



Implementing Alternatives to Administrative Detention in Greece

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Implementing Alternatives to Administrative Detention in Greece

In this text we shall discuss the matter of the implementation of alternative measures to administrative detention in Greece, seeking to contribute in the promotion of their actual implementation. Among other things we shall discuss the conceptual delimitation of the term *alternatives* within Greek law, the procedure for considering and implementing alternatives, the conditions and guarantees that must be ensured and, lastly, examples of alternative measures. It should be noted at this point that despite the fact that there are dozens of alternative measures implemented worldwide, these need to be developed and implemented in a way that is context-specific, taking into account the particularities of each country context. No single alternative to detention will be fully replicable in another context; however, certain elements of successful alternatives to detention are consistent across good practices¹. Therefore, policy-making on alternatives to detention must take into account the particularities in question as well as the experience of multiple actors working in the field of asylum and immigration and be open to public deliberation and democratic control². Policies regarding the implementation of alternative measures as well as systems of asylum and immigration should be based on “empirical evidence” rather than on “assumptions about likely migrant behaviour”³. A period of “trial and error”, where alternatives are evaluated and adapted to the national

¹ UN High Commissioner for Refugees (UNHCR), Second Global Roundtable on Reception and Alternatives to Detention: Summary of deliberations, August 2015, <http://www.refworld.org/docid/55e8079f4.html>, p. 2.

² See, for instance: Inquiry into the use of Immigration Detention of July 2014 (See <http://detentioninquiry.com/> and The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom, <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>) or the results of a research that were presented to the Belgian Parliament in April 2007 on the use of alternative measures to detention (See Council of Europe: Commissioner for Human Rights, Examples of good practice in the field of protection and promotion of human rights: example from Belgium: alternatives to detention of families with minor children, 2010, <http://www.refworld.org/docid/4eccae22.html>).

³ Jesuit Refugee Service, From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom, December 2011, <http://www.refworld.org/docid/4f0c10a72.html>, p. 44.

contexts should also be provided⁴, having regard to the fact that alternatives to detention shift the emphasis away from policy implementation and the issue of compliance from confinement and coercion to respect of dignity and building of trust.

In this text we discuss the main administrative detention practices used in Greece. Detention is/may be resorted to in order to facilitate the removal of irregular migrants (Law 3386/2005⁵ and Law 3907/2011 Art. 16 ff.⁶) whereas asylum seekers may also be detained (P.D.113/2013⁷). Despite the fact that, to date, Greece has largely failed to implement the legal framework of first reception procedures⁸ and that the use of detention is still systematic⁹, we would like to point out the following as far as First Reception procedures and reception procedures within the so-called “hotspots” are concerned.

(i) The relevant provisions of the First Reception explicitly refer to a “restriction of liberty”¹⁰ in the First reception centres (FRC), rather than to a deprivation of liberty. Experience to date shows that measures restricting the individual's liberty in a FRC are in fact equivalent to the deprivation of

⁴ UN High Commissioner for Refugees (UNHCR), Second Global Roundtable, Op. cit.

⁵ Law 3386/2005 (GG A' 212) on “Entry, Residence and Social Integration of Third Country Nationals in the Greek Territory” hereafter Law 3386/2005.

⁶ Law 3907/2011 (GG A' 7) Establishment of Asylum Service and Service of first reception, adaptation of Greek legislation with the provisions of Directive 2008/115/EC “concerning common rules and procedures in Member States for the returning of illegally staying third-country nationals” and other provisions. hereafter Law 3907/2011.

⁷ Presidential Decree No. 113/2013 on the Establishment of a Common Procedure for Identifying the Refugee Status of Foreigners and Stateless Persons or Subsidiary Protection in Compliance with Directive 2005/85/EC and Other Provisions, (L 326/13.12.2005) hereafter P.D. 113/2013.

⁸ See Article 7 par. 1 of Law 3907/2011, “All third-country nationals arrested while entering the country illegally are subject to First Reception procedures”

⁹ See: The Greek Ombudsman, 175063/43840/2015, 23 November 2015; UN High Commissioner for Refugees (UNHCR), UNHCR observations on the current asylum system in Greece, December 2014, <http://www.refworld.org/docid/54cb3af34.html>, p. 9; Joint Ministerial Decision 2969/2015 (GG B' 2602) on the “Establishment of First Reception Centres and temporary Accommodation Facilities for asylum seekers and vulnerable groups of third-country nationals” on the eastern Aegean islands of Chios, Kos, Leros, Samos and Lesbos). The operation of these Accommodation Facilities might change the above conclusion.

