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MATERIAL HOUSING CONDITIONS AND ACCESS TO HEALTHCARE OF ASYLUM SEEKERS IN GREECE AND ITALY

EUROPEAN CONVENTION OF HUMAN RIGHTS ARTICLE 3 ASSESSMENT

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Glossary

Migrant – While there is not a universally accepted definition of a migrant under international law, the United Nations International Organization for Migration classifies it as an "umbrella term" for all individuals who move away from their usual country of residence. This movement can take place within the borders of the same country or across international borders. Furthermore, it can be caused by various reasons which is why the term migrant encompasses other, legally recognized categories such as refugees and asylum seekers.[1]

Asylum Seeker – An individual who is "seeking international protection" from a state and whose asylum claim has not been finalized. This means that such an individual may or may not become a refugee.[2]

Refugee – The definition of a refugee was set in the 1951 Refugee convention and it entails an individual who "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[3]

[1] 'Key Migration Terms', (2020) International Organization for Migration, https://www.iom.int/key-migration-terms#Refugee-1951-Convention
2 Ibid
[3] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1

Abstract

The mass migration across the Mediterranean reached its peak in 2015 when over one million individuals reached the European shores and, as frontier states, Italy and Greece were the countries of first asylum for most new arrivals. Even though this unprecedented influx of individuals created a severe political, logistical, humanitarian and economic challenge for Italy and Greece, as state parties to the European Convention on Human Rights, they are obliged to respect human dignity and refrain, regardless of the circumstances, from subjecting individuals to any form of degrading treatment. This paper examined material housing conditions and access to healthcare afforded to asylum seekers in Italy and on the Greek Aegean islands. These findings were assessed in the light of standards set by the jurisprudence of the European Court of Human Rights on Article 3 of the European Convention which prohibits any form of torture, inhuman or degrading treatment and punishment. The research suggest that while it is plausible to argue that the material housing conditions and the healthcare of asylum seekers in Greece violates their absolute right not to be subjected to degrading treatment, the same cannot be said for Italy as the treatment does not reach the needed levels of severity to be considered degrading.

Introduction

The phenomena of migration and asylum seekers paired with the ideas of human rights and state obligations offers a plethora of controversial and dynamic topics and debates. Furthermore, it offers a fertile ground for clashes of key notions such as human dignity, equality, sovereignty and security. As these clashes are unavoidable in efforts to protect human rights of all peoples, finding a balance between the above outlined concepts is a crucial part of every international human rights instrument. Regardless of this, state parties to the European Convention on Human Rights (ECHR, the Convention) are legally obliged to treat all individuals in a way that respects their dignity and does not subject them to degrading treatment of any kind. This is codified as an absolute right in Article 3 of the Convention.

The substance of Article 3 and what kind of state obligations does it imply has been questioned in many different contexts with the Mediterranean migration crisis as a recent, prominent and an ongoing challenge. Therefore, this research focuses on examining the meaning of ill-treatment within Article 3 of the ECHR in the context of reception conditions afforded to asylum seekers. More specifically, it examines the material housing conditions and access to healthcare of asylum seekers in Italy and on the Greek Aegean islands.

First, by examining the caselaw of the European Court of Human Rights (ECtHR, the Court) on torture, inhuman and degrading treatment and punishment, the paper develops a working legal framework. Second, through data, reports of non-governmental organizations, the UN and the UNHCR and testimonies of asylum seekers and aid workers, it addresses the most relevant dimensions of material housing conditions and the healthcare systems available to asylum seekers. Third, it discusses relevant findings in context of the developed working legal framework. Lastly, the paper concludes that, the assessment of the two chosen indicators against standards extrapolated from the Court's rulings indicates that the conditions on the

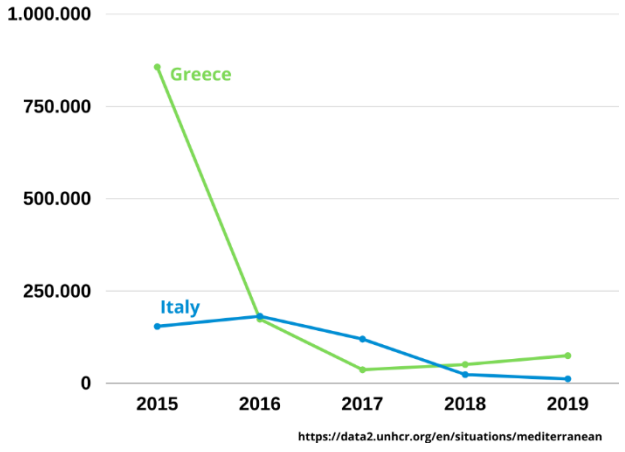
Aegean islands could plausible be labeled as degrading treatment and therefore a violation of Article 3 of the Convention. However, the same cannot be said for the Italian case study as the evidence indicates that the conditions do not amount to the level of severity needed to be labeled as degrading treatment.

Chapter 1 - Mediterranean Migration Crisis

Migration across the Mediterranean Sea with Europe as the end location is not a new phenomenon. However, the rate of movement skyrocketed in the 2010s and we started witnessing an unprecedented number of people embarking on this dangerous journey. The rapid increase of new migrants is evident in the fact that in 2013 there were 60,000 recorded crossings while in 2014 that number reached 219,000.[4] Furthermore, the highest number of new arrivals was recorded in 2015 with approximately 1,032,408 registered individuals.[5] The Pew Research Center statistics indicates that the 2015 recorded number of arrivals is the highest one seen in Europe since 1985 and that it accounts for one-tenth of all recorded migration to the continent in the last 30 years.[6]

Greece and Italy

Figure 1 New arrivals - Italy and Greece 2015-2019



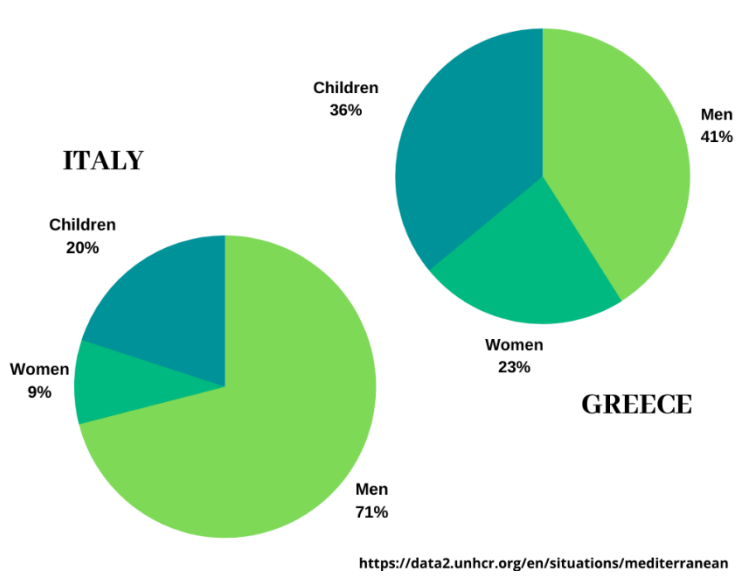
As already noted, the peak of the Mediterranean crossings took place in 2015 and the data gathered and published by the UNHCR shows that the numbers have been decreasing steadily over the years. Figure 1. illustrates the year by year numbers and the decreasing trend of

4 Judit Sunderland, "The Mediterranean Migration Crisis: Why People Flee, What Should EU Do", (2015) Human Rights Watch, pg 1
5 "Operational Portal" (Situation Mediterranean Situation) <https://data2.unhcr.org/en/situations/mediterranean> accessed April 8, 2020
6 Phillip Connor, "Number of Refugees to Europe Surges to Record 1.3 Million in 2015" (2016), Pew Research Center, pg 6

arrivals in Greece and Italy respectively. It is important to note that while a significant decrease has been recorded since 2015, tens of thousands of crossings still take place every year.

