

DRC submission to the EU Ombudsman Strategic inquiry OI/3/2022/MHZ into how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece.

Dear Ms Hickey,

The Danish Refugee Council (DRC) appreciates that the European Ombudsman has launched a strategic inquiry into how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece ('Multi-Purpose Reception and Identification Centres').

DRC would like to stress the importance of this inquiry as the European Commission both has to lead by example, when implementing EU's asylum acquis, as well as to ensure that EU Member States are respecting and effectively upholding and enforcing the EU asylum acquis, including the EU Charter for Fundamental Rights, as the guardian of the EU treaties.

DRC further appreciates being one of the six organisations having been consulted for this strategic inquiry.

After some initial clarifications on DRC's role in Greece and the difference between MPRICs and the hosting sites on the mainland, you can find DRC's responses on the outlined questions below. Please note that DRC's submission focuses on applicants for international protection's access to the asylum procedure and legal aid of persons that are hosted in RICs of the mainland, as DRC has not been providing humanitarian assistance in the MPRICs on the islands.

DRC hopes that the provided information is of use and remains available for any further information that you might require.

Kind regards,

DRC

1. Initial clarification

DRC would like to start its submission outlining the difference and similarities between Multi-Purpose Reception and Identification Centres on the islands and the hosting sites on the mainland, as in recent years DRC is only providing humanitarian assistance in the latter.

a. Multi-Purpose Reception and Identification Centres and the hosting sites in the mainland

The Task Force Migration Management (TFMM) was established in September 2020, after the fires in the Moria reception centre on the Greek island of Lesbos based on an agreement between Greece and the European Commission.¹

The TFMM's site describes the procedure and the methodology for the construction of new reception facilities on the Greek islands.² The Memorandum of Understanding between the European Commission, the European Asylum Support Office, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency, on the one hand, and the Government of the Hellenic Republic, on the other hand³, reflects the

¹ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/task-force-migration-management_en

² https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/task-force-migration-management/construction-new-reception-centres_en

³ C(2020) 8657 final published on 2.12.2020, available at: https://home-affairs.ec.europa.eu/system/files/2020-12/03122020_memorandum_of_understanding_en.pdf

agreement of the parties on a Joint Pilot for the establishment and operation of a new Multi-Purpose Reception and Identification Centre (MPRIC) on Lesbos. Similarly, the webpage of the European Commission's Directorate General of Migration and Home Affairs presents the new MPRICs on Samos, Kos and Leros.⁴

However, the MPRICs are not defined as a legal term in the national legislation that provides for the organigram of the Ministry of Migration and Asylum, in Greece. Articles 11 to 14 of the Presidential Decree 77/2022⁵ provide for three types of reception facilities in Greece, a) the Reception and Identification Centers (RICs) that are established in the mainland (Fylakio, Diavata and Malakasa), b) the Closed Controlled Centers (that are established on the islands of Northern Aegean, Lesbos, Chios, Samos, Kos and Leros) and c) the controlled facilities of temporary accommodation that are established in Southern and Northern Greece.⁶ According to article 11 of Law 4939/2022, that describes the operation of above facilities, the main distinction between (A) the RICs and the Closed Controlled Centers and (B) the Controlled Facilities of Temporary Accommodation is that the first (A) serve for the implementation of the procedures of registration, of identification of the personal details of the persons hosted in them, of medical control, of identification of vulnerable persons, and of provision of information, especially concerning all the forms of international or any other protection and the return procedures, while (B) Controlled Facilities of Temporary Accommodation provide accommodation and reception conditions. In all the above types of facilities beneficiaries hosted are: asylum applicants, third country nationals under the return or the deportation procedures, third country nationals that are under the return procedure but are entitled to continue living in Greece for humanitarian reasons.

