HumanRights360 is a civil society organization aiming to protect and empower the rights of all, with no discrimination but with special focus on the most disadvantaged and vulnerable populations. Through its implementation of (a) a legal and psychosocial aid project in the European land borders of Evros aiming on supporting UASCs entering Greece and (b) a community based alternatives to detention project ([https://www.humanrights360.org/#](https://www.humanrights360.org/)), aiming to shift the narrative on the administrative detention through evidence based case management, HunanRights360 has identified some of the gaps and challenges of the Greek context regarding immigration detention of children and the malfunctions on providing an adequate reception and care for them.

The current situation in Greece shows that a significant number of unaccompanied refugee minors are under *“protective custody”* status, 1637 children in RICs and 331 children under *“protective custody”*, awaiting to get integrated into sheltering structures. According to the latest statistics from the National Center for Social Solidarity (EKKA), 1,687 total number of places in long term accommodation (Shelters/SIL), 719 total number of places in temporary accommodation (Safe zones/Emergency hotels) places are currently available in shelter facilities for children, while the total number of unaccompanied refugee minors in Greece is 5.252[[1]](#footnote-1).

In particular, within the Reception and Identification Centre (RIC) of Fylakio-Orestiada which, among others, is the only close RIC in Greece and therefore exempted from the March 2016 EU-Turkey Deal, the restriction of freedom of movement should be applied only in an extreme need, always in the best interest of children and for a maximum of twenty-five (25) days, which may be extended for a period of twenty (20) days*[[2]](#footnote-2)*. After the completion of the reception and identification procedures, the newly arrived persons should be either released, or referred to pre-removal detention facilities, such as the pre-removal detention center of Orestiada (PRDC), where they can be further detained in view of removal. However, UASC’s may remain in the RIC of Fylakio-Orestiada for much more than 45 days, under the pretext of *“protective custody”*, while awaiting to get integrated into sheltering structures, through the National Center for Social Solidarity (EKKA), which is the responsible authority for the placement, rendering their restriction of movement a *“de facto detention measure”*. As per today, 160 unaccompanied and separated minors are under “*protective custody”* in the RIC by the public prosecutor’s order, as their temporary custodian, awaiting to get integrated into sheltering structures, while the average time of their transportation to a suitable shelter on the mainland is 6-8 months (!), in total contravention of the provisions of law[[3]](#footnote-3).

Within the RIC there are 4 controlled wings (A-D), with 6 containers and 1 more controlled wing with 7 containers (E), but unfortunately the minors are not held separately from adults, they have limited access to educational and recreational activities and although they are allowed to use their mobile phones to communicate with their relatives there is no wifi available and the internet access is really poor. The National Public Health Organization (NPHO), to ensure the coverage of the minors’ and adults’ population medical needs within the RIC, had appointed 3 psychologists, 3 social workers, 2 nurses, 2 first responders, 1 doctor, 1 midwife and 1 coordinator, who have everyday presence at the premises of the RIC and are prepared to face any future COVID-19 incident.

Due to the suspension of the asylum applications, applied by a legislative act, for individuals who entered Greece illegally and were arrested by the Greek authorities after the 1st of March 2020 and the direct and strict measures taken against COVID-19 by the Greek government till 15th of May 2020, the RIC which is the only close reception center in Greece, does not accept newly arrived people within the premises until further notice, putting in more risk these population’s rights, regarding asylum procedures and detention time limits. In total, during March 2020 146 individuals, 10 of whom were minors, were exceptionally recorded in the RIC in an effort of decongesting the border guards and as soon as they entered the premises, they were put into a 14 days quarantine. This last period, the RIC faces the postponement of the childrens’ transportation to shelter facilities on the mainland, forcing unaccompanied and separated children to remain under *“protective custody”* for more than 6-8 months, in a close reception center that was not set up or functioned at first place for this reason.

