

Longer note to the Joint Submission of the International Commission of Jurists (ICJ) and of the Greek Council for Refugees (GCR) to the United Nations Special Rapporteur on the human rights of migrants report on ending immigration detention of children and seeking adequate reception and care for them.

15 May 2020

The International Commission of Jurists (ICJ) and the Greek Council for Refugees (GCR) welcome the opportunity to present to make this submission to the United Nations Special Rapporteur on the human rights of migrants, Felipe Gonzales Morales, pursuant to his call for inputs on his next thematic report. The organizations hope that this contribution will be helpful to the Special Rapporteur in preparation of his forthcoming report on ending immigration detention of children and seeking adequate reception and care for them, which is expected to be submitted to the 75th session of the General Assembly.

The submission will mainly respond to Question 4 raised in the call for submissions: Challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families, and it will in particular be focusing on the situation in Greece, while we are aware that there are multiple challenges in addressing child detention in Europe, some of which have been documented as by ECRE in their submission to the Special Rapporteur.

The ICJ and the European Council on Refugees and Exiles (ECRE), supported by GCR, have submitted a collective complaint to the European Committee on Social Rights in 2018, [ICJ and ECRE v Greece \(173/2018\)](#), concerning the situation of migrant children in Greece, which covers, among other issues, the detention of migrant children. The Committee has since [ruled on immediate measures](#) against Greece in May 2019, to protect the rights of migrant children given the serious concerns about the gravity and urgency of their situation. The Committee's decision required the government to immediately provide migrant children with appropriate shelter, food, water, education and medical care; to remove unaccompanied migrant children from detention and from Reception and Identification Centers (RICs) at the borders, place them in suitable accommodation for their age and appoint effective guardians.¹ Greece has failed to implement this last year's decision of the Committee and migrant children remain in detention in Greece. The Committee's prescription regarding provision of food, water, education, appropriate shelter and health care have neither been fully implemented. Additional challenges now arise from the Covid-19 crisis.

This joint submission focuses mainly on the challenges in the development and implementation of non-custodial alternatives to immigration detention of children and their families in Greece as well as the current Covid-19 pandemic and measures taken in that context by Greece that impact detention of migrant children.

1. Obstacles and challenges to the development and implementation of non-custodial alternatives to immigration detention of children and their families in Greece

Greek law does not prohibit the detention of migrant children. Detention of unaccompanied migrant children is purported to take place on the basis of European Union provisions regulating detention in view of return (L. 3907/2011 transposing the Return Directive, 2008/115/EC), the detention of asylum seekers (L. 4636/2019 transposing Art. 8 of the recast Reception Directive 2013/33/EC) or on the ground of "protective custody" (Art. 118 P.D. 141/1991).

Such legislation is however contrary to the Convention on the Rights of the Child as Greece, like other countries has an obligation, particularly under the CRC, generally to desist from the immigration detention of children.² Despite this general prohibition, migrant children are routinely and increasingly being detained in Greece.³ The resort to detention of migrant children has been a consistent practice in Greece for many years and stems, in significant part, from the severe shortcomings in the child protection system in Greece and from the severe accommodation shortage across the country.⁴ The detention of unaccompanied migrant children may be prolonged for periods exceeding several weeks or even months, pending their transfer to accommodation.⁵

As repeatedly found by national and international monitoring bodies, detention of unaccompanied migrant children takes place in inadequate conditions in Greece, in police stations, which by their nature are not suitable for detention exceeding 24 hours,⁶ and in pre-removal detention facilities. Indicatively, in a 2019 visit to Greece, specifically to the Omonia Police Station, a delegation of the CPT identified "three unaccompanied minors, including a 14-year-old boy, who were being held under "protective custody". The minors had been placed in the cell together with unrelated adult men for periods between one and five days, reportedly for their own

“protection” [...] at the time of the visit, no more unaccompanied minors were being accepted [...] at Amygdaleza pre-removal centre as the section for unaccompanied minors was operating at full capacity.”⁷

According to the official statistics issued by the National Center for Social Solidarity, under the supervision of the Greek Ministry of Labour and Social Affairs, as of 30 April 2020, 276 unaccompanied children remained in detention.⁸

1.1 “Protective custody”

The aforementioned PD 141/1991⁹ (Article 118), refers to the possibility for an unaccompanied child to be placed under protective custody.¹⁰ Detention on the ground of ‘protective custody’ is not subject to a maximum time limit,¹¹ which as noted by the European Court of Human Rights (ECtHR) in *H.A. and others v. Greece*, “can lead to arbitrary situations of prolonged child detention in violation of domestic law and, in particular, of Article 5 ECHR and Article 3 of the Convention on the Rights of the Child”.¹² Article 3 of the Convention provides that in all actions concerning by public authorities, the “best interests of the child shall be a primary consideration.” Despite the fact that detention, according to national legislation,¹³ should be imposed on the basis of an individual assessment and as a measure of last resort, particularly in the case of children, no “best interests” determination procedure is provided by Greek law and thus no assessment of the best interests of the child takes place before or during detention, in contravention of national legislation and international law, including the Convention on the Rights of the Child.¹⁴ Furthermore, as there is no legislation prescribing a procedure for assessing migrant children’s ages in detention, detained unaccompanied migrant children are in practice deprived of any age assessment guarantees.¹⁵ These shortcomings with regard to the age assessment procedure result in a number of children being wrongfully identified and registered as adults, and placed in detention together with adults.¹⁶

