

THE EU-FUNDED CLOSED CONTROLLED ACCESS CENTRE - THE DE FACTO DETENTION OF PEOPLE SEEKING PROTECTION ON SAMOS





TABLE OF CONTENTS

INTRODUCTION	4
1. LEGAL BASIS FOR DETENTION	7
2. SURVEILLANCE AND RESTRICTION OF FREEDOM OF MOVEMENT	17
3. DE FACTO DETENTION IN THE CCAC	28
3.1 DE FACTO DETENTION OF CHILDREN	28
3.2. MANDATORY QUARANTINE	33
3.3. DE FACTO DETENTION OF NEW ARRIVALS	41
3.4 LOOKING FORWARD: THE PRE-REMOVAL DETENTION CENTRE	47
4. CONCLUSION AND DEMANDS	51

This report is written by I Have Rights, a non-profit law clinic that provides assistance to people on the move at all stages of the asylum procedure on Samos. I Have Rights engages in advocacy and strategic litigation focusing on (i) ending the detention of people on the move, (ii) ending the illegal practice of pushbacks and (iii) defending the right of people to seek asylum. I Have Rights seeks to raise awareness of ongoing state practices leading to human rights violations and challenge their impact on the rights of those seeking protection in Europe. The drafting of this report was supported by Ellen Allde, a Leverhulme Doctoral Scholar based out of the School of Law at Queen Mary University of London.

The Samos Closed Controlled Access Centre (CCAC) is a site designated by the Greek State to identify, process and accommodate asylum seekers upon arrival in Greece. The CCAC is a prison-like structure, situated in an isolated area on the hotspot island of Samos, where asylum seekers are subject to constant surveillance and extreme restrictions of movement. This report aims to show that the conditions of the Samos CCAC constitutes (i) systemic breaches of the right to liberty and security under Article 5 of the ECHR; and (ii) systemic inhuman and degrading treatment under Article 3 ECHR. The report highlights that the operation of the CCAC by the Greek State as a site of *de facto* detention, facilitates an evasion of the implementation of safeguards, leaving those in the CCAC both subject to unlawful deprivation of their liberty; and without access to safeguards.

ABBREVIATIONS

CCAC	Closed Controlled Access Centre
CFR	Charter for Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GAS	Greek Asylum Service
HRLP	Human Rights Legal Project
ICCPR	International Covenant on Civil and Political Rights
IHR	I Have Rights
IRC	International Rescue Committee
MSF	Médecins Sans Frontières
PRDC	Pre-Removal Detention Centre
RCD	Reception Conditions Directive
RIS	Reception and Identification Service
UAC	Unaccompanied children
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Introduction

The first of its kind, the Samos Closed Controlled Access Centre (CCAC) is one of five CCACs constructed in Greece.[1] Funded in its entirety by the European Union (EU) through the Asylum, Migration & Integration Fund, the construction of the Samos CCAC cost the EU taxpayer €43 million,[2] with a total of over a quarter of a billion euros of EU funds going towards the construction of other CCACs in Greece.[3] Heralded by the European Commission and Greece alike as a new and more "humane" approach to migration, it is likely that CCACs will continue to open, not only in Greece but across Europe.

Despite the claims of both Greek and EU authorities, both those accommodated in the CCAC and human rights defenders continue to highlight the inhuman nature of these centres.[4] All five current CCACs, including the Samos CCAC, are located on the five hotspot islands of Greece. As such, the restriction on people's freedom of movement and liberty in CCACs occurs in a context where asylum seekers are already immobilised through being prohibited from leaving the island on which their application is lodged.[5] In this way, CCACs operate in a context where people's freedom of movement and liberty is already highly restricted.

It is also important to situate CCACs against the wider backdrop of pushbacks in Greece. In particular, the two islands with the largest CCACs, Lesbos and Samos, see the first and second highest rates of pushbacks respectively in the Aegean sea.[6] A large percentage of asylum seekers on Samos have experienced at least one pushback, which often include severe human rights violations such as unlawful killings, torture, inhuman treatment, rape and other forms of sexual violence.[7] As such, even before arriving at the CCAC, asylum seekers are

[1] Ministry of Migration & Asylum. 2023. R.I.C & C.C.A.C. Available [here](#).

[2] Ministry of Migration & Asylum. 2023. Closed Controlled Access Center of Samos. Available [here](#).

[3] Ylva Johansson. 2023. Spring is the best time to prepare for Winter – why I am visiting Lesbos now. Available [here](#).

[4] See for example, Europe Must Act. 2021. "All I Want is to Be Free and Leave" Life in the Samos Closed Controlled Access Centre. Available [here](#); CCAC resident. 2022. AYS Special from Greece: The Eye –An asylum-seeker's account on pushbacks and life in Samos Refugee Camp. Available [here](#); International Rescue Committee. 2022. One year since Greece opened new "prison-like" refugee camps, NGOs call for a more humane approach. Available [here](#).

[5] ΑΠΟΦΑΣΕΙΣ Αριθμ. 1140 (1) Περιορισμός Κυκλοφορίας των Αιτούντων Διεθνή Προστασία.Ο ΥΠΟΥΡΓΟΣ ΠΡΟΣΤΑΣΙΑΣ ΤΟΥ ΠΟΛΙΤΗ [DECISIONS No. 1140 (1) Restriction of Movement of Applicants International Protection. The Minister of Citizen Protection]

[6] Forensic Architecture. 2022. Drift-backs in the Aegean sea. Available [here](#).

[7] Border Violence Monitoring Network. 2022. Black Book of Pushbacks 2022. Available [here](#).

acutely aware of the potential for violence and inhuman treatment on Samos and the total impunity that those who conduct human rights violations and pushbacks have so far been guaranteed.[8]

Upon arrival at the CCAC, people are subjected to the following procedure: until November 2022 they were detained in the quarantine zones of the structure, with the time of detention varying from five days to three weeks. Upon completion of the quarantine period, or, after November 2022 when the mandatory quarantine was dropped, on arrival to the structure, asylum seekers are given an order for "restriction of freedom", which the Reception and Identification Service (which belongs to the General Secretariat for Reception of Asylum Seekers of the Ministry of Migration and is the state authority responsible for the CCAC, RIS) uses to *de facto* detain all new arrivals for up to 25 days in the general population sections of the CCAC. These 25 days do not include the time spent in quarantine. While *de facto* detained, people undergo at least three interviews with the authorities, with some people even having a fourth, their full asylum interview, before they can leave the CCAC. After this period of detention ends, people are permitted to leave the structure but are subjected to restrictions on their freedom of movement and are under intense surveillance and control by the authorities. If a person's asylum application is rejected, they risk being detained until their appeal is submitted. While currently not in operation, the CCAC also accommodates a Pre-Removal Detention Centre (PRDC) which, when opened, will be used to detain third country nationals pending their deportation.

This report has been prepared to show that the **nature and conditions of the CCAC constitute (i) systemic breaches of Article 5 of the European Convention of Human Rights (ECHR); and (ii) systemic inhuman and degrading treatment under Article 3 of the ECHR.** Given the factual circumstances of the CCAC amounting to systemic arbitrary detention, as will further be developed, the present report will refer to the CCAC as 'de facto detention' and those accommodated within it as 'detained'. The report highlights that the operation of the CCAC by the Greek State as a *de facto* detention site facilitates an evasion of the implementation of legal safeguards, leaving those within the CCAC in a particularly stark situation in which they are both (i) subject to unlawful deprivation of their liberty; and (ii) without access to safeguards. The reality of Samos stands in stark contrast with EU Commissioner

[8] ECRE. 2021. Greece: Increase of Pushbacks with Impunity Amid Ongoing Crackdown on Solidarity, Türkiye Considered "Safe" by Greek Authorities Sets New Record of Deportations, Thousands of Vulnerable Refugees Left Without Adequate Accommodation After Closing of ESTIA Programme. Available [here](#).

Johansson's promise that CCACs "will not be closed, they will be humane".[9]

The report presents a typology of restriction and deprivation of liberty that those accommodated in the centre are subjected to. After highlighting European and national legal definitions and standards for detention (Section 1), this report details the security apparatus, restrictions of freedom of movement and liberty and control that are in place in the CCAC which create its "prison-like" infrastructure (Section 2). The report then details the various forms of deprivation of liberty, which includes *de facto* detention, that people are subjected to in the CCAC (Section 3), including the mandatory detention of unaccompanied children (Section 3.1), the mandatory quarantine for all new arrivals that was in place until November 2022 (Section 3.2), and the systematic detention of every newly arrived asylum seeker (Section 3.3). The final section of this report foreshadows the opening of the PRDC on Samos (Section 3.4).

[9] Ylva Johansson. 2023. Spring is the best time to prepare for Winter – why I am visiting Lesbos now. Available [here](#).

SECTION 1: THE LAW - DETENTION AND DEPRIVATION OF LIBERTY

For the reasons summarised above, in this chapter we aim to address the legal basis and restrictions on the detention of people on the move in the EU and in particular, the sources of the various forms of detention that those arriving at the Greek Eastern Aegean islands experience in the Samos CCAC. The legal parameters defined and analysed in this chapter will be referred to in the remainder of this report. The Charter for Fundamental Rights of the European Union (CFR) guarantees the right to asylum with due respect for the rules of the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.[10] In a context where people on the move are constantly framed according to their entry as 'irregular' or 'illegal', the right to asylum is guaranteed. Moreover, Article 31(2) of the 1951 Convention explicitly provides that states must not penalise refugees who enter 'without authorisation'. For many scholars, Article 31(2) is seen to preclude detention which is punitive.[11] Nevertheless, the EU permits the use of administrative detention for certain limited circumstances. These permissions must be read with the understanding of this fundamental right to asylum, in addition to various applicable international and European legal protections.

In the following sections, we consider what amounts to detention within EU law and under which specific grounds detention is permitted. We consider the specific safeguards, guarantees and legal remedies which must be upheld where detention is used. Recent case law from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) demonstrate that several member states, including Greece, consistently apply policies which breach both European and international law.

1.1 DEFINING DETENTION

For those seeking international protection within the EU, the Reception Conditions Directive (RCD) sets as a starting point that "applicants may move freely within the territory of the host Member State".[12] As opposed to states

[10] Charter of Fundamental Rights Of the European Union (2000/c 364/01). Article 18.

[11] Guy S Goodwin-Gill. 2001. Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalisation, detention and protection. Department of International Protection for the UNHCR Global Consultations, 54.

[12] 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). Article 7(1).

which may immediately detain people seeking asylum, the EU asylum *acquis* foregrounds the freedom of movement for people seeking international protection. The Directive then provides how this fundamental freedom of movement could be restricted to an assigned area or particular place of "residence".^[13] **To be deprived, as opposed to restricted, of this freedom of movement would amount to detention. The RCD defines 'detention' as the confinement of an applicant for international protection who is "deprived of his or her freedom of movement".^[14]**

For the purpose of interpreting this terminology in accordance with the CFR, the CJEU considers detention a limitation of the Article 6 fundamental right to liberty.^[15] This corresponds with the rights guaranteed by Article 5 of the European Convention of Human Rights, on the right to liberty and security of person. This is important for eliciting what amounts to a restriction—to a specific area or residence—as opposed to deprivation of liberty as detention. To determine whether a person has been 'deprived of their liberty' within the meaning of Article 5, in *Austin and Others v the United Kingdom* the Grand Chamber reaffirmed the distinction as "one of degree or intensity, and not of nature and substance".^[16] Moreover, the starting point for considering whether a person has been deprived of their liberty must be the concrete situation and then the type, duration, effects and manner of the measure cumulatively.^[17] According to the RCD, the only clear "bottom-line" for restrictions on movement is the "unalienable sphere of private life" and that "access to all benefits under this Directive" should be guaranteed.^[18] Benefits are to be interpreted as not only the material reception conditions but all rights granted in the reception conditions framework, such as access to health care, education and work.^[19]

[13] *Ibid.* Articles 7(1) and 7(2).