¹⁰ Article 13 par. 2 of Law 3907/2011; Yet, at the same time, even though the provision refers to “restriction of liberty”, the same paragraph provides that “newcomers are obliged to stay in the First reception centre”.

liberty¹¹. Whether the measures restricting the individual's liberty is a *de facto* deprivation of liberty, is to be established on the basis of an assessment of the individual situation, including the type and manner of implementation of the measures. Individuals must also be able to leave the centre with permission granted by the Head of the First Reception Centre, as provided by law¹². Nevertheless, if the individuals held in the First Reception Centres find themselves deprived of their liberty, the First Reception Service must guarantee that the individuals concerned would be accommodated in full respect of their fundamental rights envisaged in international instruments and that their detention should occur where less coercive measures cannot be applied effectively.

(ii) The implementation of the legal framework of first reception procedures could have a key role in ensuring the provision of information and should guarantee the swift identification of those who should not be detained, taking into account their individual circumstances, provided that effective identification, assessment and screening procedures are available.

(iii) so far, it is not entirely clear which legal regime¹³ will govern the operation of the so-called "hotspots"¹⁴ and particular issues related to their operation and the "accommodation" of third-country nationals in the "hotspots" may arise in the near future. Moreover, it goes without saying that in the case of "hotspots" compliance with the international, European and national legal frameworks must be ensured¹⁵.

¹¹ European Council on Refugees and Exiles, «What's in a name? The reality of First "Reception" at Evros», February 2015, <http://www.refworld.org/docid/550c36614.html>.

¹² Article 13 par. 2 of Law 3907/2011.

¹³ Detention based on the provisions of Law 3386/2005 or Implementation of the provisions concerning First Reception.

¹⁴ See COUNCIL DECISION (EU) 2015/1523 of 14 September 2015 and COUNCIL DECISION (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2015_239_R_0011 and <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1601>.

¹⁵ "Compatibility of establishment and management of hotspots with the EU Law", Parliamentary question addressed to the European Commission 27.11.2015, <http://statewatch.org/news/2015/dec/ep-Q-to-commission-hotspots-1.pdf> and European Council

This report is based on a comprehensive and balanced selection of a growing number of international sources¹⁶ on the application of alternatives to detention on asylum seekers and third-country nationals awaiting return, on data provided by the national competent authorities, on the exchange of relevant experience and knowledge with various bodies and civil society organisations as well as on the experience of the Legal Department of the Greek Council for Refugees in representing detained individuals in need of international protection before Court.

1. Administrative detention and alternative measures to detention.

The use of detention in the immigration framework, is usually viewed as a country's "undeniable sovereign right to control aliens' entry into and residence in their territory", however this right must be exercised in accordance with the provisions regarding protection of fundamental rights¹⁷. In this framework, States use the detention of migrants as part of broader policies on managing migrants who are undocumented or in an irregular situation, asylum-seekers awaiting the outcome of their asylum application and as a deterrent factor for irregular migration. However, as the UN Special

on Refugees and Exiles (ECRE), "Hotspots", the Italian example. Conversation with Christofer Hein for CIR, 2.10.2015,

<http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1210-hotspots-the-italian-example-conversation-with-christopher-hein-from-cir-.html>.

¹⁶ For instance: UN High Commissioner for Refugees (UNHCR), Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva, June 2013, PPLA/2013/02, <http://www.refworld.org/docid/51a6fec84.html>; UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants, April 2011, PPLA/2011/01.Rev.1, <http://www.refworld.org/docid/4dc935fd2.html>; UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, April 2006, POLAS/2006/03, <http://www.refworld.org/docid/4472e8b84.html>; Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised), Melbourne: International Detention Coalition, 2015, http://idcoalition.org/wp-content/uploads/dlm_uploads/2015/10/idcTAA.pdf; Odysseus Network, Alternatives to immigration and asylum detention in the EU - time for implementation, 2015, <http://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf>.

