/kyt-domes/>> accessed 10 July 2023.

<sup>3</sup> *ibid.*

<sup>4</sup> Refugee Support Aegean, ProAsyl, ‘What is happening today in the refugee structures on the Aegean islands (May 2023)’ <<https://rsaegean.org/en/ccac-aegean-islands-greece/>> accessed 10 July 2023, p. 34, 41, 48.

<sup>5</sup> *ibid.* p. 16, 28.

<sup>6</sup> *ibid.* p. 25, 33.

<sup>7</sup> Greek Council for Refugees ‘Reception and Identification Procedure’ in European Council on Refugees and Exiles (ed.) *Country Report: Greece* <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/>>; Sebastian Skov Anders, Gabriel Geiger ‘Planned Greek refugee camp is in ‘high risk’ fire zone next to landfill’ <<https://www.opendemocracy.net/en/greek-refugee-camp-lesbos-high-risk-fire-zone-next-to-landfill/>> both accessed 10 July 2023.

<sup>8</sup> Amnesty International, ‘One year since Greece opened new “prison-like” refugee camps, NGOs call for a more humane approach’ (19 September 2022) <<https://www.amnesty.eu/news/one-year-since-greece-opened-new-prison-like-refugee-camps-ngos-call-for-a-more-humane-approach/>> accessed 10 July 2023.



*“Located in remote areas far from local communities, with 24/7 CCTV and barbed-wire fences, these prison-like complexes illustrate some of the most punishing elements of a European asylum policy that has a disproportionate focus on deterrence, isolation and containment. Instead of being welcomed and supported to rebuild their lives and contribute to their new communities, asylum-seekers are isolated, subject to constant surveillance, and provided limited access to essential services.”<sup>9</sup>*

## 1.2. Research question and purpose of this report

The purpose of this report is to discuss whether the placement of asylum seekers in the Vastria CCAC, on the Greek island of Lesbos, would be in conformity with human rights law, and to outline possible legal avenues that could be pursued to challenge the placement of asylum seekers in the CCAC in question. The first part of the research question, the conformity with human rights law, will be evaluated based on three human rights – the right to liberty, the right to life and the right to education. Hence, the three sub-questions are:

**(1) Would the placement of asylum seekers in the Vastria CCAC amount to detention and, in case of a finding of detention, would this detention be lawful?**

**(2) Would the Greek government be able to ensure the protection of the right to life of the asylum seekers in the event of a fire and would the decision to locate the CCAC in a highly flammable and isolated area amount to a violation of their right to life?**

**(3) Would the prospective education in the Vastria CCAC be in conformity with the right to education, focusing on the accessibility and quality of the education?**

This report was commissioned by the NGO ‘Now you see me’ as part of their campaign ‘No child in a prison’ and written by legal student researchers of the Amsterdam European Law Clinic. ‘Now you see me’ (NYSM) raises awareness of the situation of asylum seekers on Lesbos by making the stories of asylum seekers visible through art and social media.<sup>10</sup> The campaign ‘No child in a prison’ aims to bring

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<sup>9</sup> Amnesty International, ‘One year since Greece opened new “prison-like” refugee camps, NGOs call for a more humane approach’ (19 September 2022) <<https://www.amnesty.eu/news/one-year-since-greece-opened-new-prison-like-refugee-camps-ngos-call-for-a-more-humane-approach/>> accessed 10 July 2023.

<sup>10</sup> Website of ‘Now you see me’, <https://nowyouseememoria.eu/story/>; Instagram page of ‘Now you see me’, <[https://www.instagram.com/now\\_you\\_see\\_me\\_moria/](https://www.instagram.com/now_you_see_me_moria/)>; Michiel Kruijt, “Now you see me Moria getuigt zonder opspraak van het harde leven in het vluchtelingekamp,” *De Volkskrant*, 21 June 2021.



awareness and open a discussion between European citizens about CCACs by engaging creatives, legal professionals and others.<sup>11</sup>

### 1.3. Scope

This report covers the human rights obligations and possible prospective human rights violations of the Greek state when placing asylum seekers in the Vastria CCAC. It does not, however, cover the human rights obligations of the European Union (hereinafter: EU), which has provided strategical, operational, and financial support for the establishment of the Vastria CCAC.<sup>12</sup> In this regard, on 7 June 2023, the EU Ombudsman issued an instructive decision on how the European Commission should ensure respect for fundamental rights in EU-funded migration management facilities in Greece.<sup>13</sup>

This report focuses on the right to liberty, the right to life, and the right to education. These three areas have been chosen as they represent three indispensable, vital pillars of decent living, that all asylum seekers need to have access to. The importance of each right will be explained further in each relevant section of the report.

### 1.4. Limitations and methodology

The CCAC in Vastria is still under construction, hence the possibilities to assess the situation comprehensively are limited. While some circumstances, including the location and size of the CCAC, and, to a certain extent, the level of security measures are already clear, other aspects still remain uncertain. For example, the extent to which education will be provided, as well as the possibility of a bus running between Mytilene and the CCAC, remain to be clarified.<sup>14</sup> In order to deal with this limitation, this report resorts to information provided by Greek and international media, NGOs, and the Greek government, while also looking into applicable Greek legislation regulating the CCACs. Information is

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<sup>11</sup> No you see me Moria, ‘No child in a prison’ <<https://nowyouseememoria.eu/no-child-in-a-prison/>> accessed 10 July 2023.

<sup>12</sup> Memorandum of Understanding between the European Commission, the European Asylum Support Office, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency, of the one part, and the Government of the Hellenic Republic, of the other part, on a Joint Pilot for the establishment and operation of a new Multi-Purpose Reception and Identification Centre on Lesbos (2 December 2020) <[https://home-affairs.ec.europa.eu/system/files/2020-12/03122020\\_memorandum\\_of\\_understanding\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2020-12/03122020_memorandum_of_understanding_en.pdf)> accessed 20 June 2023.

<sup>13</sup> EU Ombudsman, ‘Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece’ (7 June 2023), <<https://www.ombudsman.europa.eu/de/decision/en/170792>> accessed 10 July 2023.

<sup>14</sup> EU Ombudsman, ‘Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece’ (7 June 2023), <<https://www.ombudsman.europa.eu/de/decision/en/170792>> accessed 10 July 2023, para. 49.



also drawn from the already operational CCACs on other Greek islands, as an indication on how the CCAC on Lesbos will operate. These, already functioning, CCACs operate under the same (Greek) legal framework and form part of the same EU-Greek plan of reforming former open-type centres to CCACs on the Aegean islands, therefore rendering them a choice with high probability of similarity to the future Vastria CCAC.<sup>15</sup>

This report analyses international human rights law, European law and Greek law, and then applies the findings to the facts of the case, which have been identified using the sources mentioned above. Case law is also referenced where relevant, adding to the depth and credibility of the analysis. Each chapter will start with an analysis of the relevant international human rights law. Regarding the right to liberty and the right to life, the International Covenant on Civil and Political Rights (hereinafter: ICCPR) will be analysed, while, for the right to education, the report will look into the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR) and the UN Convention on the Rights of the Child (CRC). Afterwards, the specific right in each chapter will be discussed in the context of the European Convention of Human Rights (hereinafter: ECHR). Because this is an important treaty, with an associated judicial body, the European Court of Human Rights (hereinafter: ECtHR), this report dedicates substantial attention to it. Subsequently, each chapter will present a legal overview of European Union law, which encompasses a wide range of legal instruments. Given that the individuals in the CCACs are migrants, the focus will be on European Union migration law. In addition, Greek law will be analysed wherever relevant. It is significant to clarify that two members of the research group are Greek speakers, enabling them to have a direct understanding of national Greek legislation.

In this regard, it is important to note that Greece operates under the monist system of incorporation of international law in its domestic legal order. Article 28 paragraph 1 of the Greek Constitution stipulates that each international agreement becomes an “indivisible part of domestic Greek law” upon ratification, and that international law then takes primacy over any contrary provision in Greek legislation.<sup>16</sup> The monist system requires no further codification into law of international agreements, beyond their ratification and subsequent entry into force. That means that UN Treaties and the ECHR have direct standing in the Greek courts and are directly applicable in any case before them, and that any provision

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<sup>15</sup> General Regulation for the Functioning of CCACs on the Greek Islands (Γενικός Κανονισμός Λειτουργίας Κλειστών Ελεγχόμενων Δομών Νήσων) <<https://migration.gov.gr/wp-content/uploads/2021/09/Κλειστές-Ελεγχόμενες-Δομές.pdf>> (translated from Greek by one of the researchers).

<sup>16</sup> Greek Constitution Article 28 paragraph 1, <[https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1\\_1.pdf](https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1_1.pdf)> (translated from Greek by one of the researchers).



contrary to its articles must necessarily be disapplied according to the primacy of international law over contrary national provisions mentioned in the Constitution.<sup>17</sup>

As a last remark, it is worth clarifying that the report's substantive research was concluded on 20 June 2023. Any subsequent developments, either legal or factual, have not been incorporated in the report.

## 1.5. Outline

The present report examines whether the placement of asylum seekers in the Vastria CCAC will lead to human rights violations, by focusing on three key areas: the right to liberty and security, the right to life and the right to education. This chapter has introduced CCACs in general and the Vastria CCAC in particular, while also elaborating on the scope and limitations of this report. Chapter 2 analyses whether the placement of asylum seekers in the CCAC will amount to detention. Chapter 3 evaluates whether the fire risk in the area, where the CCAC is located, causes a violation of the right to life. Chapter 4 assesses the legal standards and state obligations in respect to the right to education and explores whether the CCAC is expected to be in conformity with these standards and obligations. Each of these chapters starts with an outline of the legal framework, in the order as mentioned above. Afterwards, a comprehensive legal analysis is conducted, whereby the legal rules and the according case law is applied to the facts. Each chapter ends by answering the question to what extent the placement of asylum seekers in the Vastria CCAC is in accordance with the specific right dealt with in that chapter. Then, building upon the conclusions in the chapters before, chapter 5 will explore which national, European and international legal avenues are available to challenge possible violations of human rights. This report concludes with a summary of the above and possible leads for further research or actions.

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<sup>17</sup> Greek Constitution Article 28 paragraph 1, <[https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1\\_1.pdf](https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1_1.pdf)> (translated from Greek by one of the researchers)





## 2. DETENTION

### 2.1. Introduction

The circumstances of the Vastria CCAC, including the security measures, the isolation and the night curfew, stir up the question whether the placement of asylum seekers in the CCAC on Lesbos will amount to detention. This question is crucial because a situation of detention gives rise to rights and safeguards provided by human rights law and European Union law.<sup>18</sup> Moreover, Greece does not consider the placement of asylum seekers in a CCAC as detention.<sup>19</sup> This means that if the placement of asylum seekers in the Vastria CCAC is considered to be detention, the required legal ground for this detention is lacking, rendering the detention unlawful.

This chapter examines whether the placement of asylum seekers in the Vastria CCAC will amount to lawful detention. Section 2 analyses the definition of detention under international law, the ECHR and under EU law, and then sets out the common criteria used across these regimes to qualify a situation as detention. Section 3 applies these criteria to the Vastria CCAC and concludes, by weighing the findings under the different criteria, that the placement of asylum seekers in the Vastria CCAC will amount to detention. Section 4 addresses whether the detention in the CCAC will be lawful. The chapter concludes, in section 5, by stating the most important guarantees that people who are deprived of their liberty are entitled to and by connecting the finding of detention to the other areas of law, which will be discussed in the following chapters.

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<sup>18</sup> For example, the right to judicial review of the detention which can be found in EU Law (Art. 9 Directive 2013/33/EU) and in the ECHR (Art. 5 para. 4 ECHR).

<sup>19</sup> Art. 49 para. 1 of Greek Law No. 4939/2022 states that asylum applicants may move freely within the Greek territory or within a specific designated geographical area; Art. 7 of the Greek General Regulation for the Functioning of Island CCACs states that after the reception and identification procedure asylum applicants enjoy freedom of movement in accordance with the applicable Greek law.



## 2.2. What is detention?

### 2.2.1. What is detention under international law?

#### Article 9 ICCPR

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

#### Article 12 ICCPR

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

An important international human rights instrument that deals with detention is the International Covenant on Civil and Political Rights. Art. 9 ICCPR entails the right to liberty and security of the person. This includes the right to not be detained or arrested arbitrarily. ‘Detention’ in Art. 9 ICCPR “refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release”.<sup>20</sup> Regarding the terminology, it must be noted that the terms ‘detention’, ‘arrest’, ‘apprehension’ and many other terms, are all used in international human rights instruments to refer to deprivation of liberty.<sup>21</sup>

Looking at the substantive meaning of deprivation of liberty, it is crucial that this always means that there is no consent from the person involved.<sup>22</sup> Deprivation of liberty does not require a specific form. The Working Group on Arbitrary Detention, which is set up to monitor compliance with Art. 9, mentions different forms of detention, other than merely residence in a prison.<sup>23</sup> Measures of house arrest, for example, are also seen as detention, as long as they are “accompanied by serious restrictions on liberty of movement”<sup>24</sup>.

The right to liberty of movement is governed by Art. 12 ICCPR. This Article is to be distinguished from Art. 9 ICCPR. However, as the above suggests, the rights under Art. 9 ICCPR and Art. 12 ICCPR are

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<sup>20</sup> UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 13; also see: 631/1995, *Spakmo v. Norway*, para. 6.3.

<sup>21</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, May 2000, No. 26.

<sup>22</sup> UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 6.

<sup>23</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, May 2000, No. 26.

<sup>24</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, May 2000, No. 26, p. 4.



closely related to each other and the two can come into play together in certain cases.<sup>25</sup> For instance, one situation can amount to restriction of movement as well as to deprivation of liberty, or a situation can transform from the former to the latter (and vice versa).<sup>26</sup> In general, detention is a particularly severe form of restriction of movement.<sup>27</sup> So, in that sense, Art. 9 ICCPR is a superlative of Art. 12 ICCPR.

### 2.2.2. What is detention under the European Convention of Human Rights?

#### Article 5 ECHR

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (...)

The right to liberty and security and the protection from arbitrary detention is governed by Art. 5 ECHR. Art. 5 ECHR contains the grounds for deprivation of liberty (henceforth, also referred to as detention). Parallel to the ICCPR, deprivation of liberty in the ECHR is different from restriction of movement, as laid down in Art. 2 of Protocol No. 4 to the ECHR. The difference between those two concepts is the degree of intensity.<sup>28</sup>

To assess whether a person was deprived of their liberty, and thereby not only restricted in their movement, the ECtHR takes their concrete situation as a starting point and considers a whole range of criteria such as type, duration, effects and manner of implementation of the measure in question.<sup>29</sup> In previous cases, the ECtHR has specified these criteria by considering the following aspects: the question whether the person is confined in a particular restricted space for a not negligible length of time; considerations of the possibility to leave the restricted area; the degree of supervision and control over the person's movement; the extent of isolation and the availability of social contacts.<sup>30</sup>

In the context of immigration detention, the ECtHR has mentioned the following, partly overlapping, criteria to decide whether a situation amounts to detention: (1) the applicants' individual situation and

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<sup>25</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 7.

<sup>26</sup> Taylor, P. (2020). Article 12: Freedom of Movement of the Person. In *A commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (pp. 325-353). Cambridge: Cambridge University Press, p. 326-7.

<sup>27</sup> UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 60.

<sup>28</sup> *Guzzardi v. Italy*, App no. 7367/76 (ECtHR, 6 November 1980) para. 93; also see: Council of Europe/European Court of Human Rights, *Guide on Article 5 of the European Convention of Human Rights: Right to liberty and security* (last updated 8 August 2022), paras 1-2.

<sup>29</sup> *Guzzardi v. Italy*, App no. 7367/76 (ECtHR, 6 November 1980) para. 92.

<sup>30</sup> *Guzzardi v. Italy*, App no. 7367/76 (ECtHR, 6 November 1980) para. 95; *H.M. v. Switzerland*, App no. 39187/98 (ECtHR, 26 February 2002) para. 45; *H.L. v. the United Kingdom*, App no. 45508/99 (ECtHR 5 October 2004) para. 91; *Storck v. Germany*, App no. 61603/00 (ECtHR, 16 June 2005) para. 73.



their choices, (2) the applicable legal regime of the respective country and its purpose, (3) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events, and (4) the nature and degree of the actual restrictions imposed on or experienced by the applicants.<sup>31</sup>

### 2.2.3. What is detention under EU Law?

#### Article 2 Reception Conditions Directive

(h) ‘detention’: means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

Detention in the context of migration within European Union law is governed by different legislative instruments, one of which is the Reception Conditions Directive.<sup>32</sup> The Reception Conditions Directive sets common standards of reception conditions throughout the EU and defines detention in Art. 2(h). In the corresponding case law, the Court of Justice of the European Union (hereinafter: CJEU) articulates detention as “a coercive measure that deprives that applicant of his or her freedom of movement and isolates him or her from the rest of the population, by requiring him or her to remain permanently within a restricted and closed perimeter”.<sup>33</sup> The following circumstances are mentioned by the Court as indicators for detention: the existence of high fences and barbed wire, no option for visitors to visit the applicants from outside the alleged detention zone without permission, the limitation of the applicants’ movement, and the monitoring by members of the law-enforcement services and their presence in the area of alleged detention.<sup>34</sup> Also, the dimension and capacity of the applicants’ accommodation and the practical possibilities for the applicant to leave the restricted area should be taken into account.<sup>35</sup>

### 2.2.4. What are the common criteria?

Based on the ICCPR, Art. 5 ECHR and corresponding case law, together with European Union legislative instruments and case law, common criteria for determining detention can be identified. In the case law the starting point to determine whether someone is detained is the concrete situation of the person who filed the application to the court. This chapter, however, analyses the prospective situation in the Vastria

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<sup>31</sup> Z.A. and others v Russia, Apps nos. 61411/15, 61420/15, 61427/15 and 3028/16 (ECtHR, 21 November 2019) para. 138; also see: J.R and others v Greece, App no. 22696/16 (ECtHR, 25 January 2015).

<sup>32</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

<sup>33</sup> Joined Cases C-924/19 PPU and C-925/19 PPU ECLI:EU:C:2020:367, para. 223.

<sup>34</sup> Joined Cases C-924/19 PPU and C-925/19 PPU, ECLI:EU:C:2020:367, para. 217.

<sup>35</sup> Case C-808/18, ECLI:EU:C:2020:1029, para. 159-63.



CCAC from a general perspective, not from the perspective of one specific individual. Therefore, the focus will be on the criteria that are relevant to everyone. To complete the analysis the last criterion will then touch upon the asylum seekers individual situation and their choices. Taken all this into account, the common criteria are the following:

- (1) the level of restriction, including the possibility to leave the area and the level of supervision,**
- (2) the degree of isolation, including the possibility of asylum seekers to have (social) contact with the outside world,**
- (3) the length of time that asylum seekers are held in the restricted area,**
- (4) the asylum seekers individual situation and their choices.**

In the next section, these criteria will be elaborated upon with a focus on ECtHR case law and applied to the context of the Vastria CCAC.