[14] *Ibid.* Article 2(h).

[15] *J. N. v Staatssecretaris van Veiligheid en Justitie* [2016] CJEU (Case C-601/15).

[16] *Austin and Others v the United Kingdom* (GC) [2012] ECHR (Applications nos. 39692/09, 40713/09 and 41008/09) para 57; the relevant principles on deprivation of liberty were previously set out in the ECtHR decisions of *Engel and Others v the Netherlands* (1976) ECHR 3 and *Guzzardi v Italy* (1980) 3 EHRR 333.

[17] *Ibid.*

[18] 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). Article 7(1).

[19] Peek and Tsourdi. 2016. 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 in *EU Immigration and Asylum Law Commentary*, Hailbronner K & Thym, D (eds), Beck/Hart/Nomos, 1409.

As will be addressed below, detention is permitted according to international, European and Greek law in certain **limited circumstances**. Where provided for by a written order and with legal basis, the authorities may pursue formal or *de jure* detention. **The CCAC is not currently designated by law as a detention centre and therefore, as a whole the population held within the CCAC cannot be considered to be in formal or *de jure* detention.** Nevertheless, people seeking international protection are often confronted with forms of *de facto* detention. This means that certain measures which ultimately amount to the deprivation of liberty—*de facto* detention—are not qualified as such but rather dubbed as 'restrictions' on the freedom. Thus, there are three categorisations: (i) restrictions on freedom of movement, (ii) *de jure* or formal detention with a legal basis, and (iii) *de facto* detention without a legal basis. Irrespective of the chosen terminology, **detention of a person seeking international protection without legal basis, but also where inappropriate, unjust, lacking basis, or lacking due process, amounts to arbitrary detention in violation of Article 9 of the International Covenant on Civil and Political Rights (ICCPR) as well as Article 5(1) of the ECHR.**

European law does not distinguish whether detention has been formally provided for in law or not in an assessment of deprivation of liberty which amounts to arbitrary detention. Thus, the European Council on Refugees and Exiles argues that:

states' transparent attempts to qualify places of detention as something else—reception centres, transit zones, camps and so forth—in order to circumvent their obligations to avoid arbitrary deprivation of liberty has been consistently struck down.[20]

For example, in the case of *Khalifa v Italy*, the ECtHR dismissed the argument that individuals had not been deprived of their liberty because they had been received in a centre for first aid and assistance—*Centro di soccorso e prima accoglienza*.^[21] The Court found that **those held in the centre on Lampedusa**

[20] *Ibid.*

[21] *Khalifa v Italy* (GC) [2016] ECHR (App No 16483/12).

surveillance of the centre, restrictions on outside communication, and their prolonged confinement. Whether people seeking international protection could be permitted to leave the country they were restricted to, cannot rule out *de facto* deprivation of liberty.[22] Moreover, it is not necessary that the 'building was locked' to show detention: **that people must ask permission and that time spent away was always subject to controls and restrictions could amount to detention.**[23] In *J.R. and Others v Greece* the Court considered that those awaiting a deportation decision were 'in detention' within the Greek reception and identification facility up until it became a semi-open centre where the applicants had the option to go out during the day.[24] Similarly, the Administrative Court of Syros in Greece ruled that the exit prohibition of an individual without an asylum card from the Samos CCAC and the failure to issue a written detention order amounted to *de facto* and arbitrary detention. [25] **Ultimately, by considering the 'concrete situation' and the 'degree and intensity', the circumstances of the CCAC may amount to an unlawful deprivation of liberty.** In the following section, we consider the grounds for which a person may be lawfully detained.

1.2 GROUNDS FOR DETENTION UNDER EU LAW

According to the RCD, **"a person should not be held in detention for the sole reason that he or she is seeking international protection"**. [26] Applicants may only "be detained under very clearly defined **exceptional circumstances** laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention". [27] Importantly, the EU Directive requires an individual assessment of each case, prohibiting blanket detention of applicants of international protection. [28] The Directive outlines that an individual may be detained for the following reasons:

[22] *Riad and Idiab v Belgium* (First Section) [2008] ECHR (App No 29787/03 and 29810/03).

[23] *Stanev v Bulgaria* (GC) [2012] ECHR. (App No 36760/06).

[24] *J.R. and others v Greece*, [2018] ECHR (App No 22696/16), para 86.

[25] Decision No AP 36/17-12-2021 Administrative Court of Syros.

[26] 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). Article 8.

[27] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast). Preamble 15. See also, Article 8.

[28] *Ibid.* Article 8(2).

1. Determining or verifying their identity or nationality (Article 8(3)(a));
2. Determining the elements of the asylum application which could not be obtained without detention, such as there is a risk of absconding (Article 8(3)(b));
3. Determining right to enter the territory (Article 8(3)(c));
4. When they are subject to a returns procedure,[29] to prepare the return and/or carry out the removal process, and the Member State can objectively substantiate that they believe a further asylum application—by an individual who has had the opportunity to access the asylum procedure—is only being made to delay or frustrate the returns procedure (Article 8(3)(d));
5. When it is necessary for the protection of public order or national security (Article 8(3)(e));
6. Determining according to Dublin III[30] which Member State is responsible for examining an application for international protection (Article 8(3)(f)).

The Greek International Protection Act entered into force in 2020, transposing the above requirements for the detention of an applicant of international protection,[31] and was later replaced in 2022 with Law 4939/2022, with the grounds laid out at Article 50(2)(a-e).[32] Article 50(2) of the new law reinforces that such **a detention measure should be applied exceptionally, after an individual assessment, and only as a measure of last resort where no alternative measures can be applied.** There is broad concern that people automatically detained in the CCACs on the Aegean hotspot islands are detained without individual assessment,[33] access to legal advisers or counsellors,[34] and without sufficient legal basis.[35] The detention of people seeking international protection on grounds other than those provided for in

[29] 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.

[30] In accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013.

[31] Law 4636//2019. Article 46.

[32] Ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners, Law No 4939/2022, Published in the Official Gazette III/A/10-06-2022, Article 148.

[33] 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). Article 8(2).

[34] *Ibid.* Article 10(4).

[35] Greek Council for Refugees. 2022. Country Report Greece: Detention of Asylum Seekers. Available [here](#).

Article 8(3) of the RCD is prohibited under EU law.[36] Whether the ground for detention is lawful must be subject to the **principle of proportionality, indicating that the measures are necessary and genuinely meet objectives recognised by the EU.** [37] This is evaluated through individual assessment, referred to above, on the specific facts of each case.[38] In the Case of *Saadi v the United Kingdom*, the Court reaffirmed that:

[...] the principle of proportionality further dictates that where detention is to secure the fulfilment of an obligation provided by law, a balance must be struck between the importance of a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty.[39]

Moreover, the Court emphasised that detention of "aliens at the point of entry" must be carried out in good faith, closely connected to the purpose of preventing unauthorised entry, the place and conditions should be appropriate, and should not continue for an unreasonable length of time.[40] In *Amuur v France*, the Court reminded that the measure was applicable "not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country".[41] The RCD also emphasises that **alternative measures should be considered before resorting to detention of people seeking international protection.** [42] Alternatives should only be used where there is a legal basis or grounds for detention. Alternatives include 'enforcement-based' measures, such as reporting to police or securities, or community-based solutions, grounded in engagement and holistic support.[43] These alternatives should not impose onerous or excessively restrictive measures which amount to *de facto* detention. Under the RCD, member states are required to take "meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible", Member States must also ensure

[36] *Ministerio Fiscal v VL* [2020] CJEU (Case C-36/20).

[37] Article 52(1), Charter of Fundamental Rights; see also preamble 15, Reception Conditions Directive.

[38] 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). Article 8(2).

[39] *Saadi v the United Kingdom* (GC) [2008] ECHR (App No 13229/03), para 70.

[40] *Ibid*, para 72, 74.

[41] *Amuur v France* (Chamber) [1996] ECHR (App No 19776/92), para 43.

[42] 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). Article 8(2).

Majcher and Gionco for PICUM. 2022. Immigration Detention and *De Facto* Detention: What does the law Say? Available [here](#).

[43] Majcher and Gionco for PICUM. 2022. Immigration Detention and *De Facto* Detention: What does the law Say? Available [here](#).

that "there is a real prospect that such verification can be carried out successfully in the shortest possible time".[44] Article 9 of the RCD clearly states that applicants can only be held in detention for "as long as the grounds set out in Article 8(3) are applicable". This was reiterated by the ECtHR in the case of *Nikoghosyan and others v Poland*, when the Court confirmed that the automatic placement of asylum seekers in detention for six months without resorting to a stringent individual assessment breached Article 5(1) ECHR.[45] In the Case of *Applicant v State Secretary for Justice and Security*, the CJEU reiterated the importance of monitoring the conditions governing the lawfulness of detention in the context of asylum.[46] The Court highlighted that when it is apparent that the conditions governing the lawfulness of detention have not been or are no longer satisfied, including in situations where the responsible member state is no longer examining an applicant's case with due diligence, the applicant concerned must be released immediately. If an applicant is not released immediately, the member state risks breaching Article 6 of the CFR and the RCD.[47]

1.3. CONDITIONS AND STANDARDS OF DETENTION

Regardless of whether the circumstances of the CCAC amount to arbitrary detention and a deprivation of liberty, the **conditions and standards in the CCAC must uphold human dignity**. This section does not suggest that any form of detention of people on the move within the CCAC is permissible or lawful, but that the conditions and standards within exacerbate the dehumanising treatment of people on Samos. **The *de facto* detention of people on the move facilitates the evasion of detention safeguards otherwise required when an order for detention is issued.** In addition to deprivation of liberty or arbitrary detention – contrary to Article 5 of the ECHR, Article 6 of the CFR, and Article 9 ICCPR – this report raises concern over the potential breach of several fundamental rights guarantees of people within the CCAC.

Foremost, Article 1 of the CFR establishes that 'human dignity' is not only a fundamental right but also constitutes the real basis of EU fundamental rights.

[44] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast). Preamble 16.

[45] *Nikoghosyan and others v Poland* [2022] ECHR (App No 14743/17).

[46] *Applicant v State Secretary for Justice and Security* [2022] CJEU (C-704/20 and C-39/21).

[47] *Ibid.*

In EU law, human dignity has been used as an overarching interpretive principle, and is referred to numerous within the RCD.[48] The RCD is interpreted by the CJEU to ensure that Member States secure appropriate reception conditions in conformity with this fundamental concept.[49] In this report, **this principle similarly underscores criticism of dehumanising practices within the CCAC but also as represented by the CCAC.** People within the CCAC should be afforded several procedural safeguards, including accessing legal advice or counselling.[50] They must also ensure that the conditions do not violate the prohibition of torture or to inhuman or degrading treatment or punishment (Article 3 ECHR). Article 3 is closely bound up with 'human dignity', and thus, as a non-derogable right it is considered one of the most fundamental values enshrined by the Convention.[51] The Court considers treatment to be 'inhuman' when it is premeditated, applied for hours, and causes either "actual bodily injury or intense physical or mental suffering".[52] Treatment that is 'degrading' when it causes an individual to feel humiliated or debased, "showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance".[53]

A finding of detention additionally imposes specific guarantees which the Greek authorities must uphold. The RCD provides that detained applicants of international protection must receive a written decision, in a language they are reasonably expected to understand, highlighting the reasons, in fact and in law, for their detention.[54] Where the decision to detain the applicant is written by an administrative authority such as the RIS of the CCAC, the decision should be subject to judicial review.[55] The relevant authority is then obliged to inform the applicants about their right to appeal and their right to request free legal assistance and representation.[56] Applicants must be provided "information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed

[48] See preamble 11, 18, 25, 35 and Article 20.