Furthermore, Figure 2 shows the demographic breakdown of the new arrivals for 2019. While it is not surprising to learn that the majority of asylum seekers are men, the number of children compared to the number of women in both Italy and Greece is surprising.

Figure 2 Demographic breakdown of new arrivals (Italy and Greece 2019)



Besides this, it is important to note that both Greece and Italy have had distinctive experiences with handling a mass influx of migrants and some of the most relevant particularities of each context need to be acknowledged. This will enable two things. First it will ensure a better contextual understanding of the case studies and second it will facilitate designation of the spatial and temporal scope of the analysis.

When it comes to the Greek experience, the highly scrutinized agreement between the European Union and Turkey signed on March 18, 2016 must be addressed. In theory, the deal is meant to end the business model of human smugglers, create controlled but safe alternative paths of migration, protect external European borders from possible security threats and tackle the issue of migration crisis that has burdened the continent.[7] As per the agreement, all irregular

7 "EU-Turkey Statement, 18 March 2016" (2016), Consilium Europa https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement

migrants were to be returned to Turkey in exchange for six billion euros of assistance meant to ease the burden of hosting such large number of asylum seekers.[8]

Furthermore, all new arrivals and those already situated on the Aegean islands are subjected to a geographic restriction which denies them access to the mainland until their asylum claim has been processed.[9] However, the Greek system has been notoriously slow in processing asylum claims and constant arrivals further exacerbate the problem.[10] Therefore, individuals are stuck in the so-called hotspots[11] waiting to log their application for an extended period. This has resulted in what Amnesty has labeled as "stockpiling of refugees on the Greek islands."[12]

Precisely because a large number of asylum seekers in Greece are unable to reach the mainland at their own will is the reason the scope of this examination will be limited to the reception centers located on the Aegean Islands. Furthermore, due to the its far-reaching consequences, the signing of the EU-Turkey agreement in March 2016, will serve as the beginning date of analysis.

The reality of the Italian case study is significantly different. Unlike in Greece, the hotspot centers have maintained their initial purpose of facilities meant for reception and identification of new arrivals. These centers are a part of an elaborate national reception system with different stages and types of accommodation for asylum seekers and refugees.

8 Ibid
9 Marianna Karakoluaki, "EU-Turkey Deal Two Years After: The Burden On Refugees In Greece／Open Migration' (2020), Open Migration https://openmigration.org/en/analyses/eu-turkey-deal-the-'burden-on-refugees-in-greece/
10 Rene Wildangel, "Willfull Blindness: How The EU Should Revise Its Refugee Deal With Turkey" (2020) ECFR https://www.ecfr.eu/article/commentary_wilful_blindness_how_the_eu_should_revise_its_refugee_deal_with
11 Identification facilities created in order to register and fingerprint new arrivals
12 "Refugees Trapped In Greece Need A Plan That Works" (2020), Amnesty International https://www.amnesty.org/en/latest/campaigns/2017/03/the-real-deal

The reception system can be divided into first-line and second-line reception facilities. As already stated, all new sea arrivals are received and registered at a shore hotspot, the so-called CPSA. These individuals then move to the first line reception accommodation consisting of CARA facilities and the supplemental CAS facilities. Both of these are envisioned to serve as short term housing enabling asylum seekers and refugees to complete adequate administrative procedures and then move on to the second-line accommodation SPRAR[13].

However, the Decree Law 113/2018 significantly changed the functioning and therefore the makeup of the accommodation system. Most significantly, the 2018 *Salvini decree*[14] reformed the second line reception centers, now called SIPROIMI, which are only available to established beneficiaries of international protection and unaccompanied minors. All other asylum seekers are accommodated in CAS, originally created as emergency centers.[15] While the decentralized nature of the CAS system hinders access to an exact total number of individuals housed in the system, the 2019 Borderline-Europe report states that 75-90% of all migrants in Italy are accommodated in CAS facilities.[16] Therefore, this examination will focus on material conditions and healthcare services provided in CARA and CAS facilities as the predominant mode of housing of asylum seekers in Italy.

As frontier states of the European continent, both Italy and Greece have faced an unprecedented influx of migrants in the last decade. Reception, accommodation and services provided for the newly arrived migrants differ between the two and the political dynamics of each state have affected the reality of the lived experiences on the ground. However, what cannot be forgotten is that both Greece and Italy are member states of the Council of Europe

13 Swiss Refugee Council, "Reception Conditions in Italy, updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees in Italy" (2020) OSAR, pg 16
14 Legal Decree 113/2018, 4 October 2018
15 Swiss Refugee Council Report, pg 16
16 European Council on Refugees and Exiles, "Italy: Report on Effects of the 'Security Decree' on Migrants and Refugees in Sicily" (2020)

and have ratified the European Convention on Human Rights. This means that they are obliged to uphold certain standards of human rights dictated by the Convention and the caselaw of the European Court of Human Rights. Asylum seeker's fundamental right must be protected, and they must be treated in a human and dignified manner. The following section will further explore the meaning of such treatment within Article 3 of the Convention and the existing case law of the Court.

Chapter 2 – European Convention of Human Rights Article 3 Caselaw

Article 3 of the European Convention on Human Rights states that "*No one shall be subjected to torture or to inhuman and degrading treatment or punishment.".*[17] This provision should always be read in conjecture with Article 15 (2), which positions Article 3 as an absolute right and prohibits derogation from the same, "except in respect of deaths resulting from lawful acts of war".[18] Violation of Article 3 most frequently takes places in contexts of extradition, expulsion and detention.

Furthermore, the Convention itself does not directly define what constitutes torture, inhuman and degrading treatment or punishment. That is why we must turn to the caselaw of the ECtHR in order to clarify the meanings of these terms, their applicability and how they interact with each other. One of the important dynamics within Article 3 is the element of gradation and a hierarchy of forms of ill-treatment. This is established through the *Greek a*nd the *Tyer* cases where the Court states that "all torture must be inhuman and degrading treatment" while not all "degrading treatment and punishment must amount to the level described as inhuman."[19] Therefore, we can extrapolate that degrading treatment and punishment correspond to the lowest level of gravity of the three-tiered approach while torture corresponds to the highest.

17 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 3
18 Ibid, Article 15(2)
19 Yutaka Arai-Yokoi, "Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment Under Article 3 ECHR", (2003), Netherlands Quarterly of Human Rights, Vol. 21/3, 385-421, pg. 387-388

In addition to this, Figure 3. outlines the specific distinctions between the three tiers of ill treatment made by the Court. As evident, with degrading treatment, additional weight has been placed on the psychological and subjective elements of the act.

