



DETENTION AS THE DEFAULT

How Greece, with the support of the EU, is generalizing administrative detention of migrants

Putting migrants and asylum seekers into detention for administrative reasons is a common practice in Greece, despite this policy contravening human rights. Greek authorities are using detention and the new EU-funded closed compounds as a way to discourage people from seeking asylum in Europe. Detention, as outlined in Greek law, should only be used as a final resort and only then in specific instances. Detention carries with it not only a financial cost, but also a considerable moral cost. Detention without just cause violates basic human rights, such as freedom of movement, the right to health and the right to family life. Alternatives to detention exist and must be prioritized.

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This paper was written by Vasilis Papastergiou. It is part of a series of papers written to inform public debate on development and humanitarian policy issues.

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Cover photo: People protest after the Moria fire in September 2020. Credit: Yousif Al Shewali/Oxfam.

EXECUTIVE SUMMARY

Detention of migrants in Greece has increased considerably in recent years. Until 2020, Greek law stated that detention could be used only as a last resort. However, as of July 2021, 3,000 migrants were in administrative detention, meaning that they were detained without any criminal charges against them.¹ Of these, nearly half (46%) had been detained for more than six months.

Greece recently passed legislation making it possible for the authorities to detain people seeking asylum. This was followed by a change to the law to give the authorities the power to put non-asylum-seeking migrants into detention without examining alternative measures. Both legislative changes undermine the right to freedom of movement and threaten access to asylum procedures.

These measures brought in by the Greek government are making detention the rule rather than the exception.

This paper determines seven distinct categories of people who are being detained unfairly:

1. People seeking asylum while already in detention.
2. People with no papers.
3. Asylum seekers who violate the geographical restrictions imposed on them.
4. All asylum seekers arriving on the island of Kos.
5. Migrants and refugees being detained before allegedly being pushed back.
6. People seeking asylum while not in detention.
7. Asylum seekers whose asylum applications have been impossible due to administrative deficiencies.

The duration of detention differs depending on whether the person is an asylum seeker or a non-asylum-seeking migrant. Recent changes to the law have made it possible to extend the detention period for asylum seekers to 18 months. For non-asylum seekers, detention often exceeds six months.

The Greek authorities refuse to examine alternatives to detention, even in cases where a deportation decision has been made but cannot be implemented. Turkey, for example, has been refusing returns of migrants and asylum seekers from Greece due to COVID-19 restrictions. Individuals who would have been returned are now being placed in detention instead of less harsh alternatives.

The administrative courts can decide to place or keep someone in detention in two instances: an approval to extend detention on the courts' own initiative, and an examination of appeal by the detainee. The courts too often approve the extension of detention on their own authority, which shows a structural problem and underlines the importance of legal aid for detention cases.

Detention conditions have been strongly criticized, with the European Court of Human Rights finding that they may even violate Article 3 of the European Convention on Human

Rights – i.e. the prohibition of inhuman and/or degrading treatment or punishment. This criticism has, however, fallen on deaf ears.

One in five people in detention are held for a prolonged period in police cells that were designed to hold people for just a few hours. They are locked in 24 hours a day in unacceptable conditions.

People with vulnerabilities, such as single women, children and persons with serious mental health problems, are also being detained. This is happening even though the practice of detaining children in police stations has been abolished by law due to international pressure. Children without parents or guardians are also being illegally detained.

Any discussion about alternative measures to detention must begin with the acknowledgement that the deprivation of personal freedoms should always be a last resort. While migration and asylum legislation acknowledges the possibility of alternatives to detention, in practice, the Greek authorities prioritize detention. Alternatives to detention (such as reporting regularly to a police station – an option commonly used for suspects of criminal offences awaiting trial) are already enshrined in law. These alternatives are much more proportionate and do not violate the human right not to be detained without good reason.

This increasing tendency to opt for detention, alongside the building of five new European Union (EU)-funded 'closed and controlled' Multipurpose Reception and Identification Centres, is not in line with EU and Greek law. Major legislative and policy changes are needed to bring Greece back in line with the rule of law. These include:

- Ending prolonged detention in police stations.
- Ending detention for those people who do not have a real and immediate possibility of return.
- Avoiding the generalization of detention demonstrated by the construction of 'closed and controlled' centres.
- Ensuring detention on the grounds of public order and national security is not used to penalize asylum seeking.
- Ensuring that children are not detained.
- Mandating a short time limit for detention.
- Establishing a legislative provision for a judicial decision as a necessary condition for detention.
- Ensuring an individual assessment by the authorities of the risk of absconding.
- Ensuring the provision of effective legal aid for people in detention.

1 INTRODUCTION

Since 2016, Greece has been the sandbox for the development of new European asylum policies. In the absence of EU-wide consensus on the reform and harmonization of the Common European Asylum System, the Greek government, with the support of the European Commission, has reformed its laws and practices. One of these practices is the increased use of administrative detention to control and deter asylum seekers and restrict their freedoms.²

This report looks at the practice of administrative detention of migrants in Greece. It examines how widespread the practice is, its compatibility with human rights (especially the duration of detention and detention of persons with vulnerabilities) and suggests alternatives to detention. The paper describes the legal provisions on administrative detention and the instances in which the authorities use administrative detention, especially concerning asylum seekers. The paper also features testimonies from people who have been detained while seeking asylum.

According to existing legislation and in accordance with EU administrative law, detention of asylum seekers should only be used as a last resort. Depriving people of their freedom is dehumanizing and should not be undertaken unless all other options have been considered, especially in relation to people who are simply seeking safety. As there are alternatives to detention that are not being utilized, detaining people for immigration reasons is therefore a political choice. Our research shows that the Greek authorities, rather than looking at alternatives, are imposing detention in a generalized manner, including on asylum seekers. This generalized detention is often prolonged due to administrative delays and comes at the cost of migrants' rights. Greek legislation allows for this generalized trend of detention.

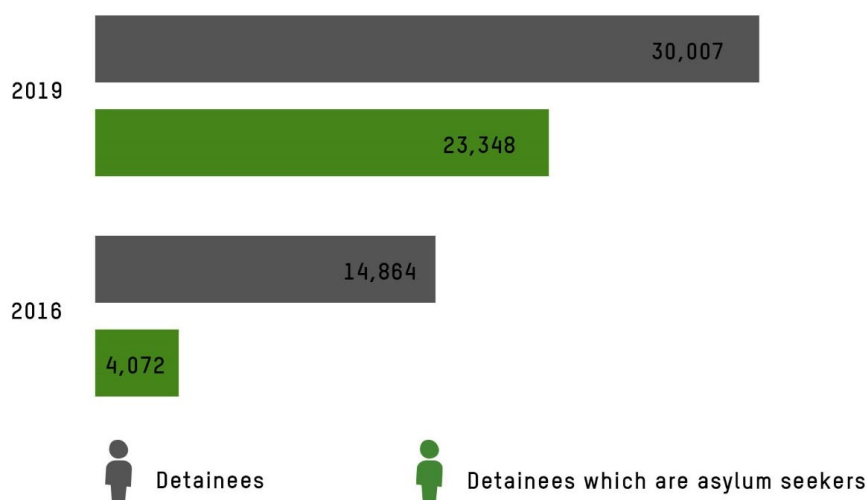
A recent amendment to the law gave Greek authorities the power to impose detention on undocumented migrants without first examining the possibility of alternative measures. The Greek authorities also appear to be promoting the EU-introduced model of 'closed and controlled' centres as a means of controlling the movement and living conditions of the refugee population. Images from the recently opened centre in Samos, which is due to house 3,000 asylum seekers, reveal the reality of generalized detention – a breach of the right to liberty and a dead end for the purpose of integration. It is important to note that the construction of this new 'closed and controlled center' is **fully funded by the Asylum, Migration & Integration Fund of the European Union.**³