[49] Bačić Selanec N and Petrić D. 2021. Migrating with Dignity: Conceptualising Human Dignity Through EU Migration Law. 17 European Constitutional Law Review 498.

[50] Directive 2013/32/EU on common procedures for granting or withdrawing international protection (recast), Article 12(3).

[51] ECHR, Article 15(2).

[52] *M.S.S. v Belgium and Greece*, (GC) [2011] ECHR (Application No 30696/09), para 220.

[53] *Ibid.*

[54] Article 9(4). See also ECHR, Article 5(2).

[55] Article 9(2). See also ECHR Article 5(3).

[56] Article 9(4).

to understand".[57] The ECtHR has considered that deprivation of liberty involves an element of suffering and humiliation that does not infringe Article 3, but that the provision requires that the measure "does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent" and that it is "necessary to attain the legitimate aim pursued".[58] A violation of Article 3 was found where asylum seekers were detained for 6 days without the possibility of taking a walk, accessing a leisure area, and the use of a free toilet and clean mattresses.[59]

Specific safeguards for vulnerable applicants or persons with special reception needs

In *M.S.S. v Belgium and Greece*, the ECtHR recognised people seeking asylum as a category constituted of "a particularly underprivileged and vulnerable population in need of special protection".[60] Thus, broadly the decision recognised that as a group, people seeking asylum merit special treatment on account of their experiences of trauma, lack of familiarity with the language and legislative frameworks, and their lack of economic means. The case establishes a higher threshold of safeguards and protection which should be afforded to 'people seeking asylum'. In addition, the RCD provides for the special reception needs of certain individuals in detention.[61] The Directive defines persons with "special reception needs" as vulnerable persons including: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical, or sexual violence, such as female genital mutilation.[62] The Greek Law 4939/2022 transposes this definition with the additional category of direct relatives of victims of shipwrecks.[63] In order to identify vulnerable applicants or those with special reception needs, the authorities are expected to undertake an assessment "within a reasonable time".[64] As detention requires special

[57] Article 10.

[58] *Riad and Idiab v Belgium*, (First Section) [2008] ECHR, para 99.

[59] *S.D. v Greece* [2009] ECHR (Application No 53541/07).

[60] *M.S.S. v Belgium and Greece* (GC) [2011] ECHR (Application No 30696/09).

[61] Article 11.

[62] Article 21.

[63] Article 1(λγ).

[64] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast). Article 22.

measures, it is reasonable to expect this assessment takes place prior to detention.

Applicants considered vulnerable should be monitored regularly if placed in detention and provided adequate support.[65] Female applicants should be accommodated separately from men.[66] Minors should only be detained as a last resort and in such cases they should be detained in a separate facility specifically for minors and given access to play and recreational activities.[67]

Conclusion

That every person has the right to seek asylum underscores the entirety of this report. As such, **people seeking international protection should not face penalisation for having presented themselves at the European border**.^[68] In each below section, we consider whether the 'concrete situation' of people on the move held in the Samos CCAC meets the definition of *de facto* detention. The detention of people seeking international protection should only be used as a measure of last resort; nevertheless, in this report we argue that deprivation of liberty is used by the Greek authorities to systematically and disproportionately deprive individuals of their fundamental rights. Particular emphasis is placed on whether the circumstances and conditions within the CCAC amount to unlawful deprivation of liberty contrary to Article 5 ECHR and systemic inhuman and degrading treatment contrary to Article 3 ECHR.

[65] *Ibid.* Article 11(1).

[66] *Ibid.* Article 11(5).

[67] *Ibid.* Article 11(2).

[68] Article 18, Charter of Fundamental Rights; Article 31, 1951 Convention on the Status of Refugees.



SECTION 2: SURVEILLANCE AND RESTRICTION OF LIBERTY AND FREEDOM OF MOVEMENT

The following section aims to demonstrate that the security infrastructure and operation of the CCAC which includes the control of everyday life and measures that restrict residents' freedom of movement, cumulate to create a "prison-like" environment in the CCAC, which is felt irrespective of whether someone is legally subjected to a detention order. This, combined with the fact that non-detained residents are accommodated alongside those who are detained creates a "precarity for removal" where people are reminded that they can be detained or punished at any moment and acts as a reminder that the authorities are in control. This is confirmed by I Have Rights' beneficiaries who often express that they feel they are being punished due to their treatment in the highly securitised and prison-like structure of the CCAC.

By referring to the CCAC as a 'prison-like' structure or environment, this report seeks to describe the material infrastructure and the pervasive social control which the authorities assume. Importantly, this description does not seek to normalise or justify the arbitrary detention or inhuman and degrading treatment of people incarcerated in formal prisons. The monotonous appearance of the CCAC, constant surveillance and geographical isolation mimic the dehumanising architecture of prisons. The social life of people is under near-constant observation and governed by the rules of the CCAC. Failure to adhere to the social and bureaucratic rules leads to penalisation. Throughout this report, we show how the authorities remind individuals that their mobility remains in the control of the CCAC officials.

However, the effective control which the authorities assume in the CCAC equally creates a positive obligation to ensure that applicants are treated with full respect for human dignity and are not at risk of inhuman or degrading treatment. Upon opening the facility, the EU Department of Migration and Home Affairs stated that the modern security system and fencing was "to ensure

security and safety for the residents and personnel".[69] Moreover, the "new facilities and services will ensure adequate living conditions for all groups of residents and dignified reception conditions".[70] Contradictory claims to "care and control" are not new to the European bordering apparatus: and thus, the deprivation of liberty and prison-like conditions within the CCAC are another example of unlawful, disproportionate and dehumanising measures dismissed using the language of humanitarianism. These measures are explored below.



[69] Directorate-General for Migration and Home Affairs. 2021. Opening of the first new reception centre on Samos. EU Migration and Home Affairs. Available [here](#).

[70] *Ibid.*

2.1 LEGAL BASIS

The legal basis for the possibility of restricting the movement of applicants for international protection is found in Greek Law 4540/2018, incorporating Directive 2013/33/EU of 26-06-2013.[71] While it provides for the possibility of movement restrictions if they are "necessary for the rapid processing and effective monitoring of applications for international protection",[72] the law lays out the material reception conditions that must be ensured. These include A) adequate standard of living, which "guarantees [the applicants'] maintenance and promotes their physical and mental health, based on respect for human dignity", B) possibility of communication with relatives, legal advisors, representatives of United Nations High Commissioner for Refugees (UNHCR), and other certified social actors; allowing some limitations and C) "appropriate" accommodation regarding the gender, age, and vulnerabilities.[73] Further details on the operation of CCACs on the islands are laid out in the Ministerial Decision No. 25.0/118832 ("General Regulations for the Operation of Closed Controlled Island Structures" referred to as 'General Regulations').[74]

2.2 SECURITY INFRASTRUCTURE AND OPERATION OF THE CCAC

Personnel

As detailed on the Ministry of Migration & Asylum's website, the Samos CCAC "is guarded by the Hellenic Police and by a private security company [G4S] 24 hours a day with the presence of fifty uniformed personnel in each shift".[75] The police on duty include Greek riot police (MAT), well known in Greece for their use of excessive force,[76] as well as border guards (Synoriotophylakes).

[71] Law 4540/2018, modifying Law 4251/2014.

[72] *Ibid.* Art. 7(2).

[73] *Ibid.* Art. 17(1), Art. 18(2)(b)) and Art. 18(2)(c).

[74] Decision 25.0/118832 of the General Secretary of Reception of the Ministry of Migration and Asylum, Gov. Gazette 3191/B/ 20.7.21.

[75] Ministry of Migration & Asylum. 2023. Closed Controlled Access Center of Samos. Available [here](#).

[76] Greek Reporter. 2022. Riot Police Attacks Photojournalist in Athens. Available [here](#); Reporters United. 2021. Police abuse in Greece: Disinfo Collective report examines rogue petrol bomb video and reveals possible police ties to shady pro-government group. Available [here](#); Amnesty International. 2012. Police Violence in Greece. Available [here](#).

The British private security company G4S, which is contracted by the RIS, has been accused of serious allegations of abuse and of violating human rights in various locations, including the abuse of detained children.[77] In particular, G4S have been accused of failing to meet international standards and committing serious human rights violations in relation to the treatment of asylum seekers,[78] including the unlawful killing of third country nationals in detention.[79]



I Have Rights' beneficiaries often report that they cannot distinguish between the CCAC state security forces and those responsible for pushbacks. It is important to note that at the time of writing 23% of I Have Rights's beneficiaries claim to have experienced a pushback from Greece.[80] It is likely that most people accommodated in the CCAC are fully aware of the systematic practice of pushbacks.[81] This lack of distinction between pushback agents and CCAC security personnel contributes to the pervasive feeling of fear felt by residents in the CCAC.

Moreover, as detailed further in Section 3.2 below, Greek Police have been accused of abuse, violence and inhuman treatment against asylum seekers inside the CCAC. As reported by the Press Project, multiple asylum seekers have stated that they were subjected to violence at the hands of the police, both in the main section and quarantine zones of the CCAC. For example, in the main section of the CCAC, the Press Project details how:

[77] Liberty. n.d. G4S: a history of discrimination, human rights violations, malpractice and mismanagement in the UK. Available [here](#).

[78] Human Rights Law Centre. 2014. Complaint of Serious Human Rights Abuses in Australian Processing Centre Lodged Against UK Company G4S. Available [here](#).

[79] The Guardian. 2010. Security guards accused over death of man being deported to Angola. Available [here](#).

[80] For updated statistics visit I Have Rights' website [here](#).

[81] See for example this first person account of life in the CCAC where pushbacks are mentioned: CCAC resident. 2022. AYS Special from Greece: The Eye –An asylum-seeker's account on pushbacks and life in Samos Refugee Camp. Available [here](#).

H.A. reported that on 3 October 2022, they were a victim to police violence that resulted in a ruptured eardrum. After a fight in the CCAC on 2 October, five police officers moved H.A. (who was not involved in the fight) and four others into an empty container and kept there overnight. The following day around 5.30 am, the police returned to question them about those responsible for the fight. They were then taken one-by-one in an official vehicle and told to turn on flight mode on their phones. Multiple police officers then punched and kicked H.A. in the stomach and head. As H.A. was not permitted to see a doctor within the CCAC without a 'specific reason', and he had to wait until he could leave the CCAC to receive medical treatment.[82]

Such instances have been reported by five beneficiaries of I Have Rights who, towards the end of 2022, alleged that they had been beaten by the police in the quarantine zones of the CCAC (see Section 3.2). I Have Rights has since made two joint submissions with the Human Rights Legal Project (HRLP), one to the Council of Europe's Committee for the Prevention of Torture and another to the Greek Ombudsman to ask them to investigate these allegations.

Security infrastructure

In addition to the security personnel, as the Ministry of Migration & Asylum's website describes, the CCAC:

is surrounded by a double NATO-type security fence, which in combination with the installation at the entrance of the necessary control systems, such as turnstiles, magnetic gates, x-rays, two-factor access control system (identity and fingerprint), ensures secure and controlled entry and exit from the access center to whoever is entitled to it.[83]



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[82] Nektaria Psarakis. 2023. Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛΑΣ στο TPP. Available [here](#).

[83] Ministry of Migration & Asylum. 2023. Closed Controlled Access Center of Samos. Available [here](#).