¹⁷ See ECtHR - Amuur v. France, Application no 19776/92, 25 June 1996, par. 41.

Rapporteur emphasizes, “there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased. This may be due, *inter alia*, to the fact that migrants possibly see detention as an inevitable part of their journey”¹⁸.

Additionally, it is well-established that detention:

- is linked with severe violations of human rights ¹⁹,
- causes mental and physical harms to the detained third-country nationals²⁰,
- causes a feeling of injustice with regard to immigration processes and subsequently impacts an individual’s ability to comply with immigration processes²¹,
- is considerably expensive ²².

The development of international and regional human rights law and standards, combined with the findings mentioned previously, has made it clear that governments can draw upon a range of alternatives to detention to

¹⁸ UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, A/HRC/20/24, <http://www.refworld.org/docid/502e0bb62.html>, par. 8; See also UN High Commissioner for Refugees (UNHCR), Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019, 2014, <http://www.refworld.org/docid/536b564d4.html>, p. 5.

¹⁹ Volker Türk, Alice Edwards, Introductory Note to the Summary Conclusions of the Global Roundtable on Alternatives to Immigration Detention, Oxford Journals Law, International Journal of Refugee Law, Volume 23, Issue 4, p. 873; UN High Commissioner for Refugees (UNHCR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011, <http://www.refworld.org/docid/4e315b882.html>, par. 8-15 ‘Human Rights impact of Detention’.

²⁰ Jesuit Refugee Service, Europe: Becoming Vulnerable in Detention, June 2011, <http://www.refworld.org/docid/4ec269f62.html>; Mark Noferi, Esq., A Humane Approach Can Work: The Effectiveness of Alternatives to Detention for Asylum Seeker, American Immigration Council, July 2015, http://www.immigrationpolicy.org/sites/default/files/docs/a_humane_approach_can_work_the_effectiveness_of_alternatives_to_detention_for_asylum_seekers_finaLawpdf, p. 6-7.

²¹ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 4.

²² Op. cit. p. 6.

reduce unnecessary detention. Empirical evidence suggests that alternatives to detention²³:

- support individuals' well-being and better respect the human rights,
- ensure greater compliance with immigration processes (including asylum and return procedures) and
- alternatives to detention are less costly.

Research based on the evaluation of the implementation of alternative measures across more than thirty countries (2006)²⁴ and across thirteen alternative measures implemented in five different countries (2011)²⁵, has indicated that, given the availability of alternative measures, only in very few cases is immigration detention for asylum seekers or those "pending removal" deemed justified or necessary.

The States' obligation to seek for alternatives to detention has become all the more pressing in the light of international as well as national law. In this regard, the failure of governments to even trial alternatives to detention, puts their detention policies and practices into direct conflict with the law²⁶. In particular, regarding the EU Member States, the adoption of the Return Directive²⁷ and of the revised Directive on Reception²⁸, introduced the obligation of examination of alternative measures to detention before

²³ UN High Commissioner for Refugees (UNHCR), Executive Committee of the High Commissioner's Programme, Alternatives to detention, EC/66/SC/CRP.12, 3 June 2015, <http://www.unhcr.org/559643e59.pdf>, par. 3-6; Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 9-12.

²⁴ UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit.

²⁵ UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit.

²⁶ Op. cit. p. iv.

²⁷ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

²⁸ 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.

applying detention as a measure; accordingly the relevant obligation constitutes an integral part of the Community *acquis* in the fields of asylum and immigration ²⁹. Even though alternatives to detention are laid down in law and all EU Member States provide for the possibility of alternatives to detention in their national legislation³⁰ and that there has also been consistent movement towards a wider implementation of alternatives to detention³¹, in practice, the use of alternatives to detention is still quite limited. They are mostly applied in vulnerable cases whereas, usually, data on the effectiveness of such measures is not provided ³².

Second thoughts regarding the implementation of alternatives to detention, concern among other things:

i) whether the alternatives to detention are efficient as well as that their implementation includes the risk of an “increased likelihood of

²⁹ It is noted that the views of the EU bodies, which consider the use of detention as a legitimate measure of last resort, but at the same time invite Member States to reinforce their pre-removal detention capacity to ensure the physical availability of irregular migrants for return, constitute a major setback on this point; See Council of the EU, Press Release, Council conclusions on the future of the return policy, 8.10.2015, <http://www.statewatch.org/news/2015/oct/eu-jha-council-conclusions-returns-policy.pdf>.

