



UNRECOGNISED VULNERABILITY

Greece's systematic failure to identify and
certify Victims of Torture

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ABBREVIATIONS

CFR	Charter of Fundamental Rights of the European Union.
CIL	Customary International Law
CJEU	Court of Justice of the European Union
CoO	Country of Origin
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EODY	National Public Health Organisation
ESTIA	Emergency Support to Integration and Accommodation
GAS	Greek Asylum Service
ICCPR	International Covenant on Civil and Political Rights
MRCT	Medical Rehabilitation Centre for Victims of Torture
MSF	Medecins Sans Frontieres
NGO	Non-Governmental Organization
OHCHR	United Nations Office of the High Commissioner for Human Rights
RCD	Receptions Conditions Directive
RIC	Reception and Identification Centre
RIS	Reception and Identification Service
STC	Safe Third Country
UN	United Nations
UNCAT	United Nations Convention Against Torture
The Committee	United Nations Committee Against Torture
UNHCR	United Nations High Commissioner for Refugee
VoT	Victim of Torture

GLOSSARY

<i>EU-Turkey Statement</i>	Statement of the Heads of State or Government of Member States and the Turkish Prime Minister published on 18 March 2016. The main provision of the Statement established that all migrants who arrived in Greece from Türkiye and either didn't apply for international protection or had their asylum application rejected as inadmissible or unfounded, would be returned to that country. It was presented as a temporary and extraordinary measure to address the increase in the number of arrivals to Greece from Turkey and to save lives.
<i>Istanbul Protocol</i>	The <i>Manual of Effective Investigation and documentation of Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment</i> , known as Istanbul Protocol, sets internationally recognised standards and procedures on how legal and medico-legal investigations of acts of torture or ill-treatment must be conducted. It also contains fundamental principles to ensure effective investigation and documentation of torture and ill-treatment.
<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)</i>	The UNCAT is the most important international human rights treaty that deals exclusively with Torture. The Convention obliges countries who have signed and ratified the treaty to prohibit

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	and prevent torture and cruel, inhuman or degrading treatment or punishment, and to ensure accountability for acts of torture. The Convention presents a detailed codification of standards and practices regarding the prohibition of torture. Article 1 provides the definition of torture at an international level, while Article 2 obliges States to take all necessary legislative, administrative, judicial and other appropriate measures to prevent acts of torture, and specifies additional steps States must take to adequately prevent, prohibit and redress torture and guarantee non-repetition.
Torture	The UNCAT establishes that torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person, has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

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United Nations Committee Against Torture (The Committee)	The Committee was established pursuant to Article 17 of the UNCAT and started functioning on 1 January 1988. The Committee's main function is to ensure that the UNCAT is respected and its provisions are implemented.
Victims of Torture (VoT)	Victims of Torture (VoT) are those who have experienced any form of torture. Although Fenix has shifted from a 'victim' to 'survivor' narrative in our fieldwork by honouring the uniqueness and complexities of the life journeys of survivors, we have adopted the term 'victims of torture' in this report, in accordance with the legal definition, as we intend to highlight the shortcomings and inconsistencies of the authorities' practice in relation to International, European and Greek legislation.

EXECUTIVE SUMMARY

Acts of torture are prohibited under international law, both in times of peace and war; nonetheless, an innumerable number of people are subjected to torture worldwide. Despite the limited official statistical information on how many people within the migrant populations are victims of torture (VoTs), the United Nations Office of the High Commissioner for Human Rights (OHCHR) estimates that between 5 to 35% of refugees survived torture in 2017. Given the prevalence of torture cases amongst persons forcibly displaced, many policies and procedures have been adopted to ensure VoTs have access to appropriate services and protection mechanisms.

Greece, as a state party of the UNCAT, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and other international conventions and a Member State of the EU, has an obligation to ensure that everyone who states or presents signs of having been subjected to torture is properly identified (Articles 41, 67 and 77 of Law 4939/2022, Article 18 of Directive 2013/32/EU, and Article 14 of UN Convention against Torture), and if recognised as VoT, obtains access to redress, including rehabilitation, and other fundamental rights (Article 14 of UN Convention against Torture).

Nonetheless, practice over the years has demonstrated serious deficiencies in the identification and certification of victims of the torture of applicants in Greece, including on Lesbos. Systematic deficiencies have been observed in the identification of vulnerabilities due to low quality of vulnerability assessments, rushed procedures and disregard of incidents of torture outside the country of origin during the asylum interview. Additionally, **structural deficiencies are also observed in the specific process to certify VoTs, namely due to restrictive legislation limiting only public authorities to provide certification for VoTs in accordance with the Istanbul Protocol, whilst national authorities and bodies do not have the qualification or training and lack of interpretation to proceed with this certification.** At the same time, non-governmental organisations, namely Metadrasi, hold the appropriate expertise to provide certification for VoTs according to the Istanbul Protocol and attempt to provide this certification. **Nonetheless, they are not considered competent to provide this certificate, and, as a result, their certificates do not give access to rehabilitation or care, and are not binding for the Greek Authorities. In other words, the VoT certification provided by NGOs may be taken into consideration by asylum authorities for the purposes of the asylum procedure, but it is at the discretion of each decision maker. In practice, Fenix observed that different authorities, at different moments, apply their discretionary powers differently.**

The deficiencies observed during the asylum procedure and VoT certification leave asylum seekers, who reported being subject to or present signs of having been subjected to acts of torture, without access to fundamental rights and guarantees, including access

to special reception conditions and special procedural guarantees in line with their special needs, and access to rehabilitation and adequate care.

The failure to identify and certify VoTs has severe consequences for VoTs and amounts to violations of fundamental rights laid down by international and European law. Greece's failure to assess and identify vulnerable asylum seekers and promptly determine and certify VoT constitutes a *de facto* denial of rehabilitation, a deprivation of the fundamental rights of VoT under Article 14 of the UNCAT. Additionally, the lack of effective consideration towards VoTs and respect for their special needs, especially the lack of access to specialised medical care and adequate housing, constitutes humiliating treatment that completely denies VoT acknowledgement of their human dignity, in violation of Article 16 of UNCAT. Finally, the lack of identification and certification of VoTs may also have an impact on the examination of their asylum application, especially when the safe third country or safe country of origin concepts are used. In these cases, there is a presumption of safety; thus, since the level of proof is much higher, certifications, such as the VoT certification, are fundamental to derogate the presumption. Moreover, recognised VoTs should be provided with special procedural guarantees in order to be able to enjoy their rights and comply with their obligations, therefore, cannot be expected that they will be able to fulfill their obligations, including the obligation to cooperate with the national authorities at every stage of the process. In both scenarios, vulnerable applicants may be at risk and threat of experiencing torture, ill-treatment, and any other treatment which may be in contravention of Article 3(1) of the UNCAT.

Fenix calls on the Greek Government to respect the rights and safeguards afforded to vulnerable asylum applicants, including those of VoTs, and calls the Greek Government to appropriately provide clear and effective pathways for VoTs to be identified and certified. Fenix also recommends the European Commission, as the guardian of the EU treaties, to ensure compliance with EU law, including on the Asylum Procedures Directive, the Reception Conditions Directive, the Return Directive, the European Convention of Human Rights, and the Charter of Fundamental Rights of the European Union.

I. INTRODUCTION

"The main problem is that among migrants, the survivors of torture are generally not identified, and hence not offered, or seen to be entitled to redress and rehabilitation." – Jens Modvig, Chairperson, United Nations Committee against Torture (the Committee).¹

Perpetrators of acts of torture seek to eliminate the survivor's personality and deny the dignity inherent to a person. Due to the nature of its gravity, torture is absolutely prohibited under international law, both in times of peace and war.² Despite its absolute nature, an innumerable number of people are subjected to torture in their country of origin or a third country around the world. Despite there being no official statistical information on how many people within the migrant populations are victims of torture (VoTs), the United Nations Office of the High Commissioner for Human Rights (OHCHR) estimates that between 5 to 35% of refugees survived torture in 2017.³ Given the prevalence of torture cases amongst persons forcibly displaced, many policies and procedures have been adopted to ensure that VoTs have access to appropriate services and protection mechanisms.

Numerous laws and standards have been introduced at international, European and national levels to protect everyone who has been submitted to torture. Under European and international law, Member States have an express obligation to identify, certify and rehabilitate anyone whom authorities believe may have been submitted to acts of torture, independently of the territory in which such acts were committed.⁴ Accordingly, Greece

¹ United Nations Human Rights Office of the High Commissioner (OHCHR), *Report on the Third Annual Expert Torture victims in the context of migration: identification, redress, and rehabilitation* (Hereinafter "*OHCHR Third Annual Expert Report*"), 26–27 April 2017, p 8.