2 DETENTION: AN INCREASING TREND

As of 30 June 2021, 2,392 people were being detained in seven Pre-Removal Detention Centres (PROKEKA) in Greece (Amygdaleza, Tavros, Korinthos, Paranesti, Xanthi, Fylakio and Kos).⁴ According to data provided to the Greek Parliament by the Ministry of Citizen Protection, 1,109 of these people (nearly 50%) had been detained for more than six months. Apart from the people in PROKEKA, a further 601 people were being detained in police stations. This makes a total of 2,993 people in detention as of 30 June 2021.⁵

The total number of migrants issued detention orders increased considerably between 2016 and 2019. Asylum seekers comprise the majority of detention decisions. In 2016, the total number of persons issued detention decisions was 14,864, of which 4,072 were asylum seekers. By 2019, this number had doubled to 30,007.⁶

Figure 1: Between 2016 and 2019, the number of detainees doubled



A decrease in detention decisions occurred in 2020, with a total of 14,993 detention decisions issued throughout the year, of which 10,130 applied to asylum seekers.⁷ This decrease can be attributed both to movement restrictions because of the pandemic and fewer arrivals in the Greek islands. At the end of 2020, there were 2,408 people in detention in pre-removal centres, compared with 2,847 at the end of 2019.

The divergence in these numbers comes from the fact that the migrants issued detention decisions were not all detained at the same time or in some cases, not detained at all. Additionally, the duration of the detentions varies from several days to many months. Still, according to the most recent data, in the first six months of 2021, there were 9,575 decisions for administrative detention, which represents a significant reduction compared with 2020. The majority (7,247) were issued under the provisions of L3907/2011 (concerning returns), 1,980 under L.3386/2005 (concerning deportations), and only 348 under the provisions of L4636/2019 (concerning asylum law).⁸

DURATION OF DETENTION

As noted earlier, as of 30 June 2021, nearly half of all migrants in detention had been detained for more than six months. The duration of detention differs depending on whether it refers to asylum seekers or to migrants with no asylum status. In the case of asylum seekers, recent Greek legislation outlines a 50-day detention period.⁹ There may be consecutive decisions that prolong the detention for another 50 days at a time (any extension has to be justified on the same grounds as the initial decision). The maximum time limit for this potential series of extensions is 18 months. Recent law explicitly exempts the time that a person may have been detained on the grounds of a previous deportation or return decision. Given that detention under the legal provisions on deportation and return (L.3907/2011 and L.3386/2005) may also be prolonged for up to 18 months, theoretically it is possible that people can be detained for up to 36 months – simply for being a migrant.¹⁰

There is controversy about from what point in time detention starts to count for asylum seekers who apply for asylum while in detention. Although a fair interpretation of the law would be that the time limit starts from the first day of detention, in practice, the authorities consider it to begin at the time the asylum application is forwarded to the local Regional Asylum Office. Yet there are often considerable delays – of up to five months – in registering receipt of asylum applications from those in detention.¹¹ The result is an extension of detention, which can exceed the maximum time limit, through no fault of the person submitting the application. This also a clear violation of the law, which states that ‘delays in administrative procedures [which] cannot be attributed to the applicant shall not justify the prolongation of detention’.¹² In practice, the legislative reform of 2019 has extended the actual time during which asylum seekers remain in detention.¹³

For migrants with no legal status of residence (whether individuals that have not applied for asylum or asylum applicants whose application was rejected in the second instance), legislation states a possible detention period of six months that may be prolonged up to 18 months.¹⁴ In practice, detention often lasts longer than six months.

3 LEGISLATION ON DETENTION

DETENTION OF ASYLUM SEEKERS

As a rule, international law prohibits the penalizing of a person who has entered a country to seek asylum. While every asylum application should be examined by competent authorities, EU law permits the use of detention during this process only in very specific circumstances.¹⁵ Greek legislation, at first glance, respects this principle as it states that *'a third country national ... that seeks international protection is not detained for the reason only that (s)he has applied for international protection and the fact that (s) he has entered the country illegally and remains with no residence permit'*.¹⁶ Despite this, there has been an increased use of detention in the implementation of the law and as a consequence, asylum seekers are likely to find themselves in detention, regardless of their individual circumstances.

In 2019, Greece introduced a new piece of legislation which meant that people applying for asylum could be detained based on a list of grounds linked to their asylum application. This includes the determination of their identity, risk to national security and public order, and risk of absconding.¹⁷ According to Greek and EU law, people who are in detention and apply for asylum can only remain detained after individual evaluation and if no alternative measures can be implemented.¹⁸

This legislation also states that the authority responsible for issuing a decision on detention must provide a written administrative decision including a proper justification for the decision. This should include the duration of the detention, the detainee's rights, and the possibility of legal aid.

The Council of State notes that danger to public order has to be 'specifically justified',¹⁹ while the Court of Justice of the EU states that the behaviour of the migrant has to comprise a 'real and present' danger to public order.²⁰ The Greek Ombudsman has itself remarked that there is an abuse of administrative detention based on the invocation of public order and national security concerns.²¹ Moreover, the Returns Directive 2008/115/EC does not provide for detention on public order grounds, and thus the relevant provision of Article 30 (1) c, which gives this power to the Police Directorate, is clearly a misinterpretation of EU law. Any threat to public order should be based on a specific accusation addressed to the applicant by the competent judicial authorities.

In summary, the new legislation outlines the reasons why asylum seekers may be detained. While it does not, on the surface, seem to put those who apply for asylum while in detention in a worse position than those who apply while not in detention, that is not the case in practice.

Government figures show that in 2020, 4,062 asylum seekers applied for asylum while in detention,²² most of whom remained in detention while their application was assessed. Of those applications, more than 90% (3,692) were rejected; only 316 (7.8%) were accepted. Another 79 decisions awarded subsidiary protection to the applicants.²³

DETENTION OF NON-ASYLUM-SEEKING MIGRANTS

Greek law dictates that people who enter Greece irregularly, without the proper documentation, can be detained in certain cases. Often, the Greek authorities issue a deportation decision and, pending deportation, a high percentage of irregular migrants are detained.²⁴ People living in the country without proper residence permits can also receive an order of detention and return.²⁵

In May 2020, the Greek legislature amended the law, which stated that detention for the purpose of return should be applied as a last resort. The amendment changed the wording to give the authorities the power to impose detention without the obligation to examine alternative measures.

This change means that detention is now the rule rather than the exception. This legal amendment is also in violation of the EU law on returns, which only permits detention when there is no option for 'less coercive measures'.²⁶

APPEALS AND JUDICIAL REVIEW OFFER INSUFFICIENT PROTECTION

Detention seems to be the rule rather than the exception where the decision is for return or deportation. As of July 2021, of the 1,990 deportation decisions, almost all (1,980, or 99.4%) imposed detention. This percentage in detention drops to 64% for those issued return decisions.²⁷ Judicial reviews rarely overturn these decisions; with less than the 1% of detention decisions being overturned, while only about one in eight detention decisions have been contested by the detainees before the administrative courts.²⁸

'Third-country nationals subject to return procedures ... are placed in detention in order to prepare the return and carry out the removal process. In case that the competent officer considers that

*a) there is no risk of absconding,
b) the third country national concerned is cooperative and does not hamper the preparation of return of the removal process or
c) there are no national security reasons.*

Other less coercive measures are applied as is provided in para.3 of Art.22 if considered effective.'

As in accordance with the new wording of L3907/2011 as amended by L.4686/2020

4 TESTIMONIES OF PEOPLE WHO HAVE BEEN DETAINED

Detention of asylum seekers and migrants is not a humane situation. Recovering from the experience is difficult and sometimes impossible.