Figure 3. European Court of Human Rights on categories of ill-treatment

Torture	✓ "deliberate inhuman treatment causing very serious and cruel suffering"[20] ✓ Consideration of the level of severity (which must amount to the highest one), intentional/preparative elements and the status of the perpetrator (both state and non-state actors included)[21]
Inhuman treatment	✓ "premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering"[22]
Degrading treatment	✓ "treatment is considered to be 'degrading' when it humiliates or debases an individual, 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."[23]

20 Ireland vs United Kingdom, Judgement of 17 December 1977, App no.53101/71, para. 167
21 Evelina Silinyte, "The Application of the Definition of Torture: Nowadays and Perspectives in the Practice of European Court of Human Rights" (2013), Contemporary Readings in Law and Social Justice Volume 5(2), 2013, pp. 244-254
22 Kudla vs Poland, Judgment of 26 October 2000, App. No. 30210/96, para. 92; and Kalashnikov vs Russia, Judgment of 15 July 2002, App No. 47095/99 para. 95
23 Ibid, para 92

Article 3 in context: migration, asylum seekers

In order to better understand the role played by Article 3 in this analysis, we must clarify some of its most important nuances in the context of asylum seekers and the European migration crisis. Five most relevant dimensions will be addressed.

First, we must consider the paramount role of intent and premeditation. As evident from the definitions in Figure 3 these two elements are crucial for classifying conduct as torture or inhuman treatment respectively. Not only does this creates a high threshold for making such classifications but it also reflects the fact that these acts are some of the most severe violations of human rights possible. However, while the Court has assigned high importance to intent when considering alleged violations of Article 3, its absence does not relieve the state of possible guilt. More specifically, even with the lack of direct intent to humiliate and debase an individual, conduct can still be classified as "degrading" and therefore a violation of Article 3 of the Convention.[24] As noted in *Peers v. Greece*, the very act of omission can indicate a "lack of respect" and "diminishment of human dignity" of individuals.[25] Based on this and the definitions in Figure 3., this paper will use the standard of degrading treatment over standards of torture and inhuman treatment to assess asylum seeker's housing conditions and access to healthcare in Greece and Italy,

Second and as already mentioned, the case law of ECtHR positions prohibition of ill-treatment as an absolute right and a fundamental value of democratic societies[26] and therefore, states can never be resolved of their obligation to ensure respect of Article 3 of the Convention. In *Khalifia and Others v. Italy*, this was stressed in the context of mass migration in the

24 V v. The United Kingdom, Judgement of 16 December 1999, Appl. no. 24888/94 para 71, Khlaifia and Others v. Italy, Judgement of 15 December 2016, Appl. 16483/12, para 160, Peers v. Greece, Judgement of 19 April 2001, App. No. 28524/95 para 68, 74.
25 Peers v. Greece, para 75
26 Selmouni v. France, Judgement of 28 July 1999, Appl. No. 25803/94, para 95

aftermath of the Arab spring. The Court argued that any form of ill-treatment is prohibited even under logistical, organizational and humanitarian stress or difficulty caused by a high volume of new migrant arrivals.[27]

Third, in examination of Article 3 cases, the Court puts weight on whether individuals belong to a particularly vulnerable group. While the ECtHR does not have a coherent and explicit criterion for designating a group "particularly vulnerable", it has relied on identifying historical patterns of discrimination towards groups when making such designation.[28] Therefore, "Roma, asylum seekers, HIV victims, detained persons, children, the mentally ill, victims of domestic violence etc." have been marked as belonging to particularly vulnerable groups.[29] In *MSS v. Belgium and Greece*, the Court reiterated that asylum-seekers as members of "particularly underprivileged and vulnerable population group are in need of special protection".[30] Therefore, material conditions and access to healthcare afforded to asylum seekers must be assessed with strict scrutiny considering their status of a particularly vulnerable group.

Fourth, while this paper already touched upon the detrimental impact of the 2016 EU-Turkey deal on fundamental rights of asylum seekers, the plausible implications of the geographic restriction that accompanied the agreement must be further acknowledged. In order to do this, we must look at the *Guzzadi v. Italy* judgement where the ECtHR differentiates between restriction on freedom of movement and deprivation of liberty using the intensity of the implemented measure.[31] Furthermore, the Court held that the cumulative conditions of an

27 Khlaifia and Others v. Italy, para 137, MSS v. Belgium and Greece, Judgement of 21 January 2011, App no. 396/96, para 223, 224
28 Michael O'Boyle, "The notion of 'vulnerable groups' in the case law of the European Court of Human Rights", (2015) European Commission For Democracy Through Law (Venice Commission), pg. 2-3
29 Ibid
30 MSS v. Belgium and Greece, para 251
31 Guzzardi v. Italy, Judgement of 06 November 1980, Appl no. 7367/76, para 92

applicant's restriction on freedom of movement could amount to deprivation of liberty, as was the case with Mr. Guzzardi.[32] Most importantly, as evident in Figure 4., the particularities of the restriction on freedom of movement on the Aegean island echo the conditions listed by the Court in their judgement, point by point.

Figure 4. Guzzardi v. Italy in comparison to the Aegean islands

Guzzardi v. Italy[33]	**Aegean islands[34]**
✓ not allowed to leave the island he was situated on ✓ had to report to the authorities twice a day ✓ not allowed to leave his dwelling at night ✓ subjected to these restrictions for an extended period	✓ cannot leave the islands voluntarily ✓ those living outside of reception centers must report to authorities every other day ✓ those living in the RICs must return before night and report the return ✓ subjected to restrictions for an extended period of time

All of this raises various questions related to Article 5 (right to liberty and security) but such considerations are outside of the scope of this analysis. However, because the argument that asylum seekers on the Aegean islands are *de facto* deprived of liberty and are therefore in detention is not completely devoid of merit, we must analyze the material conditions and access to healthcare of those situated on the islands with heightened scrutiny. In order to do this, the Court's rich jurisprudence on violation of Article 3 through conditions of detention of must be acknowledged. The core of their position in reflected in *AA v. Greece* where the Court found

32 Ibid, para 95
33 Guzzardi v. Italy, para 95
34 Izabella Majcher, "The EU Hotspot Approach: Blurred Lines Between Restriction on and Deprivation of Liberty (Part II)" (2018) https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/eu-hotspot-0,

violation of Article 3 because the applicant was forced to spend three months in overcrowded space with no adequate hygiene facilities, appalling levels of cleanliness and two moths delayed medical assistance.[35] In addition to this, it is important to note that, in *Khlaifia and Others v. Italy,* the Court said that when examining detention cases where overcrowding is present "this aspect can suffice in itself to entail a violation of Article 3 of the Convention"[36]

Fifth, the Court has found violation of Article 3 in situations where states have failed to provide adequate material conditions for asylum seekers outside of situations where deprivation of liberty takes place. While, the Court's previous decisions consistently held that Article 3 cannot be interpreted as imposing obligation to provide everyone with a home and sufficient financial means[37], the 2011 *MSS v. Belgium and Greece* decision shed new light on similar situations and opened new avenues for stricter scrutiny of state conduct.

In the final judgement the Court put weight on three important factors. First on the already discussed notion of asylum seekers as particularly vulnerable groups. Second on the judgement of *Budina v. Russia* which creates the possibility to hold states responsible for "treatment" if individuals, fully dependent on State support, find themselves in conditions of deprivation due to state indifference. Third, the fact that Greece is bound by the EU Reception Directive, outlining minimum material standards needed to be afforded to asylum seekers, which has officially entered its national law. Taking all of this into consideration, the ECtHR concluded by stressing that reaching a certain level of severity which induces desperation, fear, feeling of inferiority and anguish is crucial.[38] Similar sentiments have been echoed in the 2016 judgement of Article 3 violation in *Amadou v. Greece.*[39]

35 A.A. v. Greece, Judgement of 22 July 2010, Appl no. 12186/08, para 57-65
36 Khlaifia and Others v. Germany, para 165
37 Budina v Russia, Judgement of 18 June 2009, Appl no. 45603/06
38 MSS v. Belgium and Greece, para 249-264
39 Amadou v. Greece, Judgement of 4 February 2016, Appl no. 37991/11

Lastly, while these nuances only scratch the surface of this complex subject, they create a clearer image of the standard of treatment of asylum seekers by contracting parties of the Convention. The following sections will explore material housing conditions and access to health care for asylum seekers in Greece and Italy over the years and then scrutinize those discoveries using the above outlined framework.