² International Committee of the Red Cross (ICRC), *Prohibition and punishment of torture and other forms of ill-treatment*, 25 June 2014, available at: <https://www.icrc.org/en/document/prohibition-and-punishment-torture-and-other-forms-ill-treatment>; Under international law prohibits torture at all times and in all places, even in situations of armed conflict or public emergency, see further <https://www.ohchr.org/en/topic/torture>. The prohibition of torture may be found in Article 5 of the Universal Declaration of Human Rights; the Convention against Torture or Other Cruel, Inhumane and Degrading Treatment or Punishment (CAT) at a series of Articles; International Covenant on Civil and Political Rights (ICCPR) at Article 7; European Convention on Human Rights (ECHR) at Article 3; Relevant provisions can also be found in the Convention on the Rights of Persons with Disabilities (Article 15), Convention on the Rights of the Child (Article 37), Convention on the Rights of Migrants (Article 10).

³ *OHCHR Third Annual Expert Report*, p 3.

⁴ International Rehabilitation Council for Torture Victims (IRCT), *Recognizing victims of torture in national asylum procedures, A comparative overview of early identification of victims and their access to medico-*

has an obligation to ensure that everyone who states or presents signs of having been subjected to torture is properly identified, and if recognised as VoT, obtains access to redress, rehabilitation, and other fundamental guarantees. In lieu of this, those working with survivors of torture and other serious acts of violence should be provided with the appropriate training concerning the special needs of the survivors.⁵

Despite the binding nature of such obligations, there is a systematic failure to identify and certify VoTs in Greece. The structural failure directly impacts their access to specialised and adequate medical care, psychological support and special reception conditions in accordance with their particular needs, and can lead to a failure in the recognition of their need for international protection. Such systematic failures amount to direct and/or indirect violations under international, European and Greek legislation.

This report aims to highlight the importance of the effective identification of applicants who survived acts of torture and to address the main challenges that VoTs face from the moment they initiate their asylum application until the moment they complete it. To achieve this aim, the report will focus on the main legal and practical obstacles faced in Greece by applicants who are survivors of torture. It will then analyse Greece's compliance with its legal obligations towards survivors of torture. In the end, we offer recommendations to address the referred problems. The report is not exhaustive in scope and so cannot reasonably cover all harmful practices and violations reported by applicants who were subjected to torture.

legal report in asylum-receiving countries", 2013; METAdrasi, *Victims of Torture: the invisible side of the refugee population vulnerability*, 16 October 2018; Council of the European Union, *EU Guidelines on EU Policy Towards Third Countries on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 16 September 2019; Council of Europe, *Committee of Ministers Recommendation Rec (2006)9 to Member States on Assistance to crime victims*, 14 June 2006.

⁵ Council of the European Union, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 26 June 2013, OJ L 180/96 (Hereinafter "Receptions Conditions Directive"), Article 25; United Nations Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("Istanbul Protocol"), 2004, HR/P/PT/8/Rev.1, para 631, 662 "States should ensure that all relevant personnel (Law enforcement official, prison officials, State forensic experts and other health professionals, prosecutors, lawyers and judges) receive training on effective legal and clinical investigation and documentation of torture and ill-treatment (...)".

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The research is informed by an interdisciplinary approach based on Fenix fieldwork on Lesbos and in Athens, and takes into consideration academic research, case law, policy developments and the positions adopted by international organisations. The primary source of evidence informing this report is drawn from Fenix's clients. Between 2020 and 2022, Fenix supported 42 applicants from 13 countries seeking international protection on Lesbos and who reported being subject to acts of torture in their country of origin or in transit countries.

II. OVERVIEW OF THE PROCEDURE FOR THE IDENTIFICATION AND CERTIFICATION OF VICTIMS OF TORTURE

1. Vulnerability assessment: domestic legal framework and practice

Under Articles 38(2) and 41 of Law 4939/2022,⁶ third-country nationals who enter Greece without following legal formalities are subjected to reception and identification procedures, including medical and psychosocial assessments conducted by the competent medical staff and psychosocial support section of the Reception and Identification Centre (RIC) or the Closed Controlled Access Centre (CCAC). Following the identification of vulnerabilities⁷ by the competent authorities during the reception and identification procedures, the RIC or CCAC Commander where the applicant is residing must refer the applicants to the competent public institution to receive appropriate care and protection, in accordance with Article 77(2) of 4939/2022. Where vulnerabilities are only identified or revealed at a later stage of the asylum procedure, the competent authorities must refer the applicant to public hospitals, public mental health institutions, other contracted physicians, the medical screening and psychosocial support unit of the RIC or CCAC to proceed with a new vulnerability assessment following Article 41 of Law 4939/2022, as established by Article 77.⁸

The determination of vulnerabilities is fundamental for the identification of special reception needs of applicants and subsequent provision of special reception conditions, which includes access to adequate accommodation and access to specialised medical

⁶ Law 4390/2022, Official Gazette 111/A/10-6-2022 (Codified), Ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners, available at: <https://www.e-nomothesia.gr/kat-allodapoi/nomos-4939-2022-phek-111a-10-6-2022.html>.

⁷ Under Article 1 of 4939/2022, the recognised vulnerabilities are: children, unaccompanied minors, children, direct relatives of victims of shipwrecks (parents, siblings, children, husbands/wives); disabled persons; elderly; pregnant women; single parents with minor children; victims of human trafficking; persons with serious illness; persons with cognitive or mental disability and victims of torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation.

⁸ For further details, see Asylum Information Database (AIDA) et GCR, "Country Report: Greece" (2020 Update) (Hereinafter: "AIDA Report 2020"), available at: https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf, p 112-116; AIDA et GCR "Country Report: Greece" (2021 Update) (Hereinafter: "AIDA Report 2021"), available at: https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf, p 115.

care.⁹ This recognition of the vulnerabilities is also essential to the determination of special procedural needs, as provided for in paragraph 1 of Article 72 of Law 4939/2022. Paragraph 3 of the same Article specifically recognises that certain applicants with vulnerabilities – e.g. survivors of torture, rape or other serious forms of psychological damage, physical or sexual violence – should not have their asylum application examined under border procedures where appropriate support to satisfy special procedural needs cannot be provided.

In practice, serious deficiencies in the determination of asylum applicants' vulnerabilities have been systematically observed in recent years in Greece, and on Lesbos has been no different. It is undeniable that in recent years, there has been a reduction in the waiting time for conducting vulnerability assessments on Lesbos.¹⁰ Yet, this did not mean that the systematic failures in the identification of the vulnerabilities have been suppressed. Asylum applicants often are rushed through several different phases of the asylum process before the medical and/or psychosocial examinations are completed.¹¹ Frequently, asylum interviews are conducted even while the medical assessment remains pending.

The problems observed are not only related to delays. As described in several reports of different international and non-governmental organisations and experienced by asylum

⁹ Article 62 of Law 4939/2022.

¹⁰ See for example, in *AIDA Report 2021* p 111; RSA et al., *The Workings of the Screening Regulation. Juxtaposing Proposed EU Rules With the Greek Reception and Identification Procedure* (Hereinafter "RSA, *The Workings of the Screening Regulation*"), January 2021, available at: <https://www.fenixaid.org/articles/the-workings-of-the-screening-regulation>; Fenix Aid, *The UN Special Rapporteur on Human Rights Defenders: Hearing with migrants' rights defenders in Greece*, 27 July 2022, available at: <https://www.fenixaid.org/articles/un-special-rapporteur-on-human-rights-defenders-hearing-with-migrants-rights-defenders-in-greece>; Fenix et al., *For Refugees and Asylum Seekers residing on Lesbos, mental health remains an invisible vulnerability*, 24 May 2022, available at: <https://www.fenixaid.org/articles/for-refugees-and-asylum-seekers-residing-on-lesvos-mental-health-remains-an-invisible-vulnerability>.