### **2.3. Will the placement of asylum seekers in the Vastria CCAC amount to detention?**

To determine whether the placement of asylum seekers in the Vastria CCAC will amount to detention, each of the following four subsections analyses the case law that has contributed to the substantiation of the respective criterion and then describes the expected situation in the CCAC with respect to this criterion and evaluates these findings in light of the case law.

#### **2.3.1. What is the nature and degree of restrictions placed upon asylum seekers?**

In *Guzzardi v Italy*, the ECtHR had to assess whether the restrictions imposed on Mr. Guzzardi, who had to take up compulsory residence on a small island due to criminal charges, amounted to detention.<sup>36</sup> First, the ECtHR stated that detention can take various forms and does not require people to be limited by a cell or physical barrier.<sup>37</sup> However, the ECtHR also pointed out that special supervision accompanied by an order for compulsory residence in a specified district does not of itself constitute detention, but it might in combination with other factors.<sup>38</sup> The restrictions in *Guzzardi v Italy* included the order, issued by an Italian court, to not return to the residence later than 10 pm and not go out before 7 am, except in case of necessity and after having given notice in due time to supervisory authorities and the order to report to the supervisory authorities twice a day and whenever called upon to do so. Mr. Guzzardi was liable to punishment by "arrest" (between three months and one year) if he failed to comply with any of

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<sup>36</sup> *Guzzardi v. Italy*, App No. 7367/76 (ECtHR, 06. November 1980).

<sup>37</sup> *ibid*, para. 95.

<sup>38</sup> *ibid*, para. 94, 95.



these obligations.<sup>39</sup> On the basis of these circumstances, the ECtHR compared the situation in *Guzzardi v Italy* with an “open prison” and concluded that the compulsory residence on the island in combination with the other restrictions which had been imposed on Mr. Guzzardi amounted to detention.<sup>40</sup>

In *Stanev v Bulgaria*, the ECtHR concluded that the placement of Mr. Stanev in a social care institution for people with mental disorders amounted to detention.<sup>41</sup> The ECtHR observed that Mr. Stanev was able to leave the buildings of the social care institution but emphasised that for the finding of detention it is not decisive whether the building was locked.<sup>42</sup> Mr. Stanev needed permission from the director of the institution to visit the nearby village, which he did regularly.<sup>43</sup> The ECtHR considered, among others, the following factors as contributing to the finding of detention: constant supervision, no leave without permission, the retaining of identity papers and being involuntarily returned to the institution after the authorised period of leave had been exceeded.<sup>44</sup>

In the cases *Amuur v France* and *Khlaifia and others v Italy* the ECtHR concluded that the strict and constant police surveillance of asylum seekers in combination with other factors amounted to detention.<sup>45</sup> Finally, it is important to note that the ECtHR stated in *Khlaifia and Others v Italy* that even measures intended for the protection or taken in the interest of the person concerned may be regarded as a deprivation of liberty.<sup>46</sup>

#### Application of a curfew

In the Greek CCACs asylum seekers are prohibited to enter and exit the premises during certain hours. Art. 7 of the Greek ‘General Regulation for the Functioning of CCACs on the Greek Islands’ (henceforth, the Regulation) states that for the duration of their stay in the CCAC, migrants enjoy the right of entry and exit from the CCAC during the hours stated in a Decision of the Governor of the Registration and Identification Service (RIS), which applies to all CCACs in the country. Currently, asylum seekers are prohibited to enter and exit the CCAC between 9pm and 7am.<sup>47</sup> Art. 7 of the Regulation specifies further that abiding by the CCAC’s entry and exit hours, including the overnight stay within the Centre, is

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<sup>39</sup> *ibid*, para. 12, 30, 95.

<sup>40</sup> *Guzzardi v. Italy*, App No. 7367/76 (ECtHR, 06. November 1980), para. 95.

<sup>41</sup> *Stanev v Bulgaria*, App. No. 36760/06 (ECtHR, 17 January 2012).

<sup>42</sup> *ibid*, para. 124.

<sup>43</sup> *ibid*, para. 25.

<sup>44</sup> *ibid*, para. 124-128, 132

<sup>45</sup> *Amuur v France*, App no. 19776/92 (25 June 1996), para. 45, 49; *Khlaifia and Others v. Italy*, App No. 16483/12 (ECtHR, 15. December 2016), para. 13ff, 65, 72.

<sup>46</sup> *Khlaifia and Others v. Italy*, App No. 16483/12 (ECtHR, 15. December 2016) para. 71.

<sup>47</sup> Refugee Support Aegean, ProAsyl, ‘What is happening today in the refugee structures on the Aegean islands (May 2023) <<https://rsaegean.org/en/ccac-aegean-islands-greece/>> accessed 20 June 2023, p. 8.



mandatory and that unjustified absence during the regular procedure of verifying the current population in the camp for two consecutive times may result in the termination of residence or the termination (or restriction) of the provision of material living conditions (such as housing, food, financial assistance etc.). Lastly, Art. 7 of the Regulation provides for the possibility to use available and useful technical control measures such as an electronic system of entry/exit cards.

The cases *Guzzardi v Italy* and *Stanev v Bulgaria* show that situations in which the person concerned is able to leave the building (e.g. during the day or with permission) can also amount to detention. Moreover, the entry/exit restrictions in the Vastria CCAC are at least comparable to the restrictions in *Guzzardi v Italy* and might even exceed them. In both situations the authorities implemented or will implement a night curfew. Based on the current decision of the Governor of the RIS the night curfew in the CCAC will start one hour earlier than in the *Guzzardi v Italy* case. Furthermore, unlike in *Guzzardi v Italy*, where an Italian court decided about the night curfew, in the CCACs the night curfew can be changed by the Greek Governor of the RIS without any judicial review. In *Guzzardi v Italy* the failure to comply with obligations could lead to punishment by “arrest”. In the CCAC the Greek law allows for the termination or restriction of material living conditions. It is difficult to compare these two consequences. However, restrictions on food, housing and financial assistance are very serious consequences for the asylum seeker concerned, which might even lead to human rights violations (e.g. Art. 3 ECHR). It is a mechanism to enforce the entry/exit restrictions, which is at least as deterrent as an arrest.

### Level of surveillance

In the Vastria CCAC the ‘Centaur’ and the ‘Hyperion’ surveillance systems will be used.<sup>48</sup> The Greek Ministry of Migration and Asylum describes the ‘Centaur’ system as an “integrated digital system of electronic and physical security management placed inside and around the facilities using cameras and a motion analysis algorithm (AI Behavioural Analytics)”.<sup>49</sup> The ‘Centaur’ system will include a CCTV system, video monitors, drones, perimeter violation alarms with cameras, control gates with metal detectors and x-ray devices and an automated system for public announcements through loudspeakers.<sup>50</sup> The ‘Hyperion’ system will monitor the entry and exit of asylum seekers by employing a 2 factor system

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<sup>48</sup> National Migration Strategy 2020-2021 by the Greek Ministry of Migration and Asylum <<https://s3.documentcloud.org/documents/20689221/493570553-ethnike-strategike-metana-steuses-sa-mos-le-sbos-khi-os-le-ros-kos-1.pdf>>; see also Corina Petridi, ‘Greek camps for asylum seekers to introduce partly automated surveillance systems’ (Algorithm Watch) <<https://algorithmwatch.org/en/greek-camps-surveillance/>> both accessed 20 June 2023.

<sup>49</sup> *ibid.*

<sup>50</sup> Corina Petridi, ‘Greek camps for asylum seekers to introduce partly automated surveillance systems’ (Algorithm Watch) <<https://algorithmwatch.org/en/greek-camps-surveillance/>> accessed 20 June 2023.



(asylum applicant card & fingerprints), turnstiles, magnetic gates and x-rays.<sup>51</sup> Hence, the surveillance of the people in the CCAC will be extensive.

The Samos CCAC is a good example to show how the surveillance systems are implemented and how the surveillance affects people. On Samos, in addition to the surveillance systems the CCAC “is guarded by the Greek Police and by a private security company 24h hours a day, with at least 50 uniformed people present on each shift.”<sup>52</sup> Children are also subjected to security checks - including the search of their backpacks - when entering the premises.<sup>53</sup>



#### *Surveillance of the Samos CCAC<sup>54</sup>*

The NGO Medecins Sans Frontieres (MSF) states that the mental health of people in the Samos CCAC has deteriorated due to the high security infrastructures in the camp.<sup>55</sup> Inhabitants describe that the living conditions in the CCAC Samos add up on the traumatic experiences they suffered in their country of origin.<sup>56</sup> One patient of MSF explained that he rarely leaves his room in order not to be confronted with barbed wire and heavy police presence.<sup>57</sup> From various testimonies of people in the Samos CCAC it

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<sup>51</sup> Refugee Support Agean, ProAsyl, ‘What is happening today in the refugee structures on the Aegean islands (May 2023) <<https://rsaegean.org/wp-content/uploads/2023/05/ccac-aegean-islands-greece.pdf>> accessed 20 June 2023, p. 6f.

<sup>52</sup> *ibid* p. 36.

<sup>53</sup> Elisa Perriguer and others, ‘Prisons in Paradise: Refugee detentions in Greece raise alarm’ (Al Jazeera, 22 Oct 2021) <<https://www.aljazeera.com/news/2021/10/22/prisons-in-paradise>> accessed 20 June 2023.

<sup>54</sup> FRANCE 24 English, <<https://www.youtube.com/watch?v=iFKTBXO4x6w>> accessed 10 July 2023.

<sup>55</sup> Medecins Sans Frontieres, ‘Κλειστά κέντρα για τους πρόσφυγες που φτάνουν στα ελληνικά νησιά: Ένα χρόνο αργότερα, «όλοι υποφέρουν από προβλήματα ψυχικής υγείας’ (30 November 2022) <<https://msf.gr/magazine/kleista-kentra-gia-toys-prosfyges-poy-ftanoyn-sta-ellinika-nisia-ena-hrono-argotera-oloi>> accessed 20 June 2023.

<sup>56</sup> Oxfam, ‘Stories from Samos: A collection of Testimonies’

<[https://www.gcr.gr/media/k2/attachments/Stories\\_from\\_Samos\\_A\\_collection\\_of\\_Testimonies.pdf](https://www.gcr.gr/media/k2/attachments/Stories_from_Samos_A_collection_of_Testimonies.pdf)> p. 7.

<sup>57</sup> Medecins Sans Frontieres, ‘Κλειστά κέντρα για τους πρόσφυγες που φτάνουν στα ελληνικά νησιά: Ένα χρόνο αργότερα, «όλοι υποφέρουν από προβλήματα ψυχικής υγείας’ (30 November 2022) <<https://msf.gr/magazine/kleista-kentra-gia-toys-prosfyges-poy-ftanoyn-sta-ellinika-nisia-ena-hrono-argotera-oloi>> accessed 20 June 2023.





becomes clear that the overall structure and surveillance of the camp makes people feel like they live in a prison. One Afghan mother with four children expresses: "...It is like living in a prison. The only thing that changed compared to the old camp, the only improvement, is that there we live in containers; for the rest, the new centre is worse. We don't have our freedom..."<sup>58</sup>

The supervision in the CCAC exceeds the supervision that was implemented by the Italian authorities in the case *Guzzardi v Italy* considerably. In *Guzzardi v Italy*, Mr. Guzzardi had to report twice a day to a police station close to his residence. In the CCAC on the other side, people will be constantly monitored by drones, cameras and security guards, whenever they are inside or around the CCAC. The supervision even exceeds the strict and constant police surveillance in *Amuur v France* and *Khlaifia and others v Italy*. In these cases, the asylum seekers were constantly under surveillance by police officers. In the CCAC in comparison, they will employ a wide range of technical surveillance tools in addition to police officers and security guards.

### 2.3.2. How isolated are asylum seekers in the CCAC?

In *Guzzardi v Italy*, the ECtHR considers the actual position of Mr. Guzzardi on the island by examining whether he could actually use the time, that he was allowed to leave his residence, to visit the villages on the island or go to the mainland.<sup>59</sup> He was restricted by an administrative order that did not allow him to visit the village on the island and he could not visit the mainland without permission and supervision.<sup>60</sup> As a consequence, he could not make any social contacts outside his near family, his fellow residents and the supervisory staff.<sup>61</sup>

The new CCAC on Lesbos is located about 30 kilometres from the city of Mytilene.<sup>62</sup> Currently, the road from the city to the CCAC is still unpaved and dirty.<sup>63</sup> This means that, if nothing changes, the asylum seekers residing in the camp are very limited in their actual ability to go outside the camp to maintain social contacts or buy essentials. 60 kilometres (to the city and back) is too far to walk not only for certain groups of people (children, elderly), but also for physically healthy people. Moreover, the time that this

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<sup>58</sup> Oxfam, 'Stories from Samos: A collection of Testimonies'

<[https://www.gcr.gr/media/k2/attachments/Stories\\_from\\_Samos\\_A\\_collection\\_of\\_Testimonies.pdf](https://www.gcr.gr/media/k2/attachments/Stories_from_Samos_A_collection_of_Testimonies.pdf)> p. 5.

<sup>59</sup> *Guzzardi v. Italy*, App No. 7367/76 (ECtHR, 06. November 1980), para. 26-29, 94, 95.

<sup>60</sup> *ibid*, para. 26-29.

<sup>61</sup> *ibid*, para. 95.

<sup>62</sup> Greek Council for Refugees 'Reception and Identification Procedure' in European Council on Refugees and Exiles (ed.) *Country Report: Greece* <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/>> accessed 20 June 2023.

<sup>63</sup> Mare Liberum, 'Camp Vastria: the new hell on Lesbos?' (17 February 2023) <<https://mare-liberum.org/en/camp-vastria-the-new-hell-on-lesvos/>> accessed 20 June 2023.



walk would take and the fact that the people have to be back in the camp before 9pm limits the options of activities to engage in the city.



*The Vastria CCAC under construction*<sup>64</sup>

The level of isolation has a very big impact on the people living inside the camp.<sup>65</sup> Not only does the level of isolation affect the level of choice that the asylum seekers have to leave, but it also limits their ability to maintain social contact with others than family, persons living in the same accommodation and supervisors. All the CCACs are placed outside of urban areas, which underlines that the actual purpose of the camps is to keep the asylum seekers isolated from the cities nearby.<sup>66</sup>

Of great importance is whether a bus will run between the CCAC and Mytilene because this could largely expand the actual options for asylum seekers to leave the camp. Some practical matters that are to be taken into account are whether the bus runs regularly, whether the capacity of the bus is sufficient and whether a bus ticket would be affordable for the asylum seekers; the CCAC on Samos, for example, has a bus connection to the town nearby, but the price of the ticket is a heavy financial burden for some

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<sup>64</sup> Now you See Me Moria Collective (anonymous photographer)

<sup>65</sup> Samos Advocacy Collective and Europe Must Act, 'All I want is to be free and leave: life in the closed control access centre in Samos' (18 December 2021), downloaded from: <<https://www.europemustact.org/post/all-i-want-is-to-be-free-and-leave-life-in-the-closed-controlled-access-centre-in-samos>> accessed 10 July 2023.

<sup>66</sup> Greek Council for Refugees 'Reception and Identification Procedure' in European Council on Refugees and Exiles (ed.) *Country Report: Greece* <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/>> accessed 20 June 2023; Amnesty International, 'One year since Greece opened new "prison-like" refugee camps, NGOs call for a more humane approach' (19 September 2022) <<https://www.amnesty.eu/news/one-year-since-greece-opened-new-prison-like-refugee-camps-ngos-call-for-a-more-humane-approach/>>; Joint Policy Briefing, 'Wailing of welcome: new reception facilities in Greece reinforce a policy of refugee containment and exclusion' (8 September 2021) <<https://www.rescue.org/eu/report/wailing-welcome-new-reception-facilities-greece-reinforce-policy-refugee-containment-and>> last accessed 16 May 2023.



people living there.<sup>67</sup> At 30 kilometres from a town, the Vastria camp is the most isolated, compared to the other CCACs, which is why the existence of a bus service is crucial.<sup>68</sup>

The situation in the CCAC is comparable to the *Guzzardi v Italy* case in different aspects. Namely, asylum seekers in the CCAC are generally not allowed to leave the island Lesvos<sup>69</sup>, just as Mr Guzzardi was practically unable to leave the island where he lived. Additionally, due to the isolated location of the camp it is highly unlikely that the asylum seekers will be able to engage in the social life on the island, which was a factor that added up to isolation in the *Guzzardi v Italy* case.<sup>70</sup> Given the similarities between the *Guzzardi v Italy* case and the Vastria CCAC case at hand, the starting point to assess the level of isolation should be the actual ability to engage in life outside the restricted area, just as the ECtHR used this as a starting point in the *Guzzardi v Italy* case.<sup>71</sup> This means that it is essential to obtain accurate information regarding the extent of isolation faced by asylum seekers to determine their actual ability, rather than just theoretical potential, to access nearby cities. This information is currently not provided for by the Greek government.

### 2.3.3. For how long will asylum seekers be placed in the CCAC?

The duration of the restriction as an indicator for detention is dealt with by the ECtHR in various cases. In the case of *Amuur v France*, the ECtHR concluded that excessive prolongation can turn a situation of restriction on liberty to a situation of deprivation of liberty.<sup>72</sup> Whether or not a prolongation is excessive, should be seen in light of the objective of the restrictive measures.<sup>73</sup> In the case of *Z.A. and others v Russia*, for instance, the ECtHR stated that if the time a person has to stay in a transit zone is significantly longer than the period of time that is normally needed to examine his or her asylum request, (provided for exceptional circumstances) this can affect whether or not the case falls into the scope of Art. 5

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<sup>67</sup> Refugee Support Aegean, ProAsyl, 'What is happening today in the refugee structures on the Aegean islands (May 2023) <<https://rsaagean.org/wp-content/uploads/2023/05/ccac-aegean-islands-greece.pdf>> p. 9; International Rescue Committee and I Have Rights, 'Contribution to the European Ombudsman's strategic inquiry into how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece' (January 2023) <[https://eu.rescue.org/sites/default/files/2023-02/EU%20Ombudsman\\_Submission\\_IRC\\_IHR\\_Jan%202023.pdf](https://eu.rescue.org/sites/default/files/2023-02/EU%20Ombudsman_Submission_IRC_IHR_Jan%202023.pdf)> both accessed 20 June 2023.

<sup>68</sup> Greek Council for Refugees 'Reception and Identification Procedure' in European Council on Refugees and Exiles (ed.) *Country Report: Greece* <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/>> accessed 20 June 2023

<sup>69</sup> Art. 49 of Greek Law No. 4939/2022 paragraph 1.

<sup>70</sup> *Guzzardi v. Italy*, App No. 7367/76 (ECtHR, 06. November 1980), para. 95.