b. Operation of the Task Force Migration Management in Greece

The Memorandum of Understanding (mentioned above) provides for a dedicated Task Force for the establishment and operation of a new MPRIC on Lesbos with the Greek authorities. The Taskforce is set up within the Commission's Directorate-General for Migration and Home Affairs (DG HOME) and chaired by DG HOME at the level of Deputy-Director-General.⁷ While the TFMM was created for implementing the Joint Pilot for the establishment and operation of a new MPRIC on Lesbos, it is now in practice involved with the asylum procedures that are implemented in the Greek territory as a whole.⁸

The head of the TFMM was present at the event organized by the Ministry of Migration and Asylum for the three years of the Task Force's operation focused on *"the solidarity and support and on the willingness of the EU to support people to protect the borders and to create new employment opportunities"* without limiting its role on the Lesbos joint pilot project.⁹ Speaking about the funding that is available to support Greece she mentioned all aspects of the asylum system in Greece, including but not limited to the reception conditions in the mainland, to the reduction of backlog of asylum cases etc.¹⁰ Furthermore, the Task Force's mandate is expanded and as of 16.12.2022 it covers South, West, North and Central Europe (as reflected in the organization chart).¹¹

c. Role of DRC in Greece

DRC operated on the islands of Eastern Aegean from 2015 until 2019. However, since 2016 DRC operates on the mainland through implementing EU funded projects (through ECHO from 2016-2018 and through DG Home from 2019 until 2022, through being an implementing partner of IOM). Since 2016, DRC, among others, provides legal assistance to beneficiaries that are hosted in the reception centers established by the Greek Government on the mainland. It is within this context that DRC, follows up the implementation of EU and national asylum law on

⁴ https://home-affairs.ec.europa.eu/new-multi-purpose-reception-and-identification-centres-samos-kos-and-leros_en

⁵ Available in Greek, at: <https://migration.gov.gr/wp-content/uploads/2022/11/%CE%A0%CE%9477-2022.pdf>

⁶ For a list of the controlled facilities of temporary accommodation see articles 13 and 14 of Law 4939/2022.

⁷ See, page 3 of the document C(2020) 8657 final (above footnote 4).

⁸ Staff of the TFMM was present in the meeting held between the Secretary General for the Reception of Asylum Seekers and 16 NGOs that raised issues on the access to asylum in Greece, see the press release of the Ministry of Migration and Asylum at: <https://migration.gov.gr/en/synantisi-yma-me-mko/>.

⁹ See the press release of the Ministry of Migration and Asylum (in Greek) at: <https://migration.gov.gr/en/mitarakis-eimaste-proetoimasmeno-gia-kathe-proklisi-poy-tha-prokypsei-sto-metanasteytiko/>

¹⁰ See at: <https://www.youtube.com/watch?v=MIAqK96r7rE&t=9s> (minutes 19:11 to 23:00 of the video)

¹¹ Available at: https://commission.europa.eu/system/files/2022-12/organisation-chart_en.pdf

the mainland. The access to the asylum procedure and the access to legal aid are provided and regulated by EU asylum law and transposed into the National Legislation by Law 4939/2022 (articles 69 and 79).¹²

Considering the experience of DRC, and its operational experience on the mainland, this submission will focus on information gathered from DRC's operations in the RIC in Malakasa and Diavata and in the Controlled Facilities of Temporary Accommodation that are located on the mainland, specifically in Lagkadikia, Alexandreia and Veroia.

2. What impact, if any, has your organisation identified on the rights of migrants as a result of their stays in the (MPRICS¹³ and) RICs?

In September 2022, the Ministry of Migration and Asylum introduced a platform¹⁴ **to facilitate the pre-registration of asylum claims of persons who are on the mainland** who had never undergone reception and identification procedures at two reception and identification centers (RICs) that operate in Diavata and Malakasa, both located in the mainland (Northern and Southern Greece respectively). This is the only system that provides potential asylum seekers access to the procedure in the mainland. Both reception and asylum authorities operate in the above RICs and by using a single registration form the reception and identification authorities register the personal details of the applicants and the reasons the applicant fled her/his country of origin. However, besides the technical problems of accessing the questionnaire of the platform that led to the impossibility to register the claim, its operation is not fully compliant with the EU Procedures Directive. For instance:

- non-compliance with the obligation to register the asylum claim within three days after the filing of the application or in case the full registration of the claim is not possible to proceed with the two steps registration - partial registration and then full registration after 15 days;
- non-compliance with the obligation of the state to provide the asylum seeker's card after the partial registration which in turn restricts the rights of asylum seekers to shelter, food etc.;
- non-compliance with the obligation of the state to provide information to the applicants on the asylum procedure, including but not limited to the type of cases that are examined in the above centers and their right to consult a lawyer.