¹¹ Fenix, *For a Europe that Truly Protects: Joint NGO Policy Brief on the Screening Regulation Proposal* (Hereinafter: "*Fenix, For a Europe that Truly Protects: Joint NGO Policy Brief on the Screening Regulation Proposal*"), 6 May 2021, available at: <https://www.fenixaid.org/articles/for-a-europe-that-truly-protects-joint-ngo-policy-brief-on-the-screening-regulation-proposal>. RSA et al., *The state of the border procedure on the greek islands*, 11 October 2022, available at: <https://rsaegrean.org/en/border-procedure-greek-islands/>, p 15-19.

applicants represented by Fenix, the vulnerability assessments are of low quality.¹² Oftentimes only 'evident vulnerabilities' are identified and recorded,¹³ leaving less observable vulnerabilities unrecognised and unnoticed.¹⁴

The low quality of the assessments has been linked to several factors: insufficient number of medical and psychosocial professionals, lack of privacy to conduct thorough assessments, failure to provide translators,¹⁵ poor medical screening, poor psycho-social assessments,¹⁶ the failure of medical practitioners to recognise the types of scars and other physical trauma as a result of the torture and violence,¹⁷ and difficulties in referrals where public hospitals refuse to proceed with further evaluation.¹⁸ From the end of 2022, Fenix has observed that vulnerability assessments only consist of a medical examination on Lesbos – psychosocial assessments may only be conducted whether the doctor who conducts the medical assessment requests it, raising the likelihood of leaving

¹² See for example in *AIDA Report 2021* p 111; *Fenix et al, For a Europe that Truly Protects: Joint NGO Policy Brief on the Screening Regulation Proposal*, available at: <https://www.fenixaid.org/articles/for-a-europe-that-truly-protects-joint-ngo-policy-brief-on-the-screening-regulation-proposal>; RSA, *The Workings of the Screening Regulation*; Fenix, *The UN Special Rapporteur on Human Rights Defenders: Hearing with migrants' rights defenders in Greece*", 27 July 2022, available at: <https://www.fenixaid.org/articles/un-special-rapporteur-on-human-rights-defenders-hearing-with-migrants-rights-defenders-in-greece>; Fenix Aid, *For Refugees and Asylum Seekers residing on Lesbos, mental health remains an invisible vulnerability*, 24 May 2022, available at: <https://www.fenixaid.org/articles/for-refugees-and-asylum-seekers-residing-on-lesvos-mental-health-remains-an-invisible-vulnerability>; Fenix Aid, *Vulnerabilities and the New Pact on Migration*, 3 December 2020, available at: <https://www.fenixaid.org/articles/vulnerabilities-and-the-new-pact-on-migration>.

¹³ See further *AIDA Report 2021*, p 115; Evident vulnerabilities are elderly people, pregnant women, children, unaccompanied children, and people with clear physical disabilities, etc. Leaving out non-evident vulnerabilities such as: sexual and gender-based violence victims, victims of torture, rape or other serious forms of psychological violence, or sexual violence such as victims of female genital mutilation, human trafficking victims, and others.

¹⁴ Fenix, *For a Europe that Truly Protects: Joint NGO policy brief on the Screening Regulation Proposal*.

¹⁵ *ibid*; RSA, *Rejection of 28 Asylum seekers from African Countries due to Lack of Interpreters*, 24 November 2019, available at: <https://rsaegean.org/en/rejection-of-28-asylum-seekers-from-african-countries-due-to-the-lack-of-interpreters/>.

¹⁶ See further, *AIDA Report 2021* p 21, 111.

¹⁷ Médecins Sans Frontières (MSF), *Submissions to the United Nations Committee Against Torture prior to the periodic review of Greece*, 67th Session, June 2019.

¹⁸ See further, *AIDA Report 2021* p 21, 110-113; Fenix Aid, *For Refugees and asylum seekers residing on Lesbos, mental health remains an invisible vulnerability*, 24 May 24 2022, available at: <https://www.fenixaid.org/articles/for-refugees-and-asylum-seekers-residing-on-lesvos-mental-health-remains-an-invisible-vulnerability>.

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unrecognised many non-visible vulnerabilities. If the asylum applicants go through a psychosocial assessment, the doctor who conducted the initial medical examination has to accept and agree with the observations by the psychologist.

Asylum applicants can request a reassessment; however, in practice, this is challenging for applicants who do not have legal representation,¹⁹ and delays are frequent. More recently, reassessments for persons between asylum applications stopped being conducted.

The structural deficiencies of vulnerability assessments have led to many vulnerabilities going unrecognised and applicants not accessing their rights guaranteed to them by law. As described above, recognised VoTs (and other applicants with vulnerabilities) are entitled to special reception conditions, but if they are not identified as such, they will not be able to access it and forced to go through the asylum procedure without being able to access the adequate conditions, including housing and medical care.

Additionally, they may also be entitled to special procedural guarantees, in accordance with Article 72 of Law 4939/2022. The competent authorities shall assess whether an asylum applicant with vulnerabilities requires special procedural guarantees due to age, sex, sexual orientation, gender identity, mental health problems or victims of torture, rape or other serious forms of psychological, physical or sexual violence. Where applicants are recognised with the need for special procedural guarantees, they must receive adequate support to be able to enjoy their rights and follow their obligations during the asylum procedure. In case of adequate support cannot be provided within border procedures, particularly in the case of the asylum applicant has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, the border procedures must not apply or cease to apply, and refer to the regular procedure. However, asylum applicants continue not to access special procedure guarantees or being referred to the regular procedure due to a lack of recognition of vulnerabilities or recognition that adequate support cannot be provided within the border procedures.²⁰

Furthermore, Fenix legal representatives observed that authorities often fail to respond to oral or written objections raised by legal representatives for pending vulnerability assessments and continue to conduct asylum interviews without regard to

¹⁹ Fenix, *The Workings of the Screening Regulation*, p 15

²⁰ RSA et al, *The State of the Border Procedure on the Greek Islands*.

vulnerabilities.²¹ In several cases represented by Fenix, we observed a general lack of communication between GAS, who conduct the asylum interviews, and RIC, who is responsible for the assessment of vulnerabilities such as torture. All asylum seekers should be provided with a health card provided by Hellenic National Public Health Organisation (EODY), where medical problems and vulnerabilities must be identified. Often, asylum applicants' EODY cards do not chime with their GAS files. This is concerning and forces the question of how the competent authority is able to make decisions on the provision of procedural guarantees and 'adequate support' without such information. As a consequence, asylum applicants who do not have legal representation are at a distinct disadvantage; they are unable to provide details regarding recognised vulnerabilities or pending procedures during the asylum proceedings.

2. The 10A code and its applicability

Aside from identification in accordance with the Istanbul Protocol, which will be detailed in Chapter II.3., asylum applicants who survived violence, including VoTs, ought to be identified with the code 10A.²² This code is not established in the World Health Organisation (WHO)'s International Classification of Diseases (ICD) or in national law but from the Standard Operating Procedures (SOPs)²³ of RIC or CCAC. This code is used when an asylum applicant is considered to be a 'victim of Torture, Rape, Physical, Sexual, Psychological or other serious forms of violence', and indicates the need for the continuation of the needs assessment and the creation of a care plan due to the vulnerability.²⁴

²¹ This has also been observed by other NGOs working on Eastern Aegean Islands. See RSA et al, *The State of the Border Procedure on the Greek Islands*.

²² This code is not defined in national legislation; it is defined in the Standard Operating procedure (SOP) of the Reception and Identification Centres for the purposes of determination of special reception conditions of applicants, which is a set of written instructions that describes the process that must be followed.

²³ ICD is a tool designated to promote international comparability in collecting, processing, classifying, and presenting statistics on causes of mortality and morbidity. The ICD is periodically reviewed to incorporate changes introduced in the medical field. The last version is ICD-11, and it was adopted by the 72nd World Health Assembly in 2019 and came into effect on 1 January 2022. For more information, see: WHO, 'International Statistical Classification of Diseases and Related Health Problems (ICD)', available at: <https://www.who.int/standards/classifications/classification-of-diseases>.

²⁴ AIDA (2021), *Country Report Greece, 2020 Update*, p 114.

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As aforementioned, medical or psychosocial problems are systematically not recognised, especially vulnerabilities which are not visible with a simple physical examination. For victims of violence, this is not different. Frequently, asylum applicants are not recognised as victims and do not receive the 10A code.

From Fenix's fieldwork, out of forty-two applicants who reported surviving acts of torture, only five received the 10A code. Four of those with the 10A code received it only after a re-assessment was requested by the asylum applicants' legal representatives. Therefore only 11.9% of the applicants represented by Fenix have been identified with the 10A code, while the vast majority of 88.1% have not received the 10A code and have continued the asylum procedure with their vulnerabilities unidentified.

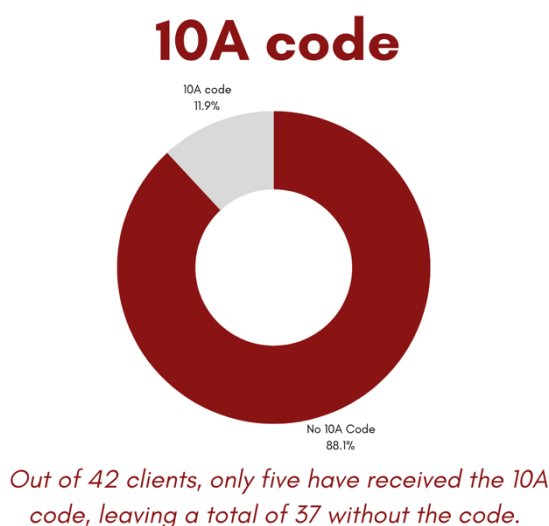


Figure 1

Despite its significance, the use of the 10A code has several limitations. On the one hand, it is not part of the ICD codes, nor has it been transposed into national Greek law – it is only defined in SOPs of RIC or CCAC for the purposes of identifying special material reception needs. On the other hand, it is not exclusively for VoTs – survivors of violence, which do not correspond to the definition of torture of the Istanbul Protocol, may also receive this code. The assessment procedure which leads to the determination that an asylum application should receive the 10A code does not follow the minimum standards to ensure the effective investigation and documentation of torture and ill-treatment established in the Protocol.