Whilst in protective custody, unaccompanied migrant children are typically held with unrelated adults,¹⁷ including of the opposite sex,¹⁸ deprived of access to outdoor facilities, recreational or educational activities, interpreters, legal assistance or child-friendly information.¹⁹ These conditions are contrary to international standards²⁰ and in direct violation of domestic legislation,²¹ which provides that unaccompanied migrant children should not be detained with adult detainees, should have access to recreational activities and be appointed a legal representative as a matter of priority.²² In police stations and pre-removal centres, unaccompanied migrant children have been found to be held in overcrowded cells.²³

1.2 Detention upon arrival

On the basis of Art. 39 L. 4636/2019, newly arrived persons, including unaccompanied migrant children, are subject to a five-day “restriction of freedom within the premises of the centre” which can be further extended by an additional 20 days, up to a maximum of 25 days from the time of entry into the centre, if reception and identification procedures have not been completed. Restriction of freedom within the RIC, in fact, amounts to detention since there is no possibility to exit the centre, and rather there is an obligation to remain in it. The measure provided by Article 39 is a de facto detention measure, even if it is not classified as such under Greek law.²⁴

1.3 Detention pending transfer

Due to the chronic lack of accommodation facilities for children, detention of unaccompanied children is systematically imposed in police stations and pre-removal facilities or in Reception and Identification Centers, until they can be transferred to suitable shelters.²⁵ For instance in the Fylakio RIC, despite the legal limit of 25 days detention, unaccompanied migrant children are not released after the completion of the reception and identification procedure. On the contrary, they remain detained, usually for a significant period, under the authority of the reception identification service or under the pretext of “protective custody”, until they can be transferred to accommodation shelters for children.²⁶ As noted by UNHCR in August 2019, the Fylakio RIC “has an average of 100 to 140 UAC staying under ‘protective custody’ beyond the 25 days and up to 3-5 months. During this period, the children are restricted in a facility without adequate medical and psychosocial services and without access to recreational and educational activities. Due to overcrowding, they stay together with families and adults, at risk of exposure to exploitation and abuse”.²⁷

1.4 Detention pending removal

Children are also in practice detained for prolonged periods of time in pre-removal detention facilities. For example, at the end of 2017 the average period of detention of unaccompanied migrant children in Amygdaleza pre-removal detention center in Athens, pending their placement in a shelter, has been reported between two weeks and two months.²⁸ In October 2018, the average period of detention of unaccompanied migrant children in Northern Greece was reported to be between 30 days and three months.²⁹ Throughout 2019, average periods of

detention of unaccompanied migrant children in the Pre-Removal Detention Center of Orestiada, in Northern Greece, pending their placement in a shelter, was 6 months.³⁰ In April 2020, about 85 unaccompanied children were held in detention (“protective custody”) in the pre-removal centre of Amygdaleza, among them a 14-year-old unaccompanied girl from Syria, for an average period of about three months.³¹

Such detention of children is in violation of international law. Under both EU law and international law,³² even for adult detainees, administrative detention is, with few exceptions, generally prohibited. Deprivation of liberty, aside from that resulting from criminal convictions, may only be imposed as a measure of last resort following an individual assessment of each case, if other less coercive alternative measures cannot be applied effectively. All forms of detention must have a clear legal basis in national law and procedures and must not be arbitrary, unnecessary or disproportionate.

Asylum seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt.³³ To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.³⁴ The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review.³⁵

Under both EU and international law, pre-removal detention is only justified where there is a realistic prospect of removal within a reasonable time.³⁶ When there are no such realistic prospects, including due to border closures or travel restrictions imposed in response to COVID-19, there is no legal basis for detention.

1.5 Guardianship

In Greece, the public prosecutor for children or the competent local prosecutor, if a public prosecutor for children does not exist, is appointed as a provisional guardian. As per L 4554/2018, the provisional guardian has to undertake all necessary actions to appoint a permanent guardian within the shortest possible period of time.³⁷ As per article 16(2) of the same law, the guardian of the minor can be either a suitable person, such as an adult de facto caring for the child in the case of separated children, or a professional guardian, indicated by the National Centre for Social Solidarity (NCSS) from a Registry of Guardians which is to operate under the latter’s competence.³⁸

L. 4554/2018 introduced for the first time an institutional and regulatory framework for the guardianship of unaccompanied children in Greece, including by providing for a best interest determination procedure and designating the competent prosecutor, the guardian and a supervisory board, as tripartite agents of the national guardianship system. It only and belatedly entered into force on 1 March 2019. By exception, some of its provisions, such as the establishment of a registry of professional guardians entered into force on 16 May 2019,³⁹ with their operationalisation pending issuance of secondary legislation, which in the former case was issued in July 2019.⁴⁰ Since then, however, and despite multiple reassurances throughout the year,⁴¹ the Greek state and specifically NCSS have been unable to undertake charge of the guardianship system, while the guardians’ registry remains unstaffed, as a relevant announcements of vacant positions has yet to be issued.⁴² Accordingly, despite the aforementioned positive steps, the guardianship system remains non-operational and, in practice, the competent prosecutors still end up being the provisional guardians of a large number of children, with practically no involvement in the decisions that affect them. Due to the lack of an effective guardianship system, unaccompanied minors in Greece do not have legal standing before Greek Courts and thus are deprived of access to justice.⁴³