The relevant problems of compliance with the Asylum Procedures Directive were flagged by a letter addressed by the members of the Legal Aid Working Group to the Secretary General for the Reception of Asylum Seekers of the Ministry of Migration and Asylum, who called for a meeting for further discussions on the problems observed. Some applicants for international protection, only managed via the platform to schedule an appointment six months or even up to one year after lodging their request. The Secretary General for the Reception of Asylum Seekers provided statistics on the number of the applications the platform received since September 2022, on the nationalities of the applicants but also on the percentage of people who effectively are present on their appointment. The statistics reflected that until 3.1.22 36,430 persons pre-registered their claims and were given appointments to present themselves at the above RICs to lodge their asylum claim. The largest group of the persons who applied through the platform were nationals of Pakistan, followed by nationals of India, Egypt, Georgia, Bangladesh, Nepal, Albania, Syria, Afghanistan, Iran, Iraq, Turkey, Palestine, Indonesia and Eritrea. Until 3.11.2022 2,626 appointments were scheduled in Diavata and 2,746 in Malakasa and only 92 applicants showed up to lodge their asylum application. This means that the non-show up rate was as high as 98,6% in Diavata and 98% in Malakasa, while 1,050 applicants lodged their applications without appointment. The Ministry of Migration and Asylum recognized the shortcomings of the new system established for the access to the asylum procedure of the persons who are in the mainland, especially the high rate of absent applicants is an obstacle to persons in need of international protection to lodge their own asylum claims in a timely way. It was suggested to reschedule the appointments that were given by the platform so that persons in need of

¹² Available in Greek, at: <https://migration.gov.gr/wp-content/uploads/2022/07/%CE%A6%CE%95%CE%9A-%CE%91-111-2022.pdf>

¹³ Note: as outlined above, DRC can only provide evidence of the sites where the organisation has an operational presence. DRC's submission therefore addresses the situation in the RICs.

¹⁴ <https://apps.migration.gov.gr/international-protection-registration?lang=en>

international protection can lodge their asylum claims in a timely way. The relevant procedure was completed in December 2022.

Further in the RICs, applicants for international protection are deprived of their personal liberty. Through the management of cases by the legal aid actors and the visits of UNHCR it is observed¹⁵ that:

- Non-vulnerable applicants with claims examined on admissibility grounds (safe country of origin) leave Malakasa after the issuance of the decision by the asylum service (meaning that they are deprived of their personal liberty until the issuance of the decision of the asylum authorities);
- Vulnerable applicants with claims examined on admissibility grounds (safe country of origin) leave Nea Malakasa after the registration of their asylum claim and their personal asylum interview is conducted by asylum offices;
- Non vulnerable applicants with claims examined under the normal/regular procedure (admissibility grounds are not applicable) leave Malakasa after the registration of their asylum claim and their personal asylum interview is conducted by asylum offices.

Equally problematic is the access to the asylum procedure for the vulnerable applicants who are in the mainland. While it is not mentioned on the website of the platform, it seems that vulnerable applicants are allowed to lodge their asylum applications when they show up at the above RICs without an appointment scheduled by the platform. The statistics provided by the Ministry of Migration and Asylum at the meeting held with the NGOs reflect that there are persons whose claims are registered when they show up at the above RICs; however, the rules and practices for the immediate lodging of asylum claims at the RICs of Diavata and Malakasa without previous appointment through the online registration are not known. In some cases, persons showing up in Diavata without any legal support are immediately accepted to lodge their application, while in Malakasa they are advised either to register through the online platform and then contact the site management or to contact the site management by email asking for the scheduling of an appointment. Considering that the online platform does not provide for the prioritization of vulnerable applicants, it was observed that vulnerable applicants who show up at the RIC of Malakasa were immediately registered without having previously submitted an online application through the platform.