Accordingly, the 10A code cannot be considered equivalent to the identification and certification established in the Protocol. Instead, the two procedures should be understood as complementary. When asylum applicants receive this code due to torture, they should be referred to the competent authority in order to determine whether they can be considered VoTs in accordance with the Istanbul Protocol.

The use of the 10A code does not guarantee that applicants will access special material reception conditions, such as appropriate medical care or accommodation in accordance with their needs. For example, out of twenty applicants with the 10A code who were referred to the Emergency Support to Integration and Accommodation (ESTIA II), only thirteen have been accepted. It is unclear why the remaining seven were not accepted, contrary to the SOPs of RIC or CCAC.

It is important to note that on 31 December 2022, the EU-funded ESTIA program was terminated, as announced by the Greek Government in February 2022.²⁵ This decision forced thousands of applicants with vulnerabilities, including VoTs, to live in camps throughout Greece in remote areas under conditions which constitute inhumane and degrading treatment and without access to medical care, not to mention identification and rehabilitation services for survivors of torture.

In sum, and most importantly, the 10A code does not guarantee that survivors will access rehabilitation and redress as prescribed by international obligations.

3. Identification and certification of VoTs in Greece

In the specific case of VoTs, Article 67(1) of Law 4939/2022 provides that their recognition must be certified by a medical opinion from a public hospital, military hospital or appropriately trained practitioners of public health service providers (including forensic doctors).²⁶ Further, VoTs have the right to receive appropriate care for the damage caused by the acts of torture.²⁷ The certificate of the torture must include the

²⁵ Ministry of Migration and Asylum, *The program for hosting asylum seekers in urban apartments “ESTIA” has been completed*, 4 January 2023, available at: <https://migration.gov.gr/oloklirothike-to-programma-filoxenias-aitoynton-asylo-se-astika-diamerismata-estia/>; Ministry of Migration and Asylum, *The “ESTIA II” housing program is completed in 2022*, 22 February 2022, available at: <https://migration.gov.gr/oloklironetai-to-programma-stegasis-estia-ii-to-2022/>.

²⁶ This restriction was introduced by Article 23 of Law 4540/2018 in 2018.

²⁷ Article 67(1) of the 4939/2022.

history of torture, the medical opinion describing the physical sequelae(s) (scars and other marks) as the result of the specific method(s) of torture used, the written assessment of a psychologist on the psychological consequences of torture; and lastly, the legal opinion in the conclusion of the medico-legal report.²⁸

Despite national law, the certification of VoTs systematically does not occur. Article 67(1) of Law 4939/2022 imposes that only public authorities are competent to provide certification. This is a restriction to Article 25 of the Reception Conditions Directive, which only specifies that the competent authorities have 'appropriate training'. This is an unnecessary restriction of the competent authorities which provide certification and a violation of Article 4 of the Reception Condition Directive. The restriction creates further barriers to the identification and certification of VoTs, especially considering that no public authority in Greece currently has qualified personnel or is competent for this type of certification of VoTs.

To several requests submitted by Fenix between 2021 and 2022, the General Hospital of Mytilene "Vostaneio" (the Hospital), which is the only public hospital on the island of Lesbos, repeatedly replied that the Hospital does not have the adequate infrastructure and specialised personnel to conduct VoT certifications since there is no 'Special Committee for Psychosocial Support' for victims of violence or translation services.²⁹ In cases referred to the Northern Aegean Forensic Service (the Forensic Services), the Forensic Service stated that the service could not proceed with an assessment without a formal request by police authorities or the public prosecutor.³⁰

Similarly, the RIC or CCAC Lesbos has replied that the 'Medical Rehabilitation Centre for Victims of Torture' (MRCT) was the competent public authority for the identification and certification of VoTs, and, since its closure in 2008, no other authority or public service can proceed with VoT certification due to the lack of specialised personnel.³¹ EODY on Lesbos has also expressed that they lack specialised personnel to certify VoT.³² Accordingly, due to a lack of specialised medical personnel, VoTs cannot proceed to request certification from public health services on Lesbos.

²⁸ *Istanbul Protocol*, p 69.

²⁹ Answers of "Vostanio" General Hospital of Mytilene with protocol no 6322/2021, 6323/2021, 4990/2021; RIC Lesbos answer with protocol no 305/2021.

³⁰ Answers of the Northern Aegean Forensic Service with protocol no 72a/2021, 93a/2021.

³¹ Answers of the Northern Aegean Forensic Service with protocol no 72a/2021, 93a/2021.

³² Answers to Fenix from EODY on 15 May 2022.

The gap in the identification and certification of VoT is not only verified on the islands of Lesbos; it is also verified on the mainland, including in Athens. The Forensic Service of Athens and several public hospitals systematically reply to requests submitted by Fenix legal representatives that they cannot proceed with the identification and certification of VoTs according to the Istanbul Protocol due to a lack of specialised training and knowledge.³³ This gap has been highlighted to the Ombudsman since 2020.³⁴

To conclude, there is no public authority with qualified professionals willing to assume the required competence to proceed with the certification process of VoTs, despite the clear binding obligations under Article 67 of Law 3949/2022, and Article 25 of the Reception Conditions Directive. As a result, VoTs are systematically not certified as such and, therefore, cannot access the rights they are entitled to since competent public authorities lack the capacity and/or knowledge to undertake this procedure in accordance with the Istanbul Protocol.³⁵

4. Non-governmental organisations filling procedural gaps

At the same time that public authorities do not qualified personnel to proceed with the VoT certification, non-governmental organisations (NGOs) hold the appropriate knowledge and capacity to provide certification for VoTs according to the Istanbul Protocol and attempt to provide this certification.³⁶ In 2011, following the closure and suspension of activities of the MRCT in 2008, METAdrasi, a Greek NGO, took on the responsibility of filling the gap in Greece by running relatively specialised programmes to handle the identification and certification of VoTs and facilitating the reception and integration of refugees and immigrants. The program named 'Hope and Memory: Identification and Certification of VoTs' aims to 1) provide certification for VoTs based

³³ Answers to Fenix Aid from Sotiria Hospital with protocol no. 5629/2022.

³⁴ Intervention to the Ombudsman with protocol number 278729/54595/2020.

³⁵ See METAdrasi, *Θύματα βασανιστηρίων: Από την ανίχνευση στην προστασία: Ιστορικό, πρακτικές και συστάσεις για τη βελτίωση της προστασίας των θυμάτων βασανιστηρίων στην Ελλάδα*, 21 December 2021, available at: <https://bit.ly/3170BJQ>; MSF, *Όι Γιατροί Χωρίς Σύνορα ολοκληρώνουν τη δράση τους στην κλινική για επιζώντες βασανιστηρίων στην Αθήνα*, 21 December 2021, available at: <https://bit.ly/3EBMrOC>> Accessed August 2022

³⁶ AIDA (2021), *Country Report Greece, 2021 Update*, p 118–128; *Istanbul Protocol*, p 32, 47, 49.

on the Istanbul Protocol, 2) train relevant actors, and 3) raise awareness, provide information and advocacy.³⁷

In 2014, Medecins Sans Frontieres (MSF) began providing medical care for the rehabilitation of VoTs in Athens to fill the gaps found in the medical and humanitarian response to migrants, asylum seekers and refugees who suffered torture and ill-treatment.³⁸ Nonetheless, this medical care for VoTs closed in 2021, leaving METAdrasi as the only NGO covering the evident gaps and oversights in public services and the Greek asylum system supporting VoTs.

Due to Article 67(1) of Law 4939/2022, NGOs, such as METAdrasi, are not considered competent to proceed with such certification according to the aforementioned Article, and as a result, their certificates are not binding for the Greek Authorities. The lack of recognition of NGOs to provide certification to VoTs directly impacts the right to receive the necessary access to appropriate care, medical and psychological treatment or care, in accordance with Article 67(1) of the same Law, Article 25(1) of Reception Conditions Directive and Article 14 of UNCAT. This may also impact the examination of the asylum applications since the competent authorities are also not bound to consider NGO certification of torture, it is at their discretion to take it into consideration or not.

Whilst 16 out of 42 asylum applicants who reported to have been subjected to torture have received the METAdrasi and MSF certification, constituting 38.1%, of those asylum applicants who have received an MSF and/or METAdrasi certification, only three have received the 10A code from the relevant public authorities, leaving in total thirteen beneficiaries, constituting of 31%, who have a certificate from an NGO without a 10A code.