<sup>71</sup> *Ibid.*, para. 94.

<sup>72</sup> *Amuur v France*, App no. 19776/92 (25 June 1996) para. 43; also see: *Z.A. and others v Russia*, Apps nos. 61411/15, 61420/15, 61427/15 and 3028/16 (ECtHR, 21 November 2019) para. 147.

<sup>73</sup> *Gahramanov v Azerbaijan*, App no 26291/06 (ECtHR, 15 October 2013) para. 42; *R.R. and others v Hungary*, App no. 36037/17 (ECtHR, 2 March 2021) para.78.



ECHR.<sup>74</sup> Also, the domestic law about the duration of stay is relevant. In the case of *R.R and others v Hungary*, the ECtHR gives particular weight to the fact that the duration of the applicant's stay was not legally prescribed, when judging on the applicability of Art. 5.<sup>75</sup>

The duration of time that people reside in the CCAC is different per situation, but personal testimonies show that it can be months or even years. Articles by journalists and NGOs about the camp in Samos report people who have been living in the camp for two years.<sup>76</sup> Other sources write about persons that have been in the camp for 5 or 6 months, and received a letter from the Greek officials that they will have to wait 1,5 years more to be interviewed.<sup>77</sup>

The purpose of keeping the asylum seekers in the camps is to process the individual's personal details and to decide on whether they qualify for international protection. The ECtHR gives weight to domestic rules when assessing whether the duration of stay is excessive.<sup>78</sup> The Greek law states that asylum requests should be examined as soon as possible, within 6 months. An extension of 3 months is possible, and in some cases a further extension, but at no point should it take more than 21 months.<sup>79</sup> So, taking this as a reference for the time it takes to assess an asylum claim, and weighing this against the time people actually have to spend in the CCAC, as done in the cases mentioned above, this suggests that there is a risk for the duration to be excessive.

Personal testimonies are currently the only sources available about how long asylum seekers have to reside in a CCAC. Because the actual duration of residence in the Vastria CCAC will depend on the Greek government, the Greek government needs to prove that the duration that asylum seekers have to

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<sup>74</sup> *Z.A. and others v Russia*, Apps nos. 61411/15, 61420/15, 61427/15 and 3028/16 (ECtHR, 21 November 2019) para. 147.

<sup>75</sup> *R.R. and others v Hungary*, App no. 36037/17 (ECtHR, 2 March 2021), para 83 and 79.

<sup>76</sup> Eva Papaioannou, Eva Petraki, Betty Sifaka, 'We can only help refugees survive: new camp on Samos' (Medecins sans frontiers, 17 September 2021) <<https://www.msf.org/we-can-only-help-refugees-survive-new-camp-greek-island>> accessed 20 June 2023; Samos Advocacy Collective and Europe Must Act, 'All I want is to be free and leave: life in the closed control access centre in Samos' (18 December 2021), downloaded from: <<https://www.europemustact.org/post/all-i-want-is-to-be-free-and-leave-life-in-the-closed-controlled-access-centre-in-samos>> accessed 20 June 2023.

<sup>77</sup> Valérie Gauriat & Apostolos Staikos, 'Migrants and Greeks in Samos share anger and despair' (26 July 2019) <https://www.euronews.com/my-europe/2019/05/10/refugees-on-samos-live-in-a-huge-camp-of-lost-souls>.

<sup>78</sup> *Z.A. and others v Russia*, Apps nos. 61411/15, 61420/15, 61427/15 and 3028/16 (ECtHR, 21 November 2019), para. 147.

<sup>79</sup> Greek Council for Refugees 'Reception and Identification Procedure' in European Council on Refugees and Exiles (ed.) *Country Report: Greece* <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/>> accessed 20 June 2023.



reside in the Vastria CCAC will not be excessively long in light of the purpose of their stay, and that the duration is set by law.

#### **2.3.4. What are the individual situations of asylum seekers, and do they have a choice?**

The case of *Tarak and Depe v Turkey* is a good example to demonstrate how the ECtHR considers the individual situation of the person who is affected by the measure in question.<sup>80</sup> In *Tarak and Depe v Turkey*, the ECtHR concluded, in the case of an unaccompanied eight year old child who was left to his own devices on the premises of a police station, that it does not have to consider whether the child was in a closed and guarded building from which any unauthorised exit was prohibited, since the child could not be expected to leave the police station on his own due to his vulnerability as a minor, even if he would have been allowed to.<sup>81</sup>

This case is relevant when the specific situation of children in the CCAC is evaluated. When considering the possibilities to leave the CCAC during the day the specific vulnerabilities of children need to be considered. Additionally, this case can also be used to make an argument that the specific vulnerabilities of children need to be considered in respect to every criterion. Especially the overall ‘prison-like’ structure of the CCAC, which includes barbed wire, fences and security guards as well as the entry/exit restrictions and surveillance measures can have a detrimental and long-lasting effect on a child’s development, their physical and mental health, and might exacerbate previous trauma.<sup>82</sup>

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<sup>80</sup> *Tarak and Depe v. Turkey*, App no. 70472/12 (ECtHR, 09. April 2019).

<sup>81</sup> *ibid* para. 53, 61.

<sup>82</sup> cf. UNGA, ‘Ending immigration detention of children and providing adequate care and reception for them: Note by the Secretary-General’ (UN Doc A/75/183, 20 July 2020), para. 26.



*Prison-like conditions in the Vastria CCAC*<sup>83</sup>

*Prison-like conditions in the Samos CCAC*<sup>84</sup>

Another important aspect is whether the asylum seeker's stay in the camp is involuntarily. This question can only be answered for each asylum seeker individually and should therefore be dealt with on a case-to-case basis. A relevant point here is that it is established by the ECtHR in case-law that asylum seekers cannot be considered to have the option of going back to the country where they came from if this option is merely theoretical. It is considered theoretical if going back would mean a violation of the rights under Art. 3 ECHR or no access to asylum procedures.<sup>85</sup> This is also the opinion of the CJEU.<sup>86</sup> As the people in the CCAC are asking for asylum in Greece, there is a real chance that it is indeed not safe for them to go back to the country that they left. This should be considered when assessing the issue of choice for asylum seekers.

### 2.3.5. Interim conclusion

To determine whether the placement of people in the Vastria CCAC will amount to detention, the different factors discussed above must be assessed in combination.

The extensive surveillance of asylum seekers in the Vastria CCAC is a strong point that indicates a situation of detention. The surveillance measures that will be implemented in the Vastria CCAC exceed

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<sup>83</sup> Sebastian Skov Anders, Gabriel Geiger 'Planned Greek refugee camp is in 'high risk' fire zone next to landfill' <<https://www.opendemocracy.net/en/greek-refugee-camp-lesbos-high-risk-fire-zone-next-to-landfill/>> accessed 10 July 2023.

<sup>84</sup> AFP photo, <<https://www.dailysabah.com/world/europe/greece-opens-1st-detention-center-like-migrant-camp-on-samos>> accessed 10 July 2023.

<sup>85</sup> *Amuur v France*, App no. 19776/92 (25 June 1996) para. 48; *Ilias and Ahmed v Hungary*, App no. 47287/15 (ECtHR, 21 November 2019) para. 248; *R.R. and others v Hungary*, App no. 36037/17 (ECtHR, 2 March 2021) para. 81; *Riad and Idiab v Belgium*, App nos. 47287/15 (ECtHR, 24 January 2008) para. 68.

<sup>86</sup> Case C-808/18, ECLI:EU:C:2020:1029, para. 163.



the measures of supervision that the ECtHR had to consider in its case law so far. In previous cases the ECtHR has even considered less extensive supervision measures as contributing to a finding of detention.

The fact that asylum seekers are allowed to leave the CCAC during the day cannot lead to the conclusion that this is not a situation of detention. In several of its judgments, the ECtHR found a situation of detention, even though the person concerned was allowed to leave their residence during the day. The night curfew was seen as a factor that contributed to the finding of detention.

The isolation and the duration have a high potential of contributing to the finding of detention. As the effects of the isolation (dependent on an effective bus connection) and the actual duration of stay in the CCAC will depend on the Greek government, they will need to provide correct and reliable information. Currently, based on the available information, the isolation and the duration point towards a finding of detention, as well. And even if the government could provide for an effective bus connection an argument can be made that the other factors, especially the extensive surveillance, are sufficient for a finding of detention.

In conclusion, the placement of asylum seekers in the CCAC will amount to detention due to the combination of the factors discussed above.

#### **2.4. Will detention in the CCAC Vastria be lawful?**

Since the placement of asylum seekers in CCAC Vastria will amount to detention, the follow-up question is whether this situation of detention will be lawful. Art. 5 ECHR states that a situation of detention should always be “in accordance with a procedure prescribed by law”. The Reception Conditions Directive also states that the grounds for detaining immigrants are to be laid down in national law.<sup>87</sup>

There is no legal basis in Greek national law that prescribes detention in the CCACs except during the registration and identification procedure, which can legally last up to 25 days.<sup>88</sup> After the registration and identification procedure, the Greek legislator considers the situation neither as situation of detention, nor as restriction of movement.<sup>89</sup> Hence, the placement of asylum seekers in the Vastria CCAC is detention, but this is not, except for the first 25 days, provided for by law, and therefore it is not lawful.

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<sup>87</sup> Art. 8 Directive 2013/33/EU.

<sup>88</sup> Art. 40(a) Law No. 4.939/2022.

<sup>89</sup> See Art. 49 Law No. 4939/2022 and Art. 7 Greek General Regulation for the Functioning of Island CCACs.



## 2.5. Conclusion

This chapter has examined the prospective situation in the CCAC on Lesbos and has argued that the placement of asylum seekers in the CCAC will amount to detention, while the Greek government does not recognise this as a form of detention. Therefore, the placement of asylum seekers in the Vastria CCAC will not be lawful.

One consequence of a finding of detention is that the people who will be deprived of their liberty are entitled to several guarantees, including the right to information on the reasons for arrest (Art. 5 para. 2 ECHR), the right to have the lawfulness of detention speedily examined (Art. 5 para. 4 ECHR) and the right to compensation for unlawful detention (Art. 5 para. 5 ECHR). Furthermore, the finding of detention has implications in respect to the right to life and the right to education, which will be discussed in the two following chapters, starting with the right to life in the next chapter.





### 3. FIRE RISK

#### 3.1. Introduction

In the Memorandum of Understanding on the establishment of the multi-purpose reception and identification centre in Lesvos, the Greek government committed to place the camp in a safe, healthy, and secure location, for both the asylum seekers and the staff, in accordance with EU standards.<sup>90</sup> One of those standards is the protection of the right to liberty, as discussed above, and another is the protection of the right to life, dealt with in this chapter. This is relevant because the placement of the camp poses security issues since it is being built in the middle of a pine forest, a highly flammable territory.<sup>91</sup> In the past years, Greece has been confronted with unprecedented heat waves that according to the European Commission, are expected to increase in the following years.<sup>92</sup> Like other southern European countries, the rise of temperatures due to climate change in Greece has intensified the risk of wildfires, as demonstrated by the deadly wildfires of 2021.<sup>93</sup> Therefore, the camp's placement constitutes a central concern for the safety and well-being of its future residents, the asylum applicants. Hence, the question that arises is whether the Greek government would be able to meet the standards set out mainly in the ICCPR and ECHR to ensure the protection of the right to life of the asylum seekers or whether the decision to locate the camp in that highly flammable and isolated area would amount to a violation of their right to life.

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<sup>90</sup> European Commission, 'Memorandum of Understanding between the European Commission, European Asylum Support Office, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency, of the one part, and the Government of Hellenic Republic, of the other part, on a Joint Pilot for the establishment of a new Multi-Purpose Reception and Identification Centre in Lesvos' (2020) C(2020) 8657 final, 5.

<sup>91</sup> Gabriel Geiger, 'Planned Greek refugee camp is in "high-risk" fire zone next to the landfill' (Open Democracy, 15 February 2022) <<https://www.opendemocracy.net/en/greek-refugee-camp-lesbos-high-risk-fire-zone-next-to-landfill/>> accessed 25 May 2023.

<sup>92</sup> European Commission, 'New EU Forest Strategy for 2030. Communication to the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of regions' (2021) COM(2021) 572 final, s 3.

<sup>93</sup> Chris Liakos, Elinda Lambropoulou and Amy Woodyatt, 'Greece faces "disaster of unprecedented proportions", as wildfires ravage the country' (CNN World, 10 August 2021) <<https://edition.cnn.com/2021/08/09/europe/greece-wildfire-warning-climate-intl/index.html>> accessed 25 May 2023.



### 3.2. What is the meaning of the right to life?

To answer the question whether the right to life is at issue, it is necessary to develop the applicable legal framework on the right to life to identify the content of this right in the international, European and national level in order to determine the specific standards that would need to be met by the Greek government to ensure its protection.

#### 3.2.1. How is the right to life protected under international law?

##### Article 6 ICCPR

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The right to life is a “fundamental right the effective protection of which is the prerequisite for the enjoyment of all other human rights.”<sup>94</sup> Hence, on the international level there are different instruments of universal, regional scope that conform its international sphere of protection. Already Art. 2 of the Universal Declaration of Human Rights recognised that every person has the right to life. However, this right acquired binding force when it was included in Art. 6 of the ICCPR.

First, due to the supreme nature of this right, it has been included in the list of the rights on which no derogation is permitted. This means that, as established by Art. 4 of the ICCPR, the right to life must be respected at all times, including situations of public emergency and moments in which the life of the nation is threatened. In addition, it must be interpreted narrowly to provide for the effective protection of the right to life for every person at any time. Accordingly, the material scope of this right exceeds the concept of direct physical injury. It has been established that deprivations of life may take different forms including acts or omissions that would harm “the bodily or mental integrity of a person or a threat thereto.”<sup>95</sup>

From the literal wording of the first paragraph of Art. 6, two ideas can be drawn. First, that contrary to other human rights such as the right to take part in the conduct of public affairs, reserved only for citizens

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<sup>94</sup> UN Human Rights Committee (CCPR), "General Comment No.36 – Article 6: the right to life" (3 September 2019) UN Doc CCPR/C/GC/36, para 2.

<sup>95</sup> UN Human Rights Committee (CCPR), ‘General comment No. 35: Article 9 (Liberty and security of person)’ (16 December 2014) UN Doc CCPR/C/GC/35, paras 9 and 55.



of the state,<sup>96</sup> every person has the right to live by the mere fact of being human. No one can be deprived of his life based on any ground of discrimination such as his nationality, origin or religion.<sup>97</sup>

Moreover, it establishes that member states have the positive obligation to abstain from carrying out arbitrary deprivations of life and that this protection has to be provided by law.<sup>98</sup> In addition to the negative obligation of state parties to abstain from committing arbitrary deprivations of life, this positive obligation on to respect and ensure the right to life has also been recognised in caselaw.<sup>99</sup> States are compelled to protect the right to life of the people under their jurisdiction or control and within the scope of their powers from “*reasonable threats and life-threatening situations that can result in loss of life.*”<sup>100</sup> Consequently, this duty will be violated if the state fails either by act or omission to undertake the necessary measures to protect the right to life.<sup>101</sup> Yet, this duty cannot be interpreted in a way that would entail a disproportionate or impossible burden on the state authorities.<sup>102</sup> Accordingly, it would be unrealistic to expect states to undertake measures to prevent every danger to the right of life from occurring. For a positive obligation to arise, it must be proven that the authorities were aware of the existence of real and imminent risk.<sup>103</sup>

Direct threats coming from both public and private actors may give rise to this due diligence obligation to protect life.<sup>104</sup> Those may include specific risks but also general societal conditions that may give rise to threats to life. Among the latter, the degradation of the environment “constitutes one of the most

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<sup>96</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 25.

<sup>97</sup> The right to life has to be read in conjunction with Art. 14 of the ICCPR on the prohibition of discrimination. This prohibition extends to the enjoyment of all the other substantive rights of the Convention and additional Protocols.

<sup>98</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 6(1).

<sup>99</sup> *Yakye Axa indigenous Community v. Paraguay* IACHR Series C no 125 (Official Case No) IHRL 1509 (IACHR 2005) (Inter-American Court of Human Rights [IACtHR], 17 June 2005), para 9

<sup>100</sup> UN Human Rights Committee (CCPR), "General Comment No.36 – Article 6: the right to life" (3 September 2019) UN Doc CCPR/C/GC/36, paras 5 and 7.

<sup>101</sup> UN Human Rights Committee (CCPR), ‘Gilmet Dermit (on behalf of Dermit Barbato and Dermit Barbato) v Uruguay, Merits’ (21 October 1982) Communication No. 84/1981 UN Doc CCPR/C/17/D/84/1981, para 9.2.

<sup>102</sup> UN Human Rights Committee (CCPR), "General Comment No.36 – Article 6: the right to life" (3 September 2019) UN Doc CCPR/C/GC/36.

<sup>103</sup> *Huilca Tecse v Peru, Gutiérrez and ors (on behalf of Huilca Tecse) v Peru* IACHR Series C No 121, [2005] IACHR 2, IHRL 1505 (IACHR, 2005), para 66; *Pueblo Bello Massacre v Colombia, del Carmen Alvarez Blanco and ors v Colombia* IACHR Series C no 140, IHRL 1524 (IACHR, 2006), para 120; *Kiliç v. Turkey* App no 22492/93 (ECtHR, 28 March 2000), para 62; *Öneryildiz v. Turkey* App no 48939/99 (ECtHR, 30 November 2004), para 65.

<sup>104</sup> UN Human Rights Committee (CCPR), "General Comment No.36 – Article 6: the right to life" (3 September 2019) UN Doc CCPR/C/GC/36, paras 18-22.



serious threats to the ability of the present and future generations to enjoy the right to life.”<sup>105</sup> States must adopt measures such as the conduction of environmental impact assessments to measure the negative impact that hazardous activities could potentially have on the environment.<sup>106</sup> The lack of initiatives on the part of the state to foresee and put in place measures to stop environmental disasters from taking place has been recognised by international courts and tribunals as a violation of the positive obligation of the state to protect the right to life.<sup>107</sup> Hence, the right to life involves the right to change a life-threatening environment. In those situations, the authorities must modify the environment that constitutes a hazard to life to prevent the danger from materialising.<sup>108</sup>

Moreover, the general obligation to protect life is reinforced in relation to certain groups of individuals. First, “the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats.”<sup>109</sup> This category includes, among others, children<sup>110</sup>, asylum seekers and unaccompanied migrant children<sup>111</sup>. States also have strengthened duties of protection in relation to persons deprived of their liberty. “The loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities.”<sup>112</sup>

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<sup>105</sup> Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972) UN General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII, para 1; Rio Declaration on Environment and Development (Rio de Janeiro, 3-14 June 1992) UN Doc A/CONF.151/26 (Vol. I), principle 1; United Nations Framework Convention on Climate Change (New York, 9 May 1992) 1771 UNTS 107, preamble.