Every time a person enters the CCAC, they must undergo airport-style security checks which includes walking through a metal detector, being subjected to a handheld detector check, and the placement of bags through an X-ray machine. The "two-factor access control system" requires that residents scan both their identification document and fingerprints to enter and leave the centre.



Even inside the CCAC, residents must pass through gates manned by a security officer and submit to a security check including have a metal detector bodily check, when they walk from their container to the administrative services' office inside the CCAC.[84]



[84] GCR and Oxfam. 2022. Lesbos Bulletin Update on Lesbos and the Aegean Islands, by the Greek Council for Refugees & Oxfam. Available [here](#).

As detailed by the Ministry of Migration & Asylum:

Additionally, the installation of a Closed Surveillance System (CCTV) is provided throughout the Closed Controlled Access Center, with the use of "smart" software, in order to alert in time of any emergencies, while it is capable of giving notifications and images to the Local Event Center, to the Center for Management of Events & Emergencies (KERANIS building) and to the Control Centers of other involved bodies (for instance the Hellenic Police).[85]

Moreover, "drones are planned to be used, in addition to a software which analyses movement of people to avoid gatherings".[86] While space precludes a more detailed analysis of the likely privacy rights violations of the use of Artificial Intelligence and data analytics in the CCAC,[87] it is important to emphasise the ways in which these surveillance systems, combined with the use of biometric data and "traditional" security systems such as CCTV, watch towers, NATO-grade barbed wire fences, airport-style security and national, EU and private security companies combine to create highly controlled security infrastructure in the CCAC.



It is therefore no surprise that I Have Right's beneficiaries consistently report feeling like they live in a prison. This level of surveillance and securitization is hardly conducive of dignified living conditions for people seeking safety.

[85] Ministry of Migration & Asylum. 2023. Closed Controlled Access Center of Samos. Available [here](#).

[86] Deportation Monitoring Aegean. 2022. The Dystopia in form of a camp – The "Closed Controlled Access Centre of Samos". Available [here](#).

[87] For example, it is unclear which algorithms or data sets are used to programme the "smart" software used to surveil those held in the CCAC. It is also unclear how those held in the CCAC can request access to their data and how this data is stored.

Moreover, those held in the CCAC must adhere to a plethora of rules. As an example, non-detained residents of the Samos CCAC are subject to a curfew which is in place from 8pm to 8am.[88] Additionally, despite the strict rules on entry and exit, people must present themselves for a weekly census. If residents do not appear for the census on two consecutive dates, their residence in the CCAC may be terminated.[89] Visitors are also not allowed to the structure unless their request has been approved by the RIS and the Director of the CCAC, with the duration, hours and place of the visit being at the authorities' discretion. These are only a few examples of the various rules in place in the CCAC.

The use of the megaphone speaker system of the CCAC contributes to its prison-like environment. Throughout the day, the RIS calls out near continuous orders to the population. For example, the day before the weekly census, residents are informed that they cannot leave the CCAC until they are counted, and at times they are ordered not to leave their containers until they are checked. Furthermore, all day the speaker system is used to call people by name to the RIS and Greek Asylum Service (GAS) offices in the CCAC, for example, people are called "to see the psychologist" or attend "Office 3" which people know is where you are called to sign for an open card. **This practice raises serious concerns about people's right to privacy.** It is common for beneficiaries of I Have Rights to leave legal counselling appointments early to rush back to the CCAC as they have been told by their friends that their name has been called and they are afraid that their asylum procedure will be affected if they do not present themselves in a timely manner. **The use of the speaker system contributes to the prison-like atmosphere of the CCAC.**

Additional factors contributing to people's restriction of movement

The CCAC is located 8 kilometres from Vathy, Samos town. Residents rely on the bus, which is run by a private operator, to reach the town. The cost of a return ticket for the bus is €3.20, while the daily financial aid, when actually paid,[90]

[88] Article 7(2) General Regulations. See also, Info Migrants. 2022. 'Jungle' to 'prison' for migrants on Samos island Available [here](#).

[89] Article 7(2) General Regulations.

[90] On average it takes 2 to 3 months from the time of registration with the police until asylum seekers receive the first payment of cash assistance. When people are finally paid, they are not paid the money they are "owed", i.e. they receive one payment a month rather than the equivalent of three months. Moreover, those who receive a decision on their asylum claim are not entitled to cash assistance. In this way it is common for asylum seekers on Samos to not once receive cash assistance.

is €2.50 per day for a single person and for a four-member-family €1.75 per person.[91] Those who cannot afford the bus are left with the only option of walking to the town which takes around 2 hours, with the return trip back to the CCAC being steeply uphill. This makes it much harder for elderly people, as well as those with disabilities or families to come to town and use the services provided by NGOs in Vathy. This includes legal assistance and essential services. People are therefore further isolated and further confined within the CCAC.

Additionally, there are plans to create a new system for accessing the Wi-Fi.[92] People will be required to use their ID card number to access the Wi-Fi, cutting off all residents without an ID from accessing the CCAC internet. As a result, they will not have a possibility to communicate with their friends and family and their ability to access legal information will be limited. This will have a severe impact on people's well-being and exacerbate the CCAC's social isolation.

Undignified living conditions

Additional factors contribute to the undignified living conditions in the CCAC and have a severe impact on the mental health of the residents. As I Have Rights reported with the International Rescue Committee (IRC) to the EU Ombudsman, in the "CCAC's first year of operation, residents have had their access to water severely limited or completely cut off for two extended periods", this includes at the time of writing where the water is cut for 9 hours a day.[93] Residents report being plagued by bed bugs and cockroaches in their containers.[94] Beneficiaries of I Have Rights have reported that, as the cockroach infestation has become so severe, people are suffering from cockroaches biting them at night, which has impacted their ability to sleep, in turn affecting people's mental and physical health.

Crucially, the health care provided in the CCAC is insufficient. There is no permanent CCAC doctor and one psychologist for the more than 1,000 residents. Gaps in primary medical provisions were filled by Médecins Sans Frontières (MSF) who mounted an emergency medical response with a mobile clinic three days a

[91] GCR and Oxfam. 2022. Lesbos Bulletin Update on Lesbos and the Aegean Islands, by the Greek Council for Refugees & Oxfam. Available [here](#).

[92] I Have Rights. 2022. Call to the Ministry of Migration and Asylum. Available [here](#).

[93] International Rescue Committee and I Have Rights. 2023. 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. Available [here](#).

[94] CCAC resident. 2022. AYS Special from Greece: The Eye —An asylum-seeker's account on pushbacks and life in Samos Refugee Camp. Available [here](#).

week until the end of 2022. However, at the time of writing MSF has been denied access to the CCAC.[95] Their employees' registration status on the National Migration Registry was the reason cited for the denial of access, which has now left those who are unable to leave the CCAC,[96] including those detained there, without on-site access to a doctor.

Conclusion

The law allows for the restriction of freedom only if an adequate standard of living, which "guarantees [the applicants'] maintenance and promotes their physical and mental health, based on respect for human dignity" is ensured.[97] The conditions in the CCAC do not meet this requirement.

Rather than treating those accommodated in the CCAC with human dignity, the CCAC's securitised structure creates a prison-like environment where people's freedom of movement and freedom of choice are restricted, where they are isolated from wider society and where their basic needs, including access to a doctor, are not met.



It is therefore no surprise that those accommodated in the CCAC consistently call it "the prison".[98]

[95] International Rescue Committee and I Have Rights. 2023. 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. Available [here](#).

[96] Gemma Bird. 2023. 'You mean the prison?': displaced people on Samos. Available [here](#).

[97] Article 7(2) L4540/2018.

[98] See for example, where a camp resident is asked how the CCAC is and "reportedly 'burst out laughing and said: what, you mean the prison?'. Gemma Bird. 2023. 'You mean the prison?': displaced people on Samos. Available [here](#).

For groups with particular vulnerabilities, placement in the CCAC, even without being subjected to further restrictions on their liberty, may well constitute a violation of Article 5 ECHR. These include elderly and disabled people who, without the resources to pay for the bus, are unable to leave the CCAC due to its isolated location, leaving them stuck in a highly controlled and isolated facility. Moreover, even where placement in the CCAC does not constitute a restriction of liberty as per Article 5 ECHR, **the general setting of restriction and securitisation must be taken into account as the foundation on which all further restrictive measures, such as the *de facto* detention of unaccompanied children (Section 3.1) mandatory quarantine detention (Section 3.2) and detention for identification purposes (Section 3.3), are applied.**[99]

In assessing whether there has been a violation of Article 3 ECHR, it must always be considered with the overall principle of human dignity.[100] With this in mind and when it is considered that asylum seekers are "a particularly underprivileged and vulnerable population in need of special protection",[101] and that a large percentage of CCAC residents will have been subjected to pushbacks and/or border violence, contributing to "feelings of fear, anguish and inferiority",[102] the general conditions of the CCAC **may well reach the threshold of inhuman treatment, or at least provide a high foundation from which further undignified treatment can cumulate to reach the Article 3 standard.**[103]

[99] *Stanev v Bulgaria*, (GC) [2012] ECHR (App No 36760/06), the Court determined that "whether the building was locked is not decisive": a deprivation of liberty could be found as the individual required express permission to leave and that time spent was always subject to controls and restrictions (para 124).

[100] ECHR, Article 15(2).

[101] *M.S.S. v Belgium and Greece*, (GC) [2011] ECHR (Application No 30696/09).

[102] *Ireland v. the United Kingdom*, Judgment of 18 January 1978.

[103] *Stanev v Bulgaria*, (GC) [2012] ECHR (Application No 36760/06), para 205.

SECTION 3: DE FACTO DETENTION IN THE CCAC

3.1 DE FACTO DETENTION OF CHILDREN

Children, both accompanied and unaccompanied, are routinely *de facto* detained in CCAC. In the first chapter on specific safeguards and protections for "vulnerable applicants of international protection" within the CCAC, we referred to the Article 11(2) RCD requirement that minors should only be detained as a last resort and in separate facilities with access to play and recreational activities. The possible detention of minors is maintained within the EU asylum *acquis*, but must satisfy a significantly higher threshold in order to justify the deprivation of liberty (Article 5, ECHR) and risk of torture or inhuman or degrading treatment (Article 3, ECHR). As a substantive, fundamental and interpretive legal principle, the 'best interest of the child' aims to ensure the full and effective enjoyment of rights in the UN Convention on the Rights of the Child.[104]

Several ECtHR cases have determined that the detention of families, in otherwise generally 'adequate' conditions, nevertheless amounted to a violation of Article 3, due to the age of the children, and the duration and conditions of detention.[105] In *A.M. and Others v France*, the detention of two children (aged 2.5 and 4 months) with their mother was found in violation of Article 3, as they were separated only by a net and exposed to significant noise disruptions from the loudspeaker announcements.[106] All efforts should be made to release minors, especially unaccompanied minors, as soon as possible. In this regard, it should be assumed that the Greek state also has an obligation to identify unaccompanied children (UACs) as soon as possible and to act as quickly as possible once an applicant declares themselves to be a minor.

It is essential to stress from the outset that for over a year, until November 2022, both accompanied and unaccompanied children were *de facto* detained in the quarantine zones of the CCAC (see Section 3.2 below). While the situation was challenging for everyone who was detained, the situation was particularly critical for children as **their age was not assessed until after the quarantine**

[104] UN Convention on the Rights of the Child 1989, Article 3. See also, European Commission. n.d. best interests of the child (BIC). Available [here](#).

[105] Majcher and Gionco for PICUM. 2022. Immigration Detention and *De Facto* Detention: What does the law Say? Available [here](#).

