

Summary of Points

EIN online briefing to the Committee of Ministers on 11th September 2020

The following recommendations were presented at the briefing by:

- 1) Arpi Avetisyan, ILGA-Europe, on the Identoba and others v Georgia case
- 2) Adriana Tidona, Amnesty International, and Elli Kriona-Sarantis, HIAS Greece, on the M.S.S. and Rahimi groups of cases v Greece.

Identoba and others v Georgia

With a view of adequately addressing general measures under the Identoba case, EMC, WISG and ILGA-Europe submit the following recommendations:

- Together with civil society actors, the State should establish measures necessary to enable the safe and peaceful gatherings of LGBTQI activists and take preventive measures to deter violence, hatred and discriminatory attitudes and behaviour;
- Georgian authorities should properly investigate violence and incitement of violence against LGBTQI people directed from the ultra-conservative violent groups in Georgia. Accordingly, the State should develop effective preventive measures and counter rhetoric of violent ultraconservative groups;
- Georgian authorities should establish a hate crime investigation unit within the law enforcement system in order to strengthen the investigation/prosecution/prevention of hate crimes based on SOGIE and should work towards the elaboration of the effective preventive policies against hate crimes/incidents by close cooperation with other state institutions;
- Georgia should work towards elaboration of victim-based approach by strengthening its services, including social workers, psychologists, shelter services and others; Georgia should ensure the availability of high quality, timely and reliable disaggregated unified statistics in regards to hate crimes that shall enclose data of the Ministry of Internal Affairs, Prosecutors Office of Georgia and General Courts in a way that the processing of the single case was visible.

Conclusion

Government of Georgia has made significant and important steps to fight against homo/transphobic hate crimes. However, it is not accompanied with the systemic approach, as the right to LGBTQI group to enjoy their right to freedom of assembly and expression is not properly protected; There are profound gaps at the policy level, as the significant progress was not achieved regarding the organization of pride marches/assemblies after 2012, contrary to Moldova for example, where important changes were made towards the implementation of general measures in the case of GENDERDOC-M v. MOLDOVA delivered by the European Court of Human Rights in 2012.

M.S.S. and Rahimi groups of cases v Greece

Recommendations by Amnesty International

Amnesty International remains deeply concerned that asylum-seekers continue to face significant risks in Greece, both with regard to the material reception conditions that prevail across the facilities on the Aegean islands, particularly for unaccompanied minors and other people in vulnerable situations, This, and the significant deficiencies in the procedural safeguards

afforded to applicants throughout international protections procedures, as a result of recent legislative changes, clearly show that the shortcomings identified by the Court in the judgments under examination have not been addressed in a meaningful or effective manner. Significant obstacles to asylum-seekers' enjoyment of economic and social rights also remain, for instance in terms of access to healthcare for those who are not able to register their claims. The supervision of the execution of this group of cases under enhanced procedure, and a strong decision and resolve from the Committee of Ministers to address these issues, are required to put an end to the continuous failures and ongoing violations against asylum-seekers, refugees and migrants.

RECOMMENDATIONS

Amnesty International considers that to avoid similar violations as those found by the Court in *M.S.S. and Rahimi groups v. Greece*, the following measures, indicated under each chapter above, should be taken by Greece:

- 1. On living conditions of asylum-seekers in reception and identification facilities on the Aegean islands and challenges in relation to access to healthcare**
 - Taking urgent steps to improve the living conditions of people in facilities across Greece, particularly those on the overcrowded facilities on the Greek islands, including by: increasing efforts to transfer them to safer accommodation on mainland Greece; improving the quality of water, sanitation and hygiene services in islands facilities; and stepping up efforts to protect residents' safety.
 - Withdrawing the decision to extend movement restrictions in all reception facilities across Greece as a measure to control the spread of Covid-19 and ensure that restrictions on movement implemented in response to Covid-19 are applied in a manner consistent with international human rights law and standards.

- 2. On reduction of substantive and procedural safeguards for asylum-seekers in international protection procedures in Greece as a result of the reform of asylum and migration law in November 2019 and May 2020**
 - Ensuring the provision of adequate procedural safeguards to people seeking asylum, in line with European and international standards, particularly with reference to those in border and accelerated procedures, and to those in appeals procedures.

- 3. On the challenges faced by minors, including the substandard and unsafe living conditions they experience in the reception facilities in the Aegean islands, and the placement of unaccompanied minors in so-called 'protective custody'**
 - Ending the detention of minors both in law and in practice, including the detention of children in police stations and other facilities under "protective" custody.
 - Significantly increasing the space available for unaccompanied children in long-term shelters and flats, to meet their actual needs.
 - Improving safeguards for unaccompanied children in asylum procedures, including by removing the possibility for the accelerated processing of their claims.

- 4. On the detrimental reforms in asylum-related detention and arbitrary detention in the context of the temporary suspension of asylum in Greece (1 March 2020 – 1 April 2020)**
 - Conducting prompt, impartial and effective investigations into the allegations of mistreatment of asylum-seekers and migrants in detention, such as those raised in the context of detention in the port facilities of Kos during the suspension of asylum.
 - Publishing the report by the CoE CPT following its rapid reaction visit of March 2020, shortly after it is communicated to the Greek authorities.