<sup>106</sup> It is present in environmental treaties of universal scope such as the Rio Declaration’s principle 17 and is considered a customary international norm regarding the prohibition of causing transboundary harm. However, there is an ongoing trend directed toward the recognition of the customary nature of the obligation to conduct an environmental impact assessment beyond a transboundary context. The Seabed Chamber Advisory Opinion on the Responsibilities in the Area and the South China Sea Arbitration.

<sup>107</sup> *Social and Economic Rights Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria* Communication No. 155/96 (African Commission on Human and Peoples’ Rights, 27 May 2002), para 67; *The Netherlands v. Urgenda* 19/00135 (Supreme Court of the Netherlands, 20 December 2019), paras 5.2.2 and 8.2.2.

<sup>108</sup> Pinghua Sun, ‘Protection of the Right to Life by International Human Rights Law’ in *Chinese Contributions to International Discourse of Human Rights* (Springer Singapore 2022), 136.

<sup>109</sup> UN Human Rights Committee (CCPR), “General Comment No.36 – Article 6: the right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para 23.

<sup>110</sup> UN Human Rights Committee (CCPR), ‘Considerations of reports submitted by state parties under art. 40 of the Covenant’ (2 February 2009) UN Doc CCPR/C/HND/CO/1, para 9.

<sup>111</sup> *ibid.*, para. 12.

<sup>112</sup> UN Human Rights Committee (CCPR), “General Comment No.36 – Article 6: the right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para 29.



### 3.2.2. How is the right to life protected under European law?

#### Article 2 ECHR

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

International standards on the right to life are not sufficient to determine the full scope of obligations of the Greek government regarding the right to life. Apart from the ICCPR and international norms of universal scope, it is necessary to address the applicable regional human rights instruments. Therefore, this part of the analysis will focus on Art. 2 of the ECHR and on the subsequent ECtHR case law.

The right to life is a fundamental right that states parties to the ECHR, like Greece, are required to guarantee to all those within their jurisdiction. It is well-established in case law and interpretative guides of the ECtHR that the right to life binds a State with positive obligations to ensure that the right to life of those within their jurisdiction is not violated. The ECtHR has stated in numerous cases that “the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”<sup>113</sup> Initially the Court expanded upon these positive obligations in cases of protection from the criminal acts of other individuals within the state's jurisdiction.<sup>114</sup> A violation of the state's positive obligations to protect the right to life occurs if “the *authorities knew, or ought to have known* at the time, of the *existence of a real and immediate risk to the life of identified individuals* from the criminal acts of a third party and that they *failed to take measures* within the *scope of their powers* which, judged reasonably, might have been expected to avoid that risk.”<sup>115</sup>

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<sup>113</sup> *Osman v the United Kingdom* App no 23452/94 (ECtHR, 28 October 1998), para 115; *L.C.B. v. the United Kingdom* App no 23413/94 (ECtHR, 9 June 1998), para 36; *Öneryıldız v Turkey* App no 48939/99 (ECtHR, 30 November 2004), para 71.

<sup>114</sup> *Tagayeva a.o. v Russia* App no 26562/07 (ECtHR, 13 April 2017), para 482; *Osman v the United Kingdom* App no 23452/94 (ECtHR, 28 October 1998), para 115.

<sup>115</sup> *Tagayeva a.o. v Russia* App no 26562/07 (ECtHR, 13 April 2017), para 482; *Paul and Audrey Edwards v the United Kingdom* App no 46477/99 (ECtHR, 14 March 2002), para 55; *Medova v Russia* App no 25385/04 (ECtHR, 15 January 2009), para 96; *Tsechoyev v Russia* App no 39358/05 (ECtHR, 15 March 2011), para 136.



First of all, it is necessary to establish which types of real and imminent *risks* to the right to life are covered by this provision. The ECtHR adopted the same extensive interpretation of the right to life adopted by the HRC, already discussed in the last section. The due diligence obligation to protect life takes effect not just in situations of threats of criminal action against life from other individuals, but also, “in cases raising the obligation to afford general protection to society.”<sup>116</sup>

Then, what has to be proven is whether the authorities were aware of the existence of any real and imminent risk of any kind. Regarding the *knowledge* requirement the Court affirmed that the standard of evidence assessment would be “beyond a reasonable doubt.”<sup>117</sup> That means that, on a general basis, the Court applies a high standard of proof as regards to the facts. Nevertheless, if there are sufficiently strong, clear and concordant interferences of similar un rebutted presumptions of facts this threshold may be reached. Yet, similarly as at the international level, under the ECHR state parties have reinforced obligations regarding vulnerable collectives that have an influence on the applicable standards of proof. In *Daraibou v. Croatia* the Court ruled that “even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person”.<sup>118</sup> Here, the Court lowers the established threshold of responsibility that states parties have to those within their jurisdiction on their right to life regarding persons deprived of their liberty. Therefore, with respect to persons within the control and custody of the government a strong presumption of facts will arise with respect of the preventive measures implemented by the state and regarding the potential injuries and deaths occurring during that detention.

Moreover, once the element of knowledge has been demonstrated, the *causal link* between the failure to take the reasonable measures from the part of the government within the scope of to prevent the risk from materialising has to be proven. The case of *Öneryildiz v. Turkey* the ECtHR dealt with a case of mismanagement of an industrial site and negligence by the government to inform the inhabitants living near it of the risks<sup>119</sup> they ran by remaining in the area<sup>120</sup>, is illustrative of the broadness of state acts or omissions that can constitute a failure to protect life. The Court found the government guilty of violating

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<sup>116</sup> *Tagayeva a.o. v Russia* App no 26562/07 (ECtHR, 13 April 2017), para 482; *Mastromatteo v Italy* App no 37703/97 (ECtHR, 24 October 2002), para 69; *Maiorano and Others v Italy* App no 28634/06 (ECtHR, 15 December 2009), para 107; *Choreftakis and Choreftaki v Greece* App no 46846/08 (ECtHR, 17 January 2012), paras 48-49.

<sup>117</sup> *Daraibou v Croatia* App no 84523/17 (ECtHR, 17 January 2023), para 84.

<sup>118</sup> *ibid*; *Fanzyeva v Russia* App no 41675/08 (ECtHR, 18 June 2015), para 48; *Keller v Russia* App no 26824/04 (ECtHR, 17 October 2013), para 88; *Eremiášová and Pechová v the Czech Republic* App no 23944/04 (ECtHR, 16 February 2012), para 110; *Mižigárová v Slovakia* App no 74832/01 (ECtHR, 14 December 2010), para 89.

<sup>119</sup> *Öneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004), para 71.

<sup>120</sup> *ibid*.



the applicant's right to life as "the relevant authorities had not only refused to make any real effort to avert the serious operational risks" highlighted in an expert report but also "had failed to comply with their duty to inform the inhabitants of the Kazım Karabekir area of the risks they were taking by continuing to live near a rubbish tip,". A causal link was found between, "on the one hand, the negligent omissions attributable to the Turkish authorities and, on the other, the occurrence of the accident on 28 April 1993 and the ensuing loss of human life."<sup>121</sup> The Court accordingly, concluded that the Turkish government "could not be said to have done everything that could reasonably be expected of them to prevent the materialisation of the real risks to the lives of the inhabitants."<sup>122</sup>

Lastly, it is worth mentioning that the Court notes that it is not necessary for the applicants to have died for a breach of their right to life to be triggered, seeing that would defeat the principle of the Convention offering meaningful and practical protection to individuals.<sup>123</sup> In *Makaratzis v. Greece*, the Court declared that "irrespective of whether or not the police actually intended to kill him, the applicant was the victim of conduct which, by its very nature, put his life at risk, even though, in the event, he survived. Article 2 [was] thus applicable in the instant case."<sup>124</sup> That means that the violation of the due diligence state duty to protect life does not necessarily have to take place *ex post facto*. Hence, states are required to put in place preventive measures to prevent specific or general societal risks from materialising.

### 3.2.3. How is the right to life protected under Greek law?

Article 2(1) of the Greek Constitution speaks of the "respect and protection of human value" being the "foremost obligation of the State."<sup>125</sup> It is therefore a fundamental constitutional obligation of the State to ensure the dignity and respect of humans, arguably of everyone within their jurisdiction, since they regard this as their "foremost obligation". It is important to keep in mind this constitutional obligation of the government for the ensuing analysis of Greek legislation and its interplay with international and European law. Greek Law No. 4014/2011 mandates the compilation of Environmental Impact Assessment (EIA) reports for certain building projects, including in situations such as the Vastria camp.<sup>126</sup>

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<sup>121</sup> *Öneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004), para 75.

<sup>122</sup> *ibid.*

<sup>123</sup> *Daraïbou v Croatia* App no 84523/17 (ECtHR, 17 January 2023), para 86; *Feregc v Croatia* App no 68516/99 (ECtHR, 9 May 2017), paras 21-24.

<sup>124</sup> *Makaratzis v Greece* App no 50385/99 (ECtHR, 20 December 2004), para 55.

<sup>125</sup> Greek Constitution, art 2(1), <[https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1\\_1.pdf](https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1_1.pdf)> (*translated from Greek by one of the researchers*).

<sup>126</sup> Law No. 4014/2011, <<https://www.kodiko.gr/nomothesia/document/62759/nomos-4014-2011>> (*translated from Greek by one of the researchers*).



### 3.3. Would the Greek authorities be able to fulfil their duty to protect in case of a fire?

A strong case can be made for a parallel of ECtHR precedent to the case at hand in the Vastria camp. The government must necessarily be assumed to be aware of the real risks to the lives of the future inhabitants of the Vastria CCAC, as wildfires get more frequent, uncontrolled and deadly each year in the Greek summer.<sup>127</sup> The President of the fire brigade workers of the North Aegean region, acting as a representative for the firefighters of Lesbos, has stated that the Greek authorities chose the “worst place” for the structure stating that they have tried to show asylum seekers how to operate fire extinguishers repeatedly but have failed, and that if a fire breaks out in the camp, it will burn “half of the island” while he questions how they would ever be able to evacuate the migrants that are “in the middle of nowhere with no roads.”<sup>128</sup> He states that “the area is not recommended for the safety of, first and foremost, the people and the workers.” With such a vocal stance from the island firefighters, it is difficult to deny the Greek authorities’ knowledge of the risks involved in building and operating a CCAC in a densely forested area, at a very high risk of fire and with no operational evacuation plan for the thousands that would be housed there.

Not only that, but the European Forest Fire Information System’s (EFFIS) wildfire risk viewer places the entirety of Lesbos’ forested area in the “high risk” category.<sup>129</sup> This agency operates in partnership with the EU Commission and all EU Member States, including Greece.<sup>130</sup> This makes any potential defence of ignorance of the high risk of wildfires in the area by the Greek government even less plausible.

As in the *Öneryildiz* case, it is very likely that in the event of a tragic fire scenario in the Vastria camp the ECtHR would also find “a causal link between, on the one hand, the negligent omissions attributable to the [...] authorities and, on the other, the occurrence of the accident [...] and the ensuing loss of human life.”<sup>131</sup> The ECHR’s “object and purpose” as an instrument of protection of individual rights, must

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<sup>127</sup> Climate Change Post, ‘Forest Fires Greece’ (5 June 2023) <<https://www.climatechange.org/post/greece/forest-fires/>> accessed 10 June 2023; Ruth Michaelson, ‘It’s like a war’: Greece battles increase in summer wildfires’ (*The Guardian*, 30 September 2021) <<https://www.theguardian.com/world/2021/sep/30/its-like-a-war-greece-battles-increase-in-summer-wildfires>> accessed 10 June 2023; BBC News, ‘Greece wildfires: Hundreds more evacuated as uncontrolled fires rage’ (8 August 2021) <<https://www.bbc.com/news/world-europe-58138614>> accessed 10 June 2023; Ekathimerini, ‘Wildfire burning uncontrollably in Amfissa; convent evacuated’ (4 July 2022) <<https://www.ekathimerini.com/news/1188260/wildfire-burning-uncontrollably-in-amfissa-convent-evacuated/>> accessed 10 June 2023.

<sup>128</sup> See testimony by George Dinos in Natasha Papanikolaou, ‘ΒΑΣΤΡΙΑ: Το έργο προοδεύει ο κίνδυνος παραμονεύει- SOS από Πυροσβεστική’ (*Politika*, 9 June 2022) <<https://www.politika.esvos.gr/vastria-to-ergo-proodeuyei-o-kindynos-paramoneyei-sos-apo-pyrosvestiki/>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).

<sup>129</sup> EFFIS Wildfire Risk Viewer Online Tool <<https://effis.jrc.ec.europa.eu/apps/fire.risk.viewer/>> accessed 25 May 2023.

<sup>130</sup> EFFIS, ‘A brief history’ <<https://effis.jrc.ec.europa.eu/about-effis/brief-history>> accessed 25 May 2023.

<sup>131</sup> *Öneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004), para 75.





necessarily be "interpreted and applied in such a way as to make its safeguards practical and effective."<sup>132</sup> That means that the Convention would be failing at its object and purpose if it were to only offer protection to the right to life retroactively, after a tragic and fatal fire breaks out in the Vastria camp during its future operation. Art. 2 ECHR on the right to life imposes a positive obligation in the present moment on the Greek state to do everything that can be reasonably expected of them to prevent loss of life that can still be avoided. Under any contradictory interpretation of Art. 2 ECHR, the ECHR would be failing to protect the lives of those within the jurisdiction of Greece.

As per the *Daraibou v. Croatia* case, the Greek authorities have an even stricter obligation to guarantee the right to life of those detained within their jurisdiction. In those cases, the lower standard of proof requires that "even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person,"<sup>133</sup> On the basis of this report's chapter on detention, there is a strong case to be made for the migrants' *de facto* detention in the Vastria camp, thereby triggering the obligations of the government as stated in the *Daraibou* judgment on treatment and safety of detainees. However, even if the courts would determine that this case does not fall under the scope of detention, it is well known that during the night the asylum seekers would not be able to leave the center.<sup>134</sup> Hence, due to the specific circumstances the asylum seekers have to be considered as a vulnerable collective, as demonstrated in the part addressing international law, entailing extra responsibilities for the Greek government with regard to the protection of their right to life.

Available evidence show that the knowledge requirement set out by the jurisprudence of the ECtHR would be met in this case, since it would be very difficult to deny that the Greek government is aware of the great risk of fire on that part of the island, which could prove to be fatal for hundreds of migrants to be placed in the camp due to the EFFIS assessment and through the public opposition of the camp's placement by the island's firefighters.

Another important legal deficit in the Vastria CCAC is that the Greek Government must take precautions starting from the execution of an Environmental Impact Assessment report as mandated by customary international law and by the Greek Law No. 4014/2021, analysed in the sections above. This law was

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<sup>132</sup> *Öneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004), para 69.

<sup>133</sup> *Daraibou v Croatia* App no 84523/17 (ECtHR, 17 January 2023), para 84.

<sup>134</sup> LesvosNews.Net, 'Αντιδράσεις για την δομή στη Βάστρα - Το ΣτΕ ανέστειλε εργασίες για περιβαλλοντικούς λόγους' (16 February 2023) <<https://www.lesvosnews.net/articles/news-categories/koinonia/antidraseis-gia-tin-domi-sti-bastra-ste-anesteile-ergasies-gia>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).



not ratified before the beginning of the construction work but was completed after the works began, hence, it is currently applicable.<sup>135</sup> The municipal council stated that due to this, the EIA report was technically insufficient and outdated, therefore its approval would be unlawful.<sup>136</sup> The Supreme Court decided to halt the construction of the road leading up to the CCAC until the structure's legality can be determined, noting that its impact on the environment will be important and non-reversible.<sup>137</sup> The relevant authorities attempted to make the construction of the camp legal through a loophole, by reducing the CCAC's capacity from 5.000 people to 3.000 people, however, the case before the Supreme Court is still ongoing, with lawyers stating that its approval in the first place was a big step back for the protection of the environment.<sup>138</sup> The initial capacity of the camp that was approved by the municipality was set to 3.000 people, but locals have noticed the possibility of an additional second floor to the structures, which would up the capacity to up to 7.000 people.<sup>139</sup> The municipal council is now deeming the construction of the site as illegal, even though they initially approved of it, and is requesting the completion of an EIA report and notes that cancelling the project would be in line with the legal interest of the citizens of Lesvos. A decision by the Greek Supreme Court is forthcoming.<sup>140</sup>

The facts show that the Vastria CCAC is situated in a critical danger point for wildfires in the high-risk summer season. If such a fire were to occur in or around the camp area, there is a high chance that many lives of asylum seekers would be lost either by the flames or by the inhalation of smoke. Moreover, the

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<sup>135</sup> LesvosNews.Net, 'Αντιδράσεις για την δομή στη Βάστρα - Το ΣτΕ ανέστειλε εργασίες για περιβαλλοντικούς λόγους' (16 February 2023) <<https://www.lesvosnews.net/articles/news-categories/koinonia/antidraseis-gia-tin-domi-sti-bastra-ste-anesteile-ergasies-gia>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).

<sup>136</sup> *ibid.*

<sup>137</sup> LesvosNews.Net, 'Αντιδράσεις για την δομή στη Βάστρα - Το ΣτΕ ανέστειλε εργασίες για περιβαλλοντικούς λόγους' (16 February 2023) <<https://www.lesvosnews.net/articles/news-categories/koinonia/antidraseis-gia-tin-domi-sti-bastra-ste-anesteile-ergasies-gia>> accessed 25 May 2023 (*translated from Greek by one of the researchers*); Andronikis Koutsavlis, 'Ομόφωνο «όχι» από το Δημοτικό Συμβούλιο στη μελέτη περιβαλλοντικών επιπτώσεων για τη Βάστρια [Vid]' (*Emprosnet*, 31 January 2023) <<https://www.emprosnet.gr/e-tv/omofono-oxi-apo-to-dimotiko-symvolylio-sti-meleti-perivallontikon-epiptoseon-gia-ti-vastria-vid>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).

<sup>138</sup> See opinion of lawyer Loukas Apostolidis in LesvosNews.Net, 'Αντιδράσεις για την δομή στη Βάστρα - Το ΣτΕ ανέστειλε εργασίες για περιβαλλοντικούς λόγους' (16 February 2023) <<https://www.lesvosnews.net/articles/news-categories/koinonia/antidraseis-gia-tin-domi-sti-bastra-ste-anesteile-ergasies-gia>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).

<sup>139</sup> LesvosNews.Net, 'Αντιδράσεις για την δομή στη Βάστρα - Το ΣτΕ ανέστειλε εργασίες για περιβαλλοντικούς λόγους' (16 February 2023) <<https://www.lesvosnews.net/articles/news-categories/koinonia/antidraseis-gia-tin-domi-sti-bastra-ste-anesteile-ergasies-gia>> accessed 25 May 2023 (*translated from Greek by one of the researchers*); On the EIA Report see also AigaioReport, 'Λέσβος: Παρέμβαση του προέδρου της Κώμης' (17 January 2023) <<https://aigaio-report.gr/topikes-eidiseis/4374/lesvos-paremvasi-tou-proedrou-tis-komis>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).