[106] *A.M. and Others v France* [2016] ECHR (App No. 24587/12).

period was over. As such, **children were not separated from adults while being *de facto* detained in the quarantine zones of the CCAC** and were required to share dormitories with adults, **in violation of European and Greek law.**^[107] Of particular concern are reports that **children were witnesses to violence and ill-treatment in the quarantine zones of the CCAC,**^[108] which is covered in more detail in Section 3.2 of this report.

Accompanied children

For accompanied children, they are dependent on the status of their guardian and as such are detained and/or have their liberty restricted at the same time and with the same intensity as their family member/guardian. At the time of writing accompanied children are *de facto* detained upon arrival to the CCAC and are subject to detention for up to 25 days (See Section 3.3 below).

Unaccompanied children

Whereas official numbers in January 2023 cited that 15 UACs are held in the Samos CCAC,^[109] actors in the CCAC estimate that there are currently over 70 UACs detained in the so-called "safe-zone", suggesting **official numbers under-report the amount of children detained in the CCAC.** When UACs enter the CCAC they are automatically transferred to the so-called "safe-zone" of the CCAC. UACs are only permitted to leave the "safe-zone" for 2 hours of "free time" a day where they can play in Section A of the CCAC only.

Other than i) being taken to the hospital, where they must be accompanied both by a guardian and the police, or ii) attending the informal education NGO Alkezei for classes, **UACs are not allowed to leave the CCAC.** This combination of restriction of liberty to a confined space of the CCAC for 22 hours a day, combined with the general rule that they cannot leave the wider structure of the CCAC has resulted in **UACs expressing that they feel like they are detained in a prison within a prison.**

[107] Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (January 30, 2018), Special report further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017). Available [here](#).

[108] Border Violence Monitoring Network. 2022. Illegal Pushbacks and Border Violence Reports - November 2022. Available [here](#).

[109] Hellenic Ministry of Migration and Asylum. 2023. Ανατολικό Αιγαίο 22.01.23. Available [here](#).

Moreover, UACs are not provided with any written decision as to why they cannot leave the CCAC. As such this places the restriction of their liberty in variance with EU law which requires, in situations that people are detained, that there should be a written decision issued to the applicant, in a language they are reasonably expected to understand, highlighting the reasons, in fact and in law, for their detention.[110]



I Have Rights has consistently raised their concern regarding the detention of UACs in the CCAC including inhuman living conditions, deficiencies in the age and vulnerability assessment procedures, lack of access to asylum including access to a lawyer and lack of access to basic services for UACs in the CCAC. [111] Children in the so-called "safe-zone" are unable to leave the CCAC and as such are *de facto* detained for extended periods, with UACs often staying in the CCAC for on average up to four months. Through conversations with actors that work in the Samos CCAC, I Have Rights has learnt that the detention of UACs has contributed to children's reticence to challenge age assessments which incorrectly determine them to be adults as they fear that appealing means they will remain stuck in the procedure for UACs, which so far has resulted in their detention.

This is hardly surprising when, in addition to being *de facto* detained for extended periods, UACs are left with limited access to essential services.[112] Their access to education is dependent on a NGO that provides informal education as, despite the law giving them the right to enrol at public schools, the RIS refuses to register them at Samos public schools. This can be compared with Commissioner Johansson's promise that CCACs "[...]will allow children to get schooling – essential so that precious years are not wasted".[113]

[110] 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). Article 9(4), ECHR, Article 5 (2).

[111] I Have Rights and Still I Rise. 2022. The Committee of the Rights of the Child Sides with Still I Rise and I HAVE RIGHTS. Available [here](#).

[112] *Ibid*.

[113] Ylva Johansson. 2023. Spring is the best time to prepare for Winter – why I am visiting Lesbos now. Available [here](#).



Football pitch in Section A of the CCAC, which UACs can access for only two hours a day.

UACs access to legal information has also been recently hampered when the RIS revoked the lawyer for PRAKSIS, the child protection actor in the CCAC, access to the "safe-zone", due to issues with the Migration Registry, which has also prevented other essential actors from accessing the CCAC. At the time of writing, the lawyer can only speak with the UACs by phone. In addition, due to the lack of a CCAC doctor and the fact that MSF cannot enter the CCAC, UACs are detained without access to a doctor. Moreover, UACs access to clothing is dependent on NGOs, as CCAC authorities do not have enough clothing to provide. Samos-based organisations Samos Volunteers and Just Action have highlighted that UACs often only have one set of clothing, which is frequently not winter-appropriate with some children attending informal classes in the CCAC wearing only a towel when their one set of clothes is being washed.^[114] As emphasised by I Have Rights and the IRC earlier this year, **"considering the extensive EU-funding involved in establishing the CCAC the rights of the children appear to be worryingly deprioritised"**.^[115]

Conclusion

Despite abolishing the highly criticised 'protective custody' of UACs, the Greek authorities have rebranded and continued policies that effectively detain children within the CCAC. The measures governing the 'safe-zone' amount to Article 5 ECHR deprivation of liberty by their degree and intensity. In these zones, children are further enclosed within the already hostile environment of the

[114] Samos Volunteers and Just Action. 2022. Instagram Post. Available [here](#).

[115] International Rescue Committee and I Have Rights. 2023. 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. Available [here](#).

of the CCAC and limited, for 22 hours a day, from accessing the remainder of the facilities. Without a written order, there is no clear legal basis for this detention or grounds for their detention. For accompanied children, they experience detention to the same extent and alongside their parents. Their automatic detention without individual assessment or the consideration of alternative measures is disproportionate to the aims of authorities. Moreover, there is **growing consensus that the detention of children for reasons related to their or their parent's asylum claim fundamentally conflicts with the best interest of the child.**^[116] **Where there should be a higher threshold for detention of children to be considered proportionate: children in the CCAC are arbitrarily detained.**

The situation for children in the CCAC additionally amounts to a breach of Article 3 ECHR prohibition on torture or inhuman and degrading treatment or punishment. To prevent a breach of Article 3, the reception conditions for children seeking asylum must ensure that they do not create a situation "of stress and anxiety, with particularly traumatic consequences".^[117] Children as a group with "special reception needs" are not able to benefit from the rights and guarantees of the reception conditions framework in this *de facto* detention. Instead of quick and effective recognition in order to ensure access to "a standard of living adequate for the minor's physical, mental, spiritual, moral and social development",^[118] **children are socially isolated and prevented from accessing medical and legal assistance, and education. The further enclosure of children in the "safe-zone" or alongside their parents in the CCAC may have long-lasting effects on their physical and mental health.**

[116] Majcher and Gionco for PICUM. 2022. Immigration Detention and *De Facto* Detention: What does the law Say? Available [here](#).

[117] *Tarakhel v Switzerland* (GC) [2014] ECHR (Application No. 29217/12), para 119.

[118] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast). Article 23.

**STEP
01****MANDATORY QUARANTINE****STEP
02**

IDENTIFICATION

**STEP
03**

PRISON-LIKE STRUCTURE

**STEP
04**

AFTER A NEGATIVE DECISION

**STEP
05**

PRE-REMOVAL DETENTION

3.2 MANDATORY DE FACTO DETENTION IN THE QUARANTINE ZONES

From March 2020 to 25 November 2022, asylum seekers arriving to the Greek hotspots were required to undergo a mandatory quarantine period of five to fifteen days, which could be extended for all in quarantine if any individual member of the quarantined group presented symptoms of COVID-19.[119] This policy continued seven months after the United Nations (UN) High Commissioner for Refugees appealed to states to lift remaining pandemic-related asylum restrictions in May 2022.[120]

On the basis of Joint Ministerial Decision 51236/22,[121] people seeking asylum were tested for COVID-19 and placed in quarantine for a **minimum period of 15 days in 2020 and later 5 days towards the end of 2022**. Upon their arrival to the CCAC people were required to do a COVID-19 test. Regardless of the result, they were required to undergo the minimum quarantine period. After the minimum days, individuals were subjected to a second COVID-19 test: **if one person tested positive in a quarantine group, which was defined as the whole arrival group, their quarantine would continue**. After a minimum additional 5 days, the authorities would check for symptoms. If symptoms regressed, their quarantine finished and people were required to wear a medical mask for another 5 days. If symptoms persisted and there was fever, they remained isolated until symptoms regressed.

[119] Information provided by the Reception and Identification Service, quoted in European Council of Refugees and Exiles Asylum Information Database 'Reception and Identification Procedure: Greece'. 2021. Available [here](#).

[120] UNHCR. 2022. UN High Commissioner for Refugees calls on states to lift remaining pandemic-related asylum restrictions. Available [here](#).

[121] Published in Government Gazette sheet no. 4756/B/09.09.22. See Annex II of the Joint Ministerial Decision on Measures Against The Appearance And Spread Of Coronavirus Covid-19 In The Centers Reception And Identification (C.y.t.), In Closed Controlled Structures (C.e.d.), In Controlled Temporary Accommodation Structures For Asylum Seekers And In The Accommodation Structures Of Third Country Citizens In The Entire Territory; the last renewal was by Joint Ministerial Decision No. Δ1α/Γ.Π.οικ.61055/27-10-2022 (published in Government gazette sheet no 5563/B/27-10-2022).

The length of stay varied, **I Have Rights’s beneficiary data reveals that asylum seekers were detained in the quarantine zones for an average of 12 days, and some up to three weeks.** This is confirmed by media reports, for example an individual who arrived on 27 July 2022 reported that they were held in quarantine for 20 days.[122] During this time I Have Rights would often receive messages from those in quarantine asking for clothing, with people reporting that they were required to remain in the same clothes they had arrived in or had only been given one additional set of clothes, raising concerns about the undignified conditions people were detained in. The supposed concerns for the health of those held in quarantine are immediately contradicted by these standards, but also the immediately decreased concerns for the spread of disease in the overcrowded accommodation in the CCAC after quarantine.[123]

Crucially, and as already highlighted in the previous section, while in the main section of the CCAC, unaccompanied children are separated from the general population, this was not the case in the quarantine zones. **UACs were not identified prior to quarantine, which resulted in them being placed in shared dormitories with adults, in breach of multiple safeguards enshrined in European and Greek law.**[124]

The factual circumstances of the quarantine amounted to *de facto* detention. Yet, the decision to hold people in quarantine was not made according to an individual assessment, neither during initial arrival nor after the minimum days. In contravention of Article 8(2) of the RCD, all new arrivals were subjected to quarantine detention as a group and their quarantine was extended as a group. During quarantine, people were confined to containers with other ‘new arrivals’. **Those in mandatory quarantine were under constant observation by police who worked in shifts throughout the day and night. Despite their enclosure within the heavily securitised quarantine section, those in quarantine were subject to repeated checks throughout the day outside their containers.**[125] Additionally, police entered the containers during the night, and reports suggest that people would be woken up in the night by the police who would order them to quickly exit their container to be counted.

[122] Nektaria Psarakis. 2023. Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛ.ΑΣ στο TPP. Available [here](#).

[123] CCAC resident. 2022. AYS Special from Greece: The Eye –An asylum-seeker’s account on pushbacks and life in Samos Refugee Camp. Available [here](#).

[124] 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). Articles 11, 21, 22 and 23.

[125] Nektaria Psarakis. 2023. Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛ.ΑΣ στο TPP. Available [here](#).

During this time and as implied by the notion of a quarantine, people were unable to leave the quarantine zones of the CCAC, depriving them of their freedom of movement. Thus, according to the RCD definition, those held in the quarantine section of the CCAC were *de facto* detained. Similar to the facts of *Khalifa*,^[126] the degree to which people were indiscriminately detained for inconsistent periods and surveilled further suggests this mandatory quarantine amounted to a deprivation of liberty, to be considered in light of Article 5 of the ECHR.