Detention itself can cause trauma and the poor living conditions in detention add to the problem. People live in cramped environments, sometimes in police cells, without any access to psychological help, and are often held for an indefinite period of time. The mental strain this causes has led to deaths by suicide as well as prevented people from receiving necessary medical treatment.

In March 2021, two people died while in detention. The first case concerned a young man in his 20s who had already been detained for 16 months. He died by suicide in the detention centre at Korinthos upon learning that his detention would be extended again.²⁹ The second case concerned a 44-year-old man in Kos, where people applying for asylum receive blanket detention decisions. He died in detention while waiting for medical care for a treatable disease.³⁰

The people interviewed as part of this research spoke of a feeling of total abandonment. They described how their living conditions while in detention have affected their mental health and well-being. These testimonies confirm that detention should not be an option for people who are simply seeking safety and should be the last resort for migrants not seeking asylum.

Difficulties navigating the asylum application system

Abdul* is a young Afghan man who was in Greece for two years. For more than three months, he tried to apply for asylum. But he faced many challenges in his asylum application, due to well-documented barriers such as the difficulties involved in the online Skype system. Abdul was put in detention as he was unable to apply for asylum.

'I miss everything out there. It is the first time I am being detained and I am very scared. I need to get out of here, I need legal documents and just a living space to call my own. I have no one here.'

While he did not complain about his treatment while in detention, the interview was held under constant police supervision. Abdul did mention that he had developed a skin condition due to bugs in the mattresses, indicating the poor hygiene situation.

Beaten by guards and denied important resources – water, soap and even medications

Joseph,* from the Democratic Republic of Congo, was detained for two-and-a-half months in three different police stations in Athens.

The conditions in each station were inhumane. Detainees were locked up 24 hours a day, not even allowed a short walk. There was no drinking water in the cell. Detainees were forced to drink water from the toilet, which they could only access with permission from the guards. Cells were very small, with up to eight people sharing. Often there were not enough beds, so people slept on the floor.

Asked if they had been given any soap, Joseph said ‘jamais, jamais, jamais’ (never, never, never). He gives the same answer when asked about toilet paper.

Joseph was beaten while in the cells and was refused the medication he was on (anti-depressants). He was called ‘Mavro’ (Μαύρο – black) by the police guards. He was released in July 2021 after legal action by the Greek Council for Refugees.

His mental health was so fragile that after leaving detention, he was hospitalized for nearly a month.

Confined for months in a cell, begging guards for toilet breaks

Omar,* a Syrian man, was in administrative detention for nine-and-a-half months. Despite undergoing the asylum process, he was put in detention on the grounds of public order. He spent seven months in the headquarters of the Greek police (at Petrou Ralli) in Athens and two months in the detention centre at Amygdaleza.

‘There was a major difference between the two centres... In Amygdaleza you could keep and use your mobile phone, you could use the toilet freely, you could buy your own meal, you could have visits. But, most important, you could move freely inside the camp. In Petrou Ralli, we were locked in our cells for 22 hours a day – no mobile phone, no visits, disgusting food. We often had to beg the guards to unlock us to go to the toilet. And sometimes this was not even possible.’

Omar was detained when he went to give his fingerprints as part of the asylum procedure. He shared a cell of about 12 square metres with four other people. The detainees slept on mattresses infested with bed bugs. The guards shouted at them and sometimes acted violently towards the detainees. Omar witnessed one man being beaten by guards because he did not enter his cell quickly enough. Omar believes that this violence had the silent approval of the heads of the detention centre. He says that no such incident happened in Amygdaleza while he was there.

Omar was released in June 2021 after legal action by the Greek Council for Refugees.

A survivor of sexual and gender-based violence ignored

Gloria* is a woman from Togo. She asked for international protection after a forced marriage at 15 years old to an elderly man. She suffered intense domestic violence and did not get any protection from the Togolese authorities. She entered Greece via the island of Kos in February 2021 and immediately expressed her desire for international protection. However, she received a decision of return with readmission to Turkey as well as a detention decision within days. The detention decision had as justification the need to 'verify of the details of her application'. She was held in detention in the Pre-Departure Center of Kos.

The external medical assessment (limited to the question if she suffered from an illness) ignored Gloria's vulnerability as a survivor of sexual and gender-based violence. This case is an example of how the lack of a vulnerability evaluation and the practice of 'automatic detention' as followed by authorities in Kos can lead to the worsening in the conditions of women and other persons with vulnerabilities.

Her vulnerability as a survivor of sexual and gender-based violence was stated again during her interview with the Asylum Service. In March 2021, Gloria was notified that her application was rejected as manifestly unfounded (safe country of origin). In March 2021, while the second instance decision was pending, Gloria experienced intense pain in her left eye and asked the police for help. Her request was ignored by the authorities, but a legal aid actor referred her to health services. Her medical examination discovered possible glaucoma and concluded she was in a severe psychological state. The detention centre scheduled an examination in Kos Hospital.

Her deteriorating condition allowed for an objection against her detention before the Administrative Court of Rhodes, claiming that the detention measure was inappropriate for this specific vulnerable applicant. This objection was overruled stating that the detainee was receiving sufficient medical help in the detention centre. She therefore remained in very poor psychological and physical condition as she received a second instance rejection on the basis of the safe country of origin approach. Meanwhile, her detention was extended for an unspecified period of time as Turkey has not been accepting readmissions since March 2020.

In July 2021, after failing to receive treatment from a psychiatric hospital in June, Gloria attempted suicide in her cell. She was saved by the guards and was transferred to Leros psychiatric clinic, where she was hospitalized.

With the legal support of the Greek Council for Refugees, she was released from detention.

Detainees denied vital medical treatment

Amir-Ali* is an Iranian asylum seeker who applied for asylum while in administrative detention. He is classed as highly vulnerable as he had previously undergone a kidney transplant and needs medication and ongoing treatment to prevent his body rejecting the transplanted organ. But he could not get this vital medication while in detention, even though the facility's doctor urged immediate access to it as his condition was life-threatening. This was a month after Amir-Ali was put in detention.

Despite the gravity of his situation, when the Greek Council for Refugees took on the case at the beginning of September 2021, Amir-Ali was still in detention. He was experiencing severe feelings of anxiety and despair as well as fearing for his life due to the ongoing lack of medication.

Through the intervention of both the Greek Council for Refugees and the Greek Ombudsman, Amir-Ali was finally released.

Children seeking asylum trapped by the pandemic

Mohammed* arrived in Greece as an unaccompanied minor in 2018. He was forced to flee his home country due to ethnic discrimination. After a year of waiting, the Greek authorities approved his request to be reunited with his family, who were living in another European country. His flight was scheduled for March 2020 but was cancelled due to the onset of the COVID-19 pandemic. This left him stranded in Greece.

During this time, Mohammed turned 18 and was forced to move out of the youth centre. He moved into an apartment, where, after an incident, he called the police fearing for his safety. Instead of helping him, the police placed him in administrative detention. He remained in detention until his application for asylum was assessed. This is despite the fact that Mohammed had already undergone all relevant legal processes, and his transfer to reunite with his family had been approved and was pending implementation by the Greek state. He was held in detention for eight months.

The Greek Council for Refugees took up Mohammed's case in July 2021. It was clear that there was no legal justification for his detention. It also became clear that it amounted to a violation of Article 3 of the European Convention on Human Rights (the prohibition of torture and inhuman and degrading treatment) due to the dire living conditions in detention. His cell was dirty, humid, full of insects, and had insufficient light and ventilation. He lacked any type of access to recreational activities such as a book or television; he had very limited access to open air, as he was living in a highly substandard prison-like courtyard (cement walls and barbed wire); there were no clean sheets; and he was not given any personal hygiene products (such as soap). There was little food and the food that was provided was of poor quality. Mohammed also lacked any access to mental health support, despite experiencing feelings of isolation, despair, anxiety and humiliation that were intensified by his living conditions.