³⁷METAdrasi, *Hope and Memory: Identification and Certification of Victims of Torture*, available at: <https://metadrasi.org/en/campaigns/certification-of-torture-victims/>.

³⁸ MSF, *MSF Submission to the United Nations Committee Against Torture prior to the periodic review of Greece, 67th Session, June 2019*, available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/GRC/INT_CAT_CSS_GRC_35376_E.pdf.

Unrecognised Vulnerability

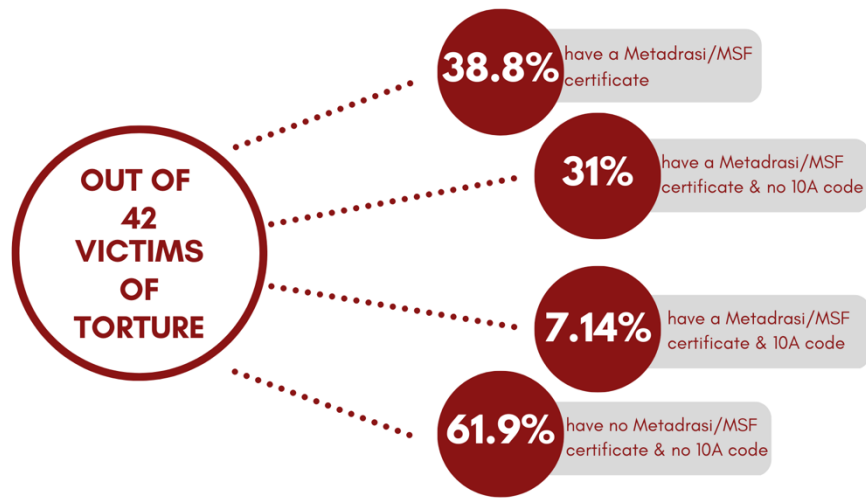


Figure 2

III. CONSEQUENCES OF THE FAILURE OF IDENTIFICATION AND CERTIFICATION OF VOTS

Failure to provide certification to VoTs and to efficiently train public authorities and practitioners has serious consequences for VoTs, amounting to direct and indirect violations of fundamental human rights laid down in International and European law. Such consequences include:

- 1) Failure to provide redress and rehabilitation for VoTs, amounting to a violation of Article 14 of the UNCAT
- 2) Failure to provide special reception conditions, violating the prohibition on inhumane and degrading treatment enshrined in Article 16 UNCAT; and
- 3) Refoulement, violating the right of non-refoulement as enshrined in Article 3 of UNCAT.

1. Failure to provide redress and rehabilitation for VoTs, amounting to a violation of Article 14 of the UNCAT

Under Article 14 of UNCAT, State parties must ensure that everyone who was submitted to an act of torture obtains redress and has the right to fair and adequate compensation, including the means for 'as full rehabilitation as possible'.³⁹ Unlike other Articles of the same Convention,⁴⁰ Article 14 does not contain any geographic limitation, nor does it mention that it only applies to cases where the acts of torture occurred in the territory of the relevant state or are subject to the state jurisdiction.⁴¹ In 2012, the CAT confirmed

³⁹ Article 14 of the UNCAT establishes that:

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act. of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

⁴⁰ See for example Articles 2(1), 5, 7, 12 and 13 of CAT.

⁴¹ UN Committee against Torture, General Comment No.3: Implementation of Article 14 by State Parties (Hereinafter: '*UNCAT General Comment No 3*'), CAT/C/GC/3, 13 December 2012, available at: <https://www.refworld.org/docid/5437cc274.html>, para 22; Christopher Keith Hall, *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations*

this interpretation, stating that all VoTs should access rehabilitation 'without discrimination' and independently of their identity or status, including asylum seekers and refugees.⁴²

The absence of a geographical limitation is also confirmed by the *travaux préparatoires*.⁴³ Numerous versions of the present Article were discussed within the drafting Working Group, including those with geographical limitations; nonetheless, the final version was the one without geographical limitations. Finally, the Commission on Human Rights studied all the proposals presented by the Working Group between 1982 and 1983, and in the last version, the Commission did not object to the rejection of the geographical limitation.⁴⁴ Greece, being a State party to the UNCAT must properly implement it and, therefore, respect the universal scope of Article 14, guaranteeing redress to VoTs independently of where the torture occurred or who is responsible for it.

In the General Comment No 3, the Committee expressed that 'redress' is not only an 'effective remedy' but also 'reparation', which encompasses restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴⁵ To comply with this obligation to provide redress and adequate compensation, Article 14 of UNCAT encompasses two types of obligations: procedural and substantive obligations.⁴⁶

To satisfy the procedural obligations, the States parties have to enact legislation and establish mechanisms, investigative bodies and institutions with the competence to

for *Torture Committed Abroad*, EJIL, VOL No 5, 2007, available at: <https://academic.oup.com/ejil/article/18/5/921/398690>, p 923-924.

⁴² UNCAT General Comment No. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/GC/3, December 13, 2012, para 15 and 32.

⁴³ The *travaux préparatoires* refers to the preparatory works of the negotiations and drafting of the Convention. For a more extensive explanation of the changes in the wording on the successive drafts of Article 14 of the Convention against Torture and their relevance for the interpretation of this Article, see Christopher Keith Hall, *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*, EJIL, VOL No 5, 2007, available at: <https://academic.oup.com/ejil/article/18/5/921/398690>, p 931-937.

⁴⁴ For a more extensive explanation of the changes in the wording on the successive drafts of Article 14 of the Convention against Torture and their relevance for the interpretation of this Article, see Christopher Keith Hall, *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*, EJIL, VOL No 5, 2007, available at: <https://academic.oup.com/ejil/article/18/5/921/398690>, p 931-937.

⁴⁵ UNCAT General Comment No. 3, para 2 and 4.

⁴⁶ UNCAT General Comment No. 3, para 5.

determine the right to and award redress for a VoT and guarantee that both the mechanism and the body are effective and accessible to all VoTs.⁴⁷ In other words, to satisfy their obligations, State Parties must on the one hand establish institutions with the competence to issue enforceable decisions that provide VoTs access to redress, including compensation and rehabilitation. On the other, states must establish authorities that promptly, effectively and impartially investigate the case of a person who states to have survived acts of torture. Such investigation must encompass a physical and psychological forensic examination in accordance with the Istanbul Protocol.⁴⁸ The right to seek redress and the obligation to initiate the process must not depend on a criminal complaint.⁴⁹ Additionally, State Parties must ensure that all relevant authorities receive training on human rights law, various aspects of torture and how to use a sensitive approach towards VoTs, following the Istanbul Protocol.⁵⁰

For the satisfaction of the substantive obligations, the State parties must ensure that VoTs obtain effective redress and reparation in at least one of the five forms indicated above (i) restitution, (ii) compensation, (iii) rehabilitation, (iv) satisfaction and (v) guarantees of non-repetition, as described in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Law*.⁵¹

The CAT defined 'rehabilitation' as the "restoration of function or the acquisition of new skills required as a result of the changed circumstances after the act of torture", and it must include medical and psychological care and legal and social services.⁵² The aim of rehabilitation must be the restoration of VoT's 'independence, physical, mental, social and vocational ability' and full participation in society.⁵³

⁴⁷ UNCAT General Comment No. 3, para 5.

⁴⁸ UNCAT General Comment No. 3, para 19-28.

⁴⁹ UNCAT General Comment No. 3, para 27.

⁵⁰ UN Committee Against Torture, *Concluding observations on the Seventh Periodic Report of Greece* (Hereinafter: "UNCAT Committee, Concluding Observations on Greece"), 3 September 2019, CAT/C/CGR/CO/7, para 18, 34-35.

⁵¹ *Basic Principles and Guidelines on the Right to Remedy and Reparation*; UNCAT General Comment No. 3, para 5-7.

⁵² UNCAT General Comment No. 3, para 11-12.

⁵³ UNCAT General Comment No. 3, para 11.

In order to fulfil its obligations on rehabilitation, State parties must guarantee that specialised services for VoTs are available and accessible to all,⁵⁴ independently of the existence of a formal complaint, court decisions on parties responsible or where it occurred,⁵⁵ and who is the person who was submitted to acts of torture. This means that the State Parties must ensure that rehabilitation is available to all, regardless of 'race, colour, ethnicity, age, religious belief or affiliation, political or other opinions, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, the reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction'.⁵⁶

The Greek legal framework establishes a certification procedure and determines which are competent authorities. However, in practice, Greece is not fulfilling its obligations since the competent authorities do not have the knowledge or capacity to proceed with the determination and certification of VoTs. As aforementioned, only public authorities are officially recognised by Greek law to certify VoTs and to provide the necessary and adequate rehabilitation. However, they do not have the qualified professionals to proceed with such certification according to the Istanbul Protocol. Hence, the Greek Government does not only violate its procedural obligations, with no effective access for VoTs to a mechanism or body but also its substantive obligations, considering that only VoTs with certification can access rehabilitation.