From the 1st of May 2022, Greece dropped all COVID-19 entry measures for tourists.^[127] Meanwhile, the final renewal for the mandatory quarantine was issued as late as 27 October 2022 for those applying for international protection at the Reception and Identification Centres in Greece.^[128] Public health is cited as a legitimate purpose for detention, within the meaning of Article 8(3) of the Directive, however, only where necessary and proportionate.

The clear distinction made between the arrival of tourists and the arrival of people seeking international protection likely places the practice in conflict with these two principles. If the basis for detention was that it was necessary as a matter of public health, **there is no reason why those seeking international protection posed a greater risk than other groups arriving in Greece.** Yet, all travel restrictions for tourists were dropped in May, including a negative COVID-19 test.^[129]

The deprivation of freedom of movement and the highly-securitised nature of the mandatory quarantine, in so-far as even access to medical treatment was prevented,^[130] indicates that the detention was disproportionate to the aims of preventing the spread of COVID-19. As a consequence, the mandatory quarantine amounts to arbitrary detention or an unlawful deprivation of liberty in breach of Article 5 of the ECHR. In the remainder of this section, the detention must be considered in light of the guarantees and obligations which arise from international and European human rights law.

[126] *Khalifa v Italy* (GC) [2016] ECHR (App No 16483/12).

[127] Lucy Thackray. 2022. Greece to drop all Covid entry restrictions from Sunday. Available [here](#).

[128] Joint Ministerial Decision no. Δ1α/Γ.Π.οικ.61055/27-10-2022 (published in Government gazette sheet no 5563/B/27-10-2022).

[129] Lucy Thackray. 2022. Greece to drop all Covid entry restrictions from Sunday. Available [here](#).

[130] Médecins Sans Frontières. 2022. In Greek Reception Centres, Asylum Seekers are Stranded in prison-like conditions. Available [here](#).

Foremost, the collective detention in a mandatory quarantine of all asylum seekers to Samos may amount to a violation of the principle of non-discrimination according to Article 14 of the ECHR and Article 21 of the Charter of Fundamental Rights. The detention of people seeking international protection was a blanket measure, targeting only asylum seekers, who are a recognised vulnerable group,[131] without any sufficient basis for the differential treatment. The UNHCR outlined key legal considerations in the context of the COVID-19 in March 2020, stating the following:

*Where such restrictions amount to detention, that detention must not be arbitrary or discriminatory, must be in accordance with and authorised by law in accordance with applicable procedural safeguards, for a limited time period and otherwise in line with international standards. **Health concerns do not justify the systematic use of immigration detention against individuals or groups of asylum seekers or refugees.***[132]

Blanket *de facto* detention in the quarantine zones of the CCAC, as addressed above, was arbitrary both due to the irrelevance of the initial COVID-19 test and the comparative measures applicable to arrivals of tourists. The Council of Europe encouraged Member States to pursue COVID-19 measures that are proportionate to the evaluated risk;[133] however, no justification was provided by the authorities as to why a different risk evaluation was seemingly undertaken in relation to those seeking international protection. No 'risk evaluation' for the spread of COVID-19 specific to those seeking international protection was referred to by the Greek authorities in the Joint Ministerial Decision 51236/22.[134] Comparatively, it has been shown that those seeking international protection and restricted to the Greek hotspots are at a greater risk and require greater protection.[135] The blanket *de facto* detention which

[131] *M.S.S. v Belgium and Greece* [2011] ECHR (App No 30696/09), para 251.

[132] UN High Commissioner for Refugees. 2020. Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response. Available [here](#).

[133] Stephanie Cramer Marsal, Christian Ahlund, Robin Wilson. 2020. COVID-19: An analysis of the anti-discrimination, diversity and inclusion dimensions of the Council of Europe member States. Council of Europe. Available [here](#).

[134] Joint Ministerial Decision 51236/22 (published in Government Gazette sheet no. 4756/B/09.09.22).

[135] Refugee Support Aegean. 2021. Refugees unprotected against COVID-19 risks in Greece. Available [here](#).

lacked sufficient procedural safeguards, **without access to a doctor and with reported instances of police violence,[136] certainly did not provide asylum seekers with greater protection.**

As had previously been the case regarding COVID-19 entry restrictions, measures made on the basis of country of origin or most recent country of residence were generally accepted as reasonable discriminatory measures on the basis of public health. However, the blanket detention did not apply to all arrivals from Türkiye, as would be the most recent country of departure for most people seeking international protection on Samos. Rather, the detention was only those arriving to apply for international protection and thus, **likely amounted to discriminatory *de facto* detention in breach of Articles 5 and 14 of the ECHR and Articles 6 and 21 of the CFR.**

Detention of Vulnerable Applicants and those with Special Reception Needs

The immediate and indiscriminate detention of individuals who arrived on Samos prevented the appropriate protection and guarantees afforded to vulnerable applicants and those with special reception needs. In Section 1.3 , we outlined the categories of vulnerable applicants and people with special reception needs, as well as the minimum standards provided for in the RCD and Greek International Protection Act.

Despite these specific categories of 'additional' protection needs, the mandatory quarantine did not sufficiently distinguish individuals for the purpose of ensuring adequate support. The Directive provides that UACs be detained only in exceptional circumstances and that women should be accommodated separately.[137] Whereas the main sections of the CCAC provide different facilities for women and unaccompanied children, the quarantine was not separated. As such, **UACs were not identified prior to quarantine and were detained together with the adult population.** Moreover, there is no evidence that any form of assessment of vulnerabilities or required medical treatment beyond emergency care was undertaken. For example, MSF reported that a person with diabetes was rushed to the Samos hospital from quarantine with a life-threatening condition after his medical condition went unidentified.[138]

[136] Nektaria Psarakis. 2023. Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛ.ΑΣ στο TPP. Available [here](#).

[137] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast). Article 11(3) and Article 11(5).

Greece has a positive obligation to identify survivors of human trafficking, one of the legal categories of vulnerability, and provide protective services.[139] 12% of I Have Rights' beneficiaries are survivors of human trafficking. If this statistic is representative of the wider CCAC population, then in 2022 alone potentially hundreds of survivors of trafficking entered the Samos CCAC. Without any identification occurring, survivors of human trafficking were held in an entirely unsuitable environment. The mandatory quarantine with its prison-like architecture, constant surveillance, and restrictions on free movement, prevents adequate recovery for survivors and risks further traumatising them.[140] **As a blanket measure for all 'new arrivals' on Samos, the mandatory quarantine did not ensure the protection of vulnerable applicants and those with special reception needs, placing the practice in variance with the Reception Conditions Directive.**

Detention of Vulnerable Applicants and those with Special Reception Needs

After leaving quarantine, individuals began informing legal organisations on Samos of instances of police brutality within quarantine. In two joint submissions to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to the Greek Ombudsman, I Have Rights, together with HRLP, asked the bodies to investigate the testimonies of eight asylum seekers who reported being subjected to violence in the CCAC, including forced stripping and beating, beatings in the dark, kicks, punches, slaps, stampings, multiple police officers beating one person at a time and/or in quick succession, insults, taunting and laughing at people while they are being beaten and psychological violence. The following are two instances reported by the Press Project of alleged instances of police violence which were brought to the attention of HRLP who have since began litigation on their behalf and were made public at the end of 2022:

- Y.M. was held in quarantine for 20 days and reported experiencing both verbal and physical assault by multiple police officers. On 27 July, the day of

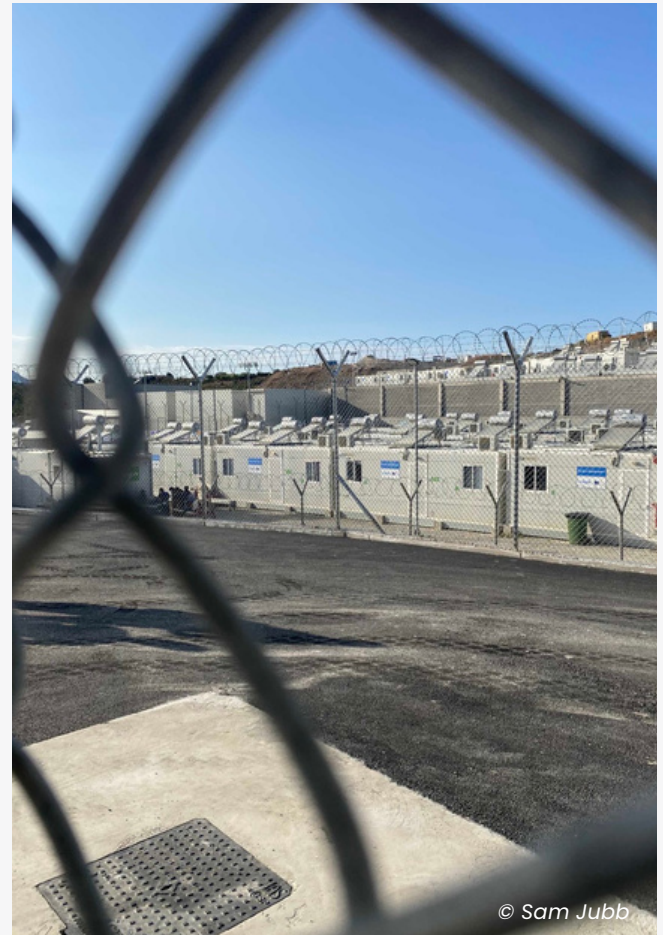
[138] Médecins Sans Frontières. 2022. In Greek reception centers, asylum seekers are stranded in prison-like conditions. Available [here](#).

[139] European Convention on Action against Trafficking in Human Beings (ECAT), Article 10(2); International Protection Act, Article 72(3).

[140] European Convention on Action against Trafficking in Human Beings (ECAT), Article 12, 13; Directive 2011/36/EU, Article 11; Palermo Protocol Article, 6(3) and 6(4).

their arrival, he claims that police officers inflicted serious violence which caused them to suffer serious neck pain. Y.M. reports to have witnessed several instances of violence against others in quarantine. After a census check, two officers entered the container which Y.M. was laying down in. Y.M. claims the officer yelled degrading language at Y.M. whilst the other held them against the wall and hit them several times in the face.

- A.M.Y. is an individual with a visual impairment who was held in the mandatory quarantine and beaten by police officers. He reported that on 24 October 2022 at 23.00, two police officers burst into their container and questioned them regarding their English abilities. They were then slapped several times in the face, once hitting them in the eye and causing them to experience acute pain since. A.M.Y. claims they were later visited by two individuals who introduced themselves as the 'Director of CCAC Samos' and as the 'chief of police'. A.M.Y. claims they apologised to A.M.Y. and brought them to the Samos hospital.[141]



The ECtHR held that for those deprived of their liberty in detention, physical violence which is not 'strictly necessary' by their own conduct, "diminishes human dignity" and is an infringement of their Article 3 rights.[142] H.A. was unable to receive medical treatment until after they had left quarantine, exacerbating their ill-treatment.[143]

[141] Nektaria Psarakis. 2023. 'Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛ.ΑΣ στο TPP. Available [here](#).

[142] *Keenan v United Kingdom* [2001] ECHR (App no 27229/95).

[143] *Preminiy v Russia* [2011] ECHR (App no 44973/04), para 111.

Member States are under an obligation to prevent and investigate instances of ill-treatment by those detained or by the staff of the facilities.[144] Further, the Greek Code of Criminal Procedure requires investigating officers or employees to report criminal acts by officers to the Public Prosecutor without delay (Article 38). The Press Project received reports from **CCAC workers that incidents of brutal violence against refugees are a "common secret" within the Samos CCAC and that the Director had been officially informed of these attacks.**[145] The Director denied that he had approached A.M.A. The Press Project was informed by the **Northern Aegean General Police Directorate** that an administrative investigation had begun.