Taking into consideration the provision of the Greek law[[4]](#footnote-4) pertaining the *“protective custody”* of persons, it is easy to understand the violation of this provision, which is referred to obsolete social conditions, establishes a precautionary administrative measure and not a criminal-repressive measure, concerning the restriction of personal liberty. It is certainly a malady for the one who suffers it and undoubtedly affects the legal rights of personal liberty, even at its core. Legal experts have from the very early noticed the unconstitutionality of the provision, due to its opposition to Article 5 para. 4 of the Greek Constitution, but also its incompatibility with Article 5 of the ECHR. This occurs because the person who is under *“protective custody”*, on the one hand, cannot exercise the right to be heard before the measure is imposed on him/her, and on the other hand is deprived of legal remedy for challenging the adverse administrative measure against him/her, which is subject to no maximum time limit [[5]](#footnote-5).

In that context and due to lack of accommodation facilities or transit facilities for minors, the “*de facto detention measure”* of UASC’s is systematically imposed and may be prolonged for even more than eight months, while awaiting their integration into sheltering structures. In most of the cases, *“protective custody”* takes place in border guard units, in pre-removal facilities or in Reception and Identification Centers, even in police station cells on the mainland, where the duration of the latter may reach up to three months, under real detention’s conditions, in unacceptable and degrading for minors conditions[[6]](#footnote-6).

It is undoubtful that the stay of unaccompanied children in detention facilities, “constitutes a flagrant violation of their rights and poses a direct risk to their smooth unobstructed development”, while in the police station cells minors are sometimes detained in cells of 25 s.m. in poor hygiene and inhuman conditions, on mattresses without sheets covering almost the whole of the floor area and often in shared cells with adults, who may be accused of crimes related to the penal code. Furthermore, minors in most of these cases are unable to communicate regularly with their family members because they don’t have access to mobile phones, while they are not provided with basic medical care.[[7]](#footnote-7)

Despite the fact that unaccompanied or separated children “shall be kept only in an extreme need, always in their best interest, ...if it is proved that alternative and less restrictive measures cannot be applied… and every effort must be made to remove the detention and refer to accommodation centers suitable for minors and never in penitentiaries”,[[8]](#footnote-8) detention is a rule applied in practice and minors are subject to unfavourable conditions of deprivation of liberty. Moreover, no assessment of the best interests of the child takes place before or during detention, in contravention of the Convention on the Rights of the Child, while Greece has already been convicted by the ECtHR’s regarding the detention of children under the pretext of *“protective custody”* (violation of Article 3, Article 5 and Article 13).

Furthermore, the administrative detention of Third country nationals (TCN), including families and children, (both TCNs and stateless persons) is provided also by law for persons under return procedures (either to the country of origin or in the country in which they can be returned-third safe country context), who do not carry valid legal documents for their residence in Greece. However, national legislation, in line with European Directives, clearly provides for the imposition of the measure of administrative detention only as a last resort and always if other less restrictive measures cannot be considered (alternatively). As alternative measures, the law[[9]](#footnote-9) provides indicatively the regular appearance before authorities, financial bail, submission of documents or the obligation to stay in a certain place. Specifically, regarding the persons who are under return procedures, the Greek legislation[[10]](#footnote-10) which incorporates the relevant European Directive, provides that the measure of detention is imposed only if other adequate and less restrictive measures cannot be applied effectively in this particular case, because a) there is a risk of absconding or b) the third-country national avoids or hinders the preparation of the return process or c) for reasons of national security, while the maximum time of detentions limit is set at 18 months. However, it is worth noting to mention a worrying development, with a new amendment to the law which is currently in the consultation stage, it is proposed that the detention of third country nationals under return procedures be the rule and that alternatives be applied only exceptionally, which is a clear violation of the relevant European Directive.

During the last year we have witnessed an increase in the detention, and we have identified a lack of an individual assessment to the persons under detention. At the same time other provisions of law regarding prior individual assessment and the obligation of the authorities to consider alternatives before the imposition of detention, as well as the possibility of detaining unaccompanied minors and families, are included in the Law. However, in practice alternatives to detention are not examined in a systematic way in the vast majority of the cases, while administrative detention is implemented without prior individualized assessment and without taking into consideration the vulnerabilities and specific needs of each individual, in contravention of the international, European and national legislation**.** In addition, detention facilities are overcrowded, and the detention conditions are most of the times inappropriate (inadequate access to basic services, poor provision of medical and psychosocial services) or even completely unsuitable, while many persons remain in Police Stations for long periods (even for months) under very challenging conditions (no yarding, no access to basic services). In addition, many third country nationals, including families with minors, are being detained for long periods, although there is no reasonable prospect of being returned for various reasons (return is impossible, consular authorities do not cooperate, economical obstacles etc). In such cases, following the exhaustion of the time limits for detention (without being returned) they are becoming «foreign nationals without legal documentation» in the risk to be detained again. Another significant aspect is the rapidly increasing number of the population that is becoming undocumented with no reasonable prospect of removal further increasing. On top of that, many cases of persons becoming undocumented are identified as extremely vulnerablepopulation (e.g single mother with minor’s former domestic violence victim etc) with limited supporting social network completely unable to ensure their welfare, as well as access food banks for fear of arrest.