During this time, Mohammed thought that he was waiting for the Covid-related measures to be lifted so that he could finally fly out of the country to be reunited with his family. Yet unknown to him, the deadline for doing so had already come and gone. It was a truly Kafkaesque situation: he was unable to be transferred on time because the Greek Dublin Unit could not find him while he was languishing in administrative detention.

In July 2021, in total despair, Mohammed attempted suicide and was hospitalized. Despite suffering poor physical and mental health, he was then transferred directly from the hospital back to his cell. Following multiple interventions by a lawyer acting for the Greek Council for Refugees, a further attempt was made by the Dublin Unit to reunite him with his family. In mid-September 2021, Mohammed was escorted from his cell to the airport, after eight months of arbitrary detention that nearly cost him his life. After reaching his destination, he contacted the lawyer to let him know that he was finally with his family.

*Testimonies provided with consent from interviewees and names changed to protect their anonymity.

5 WHY SOME MIGRANTS ARE MORE LIKELY TO BE DETAINED

The practice of detention by the Greek authorities is unequal, with some groups more likely to be detained than others. Greek legislation does not restrict the use of detention to specific or exceptional cases. Instead, it applies detention to certain groups of migrants who fulfil specific criteria – sometimes without the necessary legal basis for doing so. We describe these groups here.

ASYLUM SEEKERS WHO APPLY FOR PROTECTION WHEN NOT IN DETENTION

As noted earlier, the law makes it possible to detain asylum seekers who applied for protection when not in detention. In many cases, this detention is imposed arbitrarily and without examining possible alternative measures, despite the status of the detainees as asylum seekers. The competent authorities often justify detention decisions against asylum seekers on the grounds that they pose a danger to public order or national security. There are also cases where detention is imposed for reasons not outlined in legislation, such as due to a breach of geographical restrictions or possession of forged documents.³¹

ASYLUM SEEKERS WHO APPLY FOR PROTECTION WHILE IN DETENTION

As already mentioned, a very high percentage of asylum seekers who apply for protection while already in detention remain in detention. This is in clear contrast to the law, which indicates that detention – even in this case – should be the exception rather than the rule.³²

ASYLUM SEEKERS ARRESTED ON THE MAINLAND FOR VIOLATING GEOGRAPHICAL RESTRICTIONS

In addition to the general reasons for detention that are listed in Greek law, the authorities have introduced several measures linked to Greece's geography. Since the announcement of the EU-Turkey Statement in March 2016, the EU has supported Greece to restrict asylum seekers to the Aegean islands closest to Turkey, from which they can be returned after a short assessment. To implement this arrangement, Greece began to restrict the movement of asylum seekers arriving from Turkey, bringing in a number of new measures.

The first measure was a geographical restriction – an order prohibiting asylum seekers from leaving the Aegean islands on which their case is being examined.

Detention for non-compliance with this geographical restriction is not provided for under Greek law. Yet the authorities often arrest individuals for infringing the geographical restriction if they entered the country from five islands (Lesbos, Chios, Leros, Samos or Kos). The legal basis for this type of detention stems from a Police Circular issued on 18 June 2016.³³ Yet two years later, this very decision to impose geographical restrictions was annulled by the Council of State, the highest Administrative Court in the country, as incompatible with the Geneva Convention and the European Convention on Human Rights.³⁴ Despite it contravening international law, asylum seekers arrested for infringement of the geographical restriction are returned from the mainland to the islands.³⁵

In 2020, a total of 282 asylum seekers were apprehended and returned to the islands for this reason.³⁶

ASYLUM SEEKERS ARRIVING IN KOS

A ‘pilot project’ was implemented in May 2018 on the islands of Kos and Lesbos. Asylum seekers coming from countries with an asylum recognition rate lower than 33% were immediately placed into detention upon arrival and remained in detention during the whole asylum application procedure.³⁷ This policy was tightened even further in 2020, when new legislation created a 25-day period of ‘restriction of movement’ for newly arrived persons so that they might be subject to the identification procedure.³⁸ In practice, this has led to the generalized detention of any person arriving in Kos since 1 January 2020.³⁹ In Lesbos, this practice was abandoned after the fire that destroyed the detention centre inside Moria camp.

ASYLUM SEEKERS FOR WHOM APPLICATION FOR ASYLUM WAS IMPOSSIBLE DUE TO ADMINISTRATIVE DEFICIENCIES

There are many cases where asylum seekers were prevented from applying for asylum due to lack of access to the Asylum Service. In some cases, it seems that applicants tried unsuccessfully to register via the inefficient Skype portal provided by the Asylum Service. The individuals involved in these cases remained unregistered and are subject to arrest and detention.⁴⁰

MIGRANTS WITH NO RESIDENCE PERMIT

Migrants who lack a legal residence permit in Greece are detained while the authorities process their deportation or return.⁴¹ Detention takes place in the Pre-Removal Centres on the mainland. Asylum seekers whose application has been rejected in the second instance may also be included in this group; after receiving a second instance decision, they are downgraded to the status of undocumented migrants.

MIGRANTS IN DETENTION PENDING TRANSFER TO RECEPTION AND IDENTIFICATION CENTRES

This practice has been most evident in the Evros region at times of increased arrivals, despite the fact that it is not provided for in national legislation. Article 39 (1) L.4636/2019 stipulates that new arrivals should be referred directly to a reception and identification centre.⁴²

MIGRANTS DETAINED BEFORE BEING ALLEGEDLY PUSHED BACK

Pushback allegations have been consistently reported in recent years, becoming more intense and chronic since 2020. Institutions such as the European Commission,⁴³ the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE)⁴⁴ and the UN Special Rapporteur on the Human Rights of Migrants⁴⁵ consider those allegations to be serious. Detention in these cases includes arrest, short arbitrary detention under poor or even humiliating conditions, and informal forced return to Turkey, in clear violation of international and EU law.⁴⁶

UNACCOMPANIED MINORS IN PROTECTIVE CUSTODY

Despite the positive step to disallow the detention of unaccompanied minors in 'protective custody',⁴⁷ in practice some unaccompanied minors are still detained.

The fact that detention is imposed upon so many different groups of people indicates that the practice has become generalized against migrants. Rather than being a practice of last resort, it has become the rule.

6 CONDITIONS IN DETENTION INFRINGE ON HUMAN RIGHTS AND DIGNITY

Even when the use of detention is justified by law, there have been many reports of asylum seekers being kept in conditions that violate their rights and dignity.

There are huge differences between the conditions of detention in police stations and those in Pre-Removal Centres. About 25% of people who are detained are held in police stations throughout the country, while most migrants are detained in one of the seven Pre-Removal Centres.

DETENTION IN POLICE STATIONS

Detention in police stations or other places under the responsibility of the police (including border police stations, the Police Directorate building, and the police station at Athens airport) seems to be the harshest form. Cells are designed for only a few hours' detention, but migrants are often detained there for much longer periods, with no outdoor access, no access to a natural light source and no privacy. They are also often detained in the same cells as suspects of serious crimes. There is no access to an interpreter and no medical or psychological services are provided.

The European Court of Human Rights, in two separate cases in 2018 and 2019, ruled that prolonged detention in police stations constitutes a breach of Article 3 of the European Convention on Human Rights, noting that 'police stations per se ... are places designed to accommodate people for a short time only'.⁴⁸ Despite this, Greek authorities continue this unacceptable practice and ignore the ruling.