Chapter 3 - Housing conditions

In its attempt to analyze the adequacy of material conditions of housing in Italy and Greece this paper will focus on two key dimensions. First, it will look at the appropriateness of the space (such as levels of overcrowding, sleeping arrangements, separation of minors, families and women etc.) and second, the levels of hygiene (such as cleanliness of the overall facilities and the ability of inhabitants to maintain personal hygiene etc.) available to asylum seekers.

When it comes to the type of accommodation, on the one hand, the new arrivals to the Aegean islands are accommodated through various channels, with the government-run Reception and Identification Centers (RIC) and the UNHCR accommodation scheme facilities as the most prominent formal settlements. Furthermore, numerous rudimental dwellings have been created over the years by asylum seekers themselves. This paper will focus on the conditions within the spaces designated as the Reception and Identification Centers on the islands of Lesvos (Moria), Chios, Samos, Leros and Kos.

One constant feature of the Aegean island's reception facilities has been overcrowding. Three main factors contribute to this phenomenon. First, the geographic restriction to the islands that came in force in the spring of 2016. Second, the tardiness of the Greek asylum system and third, the steady flow of migrants coming to the continent. Figure 5 lists data on the aggregate capacity and occupancy of RICs at the end of each year since the signing of the EU-Turkey in 2016. Two trends can be noted. First the actual capacity of the facilities has gradually decreased, likely due to deteriorating conditions of the infrastructure. Second, this was accompanied with an increase in occupancy, especially between 2018 and 2019. Furthermore, out of the five islands included in the aggregate numbers in Figure 5, the islands of Lesvos and Samos have had the highest levels of overcrowding (Figure 6.)

Figure 5. Total Capacity and Occupancy of RICs

	Nominal Capacity	Occupancy
2016	7450	7986
2017	6246	9902
2018	6438	11683
2019	6178	38423

Source: National Coordination Centre for Border Control, Immigration and Asylum
https://infocrisis.gov.gr/category/pliroforiaka-stoixeia/apotyposi-ikonas-sta-nisia/

Figure 6. Total Capacity and Occupancy on Lesvos and Samos

	Lesvos		Samos	
	Nominal Capacity	Occupancy	Nominal Capacity	Occupancy
2016	3500	4563	850	1659
2017	3000	4952	700	2383
2018	3100	5010	648	3723
2019	2840	18615	648	7765

Source: National Coordination Centre for Border Control, Immigration and Asylum
https://infocrisis.gov.gr/category/pliroforiaka-stoixeia/apotyposi-ikonas-sta-nisia/

On the other hand, it is more difficult to get as clear picture of the exact capacity and occupancy of the Italian first line reception centers. The lack of systematically collected data can be attributed to the big number of reception centers and the mode of their operation and management. Over 9000 CAS and CARA facilities are "managed by public local entities, consortia of municipalities and other public or private bodies" which are chosen on a rolling basis and financially assisted by the Ministry of the Interior through a public tender open for everyone.[40] This system creates the following problems. First, as the government does not directly run the centers, they do not keep substantial data on their capacity and occupancy. Second, as they are often run by private actors, the documentation on many facilities are not

40Asylum Information Database, "Country Report: Italy, 2018 Update" (2019), AIDA, pg 93-95

available to the public.[41] Third, as tender is awarded on rolling basis, management changes frequently and sometimes this results in closing and relocation of occupants to other facilities.[42]

However, local NGO have managed to obtain some data and point out the issue of overcrowding over the past few years. After a 2016 on-site visit to the Castelnuovo di Porto first-reception center in Rome, the *Lunaria* NGO reported that 844 individuals were living in a facility with 650-person occupancy.[43] Another report published in 2017 stated that 400 individuals were living in tents outside of the Cavarzerani center in Udine, due to overcrowding.[44] Further reports on the same facility in the spring of 2019 list 700 individuals residing in a facility with a capacity for 350. Lastly, the Gorizia center with the intended occupancy of 138 was found to host over 500 individuals in 2017 and 2018.[45] . Therefore, it can be concluded that overcrowding is a present condition of some asylum accommodation in Italy but due to the lack of data that generalization cannot be extended to the entire system.

The overcrowding of RICs in Greece has been one of the main drivers of deteriorating housing conditions over the years. On the one hand, those staying within the facilities are forced to cohabitate with dozens of individuals in very small spaces. As an example, in 2016, Human Rights Watch reported that up to 40 people were forced to share one room in camp Moria. On the other hand, overcrowding has coerced many new arrivals to either sleep on the ground or in tents in front of the buildings.[46] Following her visit to Greece in 2018, CoE Commissioner for Human Rights reported that over 125 individuals are living in the same large tents with no

41 Armağan Teke Lloyd, "Exclusion and Inclusion in International Migration: Power, Resistance and Identitty" (2019) Transnational Press London, pg 45
42 Swiss Refugee Council Report (2020), pg 24
43 Lunaria, "Il mondo di dentro, il sistema di accoglienza per richiedenti asilo e rifugiati a Roma, (2016) pg 13
44 Lasciate CI Entrare"Report dell' ingresso alla ex caserma Cavarzerani" (2017), pg 26
45Asylum Information Database Country Report:Italy (2019), AIDA pg 93-98
46 "Greece: Refugee 'Hotspots' Unsafe, Unsanitary" (2016) Human Rights Watch, https://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary

privacy.[47] Residents are forced to sleep on the ground and the tents offer little to no protection from the elements. The situation becomes particularly dire in the winter as they are exposed to cold weather and have no electricity or heating. Furthermore, due to the lack of space tents are being set up meters away from trash and waste filled alleyways which remains uncollected and filled with snakes and rats.[48]

With the upward trajectory of the levels of overcrowding, it is unsurprising to learn that this issue persisted over the years and on all islands. The UNHCR released a statement in February 2020, reporting that the situation has become extreme and that the overwhelming majority continue to share small spaces with dozens of others, without electricity or heating.[49]

Once again, while the Greek case study demonstrates a clearer and more uniform situation across different locations, the same cannot be said for Italy. However, some concerning reports have over the past few years have pointed to similar issues as in Greece. Overcrowding in the Raguzza/Polazzo center has forced 20 or more individuals to sleep in same rooms, with mattress on the floor "covering the whole pavement".[50] In Trapani/Milo center, asylum seekers sleep outside and on the ground in the "hallways of the center" due to lack of space.[51] Furthermore, the already noted serious overcrowding of the Cavarzerani center