In September 2019, the Committee published the Concluding Observations on the seventh periodic report of Greece of the Convention against Torture, where it pointed out several concerns, all in line with the concerns raised in this report.⁵⁷ Particularly, the Committee reminded Greece that it 'should ensure that all victims of torture [...], including [...] the means for as full a rehabilitation as possible'.⁵⁸

In addition, the Committee also highlighted that '[...] only scant information has been provided on training programmes for professionals directly involved in the investigation

⁵⁴ UNCAT General Comment No. 3, para 13.

⁵⁵ UNCAT General Comment No. 3, para 13 and 15.

⁵⁶ *ibid*

⁵⁷ UNCAT Committee, Concluding Observations on Greece.

⁵⁸ UNCAT Committee, Concluding Observations on Greece, para 31.

and documentation of torture [...]’⁵⁹ and asked that Greece specifically train the relevant professionals, including medical personnel, to detect, investigate, refer and treat the consequences of torture.⁶⁰ Providing well-trained personnel is critical to identifying victims of torture, so they can access rehabilitation services.

The Committee has also emphasised that Greece should provide training to the relevant personnel to ensure effective and appropriate redress to VoTs; in particular, they should receive 'methodological training in order to prevent re-traumatisation of VoTs or ill-treatment'. The CAT added that 'this training should include, for health and medical personnel, the need to inform victims (...) the availability of emergency medical procedures, both physical and psychological'.⁶¹ In addition, it recommended that Greece 'ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment' in accordance with the Istanbul Protocol and 'develop and implement a methodology to assess the effectiveness and impact of educational and training programmes relating to the Convention and the Istanbul Protocol'.⁶² Nonetheless, as the practical experiences of Fenix demonstrate, there is a serious lack of training, amounting to the failure to provide identification and certification to VoTs who are asylum seekers and migrants.

In summary, Greece’s failure to investigate, detect, assess vulnerable asylum-seekers, and promptly provide certification constitutes a *de facto* denial of rehabilitation, a deprivation of the fundamental rights of VoT under Article 14 of the UNCAT.

2. Failure to provide special reception conditions, violating the prohibition on inhumane and degrading treatment enshrined in Article 16 UNCAT, Article 3 ECHR, Article 4 Charter of Fundamental Rights of the European Union (CFR)

States have a legal obligation to treat asylum application adequately and fairly throughout the whole asylum procedure, in accordance with the standards set out by

⁵⁹ UNCAT Committee, Concluding Observations on Greece, para 44.

⁶⁰ UNCAT Committee, Concluding Observations on Greece, para 45.

⁶¹ UNCAT General Comment No. 3 para 35; The UN Committee against Torture has also noted that training of relevant police, prison staff, medical personnel, judicial personnel and immigration personnel, including training on the Istanbul Protocol, is fundamental to ensuring effective investigations.

⁶² UNCAT Committee, Concluding Observations on Greece, para 45(c) and (d)

international and European human rights law⁶³ and refugee law⁶⁴. A core principle is enshrined in Article 16 of UNCAT and Article 3 of ECHR, which establishes an absolute, non-derogable obligation⁶⁵ to prevent acts of torture or other cruel, inhuman, or degrading treatment and punishment. It requires States to provide effective measures that prevent 'any treatment that may amount to a violation of the Convention'.⁶⁶

Greece, as all European Member States, has the obligation to provide adequate reception conditions to applicants, when they make their asylum applications.⁶⁷ If not, it threatens to violate the prohibition on inhumane and degrading treatment. The ECtHR found a violation of Article 3 of the ECHR in its landmark judgement on *M.S.S v. Belgium & Greece*, considering that Greece did not meet its obligations under Article 3 because it did not secure the vulnerable applicant adequate reception conditions when his asylum procedure was pending.⁶⁸

The Reception Conditions Directive establishes additional obligations towards vulnerable persons, including persons who have been subjected to torture. These include special

⁶³ International human rights law offers a minimum content of human rights which applies to everyone regardless of their legal status and situation, for example, Universal Declaration of Human Rights (UDHR) under Article 25 recognises the right of everyone to a standard of living adequate for the health and well-being of himself or herself and his or her family, including food, clothing, accommodation and medical care and necessary social services. The International Covenant on Civil and Political Rights (ICCPR) Article 2(1) provides standards for the exercise of civil rights, including protection against arbitrary detention and torture, and the right to recognition everywhere as a person before the law, it further prohibits discrimination on the ground of national origin. At a European level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provides that human rights of asylum seekers are also protected, and it applies to everyone in the jurisdiction of the contracting states.

⁶⁴ *Istanbul Protocol*; European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337/9-337/26; 20.12.2011, 2011/95/EU; UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189

⁶⁵ De Wet, *The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law*, 2004, *European Journal of International Law*, p 97; Rodley, *The Prohibition of Torture: Absolute Means Absolute*, 2006, 34 *Denver Journal of International Law and Policy*, p 145.

⁶⁶ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 'General Comment No. 2 Implementation of Article 2 by State Parties' (Hereinafter "*UNCAT General Comment No. 2*") CAT/C/GC/2, 24 January 2008; Article 1 of the Convention Against Torture.

⁶⁷ Article 17(1) of the Reception Conditions Directive.

⁶⁸ *M.S.S. v. Belgium and Greece* [GC], 30696/09, ECHR 2011, para 249-264.

material reception conditions.⁶⁹ In order to fulfil Article 21 of the Reception Conditions Directive, Member States must assess if the applicant has special reception needs and guarantee that they are satisfied.⁷⁰ For VoT and survivors of severe violence, Article 25 of the Reception Condition Directive imposes extraordinary obligations on Member States to safeguard asylum seekers with special needs.⁷¹ Where a Member State fails to acknowledge an asylum applicant's vulnerabilities and to provide special reception conditions, this, in itself, breaches the individual's Article 3 ECHR rights.⁷²

Under Greek Law, Article 59(1) of Law 4939/2022, relevant authorities must ensure that applicants are provided with adequate reception conditions to promote their physical and mental health.⁷³ For vulnerable groups, Article 62(4) of Law 4939/2022 requires that those belonging to vulnerable groups, as defined under Article 1 of Law 4939/2022, benefit from special reception conditions.⁷⁴ Based on Law 4939/2022, the RIC Commander is responsible for identifying vulnerable applicants and referring them to appropriate structures to ensure decent living conditions according to their specific needs, as discussed above. In such cases where there is no adequate support on the islands, the RIC Commander can lift the geographical restrictions so that appropriate medical support can be provided to VoTs on the mainland.⁷⁵

Despite the prescribed obligation under International, European and Greek legal frameworks, the practice demonstrates that the Greek authorities systemically fail to meet their obligations as set out in (i) the Convention against Torture, (ii) the ECHR and

⁶⁹ Article 21 of the Reception Conditions Directive.

⁷⁰ Article 22(1) of the Reception Conditions Directive.

⁷¹ Article 25 of the Reception Conditions Directive '*Member States shall ensure that persons who have been subjected to torture, rape and other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular, access to appropriate medical and psychological treatment or care*', and that those working with this group of a vulnerable individual shall continue to receive appropriate training concerning their needs

⁷² Articles 17(2) and 21 of the Reception Conditions Directive. See *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, (Hereinafter "*M.S.S. v. Belgium and Greece*") para 250-251 and 263.

⁷³ Article 59(1) of Law 4939/2022.

⁷⁴ Article 62(4) of Law 4939/2022.

⁷⁵ Law 4939/2022, Official Gazette 111/A/10-6-2022 (Codified), at Ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners, available at: <https://www.e-nomothesia.gr/kat-allodapoi/nomos-4939-2022-phek-111a-10-6-2022.html>; Article 2 (d) of the Ministerial Decision 1140/2.12.2019 (GG B" 4736/20.12.2019).

(iii) the Reception Condition Directive. Vulnerable applicants, including VoTs, are regularly not identified and are forced to go through the asylum procedure without having their special needs identified and satisfied.

The result of this systematic failure is that VoT's are exposed to reception conditions which have systematically been criticised because of their inhumane character. In 2019, the Committee issued its concluding observations noting that there were numerous subjects of concern regarding the reception conditions in Greece. The Committee's concerns are the 'appalling and unsanitary living conditions' that asylum seekers and beneficiaries of international protection are being held in within the overcrowded reception and identification centres, Greece's systematic failure to provide and ensure access to medical care and safe shelter, and inadequate protection afforded to those living in the camps which have further exposed them to violence.⁷⁶

On Lesbos, the current situation remains of great concern as asylum seekers and beneficiaries of international protection, specifically those most vulnerable, are exposed to living and reception conditions that constitute inhuman and degrading treatment within the meaning of Article 3 of ECHR, even though they are no longer overcrowded.⁷⁷ The conditions of Mavrovouni camp, now CCAC Lesbos, continue to fall far short:⁷⁸ the WASH facilities are inadequate, especially for applicants with disabilities,⁷⁹ access to

⁷⁶ UNCAT Committee, Concluding Observations on Greece, para 20.