Therefore, while, the platform aims at ensuring access to the asylum procedure **of persons being in the mainland** through their request to be subjected to reception and identification procedures in the above RICs of Diavata and Malakasa, it does not fulfill all the requirements of the Procedures Directive concerning the access of asylum seekers to the rights that are guaranteed by the EU Asylum Law, especially not the right of access to the asylum procedure and it is not compliant with the basic principle of EU law concerning the transparency of the administrative action.

3. Could you please comment on what access to legal assistance is available to migrants staying in the (MPRICS¹⁶ and) RICs?

Article 76 of Law 4939/2022 provides for the right of asylum seekers to legal counselling by lawyers of their choice. The legal counselling includes support for the registration/lodging of the asylum application, support during the asylum interview, including the drafting of a memo that documents the claims of asylum seekers and that is filed by asylum authorities, the lodging of an appeal before the Appeals Committees (by a lawyer of their choice or by a lawyer of the free legal aid system that is implemented by the Asylum Service), the drafting of a memo to support the appeal before the Committees and the representation before the Courts when the asylum claim is rejected by the administrative authorities. The legal support for cases brought before the Courts includes the draft of the relevant legal document and the support of the case at the hearing. The representation before

¹⁵ Due to a lack of transparency, the rules applicable to deprivation of personal liberty are not publicly accessible, and therefore all information is obtained via the legal aid actors and UNHCR's visits.

¹⁶ Note: as outlined above, DRC can only provide evidence of the sites where the organisation has an operational presence. DRC's submission therefore addresses the situation in the RICs.

the asylum authorities and the Courts is documented by an authorization that is signed by the applicants before a public authority that certifies their signature.

The access of applicants to legal assistance in the MPRICs is extremely problematic because of the new access control system, namely YPERION. The system is applicable to all persons entering and working in the reception facilities operating in Greece under the Ministry of Migration and Asylum. This system is applicable to beneficiaries hosted in the reception facilities, to the staff working in them, to staff of international organizations that provide services to the beneficiaries, as well as to lawyers who want to meet with their applicants. The following part of this submission will firstly outline how the new access control system operates, secondly the obstacles to the entry of the lawyers, and finally will provide an overview of the impact on the right to legal assistance that is experienced by migrants staying in the reception facilities.

Article 5 of the Presidential Decree 77/2022 provides that the mandate of the Unit of Logistics and Standards of the IT and Communications Infrastructure Directorate is to support the access control system in the issuance or the cancellation of entry cards that are used to control the entry of NGO staff to all the services of the Ministry. The YPERION control system collects fingerprints of people who have submitted a request for international protection and who are residing in the sites. Asylum seekers have their benefits (e.g. food, clothing, supplies, etc), as well as their movements between the centres and the accommodation facilities tracked. The Ministry of Migration and Asylum issues individual cards for staff of NGOs that are registered with the Ministry. Lawyers working with NGOs under a job contract (mandated lawyers) can use their professional ID card to enter the Closed Controlled Centers, in accordance with a legal opinion of the Athens Bar Association that supports that they have a special status as provided by the Code of Greek Lawyers. They are exempted from the registration with the Ministry of Migration and Asylum.