[47] Dunja Mijatovic, "Report of the Commissioner of Human Rights of the Council of Europe, following her visit to Greece" (2018), Council of Europe, para 16
[48] Matthew Mpoke Bigg, "Vulnerable asylum seekers struggle to access medical care on overcrowded Greek islands" (2020), UNHCR, https://www.unhcr.org/news/stories/2020/2/5e4fc07b4/vulnerable-asylum-seekers-struggle-access-medical-care-overcrowded-greek.html
[49] Matthew Mpoke Bigg, "UNHCR calls for a decisive action to end alarming conditions on Aegean islands" (2020) UNHCR, https://www.unhcr.org/news/briefing/2020/2/5e3d2f3f4/unhcr-calls-decisive-action-end-alarming-conditions-aegean-islands.html
[50] "After the Landing, Human Rights on Hold: The Case of the Extraordinary Reception Centre at Rosolini" (2017), Borderline Sicily, https://www.borderlinesicilia.it/index.php?option=com_content&view=article&id=2496:95after-the-landing-human-rights-on-hold-the-case-of-the-extraordinary-reception-centre-at-rosolini&catid=40&lang=en&Itemid=203
[51] "The difficulties of the reception system in Trapani" (2017), Borderline Sicilia, https://www.borderlinesicilia.it/index.php?option=com_content&view=article&id=2638:37the-difficulties-of-the-reception-system-in-trapani&catid=43&lang=en&Itemid=204

in Udine led to 9-12 individuals sleeping on the ground in each of the 38 tents around the facility, with no electricity or heat.[52] However, since overcrowding is not a system-wide, issue reports on some locations, such as Friuli-Venezia Giulia and Montalto Uffugo, Calabria, have noted adequate allocation of space in rooms for individuals.[53]

Moreover, it is crucial to acknowledge the way overcrowding and consequent deteriorating conditions have affected unaccompanied minors within camps and reception facilities. The conditions in Greece are especially dire. The data release by Human Rights Watch in November 2019 report a total of 1746 of unaccompanied minors in the RICs and many more in the informal settlements dispersed over the islands. Furthermore, half of the 1061 unaccompanied children registered at Moria are living in large, "general population" tents, with up to 50 other individuals.[54] In a 2019 Human Rights Watch interview, a 14-year-old Afghan boy reported sleeping with unknown adult men in a tent filled with rats and terrible odor.[55] By living in these conditions, not only are these children especially vulnerable to severe mental and physical trauma they are also exposed to potential physical violence, sexual assault and human trafficking,

The situation in Italy does not offer a much better picture. While the 2018 *Salvini decree* designated second-line reception facilities for unaccompanied minors and beneficiaries of international protection, the number of available places is grossly inadequate. The Ministry of the Interior website lists 4255[56] spots for unaccompanied minors while the official asylum statistics lists 10787[57] individuals present in the system as of April 2019. This means that at

52 Asylum Information Database "Country Report: Italy" (2019), AIDA, pg 98
53 Ibid, pg 100
54 "Greece: Unaccompanied Children at Risk" (2019) Human Rights Watch, https://www.hrw.org/news/2019/12/18/greece-unaccompanied-children-risk
55 Ibid
56 Ministry of the Interior, Numbers in the SIPROIMI centers as of February 2020 https://www.siproimi.it/i-numeri-dello-sprar
57 Asylum Information Database "Country Report: Italy" (2019), AIDA, pg 109

least 7000 children are housed in other, overcrowded, centers with general population exposed to horrendous living conditions.

Besides this, the appalling sanitation and hygiene conditions as interconnected with the overcrowding in the camps and facilities, must be noted. The Aegean islands have been particularly notorious. Even in 2016, when the overcrowding levels were far from the ones observed in December 2019, Human Rights Watch reported only three toilets for more than 500 women and sewage from men's latrine flowing into the common living area.[58] In 2018, International Rescue Committee reported that camp Moria had no hot water and that 84 people are expected to share one shower and 72 one toilet.[59] Most recently, the UNHCR and MSF have expressed their deepest concerns over sanitation and hygiene issues in camps, especially amid the COVID-19 pandemic, as asylum seekers in camps are "living in filth and garbage"[60], while some camps have no soap and 1 water tap is intended for 1,300 people.[61]

Even though it cannot be argued that the Italian situation is parallel to the Greek one, similar concerns have been echoed in various reports on conditions of some facilities over the years. In 2017, Borderline Sicily reported that the Trapani center in Milo does not have running water for days at a time and that hot water is never provided to the residents.[62] In 2018 the Danish Refugee Council interviewed asylum seekers placed around different centers on their respective experiences. One woman reported "appalling sanitary conditions in showers and toilets"[63] with mice and bugs present. Other individuals became sick with tuberculosis due to

58 "Greece: Refugee 'Hotspots' Unsafe, Unsanitary" (2016) Human Rights Watch,
59 "Unprotected, Unsupported, Uncertain", (2018), International Rescue Committee, pg 1
60 "Act now to alleviate suffering at reception centers on Greek islands – UNHCR Grande", (2020), https://www.unhcr.org/news/press/2020/2/5e4fe4074/act-alleviate-suffering-reception-centres-greek-islands-unhcrs-grandi
61 "Evacuation of squalid Greek camps more urgent than ever over COVID-19 fears", (2020), Medecines Sans Frontiers, https://www.msf.org/urgent-evacuation-squalid-camps-greece-needed-over-covid-19-fears
62 "The difficulties of the reception system in Trapani" (2017), Borderline Sicilia,
63 "Mutual trust is still not enough: The situation of persons with special reception needs transferred to Italy under Dublin III regulation" (2019) Danish Refugee Council, pg 14

the unsanitary conditions in the facility while a family with two minor children reported that their center did not have doors on bathroom and showers, and it was shared with all residents.[64] Furthermore, the 2019 AIDA report notes that 10 bathrooms and 14 showers were shared among 400 residents in Udine.[65] Lastly, the deteriorating sanitary conditions of some facilities have spiked worries over COVID-19 spread among residents as appalling conditions of the facilities make even hand washing "nearly impossible".[66]

64 Ibid , pg 17, 28
65 Asylum Information Database Country Report: Italy (2019), AIDA, pg 98
66 Giada Zampano "Assisting migrants at risk as coronavirus strikes in Italy", (2020), Anadolu Agency, https://www.aa.com.tr/en/europe/assisting-migrants-at-risk-as-coronavirus-strikes-italy/1777138

Chapter 4 - Access to Healthcare

Article 32 of the Italian constitution states that access to health care is a fundamental right of all individuals, regardless of their citizenship status[67] while the Legislative Decree 286/1998 states that all registered migrants are afforded the same healthcare services as Italian citizens.[68] Therefore, in theory, in order to access the same health services as citizens, asylum seekers only have to register with the National Health Services (SSN) at one of the local health authorities (ASL) with a valid residence permit, a certification/declaration of residence and a tax identification number.[69] However, in practice, asylum seekers face various difficulties, stemming from general discrimination, administrative shortcomings and systemic inadequacies, when attempting to exercise their right to health care.

First, we must consider the fact that in order obtain a health card and access the healthcare system migrants need a residence permit which they received once they lodge an asylum application. Until then, they can only access the most rudimental healthcare in cases of accidents or emergencies, usually afforded to irregular migrants.[70] However, severe delays in the bureaucratic processing of documents and at time of *de facto* denial of access to the asylum procedure serves as a serious impediment to obtaining the necessary documents to access the health services. [71]

The 2019 AIDA report lists the following as the most frequent institutional obstacles. First, the limited hours of asylum offices which only allow for a small number of applications to be submitted every week. Second, introduction of online applications which do not consider

67 Constitution of the Republic of Italy, adopted 1 January 1948, last amended 2012, article 32
68 Legislative Decree 286/98, Article 32 and 33.
69 Ibid, pg 73
70 Margherita Giannoni and Antonio Chiarenza, Country Report: Italy for MIPEX, Health Strand, (2018), International Organization for Migration, pg 16
71 Asylum Information Database Country Report: Italy (2019), AIDA, pg. 30-33

that many new arrivals do not have access to, or knowledge of the technology needed to apply for asylum. Third, applicant's nationality and/or presumed merit of their application can affect the time need for processing. Consequently, the average waiting time in some regions of the country is six months but some individuals wait for up to a year, meaning that this is how long they are being deprived of adequate healthcare.[72]

These factors not only severely limit the scope of health services available to migrants to the most basic ones, but they also deter them from seeking medical assistance in situations of genuine emergency. As they are not able to obtain proof of their "regular" status for a year at a time and because the authorities do not issue any kind of documents confirming they are in process of doing so, individuals often avoid hospital visits out of fear they will lead to arrest and deportation.[73] Because of that, many asylum seekers experience serious complications of very treatable diseases and conditions.