<sup>140</sup> LesvosNews.Net, 'Αντιδράσεις για την δομή στη Βάστρα - Το ΣτΕ ανέστειλε εργασίες για περιβαλλοντικούς λόγους' (16 February 2023) <<https://www.lesvosnews.net/articles/news-categories/koinonia/antidraseis-gia-tin-domi-sti-bastra-ste-anesteile-ergasies-gia>> accessed 25 May 2023 (*translated from Greek by one of the researchers*).



isolation of the camp would make it difficult to access health care for the wounded that would have a high chance of dying on the road. In that event, deaths are clearly foreseeable and preventable by the Greek state. Currently, the Greek state has adopted an evasive approach reiterated by an evacuation plan and the decision to not carry out an Environmental Impact Assessment report through a technical loophole. Consequently, according to the existent evidence, the risk to the right to life of any asylum seekers that are to be placed in such a camp is grave. In addition, at the moment, as it has been proven in chapter 2 of this report, the present facts show that the isolation of the future asylum seekers could amount to detention. Hence, if that was the case, the unnatural death of the asylum seekers would entail a presumption of violation of the right to protect life of the Greek authorities<sup>141</sup> inverting the burden of proof<sup>142</sup>. Therefore, the Greek government has not proven to have taken sufficient preventive measures to ensure the protection of the right to life of the people to be transferred to the new CCAC. Consequently, the lack of information provided by the state represents a violation of its due diligence obligation to take all the necessary steps to ensure the protection of this right in the event of a fire in the new camp.

### 3.4. Conclusion

Greece has an obligation, under human rights law and Greek constitutional law, to refrain from placing any person within its jurisdiction in a situation that would endanger their life, especially regarding vulnerable groups. Hence, to determine whether a violation of a state's due diligence obligation to protect the right to life it must be proven that state action did not meet the jurisprudential criteria set out by the European Court of Human Rights. Those requirements may be summarised as follows:

- 1) the element of knowledge of the existence of a real and imminent risk to the right to life,
- 2) the failure to implement reasonable measures within the scope of state powers to prevent the risk from taking place, and
- 3) the existence of a causal link between the acts or omissions from the part of the state and the materialisation of the risk.

Current evidence shows that Greece meets the above mentioned criteria, and has in fact, a positive obligation to protect the right to life of future asylum seekers that are meant to be placed in the Vastria camp.<sup>143</sup> This positive obligation of Greece, requires the government to refrain from placing any asylum-

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<sup>141</sup> UN Human Rights Committee (CCPR), 'Eshonov v Uzbekistan' (8 September 2003) UN Doc CCPR/C/99/D/1225/2003, para 9.2; UN Human Rights Committee (CCPR), 'Zhumbaeva v Kyrgyzstan' (4 January 2008) UN Doc CCPR/C/102/D/1756/2008, para 8.8; UN Human Rights Committee (CCPR), 'Khadzhiyev v Turkmenistan' (9 April 2013) UN Doc CCPR/C/122/D/2252/2013, para 7.3.

<sup>142</sup> UN Human Rights Committee (CCPR), "General Comment No.36 – Article 6: the right to life" (3 September 2019) UN Doc CCPR/C/GC/36, para 29.

<sup>143</sup> *Tagayeva a.o. v Russia* App no 26562/07 (ECtHR, 13 April 2017), para 486.



seeker in the Vastria CCAC, seeing as there is a real and imminent risk to their right to life, seeing as they would be placed in the middle of a flammable pine forest that is labelled as high risk for wildfires, with no sufficient evacuation plan or guarantee of protection of the life of asylum seekers. Greece has so far failed to implement reasonable measures within the scope of their powers to mitigate this risk of death of the asylum seekers that would be housed in the Vastria CCAC. There is a clear causal link between any clearly foreseeable loss of life of asylum seekers in a wildfire in the Vastria CCAC, and the acts and omissions of the Greek government, in building the camp in the middle of a flammable forest, and in failing to ensure fire safety in its operations. Therefore, the Greek government would be violating the right to life of the asylum seekers placed in the Vastria CCAC.

Thus far, this report has argued that the placement of asylum seekers in the Vastria CCAC is a violation of the rights to liberty and the right to life. The next chapter will analyse the right to education and educational practices within the Vastria CCAC.



## 4. EDUCATION

### 4.1. Introduction

The education of minor asylum seekers in Greece has been a controversial topic for the past years, causing tension within politics and the society. At the same time, the right to education is a very crucial right, inherent to childhood, to which every child is entitled. This combination of tension and vitality is what renders the subject complex and central in the discourse around the under-construction Vastria CCAC.

Shifting the focus from detention and the right to life, analysed in the previous chapters, the present chapter of the report shall then focus on the right to education of minor asylum seekers who will inhabit the Vastria CCAC. It will begin with an analysis of the international, European, and Greek legal framework associated with the right to education and then explore the conformity of the future camp's educational scheme with the established standards. The analysis will consist of an examination of two pivotal factors: the accessibility and the quality of the provided education.

### 4.2. How is the right to education protected?

#### 4.2.1. How is the right to education protected under international Law?

##### Article 13 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The foundation of the right to education can be found in Article 26 of the Universal Declaration of Human Rights (UDHR). Art. 26 UDHR recognises the right to receive an education which shall be compulsory in the elementary stage and free, at least in the elementary and fundamental stages.<sup>144</sup> The UDHR, although not legally-binding, has provided a basis for subsequent legally binding human rights instruments, like the ICESCR.

The right to education is laid down in Articles 13 and 14 of the ICESCR as applicable to everyone as well as compulsory and free of charge in regards to primary education. The Committee on Economic,

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<sup>144</sup> Fons Coomans 'Education and Work' in Moeckli and others (eds.) *International Human Rights Law* (Oxford, 2022) 236.



Social and Cultural Rights (hereinafter: CESCR) elaborates in its General Comment No. 13 of the importance of education. It highlights the empowerment aspect that the right to education encourages by providing marginalised adults and children with the means to lift themselves out of poverty and to participate fully in their communities.<sup>145</sup> For this to be the case, it is crucial that this right applies to everyone, including asylum seekers, as the CESCR clarifies, regardless of legal status and documentation.<sup>146</sup>

The ICESCR state parties are, then, under an obligation to realise the right to education progressively<sup>147</sup>, in a non-discriminatory way<sup>148</sup> and in accordance with the principle of non-retrogression which prohibits them to regress on the progress in the levels of protection they already achieved internally. Therefore, despite the clear existence of an obligation, its exact content will depend on the particular state.

To assess the content of state obligations regarding the right to education, the CESCR developed the “**4-A scheme**” which sets the following standards:

- (1) functioning educational institutions and programs need to be **available**,
- (2) educational institutions and programs have to be **accessible** to everyone, without discrimination, within the jurisdiction of the State party,
- (3) the form and substance of education (including curricula and teaching methods) must be **acceptable**,
- (4) education must be flexible so it can **adapt** to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.<sup>149</sup>

Thus, even though the obligations on states will be different depending on the particular state, every state has to fulfil the core content of the right to education. The CESCR clarifies in its General Comment 13, that:

*“[57] States parties have “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels” of each of the rights enunciated in the Covenant, including “the*

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<sup>145</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 13: The Right to Education (Art. 13 of the Covenant)’ (8 December 1999) UN Doc E/C.12/1999/10, paras 1-2.

<sup>146</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (2 July 2009) UN Doc E/C.12/GC/20, para 30.

<sup>147</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), art 2(1).

<sup>148</sup> *ibid*, art 2(2).

<sup>149</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 13: The Right to Education (Art. 13 of the Covenant)’ (8 December 1999) UN Doc E/C.12/1999/10, para 2-3.



*most basic forms of education”. In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with “minimum educational standards” (art. 13 (3) and (4)).”*

In addition to the above, the Convention on the Rights of the Child (CRC), to which Greece is a signatory party, recognises, in its Art. 28, the right of the child to education which should be achieved progressively and on the basis of equal opportunity. This entails, at least, the provision of compulsory and available primary education, free to all, without discrimination, as mandated by Art. 2. Further, State Parties also committed to encourage the development of different forms of secondary education, to be made available and accessible to every child.<sup>150</sup>

In addition to access, the Committee on the Rights of the Child stresses that the right to education is also a matter of content and that it is indispensably linked to the provision of education in line with the values of Art. 29 CRC.<sup>151</sup> These values concerning, among others, human rights, the environment and cultural diversity, are deemed an essential part of any educational curriculum that aims to teach children how to appropriately respond to the challenges of the modern world.<sup>152</sup>

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<sup>150</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 28(b).

<sup>151</sup> UN Committee on the Rights of the Child (CRC), ‘General comment No. 1 (2001), Article 29 (1), The aims of education’ (17 April 2001) UN Doc CRC/GC/2001/1, para 3; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 29(1).

<sup>152</sup> UN Committee on the Rights of the Child (CRC), ‘General comment No. 1 (2001), Article 29 (1), The aims of education’ (17 April 2001) UN Doc CRC/GC/2001/1, para 3.



#### 4.2.2. How is the right to education protected under European Law?

**Article 2 Protocol no. 1 ECHR**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Art. 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR), binding on Greece as a signatory state<sup>153</sup>, guarantees the right to education.

It should, first be noted that the wording of the first sentence is negative, which means that there is no obligation of the state to create a public education system or subsidised private schools. However, a state cannot deny to its citizens the right to education in the educational institutions it has chosen to set up or authorise. This translates into a positive obligation of the state to provide effective access to its educational institutions.<sup>154</sup> Second, restrictions on the right to education are only compatible with this article ‘if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved’ and if they do not ‘conflict with other rights enshrined in the Convention and its Protocols’.<sup>155</sup>

Because of the importance of the right to education, the first sentence of Art. 2 of Protocol No. 1 should not be interpreted restrictively.<sup>156</sup> Moreover, the provision needs to be interpreted in light of the right to non-discrimination as regards the application of the Covenant rights, as provided by article 14, as well as in harmony with international law.<sup>157</sup>

In addition to the above, Art. 17(2) of the European Social Charter states that ratifying states are to take all appropriate and necessary measures designed to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools. Later caselaw confirmed

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<sup>153</sup> Council of Europe, ‘Chart of Signatures and Ratifications of Treaty 009’ <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=009>> accessed 17 April 2023.

<sup>154</sup> Case “*relating to certain aspects of the laws on the use of languages in education in Belgium*” v Belgium App no 1474/62 and 5 others (ECtHR, 23 July 1968); *Leyla Şahin v. Turkey* App no 44774/98 (ECtHR, 10 November 2005), para 137; Council of Europe: European Court of Human Rights, ‘Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to education’, 31 August 2022, paras 3-4.

<sup>155</sup> *Leyla Şahin v. Turkey* App no 44774/98 (ECtHR, 10 November 2005), paras 154-155.

<sup>156</sup> Council of Europe: European Court of Human Rights, ‘Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to education’, 31 August 2022, para 8.

<sup>157</sup> *ibid*, para 10.





that access to education is to be provided even in the case of children unlawfully present in a state's territory.<sup>158</sup>

Within the European Union, the right to education is laid down in Art. 14(1) of the Charter of Fundamental Rights of the European Union which provides “everyone” with the right to education and to access to vocational and continuing training. As per Art. 14(2), this right includes the possibility to receive free compulsory education.

In the case of education for minor asylum seekers, the main provision governing the question under EU Law is the Reception Conditions Directive (RCD).<sup>159</sup> Art. 14(1) states that Member States shall grant minors access to the education system, which may be provided in accommodation centres, as long as under similar conditions as their own nationals. If this is not possible for some reason, under Art. 14(3), the Member State concerned must offer some other education arrangements in accordance with its national law and practice. As per Art. 14(2), access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged. This also entails the provision of preparatory classes, including language classes, if these are deemed necessary to facilitate children's access to and participation in the education system.

The right to education for children who were not granted a status pursuant to their asylum application and are, hence, under return proceedings, is protected to some extent by the Returns Directive.<sup>160</sup> Art. 14(1)(c) grants access to the basic education system for children who are granted a voluntary period of departure or whose removal has been postponed as well as for children in immigration detention, subject to the length of their stay. Art. 17(3) grants minors in detention awaiting return access to education depending on the length of their stay.

#### **4.2.3. How is the right to education protected under Greek law?**

Implementing EU Law, Greek legislation recently adopted Law 4939/2022 on the “Ratification of the Code of Reception for the reception, the international protection of third country nationals and stateless persons and the temporary protection in case of mass influx of displaced foreigners”.

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<sup>158</sup> European Committee of Social Rights, *Médecins du Monde – International v. France*, Complaint No 67/2011, 11 September 2012.

<sup>159</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L 180/96.

<sup>160</sup> 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] OJ L 348/98.



According to Art. 55(1) of the latter, primary (including pre-primary) and lower secondary public education - eight and three years long, accordingly<sup>161</sup> - is compulsory both for minors who have applied for asylum and minors whose parents are applicants for asylum (hereinafter: ‘minor asylum seekers’). Greek public authorities are under the obligation to adequately support and facilitate the procedure of the minors’ integration into the public education system, which shall take place under conditions analogous to those that apply to Greek citizens.<sup>162</sup>

In the second paragraph, the article notes that this integration has to materialize no later than three months after the minors’ identification date. In case the minors do not comply with this obligation (of joining the education system), administrative sanctions will be imposed on their adult family members – as is the case also for Greek citizens - and their material reception conditions shall be limited pursuant to Art. 61 of the same law.

At the same time, Art. 55(3) clarifies that, for the facilitation of the minors’ integration into the public education system, temporary educational actions in the context of informal education can be provided, including in the reception centres. However, these actions cannot substitute formal education.

The right to education for minor asylum seekers is also codified under the Greek Migration Code (L.5038/2023), according to which minor third-country nationals attending all levels of Greek education, are entitled to unrestricted access to the activities of the school or educational community (Art.18).

Having established the legal framework for the right to education, now the application of this right to the children in the Vastria CCAC will follow. This analysis focusses on the accessibility of education and the quality of education.

### **4.3. Can the children in the Vastria CCAC enjoy their right to education?**

#### **4.3.3. What are the standards for access to education?**

The European Asylum Support Office (EASO) Guidance on reception conditions for unaccompanied children, although not binding, can help to clarify the RCD conditions in regards to access to education

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<sup>161</sup> European Commission, ‘Greece: Organisation of the education system and of its structure’ (European Commission, 13 March 2023) <<https://eurydice.eacea.ec.europa.eu/national-education-systems/greece/organisation-education-system-and-its-structure>> accessed 17 April 2023.

<sup>162</sup> General Regulation for the Functioning of CCACs on the Greek Islands (Γενικός Κανονισμός Λειτουργίας Κλειστών Ελεγχόμενων Δομών Νήσων) <<https://migration.gov.gr/wp-content/uploads/2021/09/Κλειστές-Ελεγχόμενες-Δομές.pdf>> (translated from Greek by one of the researchers).



systems and other education arrangements. It provides that, for article 14 RCD to be appropriately complied with, education must be available either outside the reception facility at a *reasonable distance* or inside the facility.<sup>163</sup> When education is provided for outside the camp, the costs of the transport should be either covered by the daily expenses allowance or organised on behalf of the children. It also provides the option for unaccompanied children to be accompanied by staff or a representative on their transport to school.<sup>164</sup>

When education is provided within the accommodation facilities or other locations, specific arrangements, such as sufficient and adequate infrastructures, curriculum and trained staff for education activities, need to be in place.<sup>165</sup>

Furthermore, the European Committee of Social Rights (ECSR), established under Art. 25 of the European Social Charter, issued a decision in 2021, regarding - inter alia - the access to education of migrant accompanied and unaccompanied children on the Greek Aegean islands.<sup>166</sup> The ECSR oversees compliance with the European Charter of Social Rights and is comprised of independent experts. According to the Decision, 'Article 17(2) of the Charter requires States Parties to establish and maintain an educational system that is both *accessible* and *effective*'.<sup>167</sup> On that basis, the Committee concluded 'unanimously that there is a violation of Article 17(2) of the Charter due to the lack of access to education for accompanied and unaccompanied migrant children on the (Greek) islands'.<sup>168</sup>

To reach the standard of accessibility, the decision dictates that access to education for asylum seeking and refugee minors must be ensured by two cumulative factors: physical and equal access. As far as the first factor is concerned, it is underlined that schools must be distributed equally throughout the country, while the number of teachers shall be analogous to that of the students.<sup>169</sup> Also, 'ease of access' is highlighted as crucial and explained as the children's' proximity and transport to and from the educational units.<sup>170</sup>

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<sup>163</sup> European Asylum Support Office (EASO), 'Guidance on reception conditions for unaccompanied children: operational standards and indicators', December 2018, 43.

<sup>164</sup> European Asylum Support Office (EASO), 'Guidance on reception conditions for unaccompanied children: operational standards and indicators', December 2018, 43.

<sup>165</sup> *ibid.*

<sup>166</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021.

<sup>167</sup> *ibid.*, para 199.

<sup>168</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021.

<sup>169</sup> *ibid.*, para 199.

<sup>170</sup> *ibid.*, para 200.



Regarding the equality of access to education of the minors in question, the Committee concludes that education must be free and ‘integrated into mainstream educational facilities and ordinary educational schemes’<sup>171</sup>. To ensure their access on terms analogous to the state’s nationals, special measures might be required, such as additional language education, additional staff and other intercultural support.<sup>172</sup>

#### 4.3.2. Will children in the Vastria CCAC have adequate access to education?

As already established and pursuant to International, European, EU and Greek Law, minor asylum seekers are entitled to exercise their right to education under circumstances similar to those that apply for Greek nationals. Therefore, and pursuant to L.4939/2022, all children in the CCAC need to attend public, free, formal education, provided by the state for the minimum compulsory 11 years (pre-primary, primary and lower secondary education).

According to Refugee Support Aegean (RSA), in 2023, the number of children residing in the Kara Tepe/Mavrovouni CCAC in Lesbos currently attending public schools in Mytilene is significantly larger than that of the previous years’.<sup>173</sup> More specifically, ‘in mid-March, out of 250 children at the age of compulsory education (4-14), 210 were enrolled in public schools, 150 were actually studying and 60 were on hold’.<sup>174</sup>

However, this improvement could be hindered by their transfer to the Vastria CCAC, which is located about 30km away from the city of Mytilene,<sup>175</sup> where the closest public schools are located. Hence, to estimate the probability of the minors’ adequate accessibility to education, we need to examine the standards and factors analysed above. Since the camp has not yet begun its operation, nor is there specific information on how education will be approached in the new camp, the current estimation will be based on the already available information, while also drawing on experiences from other functioning Greek island CCACs.