DETENTION CONDITIONS IN PRE-REMOVAL CENTRES

Reports suggest a range of poor conditions in Pre-Removal Centres. While some are specific to each centre, others are common to all. The most common problems are as follows:⁴⁹

- Lack of medical personnel. Recent data confirm that only 10 doctors are available for 2,392 detainees in the seven Pre-Removal Centres.⁵⁰
- Lack of interpreters. Two of the Pre-Removal Centres have no interpreters at all, while others have insufficient numbers of interpreters for those detained.
- Lack of mental health specialists. There are only nine psychologists available across all seven centres. In total, there are just 34 medical and psychosocial support staff for the seven Pre-Removal Centres (doctors, psychiatrists, nurses, psychologists, interpreters and social workers), a reduction on 2020.⁵¹

- Lack of recreational activities. There is limited or no access to outdoor time or indoor leisure such as a television.
- Inadequate facilities and infrastructure. There is a lack of sanitary facilities, ventilation, heating and cleaning services.

Conditions for people in detention have long been criticized by civil society organizations. Moreover, detention conditions have been ruled incompatible with the European Convention on Human Rights (ECHR) by the European Court of Human Rights, and criticized by international organizations such as the United Nations Refugee Agency (UNHCR) and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Specifically, UNHCR noted in 2019 that 'conditions and procedural safeguards continue to be problematic. [...] Some of the main deficiencies of concern to UNHCR include [...] seriously substantial substandard conditions of detention in the pre-removal centers, in particular in P. Ralli [Petrou Ralli] in Athens and Fylakio at Evros.'⁵²

These major problems were also pointed out by the Greek Ombudsman in June 2021.⁵³

In 2020, the CPT called upon the Greek authorities to '... change the current approach towards immigration detention [and] to take decisive steps ... to reform their immigration detention system [in line with] European values and norms'.⁵⁴ Although things seem to have improved since 2011, when the CPT – for the first and only time with regards to an EU Member State – issued a public statement concerning the detention conditions of migrants, the strong criticism remains. Its 2020 report notes that 'regrettably, despite repeated recommendations by the Committee, the approach of Greek authorities has not evolved substantially'.⁵⁵

IN DENIAL: LACK OF RECOGNITION BY GREECE ON INHUMANE CONDITIONS IN DETENTION

Finally, it is important to examine how the Greek justice system has addressed (or failed to address) the issue of detention conditions in the context of examination of remedies against detention.

Poor detention conditions have often been invoked by appeal lawyers during detention reviews, as the court must decide not only on the necessity of detention, but also on the compatibility of detention with certain human rights conditions.

The Greek administrative courts have been very reluctant to accept arguments based on the low standards of detention centres. In most cases, these arguments have been rejected as '*vague and inadmissible*', with justification of detention centres on the basis that '*direct medical care can be provided [...] there is an area available for physical activity and by its nature it is not only intended for short stay*'. In other cases, the conditions of detention are not examined at all.⁵⁶

7 PROVISIONS FOR VULNERABLE PEOPLE IN DETENTION

THE EXPERIENCES OF WOMEN IN DETENTION

Many international authorities recognize the particular risks faced by women when subjected to immigration detention. The International Organization for Migration (IOM) states that women in detention are more vulnerable to sexual abuse and should 'be detained in separated facilities and guarded by female warders', as well as ensured privacy conditions.⁵⁷ It is often the case that women in detention have already suffered specific kinds of abuse on which immigration detention might have retraumatizing effects. In this regard, the UN Special Rapporteur on the Human Rights of Migrants has stated that 'whenever possible, migrant women who are suffering the effects of persecution or abuse, or who are pregnant or nursing infants, should not be detained.'⁵⁸ Furthermore, the Council of Europe Commissioner for Human Rights has also taken a position against the detention of pregnant women.⁵⁹

Greek law stipulates that women should be detained separately from men,⁶⁰ and that the privacy and unity of families in detention should be respected.⁶¹ Women are usually detained in the Pre-Removal Centre in Tavros. However, organizations working in the centres are concerned about the facilities provided and their ability to meet the needs of single women. Specifically, there is a lack of interpreters, medical personnel, psychologists and social workers.

Though there are relatively few women in detention compared with men, and there is a much higher success rate for appeals submitted on behalf of detained women, detention of single vulnerable women in Greece is not uncommon.⁶²

In some recent cases, the administrative courts have rejected appeals against detention by survivors of sexual and gender-based violence, by women suffering serious psychiatric illnesses (supported by medical documentation), by survivors of violence in the country of origin, and by women suffering from diabetes and asthma.⁶³ In an even more striking case, the administrative courts rejected an appeal to leave detention by a heavily pregnant woman, despite deportation being prohibited by law in such cases. This illustrates how the principle of detention as a last resort is being ignored, even for the most vulnerable individuals.⁶⁴

CHILDREN'S EXPERIENCES OF DETENTION

Though the administrative detention of children is not prohibited by law, many international organizations condemn the practice and maintain that alternatives should be found. The UN Convention on the Rights of the Child (UNCRC) states that 'no child shall be deprived of his or her liberty unlawfully or arbitrarily' (Article 37).⁶⁵ The UN Committee on the Rights of the Child has called on states to 'expeditiously and completely cease the detention of children on the basis of their immigration status' and 'adopt

alternatives to detention that fulfil the best interests of the child' (paragraphs 78 and 79).⁶⁶

Greek legislation permits the detention of children '... only in exceptional cases ... as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors'.⁶⁷ However, in practice children are often detained when alternatives exist.

Detention of children includes detention when their family members are also detained (i.e., when the whole family is subject to detention), and detention of unaccompanied minors.

In the first instance, families with children are often detained despite decisions made by the European Court of Human Rights which indicate that this should not happen.⁶⁸ Usually, the detention of children alongside family members happens in the context of migration controls.

Unaccompanied minors have been detained in Greece under the status of 'protective custody', which has been harshly criticized for various reasons:

1. In practical terms, it entails detention in a police station under conditions even worse than those provided in Pre-Removal Centres.
2. There is no time limit on the duration of protective custody, although it does not usually last for more than a few days.
3. There is no appeal process to question the validity of a decision to place a child in protective custody.

The European Court of Human Rights found in 2019 that automatic detention of unaccompanied minor asylum seekers under protective custody in police stations did not take into consideration the best interests of the child and thus violated Article 5(1) of the European Convention on Human Rights (Right to Liberty and Security).⁶⁹ It is also often in violation of Article 3 of the Convention due to the conditions of 'protective custody' in police stations.⁷⁰ More recently, on 26 January 2021, the European Committee of Social Rights ruled on a complaint by the International Commission of Jurists (ICJ) and the European Council for Refugees and Exiles (ECRE), finding that detention of unaccompanied migrant children under the 'protective custody' scheme is a violation of Article 17.1 of the European Social Charter (the right of children and young persons to social, legal and economic protection).⁷¹

Under pressure from numerous decisions against the practice, a legislative initiative in 2020 abolished detention as a form of protective custody.⁷² Despite this, protective custody for unaccompanied minors is still being used in Greece. According to the National Center for Social Solidarity (EKKA), on 15 August 2021 – eight months after the practice was abolished – there were 21 unaccompanied minors in protective custody (down from 28 the previous month).⁷³

8 DETENTION AND DECISIONS ON THE IMPOSSIBILITY OF RETURN

Detention may be imposed when asylum applications are rejected in the second instance. In this case, a return decision (to country of origin) is issued. Detention decisions are often issued and then renewed for more than three months. In this instance, detention serves as a means of safeguarding an individual's return to Turkey in accordance with the EU-Turkey Statement and the EU-Turkey Readmission Agreement.⁷⁴

However, since 30 March 2020, Turkey has suspended the return of migrants whose asylum applications were rejected by Greece, invoking COVID-19 restrictions. This suspension was ongoing at the time of writing this report (October 2021). Asylum seekers whose protection claims have been rejected face an impossible situation: the Greek authorities keep them in detention for the stated purpose of returning them to Turkey, while Turkey rejects all returns, with no indication of when it might review this policy.