AMNESTY INTERNATIONAL RECOMMENDS THAT THE COMMITTEE OF MINISTERS REQUESTS THE FOLLOWING CLARIFICATIONS FROM GREECE:

- What safeguards are the Greek authorities considering implementing to ensure that all procedures related to the proposed ‘closed-controlled’ centres comply with European and international standards on the right to liberty and the right to freedom of movement of asylum seekers and migrants?
- What steps have been taken to investigate acts of violence against refugees, journalists, NGO workers and others?
- What are the Greek authorities’ plans to ensure that access to healthcare in the public system is guaranteed in compliance with Article 33 of Law 4368/2016?
- What measures have been taken to ensure the protection of asylum-seekers living in camps on the mainland and islands during the COVID-19 pandemic?
- What steps have the Greek authorities taken to address the issues affecting access to legal assistance and representation of asylum-seekers in Greece, particularly those at the appeal stage?
- What are the Greek government’s detailed plans to “end the practice of detaining unaccompanied minors and transfer them without delay to a (semi) open establishment specialised for juveniles”, as per the June 2019 decision of the Committee of Ministers in the groups of cases under consideration?
- To what extent have the relevant immediate measures indicated by the European Committee of Social Rights in Complaint No. 173/2018, discussed above, been implemented?
- What steps have been taken to investigate the human rights violations against people on the move in February-March 2020, including the arbitrary detention of asylum-seekers and migrants during Greece’s temporary suspension of asylum?
- Did people falling under the temporary suspension of asylum have access to international protection procedures?

Recommendations by HIAS Greece

In view of the aforementioned findings, HIAS Greece calls on the Committee of Ministers to recommend that the Greek Government adopt the following measures, in relation to asylum seekers **at Lesvos Hotspot:**

Asylum procedure and absence of an effective remedy against expulsion

- Ensure chronological and vulnerability-based prioritisation in the processing of asylum applications.
- Ensure the medical screening and vulnerability assessment is completed prior to the conduct of the asylum interview.
- Ensure that applicants are provided with reasonable time to seek legal assistance and prepare for their interview.
- Guarantee access to free legal aid and suspend the serving of negative decisions until such access can be provided.
- Extend the deadlines for the submission of an appeal to ensure access to free legal aid and to the complete administrative file of the appellants, including the audio recording of the asylum interview.
- Ensure decisions on asylum applications, both on admissibility and on merits, contain individualised reasoning in fact and law, with reference to the personal circumstances of the applicants.
- Serve asylum decisions on the day of the renewal of the asylum applicant’s card to ensure the actual notification of the decision to the applicants.

- Remove unnecessary and excessive administrative requirements at the appeal stage, such as the obligation to provide an attestation of “personal appearance” to the Appeals Authority for the appeal not to be rejected as manifestly unfounded.
- End the punitive application of the provisions on “implicit withdrawal” of the asylum applications, as they disproportionately deprive asylum seekers of an “effective remedy against expulsion”.
- Ensure the registration and processing of the asylum applications of all March 2020 arrivals and provide redress for the human rights violations committed during the period of suspension of the access to asylum.
- Ensure that individuals alleging to have been tortured are referred to an independent medical examination free of charge and that their asylum applications are not rejected without first obtaining an expert report on the matter.
- Ensure asylum caseworkers and interpreters are sensitized on issues relating to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) and that they receive specialised training on the appropriate assessment of SOGIESC asylum claims.

Living conditions of asylum seekers

- End the policy of the geographical restrictions of asylum seekers on the Greek island “hotspots” and ensure that they are promptly transferred to dignified reception conditions in mainland Greece, as also urged by the Greek National Commission for Human Rights (http://www.nchr.gr/images/English_Site/PROSYFGES/GNCHR%20Announcement%20on%20Asylum%20Developments.pdf) and the Commissioner for Human Rights of the Council of Europe (<https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>). The measure of geographical restriction inevitably leads to overpopulation in the camps and, therefore, to abhorrent and unsafe reception conditions, which are exacerbated by the already limited resources of the Greek islands.
- Ensure dignified accommodation for asylum seekers and recognized refugees, including by increasing the current accommodation capacity.
- Recognize LGBTIQ+ individuals as vulnerable persons in need of special reception conditions.
- Ensure conditions of quarantine are “fully respectful of the dignity, human rights and fundamental freedoms of persons”, in accordance with the 19 March 2020 “Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19)” of the World Health Organization ([https://www.who.int/publications/i/item/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-\(covid-19\)](https://www.who.int/publications/i/item/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)))
- Ensure asylum seekers’ and refugees’ unhindered access to social rights and benefits.

Conditions of detention, including provision of healthcare services

- Ensure the permanent presence of at least one doctor and one nurse at Lesvos PRDC at all times, including during weekends and holidays, in accordance with the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) of the Council of Europe, following its visit to Greece in April 2018.
- Abstain from detaining third country nationals in Lesvos PRDC until the authorities are able to ensure conditions of detention, including access to healthcare, which comply with the standards set forth in the European Convention on Human Rights.
- Abolish the detention of third country nationals in police stations which remain “totally inadequate for stays exceeding 24 hours”, as confirmed by CPT during its 2018 visit.
- Ensure that judges examine the conditions of detention in the context of a legal remedy against detention.

Reception and protection of unaccompanied minors

- Ensure that asylum seekers who claim that they are minors are registered and treated as such. If doubts remain, ensure that all such applicants are promptly referred to age assessment procedures and that they benefit from the principle of presumption of minority until the completion of said procedures. To ensure transparency and accountability in this process, provide that the registration and identification interviews at the level of RIC be audio-recorded.
- Ensure that age assessment procedures are carried out in a prompt and child-friendly manner, and in compliance with the applicable legal framework.
- Ensure that documents furnished by asylum seekers claiming to be minors are considered to be genuine unless there is proof to the contrary, in accordance with the *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families* and *No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*.
- Ensure the immediate placement of unaccompanied minors in suitable accommodation.