1.6. Age Assessment

The first step in ensuring that legislation and policies protecting unaccompanied minors are applied is that the child be identified as a minor. In Greece, no age assessment procedure is provided by the national framework to be applied by the Hellenic Police for minors held in detention.⁴⁴ In practice, children under the responsibility of police authorities are deprived of any age assessment guarantees set out in the reception and identification procedure, and systematically undergo medical (X-ray) examinations in case their age is disputed.⁴⁵ In addition to the limited reliability and highly invasive nature of the method used, it should be noted that no effective remedy is in place to challenge the outcome of that procedure. These shortcomings with regard to the age assessment procedure result in a number of children being wrongfully identified and registered as adults, and placed in detention together with adults.⁴⁶ As determined by the UN Working Group on Arbitrary Detention, “[t]he

guarantees applicable to age assessment do not apply to unaccompanied children who are in protective custody under the responsibility of the Hellenic Police. As a result, unaccompanied minors and other children are being detained unnecessarily due to inaccurate assessment procedures, and are treated as and detained with adults".⁴⁷

The ICJ and GCR request the UN Special Rapporteur on the rights of migrants to take account of these serious and systematic shortcomings of the Greek system that lead to children being deprived of their liberty and hinder effective development and implementation of non-custodial measures as alternatives to immigration detention of children.

3. Specific obstacles and challenges raised within the Covid-19 pandemic and measures taken

3.1 Restrictions on freedom of movement

According to a joint press release of the Ministry of Civil Protection and Ministry of Health issued on 17 March 2020, persons arriving in Greece from abroad are strongly advised to voluntarily self-isolate for 14 days.⁴⁸ FRA reported, the government is in the process of imposing restrictions on the movement of persons residing in Reception and Identification Centers (RICs) on the Greek islands.⁴⁹ The Greek Ministry of Migration and Asylum specified the precautionary measures to be applied in RICs including compulsory temperature taking, information documents in all languages and the operation of special confinement spaces within the RICs for infected persons.⁵⁰

In the week of 1 April, the Ritsona camp was sealed off after 20 persons from the camp tested positive for the Covid-19 virus.⁵¹ On 5 April, the Malakasa camp was put on lockdown after a man tested Covid-19 positive in the camp.⁵² On 11 April, the Koutsochero camp was similarly sealed off, after it arose that a member of the local Roma community, who had been found Covid-19 positive, had "come to contact" with the camp's population.⁵³ Lastly, on 16 April, the Kranidi accommodation site (Galaxias hotel) was preventively sealed off, reportedly after an employee of the local hospital was tested positive to Covid. Following the random identification of a Covid-positive pregnant asylum seeker a few days later, and the subsequent testing of the hotel's 471 hosted population, an additional 149 asylum seekers tested positive to Covid-19.⁵⁴ There are also a number of children with their families and unaccompanied minors in the camps that have been put on lockdown.⁵⁵

Preventive measures include effective lockdowns of the island camps and in Moria, only 100 people per hour are permitted to leave.⁵⁶ Any remaining NGOs have to submit a list of staff who will be working in the camp.⁵⁷

Forced lockdowns of whole reception centers effectively turn open reception centres into closed centers, depriving asylum seekers of their liberty. Under the ECHR, a deprivation of liberty must be: justified for a specific purpose defined in Article 5.1, be ordered in accordance with a procedure prescribed by law, and not be arbitrary. Under both EU and international law, deprivation of liberty or restriction on freedom of movement must comply with other human rights guarantees, such as: the conditions of detention respecting human dignity or never putting the health of individuals at risk. Under article 9 of the ICCPR, as well as in international refugee law in regards to asylum seekers, the State must show that the detention was reasonable, necessary and proportionate in the circumstances of the individual case, in order to establish that detention is not arbitrary. As specified by the Human Rights Committee,⁵⁸ detention in the course of proceedings for the control of immigration in order not to be arbitrary must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.⁵⁹ Children should not be detained for immigration purposes at all under international law.⁶⁰

Furthermore, the severely overcrowded, unsanitary and unsafe conditions prevailing in these centres, amid the pandemic, prevent asylum seekers from complying with hygiene rules and standards (e.g. "social distancing"), thus actively increasing the risks to their health amid the pandemic.

3.2 Overcrowding

As of 20 April 2020, the population of the "hotspots" on Lesbos, Chios, Samos, Kos, and Leros was almost 28,800 over capacity, with 34,875 people in facilities with a total capacity of just 6,095. Medecins Sans Frontieres' recommended the evacuation of refugee camps on the Greek islands, as unhygienic conditions and overcrowding pose a real threat to public health.⁶¹ However, the relevant Joint Ministerial Decision of 22 March regarding the measures within refugee camps and reception centres does not include any measures of evacuation or construction of new facilities in order to relieve the overcrowded centres.⁶² The same applies for Greece's national plan for managing crisis situations in refugee accommodation sites (RICs and camps), codenamed "Agnodike", which, though referencing evacuation as a third and presumably last resort scenario, does not specify under which

conditions this is to be triggered or to where the population is to be evacuated. Lastly, though in mid-April 2020 it was announced that 2,380 identified Covid-vulnerable asylum seekers would be temporarily evacuated from the island RICs⁶³ to primarily UNHCR-rented hotels, amongst them 1,500 from the island of Lesbos. As of 24 April this operation had been postponed,⁶⁴ following the competent Ministers of Migration & Asylum announcement that transfers would take place in smaller groups and over a longer period of time. On 3 May, 392 asylum seekers were transferred from Lesbos, in the context of this operation, while an additional transfer of close to 400 asylum seekers was scheduled for 5 and 10 May respectively.⁶⁵ Meanwhile, parallel efforts with the support of IOM, aimed at expanding mainland-based accommodation by 5,000 places in a period of two months for the purposes of “decongesting” the island hotspots,⁶⁶ may not be timely enough to prevent the ever-looming risk of a Covid outbreak in the RICs, while at the same time, they do not suffice to relieve overcrowding from the centers, where hygiene conditions remain highly substandard.⁶⁷ As of 3 May 2020, out of the 38,300 asylum seekers on the Greek islands (Lesvos, Samos, Chios, Leros & Kos), 33% (approx. 12,639) were children, of which 13% (approx. 1,643) were unaccompanied. The vast majority were living in the RICs.⁶⁸