Despite this Catch-22 situation, the Greek authorities often do not consider – even in cases of impossibility of return to Turkey – alternative measures to detention.

The Greek Ombudsman has recently issued a recommendation in the case of 19 migrants detained in the Pre-Removal Centre on Kos island.⁷⁵ They had their applications rejected in the second instance and were subsequently kept in detention for more than six months. The Ombudsman concluded that detention cannot be acceptable in the context of the impossibility of return. The Ombudsman reminded the Greek authorities that in such cases, detention contradicts both national and EU legislation. Specifically, Article 30(4) L.3907/2011 stipulates that '...when it becomes obvious that there is no reasonable perspective of return for legal or any other reasons ... detention is abrogated and the third country national is released'. In the same vein, the Return Directive 2008/115/EC introduces the principle of proportionality and states that 'detention is justified only for the preparation of return or for the execution of the deportation procedures and if the application of less forced measures is not enough'.⁷⁶

Moreover, the European Court of Human Rights has ruled that detention is justified only if procedures for removal are in progress.⁷⁷ If the procedures are not carried out with due diligence, detention is not justifiable.⁷⁸

9 ALTERNATIVES TO DETENTION

Discussions on alternatives to detention should begin with an acknowledgement that depriving someone of their personal freedom should be a last resort. As the European Court has reiterated in many cases, authorities should consider the fact that administrative detention is imposed on people who have fled their own country, often in fear of their lives, and who are suffering further trauma and revictimization in the countries that should be hosting them safely and in dignified conditions.⁷⁹

In Greece, prioritizing alternative measures to detention is mandated by law, but administrative practices do not comply with this. The authorities often use exemption clauses to justify detention, though these practices are illegal. The Greek Council for Refugees has commented that the recent change to the legal framework 'undermines the general principle that the detention of asylum-seekers should be exceptional and only be resorted to when necessary to achieve a legitimate purpose'.⁸⁰

Asylum legislation references the possibility of imposing alternative measures to detention, as it states that detention of asylum seekers may be imposed '... under the condition that there cannot be implementation of alternative measures as those mentioned in paragraph 3 of Article 22 of L.3907/2011'.⁸¹

Those alternative measures mentioned in L.3907/2011 include:

1. The duty to appear before the competent authorities on a regular basis pending his/her removal from the country.
2. The duty to deliver travel documents to the authorities.
3. The duty to stay in a certain place.
4. The duty to deposit a financial guarantee.⁸²

The Greek administrative courts have also imposed – in the context of examination and approval of appeals against detention decisions – the following terms as alternatives to detention:

1. A deadline for departure.
2. An obligation to provide residence and contact information.
3. An obligation to present to the Asylum Service within 10 days to complete the asylum application registration.

The administrative courts have also imposed the same timeline on the authorities in the same context. Instead of extending the detention, authorities can:

1. transfer the migrant to a reception and identification centre for identification procedures;
2. transfer the migrant who has stated his/her intention to apply for international protection before the Asylum Service to complete the registration procedure.⁸³

It is unacceptable that 10 years after this legislation was implemented, the Greek authorities have not even tried to implement alternative measures to detention. For example, the amount of the financial guarantee required has not been determined

during the 10 years since the enactment of the law, as the relevant Joint Ministerial Decision is still pending.

Among the alternatives to detention, reporting regularly to a police station appears to be a much less harsh and therefore more suitable alternative that does not violate people's rights. Indeed, this practice is commonly used for those accused of a criminal offence while they are awaiting trial. Lack of legal status in a country is much less of a threat to public order than individuals who are arrested for committing criminal acts; yet the administrative courts, when considering appeals against a detention decision for Greek suspects of crimes, have prioritized alternatives such as reporting to a police station regularly (once a week or twice a month).⁸⁴

An obligation to provide residence and contact information is another proportionate alternative measure. However, the Greek authorities and the administrative courts often impose or approve detention decisions by invoking the risk of absconding (on grounds of the applicant's lack of a permanent residence). Yet they fail to take into account the unique situation of asylum seekers in that they usually cannot secure a housing contract. It is a cruel paradox that a permanent address is often a requirement, yet the Ministry of Asylum and Migration demands that asylum seekers stay in facilities provided by the Ministry, threatening to cut off financial support if this condition is not adhered to.⁸⁵

The costs of administrative detention are already very high, as detention centres are expensive to build, maintain and operate.⁸⁶ These funds could be invested in other much needed areas such as integration – a longer-term and more humane solution.

10 CONCLUSION AND RECOMMENDATIONS

Detaining people seeking asylum in inhumane conditions that violate their human rights and dignity is completely unacceptable, especially when less harsh and more proportionate alternatives to detention are enshrined in national law and supported by international and EU law.

In addition, a number of recent legislative amendments and arbitrary administrative practices undertaken by the Greek authorities are in direct breach of EU law.

The recent amendment of L.3907/11 by Article 51 L.4686/2020 provides for the possibility of detention without the obligation to first examine alternatives. This is contradictory to the Return Directive, which indicates that detention may only be possible *'unless other sufficient but less coercive measures can be applied effectively in a specific case'*.⁸⁷

The lack of an individual assessment and the imposition of detention on the grounds of risk of absconding that are based on a non-exhaustive list of criteria is also not in line with the relevant provision of the EU law which provides that those criteria *'must be defined by law'*.⁸⁸

In addition, detention on the grounds of public order for asylum seekers and recognized refugees is out of the scope of EU law as the Return Directive does not provide for detention for public order reasons.⁸⁹

Finally, the lack of effective legal aid is in clear breach of Article 9(6) of Directive 2013/33/EU, which lays down standards for the reception of applicants for international protection.

This research has highlighted the impact of detention on asylum seekers in Greece. Oxfam and the Greek Council for Refugees call on the Greek government to implement the following changes to legislation to protect the human rights of those seeking asylum:

ESTABLISH A PROPORTIONATE LIMIT TO THE DURATION OF DETENTION

Current legislation allows consecutive decisions that may prolong detention for up to 18 months, or even 36 months. This is an extreme provision. Given that the Greek Constitution provides for detention of up to 18 months only in exceptional cases of very serious crimes, it is totally disproportionate to set the same time limit for administrative detention for asylum seekers. A shorter time frame would still be sufficient to allow the authorities to implement any decision to return. If return is not possible, the person in detention should be released.

END DETENTION ON THE GROUNDS OF PUBLIC ORDER AND NATIONAL SECURITY

'Public order' and 'national security' are vague legal terms. Decisions of detention issued on these grounds often just repeat the wording of the law and do not justify detention after a specific assessment of an individual applicant's case. Any threat to public order should be based on a specific accusation addressed to the applicant by the competent judicial authorities.

END DETENTION OF CHILDREN

Administrative detention for children is unacceptable. It is not in the best interests of the child and is thus always a disproportionate measure. The legislative abolition of protective custody is to be welcomed, but its full implementation is still pending. Police stations, Pre-Removal Centres and other places of detention should be explicitly defined as unacceptable in which to detain children. Ending the detention of children also means that their parents (where they have custody) are not detained.

END DETENTION IN POLICE STATIONS

There should be no administrative detention in police stations for migrants. Police stations are places for individuals suspected of committing a crime. Police cells are designed for holding people for very short periods of time, and do not provide conditions that respect human dignity.