⁷⁷ As seen in *A.R and others v Greece*, Application no 59841, January 2021.

⁷⁸ Legal Centre Lesbos, *Greek Authorities Must Urgently Transfer 'Vulnerable' Migrants to the Mainland in accordance with their own Laws: ICL Submit complaint to Greek Ombudsman Urging Action on Behalf of 21 Individuals and Families*, 17 February 2021, available at: <https://legalcentrelesvos.org/2021/02/17/greek-authorities-must-urgently-transfer-vulnerable-migrants-to-the-mainland-in-accordance-with-their-own-laws/#footnote-four>; Greek Council for Refugees and OXFAM, *Lesbos Bulletin*, October 2020, available at: [https://www.gcr.gr/media/k2/attachments/Lesbos Bulletin - October 2020 EN.pdf](https://www.gcr.gr/media/k2/attachments/Lesbos_Bulletin_-_October_2020_EN.pdf); Fenix, *Statement: One Year Since Greece Opened New Prison Like Refugee Camps NGOs call for a More Human Approach*, 20 September 2022, available at: <https://www.fenixaid.org/articles/one-year-since-greece-opened-new-prison-like-refugee-camps-ngos-call-for-a-more-humane-approach>; Fenix, *Unnecessary Obstacles, Overcoming Bureaucratic Hurdles to Suitable Reception Conditions*, 20 July 2022, available at: <https://www.fenixaid.org/articles/unnecessary-obstacles-overcoming-bureaucratic-hurdles-to-suitable-reception-conditions>.

⁷⁹ The inadequate WASH facilities include, but are not limited to, insufficient running water, hot showers, limited operation toilets, and other hygiene facilities. See for further reading: Legal Centre Lesbos, *Greek Authorities Must Urgently Transfer 'Vulnerable' Migrants to the Mainland in accordance with their own Laws: ICL Submit complaint to Greek Ombudsman Urging Action on Behalf of 21 Individuals and Families*, 17

non-primary and continued health care services continue to be extremely restricted,⁸⁰ and low-protection mechanisms amounts to an overall lack of safety.⁸¹ While everyone suffers from these conditions, vulnerable applicants like VoTs, are especially affected by them. Since September 2020 until today, the ECtHR has been consistently issuing interim measures because a lack of access to medical care and appropriate living conditions leads to a violation of article 3.⁸²

Additionally, the Greek authorities continue closing alternative and more dignified accommodations. In 2020, the Government took over the ESTIA II program with the intent of increasing the capacity from 25.000 to 40.000 places by the end of 2021.⁸³ Nonetheless, since the Greek Government took over, ESTIA II closed on the five Eastern Aegean Islands in 2021, and it fully terminated at the end of 2022.⁸⁴ At the beginning of October 2022, several beneficiaries were informed at short notice, in some cases as little as 24 hours, that they had to leave their apartments and get transferred back to camps in unknown destinations.⁸⁵ Such measures taken by the Greek government prevent

February 2021, available at: <https://legalcentresvos.org/2021/02/17/greek-authorities-must-urgently-transfer-vulnerable-migrants-to-the-mainland-in-accordance-with-their-own-laws/#footnote-four>.

⁸⁰ One example is that the camp is not properly equipped to help and facilitate medical care for pregnant women, mothers, and other. See further: Infomigrants, *Mavrovouni Camp, Lesbos: No Place to Welcome a Newborn*, 24 May 2022, available at: <https://www.infomigrants.net/en/post/40710/mavrovouni-camp-lesbos-no-place-to-welcome-a-newborn>.

⁸¹ U.S. Embassy & Consulate in Greece, *Country Report on Human Rights Practices in 2020: Greece*, 30 March 2021, available at: <https://gr.usembassy.gov/country-reports-on-human-rights-practices-2020-greece/>; RSA, *Asylum seekers Briefings Detention and Reception Conditions Integration and Social Rights Mainland camps Publications Recognised refugees Topics*, 23 December 2021, available at: <https://rsaegrean.org/en/refugeesgr-humanitarian-crisis-and-hunger/>; Refugee International, *The Fallacy of Control: Tightened Asylum and Reception Policies Undermine Protection in Greece*, February 2022, available at: <https://static1.squarespace.com/static/506c8eae4b01d9450dd53f5/t/6216a3799be96a3b07de2089/1645650812924/Greece+Report+-+Feb+2022.pdf>.

⁸² See for example: Fenix, *"European Court Grants Interim Measures for Three Clients*, 22 July 2021, available at: <https://www.fenixaid.org/articles/interim-measures-for-three-clients>.

⁸³ Ministry of Migration and Asylum, Press Release, 15 of July 2020, available at: <https://migration.gov.gr/egkrithike-i-eyropaiki-chrimatodotisi-ypsoys-92-ek-kai-ypegrafi-symvasi-gia-to-programma-estia-ii-2020/>.

⁸⁴ Ministry of Migration and Asylum, *Ολοκληρώθηκε το πρόγραμμα φιλοξενίας αιτούντων άσυλο σε αστικά διαμερίσματα «ΕΣΤΙΑ»*, 4 January 2023, available at: <https://migration.gov.gr/en/oloklironetai-to-programma-stegasis-estia-ii-to-2022/>.

⁸⁵ Fenix Aid, *Closure of ESTIA II: thousands of extremely vulnerable asylum seekers to be left without humane and adequate accommodation and proper care*, 31 October 2022, available at:

the possibility of adequate houses or apartments for vulnerable individuals and transfer them to unknown camps where the conditions are incompatible with their special needs and result in a lack of access to health care services and education for families with children.⁸⁶

The early-stage identification and certification failures deprive many VoTs, if not all, of enjoyment of their fundamental human rights, due to lack of access to special reception conditions, including appropriate and adequate living accommodations, immediate access to medical care, and any other reception conditions tailored to their needs. The lack of effective consideration displayed by Greek authorities towards these applicants and accommodation of their special needs, especially the lack of access to specialised medical care and adequate housing, constitutes humiliating treatment that completely denies VoT acknowledgement of their human dignity. The omissions of the authorities, in combination with the lack of prospects for improvement of their situation, attain the level of severity required to be inhumane and degrading treatment and falling within the scope of Article 16 of the UNCAT.

3. Refoulement, violating the right of non-refoulement as enshrined in Article 3 of UNCAT and Article 3 of ECHR in conjunction with Article 19(2) CFR, Article 5(c) of the Return Directive, Article 33(1) of the Refugee Convention, and CIL

The prohibition of refoulement or principle of non-refoulement, as laid down in Article 3(1) of UNCAT, prohibits the transfer of any person to a place where there is a foreseeable risk of torture or other cruel, inhuman or degrading treatment or punishment.⁸⁷ Article 3 refers not only to direct refoulement, but also to indirect transfers to a state from which the individual might be returned to a country where they are in danger of being subjected

<https://www.fenixaid.org/articles/closure-of-estia-ii-thousands-of-extremely-vulnerable-asylum-seekers-to-be-left-without-humane-and-adequate-accommodation-and-proper-care>.

⁸⁶ *ibid.*

⁸⁷ Article 3(1) of CAT.

to torture.⁸⁸ The principle of non-refoulement is absolute,⁸⁹ and a rule of customary law,⁹⁰ especially if individuals are vulnerable, as established under the Istanbul Protocol, and are in any territory under the State's jurisdiction.⁹¹

States must consider whether there are subjective grounds to believe that an individual would be in danger of torture, being if the risk of torture is 'foreseeable, present, and real'.⁹² If such risks are found, any person should be allowed to remain in the territory under the jurisdiction, control or authority of the State party concerned so long as the risk persists.⁹³

Under Article 83(2) of Law 4939/2022, applicants are required to cooperate with the competent authorities in relation to the examination of their asylum application; nonetheless, paragraph 2 of the same Article also recognises that this obligation must be in accordance with the guarantees established by the same law. Where applicants are deemed to be in need of special procedural guarantees, they must be provided with adequate support so asylum applicants can enjoy their rights, but also be able to comply

⁸⁸ *Mutombo v. Switzerland*, Committee Against Torture, Communication No. 13/1993, U.N. Doc. A/49/44 at 45 (1994); Weissbrodt and Hortreiter, *The Principle of non-refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement provision of Other International Human Rights Treaties*, 5 BUFF. HUM. RTS. L. REV.1 (1999).

⁸⁹ As the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterised as absolute without any exception, see further OCHR, *The Principle of non-refoulement under international human rights law*, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

⁹⁰ UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law, Response to the Questions posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994.