³⁰ According to the European Union Agency for Fundamental Rights, all EU Member States provide for the possibility of alternatives to detention, except for Malta, which is expected to introduce fully-fledged alternatives in the near future; European Union Agency for Fundamental Rights (FRA), Alternatives to detention for asylum seekers and people in return procedures, October 2015, http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-alternatives-to-detention-compilation-key-materials-2_en.pdf, p. 4.

³¹ European Commission, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on EU Return Policy, 28.3.2014, COM(2014) 199 final, [http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2014\)0199_/com_com\(2014\)0199_eLawpdf.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2014)0199_/com_com(2014)0199_eLawpdf.pdf), p. 18.

³² European Union Agency for Fundamental Rights (FRA), Alternatives to detention etc., Op. cit.; International Detention Coalition, A New Agenda for Home Affairs: Ending unnecessary immigration detention in the EU, IDC SUBMISSION, January 2014, <http://idcoalition.org/detentiondatabase/new-agenda-home-affairs-ending-unnecessary-immigration-detention-eu-2/>, par. 79; European Migration Network (EMN), Synthesis Report – The Use of Detention and Alternatives to Detention in the Context of Immigration Policies, November 2014, <http://www.refworld.org/docid/546dd6f24.html>, p. 41; European Commission, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on EU Return Policy, Op. cit. p. 18 “In practice, however, several Member States only apply alternatives to detention in rare cases”.

absconding”³³. This hypothesis is, however, not proven by empirical evidence. On the one hand, research across various alternatives to detention has found that very high rates of compliance or cooperation can be achieved in various circumstances³⁴. On the other hand, statistics demonstrate that there is a considerable gap between return decisions issued and effected returns, despite the fact that alternatives to detention are implemented only in very few cases³⁵. As a consequence, this gap ought to be covered through research in other fields and as far as the effectiveness alternative measures to detention is concerned, this should also be judged on the basis of the above statistics.

	2012	2011	2010
Third-country nationals issued with a return decision in the EU	484.000	491.000	540.000
Third-country nationals who left the EU as a consequence of a return decision	178.000	167.000	199.000

Source: COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on EU Return Policy, 28.3.2014, COM (2014) 199 final.

ii) The assumption that the efficient implementation of alternatives to detention is determined by the classification of countries into destination and transit. Yet, the said classification of countries is somewhat artificial and

³³ Council Of the European Union, Annexed to the Commission Recommendation Establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks (11847/15), 6.10.2015, <http://www.statewatch.org/news/2015/oct/eu-com-annex-to%20returns-handbook.pdf>, p. 79

³⁴ UN High Commissioner for Refugees (UNHCR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011, <http://www.refworld.org/docid/4e315b882.html>, p. 4 και 6; UN High Commissioner for Refugees (UNHCR), Second Global Roundtable on Reception and Alternatives to Detention, Op. cit. p. 9.

³⁵ European Commission, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on EU Return Policy, Op. cit. p. 3, “With regard to the return of those without the right to stay in the EU, statistics demonstrate that there is a considerable gap between the persons issued with a return decision and those who, as a consequence, have left the EU”

is based on crude global trends, rather than the motivations of individuals³⁶. There is evidence that secondary movement to a country could be prevented if migrants can meet their basic needs or/and be in a supportive environment³⁷. In particular, our findings serve as a reminder that asylum-seekers simply seek safety and protections, rather than a particular country of destination³⁸. In light of the above, working on alternatives to detention in transit countries should take into consideration the particularities of individual circumstances and should be done jointly with the improvement of asylum systems, reception conditions and integration factors³⁹.

2. The case of Greece

It is reasonable to assume that the States' reluctance to implement alternatives to detention has influenced the practices used in Greece, where, despite the fact that law provides for the implementation of alternatives to detention, in practice, no such measures are considered, and irregular migrants are systematically detained⁴⁰. The only exception from this reality is the obligation to report to the police, ordered by the Administrative Court⁴¹, in cases where *Objections* lodged against detention before the

³⁶ UN High Commissioner for Refugees (UNHCR), *Back to Basics: The Right to Liberty and Security*, Op. cit. p. 84.