END DETENTION IN CASES WHERE THERE IS NO REAL AND IMMEDIATE POSSIBILITY OF REMOVAL

Given the COVID-19-related restrictions on returns by Turkey (and possibly other countries), which show no signs of being lifted, thousands of asylum seekers will be unable to be returned any time soon. In this context, it is unreasonable to insist on generalized detention, as its purpose – to ensure that the return or deportation goes ahead – cannot be fulfilled. It is not only inhumane, but also contravenes national and EU legislation to impose a measure of deprivation of personal liberty for a considerable duration with no prospect of removal (return or deportation). Detention – even when imposed as a last resort – should serve a stated goal. When this is not the case, it lacks any legitimacy.

END GENERALIZED DETENTION FOR ASYLUM SEEKERS

Although the Greek government has not fully clarified the restrictions on movement for individuals held in the five new 'closed and controlled' Multipurpose Reception and Identification Centres, it is likely that it will amount to detention. Generalization of detention for asylum seekers contradicts national and EU legislation and jurisprudence and amounts to criminalization of the human right to seek asylum.

REQUIRE A JUDICIAL DECISION FOR DETENTION

As detention affects the fundamental right to liberty, the decision to issue a detention order should only be made by an independent authority such as a judge. In practice, Greek police are currently deciding to detain asylum seekers without the involvement of impartial actors – an unjustifiable practice. A legislative amendment is necessary so as to provide for judicial review.

MAKE REAL AND EFFECTIVE LEGAL AID AVAILABLE TO DETAINEES

Access to legal aid is a crucial factor in detention appeals, yet many asylum seekers have no access to free legal aid.⁹⁰ Although access to free 3/EU), the most recent CPT report noted that '... the provision of legal advice for issues related to detention and deportation was generally inadequate in all the detention places visited'.⁹¹

PROVIDE SPECIFIC ASSESSMENT OF THE RISK OF AN INDIVIDUAL ABSCONDING

Risk of absconding is often used as a reason to issue a detention decision. This research suggests that detention due to the risk of absconding is often prolonged by the police and approved by the administrative courts with no other reason for its extension. Where the risk of absconding is cited as a reason for detention (or extension of detention), there should be an assessment based on the circumstances of the individual application, rather than a general assumption of risk simply because the person is a migrant.

Human right defenders, asylum lawyers and civil society should strongly support the adoption of alternatives to detention. The Greek authorities should seriously examine alternative measures as provided by national and EU legislation. Only in cases where there is a breach of the alternative measures should detention be considered.

NOTES

- 1 According to data from the Ministry of Citizen Protection, provided to the Greek Parliament on 23 July 2021.
- 2 In this paper, the terms 'administrative detention' or 'detention' refer to the deprivation of freedom of a third-country national in Greece based solely on lack of legal documents.
- 3 Hellenic Republic Ministry of Migration & Asylum. (2021, September 21). *Closed Controlled Access Center of Samos*. Press release. <https://migration.gov.gr/en/nea-kleisti-elegchomeni-domi-samoy-enimerotiko/>
- 4 Reply from the Ministry of Citizen Protection to the Greek Parliament, 23 July 2021.
- 5 Ibid.
- 6 Asylum Information Database (AIDA). (2020). *Country Report: Greece, 2020 Update*, p.198. Retrieved 29 September 2021, from https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf
- 7 Asylum Information Database (AIDA). (2021). *Country Report: Greece, 2020 update*, p. 198. Available at: https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf
- 8 Reply from the Ministry of Citizen Protection to the Greek Parliament, 23 July 2021.
- 9 Article 46 (5) (b) 4636/2020.
- 10 Greek Council for Refugees press release (in Greek). <https://www.gcr.gr/el/news/press-releases-announcements/item/1307-antithetes-sto-elliniko-kai-diethnes-dikaio-oi-eksaggelies-ton-ellinikon-arxon-gia-to-prosfygiko>
- 11 AIDA *Country Report: Greece, 2020 Update*, pp.193–194.
- 12 (Article 46 (5) L.4636/2019.
- 13 AIDA *Country Report: Greece, 2020 Update*, pp.193–194.
- 14 Article 30 (5) and (6) L.3907/2011.
- 15 Articles 8–11 recast Reception Conditions Directive; Article 28 Dublin III Regulation.
- 16 L.4636/2019, Article 46.
- 17 Article 46 (2) L.4636/2019.
- 18 Article 46 (3) L.4635/2019 also states that 'A third country national or stateless that applies for international protection while in detention hereunder the provision of L.3386/2005 and L.3907/2011 as they have been reformed, remains under detention in exception, only if this is necessary, after individual evaluation and under the condition that there cannot be implementation of alternative measures as those mentioned in paragraph 3 of Article 22 of L.3907/2011'. In this case, detention may be imposed for the reasons already mentioned in the case of asylum seekers applying while in liberty.
- 19 Council of State 427/2009, 1127/2009, 2414/2008.
- 20 CJEU C-554/13, Zh and O Staatssecretaris van Veilingheid en Jusitie, 11 June 2015, paragraph 50.
- 21 The Geek Ombudsman, Special report on return of third country nationals, 2018, p.16.
- 22 ΑΠ5278/31-3-2021, Ministry of Migration and Asylum, Reply to questions from GCR.
- 23 ΑΠ5278/31-3-2021, Ministry of Migration and Asylum, Reply to questions from GCR.
- 24 According to L.3386/2005.
- 25 The legal framework for this is provided by L.3907/2011, which incorporated in the Greek legal order the EU Return Directive (2008/115/EC). Thus, Greek legislation administration seems to distinguish between procedures of deportation (L.3386/2005) and procedures of removal and return (L.3907/2011).
- 26 EU Return Directive, Article 15 (1). See The Return Directive 2008/115/EC. European Implementation Assessment, p.3. Retrieved 29 September 2021, from [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU\(2020\)642840_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU(2020)642840_EN.pdf)
- 27 Reply from the Ministry for Citizen Protection to the Greek Parliament, 23 July 2021.

28 Ibid.

29 E. Papadopoulou. (2021, March 29). *Suicide of a 24-year-old Kurd in PROKEKA, Corinth*. EFSYN. Retrieved 29 September 2021, from https://www.efsyn.gr/ellada/koinonia/287448_aytoktonia-24hronoy-koyrdoy-sto-prokeka-korinthoy

30 EFSYN. (2021, 26 March) *KEERFA Complaint: An Immigrant Died Helpless in Kos*. Retrieved 29 September 2021, from https://www.efsyn.gr/ellada/dikaiomata/287152_kataggelia-keerfa-metanastis-pethane-aboithitos-stin-ko

31 Refugee Support Aegean. (2020) *Objections to Detention: Remarks on the Case Law*. Retrieved 29 September 2021, from <https://rsaegean.org/el/antirriseis-kata-kratisis-paratiriseis-epi-tis-nomologias/> (report in Greek)

32 ΑΠ5278/31-3-2021, Ministry of Migration and Asylum, Reply to questions from GCR.

33 Circular 1604/16/1195968/18-6-2016. Retrieved 29 September 2021, from <https://www.synigoros.gr/?i=foreigner.el.metanastis-egkykloi.379856> (webpage in Greek)

34 Council of State 805/2018. See also 'Geographical Restriction of Applicants for International Protection in the Islands'. Retrieved 29 September 2021, from <http://www.immigration.gr/2018/04/8052018.html>

35 Greek Council for Refugees. (2019). *GCR Report on Administrative Detention in Greece – 2018*. Greek Council for Refugees. Retrieved 29 September 2021, from <https://www.gcr.gr/el/ekdoseis-media/reports/item/1072-ekthesi-tou-esp-gia-tin-dioikitiki-kratysi-stin-ellada-to-2018>

36 AIDA *Country Report: Greece, 2020 Update*, p.203.

37 AIDA *Country Report: Greece, 2020 Update*, p.201-202.

38 Article 39 (4) L.4636/2019.

39 TVXS. (2020, January 26). *The First Immigrants in a Closed Center in Kos, While Mitarakis Visits the island – Vovidis is Celebrating*. Retrieved 29 September 2021, from <https://tvxs.gr/news/ellada/oi-protoi-metanastes-se-kleisto-kentro-stin-ko-tin-ora-poy-o-mitarakis-episketetai-nisi->

40 Greek Council for Refugees. (2019). *GCR Report on Administrative Detention in Greece – 2018*. See also ΕΔ Δ Α, A.E.A. v Greece, No 39034/12, 15 March 2018, § 82-85.