The manual¹⁷ of the Ministry of Migration and Asylum for the implementation of YPERION, that sets out the entry-exit procedures at Closed Controlled Centres, provides for the special procedure that is applicable to the lawyers who want to enter the Closed Controlled Centers to meet with the applicants who are in need of legal support. The relevant procedures, that provide for the “visitor” card to be used by the lawyers are compliant with the above Legal Opinion of the Athens Bar Association. But, the above manual provides for strict rules concerning the access of the lawyers to the sites, including, for example, the requirement to contact by email the site manager to request permission to enter the site. The Head of the Directorate of RICs and of the Closed Controlled Centers of the Ministry of Migration and Asylum supports that lawyers do not have to get registered with the Ministry of Migration and Asylum. No prior permission of the Ministry of Migration and Asylum is required for their entry in the sites to meet with the clients. It has however been observed both at the Closed Controlled Centers on the Islands but also at the RIC of Malakasa (which does not fall in the scope of the above manual for the implementation of the YPERION system as it mentions that it is applicable at the Closed Controlled Centers of the islands) that the site managers are asking the lawyers to present a written authorization signed by their clients to allow them to enter the sites. This practice, which is not described in the above manual, is not compliant with the notion of “representation” as defined in the Greek legal jurisdiction that foresees that the relevant mandate can be provided orally or in written. In this context, the relevant Legal Opinion of the Athens Bar Association requested by the members of the Legal Aid Working Group clarifies that the requirement of a written authorization, when the lawyer has not yet met with the client, deprives him of the access to legal support and counselling and violates the relevant right.

Because of the obstacles to the entry of lawyers into the Closed Controlled Centers and the RIC of Malakasa (described above), asylum seekers who managed to get an appointment to lodge their asylum application do not have unhindered access to their lawyers. It was observed that the site manager of Malakasa does not answer to the emails of lawyers requesting to enter the site to meet with their clients (even though the lawyers have complied with the rules of the YPERION manual). The site manager further claims that the lawyers are not allowed to enter the site when they have not received a response to their request to enter the site. In another case the site manager of the Ritsona Controlled Facility of Temporary Accommodation did not allow the lawyer to meet with his clients outside the hours he indicated the lawyer could meet with them. Furthermore, the site manager of the Closed Controlled Center of Samos would not allow the lawyer to enter the site requesting for her registration with the Ministry of Migration and Asylum (as if the lawyer is staff of the NGO, disregarding the special legal status of lawyers) and was asking for a written authorization to be presented as proof of the

¹⁷ Note that this manual is not publicly available, nor shared officially with NGOs.

representation of the applicants in order to allow the entry of the lawyer in the site. In addition, the rule of the prior request for entry in the site filed by the site manager by email, is a serious obstacle to the access of asylum seekers to their lawyers especially when the asylum authorities invite applicants for the asylum interview the day after; in these cases the lawyers cannot comply with the rule of the prior request for entry in the site, thus leaving their clients without legal support.

The above considerations reflect the serious obstacles to the access of asylum applicants to legal aid that is due to:

- Lack of transparency in the administrative action (the manual for the implementation of the YPERION system for the access of the lawyers at all the types of reception facilities is not public nor the Ministry of Migration and Asylum has published the rules that are applicable for the access of the lawyers at all types of reception facilities). While the non-public manual is applicable at the Closed Controlled Centers of the islands, it has been observed that it is also applicable at the RIC of Malakasa.
- The entry rules for the lawyers to have access to the applicants hosted in the closed controlled centers of the islands and at the RIC of Malakasa are not implemented in a uniform way. While the Ministry of Migration and Asylum acknowledges that lawyers should not register with the Ministry to enter the Closed Controlled Centers, the site managers locally request the registration of the lawyers to allow them to enter the reception facility and to meet with the applicants.
- The rule of the Ministry of Migration and Asylum that lawyers should request prior permission to enter the reception facilities disregards the roles and responsibilities and the professional status of lawyers when they provide their services, especially in the cases where the need of the applicants to meet with them is not foreseeable and therefore, there is no time to ask for such prior permission.

4. Has your organisation come into contact with the activities of the Commission's Task Force on migration management? If yes in which context?

No.

5. Please set out any other matter you consider relevant for the Ombudsman's inquiry.

As DRC Greece is not operationally present on the islands, we have no further information to submit. We remain nevertheless available to provide further information on matters relevant to the sites on the mainland, where we are providing humanitarian assistance, including legal aid.