3.3 Right to health and deprivation of liberty relating to Covid-19

Under international human rights law, including the International Covenant on Economic, Social and Cultural Rights and the CRC, Greece has the obligation to respect, protect and fulfill the right to health of everyone in the jurisdiction, including migrants.⁶⁹ This requires it to ensure that people, including children, in reception centers or in immigration detention are protected from the spread of the virus, that they have conditions allowing for social distancing and hand washing and other necessary measures to minimize the impact and potential spread of the virus. In the current situation of overcrowded camps and unsanitary conditions, any measures necessary for the protection of the right to everyone’s health, such as social distancing or regular hand washing are not possible. This is similarly the case for detention facilities, where conditions have always been substandard, yet particularly amid the pandemic still lack necessary hygiene protocols to safeguard the health of administrative detainees and employees alike.⁷⁰ This is not a situation compliant with the Greece’s obligations under international law to ensure everyone’s right to health.⁷¹ As noted by UNHCR, “[t]he situation for refugees and migrants held in formal and informal places of detention, in cramped and unsanitary conditions, is particularly worrying. Considering the lethal consequences a COVID-19 outbreak would have, they should be released without delay.”⁷²

The precautionary measures as announced by the Greek ministry of health - temperature taking, information documents in all languages, operation of special confinement spaces within the RICs for infected persons, see above - may be considered a necessary and proportionate response measures to protect public health and the right to health of every person. By contrast, imposing detention on the reception centers can exacerbate the health situation of those accommodated there. Prisoners and those in detention in Greece, as elsewhere around the world face real risk of infection and lack of access to appropriate healthcare measures as a result of their detention.⁷³

Especially in this situation, ensuring that non-custodial measures and alternatives to detention are available to children, coupled with effective access to health care and if needed isolation and other health-related measures, is necessary for Greece for to comply with its international legal obligations regarding the prohibition of immigration detention of children and the right to highest attainable standard of health.

The ICJ and GCR recommend that the UN Special Rapporteur on the rights of migrants take particular account of the obstacles to development and implementing non-custodial measures in the framework of Covid-19 measures and unlawful resort to further immigration detention of children.

¹ International Commission of Jurists (ICJ), [Greece: European Committee on Social Rights decision on « immediate measures » for migrant children requires urgent action](#), 4 June 2019. See the full complaint: [European Committee for Social Rights of the Council of Europe, International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No.173/2018, 21 December 2018.

² The Committee on the Rights of the Child has made it clear that detention of children for the purposes of immigration control is never in their best interests and is not justifiable. Children should never be criminalized or subject to punitive measures because of their or their parent’s migration status; the detention of a child for these reasons constitutes a violation of the rights of the child. [Joint general comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 \(2017\) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), UN Doc. CMW/C/GC/4-CRC/C/GC/23, (2017), para 5; CRC Report of the 2012 Day of General Discussion - The Rights of all children in the context of international migration, 2012), [Report of the 2012 Day of General Discussion- The Rights of all children in the context of international migration](#), 2012). See also Article 37(b) CRC, permitting detention of children as a measure of last resort. It was confirmed by the Joint General Comment 4 and 23 of the Committee on the Rights of the Child and the Committee on Migrant Workers

that is not applicable in immigration proceedings as unauthorized entry or stay in a country should not constitute a criminal offence and cannot have the same consequences as a criminal offence, para 10.

³ Greek Ombudsman, *Annual Report 2019*, March 2020, available in Greek at: <https://www.synigoros.gr/resources/ee2019-p00-plires-keimeno.pdf>, p.55.

⁴ Inter alia, see UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September [Concluding Observations on the seventh periodic report of Greece](#), CAT/C/GRC/CO/7, (2019, CAT/C/GRC/CO/7, available at: <https://bit.ly/2wKiqPm>, para.), para. 22. Indicatively, as of 31 March 2020 there were a total of 1,435 places designated for the long-term accommodation of unaccompanied children (shelters and SILs), marking an increase of just 425 places in a period of 9 months, since June 2019. An additional 568 places were designated for short-term accommodation (safe zones and emergency hotels), marking a decrease of 284 places in the same period. This amounts to a staggering gap of 3,249 places, on account of which the majority (2,698) of the officially estimated 5,252 unaccompanied children were living in overcrowded and unsafe Reception and Identification Centers, which are currently in lockdown, and in precarious conditions, such as homelessness. Meanwhile, 331 unaccompanied children were in detention/‘protective custody’, marking one of the highest numbers of children in detention since March 2016. National Center for Social Solidarity, *Situation update: Unaccompanied Children (UAC) in Greece*, 31 March 2020, available at: <https://bit.ly/3cjdzuH>.