³⁷ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law, *There Are Alternatives*, Op. cit. p. 64.

³⁸ UN High Commissioner for Refugees (UNHCR), *Building Empirical Research into Alternatives to Detention*, Op. cit. p. 15.

³⁹ Second Global Roundtable on Reception and Alternatives to Detention, Op. cit. p. 8.

⁴⁰ European Migration Network (EMN), *Synthesis Report*, Op. cit. p. 7; UN Human Rights Council, *Report of the Working Group on Arbitrary Detention, Addendum: Mission to Greece*, 30 June 2014, A/HRC/27/48/Add.2, par. 103.

⁴¹ Moreover, in February-March 2015, in some cases where detention had exceeded the maximum period established by law, the Police imposed the obligation of reporting to the authorities upon release of the detainees. However, it appears as if this was a one-time thing and neither are there statistical data available in relation to the number of cases and the compliance rate to detention

Administrative Court have been upheld, a practice adopted from 2014 onwards. Despite the fact that in most of the cases mentioned above the imposition of the obligation of regular reporting to the authorities, did not constitute an alternative to detention, since it mostly concerned cases with no legal basis for the imposition/extension of detention⁴², this practice is an example which deserves further examination. Nevertheless, statistical data regarding the compliance rate to this detention alternative are not available⁴³.

<i>Objections</i> lodged against detention before the Administrative Court of First Instance of Athens				
	Total <i>Objections</i> lodged	<i>Objections</i> upheld without imposition of the measure	<i>Objections</i> upheld upon imposition of the measure of Reporting to the Police Department	Rejected <i>Objections</i> in court ⁴⁴
2015 ⁴⁵	494	158	59	277
2014	1144	332	232	581
2013	911	236	0	575

Source: Document no. 50020/2015 dated 9/12/2015 of the Administrative Court of First Instance of Athens, Objections' Department, Article 76 on the provision of data.

alternatives. See Document no. 6634/1-327355 dated 25 November 2015 of the Hellenic Police Headquarters, Department of Immigration and Border Protection, on the provision of data.

⁴² According to the competent department of the Administrative Court of First Instance of Athens, the majority of the cases where an alternative to detention was imposed in 2014, concerned third-country nationals whose return was infeasible e.g. Syrian nationals. Thus, there was no legal basis for the imposition/extension of detention. See Document no. 50020/2015 dated 9/12/2015 of the Administrative Court of First Instance of Athens, Objections' Department, Article 76 on the provision of data. Furthermore, having regard to the fact that on 28.2.2014 the Opinion 44/2014 of the Legal Council of the State had been approved by the Ministry, by which the Greek Government was authorized to indefinitely detain migrants, a significant number of the cases in question concerned the maximum period of detention that had been exceeded and, respectively, there was no legal basis for the extension of detention in these cases as well. (at least a 100 cases concerning indefinite detention had been brought before the competent Administrative Courts until the end of 2014, See Greek Council For Refugees (GCR), Report of the Greek Council For Refugees to the UN Human Rights Committee on Detention Issues (ICCPR art. 7, 9 and 10), <http://www.gcr.gr/index.php/el/publications-media/2015-07-06-10-08-36/item/473-ekthesi-esp-pros-epitropi-anthropinon-dikaionaton-tou-o-i-e-dekembrios-2014>).

⁴³ Document No. 6634/1-327355 dated 25 November 2015 of the Hellenic Police Headquarters, Department of Immigration and Border Protection, on the provision of data.

⁴⁴ Including negative Judgments on the merits, inadmissible decisions and minutes-decisions ruling that there is no need to adjudicate.

⁴⁵ The figures for 2015 relate to the period from 1.1.2015 until 08.12.2015.