⁹¹ UNCAT General Comment No. 2, para 16.

⁹² Indicators of personal risk may include the complainant's (i) ethnic background; (ii) political affiliation or political activities of the individual or their family members; (iii) arrest warrant without guarantee of fair treatment and trial; (iv) sentence in absentia; (v) sexual orientation and gender identity; (vi) desertion from the army or armed groups; (vii) previous torture; (viii) incommunicado detentions or other forms of arbitrary and illegal detention; (ix) clandestine escape for threats of torture; (x) religious affiliation; (xi) violations of the right of freedom of thought, conscience and religion; (xii) risk of expulsion to a third country where the person may be in danger of being subjected to torture; and (xiii) violence against women, including rape. UNCAT General Comment No. 4, para 11 & 45.

⁹³ See for example, *Aemei v. Switzerland*, Committee Against Torture, (CAT/C/18/D/34/1995) para 11; UNCAT General Comment No. 4 (2017).

with their obligations.⁹⁴ Therefore, in order for VoTs being able to be able to fulfil their obligations, including providing information regarding their asylum claim, they first need to be recognised as vulnerable and VoTs, and access to the guarantees established by law.

Additionally, when asylum applicants come from countries of origin that are considered safe, the identification and certification of VoTs are also essential to the examination of the credibility of their asylum applications. A safe country of origin (SCO) is the concept used to describe a country whose people are not, in principle, entitled to international protection since those countries are generally considered to be safe (presumption of safety), and, therefore, asylum applicants have to prove, that in their case the presumption of safety should not apply.⁹⁵ When examining an application of a national of a SCO, the competent authorities examine the application with a fast-track procedure to determine if the application will be considered unfounded.⁹⁶ In these cases, the threshold of proof is very high to prove the lift of the presumption of safety, and the timeline for the examination is much smaller; therefore, the certification of VoTs is essential to prove why the applicant left the country of origin and to prove that for them the country of origin is not safe. If this is not proven, the applicant risk being returned and may be a violation of the prohibition of refoulement.

To this end, the UNCAT has emphasised that States must take preventive measures to guarantee the principle of non-refoulement, such as providing effective training for medical and other relevant personnel dealing with applicants in identifying and documenting signs of torture, taking into account the Istanbul Protocol, for the purpose of fully implementing Article 3 on the principle of non-refoulement;⁹⁷ and providing effective training to all competent authorities who deal with persons under deportation procedures, in order to avoid decisions contrary to Article 3.⁹⁸ International and EU law lays down States' responsibility to take the appropriate legislative, administrative, judicial

⁹⁴ Articles 1(l) and 83(2) of Law 4939/2022.

⁹⁵ Article 92 of Law 4939/2022.

⁹⁶ Articles 88(9)(a) and 93(2)(c) of Law 4939/2022.

⁹⁷ UNCAT General Comment No. 4, para 18 (g); See, for example, concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), para. 18.

⁹⁸ UNCAT General Comment No. 4 para 18 (f); See, for example, concluding observations on the second periodic report of the Plurinational State of Bolivia (CAT/C/BOL/CO/2), para. 17.

and any other relevant preventive measures against any possible violation of the principle of non-refoulement.⁹⁹

According to Article 72(1) of Law 4939/2022 (transposition of Article 24 of Directive 2013/32/EU), the receiving authorities have the responsibility to assess, in a timely manner, whether the applicant requires specific procedural guarantees. According to Article 72(3) of Law 4939/2022, where adequate support cannot be provided within the framework of the procedures, especially when the applicant needs to be provided with special procedural guarantees due to acts of torture, rape or other serious forms of psychological, physical or sexual violence, the border procedure must not be applied, or its application must be ceased, and applicants must be referred to the regular procedure. Nonetheless, due to the systematic failure to identify vulnerabilities, special procedure needs are not recognised, and applicants cannot prove that in the border procedure, adequate support cannot be provided to satisfy their special needs.¹⁰⁰ VoTs are channelled to the wrong asylum procedure and not referred to the regular procedure,¹⁰¹ increasing the risk of their application being rejected and being forced to return to their country of origin or a third country where their safety is not guaranteed.¹⁰²

In other instances, even if asylum applicants have their vulnerabilities recognised, they may still not be referred to the regular procedure. The lack of referral can occur due to deficiencies in the communication between the branches of administration, or, more importantly, due to the lack of recognition of the impossibility of providing adequate support within the border procedure for vulnerable applicants with special reception

⁹⁹ Council of Europe & European Court of Human Rights, *Non-refoulement as a Principle of International Law and the Role of the Judiciary in its Implementation*, 2017; OHCHR, *The Principle of Non-refoulement Under International Human Rights Law*, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>; European Asylum Support Office (EASO), *Judicial Analysis Asylum Procedures and the Principle of Non-refoulement* (2018) <https://euagg.europa.eu/sites/default/files/asylum-procedures-ja_en.pdf.

¹⁰⁰ Article 72(3) of Law 4939/2022.

¹⁰¹ The Court of Justice of the European Union, in *Commission v. Hungary*, affirmed that the border procedure could not be used without having had a prior assessment of whether or not adequate support can be offered to the particular applicant in such procedure, CJEU, Case C-808/18 *Commission v. Hungary*, 17 December 2020, para 199.

¹⁰² CJEU, Case C-808/18 *Commission v. Hungary*, 17 December 2020, para 199.

conditions, as detailed above.¹⁰³ Such measures leave VoTs to fall through the cracks and not be properly identified and provided with rights and guarantees established for them.¹⁰⁴

The systematic failure to identify a person as vulnerable may have an impact on their asylum procedure, as has been demonstrated, lead to the return of the applicant to a third country, especially Türkiye due to the EU-Turkey Statement, and/or to their country of origin, where, in both scenarios, vulnerable applicants may be in risk and threat of experiencing torture, ill-treatment, and any other treatment which may be in contravention with Article 3(1) of the UNCAT.

¹⁰³ RSA, *Border Procedures on the Greek Islands Violate Asylum Seekers Right to Special Procedural Guarantees*, 2021, available at: https://rsaegean.org/en/rsa_msf_proasyl_specialproceduralguarantees/#footnote-ref-5.

¹⁰⁴ Fenix, *The Athens Administrative Court Orders the Greek Authorities to Refrain from any Action Involving the Forced Departure of a Syrian Family of 8 Members from Greece*, 2022, available at: <https://www.fenixaid.org/articles/the-athens-administrative-court-orders-the-greek-authorities-to-refrain-from-any-action-involving-the-forced-departure-of-a-syrian-family-of-8-members-from-greece>.

IV. CONCLUSION AND RECOMMENDATIONS

Greece, as a state party of the UNCAT, and other international conventions and a Member State of the EU, has an obligation to ensure that everyone who states or presents signs of having been subjected to torture is properly identified, and, if recognised as VoT, obtains access to redress, including rehabilitation, and other fundamental rights. Nonetheless, as aforementioned, practice over the years has demonstrated serious deficiencies in the identification of vulnerabilities, and in the identification and certification of VoTs in Greece, including on Lesbos.

The deficiencies observed during the asylum procedure and VoT certification leave asylum seekers, who reported being subject to or present signs of having been subjected to acts of torture, without access to fundamental rights and guarantees, including access to special reception conditions and special procedural guarantees in line with their special needs, and access to rehabilitation and adequate care.

The failure to identify and certify VoTs has severe consequences for VoTs and may amount to violations of fundamental rights laid down by international and European law, including violation of Articles 14, 16 and 3 of UNCA.

Therefore, Fenix calls on the Greek Government and Greek authorities to respect the rights and safeguards afforded to vulnerable asylum applicants, including those of VoTs, and calls the Greek Government to appropriately provide clear and effective pathways for VoTs by:

1. Ensuring that competent and qualified authorities identify VoTs' vulnerabilities and their special needs, in order for them to access:
 - Immediate medical care;
 - Adequate special reception conditions;
 - The right to special procedural guarantees for VoTs, placing VoTs in the right asylum procedure, ensuring adequate support throughout the whole asylum process, and that the principle of non-refoulement at land and sea is guaranteed.
2. Amending the current legislation to recognise non-public actors as competent to carry out certification and rehabilitation of VoTs, in accordance with international and European legislation.

3. Urgently providing training to professionals on how to detect, investigate, certify and rehabilitate VoTs, in accordance with the Istanbul Protocol.

Fenix also recommends the European Commission, in particular, Mr Margaritis Schinas, Vice-President of the European Commission, and Ms Commissioner Ylva Johansson, European Commissioner of Home Affairs:

1. Ensure compliance from the Greek Government, namely on the Asylum Procedures Directive, the Reception Conditions Directive, the Return Directive, the European Convention of Human Rights, and the Charter of Fundamental Rights of the European Union.