⁵ For instance, in October 2019, out of 200 unaccompanied children in detention (“protective custody”) in Pre-Removal Detention Centres and police facilities, 137 had been detained for periods of 30 days. Arsis, “Press Release: The ECHR grants interim measures putting an end to the detention of unaccompanied minors in police stations,” 10 October 2019, available at: <http://www.arsis.gr/en/press-release-the-echr-grants-interim-measures-putting-an-end-to-the-detention-of-unaccompanied-minors-in-police-stations/>; Arsis, “PRESS RELEASE – ARSIS: Detention of a large number of unaccompanied minors in the Amygdaleza Pre-Removal Detention Centre, under unacceptable conditions and for long periods,” 26 August 2019, available at: <http://www.arsis.gr/en/arsis-detention-of-a-large-number-of-unaccompanied-minors-in-the-amygdaleza-pre-removal-detention-centre-under-unacceptable-conditions-and-for-long-periods/>.

⁶ See: Council of Europe - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Immigration detention*, March 2017, CPT/Inf(2017)3, <https://rm.coe.int/16806fbf12>, p.(2017), p.3., available at: <https://rm.coe.int/16806fbf12>; UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, <http://www.refworld.org/docid/593a8b8e4.html>, paras. 101-102; Greek Ombudsman, “The Ombudsman found unacceptable detention conditions at detention places in Northern Greece”, 31 June 2017, <https://www.synigoros.gr/resources/20170731-dt-asynodeutoi-b-ellada.pdf> (in Greek).

⁷ Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 9 April 2019*, April CPT/Inf (2020, CPT/Inf) 15, (2020) 15, available at: <https://rm.coe.int/16809e2058>

⁸ National Center for Social Solidarity, *Situation Update: Unaccompanied Children (UAC) in Greece*, 30 April 2020, available at: <https://bit.ly/2WwIXtS>

⁹ The Decree is part of Greek national legislation and governs police officers, and their duties.

¹⁰ Greek President Decree (PD) 141/1991 (Article 118) Protective custody Art. 118 (1) “Persons who, due to their age or their mental health situation, are dangerous to public order or expose themselves to danger are placed in protective custody”. No time limit is provided, as protective custody is imposed until the person is handed over to a relative. Minors, “who have deliberately or involuntarily, disappeared” are explicitly mentioned by said provision as persons who can be placed under protective custody. In case that the measure is imposed, a report by the police is sent to the Public Prosecutor.

¹¹ Article 118, PD 141/1991.

¹² EDAL, 2019. *ECTHR - H.A. and others v. Greece: Greece violated Convention by placing unaccompanied minors in protective custody in police stations*, 28 February 2019, available at: <https://www.asylumdatabase.eu/en/content/ecthr-ha-and-others-v-greece-greece-violated-convention-placing-unaccompanied-minors>.

¹³ Art. 30 L. 3907/2011 and art. 46 & 48 L. 4636/2019. art. 30, L. 3907/2011 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third country nationals” and others provisions (here after L.39/07/2011).

¹⁴ AIDA, *Country Report on Greece, 2017, op. cit., Update*, (2018), p.156, <https://www.asylumineurope.org/reports/country/greece>; AIDA, *Country Report on Greece, update 2019*.

¹⁵ AIDA, *Country Report on Greece, 2017, op. cit., Update*, (2018), p.157.

¹⁶ Greek Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, p.75, available at https://www.synigoros.gr/resources/docs/greek_ombudsman_migrants_refugees_2017_en.pdf

¹⁷ For instance, in a case concerning 2 unaccompanied girls, supported before the ECtHR by GCR in 2019, the minors concerned had been transferred to the detention facility for adult women of the General Police Directorate of Attica Aliens Division (Petrou Ralli), where they remained in detention, under completely inappropriate and dangerous, for their health and age, conditions. The Court granted interim measures, by ordering the Greek authorities to transfer the minors to a shelter for unaccompanied minors. See GCR, 28 March 2019. *The European Court of Human Rights grants interim measures in favour of two detained unaccompanied girls*, 28 March 2019, available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/1069-the-european-court-of-human-rights-grants-interim-measures-in-favour-of-two-detained-unaccompanied-girls>.

¹⁸ Greek Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, p.75; UNHCR, *Recommendations for Greece in 2017*, February 2017, available at: <http://www.unhcr.org/58d8e8e64.pdf>.

¹⁹ UN Human Rights Council, Thirty-fifth session, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, A/HRC/35/25/Add.2, (2017), paras 101-102, 24 April 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/41/PDF/G1709841.pdf?OpenElement>; GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, available at <https://www.gcr.gr/media/k2/attachments/SCIZReportZfinalZPDF.pdf>; RSA, *European Court of Human Rights asks Greece to transfer two unaccompanied boys detained in police station to suitable shelter*, 6 November 2019, available at: <https://rsaegan.org/en/european-court-of-human-rights-asks-greece-to-transfer-two-unaccompanied-boys-detained-in-police-station-to-suitable-shelter/>; Equal Rights Beyond Borders, *European Court of Human Rights: Minor is to be released immediately from “protective custody”*, 29 October 2019, available at: <https://www.equal-rights.org/post/european-court-of-human-rights-minor-is-to-be-released-immediately-from-protective-custody>.