Second, it is crucial to acknowledge that asylum seekers, just like all Italian citizens are obliged to contribute to the cost of the overall health care system. However, in cases of unemployment or annual income below 8000 euros, they qualify for an exemption. While all asylum seekers are automatically exempt from the mandatory copay for the first two months of being in possession of an asylum card, registration of unemployment at the local job center is necessary to continue being exempt from the mandatory copay after that.[74]

The duty to inform them of this falls on the management of the respective facilities they are registered to be residing at.[75] However, due to the changes to the asylum reception system made by the Salvini decree, asylum seekers are often unaware of the exemption option and/or

72 Ibid
73 Antonio Chiarenza et al. "Supporting access to healthcare for refugees and migrants in European countries under particular migratory pressure" (2019), BMC Health Services Research 19:513, pg 7
74 Margherita Giannoni and Antonio Chiarenza, pg 16
75 Ibid

requirement of reporting unemployment. The funding cuts[76] mandated by the decree resulted in frequent understaffing of facilities and consequently of cutting down of the services provided to the residents. Besides this, since the decree introduced lax standards for awarding management rights, bodies that do not deal with migration/asylum issues end up being in charge of the facility and the staff employed to work with the residents is usually not adequately trained to provide this information.[77]

Moreover, many facilities have stopped offering any kind of instruction on how to properly access health services in the country and that role has been taken on by organizations such as MSF.[78] However, this still leaves many individuals without adequate information due to the lack of capacity, resources of nongovernmental organizations and the lack of access to the information on the functioning of various CAS and CARA centers. Therefore, many individuals are forced to co-pay for even most basic services which in turn serves as a deterrent for many asylum seekers from obtaining any or adequate health care.

Third, another frequent impediment to medical treatment, which serves as a discouraging factor from accessing healthcare, is the lack of communication between patents and doctors stemming from the language barrier and the lack of cultural mediation. This can become an especially salient issue for individuals in need of mental health services as evident in interviews of asylum seekers conducted by The Danish Refugee Council. One woman, a Dublin returnee from Switzerland where she was diagnosed with depression, PTSD and suicidal tendencies, was refused an interpreter and had to bring an acquaintance to her sessions in order to be able to communicate with the doctor. After she was transferred to another facility

[76] Alessandra Zinniti, "Viminale, tagli dell'accoglienza per i migranti da 35 a 20 euro a giorno" (2018) La Repubblica,https://www.repubblica.it/cronaca/2018/11/07/news/viminale_tagli_dell_accoglienza_per_i_migranti_da_35_a_20_euro_a_giorno-211025426/

[77] Swiss Refugee Council Report (2020) pg 40

[78] "International Activity Report", Italy 2018" (2019) Medecins Sans Frontier

without the acquaintance that provided translation, she had to forego mental health services as the new doctor also did not want to find an interpreter.[79]

Just like the Italian, theoretically speaking, the Greek health care law has a broad reach. Article 33 of the 4368/2018 law[80] provides access to medical, pharmaceutical and psychiatric care to uninsured individuals and those belonging to "vulnerable social groups" which includes refugees, asylum seekers and minors, regardless of their legal status. The only necessary step is obtaining a Social Security Number (AMKA) or, for those that do not fulfill all requirements needed for an AMKA, a Foreigner's Health Card (K.Y.P.A).

Further similarities to the Italian case study can be observed through criticism of the discrepancy between theory and practice of the Greek healthcare system voiced by organizations such as AIDA, Amnesty International and MSF. This criticism is centered around the fact that many asylum seekers face various administrative barriers when attempting to obtain their health care cards and therefore access to the healthcare system. Amnesty has reported that numerous individuals stated that their request was refused because their asylum-card was not translated to Greek[81], AIDA reports language barrier to be a frequent obstacle in completing the needed paperwork,[82] while MSF claims that often neither the doctors nor the asylum seekers are informed of the proper healthcare law and procedures.[83]

Besides this, the government has halted issuing of AMKA as of July 2019 by withdrawing the circular meant to regulate the card issuing procedure.[84] This is especially

[79] Danish Refugee Council (see footnote 63), pg 20-21
[80] Law 4368/2016, full text available at https://ec.europa.eu/migrant-integration/librarydoc/law-4368/2016-article-33-on-free-access-to-health-care-services
[81] Amnesty International Public Statement, "Greece Must Immediately Ensure That Asylum-Seekers, Unaccompanied Children and Children of Irregular Migrants Have Free Access to Public Health System" issued 14 October 2019
[82] Asylum Information Database Country Report: Greece (2019), AIDA, pg. 140
[83] "Greece in 2016: Vulnerable people get left behind" (2017) Medecines Sans Frontieres, pg 17
[84] "Greece denies healthcare to seriously ill refugee children on Lesbos" (2020) Medecins Sans Frontiers, https://www.msf.org/greece-denies-healthcare-seriously-ill-refugee-children-lesbos

problematic considering that the alternative K.Y.P.A system was never activated, even though it is part of the 2016 law and the government issued a circular on its implementation in 2018.[85] Considering that the K.Y.P.A is not operational, thousands of new arrivals and those that have not obtained AMKA by July 2019 are left without any ability to access the health care system.

Furthermore, three key factors must be taken into consideration as distinguishing the Greek case from the Italian. First, the severe detrimental effect of the Greek financial crisis and subsequent austerity measures on the overall healthcare system. Second, the geographic limitation to the Aegean islands of tens of thousands of individuals due to the EU-Turkey deal struck in 2016. Third is the severe overcrowding in RICs, discussed in the section on housing conditions.

The Greek national health system has been gradually deteriorating and the consequently implemented austerity measures decreased the health expenditure by five times compared to pre-2010.[86] This resulted in country-wide shortage of medical staff, equipment and medication. Many hospitals closed and 2.5 million individuals lost their health insurance as the country was unable to respond to the needs of local population.[87] Therefore, the crumbling health care system was already ill-equipped to respond to the needs of tens of thousands of migrants arriving to the Aegean islands.

Furthermore, the overall healthcare available on the islands was already in a bad shape as "resources are unevenly distributed across the country, with a much higher concentration of health services and medical equipment in large cities".[88] Therefore, the local population is forced to travel to the mainland to receive any kind of specialized care. However, due to the

[85] Amnesty International public statement, 14 October 2019
[86] Charalampos Economou et al, "Health Systems in Transition , Greece: Health system review" (2017) , The European Observatory on Health Systems and Policies Vol 19 No 5, pg 40
[87] Ibid, pg 50
[88] Ibid, pg. xviii

restrictions on movement, asylum seekers are not able to do that. This becomes especially problematic considering that, resulting from conditions in their country of origin, the consequences of dangerous travel and deteriorating conditions of the camps, they are in dire need of specialized care.