In addition to the fear of reprisal, the ability to report instances of abuse after quarantine to third parties was significantly curtailed by the further 25-day restriction to the CCAC. As will be further addressed below, once individuals left the quarantine they were subjected to a different form of *de facto* detention.

Conclusion

The mandatory quarantine which individuals 'newly arriving' on Samos were subject to until November 2022 was a form of detention that was **not proportionate to the aims of public health, and therefore in breach of the Reception Conditions Directive and amounting to an unlawful deprivation of liberty (Article 5 ECHR)**. Moreover, the terms of this measure **likely amounted to discrimination**. Whereas those with the economic, political, and social capital to access Greece as a tourist were able to enter without any public health measures, those seeking international protection were all subject to a minimum 5-day detention, which was commonly extended, often leaving people detained for around 2 weeks. As an already vulnerable group, the terms of the detention of asylum seekers likely led to further re-traumatisation. Reports from the quarantine reveal that **little protection was afforded to individuals including children**, despite the additional protection necessary and required by international and European law. As highlighted in the final section, **the mandatory quarantine became an arbitrary space in which people report to have been subjected to dehumanising and degrading treatment by the authorities in violation of Article 3.**

[144] *Osman v United Kingdom* [1998] ECHR (App no 23452/94).

[145] Nektaria Psarakis. 2023. Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛ.ΑΣ στο TPP. Available [here](#).



3.3 DE FACTO DETENTION ON ARRIVAL TO THE CCAC

Every asylum seeker who first enters the main sections of the CCAC is served with an order for "restriction of freedom" for up to 25 days for "identification purposes", resulting in their **blanket de facto detention**. Until November 2022 the RIS determined that identification procedures were completed upon issuance of the "red card"- the asylum applicant's ID. From November 2022 until the time of writing, the RIS considers that the identification procedures are completed earlier, which is after the full registration interview.

Through I Have Right's work monitoring their beneficiaries ability to leave and enter the structure, we have observed the following in practice. Firstly, from September 2021 until April 2022, new arrivals without red cards could leave the CCAC for appointments with lawyers, as long as they requested permission from the RIS the day before. Second, Until November 2022 the authorities strictly prevented newly arrived asylum seekers without a red card from leaving. This meant that many people were prevented from seeking legal assistance prior to their asylum interview as often people were interviewed before receiving their red card. Third, since November 2022, newly arrived asylum seekers, despite not yet being issued with a red card are entitled to leave the CCAC upon completion of the full registration interview. While many of I Have Rights' beneficiaries have been able to leave after this point, others have been prevented from leaving due to the privately-contracted staff of G4S not permitting people to leave.

Finally, for people who are without a red card due to receiving a rejection on their asylum application, in practice they are mostly able to leave the CCAC by using their "Police Note" which acts as an interim identification document. I Have Rights is greatly concerned that the detention of asylum seekers in the CCAC is in practice inconsistently applied, which creates uncertainty for asylum seekers in the CCAC and for this practice to be challenged. Moreover, **the restriction of people for identification purposes and/ or without a red card within the**

CCAC amounts to arbitrary detention, is in contravention with Greece's international obligations and is part of the recent infringement proceedings brought against Greece by the European Commission. This will be considered below.

Legal basis

As outlined previously, the Greek authorities may only detain applicants of international protection as a last resort, on an individual basis and where "less coercive alternative measures cannot be applied effectively".^[146] The RCD provides that applicants of international protection may be detained to:

1. determine or verify their identity;
2. determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, particularly when there is a risk of the applicant absconding;
3. decide on the applicant's right to enter the territory.^[147]

The CCAC has the power to introduce technical measures of control, such as the requirement that individuals present an asylum seekers card.^[148] However, the Decision reaffirmed that the **detention of applicants of international protection must only occur with reason and if it is necessary and proportionate**. The asylum seeker card is a purely administrative measure which has no basis beyond "technical measures of control".^[149] The enforcement of this measure on Samos, however, means that asylum seekers in the CCAC are *de facto* detained and deprived of certain procedural rights. Detention as a limitation on the CFR Article 6 fundamental right to liberty and ECHR Article 5 right to liberty and security of the person, must satisfy a higher proportionality threshold.^[150]

[146] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast). Article 8(2) and Article 50(2) Greek Law 4939/2022.

[147] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast).

[148] General Regulation on the Operation of Closed Inspectorates (Decision No 25.0/118832).

[149] *Ibid.*

[150] *J. N. v Staatssecretaris van Veiligheid en Justitie* [2016] CJEU (Case C-601/15).

For new arrivals, the RIS of the Ministry of Migration and Asylum automatically *de facto* detains every asylum seeker in the main sections of the CCAC "for up to 25 days"[151] or until they are provided with an applicant's card. **Despite not being provided for in law**, until November 2022, the RIS maintained that people were not 'identified' until they were provided with a red card. However, the notion that identification is not confirmed until an asylum applicant receives their card is highly questionable, particularly as every asylum seeker has three interviews with authorities before they are provided with a card, **while many even have their fourth full asylum interview, without the card**. In each of these interviews, the authorities were aware of the identity of the applicants, yet they remained *de facto* detained.

ΑΠΟΦΑΣΙΖΕΙ

τον περιορισμό της ελευθερίας του(ης) (Επώνυμο): [REDACTED] (Όνομα): [REDACTED] του [REDACTED] με αριθμό Φακέλου [REDACTED] και αριθμό Υπόθεσης [REDACTED] υπηκοότητας [REDACTED], από την ημερομηνία εισόδου του στο/στην ΚΥΤ/ΚΕΔ, ήτοι την [REDACTED] μέχρι να ολοκληρωθούν οι νομοθετικά προβλεπόμενες ως ανωτέρω διαδικασίες υποδοχής και ταυτοποίησης και για διάστημα που δεν μπορεί να υπερβαίνει τις 25 ημέρες.

Κατά της παρούσας, ο ανωτέρω μπορεί να προβάλλει αντιρρήσεις ενώπιον του προέδρου ή του υπ' αυτού οριζόμενου πρωτοδίκη του αρμόδιου διοικητικού πρωτοδικείου. Κατά τα λοιπά, για τη διαδικασία των αντιρρήσεων εφαρμόζονται αναλόγως οι διατάξεις των παραγράφων 4 και 5 του άρθρου 76 του Ν.3386/2005 (ΦΕΚ 212/Α'), όπως αντικαταστάθηκαν με το άρθρο 55 του Ν.3900/2010 (ΦΕΚ 213/Α').

Redacted example of the "restriction of freedom" order provided to every asylum seeker that enters the CCAC.

Since the opening of the CCAC, every newly arrived asylum seeker is automatically issued with a "restriction of freedom" order, which applies for up to 25 days. This is in addition to the quarantine period which is detailed in Section 3.2 above. This systematic practice of *de facto* detention contravenes both domestic and EU law. First, this practice is in contradiction with Article 40 of Law 4939/2022, which provides for the detention of third country nationals or stateless persons who have entered the CCAC for five days for identification purposes, which can be extended to up to 25 days, only if factual and legal justifications are given.[152] Secondly, it contradicts the principle that "detention should always be used as a measure of last resort", a principle which has been repeatedly confirmed by the CJEU.[153] In fact, **this practice of detention and Article 40 of Law 4939/2022 itself forms the basis for the European Commissions' recent infringement proceedings against Greece.**

[151] Greek Law 4939/2022, Article 40.

[152] Law 4939/2022, Articles 39(4)(a), 40).

[153] See for example the CJEU's ruling C-72/22 PPU, on 30 June 2022 against Lithuania. Available [here](#).

As the Commission explains in its letter to the Greek government:

*In this regard, Articles 8 and 9 of the Directive [2011/95/EU], in conjunction with Recitals 15 and 20 of that Directive, significantly limit the power of Member States to detain a person [...] **The Commission considers that the provisions of Article 40 of (Greek) Law 4939/2022 (the government's most recent "refugee law", which claims to allow the government to detain people on arrival for at least five days) do not comply with the requirements of Articles 8 and 9 of the Directive.***

*The detention of (asylum) applicants should be implemented in accordance with the basic principle that **a person should not be detained simply because he seeks international protection**, in particular in accordance with the international legal obligations of states –members and Article 31 of the Geneva Convention.*

*Detention of applicants should only be possible **in clearly defined, exceptional circumstances** provided for in this Directive and governed by the principle of necessity and proportionality as regards both the manner and purpose of said detention.*

*Further, Law 4939/2022 **violates or at best incorrectly interprets the Directive in relation to the detention of unaccompanied minors and vulnerable groups.***[154]

In addition, not only does the practice of routinely detaining newly arrived asylum seekers contravene EU law, it is also likely arbitrary as the detention is inappropriate to the aim of identification as asylum seekers are issued an identification document, on their first day of arrival to main sections of the CCAC. On the day that asylum seekers first enter the CCAC (or, from March 2020 to 25 November 2022, the day they were released from the quarantine zone), they are interviewed by the RIS and the police. Immediately following the interview, they are provided with an identification document called "the Police Note", which acts as a secondary ID if an applicant's card is later revoked.

Despite the Police Note being an ID which includes the essential identifying information of every asylum seeker, such as name, nationality, date of birth, language, parents' names and children, **the order for the "restriction of freedom" for "identification purposes" is provided to asylum seekers at the same time that they received the Police Note identification document.**

[154] Koraki. 2023. Illegal discrimination and detention – the EU and the Greek government on new arrivals. Available [here](#).

There are also contradicting views between the GAS and the RIS as to when the identification procedures are completed, with the RIS until November 2022 taking a more restrictive interpretation of when someone is identified (on issuance of the red card), perhaps in an attempt to justify the detention of applicants in the CCAC for longer. The practice of the GAS conducting full asylum interviews without applicants being issued a red card raises serious concern as to the RIS's justification that they could detain every asylum applicant for "identification purposes" until they receive their card. If such a claim is accepted, then the GAS is frequently interviewing asylum seekers before they have been properly identified.



From April 2022 until December 2022, I Have Rights found that on average people were issued a red card after 12 days; however, 6% of beneficiaries did not receive their red card for over 25 days and in these cases, despite the presentation of a police note with a registration date from 25 days preceding, guards routinely refused to allow individuals to exit the CCAC.

Frequently, individuals were invited for their substantive asylum interview before the 25-day restriction had passed and before they had received a red card, depriving them of the right to receive legal advice or counselling.[155]

The effect of such *de facto* detention, whether it be until issuance of the red card or upon completion of the full registration interview is not proportionate to either stated aims or purposes. As a result of this measure, people are deprived of access to legal advice and counsel as well as community and psycho-social services.

[155] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast). Article 12(3).



STEP
01

MANDATORY QUARANTINE

STEP
02

IDENTIFICATION

STEP
03

PRISON-LIKE STRUCTURE

STEP
04

AFTER A NEGATIVE DECISION

STEP
05

PRE-REMOVAL DETENTION

People in the process of filing an appeal or subsequent application

Those with a negative asylum decision and have not yet filed an appeal or received an admissibility decision on the subsequent application, are at risk of being *de facto* detained. Greek Law 4939/2022 provides the legal basis for the withdrawal and return of an asylum seekers' red card after a negative decision. While legislation does not provide for people's detention until they are reissued with an asylum seekers card, due to the RIS' statements that the red card is a requirement for entry and exit of the structure, there is a risk that this group of people may be detained.

In practice I Have Rights has monitored that this group faces limited issues with entering and exiting the structure, as they can use their Police Note to do so. Despite this, and due to the inconsistent approach in both the policy of the authorities, which has changed three times in the last year alone for newly arrived asylum seekers' exit of the structure, and inconsistent day-to-day practice of the G4S private security guards, I Have Rights is concerned that this group's ability to leave the structure could at any point be curtailed.