²⁰ See Article 9 of the ICCPR, International Covenant on Civil and Political Rights; UN Human Rights Committee, [General Comment No. 35 on Article 9 \(Liberty and security of person\)](#), CCPR/C/GC/35, 2014; Article 5 ECHR European Convention on Human Rights; Article 37(c) of the Convention on the Rights of the Child.

²¹ Article 48(2), L. 4636/2019.

²² Article 16 (1) L. 4554/2018, [L. 4554/2018 on the regulatory framework for the guardianship of unaccompanied minors](#) (here after L. 4554/2018), which entered into force on 1 March 2020.

²³ For periods of time which, as observed by the Ombudsman for Children's Rights in March 2020, can reach up to even 3 months.; CNN Greece, ". 2020. *Increase in the number of reception places for unaccompanied refugees announced by Mitarakis*", 9 March 2020, available in Greek at: <https://www.cnn.gr/news/politiki/story/210539/ayxisi-ton-theseon-filoxenias-gia-ta-asynodeyta-prosfygopoyla-anakoinose-o-mitarakis>

²⁴ AIDA, Country Report on Greece, 2017, op. cit., *Update*, (2018), p. 27, <https://www.asylumineurope.org/reports/country/greece>.

²⁵ AIDA, *Country Report on Greece, update 2019*; Council of Europe, Committee for the Prevention of Torture, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018*, CPT/Inf (2019) 4, 19 February 2019, CPT/Inf (2019) 4, <https://rm.coe.int/1680930c9a>, para. 122., available at <https://rm.coe.int/1680930c9a>.

²⁶ AIDA, Country Report on Greece, 2017, op. cit.; *Update* (2018), p.27, available at <https://www.asylumineurope.org/reports/country/greece>; UNHCR, "Greece Aegean Islands, 1-31 Fact Sheet", May 2018, op.cit., available at <https://data2.unhcr.org/en/documents/details/64326>. The 3,400 unaccompanied children in Greece exceed the 1,101 places in shelters. As a result, children risk spending extended periods in the reception and identification centres (RICs) and in protective custody in police stations.

²⁷ UNHCR, "Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights", p.5, available at: <https://bit.ly/39EHqWg>, p. 5.

²⁸ ARSIS, *Annual Report 2017*, p. 7, available in Greek at <http://arsis.gr/wp-content/uploads/%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91-%CE%9A%CE%A1%CE%91%CE%A4%CE%97%CE%A3%CE%97-2017.pdf> (in Greek), p. 7

²⁹ ARSIS, 2018. *The practice of protective custody of unaccompanied minors and the notion of the protection of minor*, 31 October 2018, <http://www.arsis.gr/deltio-typoy-i-praktiki-tis-prostatetikis-fylaxis-asynodeyton-anilikon-kai-i-ennoia/> (in Greek)).

³⁰ AIDA, *Report on Greece, update 2019, forthcoming*

³¹ AIDA, *Report on Greece, update 2019, forthcoming*; Arsis, 2020. Ασυρόδευτοι ανήλικοι – κρατούμενοι, εγκλωβισμένοι εν μέσω της πανδημίας του κορονοϊού, στο ΠΡΟ.ΚΕ.ΚΑ Αμυγδαλέζας, 27 April 2020, <https://www.arsis.gr/deltio-typoy-asynodeytoi-aniliki/> (in Greek).

³² Article 5 ECHR, Article 9 ICCPR

³³ CCPR, 1069/2002, *Bakhtiyari v. Australia*, paras. 9.2–9.3. [Bakhtiyari v. Australia](#), UN Human Rights Committee, Communication No. 1069/2002, views of 29 October 2003, UN Doc. CCPR/C/79/D/1069/2002, paras. 9.2–9.3.

³⁴ CCPR, 1551/2007, *Tarlu v. Canada*, paras. 3.3 and 7.6; 1051/2002, *Ahani v. Canada*, para. 10.2. [Tarlu v. Canada](#), UN Human Rights Committee, Communication No.1551/2007, views of 27 March 2009 ,UN Doc. CCPR/C/95/D/1551/2007, paras. 3.3 and 7.6; [Ahani v. Canada](#), UN Human Rights Committee, Communication No. 1051/2002, views of 29 March 2004, UN Doc. CCPR/C/80/D/1051/2002, para. 10.2.

³⁵ CCPR, 1014/2001, *Baban v. Australia*, UN Human Rights Committee, Communication No. 1014/2001, views of 6 August 2003, UN Doc. CCPR/C/78/D/1014/2001, para. 7.2; 1069/2002, *Bakhtiyari v. Australia*, paras. 9.2–9.3; see UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention \(2012\)](#), guideline 4.3 and annex A (describing alternatives to detention).

³⁶ European Parliament and Council of the European Union (2008), Return Directive, Article 15 (4); CJEU (2009), C-357/09, *Kadzoev (Huchbarov)*, C-357/09, CJEU, Judgment 30 November 2009, paras. 65-66; ECtHR (2019), *Al Husin v. Bosnia and Herzegovina (No. 2)*, ECtHR, Application No. 10112/16, Judgment 25 June 2019. See also ECtHR (2009), *Mikolenko v. Estonia*, ECtHR, Application No. 10664/05, Judgment 8 October 2009.

³⁷ Article 16(2)), L4554/2018, which entered into force on 1 March 2020, repealing article 19 para 1, P.D. 220/2007.

³⁸ For more, see Sarantou, E. & Theodoropoulou, A., *Children Cast Adrift: the exclusion and exploitation of unaccompanied minors (UAM)*, National Report: Greece, November 2019, pp.36-39, available at: https://rosalux.gr/sites/default/files/publications/national_greece_en_final_1211web.pdf, and AIDA: *Country Report Greece 2018*, March (2019), pp. 99-101, available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf.