All of the issues discussed above are further exacerbated with the severe overcrowding of the reception centers and camps on the Aegean islands. The already miniscule resources invested by the Greek government are stretched so thin that they are virtually non-existent while the alarming living conditions are rapidly deteriorating the health of asylum seekers. Various non-governmental organizations have been supplementing the lack of medical care with their services, but they do not have the capacity to adequately address the problem.

In April of 2020, Human Rights Watch reported that on the island of Lesvos, only one clinic is serving close to 20,000 people and that daily queues consist of up to 200 individuals. Similar situation was recorded on Samos where one resident said that it takes up to three days to see a doctor.[89] The MSF reported that they have been forced to turn away patients on daily bases due to the lack of resources to address many requests for medical assistance.[90] Furthermore, they reported that in the autumn of 2018 there was only one army doctor for the entire island of Chios while from December of the same year until June 2019 all medical screenings of new arrivals were halted because there was no medical doctor at the camp.[91]

Furthermore, MSF has been vocal on the way these precarious conditions have affected children. In 2018 they reported that the demand for pediatric services doubled from March to

[89] "Greece: Islands camps not prepared for COVID-19" (2020) Human Rights Watch, https://www.hrw.org/news/2020/04/22/greece-island-camps-not-prepared-covid-19
[90] "Greece: Overcrowded, dangerous and insufficient access to healthcare in Moria" (2018), Medecins Sans Frontieres, https://www.msf.org/greece-overcrowded-dangerous-and-insufficient-access-healthcare-moria
[91] Médecins Sans Frontières' submission to the United Nations Committee Against Torture prior to the periodic review of Greece, 67th Session June 2019,

May[92] while in 2019 they were treating 100 children with life threatening condition.[93] In January 2020 they reported that 270 children with "complex, chronic and life-threatening diseases" such as diabetes, epilepsy and heart conditions have been stuck on the islands since March 2019.[94] They have been waiting transfer to the mainland, promised by the Greek authorities, as the local hospitals do not have the resources or the specialty to address their needs.

Besides this, the state of mental health services is even worse than the one discussed in the Italian context. In early 2017, the MSF published a report on their survey of mental health of new arrivals to Lesvos and Samos warning that the islands are experiencing a mental health emergency while the resources to address it are scarce.[95] This is unsurprising considering that majority of new arrivals are coming from conflict areas and have gone through a dangerous journey to reach Europe. Many of them are victims of torture and sexual violence or have lived in fear for their life for years. Besides this, the squalid conditions of the camps they are living in now, paired with the uncertainty of their future can serve as a negative factor for their mental health. Furthermore, according to their data from 2018, a quarter of all children have self-harmed, attempted suicide or thought about doing so as many suffer from anxiety attacks, depression, PTSD, angry outbursts and constant nightmares.[96]

[92] "Greece: Overcrowded, dangerous and insufficient access to healthcare in Moria" (2018), Medecins Sans Frontieres

[93] "Greek and EU authorities deliberately neglecting people trapped on islands" (2019) Medecins Sans Frontieres, https://www.msf.org/deliberate-neglect-greek-and-eu-authorities-towards-those-trapped-islands

[94] "Greece denies healthcare to seriously ill refugee children on Lesbos" (2020) Medecins Sans Frontiers

[95] "Confronting the mental health emergency on Samos and Lesvos, Why the containment of asylum seekers on the Greek islands must end" (2017), Medecisn Sans Frontieres

[96] "Greece: Increase in suicide attempts among child refugees on Lesvos" (2018) Medecins Sans Frontieres, https://msf.org.au/article/statements-opinion/children-trapped-greek-island-camps-attempting-suicide-and-self-harm

Lastly, medical staff has reported being unable to treat even the most basic conditions such as skin infections, dehydration, diarrhea or vomiting as they are caused by the unsanitary and unhygienic conditions of the camps resulting from overcrowding. This has become especially salient in the light of the 2020 COVID-19 outbreak as the camps a perfect breeding ground for the virus and nothing is being done to protect the health of thousands of incredibly vulnerable individuals.[97]

[97] "Greece: Islands camps not prepared for COVID-19" (2020) Human Rights Watch

Chapter 5 - Discussion

Considering the seriousness with which the Court treats Article 3 violations, it is unsurprising to learn that the threshold of ill-treatment is high. Therefore, when determining whether that threshold has been met in Italy and Greece, we must look at indicators such as the duration of the treatment, physical and mental effects of it and the inherent vulnerability of the victims. Furthermore, it is crucial to highlight that despite the burdensome impact of the migration crisis on the European continent, neither Italy nor Greece are absolved of their duties under the Convention.[98] Contrary to that, their conduct must be judged with stricter scrutiny because asylum seekers are members of a particularly vulnerable group and as such, they are entitled to special protection. Besides ensuring that they are treated in dignified manner, with respect for their humanity and individual autonomy, we must take into consideration, their unique needs as survivors of persecution, torture, violence and abuse, as individuals physically and mentally wounded in conflicts who were forced to flee their homes.

However, an overwhelming amount of evidence presented above points to the contrary treatment in Greece. The unprecedented rates of overcrowding in the Aegean RICs are extremely problematic as they perpetuate a series of other problems resulting in disrespect of individual dignity. The asylum seekers do not have access to the most basic human necessities such as water and shelter, they lack any form of privacy and security, they are not treated as individuals with unique needs and all of their autonomy has been taken away. Their medical needs are being treated as inferior to those of citizens and even if suffering from life threatening conditions, they have hard times accessing the specialized care on the mainland. Lastly, as the reports of such conditions span back to 2016, this means that individuals have spent years

[98] See footnote 27

exposed to such treatment. All of this offers strong evidence for labeling Greece's conduct as degrading treatment.

On the other hand, while plagued with, problems, irregularities and inadequacies, the Italian case is not as severe and extreme as the Greek one. Most prominently, the lax regulation of the public tender process has created problems of overcrowding and lack of access to basic living necessities in some government facilities. Besides this, the number of unaccompanied minors living in overcrowded and unsanitary facilities with the general population in is concerning. However, while problematic and far from being painted in a positive light, some facilities meet the minimum standards of material conditions. When it comes to the access to healthcare, it is clear that the entire system is facing numerous shortcomings but those are mostly related to procedural and bureaucratic issues. While it is plausible that this have negative impact on the livelihood of asylum seekers as argued in the section on healthcare, further research must be done in order to make convincing arguments on the severity of that impact.

Regardless of this, the disregard for the insurmountable psychological toll of the lived experiences of asylum seekers in Italy must be taken into consideration. This was demonstrated in the testimonies of those suffering from severe mental health issues, their mistreatment and failed experiences to access adequate housing and psychological care. Considering the vulnerability of asylum seekers, this is extremely problematic and could be labeled as degrading. Similarly, in the Greek case, the MSF warned about the mental health emergency and the lack of response to it on the Aegean islands back in 2017. Furthermore, reports indicate that the deteriorating camp conditions are directly correlated with the spike in self harm and suicide attempts of young children. This strongly points towards violation of Article 3 as the Court has held that treatment which results in "breaking an individual's moral and physical resistance" is considered to be degrading.

Moreover, following the Court's previous holdings, it is necessary to emphasize once more that the element of intent is not necessary to label state conduct as degrading treatment. Therefore, while it can be argued that neither Greece not Italy have direct intent to debase and degrade asylum seekers by subjecting them to the unsanitary, unhygienic, living conditions with limited or no access to healthcare, their indifference to the physical and psychological suffering caused by those conditions makes them liable for "treatment". Similar sentiments were echoed in the *MSS v. Belgium and Greece* judgement and they are applicable to the case studies at hand. Asylum seekers, even though dependent on support of Italy and Greece, have found themselves in desperate conditions due to state indifference.