41 Article 30 L.3907/2011.

42 AIDA *Country Report: Greece, 2020 Update*, p.208.

43 P.R. Atack. (2021, July 13). *Greece Warned Migrant 'Pushbacks' Violate 'EU Values' and Must Stop*. CGTN. Retrieved 29 September 2021, from <https://newseu.cgtn.com/news/2021-07-13/Greece-warned-migrant-pushbacks-violate-EU-values-and-must-stop-11RTgqfqakw/index.html>

44 European Parliament News. (2020, July 6). *Investigate Alleged Pushbacks of Asylum-Seekers at the Greek-Turkish Border, MEPs Demand*. Retrieved 29 September 2021, from <https://www.europarl.europa.eu/news/en/press-room/20200703IPR82627/investigate-pushbacks-of-asylum-seekers-at-the-greek-turkish-border-meps-demand>

45 United Nations Office of the High Commissioner for Human Rights. (2021). *Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea*. <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx>

46 AIDA *Country Report: Greece, 2020 Update*, pp.209–210.

47 Article 43 L.4760/2020.

48 ECHR S.Z. v Greece, No 66702/13, Judgment of 21 June 2018, para 40, and ECHR H.A. and others v Greece, No 19951/16, Judgment of 28 February 2019 <https://www.asylumlawdatabase.eu/en/content/echr-ha-and-others-v-greece-1995116-28-february-2019>

49 Refugee Support Aegean. (2021). *UPDATED – Immigration Detention in the First Half of 2021: Systematic Deprivation of Liberty and Inaccessibility of Remedies*. Retrieved 29 September 2021, from <https://rsaegean.org/el/statistika-dioikitikis-kratisis-proto-examino-2021>. See also AIDA *Country Report: Greece, 2020 Update*, p.198.

50 Reply from the Ministry of Citizen Protection to the Greek Parliament, 23 July 2021.

- 51 Reply from the Ministry of Citizen Protection to the Greek Parliament, 23 July 2021.
- 52 Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights in the cases of MSS v Belgium and Greece and of Rahimi v Greece, 15 May 2019, p.6. Retrieved 29 September 2021, from <https://www.refworld.org/docid/5cfffceb04.html>
- 53 Greek Ombudsman, 14 June 2021. Retrieved 29 September 2021, from <https://www.synigoros.gr/resources/110621-dt-synedrio.pdf> (in Greek)
- 54 CPT/Inf (2020) 35, Report to the Greek Government on the Visit to Greece Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, paras. 11 and 13; pp. 63–64. Retrieved 29 September 2021, from <https://rm.coe.int/1680a06a86>
- 55 Ibid.
- 56 Amongst others, 148/2018 Rhodes Administrative Court of First Instance (ACFI), 56/2019 Piraeus ACFI, 429/2017 Kavala ACFI, 238/2018 Komotini ACFI.
- 57 IOM. (2011). *International Migration Law Information Note on International Standards on Immigration Detention and Non-Custodial Measures*. Available at: <https://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/IOM3.pdf>
- 58 Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the United States of America, Addendum, 5 March 2008.
- 59 Council of Europe: Council of Europe (2017) Legal and practical aspects of effective alternatives to detention I the context of migration. Analysis of the Steering Committee for Human Rights. Adopted on 7 December 2017.
- 60 Article 48 (4) L.4636/2019.
- 61 Article 48 (3) L.4636/2019.
- 62 Reply from the Ministry of Citizen Protection to the Greek Parliament, 23 July 2021.
- 63 1537/2020 Athens ACFI, 171/2020 Piraeus ACFI, 132/2020 Piraeus ACFI, 469/2020 Athens ACFI.
- 64 Refugee Support Aegean. (2021) *Objections to Detention: Remarks on the case law*.
- 65 United Nations. (1989). UN Convention on the Rights of the Child. Retrieved 30 September 2021, from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- 66 Committee on the Rights of the Child. (2012). *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration*. https://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf
- 67 Article 48 (2) L.4636/2019.
- 68 ECHR Mahmudi and others v Greece, No 14902/10, Judgment of 31 July 2012.
- 69 AIDA *Country Report: Greece, 2019 Update*, p.195–196.
- 70 ECHR H.A. and others v Greece, No 19951/16, Judgment of 28 February 2019.
- 71 International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v Greece Complaint No 173/2018, 12 July 2021.
- 72 Article 43 L.4760/2020.
- 73 See E.K.K.A. website (in Greek): <https://www.ekka.org.gr/index.php/el/rolos-skopos-tou-ekka/statistika>
- 74 See European Commission. (2016, April 4). *Implementing the EU-Turkey Agreement – Questions and Answers*. https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_16_1221
- 75 Equal Rights. (2021, August 4). Press release (in Greek). https://equal-rights.org/site/assets/files/1304/equal_press_release_2021-08-04.pdf
- 76 Return Directive 2008/115/EC, Article 16, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0115&from=EL>

77 Chahal v UK, No 22414/93, 15 November 1996.

78 Saadi v UK, No 13229/03, 29 January 2008.

79 Amuur v France, N 19776/92, 25 June 1996, paragraph 43.

80 Submission of the Greek Council for Refugees to the Committee of Ministers of the Council of Europe concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08).

https://www.gcr.gr/media/k2/attachments/SUBMISSION_OF_THE_GREEK_COUNCIL_FOR_REFUGEES_2020.pdf

81 Article 46 (2) L.4636/2019.

82 L.3907/2011.

83 Among others, 361/2017 Komotini ACFI, 528/2019 Athens ACFI, 53/2017 Thessaloniki ACFI.

84 Amongst others 818/2020 Athens ACFI, 84/2020 Mytilini ACFI, 1367/2020 Athens ACFI, 587/2020 Piraeus ACFI.

85 Refugees International. (2021, June 24). *NGO Letter to the Greek Ministry of Migration and Asylum on Cuts to Financial Assistance for Asylum Seekers.*

<https://www.refugeesinternational.org/reports/2021/6/24/ngo-letter-to-the-greek-ministry-of-migration-and-asylum-on-cuts-to-financial-assistance-for-asylum-seekers>

86 Joint NGO policy briefing. (2021). *Walling Off Welcome: New reception facilities in Greece reinforce a policy of refugee containment and exclusion.* <https://drc.ngo/media/bqofj1hj/greece-09-21-walling-off-welcome-joint-policy-briefing-september-2021.pdf>

87 Article 15 (1) Directive 2008/115/EC.

88 Article 3(7) of the Return Directive. See also AIDA *Country Report: Greece, 2020 Update*, p.205.

89 AIDA *Country Report: Greece, 2020 Update*, p.206.

90 Ibid, p.203.

91 CPT/Inf (2020) 35, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020.

GREEK COUNCIL FOR REFUGEES

On a daily basis, GCR welcomes and offers free legal and social advice and services to refugees and people coming from third countries who are entitled to international protection in our country, while special emphasis is put on vulnerable cases, such as unaccompanied minors, victims of trafficking, etc. The ultimate goal is their protection and their smooth integration in our country. Find out more: www.gcr.gr/en/.

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