In addition to the above general comments on States' reluctance to implement alternatives to detention, it should be noted that, Greece has also adopted a policy of systematic detention of irregular migrants and asylum seekers in order to cope with these mixed migration flows. The detention of third-country nationals pending return continued for a long time as a tool to prevent entries and effectuate returns⁴⁶ and included the substantial investment in the establishment of additional detention centres⁴⁷, the systematic, without any individual assessment, detention of third-country nationals as well as the dramatic extension of the maximum permissible length of detention⁴⁸. Some official documents reflected this policy and especially the Revised Action Plan on Asylum and Migration Management (2012), which highlighted that "the Ministry decided to increase the capacity of the pre-removal facilities [...] in order to achieve a significant increase of the returns and send a strong signal to third-country nationals willing to illegally enter Greece and thus European territory. This decision underlines the Government's determination to implement an

⁴⁶ For instance: European Migration Network (EMN), Annual Report on Immigration and Asylum in Greece – 2014, p. 86; Council of Europe, Parliamentary Assembly (PACE), Resolution 1918 (2013), Migration and asylum: mounting tensions in the eastern Mediterranean, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19467&lang=en>, par. 6, "In order to cope with these mixed migration flows, Greece has, with assistance from the European Union, enhanced border controls. It has also adopted a policy of systematic detention of irregular migrants and asylum seekers".

⁴⁷ By the end of 2012, the capacity of pre-removal centres had been increased by 4,000 places, whilst it had been planned to establish additional pre-removal facilities of a total capacity of 10,000 places until the end of the first semester of 2014, See MINISTRY OF PUBLIC ORDER AND CITIZEN PROTECTION, Greek Action Plan on Asylum and Migration Management (December 2012), <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2374756&SecMode=1&DocId=2029690&Usage=2>, p. 53.

⁴⁸ The maximum period of detention for third-country nationals who are held on the basis of a return order was extended from three (3) (Law 3386/2005) to eighteen (18) months (See Law 3386/2005 as amended by Law 3772/2009 and Law 3907/2011). The Opinion 44/2014 of the Legal Council of the State, which was passed by the competent Minister in February 2014, authorized the Greek Government to indefinite detain migrants under return procedures. Accordingly, the maximum period of detention of asylum seekers was extended, at first, from two (2) (P.D. 90/2008) to three (3) months (P.D. 114/2010), and then the possibility was provided for of extending the detention periods to an additional 12-month period, and, in the end, up to eighteen (18) months (P.D. 116/2012). This *scheme* was actually adopted also by the P.D. 113/2013.

effective plan and warn all immigrants who do not fall under the status of international protection that they will be arrested, detained and returned to their countries of origin”⁴⁹, contrary to the obligation to always consider alternatives before detention and use detention as an exceptional measure of last resort, as prescribed by the national regulations. The implementation of this policy has led to serious violations of human rights, as reflected in numerous judgments of the European Court of Human Rights⁵⁰ and has repeatedly put the country on the spot since it has been harshly criticized from Human Rights Monitoring Mechanisms for having committed substantial human rights abuses⁵¹. At the same time, research has shown that the systematic use of detention has added financial costs to Greece and has not proven to be an effective policy for irregular migration control (deter migration/increase returns) ⁵². With regard to the return of those without

⁴⁹ Ministry of Public Order and Citizen Protection, Greek Action Plan on Asylum and Migration Management (December 2012), <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2374756&SecMode=1&DocId=2029690&Usage=2>, p. 53

⁵⁰ See the most recent Judgment: EctHR 58399/11. A.Y. v. Greece. 05/02/2016.; Overall since 2009 there have been more than 20 judgments of the ECtHR concerning the detention of third country national under return / asylum procedures (mainly infringements of Articles 3, 5.1, 5.4 and 13). In the cases: EctHR, *LOHAR v. Greece* 67357/14 , 20/10/2015 and EctHR, *FALLAK v. Greece*, 62504/14 20/10/2015, the applicants were paid compensation by the Greek authorities because they were held in detention indefinitely.