Furthermore, while both Greece and Italy have created and continue to perpetuate problematic systems of housing and healthcare for asylum seekers, the two case studies must be differentiated from each other on one important point. This differentiation is especially salient when it comes to analysis in the framework of Article 3 of the ECHR and it concerns the geographic limitation to the Aegean islands. This restriction only creates detention-like situation and therefore heightens the scrutiny of the indicators examined, but it also serves as a deteriorating factor and can be directly connected to the shocking conditions of the islands. Additionally, considering the Court held that the sole presence of overcrowding in detention can amount to violation of Article 3[99], this in turn further highlights the fact that having 38,000 individuals in facilities intended for 6,000 is a serious violation of the Convention. Besides this, the lack of adequate hygiene facilities and the alarming levels of sanitation, resulting for the overcrowding, echo the sentiments the Court expressed as crucial reasons for ruling violation of Article 3 in the *AA v. Greece* judgement.

[99] See footnote 35

Contrary to this, with the lack of the detention-like conditions, the Italian state is afforded more leeway and is judged against a more flexible standard of conduct. Lastly, the mobility of asylum seekers in Italy resolves the possible strain on resources of some facilities by allowing a more even distribution of people across the country.

Conclusion

An unprecedented number of individuals crossed the Mediterranean Sea over the past decade fleeing war, violence, persecution and poverty. The historic impact of this mass movement of people is still difficult to comprehend as the migratory paths are still active and faiths of millions are still unresolved. Moreover, Europe was unprepared to deal with the mass influx of new arrivals and it failed in responding to the crisis in a unified manner. As frontier states, Italy and Greece, were among those "hit" the hardest and as such were chosen to be the case studies of this paper.

Both chosen case studies, as member states of the Council of Europe and parties to the European Convention of Human Rights are legally bound to respect individual humanity, autonomy and treat everyone in a dignified and humane manner. Furthermore, this sentiment must be heightened when dealing with groups such as asylum seekers as they are especially vulnerable due to the difficult circumstances of their lives and their past experiences. Therefore, this analysis focused on examining material housing conditions and access to healthcare of asylum seekers in Italy and Greece in the light of standards of Article 3 of the European Convention of Human Rights which prohibits torture, inhuman and degrading treatment or punishment.

After the research and analysis conducted, the following concluding thoughts can be made. It is be plausible to argue that the deplorable material housing conditions and limited and at times non-existent access to healthcare on the Aegean islands amount to degrading treatment of asylum seekers, as outlined by the ECtHR. This conclusion results from a compound effect of various factors such as prolonged stay on the island, restriction of movement resulting in *de facto* detention, membership in a particularly vulnerable group coupled with observed overcrowding, lack of sanitary and hygienic facilities, denial of

healthcare etc. However, when it comes to Italy, it is difficult to make such a confident conduction. While some similar elements can be observed, they most likely do not meet the level of severity required. Moreover, the key deciding factors present in the Greek case, such as *de facto* detention, study cannot be observed in Italy.

Lastly, it must be emphasized that the scope of this analysis was limiting and did not allow for the necessary, in-depth, examination of various factors at play. The availability of data was another limiting factor, and this is especially true for the Italian case-study. The circumstances relating to the material housing conditions and access to healthcare have not been thoroughly examined and access to independent, reliable and systemic data is extremely difficult. Regardless, this research offers an overview of the most pressing issues, their plausible legal implications and can serve as a starting point and a guide for further inquiries into this important topic.

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Annex I - Recommendations

The governments of Italy and Greece must immediately acknowledge the inadequate treatment of asylum seekers on their territories. This recommendation is especially salient for the Greek government as the conditions on Aegean islands plausibly amount to degrading treatment, therefore putting the government in direct tension with Article 3 of the European Convention on Human Rights. However, it also applies to the Italian case as the evidence suggests that even though housing conditions and the healthcare afforded to asylum seekers does not necessarily amount to degrading treatment, it is far from adequate and it fails to address the most basic needs of vulnerable people.

Furthermore, the issue of overcrowding must be addressed, as one of the principal deteriorating factors of the material housing conditions and the available healthcare services. When it comes to Greece, the government is called to lift the geographic restrictions to the Aegean islands and immediately relocate the most vulnerable asylum seekers to the mainland. These include, the elderly, unaccompanied minors, sick, wounded, those suffering from psychological conditions, pregnant women etc. In order to make this designation more precise, a new vulnerability screening process, with strict adherence to the UNHCR's vulnerability guidelines, is recommended. The remaining individuals can await the outcome of their asylum procedure on the islands, only if the existing reception facilities are refurbished to meet the UNHCR standards regarding space, hygiene and sanitation needs as defined in the Emergency Handbook[100]. Lastly, special attention must be given to ensuring separation of families and single women.

[100] For details on the Emergency Handbook minimum and recommended standards for designing emergency shelters for refugees and asylum seekers visit: https://emergency.unhcr.org/entry/45581/camp-planning-standards-planned-settlements

When it comes to Italy, the government can combat overcrowding in the following way. First the government must amend the *Salvini decree* and strengthen the regulations of the public tender for CAS and CARA facilities in order to ensure that only bodies equipped to manage migrant-related facilities are enabled to do so. Second, it needs to increase the allocated financial assistance to each facility at least to the amount prior to the *Salvini decree.* Third, it must take on a bigger role in the supervision of housing facilities and ensure constant communication with the managing body in order to facilitate gathering of the necessary data on the occupancy and condition of housing facilities. This can enable better monitoring and prevent future overcrowding.

In addition to this, while the limitations to first-line reception centers only for new arrivals are problematic, they can be seized to address the issue of unaccompanied minors in CAS and CARA facilities. The Italian government must increase the availability of space in the second-line facilities to accommodate over 7000 unaccompanied minors living with the general population in CAS and CARA accommodation.

Moreover, the plethora of issues associated with healthcare must be remedied with urgency as consequences of inaction may be fatal for many. The Greek government is urged to ensure access to necessary specialized care, through transfer to the mainland, of those in critical conditions on the Aegean islands, especially wounded, children and elderly. Furthermore, the government must allocate a proportionate number of doctors and medical staff to each island for those individuals that do remain there for the duration of their asylum procedure. With more government support and involvement, efficient planning and communication, humanitarian organizations already operating on the island, such as MSF, can help ease the burden of the government. Besides this, special attention must be given to ensure appropriate mental health screening and subsequent psychological services, especially for children. Lastly, those affected by the halt on issuing of AMKA must be given access to the healthcare system.

Furthermore, the Italian government must make necessary changes to address the series of bureaucratic obstacles asylum seekers face when attempting to access their constitutionally enshrined right to healthcare. As this research shows that delays in processing of asylum applications is a frequent obstacle in obtaining healthcare, the following recommendations are made in order to ensure a timely process and subsequent access to the healthcare system.

First, the government needs to ensure that all new arrivals have access to timely and accurate information on the asylum procedure. Second, access to the bureaucratic process must be enabled though provision of translators and necessary technological equipment for the applications to be lodged. Third, government employees in charge of processing applications must receive adequate training in order to combat xenophobia, racism and other forms of prejudice and discrimination.

In addition to this, medical staff and doctors, with special emphasis on mental health services, should be provided with:

1. cultural sensitivity training
2. training on the rights of asylum seekers in the context of healthcare
3. training on the most frequent conditions and diseases they might be dealing with (physical or psychological)
4. translators for the most common languages to ensure smooth communication