Conclusion

In conclusion, **over the last year the RIS has *de facto* detained every newly arrived asylum seeker in the main sections of the CCAC.** As is the practice at the time of writing, the RIS' detention of asylum seekers until completion of their full registration interview is likely arbitrary as people are issued with an identification document on the first day that they enter the main sections of the CCAC, and as such the effect of the detention is not proportionate to either stated aims or purposes, **thus making the current practice unlawful.** Finally, the routine *de facto* detention of every newly arrived asylum seeker is in **contravention with Greece's international obligations**, including Article 5 ECHR and Articles 8 and 9 of the EU Directive 2011/95/EU, and **is the basis of current EU infringement proceedings against Greece.**

**STEP
01**

MANDATORY QUARANTINE

**STEP
02**

IDENTIFICATION

**STEP
03**

PRISON-LIKE STRUCTURE

**STEP
04**

AFTER A NEGATIVE DECISION

**STEP
05**

PRE-REMOVAL DETENTION

3.4 LOOKING FORWARD: THE SAMOS CCAC PRE-REMOVAL DETENTION CENTRE

There are currently seven PRDCs operating in Greece. An additional PRDC has been constructed in the complex of the Samos CCAC but is not yet operational. When opened, it will be run by the Hellenic Police and used to detain persons who have been issued with a return order.[156] This is of concern as on the islands, the Hellenic Police systematically issues deportation decisions to asylum seekers upon arrival,[157] contrary to the EU asylum *acquis* and in unlawful derogation from the Return Directive.

Like other PRDCs in Greece, people will be liable to be held in the Samos PRDC for up to 18 months or until such a time that they are returned to their country of origin or released.[158] Depriving individuals of their liberty, especially considering the decline in formal deportations from Greece since 2018, raises **concerns regarding the reasonable prospect of removal and proportionality of detention, and placing the practice in variance with well-established EU standards, under which detention shall cease immediately where there is no reasonable prospect of removal.**[159]

The Greek authorities have been repeatedly criticised for unlawfully detaining third country nationals in PRDCs, likely constituting a systematic violation of Article 5 ECHR.[160] Of particular concern is the authorities' over use of public order and risk of absconding grounds. For example, research by the Thessaloniki-based NGO, Mobile Info Team, indicates that despite EU and Greek law designating that asylum seekers cannot be detained for the sole reason

[156] Pursuant to Greek Law 4825/2021, Article 21.

[157] Equal Rights Beyond Borders, HIAS Greece and Refugee Support Aegean. 2022. The State or Border Procedures on the Greek Islands. Available [here](#).

[158] Greek Law 3907/11, Article 30.

[159] 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. Article 15(4).

[160] The Greek Council for Refugees. 2022. Grounds for Detention. Available [here](#); Equal Rights Beyond Borders, HIAS Greece and Refugee Support Aegean. 2022. The State or Border Procedures on the Greek Islands. Available [here](#).

that they are an applicant of international protection, asylum seekers are arbitrarily detained in PRDCs for extended periods of time, on ambiguous and excessively applied public order grounds.[161] This is echoed by the Greek Ombudsman who has repeatedly criticised the Greek authorities for issuing detention orders without prior examination of whether the "applicant's individual conduct represents a genuine, present and sufficiently serious threat", [162] which is necessary for detention to be in line with the case law of the Council of State and the CJEU.[163]



Map of the CCAC, Section C is the PRDC.

[161] Mobile Info Team. 2023. "Prison for Papers": Last resort measures as Standard Procedure. Available [here](#).

[162] The Greek Council for Refugees. 2022. Grounds for Detention. Available [here](#).

[163] *J. N. v Staatssecretaris van Veiligheid en Justitie* [2016] CJEU (Case C-601/15), paras 65-67. See e.g. Council of State, Decisions 427/2009, 1127/2009 and 2414/2008, which highlight that a mere reference to a criminal conviction does not suffice for the determination of a threat to national security or public order.

In regards to risk of absconding, national law provides a non-exhaustive criteria which may be used to determine a risk of absconding. As the criteria is non-exhaustive, it is not in line with EU law that requires detention grounds "must be defined by law".^[164] The lack of objective and exhaustive criteria, results in rejected applicants who have been issued a return order being automatically placed in detention without an individual assessment of their situation due to the "risk of absconding". Despite Samos being a hotspot island, which by design deprives persons of their liberty to leave the island, **I Have Rights fears that a large number of people would be automatically detained for prolonged periods despite the low risk of absconding.**

As evidenced by Equal Rights Beyond Borders, HIAS Greece and Refugee Support Aegean,^[165] asylum applicants who are subject to the EU-Türkiye Deal deal as well as applicants submitting a subsequent asylum application are systematically detained in PRDCs on the basis that their applications are "not genuine".^[166]

Given the number of applicants subject to the EU-Türkiye Deal on Samos, I Have Rights is concerned that a large number of third country nationals in need of international protection would be detained in the PRDCs in Samos upon receiving a decision that they should return to Türkiye. Considering the continued suspension of formal deportations to Türkiye since March 2020, this raises serious concerns regarding the reasonable prospect of removal and proportionality of detention.

Additionally, despite Greek law requiring PRDCs to ensure "the safe custody of irregular migrants",^[167] mounting evidence,^[168] including conclusions from

[164] 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, Article 3(7); see also *mutandis mutandis* CJEU, C-528/15, *Al Chodor*, 15 March 2017, para. 47, "Article 2 (n), in conjunction with Article 28 (2) of the Dublin III Regulation, has the meaning that it requires the Member States to lay down, by means of a binding provision of general application, the objective criteria on the basis of which it is assumed that there is a risk of absconding of the applicant being subjected to a transfer procedure. The absence of such a provision renders Article 28 (2) of that regulation inapplicable".

[165] Equal Rights Beyond Borders, HIAS Greece and Refugee Support Aegean. 2022. The State or Border Procedures on the Greek Islands. Available [here](#).

[166] International Protection Act (Law 4636//2019), Article 46(3).

[167] Presidential Decree no. 106/2020 as amended by Presidential Decree no. 77/2022, Articles 18 and 19.

[168] The Border Violence Monitoring Network. 2023. Dark Rooms, Degrading Treatment and Denial: The Use of Violence in Greece's Pre-removal Detention Centres. Available [here](#).

the Council of Europe's Committee for the Prevention of Torture,[169] suggests that the conditions in PRDCs across Greece are inhumane and likely in variance with Article 3 ECHR.[170] **I Have Rights is concerned that the PRDC on Samos will be no different to those across Greece, risking people being unlawfully detained and at risk of inhuman treatment.**

It is therefore likely, in violation of Article 5 and 3 ECHR respectively, that those detained in Samos PRDC will be subjected to arbitrary detention and inhuman treatment. It is also possible to assume that having a *de jure* detention facility operational within the CCAC **will have a negative impact on applicants residing in the general population of the CCAC**, who, already living in a prison-like structure, and having themselves been subjected to forms of restriction and/or deprivation of liberty, **will be accommodated within the same complex as a detention centre**. It is plausible that applicants will fear that they themselves will be detained within the PRDC, perhaps themselves having been released from the PRDC into the general population. As such, its opening will likely further **contribute to the prison-like infrastructure of the CCAC**.

[169]Committee for the Prevention of Torture. 2018. Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Greece from 10 to 19 April 2018. Available [here](#).

[170] Human Rights Watch. 2018. Greece: Inhumane Conditions at Land Border. Available [here](#).

SECTION 4: CONCLUSION AND RECOMMENDATIONS

In this report we have highlighted how the nature and conditions of the CCAC constitute (i) systemic breaches of Article 5 ECHR; and (ii) systemic inhumane and degrading treatment under Article 3 ECHR. We demonstrated that the CCAC is a site of *de facto* and arbitrary detention and this facilitates an evasion of the implementation of legal safeguards, leaving those within the CCAC in a particularly stark situation in which they are both subject to unlawful deprivation of their liberty; and without access to safeguards. The description throughout this report of the 'prison-like' infrastructure of the CCAC stands in direct contradiction to the EU's stated aim of bringing 'dignified reception' at the European external borders.[171]

The EU asylum *acquis* establishes a right to asylum and sets freedom of movement for people seeking international protection as a starting point. Detention should only be used as a measure of last resort and upon an individual assessment.[172] This report shows that far-reaching and cumulative measures affecting people when they arrive on Samos effectively and presumptively produces the CCAC as a site for *de facto* detention. Without sufficient legal basis, people are arbitrarily detained and deprived of their liberty in breach of Article 5 ECHR, Article 6 CFR and Article 9 ICCPR. This is exacerbated by the fact that even where provided for in Greek Law 4939/2022, the stated basis for detention "violates or at best incorrectly interprets the [Reception Conditions] Directive in relation to the detention of unaccompanied minors and vulnerable groups".[173] For a finding of an unlawful deprivation of liberty, the concrete situation should be taken together with the type, duration, effects, and manner of a measure on the mobility of people seeking international protection. Whilst there are specific instances of a measure drastically curtailing the liberties of people within the CCAC, **this report emphasises that it is the cumulative context which produces the CCAC as a space of arbitrary detention for people seeking international protection.** Additionally, the RIS of the Samos CCAC pursue deprivation of liberty over alternative measures more suitable for individuals who have experienced trauma and that are proportional to the aims they claim.

[171] Directorate-General for Migration and Home Affairs. 2021. Opening of the first new reception centre on Samos. EU Migration and Home Affairs. Available [here](#).

[172] Article 8(2). Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast).

[173] Koraki. 2023. Illegal discrimination and detention – the EU and the Greek government on new arrivals. Available [here](#).

There is consensus at both the international and European level that applicant's of international protection as a population should receive special protections. Nevertheless, the CCAC is a space that worsens and reinforces the precarity of people on the move, likely amounting to inhuman and degrading treatment or punishment (Article 3 ECHR). Bound up with the fundamental right and interpretive principle of 'human dignity', potential breaches of Article 3 should be assessed by their cumulative effects, duration, and the objectives and stringency of the detention regime. Similar to the potential breaches of Article 5, the conditions cumulatively make the CCAC a site for inhuman and degrading treatment and potential re-traumatisation. This report does not consider that any form of detention of people seeking international protection within the CCAC is permissible, but it is also clear that the authorities attempts to describe the space as something other than detention, seeks to circumvent the additional obligations and safeguards which arise from labelling it as such.

Far from being a humane response to people seeking safety, the Samos CCAC is a highly securitised structure where people's right to liberty is severely restricted. Whether it be through *de facto* detention in the quarantine and "safe" zones of the CCAC; the *de facto* detention of every newly arrived asylum seeker to the CCAC; or the general restrictions of liberty people must undergo, upon arrival to the Samos CCAC, people on the move's rights are undermined.

Recommendations

We call on the **Greek authorities** to:

1. Close the CCACs across Greece, which result in a systematic deprivation of liberty and which are structurally inhuman. Instead, we call on the authorities to accommodate asylum seekers and refugees in dignified community-based accommodation schemes, which respect their freedom of liberty and from where they can access services and support.
2. Ensure that the deprivation of liberty or use of detention for people on the move is only used as a measure of last resort, and in line with international and European human rights standards.
3. End the deprivation of liberty of asylum seeking children in CCACs.
4. Abandon plans to open the Samos PRDC.

We call on the **European Commission** to:

1. Cease funding CCACs in Greece which result in a systematic deprivation of liberty and which are structurally inhuman.
2. Support Greece in accommodating asylum seekers and refugees in dignified community-based accommodation schemes, which respect their freedom of liberty and from where they can access services and support.
3. To continue with infringement procedures against Greece on the basis of the incorrect transposition of the EU Return Directive into Greek law, particularly the systematic detention of asylum seekers in CCACs.