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<sup>171</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021.

<sup>172</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021, para 202; UN Committee on the Rights of the Child, ‘Concluding observations on the combined 4th to 6th periodic reports of Greece’ (28 June 2022) UN Doc CRC/C/GRC/CO/4-6, paras 38(c) and 40(k).

<sup>173</sup> Refugee Support Aegean, ‘Lesvos: What is happening today in the refugee structures on the Aegean islands’ <<https://rsaegean.org/en/lesvos-2023/>> accessed 24 May 2023.

<sup>174</sup> *ibid.*

<sup>175</sup> Greek Council for Refugees, ‘Reception and Identification: Greece’ (Asylum Information Database | European Council on Refugees and Exiles, 08/06/23) <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/>> accessed 10 June 2023.



To guarantee the minors' proper education, the CCAC's operation must be designed in a way which will ensure their equal and physical access to formal public education, as per the ECSR. This could either be done through the placement of the camp in a reasonable distance from the closest school, or through the incorporation of educational facilities within the camp, as already established by the European Asylum Support Office (EASO) Guidance and explained above.

In the first case, it is highly doubtful that the 30km distance from Mytilene could be characterised as reasonable, given that the discussion concerns children aged 4-14, belonging to the additionally vulnerable group of asylum seekers, who most likely are also not very familiar with the Greek language and culture. Of course, the families cannot be expected to cover the costs of the required transportation, but, even if these were to be covered by the state, appropriate conditions would have to be established to guarantee the safety of the children's transportation to and from school, as well as their 'ease of access'. This would require from the state to possibly organise buses - as long as the safety of the road is also guaranteed -, while also arranging for escorts, qualified to communicate with and ensure the children's safety.

On the other hand, the possible plan of 'in-house' education will not suffice if provided by NGOs, as will be explained in the following chapter. If proper formal education is secured inside the CCAC, according to the standards required by Greek law, there is a possibility for proper access to education of minors. Nonetheless, this will be an unprecedented and unlikely innovation, since, so far, in all the other CCACs, only informal education is being provided by NGOs inside the camps.<sup>176</sup>

What is more, according to the Greek Migration Code (*see above*), minor asylum seekers are entitled to unrestricted access to the activities of their school or educational community. In the prospect of Vastria camp minors attending public schools in Mytilene, due to the isolating location of the CCAC, children will necessarily be excluded from the activities of their school and the educational community. Moreover, children will be deprived of any chance to socialise with their Greek classmates. Hence, the isolation of the camp will lead to the isolation of the children, obstructing their healthy integration into

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<sup>176</sup> Refugee Support Aegean, 'Kos: What is happening today in the refugee structures on the Aegean islands' <<https://rsaegean.org/en/Kos-2023/>> accessed 24 May 2023; Refugee Support Aegean, 'Lesvos: What is happening today in the refugee structures on the Aegean islands' <<https://rsaegean.org/en/lesvos-2023/>> accessed 24 May 2023; Refugee Support Aegean, 'Chios: What is happening today in the refugee structures on the Aegean islands' <<https://rsaegean.org/en/chios-2023/>> accessed 24 May 2023; Refugee Support Aegean, 'Samos: What is happening today in the refugee structures on the Aegean islands' <<https://rsaegean.org/en/samos-2023/>> accessed 24 May 2023; Refugee Support Aegean, 'Leros: What is happening today in the refugee structures on the Aegean islands' <<https://rsaegean.org/en/leros-2023/>> accessed 24 May 2023.



the local society, the development of their social skills, and their sense of belonging in their school community.

This very problematic possibility has recently been highlighted in a common letter by 32 Refugee Education Coordinators (RECs)<sup>177</sup>, addressed to the Ministry of Migration and Asylum and to the Ministry of Education. Namely, the appointed educators are expressing their concerns regarding the ‘open prison camps’- as they call them -, stressing that it will be impossible for children living in these isolated locations to meet their classmates after class or participate in school excursions. They also interestingly note that this isolation will impede the necessary communication between the parents and the teachers.<sup>178</sup> Their claims are not just speculations, but rather based on their professional experience from the Leros, Kos and Samos prison- like CCACs, until now.

It should also be underlined that for the equal access of these children to education, in terms similar to their Greek classmates, one must take into consideration not only the isolation factor, but also the security, prison-like conditions of the CCAC, as analysed under the chapter on detention above. It is impossible to argue that a child will have ‘ease of access’ to its school and be psychologically ready to face the difficulties of an already foreign language, when faced with extreme security checks to get to and back from school. This situation will undoubtedly have a severe psychological impact on the child, who will instantly feel different compared to their classmates, not only because they will need to commute a very long distance to school daily, but also because of the expressive function of going through extreme security measures (x-rays, bag checks etc.) and being stigmatised for that.<sup>179</sup>

#### 4.3.3. What are the standards for quality education?

As per Art. 14(1) RCD, transposed into Greek Law by Art. 55(1) Law 4939/2022 children must have access to the education system under similar conditions as nationals. This means that the quality of the education provided shall be based on the national public education standard. According to the standard

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<sup>177</sup> Educators of the Greek public educational system who are appointed in these positions, acting as a liaison between the Ministry of Education, the parents of minors and the schools they attend.

<sup>178</sup> Aggelidis D, ‘A letter by 32 Refugee Education Coordinators for the Open Prison Centres (Επιστολή 32 Συντονιστών Εκπαίδευσης Προσφύγων Για Τις Δομές-Ανοιχτές Φυλακές’ *Efimerida ton Sintakton (Εφημερίδα των Συνακτών)* (Athens, 12 May 2023) <[https://www.efsyn.gr/ellada/koinonia/389420\\_epistoli-32-syntoniston-ekpaideysis-prosfygon-gia-tis-domes-anoihthes-fylakes](https://www.efsyn.gr/ellada/koinonia/389420_epistoli-32-syntoniston-ekpaideysis-prosfygon-gia-tis-domes-anoihthes-fylakes)> accessed 20 June 2023 (translated from Greek by one of the researchers).

<sup>179</sup> Aggelidis D, ‘A letter by 32 Refugee Education Coordinators for the Open Prison Centres (Επιστολή 32 Συντονιστών Εκπαίδευσης Προσφύγων Για Τις Δομές-Ανοιχτές Φυλακές’ *Efimerida ton Sintakton (Εφημερίδα των Συνακτών)* (Athens, 12 May 2023) <[https://www.efsyn.gr/ellada/koinonia/389420\\_epistoli-32-syntoniston-ekpaideysis-prosfygon-gia-tis-domes-anoihthes-fylakes](https://www.efsyn.gr/ellada/koinonia/389420_epistoli-32-syntoniston-ekpaideysis-prosfygon-gia-tis-domes-anoihthes-fylakes)> accessed 20 June 2023> (translated from Greek by one of the researchers).



for Greek nationals, minor asylum seekers must have access to primary (including pre-primary) education and lower secondary public education.<sup>180</sup> Further, they shall be granted unrestricted access to the activities of the school or educational community.<sup>181</sup> The provision of quality education following the national standard might also entail helping children to become familiar with the education system and to acquire the skills and knowledge needed to be able to appropriately participate in such system.<sup>182</sup> Art. 14(2) RCD addresses this through the provision of preparatory classes. These shall be in line with the needs of the children and might require both internal and external arrangements, including infrastructure, curriculum, and trained staff, to ensure efficacy.<sup>183</sup>

Likewise, the ECtHR ruled, in a judgement concerning Roma children, that states had the obligation to take appropriate positive measures to assist the applicants in acquiring the necessary language skills in the shortest time possible, notably by means of special language lessons, so that they could be quickly integrated into mixed classes with national students.<sup>184</sup> This ruling was advanced in response to a decision to reduce the educational curricula of Roma children as well as to separate them from the nationals on the grounds of lack of proficiency of the native language, both deemed inappropriate measures to promote the right to education.<sup>185</sup> Although this case concerns Roma children, the ECtHR's position would very likely be the same if the subject of the case were minor asylum seekers, an expectation strengthened by the fact that, for example, the recommendations of the Committee on the Rights of the Child to Greece apply to both Roma and asylum seeking children.<sup>186</sup>

The European Committee of Social Rights (hereinafter: ECSR) reiterates the importance of integrating, particularly, vulnerable children like minor asylum seekers into mainstream educational facilities and ordinary educational schemes.<sup>187</sup> Inevitably, this means that specific arrangements need to be in place for unaccompanied children with special needs in the same way as for nationals. These can take the form of alternative education arrangements such as home schooling, transportation, and accompaniment or

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<sup>180</sup> European Commission, 'Greece: Organisation of the education system and of its structure' (European Commission, 13 March 2023) <<https://eurydice.eacea.ec.europa.eu/national-education-systems/greece/organisation-education-system-and-its-structure>> accessed 17 April 2023.

<sup>181</sup> Law 5083/2023, Greek Migration Code (Νόμος 5083/2023, Κώδικας Μετανάστευσης), Art. 18 <<https://migration.gov.gr/wp-content/uploads/2023/04/Κώδικας-Μετανάστευσης.pdf>> (*translated from Greek by one of the researchers*).

<sup>182</sup> European Asylum Support Office (EASO), 'Guidance on reception conditions for unaccompanied children: operational standards and indicators', December 2018.

<sup>183</sup> *ibid.*

<sup>184</sup> *Oršuš And Others v. Croatia* App No 15766/03 (ECtHR, 16 March 2010), para 165.

<sup>185</sup> *ibid.*

<sup>186</sup> UN Committee on the Rights of the Child, 'Concluding observations on the combined 4th to 6th periodic reports of Greece' (28 June 2022) UN Doc CRC/C/GRC/CO/4-6, paras 38(c) and 40(k)

<sup>187</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021, para 200



access to specialised educational structures.<sup>188</sup> The ECSR also reminds, in the context of Art. 17(2) of the European Social Charter, that the provision of quality education, applicable to all children without discrimination, requires a functioning system of primary and secondary education provided free of charge, an adequate number of schools fairly distributed over the geographical area, appropriate class sizes and reasonable teacher pupil ratio.<sup>189</sup>

The Committee of Ministers of the Council of Europe provided clarifications on what should be understood by “quality education”. According to the Committee’s recommendation which, although technically non-binding, offers a valuable clarification, “quality education” is education which enables pupils and students to develop appropriate competences, self-confidence and critical thinking, relies on qualified teachers who are committed to continuous professional development and takes place in a secure and non-violent learning environment which recognises everyone’s learning and social needs and where democracy, respect for human rights and social justice are promoted.<sup>190</sup> This description of the content of education is in line with that advanced by the Committee on the Rights of the Child and the values of Art. 29 CRC.<sup>191</sup>

Additionally, when the provision of education to minor asylum seekers takes place in public schools as part of the educational system of the host member state, the Committee of Ministers advanced that, in order to facilitate their integration, assistance to newly-arrived minors to learn the language of instruction should be given and that collective recreation and sports activities should be organised to facilitate communication between minor asylum seekers and children of the receiving society.<sup>192</sup>

The Committee also recommends that the school curricula and teaching materials should reflect the religious, ethnic and cultural diversity of the society, include education for democratic citizenship, human rights and intercultural competence and that the practical day-to-day arrangements in school should be, wherever possible, sufficiently flexible to meet the needs of children of different cultural and religious backgrounds. In addition to this, States should also ensure teaching is undertaken by qualified

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<sup>188</sup> European Asylum Support Office (EASO), ‘Guidance on reception conditions for unaccompanied children: operational standards and indicators’, December 2018, 43.

<sup>189</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021, para 199.

<sup>190</sup> Council of Europe, ‘Recommendation of the Committee of Ministers to member States on ensuring quality education (12 December 2012) CM/Rec (2012) 13.

<sup>191</sup> UN Committee on the Rights of the Child (CRC), ‘General comment No. 1 (2001), Article 29 (1), The aims of education’ (17 April 2001) UN Doc CRC/GC/2001/1, para 3; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 29(1).

<sup>192</sup> Council of Europe, ‘Recommendation of the Committee of Ministers to member states on strengthening the integration of children of migrants and of immigrant background’ (20 February 2008) CM/Rec (2008)4.





personnel, able to recognise and address in an appropriate manner the special needs of these children and to work effectively in a diverse ethnic, cultural, religious and linguistic environment.

It should be noted that these recommendations are based on the assumption that, unless the provision of education to minor asylum seekers takes their specific difficulties with integration into account, they will not be able to enjoy education under the same conditions, in terms of quality, as their Greek colleagues. As established above, access to education alone is not enough for the right to education to be fulfilled. Instead, the education accessed needs to be “quality education”. However, the non-binding character of these recommendations in combination with the binding character of provisions requiring solely the provision of education in the same conditions as nationals is unlikely to encourage states to go beyond this standard. In any case, if it is true that the importance of quality education on a child’s development is undisputed, this is even more so for minor asylum seekers in irregular situations as the denial of quality education in these cases will exacerbate their vulnerability.<sup>193</sup>

#### 4.3.4. Will children in the Vastria CCAC be provided with quality education?

It is, at this point, impossible to predict how the provision of education will take place within the Vastria CCAC, given the still precarious state of the camp and the lack of public information on the issue. Nonetheless, assumptions can be made by comparison to the other CCACs in Greece. Recent statistics show that a significant proportion of minor asylum seekers are finally attending public schools in some of the camps.<sup>194</sup> However, none of these CCACs presents the level of isolation that characterises the Vastria CCAC which, as established above, makes the provision of formal education at public schools outside the camp an unreasonable option for children. The question that remains is, then, how will the children’s right to education be ensured *within* the camp? And to what extent can it be ensured in Vastria?

As of end of last year, children’s access to education in the Samos CCAC, for example, was still dependent on an NGO which provided informal education within the camp.<sup>195</sup> While it is established by law that education can take place in the centres, it is highly doubtful that informal education provided

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<sup>193</sup> European Committee of Social Rights, *Médecins du Monde – International v. France*, Complaint No 67/2011, 11 September 2012, para 128.

<sup>194</sup> Refugee Support Aegean, ‘Lesvos: What is happening today in the refugee structures on the Aegean islands’ <<https://rsaegean.org/en/lesvos-2023/>> accessed 24 May 2023; Refugee Support Aegean, ‘Samos: What is happening today in the refugee structures on the Aegean islands’ <<https://rsaegean.org/en/samos-2023/>> accessed 24 May 2023

<sup>195</sup> I have rights, ‘The EU-funded closed controlled access centre – the de facto detention of people seeking protection on Samos’ (23 February 2023) [https://ihaverights.eu/de\\_facto\\_detention\\_in\\_the\\_ccac/](https://ihaverights.eu/de_facto_detention_in_the_ccac/) accessed 24 May 2023, 30.



for by NGOs achieves the necessary level of quality so as to equate it with the education Greek students receive in the public system. This being said, while it is true that children placed in the Vastria CCAC have no other option but to access education inside the camp, it is not enough that such education takes the form of informal education provided by NGOs. Following the Letter of the Refugee Education Coordinators cited above, provision of formal education *inside* ‘open prison camps’ like Vastria is no viable option either as, among other obstacles, it does not allow for children’s participation in excursions, group activities within the community and other social inclusion actions as previewed by law.<sup>196</sup>

Regarding preparatory measures to facilitate the children’s integration in the public system, these are provided in Samos, Kos and Chios, through the Greek NGO Metadrasi and the Association for the Social Support of Youth. These include Greek and English language classes, tutoring as well as social and life skills and they are a crucial step to ensure that children can integrate the education system in the same way as nationals. Once again, it cannot yet be predicted exactly what form they shall take in the Vastria CCAC, but if they follow this model, assuming they are conducted by competent staff, this is enough for them to be in line with Article 14 RCD and Article 55(3) Law 4939/2022. It should, however, be noted that “these activities cannot substitute formal education”, they are merely a facilitator of such education. If there is no possibility for formal education, such measures are of limited value.

#### 4.4. Conclusion

In light of the above, it is evident that the common denominator of most Vastria camp educational scenarios is their insufficiency regarding the children's unhindered access to education, as enshrined in both domestic, European and international law. It has been shown that, in case the minor asylum seekers in the Vastria CCAC are given access to formal education in public schools outside the CCAC, their ‘ease of access’ is highly doubted, due to the camp’s isolated location. On the other hand, if the scenario of an in-camp informal education is favoured, provided by NGOs, the Greek law threshold of education analogous to national standards would not be satisfied. Nonetheless, even if formal, up-to-standard education is provided inside the camp, the prison-like environment of the Vastria CCAC would place the

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<sup>196</sup> Aggelidis D, ‘A letter by 32 Refugee Education Coordinators for the Open Prison Centres (Επιστολή 32 Συντονιστών Εκπαίδευσης Προσφύγων Για Τις Δομές-Ανοιχτές Φυλακές’ *Efimerida ton Sintakton (Εφημερίδα των Συντακτών)* (Athens, 12 May 2023) <[https://www.efsyn.gr/ellada/koinonia/389420\\_epistoli-32-syntoniston-ekpaideysis-prosfygon-gia-tis-domes-anoihtes-fylakes](https://www.efsyn.gr/ellada/koinonia/389420_epistoli-32-syntoniston-ekpaideysis-prosfygon-gia-tis-domes-anoihtes-fylakes)> accessed 20 June 2023 (translated from Greek by one of the researchers); Law 5083/2023, Greek Migration Code (Νόμος 5083/2023, Κώδικας Μετανάστευσης), Art. 18 <<https://migration.gov.gr/wp-content/uploads/2023/04/Κώδικας-Μετανάστευσης.pdf>> (translated from Greek by one of the researchers).



minor asylum seekers at risk of discrimination, compared to their Greek classmates and their access to education.

Overall, considering the scenarios advanced throughout this section, it can be concluded that there is a high probability that the education provided to the minor asylum seekers who are to be placed in the Vastria CCAC will not be in line with the required legal standards, thus resulting in a violation of their right to education under Greek, European and international law. In light of these inferences, and in addition to the violations of the rights to liberty and life discussed in the previous chapters, the next chapter of this report will focus on exploring the available legal avenues to prevent the opening of the camp or to compel its closure based on the violation of these three rights.



## 5. LEGAL AVENUES

### 5.1. Introduction

In the previous chapters, we have established that Greece may violate different human rights of asylum seekers by placing them in the Vastria CCAC. In this chapter, we will discuss which legal avenues NYSM could pursue, perhaps in combination with other actors, to obtain a review of the human rights situation in the Vastria CCAC by a Court or non-judicial body.

The legal avenues are divided into three main sections: first, we will address ‘individual complaints’ which might lead to an assessment of the specific situation of an individual (or sometimes a group of individuals) in the Vastria CCAC (Section 5.2). Then, we will describe ‘general complaints’ that might lead to the assessment of the overall situation in the Vastria CCAC (Section 5.3), followed by an overview of ‘reporting procedures’ that NYSM might be able to contribute to (Section 5.4). Unlike the other chapters, here we will start by providing an outline of the national legal avenues because to be able to access the European and international legal channels it is generally required to start with local procedures. Hence, each subsection will first consider the national avenues, if relevant, then the European avenues and then the international avenues. Finally, a short conclusion and a table with an overview of the information will be included in Annex I.