In light of the above, coordinated actions should be implemented from all actors at the field, both state and civil society & international organizations. Thus, the creation of new and adequate accommodation infrastructures, facilitating and assuring an immediate transportation of the children to such suitable for them shelters, would be for the best interest of these children. The framework for the protection of unaccompanied and separated minors is probably the one with the greatest gaps that need to be amended in favor of their best interest, both in legal and logistical infrastructures terms. Psychosocial, legal and material support to children, trying to create human conditions that lead to less damage to the aggravating conditions of detention, must also be an everyday goal. The immediate introduction of a legal remedy with the characteristics required by Article 13 of the ECHR, which will resolve by amicable settlement at the national level disputes arising out of human rights violations, would be another solution. This legal weapon would automatically reduce the number of convictions for Greece, but also the amount of money that Greece pays as fair satisfaction. It would also drastically reduce the number of pending appeals before the ECtHR and to fully comply, but also to harmonize the action of the legislative, administrative and judicial bodies of the State with what is provided in the ECHR and in the case law of the ECtHR[[11]](#footnote-11).

In parallel, civil society organizations in close coordination with municipalities and police authorities should facilitate the further implementation of alternatives to detention in a community-based approach. In that context, HumanRights360, in an effort to promote the regular use of alternatives by the authorities, aiming at changing the narrative on detention and the use of alternatives to detention measures and simultaneously at reducing immigration detention in persons in which there is no reasonable prospect of removal and are at the risk of being in detention or are already under detention, has recently started the implementation of a pilot project in order to promote engagement-based alternatives to detention in the municipalities through individualized assessment and case management and advocacy in order to use the evidence to shift the narrative of the administrative detention and further implement alternatives to detention.

1. Situation Update: Unaccompanied Children (UAC) in Greece 31 March 2020, EKKA, <http://www.ekka.org.gr/images/%CE%A3%CE%A4%CE%91%CE%A4%CE%99%CE%A3%CE%A4%CE%99%CE%9A%CE%91_2020/EKKA%20Dashboard%2031-3-2020.pdf> [↑](#footnote-ref-1)
2. According to Law 4375/2016 as amended and in force. [↑](#footnote-ref-2)
3. Article 48 of Law 4636/2019 (Article 11 of Directive 2013/33 / EU). [↑](#footnote-ref-3)
4. Article 118 of the Presidential Decree 141/1991 [↑](#footnote-ref-4)
5. "Thoughts on the protection custody of persons under Article 118 of Presidential Decree 141/1991" (Defense Legal Magazine / 1993 / pp.1041-1045) [↑](#footnote-ref-5)
6. Detention of Vulnerable Applicants, author GCR, Greece, <https://www.asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/detention-vulnerable> [↑](#footnote-ref-6)
7. Unacceptable conditions for the detention of unaccompanied minors in Northern Greece, Athens, 31 July 2017, Deputy Ombudsman for Children’s Rights of the Independent Authority, <https://www.synigoros.gr/?i=childrens-rights.en.news.446301> [↑](#footnote-ref-7)
8. Article 48 of Law 4636/2019 (Article 11 of Directive 2013/33 / EU) [↑](#footnote-ref-8)
9. Art. 22 par 3 L. 3907/2011 [↑](#footnote-ref-9)
10. Αrt. 30 L. 3907/2011 in combination with art. 76 L. 3386/2005 [↑](#footnote-ref-10)
11. Α recent proposal by the President of the Legal Council of the Greek State [↑](#footnote-ref-11)