³⁹ Article 32, L 4554/2018.

⁴⁰ Joint Ministerial Decision of the Ministers of Finance & the Minister and of labour, Social Security and Social Solidarity on the registry of professional guardians, Gov. Gazette B/ 2725/2-7-19.

⁴¹ Metadras, *Announcement of Metadras on the guardianship of unaccompanied minors*, 27 February 2020, available in Greek at: <https://bit.ly/3cPvbYT>.

⁴² As per relevant statements of the Head of NCSS on 9 March 2020, the guardians' registry would be initially staffed with 112 professionals, hired through ASEP (Supreme Council for Civil Personnel Selection) at a yet to be defined date. See CNN Greece, op.cit.

⁴³ See Art. 127-136 Greek Civil Code and inter alia ECtHR, *H.A. and Others v. Greece*, application no 19951/16, 28 February 2019, para. 212.

⁴⁴ Despite the fact that there are currently two Ministerial Decisions outlining age assessment procedures for unaccompanied children, within the scope of the reception and identification procedures, and that of the asylum procedure, no age assessment procedure is provided by the national framework to be applied by the Hellenic Police for minors held in detention.

⁴⁵ AIDA, *Report on Greece, update 2019, forthcoming*.

⁴⁶ During 2019, a number of cases of unaccompanied minors detained as adults have been identified by GCR. These inter alia include a 15 year old child of Palestinian origin who was deemed to be an adult, following dental and hand X-rays; a 17 year old minor from Egypt, who despite carrying copies of his passport and birth certificate, was detained as an adult, based solely on the initial age registration of the police on the day of his arrest and two unaccompanied children from Guinea, similarly carrying original birth certificates, yet remaining in detention for a period of 5 months. AIDA, *Report on Greece, update 2019, forthcoming*.

⁴⁷ OHCHR. *Working Group on Arbitrary Detention (WGAD): Preliminary Findings from its visit to Greece (2-13 December 2019)*, available at: <https://bit.ly/2vNjInk>.

⁴⁸ Greece,. General Secretariat of Civil Protection (GGPP) (Γενική Γραμματεία Πολιτικής Προστασίας, Γ.Γ.Π.Π). "2020. *Update to accredited health journalists by Deputy Minister of Civil Protection and Crisis Management Nikos Chardalia and the representative for the new coronavirus of Ministry of Health, Professor Sotiris Tsiodras*" (Ενημέρωση διαπιστευμένων συντακτών υγείας από τον Υφυπουργό Πολιτικής Προστασίας και Διαχείρισης Κρίσεων Νίκο Χαρδαλιά και τον εκπρόσωπο του Υπουργείου Υγείας για το νέο κορονοϊό, Καθηγητή Σωτήρη Τσιόδρα), - Press

release, 15 March 2020, available in Greek at: <https://www.civilprotection.gr/el/enimerosidiapisteymenon-syntakton-ygeias-apo-ton-yfypoyrgo-politikis-prostasias-kai-diaheirisis-0>.

⁴⁹ FRA, *Coronavirus COVID-19 outbreak in the EU - Fundamental Rights Implications*, 23 March 2020, https://fra.europa.eu/sites/default/files/fra_uploads/greece-report-covid-19-april-2020_en.pdf

⁵⁰ Greek Ministry of Migration and Asylum, 2020 *Coronavirus protection measures at Reception and Identification Centers, Accommodation facilities and the Asylum Service*, Press release, 18 March 2020, available in Greek at: <https://bit.ly/33JHulO>.

⁵¹ See Al Jazeera, *Greece quarantines camps as 20 refugees test positive for COVID-19*, <https://www.aljazeera.com/news/2020/04/woman-greece-refugee-test-positive-coronavirus-20040111738369.html>; IOM. 2020. *IOM Raises Concern Over Increasing COVID-19 Cases Recorded in Greece Mainland Refugee and Migration Camp*, <https://www.iom.int/news/iom-raises-concern-over-increasing-covid-19-cases-recorded-greece-mainland-refugee-and-migrant>.

⁵² See See EURACTIV. 2020. *Greece quarantines second migrant camps after COVID-19 case confirmed*. <https://www.euractiv.com/section/justice-home-affairs/news/greece-quarantines-second-migrant-camp-after-covid-19-case-confirmed/>

⁵³ Amna, *Under quarantine the site at Koutsouchero as well*, 11 April 2020, available in Greek at: <https://www.amna.gr/home/videos/448995/Se-karantina-kai-domi-prosfugon-sti-Larisa>

⁵⁴ Tanea, *Kranidi under quarantine – curfew between 8am and 8pm*, 21 April 2020, available in Greek at: <https://www.tanea.gr/2020/04/21/greece/se-ekseliksi-oi-diloseis-xardalia-gia-ti-domi-prosfygon-sto-kranidi/>.