This chapter only presents an overview of potential legal avenues. When deciding which avenue to take, a more in-depth analysis of the chances of success and the different admissibility criteria that need to be fulfilled for each avenue should be carried out.

### 5.2. Individual complaints

This section analyses the “individual complaints” procedure, common in many international and European treaties. This procedure allows individuals or, sometimes, groups of individuals, who suffered human rights violations by a state party to a certain treaty to bring a complaint before the body that is responsible for monitoring that treaty’s implementation. In this section, we will discuss first the Greek complaint procedure in front of the detention judge. Then we will provide an outline the ECtHR’s complaint procedure that can be used to address the potential violations of the ECHR that we have identified in the previous sections being the right to life, the right to liberty and security and the right to education. Finally, we will end this section by establishing the individual complaint procedure available at the international level to claim a violation of right to life and to liberty and security being the one from the monitoring body of the ICCPR, the CCPR.



Since Greece is neither a party to the Optional Protocol of the ICESCR nor to the Optional Protocol of the CRC these complaints procedures will not be available to address, at the international level, the violations of the right to education that are likely to take place after the opening of the Vastria CCAC.

There are two admissibility requirements that can be identified as common to almost every treaty which has an “individual complaints” procedure. These are the exhaustion of domestic remedies and the victim status. The first requires potential applicants to use all available legal procedures in the country responsible for the human rights violations before they submit an official complaint to any treaty body. The second requires that the harm resulting from the human rights violations in question is suffered directly by the person or persons submitting the complaint, in other words, the applicant or applicants have “victim status”.

Below, the Greek legal avenue for a case relating to detention will be discussed. Important to mention here is that when a case touches upon European Union law, the judge of the national court has the possibility or sometimes also an obligation to request a preliminary ruling from the CJEU. Since the placement of refugees in the Vastria CCAC is not in line with the Reception Conditions Directive, as argued in the chapters on detention and fire risk, this could be a possibility. However, it is up to the national judge to refer to the CJEU and this cannot be done by individuals.<sup>197</sup>

### 5.2.1. Greek Legal Avenue

As the domestic remedies need to be exhausted, this section will first provide some leads on the Greek legal avenues before turning to the individual complaints on the European and international level. The exploration of the Greek legal avenues is limited to the question of detention. However, to raise the right to life and the right to education in an individual complaint on the European or international level, it is not sufficient to only address the right to liberty on the domestic level. Domestic remedies need to be exhausted regarding all the rights that the complainant wants to raise on the European or international level. Hence, further research into Greek legal avenues wherein the right to life and the right to education can be addressed is required.

Greek Law 4939/2022 is the New General Law on Third-country Nationals or Stateless Individuals. According to Article 40(a) of the latter, third country nationals or stateless individuals can be restricted of their freedom of movement, for identification reasons, for a maximum of five days, counting from their point of entry in the country, based on a decision issued by the Center’s Director. This restriction

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<sup>197</sup> Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47 (TFEU), arts 258 and 259.



can be extended, for a maximum of 25 days, in total, upon their arrival at the Reception and Identification Center. In our case, their arrival at the Closed Control Access Center would be the point of reference for this maximum period. Pursuant to the same article, this restriction of movement entails a ban on exiting the center's premises, subject to specific exceptions. What is more, the article specifies that the Center's Director's decision that extends the individuals' restriction of movement must be in written form, containing factual and legal justification.

Subsequently, Article 40(b) states that this extension decision can be the object of an administrative legal process called 'Objections' (Αντιρρήσεις). Namely, the individual whose freedom of movement has been restricted, can contest the decision extending this restriction, before the First Instance Administrative Court of the Region to which the Center he/she is held at pertains.

However, in our case, we can assume that the individuals under consideration in this report will not officially be restricted or detained. According to Greek Law, as analyzed in the respective Detention chapter above, asylum seekers living in CCACs have freedom of movement, therefore there is no decision imposing or extending their restriction or detention. Nevertheless, since it has been concluded, in the present report, that their stay in the Vastria CCAC would amount to *de facto* detention, it would potentially be possible to use the legal avenue of Objections, as described above, for the *de facto* detained Vastria asylum seekers.<sup>198</sup>

In addition, Article 50(6) establishes that detained asylum seekers can contest the decision imposing or extending their detention before the First Instance Administrative Court of the Region in which they are detained. According to this Article, the same administrative legal process of 'Objections' (Αντιρρήσεις) can be invoked, according to Article 76(3) – (6) of Law 3386/2005. A great advantage of this process is that Article 50(8) clarifies that the individual's detention constitutes a great reason for the acceleration of the examination of their asylum application.

It is important to underline that the chances of this legal avenue succeeding are rather low, given that objections regarding actual, *de jure* - not *de facto* - detention are very often rejected by the Courts. Nevertheless, the decision ruling on the Objections cannot be appealed in any way<sup>199</sup>, therefore the rejection of the applicant's Objections renders the Greek legal avenues on detention exhausted, opening the way for other European and International options, analysed below.

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<sup>198</sup> De-jure detention refers to detention that is prescribed by law. De-facto detention refers to a situation of detention that is not recognized as detention under national law.

<sup>199</sup> Article 76(4) L.3386/2005.



### 5.2.2. European Court of Human Rights

In this report, we have established potential violations of Articles 2 and 5 of the ECHR as well as of Article 2 of Protocol no. 1 to the ECHR, which refer, respectively, to the right to life, the right to liberty and security of a person and the right to education. The body concerned with ensuring that state parties respect the rights protected in the ECHR is the ECtHR. The ECtHR allows for individual applications to be brought by a person, a group of persons, a company or an NGO and provides binding judgements on their substance.<sup>200</sup>

Again, the two typical admissibility requirements mentioned above apply. This means that the applicant must be a “victim”<sup>201</sup> and that domestic remedies must be exhausted for an application to be admissible<sup>202</sup>. There is some flexibility around this latter requirement, namely in cases where domestic remedies are not available in practice at the relevant time, not accessible, not capable of providing appropriate redress and not capable of offering reasonable prospects of success.<sup>203</sup> However, the ECtHR is usually reluctant to make use of these exceptions. In fact, there have even been calls to make the “exhaustion of domestic remedies” requirement even stricter.<sup>204</sup>

The requirements that need to be fulfilled to obtain the victim status are set forth in art. 34 of the ECHR. According to this provision, “the Court may receive applications from any person...claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention”<sup>205</sup>. Hence, in this case, the only persons that could be able to start a complaint procedure will be the asylum seekers that will be transferred to the Vastria CCA whose right to life, liberty and security or education would have been violated by Greece. Consequently, on a general basis, applications could only be filed to the Court, *ex post facto*, meaning after the violation of the said rights had taken place.

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<sup>200</sup> Council of Europe, ‘The ECHR in 50 questions’ (2021)

<[https://www.echr.coe.int/documents/50questions\\_eng.pdf](https://www.echr.coe.int/documents/50questions_eng.pdf)> accessed 10 June 2023; Steven Greeg and Lewis Graham, ‘Europe’ in Moeckli and others (eds.) *International Human Rights Law* (Oxford, 2022) 236, 472-473 and 463-486.

<sup>201</sup> ECHR, art 34.

<sup>202</sup> ECHR, art 35(1).

<sup>203</sup> ECtHR, ‘Practical Guide on Admissibility Criteria’ (31 August 2022)

<[https://www.echr.coe.int/documents/d/echr/Admissibility\\_guide\\_ENG](https://www.echr.coe.int/documents/d/echr/Admissibility_guide_ENG)> 27-33; *Budimirovic v Serbia* App No 57744/15 (ECtHR, 12 September 2017).

<sup>204</sup> Lisa R. Glas, “The age of subsidiarity) The ECtHR’s approach to the admissibility requirement that applicants raise their Convention complain before domestic courts” (2023) 41(2) *Netherlands Quarterly of Human Rights* 75.

<sup>205</sup> ECHR, art 34.



However, in certain situations, the ECtHR has accepted that an applicant may be a “*potential* victim”.<sup>206</sup> This category established by the ECtHR could be further explored to determine whether – prior to the opening of the Vastria CCAC - a complaint by asylum seekers that are likely to be placed in the future Vastria CCAC is admissible, particularly when the right to life is in question.<sup>207</sup> In addition to this, an NGO that represents victims or potential victims, but whose own rights as a legal person are not infringed, cannot bring a complaint on their behalf.<sup>208</sup> An applicant must be affected personally and cannot complain against a domestic practice on the sole basis that it violates human rights.<sup>209</sup> NYSM will, therefore, not be able to start a complaint before the ECtHR on behalf of asylum applicants that will have been placed in Vastria.

An advantage of starting a case before the ECtHR is that the Court may decide to issue “interim measures”, subject to certain conditions, which require a State to take certain measures provisionally, while it continues its examination of the individual complaint.<sup>210</sup> These measures, which usually consist of asking a State to refrain from doing something, apply where there is an “imminent risk of irreparable harm.”<sup>211</sup> It can be argued that such a risk exists regarding the right to life since, as described in chapter three, once asylum seekers are moved to the Vastria CCAC they are under a clear, foreseeable and imminent risk of a violation of their right to life. This undoubtedly amounts to irreparable harm given its elemental value.

The interim measures in the case at hand could look like a decision not to place the applicant in the Vastria CCAC until a decision on the main individual complaint has been reached. It should be kept in mind, however, that this procedure is a part of the individual complaint itself and, as such, the two admissibility requirements mentioned above still apply. Having this in mind, even if NYSM could partner with a person who can be considered a “victim” or a “potential victim”, in order to start a procedure, this potential applicant would have to start by seeking redress through the Greek legal system first.

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<sup>206</sup> ECtHR, ‘Practical Guide on Admissibility Criteria’ (31 August 2022)

<[https://www.echr.coe.int/documents/d/echr/Admissibility\\_guide\\_ENG](https://www.echr.coe.int/documents/d/echr/Admissibility_guide_ENG)> 15-16.

<sup>207</sup> ECtHR, ‘Guide on Article 2 of the European Convention on Human Rights – The right to life’ (31 August 2022) <[https://www.echr.coe.int/documents/d/echr/Guide\\_Art\\_2\\_ENG](https://www.echr.coe.int/documents/d/echr/Guide_Art_2_ENG)>.

<sup>208</sup> *Vallianatos and Others v Greece* App No 29381/09 and 32684/09 (ECtHR, 7 November 2013) para 48.

<sup>209</sup> *Centre for Legal Resources on Behalf of Valentin Câmpeanu v Romania* App No 47848/08 (ECtHR, 17 July 2014) para 101.

<sup>210</sup> ECtHR, ‘Factsheet – Interim Measures’ (December 2022)

<[https://www.echr.coe.int/documents/fs\\_interim\\_measures\\_eng.pdf](https://www.echr.coe.int/documents/fs_interim_measures_eng.pdf)>; ECtHR, ‘Rules of the Court’ (23 June 2023) <[https://www.echr.coe.int/documents/d/echr/Rules\\_Court\\_ENG](https://www.echr.coe.int/documents/d/echr/Rules_Court_ENG)>, rule 39.

<sup>211</sup> ECtHR, ‘Factsheet – Interim Measures’ (December 2022)

<[https://www.echr.coe.int/documents/fs\\_interim\\_measures\\_eng.pdf](https://www.echr.coe.int/documents/fs_interim_measures_eng.pdf)>.





### 5.2.3. Human Rights Committee (CCPR)

In the first and the second chapter of this report, we have concluded that the placement of asylum seekers in the Vastria CCAC would amount to a violation of Articles 9 and 6 of the ICCPR, which refer, respectively, to the right to liberty and security of person and the right to life.

The implementation of the ICCPR is monitored by a body of experts, the Human Rights Committee (hereinafter: CCPR), whose mandate includes receiving and considering individual complaints from or on behalf of a person or group of persons claiming to be victims of a violation of the ICCPR by a State party. After a decision has been reached, the CCPR issues its views on the complaint, but these are not binding on state parties. Regardless, their political value is undisputed as they represent a reasoned interpretation of an instrument which the signatories have agreed to be legally binding.

In order to bring a case to the CCPR, the exhaustion of domestic remedies and the victim status requirements must be met. It is also possible for a complaint to be brought on behalf of a victim, with approval.<sup>212</sup> This means that NYSM can bring a complaint before the CCPR even if it is not personally and directly affected by the violations of the ICCPR rights mentioned above, as long as the victim which it represents is effectively affected in that way.

## 5.3. General Complaints

This section analyses complaint procedures that do not assess the situation of an individual or a group of individuals. Instead, these complaints raise questions about general situations. This results in two consequences: (1) victim status is not required to lodge a complaint, (2) general complaints can be initiated by non-governmental organizations.

### 5.3.1. European Committee of Social Rights (ECSR)

In chapter 4 on the right education, we have discussed Art. 17 (2) of the European Social Charter (ESC). Compliance of a State's law and/or practice with the ESC is monitored by the European Committee of Social Rights (ECSR) through collective complaints and a reporting system.<sup>213</sup>

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<sup>212</sup>UNHR, 'Individual Communications' <<https://www.ohchr.org/en/treaty-bodies/individual-communications#overviewprocedure>> accessed 19 June 2023.

<sup>213</sup> Council of Europe, 'European Committee of Social Rights' <<https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>> accessed 19 June 2023.



Collective complaints can be lodged by certain international non-governmental organisations (INGOs) and several other organisations.<sup>214</sup> The list of INGOs entitled to submit a collective complaint has been published on the website of the Council of Europe.<sup>215</sup> Hence, to pursue this avenue a collaboration between NYSM and an eligible INGO would be necessary. Furthermore, the exhaustion of local remedies is not required.<sup>216</sup> Therefore, a complaint could be lodged without pursuing Greek legal avenues or while related cases in front of Greek courts are still pending.

On 26 January 2021, the ECSR has already delivered a ruling on the issue of children's right to education in the Greek refugee camps.<sup>217</sup> The ECSR concluded unanimously that there is a violation of Article 17 (2) ESC due to the lack of access to education for accompanied and unaccompanied migrant children on the islands.<sup>218</sup> On 20 April 2022, after the ECSR had issued the decision, the Committee of Ministers initiated the follow-up procedure and addressed recommendations to Greece, including the recommendation to strengthen the implementation of the regulatory framework for the education of accompanied and unaccompanied migrant children, in particular on the islands.<sup>219</sup> As part of this follow-up procedure Greece has to submit a report approximately two years after the Committee of Ministers' recommendation.<sup>220</sup> The ECSR will then, based on the report, examine whether the situation has been brought in conformity with the ESC.<sup>221</sup> It could be explored whether it would be promising to lodge a new complaint that focuses on violations of the ESC specifically in CCACs.

This procedure could be used in the future by NYSM to challenge the maladministration of the funds provided by the EU to build the Vastria CCAC caused by the disregard of EU law standards in its construction.

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<sup>214</sup> Council of Europe, 'The Collective Complaints Procedure' <<https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure1>> accessed 19 June 2023.

<sup>215</sup> Governmental Committee of the European Social Charter and the European Code of Social Security, 'List of International Non-governmental Organisations (INGOs) entitled to submit collective complaints' <<https://rm.coe.int/gc-2022-26-bil-list-ingos-01-01-2023/1680a99bfc>> and <<https://rm.coe.int/gc-2022-26-bil-list-ingos-01-01-2023/1680a99bfc>> accessed 19 June 2023.

<sup>216</sup> Council of Europe, 'The Collective Complaints Procedure' <<https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure1>> accessed 19 June 2023.

<sup>217</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021.

<sup>218</sup> *ibid*, para. 209 and conclusion.

<sup>219</sup> Recommendation CM/RecChS (2022) of the Committee of Ministers to member States in *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, 26 January 2021.

<sup>220</sup> Council of Europe, 'The Collective Complaints Procedure' <<https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure1>> accessed 19 June 2023.

<sup>221</sup> For further information on the follow-up procedure: Council of Europe, 'The Collective Complaints Procedure' <<https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure1>> accessed 19 June 2023.



### 5.3.2. The European Ombudsman

The European Ombudsman is an independent organ that investigates complaints about maladministration by EU institutions, bodies and agencies.<sup>222</sup> After deciding on the admissibility of a complaint<sup>223</sup>, the Ombudsman draws conclusions and makes non-binding recommendations. These inquiries can be initiated by individuals, businesses and organizations residing or having their registered office in a Member State, but also spontaneously by the Ombudsman.<sup>224</sup> Therefore, NYSM could file a complaint without the need for the intervention of any other actor.

For a complaint to be admissible the following general criteria must be met<sup>225</sup>:

- The complaint must concern an instance of maladministration which occurs if an EU institution or body fails to act in accordance with the law or the principles of good administration or violates human rights. It can include administrative irregularities, unfairness, discrimination or the abuse of power in, for example, the managing of EU funds;
- The complaint cannot relate to matters that are being subject to legal proceedings;
- The complaint shall make clear reference to its object and to the identity of the complainant.
- The complaint must be lodged within two years of the date on which the facts on which it is based came to the attention of the complainant;
- The complainant must first have contacted and tried to resolve the matter with the institution in question.

On the 7<sup>th</sup> of June of 2023, the European Ombudsman issued a decision on an inquiry concerning the human rights standards in EU-funded Greek multi-purpose reception centers. She called upon the European Commission to actively monitor if the actual situation in the camps is in line with EU standards.<sup>226</sup> As the Ombudsman just issued a decision on the matter ordering the Commission to “carry a fundamental rights assessment of the centers (in Greece), with a view to identify the measures to

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<sup>222</sup> See: <<https://www.ombudsman.europa.eu/en/home>>.

<sup>223</sup> See admissibility requirements here: <<https://www.ombudsman.europa.eu/en/make-a-complaint>>.

<sup>224</sup> TFEU, article 228(1); Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom [2021] OJ L 253/1, art 2; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, art 43.

<sup>225</sup> See further: Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom [2021] OJ L 253/1, art 2.

<sup>226</sup> EU Ombudsman, ‘Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece’ (7 June 2023), <<https://www.ombudsman.europa.eu/es/decision/en/170792>> accessed 10 July 2023.



mitigate any potential risks<sup>227</sup>, it is not useful for NYSM to start a complaint now, as it is too soon to assess whether the recommendations issued will be followed. However, if the Commission disregards these suggestions or if new problems appear regarding the new EU-funded Vastria CCAC, it is possible to submit a complaint asking the Ombudsman to further investigate the matter in light of the Commission's duty to ensure that EU-funded initiatives uphold fundamental rights. The rights addressed in this report - the right to life, the right to liberty and the right to education - could lay the ground for a potential complaint and help to make it concise and precise, as required.