⁵⁵ As of March 2020, the number of children in the relevant sites/camps was as follows: *Ritsona*: 1,266 (approx. 45% of the camp's population), *Malakasa*: 661 (approx. 37% of the camp's population), *Koutsouchero*: 554 (approx. 36% of the camp's population). Source: IOM, *Supporting the Greek Authorities in Managing the National Reception System for Asylum Seekers and Vulnerable Migrants (SMS)* Factsheets, March 2020, available at: https://greece.iom.int/sites/default/files/FINAL-March.compressed_0.pdf

⁵⁶ See HRW, *Greece: Nearly 2,000 New Arrivals Detained in Overcrowded, Mainland Camps*, 2020. <https://www.hrw.org/news/2020/03/31/greece-nearly-2000-new-arrivals-detained-overcrowded-mainland-camps>

⁵⁷ Article 3 of Joint Ministerial Decision regarding Measures adopted to prevent the appearance and spread of COVID-19 at Reception and Identification Centers, throughout the country's territory, for the period between 21.03.20 and up to 21.04.20", Gov Gazette 985/B/22-3-2020, available in Greek at: <https://www.e-nomothesia.gr/kat-ygeia/astheneies/koine-upourgike-apophase-agpoik-20030-2020.html>. This has been extended on two occasions up to 10.05.20 and more recently up to 21.05.20.

⁵⁸ CCPR, General comment No. 35, Article 9 (Liberty and security of person)), *op.cit.*

⁵⁹ CCPR, 560/1993, A. v. *Australia*, paras. 9.3–9.4; 794/1998, *Jalloh v. Netherlands*, para. 8.2; 1557/2007, *Nystrom v. Australia*, paras. 7.2–7.3. *A. v. Australia*, UN Human Rights Committee, Communication No. 560/1993, views of 3 April 1997, UN Doc. CCPR/C/59/D/560/1993, paras. 9.3–9.4; *Jalloh v. Netherlands*, UN Human Rights Committee, Communication No. 794/1998, views of 26 March 2002, UN Doc. CCPR/C/74/D/794/1998, para. 8.2; *Nystrom v. Australia*, UN Human Rights Committee, Communication No. 1557/2007, views of 28 July 2011, UN Doc. CCPR/C/102/D/1557/2007, paras. 7.2–7.3.

⁶⁰ See international standards referred to in endnote 2.

⁶¹ Greece, *Medecins sans Frontieres, Evacuation of squalid Greek camps more urgent than ever over COVID-19 fears*, available at <https://www.msf.org/urgent-evacuation-squalid-camps-greece-needed-over-covid-19-fears>

⁶² Greece, Ministries of Citizen Protection, Health and Migration and Asylum, *Joint Ministerial Decision No D1a/GP.oik.. 2003 O.G B' 985/22-3-2020 on "Measures against the emergence and contagion of coronavirus COVID-19 at Reception and Identification Centers throughout Greece, for the period from 21.03.2020 to 21.04.2020."* available in Greek at: <https://bit.ly/2UdKQKM>.

⁶³ Ekathimerini, *More than 2,300 refugees to be transferred to mainland after Easter*", 16 April 2020, available in Greek at:

<https://www.ekathimerini.com/251769/article/ekathimerini/news/more-than-2300-refugees-to-be-transferred-to-mainland-after-easter>

⁶⁴ Tanea, *The scheduled mass transfer of 1,500 refugees from Moria has been canceled*. 24 April 2020, available in Greek at: <https://www.tanea.gr/2020/04/24/greece/akyrothike-i-programmatismeni-maziki-metafora-1-500-prosfygon-apo-ti-moria/>

⁶⁵ GCR & Oxfam, LESBOS COVID-19 BRIEFING #3: Update on the EU 'hotspot' Moria by the Greek Council for Refugees and Oxfam, 14 May 2020.

⁶⁶ Amna, *More than 2,000 vulnerable asylum seekers on the islands will be transferred to other sites*", 13 April 2020, available at: <https://www.amna.gr/home/article/449440/Perissoteroi-apo-2000-eualotoi-aitountes-asulo-sta-nisia-tha-metaferthoun-se-alles-domes>.

⁶⁷ HRW, *Greece: Island Camps Not Prepared for Covid-19*, 22 April 2020, available at: <https://www.hrw.org/news/2020/04/22/greece-island-camps-not-prepared-covid-19>.

⁶⁸ UNHCR, *Aegean Islands Weekly Snapshot: 20-26 April 2020*, available at: <https://data2.unhcr.org/en/documents/download/75790>.

⁶⁹ For more information on the need of states to use the maximum of their resources see also: *OpinioJuris, COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (part 2)*. <https://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-2/>

⁷⁰ Open letter of 6 organisations on the protection of administratively detained third-country nationals, 22 April 2020, available in Greek at: GCR, *Επιστολή έξι οργανώσεων για την προστασία των διοικητικά κρατούμενων πολιτών τρίτων χωρών*. <https://www.gcr.gr/el/news/press-releases-announcements/item/1429-epistoli-eksi-organoseon-gia-tin-prostasia-ton-dioikitika-kratoymenon-politon-triton-xoron>.

⁷¹ Article 24 CRC, Convention on the Rights of the Child.

⁷² UNHCR, *The rights and health of refugees, migrants and stateless must be protected in COVID-19 response*, 31 March 2020, available at: <https://www.unhcr.org/news/press/2020/3/5e836f164/rights-health-refugees-migrants-stateless-must-protected-covid-19-response.html>.

To be noted, a few days earlier, a similar call was issued by the CoE Commissioner for Human Rights, *inter alia* also stressing the unlawfulness of detention, pending return, in the context of worldwide measures to prevent spread of the pandemic. See Council of Europe, *Commissioner calls for release of immigration detainees while Covid-19 crisis continues*, 26 March 2020, available at: <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-covid-19-crisis-continues>.