### 5.3.3. Human Rights Council (HRC)

The Human Rights Council (HRC) is a body established by the UN based on the UN Charter. It is composed of 47 UN member states elected by the General Assembly of the UN for a three-year term. Its function is to monitor the compliance of UN member states with their human rights obligations taking into account the UN Charter, the Universal Declaration on Human Rights, human rights treaties to which the state is a party, and voluntary commitments and pledges made by the state in the field of human rights.<sup>228</sup> To realise its function the HRC reviews every UN member state (for more information see the section on reporting procedures) and provides for a complaints procedure.

The HRC complaints procedure is confidential and "addresses consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances."<sup>229</sup> The UN brings forth two examples of cases that would qualify as "gross and patterns of human rights violations," and those are: "Alleged deteriorating situation of human rights of people belonging to a minority, including forced evictions, racial segregation and substandard living conditions," and "alleged degrading situation of prison conditions for both detainees and prison workers, resulting in violence and death of inmates."<sup>230</sup> These examples deal with detention conditions and substandard living conditions on the basis of discrimination, and are arguably comparable to the situation in the CCACs.

A complaint (sometimes also referred to as communication) related to a violation of human rights and fundamental freedoms is admissible, provided that "it is submitted by a person or a group of persons

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<sup>227</sup> *ibid.*

<sup>228</sup> Jane Connors and Sangeeta Shah, 'United Nations' in Moeckli and others (eds.) *International Human Rights Law* (4th edn. Oxford University Press 2022) 385, 386.

<sup>229</sup> United Nations Human Rights Council, 'Frequently asked questions' <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>> accessed 19 June 2023.

<sup>230</sup> United Nations Human Rights Council, 'Frequently asked questions' <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>> accessed 19 June 2023.



claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence.”<sup>231</sup> Domestic remedies must be exhausted for this procedure, “unless it appears that such remedies would be ineffective or unreasonably prolonged” which can give NYSM an advantage, as Court decisions in Greece have been frequently found to be unreasonably prolonged.<sup>232</sup> The complaint must not be “manifestly politically motivated,” not based solely on reports shared by mass media, not discussing an individual case, and should not be already dealt with “by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights,” in accordance with the principle of non-duplication.<sup>233</sup>

Upon consideration, the Human Rights Council may take one of the following decisions:

- “Discontinue considering the situation when further consideration or action is not warranted;
- keep the situation under review and request the State concerned to provide further information within a reasonable period of time
- keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;
- discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;
- recommend to OHCHR [Office of the High Commissioner for Human Rights) to provide technical cooperation, capacity building assistance or advisory services to the State concerned.”<sup>234</sup>

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<sup>231</sup> United Nations Human Rights Council, ‘Human Rights Council Complaint Procedure’ <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>> accessed 19 June 2023.

<sup>232</sup> There is an extensive body of ECtHR caselaw on the right to a fair trial in Article 6 ECHR being violated in Greece due to unreasonably lengthy proceedings; United Nations Human Rights Council, ‘Frequently asked questions’ <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>> accessed 19 June 2023.

<sup>233</sup> United Nations Human Rights Council, ‘Frequently asked questions’ <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>> accessed 19 June 2023.

<sup>234</sup> United Nations Human Rights Council, ‘Frequently asked questions’ <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>> accessed 19 June 2023.



Upon such a procedure before the HRC, the last three (or even four) options from the list above could be reasonably seen as a successful consideration of the issue at hand by the highest body competent to decide on human rights issue in the UN system.

Another option within the framework of the HRC is to engage with the UN Working Group on Arbitrary Detention, a subsidiary body of the HRC.<sup>235</sup>

#### **5.4. Reporting Procedures**

Another way of bringing human rights violations to attention, is by contributing to a reporting system. This is a common system for monitoring state obligations. For example, when a state becomes party to a human rights treaty, the state also commits to report regularly to the according treaty body that monitors whether the state is fulfilling its obligations under the treaty.<sup>236</sup> States report to the according (treaty) body by submitting their own reports that assess the current protection of different human rights in their state. Such a report is published at set times. There is often the possibility for other actors, such as NGOs, to also publish a report, to give their view on the protection of human rights. This is called a shadow report, or alternative report. The reports of the state and the alternative reports together are taken into account when the body makes a final assessment of the human rights situation, often resulting in a list of recommendations to the country. Note that these are, despite their great political influence and value, recommendations, not binding rules. There are a few bodies that have a reporting system that NYSM could contribute to by writing an alternative report, which will be mentioned below.

##### **5.4.1. Council of Europe Commissioner for Human Rights**

The Commissioner for Human Rights is a body within the Council of Europe. The Council of Europe is a council that almost all European states are member to, and that has established the ECHR. The Commissioner for Human Rights does publish country reports, but the system is not really the same as the more common reporting system that is described above. The Commissioner visits countries to examine the protection of human rights there. This results in reports and letters of recommendations to the government. The Commissioner for Human Rights focusses on different themes, which migration is one of. So, although there not really is a possibility for sending in an alternative report to the

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<sup>235</sup> For more information on the UN Working Group on Arbitrary Detention see UNHR, ‘Working Group on Arbitrary Detention’ <<https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention>>.

<sup>236</sup> Jane Connors and Sangeeta Shah, ‘United Nations’ in Moeckli and others (eds.) *International Human Rights Law* (4th edn. Oxford University Press 2022) 385, 404.



Commissioner for Human Rights to contribute to the reporting cycle, NYSM could try sending (parts of) this report to the Commission to draw attention to the new camp in Vastria.<sup>237</sup>

#### 5.4.1. Human Rights Council (HRC)

As mentioned in section 5.3.2., the Human Rights Council is a UN body that is concerned with the UN member states' compliance with their human rights obligations. One of their responsibilities is receiving and discussing country reports periodically, referred to as the Universal Periodic Review.<sup>238</sup> Every period, every UN member state will be reviewed during a session of the Universal Periodic Review Working Group based on the reports sent in both by states and other stakeholders, such as NGOs. After the session, a report and recommendations will follow. The next country report by the Greek government is due in July 2026. The deadline for submitting alternative reports is 12 March 2026.<sup>239</sup> NYSM could participate in the HRC reporting system, by sending in or contributing to an alternative report about the right to liberty, to life and to education, as these are all rights that are laid down in different UN treaties that Greece is part of. However, this would be something for the long-term, as Greece will be discussed by the HRC no earlier than fall 2026.

#### 5.4.2. Human Rights Committee (CCPR)

As mentioned in section 5.2.3., the CCPR monitors the implementation of the ICCPR. Beside the complaint procedure, another of the CCPR's responsibilities is the periodical review of the human rights situation in states. When it is time for a certain state to be considered, the Human Rights Committee also accepts, besides the report by the state itself, alternative reports from, for instance, NGOs on the human rights situation in that state.<sup>240</sup> These will be taken into account during the CCPR's assessment, resulting in a document referred to as 'concluding observations'. This will include recommendations, on which the state will have to send a follow-up report to show the action taken upon these recommendations.<sup>241</sup> NYSM could participate in submitting such an alternative report, arguing a violation of Art. 6 ICCPR

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<sup>237</sup> Council of Europe, 'Commissioner for Human Rights – Mandate'

<<https://www.coe.int/en/web/commissioner/mandate>> accessed 19 June 2023; Council of Europe, 'Commissioner for Human Rights – Country Work' <<https://www.coe.int/en/web/commissioner/country-monitoring>> accessed 19 June 2023.

<sup>238</sup> UNHR, 'Universal Periodic Review' <<https://www.ohchr.org/en/hr-bodies/upr/upr-main>> accessed 19 June 2023.

<sup>239</sup> UNHR, 'Fourth Cycle (2022-2027)' <<https://www.ohchr.org/en/hr-bodies/upr/uprcycle4>> accessed 19 June 2023.

<sup>240</sup> UNHR, 'What the Treaty Bodies do' <<https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do>> accessed 19 June 2023.

<sup>241</sup> UNHR, 'Human Rights Committee' <<https://www.ohchr.org/en/treaty-bodies/ccpr>> accessed 19 June 2023.



(right to life) and Art. 9 ICCPR (right to liberty). It will be a few years before there will be a chance to do this though, as Greece has been reviewed in 2022.

#### 5.4.3. Committee on Economic, Social and Cultural Rights

All states that have signed the Convention on Economic, Social and Cultural Rights, have to regularly report on how they are protecting the rights in this Convention. They report this to the Committee on Economic, Social and Cultural Rights. Again, NGOs and other actors can send in alternative reports.<sup>242</sup> The alternative reports can be sent by a coalition of NGOs and “covering a broad range of economic, social and cultural rights”.<sup>243</sup> This means that NYSM could contribute to a report by highlighting the violation of the right to education for children in the Vastria CCAC. The report itself would probably need to have a broader scope, for example the right to education in Greece, the economic, social and cultural rights of minors in Greece, or the economic, social and cultural rights of migrants in Greece. Naturally, this depends on the NGOs NYSM decides to team up with. The report will have to be submitted 6-4 weeks before the Committee's session on Greece.<sup>244</sup> The last session on Greece was in 2015, but a new one has not been planned yet.<sup>245</sup> After the session, again, the Committee will state the concluding observations, which entail recommendations that the state will need to reply to.

#### 5.4.4. Committee on the Rights of the Child

The Committee on the Rights of the Child monitors the Convention on the Rights of the Child. This committee provides for a 5-year-cycle reporting procedure.<sup>246</sup> In this procedure, there is also the possibility of submitting an alternative report, which can be done after the Committee has received the state report, as a response to it and in reference to it.<sup>247</sup> In this case NYSM would have to wait to submit an alternative report until after Greece has submitted their next report. Currently, there is no due date set for Greece's next report to the Committee. However, since their last report was due December 2017 and was submitted in December 2018, it is reasonable to expect the new report to be submitted within the

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<sup>242</sup> UNHR, ‘Reporting guidelines’ <<https://www.ohchr.org/en/treaty-bodies/cescr/reporting-guidelines>> accessed 19 June 2023.

<sup>243</sup> UNHR, ‘Guidelines for civil society, NGOs and NHRIs’ <<https://www.ohchr.org/en/treaty-bodies/cescr/guidelines-civil-society-ngos-and-nhris>> accessed 19 June 2023.

<sup>244</sup> *ibid.*

<sup>245</sup> UNHR, ‘UN Treaty Body Database – Sessions for CESCR - International Covenant on Economic, Social and Cultural Rights’ <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR)> accessed 19 June 2023.

<sup>246</sup> Child Rights Connect, ‘CRC Reporting Cycle’ <<https://crcreporting.childrightsconnect.org>> accessed 10 June 2023.

<sup>247</sup> *ibid.*





next one to two years, in accordance with the 5-year reporting cycle period.<sup>248</sup> NYSM could produce an alternative report highlighting the issue of the right to education in Art. 28 and 29 CRC for migrant children.<sup>249</sup> This can be done alone or jointly in a report by other NGOs. The potential outcome of this procedure would be that the Committee would submit a list of issues identified in all the NGO reports submitted to it, to the Greek government. NYSM's aim would be for the right to education for refugee children to make it on that list. Afterwards, the government has to respond to the claims. Then there is a plenary session between the State and the Committee followed by issuance of concluding observations, after which the State is ought to implement these.

#### 5.4.5. UN special rapporteur on the human rights of migrants

The reporting system of this office is somewhat different than the ones described above. The UN special rapporteur on the human rights of migrants also publishes reports on the human rights situation of a specific country, and specifically for migrants, but the country has to invite the rapporteur. The rapporteur can express his or her wish to visit a certain country, based on, amongst others, the allegations that are sent to them. Once the rapporteur is invited, he or she will visit the country and will talk to different national authorities and other actors, such as NGOs, to assess the human rights situation for migrants. This will result in a report that will be sent to the Human Rights Council and published. The rapporteur's last visit to Greece was in 2016. It would be a possibility for NYSM to reach out to the rapporteur and argue that the right to liberty, the right to life and the right to education are or will be violated, in order to encourage the rapporteur to make a country visit to Greece again.<sup>250</sup>

### 5.5. Conclusion

In this chapter, different legal actions that can be taken to draw attention to the human rights violations that are likely to take place in the Vastria CCAC are outlined. In Annex I to the report, the information is summarized in a table. It should be noted that the different categories of legal avenues presented do not exclude each other but that, rather, different steps could be taken simultaneously. This means that a

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<sup>248</sup> UNHR, 'UN Treaty Body Database'

<[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5)> accessed 10 June 2023.

<sup>249</sup> Regarding the CRC, we focus in this report on the right to education. Other articles that might be relevant to do further research on when sending in an alternative report would be Art. 37 CRC on child detention, Art. 3 CRC on the best interests of child and the need for government institutions to operate with these interests in mind, Art. 19 CRC on physical and mental violence inflicted through social programmes, and Art. 22 CRC on the refugee child.

<sup>250</sup> UNHR, 'Country and other visits' <<https://www.ohchr.org/en/special-procedures/sr-migrants/country-visits>> accessed 19 June 2023.



contribution by NYSM to an alternative report could, for example, be combined with the submission of an individual complaint on behalf of an asylum seeker as well as with a general complaint on the (probable) human rights situation in the Vastria CCAC. Nevertheless, since the exhaustion of domestic legal remedies is an important requirement for the individual complaint procedures, a first step could be to start an “objections” process at the Greek legal level.

The ultimate goal of frustrating the opening of the camp, or closing the camp once it opens, remains a decision that is to be taken by the Greek government. The legal avenues that are explained in this chapter will not automatically lead to this goal but are nonetheless relevant as a way of pressuring the Greek government to act on the matter.



## 6. CONCLUSION

This report has demonstrated that Greece may violate several fundamental rights of asylum seekers by placing them in the Vastria CCAC on the Greek island Lesbos: their right to liberty, their right to life, and, in case of children, their right to education.

Greece would deprive the resident asylum seekers of their liberty by placing them in the Vastria CCAC. By analysing relevant international and European law and case-law, this report has demonstrated that the restrictions, the isolated location, the expected duration of stay in the CCAC and the asylum seeker's lack of choice will amount to a situation of detention, even though Greece does not acknowledge this as such. So, the detention is not prescribed by Greek law and, therefore, unlawful. This leads to a violation of the right to liberty.

Greece would also be failing to fulfil its obligations on ensuring everyone within its jurisdiction their right to life, which they inherently possess, as a human being. Greece is under a positive obligation to protect the right to life of future asylum seekers by refusing to place them in the Vastria camp. This real and imminent risk to their right to life, by being located in the middle of a flammable pine forest labelled 'high-risk' for wildfires, with no sufficient evacuation plan in case of wildfires, is supplemented by a clear causal chain of potential loss of life of asylum seekers in the camp, and the steps that Greece took or failed to take to place them in the Vastria CCAC and to neglect placing appropriate safeguards in case of wildfire. This means that the Greek government would be violating the right to life of any asylum seekers placed in the Vastria CCAC.

Additionally, Greece would be violating the right to education of any minor asylum seekers placed in the Vastria CCAC. Firstly, even if children were allowed to participate in the Greek public school formal educational system, it is doubtful that they would have 'ease of access' to this education, due to the striking isolation of the camp's location. Secondly, even if there is an option of in-camp informal education that would be more easily accessible to children asylum seekers, the threshold of the right to education provides that it needs to be analogous to national standards for this right to be sufficiently fulfilled. Lastly, even if formal, up-to-standard education is provided inside the camp, the prison-like environment of the Vastria CCAC would place the minor asylum seekers at risk of discrimination, compared to their Greek classmates and their access to education.

Having demonstrated the possibility of a clear risk of violation of the rights to liberty, life and education of future asylum seekers that may be placed in the Vastria CCAC, the report has discussed some possible legal avenues to review the human right situation of the CCAC in Vastria by a competent Court or non-judicial body. The section has discussed three types of proceedings: individual complaints, general



complaints, and reporting procedures. These may lead to the assessment of the individual human rights situation of a (group of) individual(s), the overall human rights situation in the CCAC, or to raising awareness of the situation to a competent organisation. The different categories of legal avenues presented are not all mutually-exclusive but can be taken simultaneously. An important conclusion in the legal avenues assessment points to the need to exhaust domestic legal remedies as a requirement for international individual complaint procedures. Therefore, a definite prerequisite first step for ‘unlocking’ European and international legal avenues would be to start an “objections” process in Greece, domestically. The next steps of anyone wishing to prevent the opening of the camp or ensuring that it shuts down after opening, would be to pursue the legal avenues with the highest chances of success. NYSM can work with legal professionals to decide on which legal avenues are most appropriate to take.

The rights of migrants continue to be threatened by the poor response of the Greek government and the European Union to the residence needs of incoming asylum seekers. Legal practitioners can challenge these deficits in courts of law or other relevant non-judicial bodies, as an attempt to raise awareness on the unlawfulness of such conditions, and to ultimately achieve reception conditions which respect the fundamental rights of the asylum seekers they apply to. This report has attempted to provide an overview of these human rights violations and ways to challenge them. The next steps rest with competent legal professionals or organisations which can further the fight for the rights of asylum seekers by challenging these conditions on their behalf.



## ANNEX I

Body	Substance	Role of NYSM	General Requirements	Result
Greek Administrative Court	Right to liberty	Assisting individuals during objection process	Person needs to be restricted/detained	Decision on the rejection
CCPR (complaints procedure)	Right to liberty Right to life	Work with an individual to bring a complaint	Victim status Exhaustion of domestic legal remedies	Decision on the complaint
ECtHR	Right to liberty Right to life Right to education	Assist an individual who brings an application	Victim status Exhaustion of domestic legal remedies	Binding Judgement
ESCR	Right to education	Work with an INGO from the list	Only INGOs from the list can bring a complaint	Recommendations and the obligation to report
EU Ombudsman	Right to liberty Right to life Right to education	Submit complaints	Unlawful action by EU organ  Matter is not subject to legal procedures  Efforts are made to solve the matter with the EU organ	Recommendation
HRC (complaint procedure)	Right to liberty Right to life	Bring a complaint	Exhaustion of domestic legal remedies  Not politically motivated	Decision upon complaint



			Not solely based on mass media reports	
Council of Europe Commissioner for Human Rights	Right to liberty Right to life	Contact the Commissioner	The Commissioner decides which country to visit	Report
HCR (reporting system)	Right to liberty Right to life Right to education	Contribute to an alternative report	Submission of the report before the Council's session on Greece	Recommendations
CCPR (reporting system)	Right to liberty Right to life	Contribute to an alternative report	Submission of the report before the Committee's session on Greece	Recommendations and follow-up report by Greece
ESCR (reporting system)	Right to education	Contribute to a report on a broader topic	Submission of the report before the Committee's session on Greece	Recommendations and follow-up report by Greece
CRC	Right to education	Contribute to an alternative report	Submission of the report after Greece has submitted the report	Recommendations
UN special rapporteur on the human rights of migrants	Right to liberty Right to life Right to education	Contact the rapporteur	Greece's permission is needed for the visit	Report