⁵¹ See also the following non-exhaustive list besides the Case-Law of the ECtHR: UN High Commissioner for Refugees (UNHCR), UNHCR observations on the current asylum system in Greece, December 2014, <http://www.refworld.org/docid/54cb3af34.html>; UN Human Rights Council, Report of the Working Group on Arbitrary Detention, Addendum: Mission to Greece, 30 June 2014, A/HRC/27/48/Add.2, <http://www.refworld.org/docid/53eb2c3e4.html>; UN Human Rights Council, “Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece”, 18.4.2013, A/HRC/23/46/Add.4, <http://www.refworld.org/docid/51b983ab4.html>; Council of Europe: Parliamentary Assembly, “Migration and asylum: mounting tensions in the Eastern Mediterranean”, 23.1.2013, <http://www.refworld.org/docid/51384f992.html>; Council of Europe: Commissioner for Human Rights, “Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Greece from 28 January to 1 February 2013”, 16.4.2013, CommDH(2013)6, <http://www.refworld.org/docid/516e76bb4.html>.

⁵² D. Angeli A. Dimitriadi A. Triandafyllidou, “Assessing the Cost-effectiveness of Irregular Migration Control Policies in Greece”, MIDAS report/ELIAMEP, October 2014, <http://www.eliamep.gr/wp-content/uploads/2014/11/MIDAS-REPORT-GR-1.pdf>; Danai Angeli, Anna Triandafyllidou, “Is the indiscriminate detention of irregular migrants a cost-effective policy tool? A case-study of the Amygdaleza Pre-Removal Center”, MIDAS Policy Brief/ ELIAMEP, May 2014, <http://www.eliamep.gr/migration/midas-policy-brief-detention-as-punishment-can-indefinite-detention-be-greeces-main-policy-tool-to-manage-its-irregular-migrant-population/#sthash.Id3evNLZ.dpuf>.

the right to stay in Greece, statistics demonstrate that there is a considerable gap between the persons issued with a return decision (expulsion or departure), those who are detained, and those who, in the end, have left Greece through a return program assisted by the Greek Police. In fact, the tightening of detention policy did not cause significant differentiation in the figures. Although this reflects an increase in absolute terms of third-country nationals forcibly removed in 2013 and 2014, this change is not reflected in percentage terms. In particular, in 2013, when the policy for the detention of third-country nationals held on the basis of a return order up to eighteen (18) months was initiated, 20% of all the third-country nationals issued with a return decision was forcibly removed. In 2014, when the possibility of indefinite detention was introduced, only 18% of all the third-country nationals issued with a return decision was forcibly removed⁵³.

	2013	2014	2015 (nine months)
Registered forced removals – returns by the Greek Police	43,839	71,035	64,316
Registered forced removals – returns of detainees by the Greek Police	17,943	34,007	20,794
Effectuated forced removals ⁵⁴	8,780	12,818	8,247

Source: Document no. 6634/1-327355 dated 25 November 2015 of the Hellenic Police Headquarters, Department of Immigration and Border Protection, on the provision of data.

In February 2015, after the death of four prisoners (two of which were suicides), Greek authorities announced important changes to the practice of administrative detention of third-country nationals⁵⁵. These changes

⁵³ Data of the Hellenic Police Headquarters, see Footnote 41.

⁵⁴ The total number of removals for the year 2013 is 26,786 persons, of these more than 8,780 are 'forced' removals, 7,533 were transferred on the basis of a bilateral agreement (readmission), 9,225 returned with the support of IOM and 648 assisted by the Greek Police. For the years 2014 and the first nine months of 2015, statistics indicate that: total number of removals 27,789 and 16,015 respectively, 12,818 and 8,247 'forced' removals, 7,475 and 4,477 readmissions, 7,334 and 3,239 , voluntary returns (IOM), 162 and 52 voluntary returns assisted by the Greek Police. Statistics by the Hellenic Police Headquarters, See footnote 36.

⁵⁵ Press Release of the Deputy Ministers of immigration Policy on Detention centres, 17.2.2015,

included, *inter alia*: reduction of detention time limits, lifting of the detention measures for vulnerable groups, including asylum seekers, as well as the consideration of alternatives before any detention⁵⁶. These envisaged changes were welcomed⁵⁷ and their implementation, possibly linked with the problems that arose with food financing in the detention centres⁵⁸, resulted in a significant reduction in the number of detainees. Yet, even though positive steps have been taken *in the right direction*, in practice, as we speak, alternatives to detention are neither being considered nor implemented. The concluding observations on the second periodic report of Greece of the UN Human Rights Committee (October –November 2015) highlight that “while the Committee notes the recent policy of releasing persons whose detention exceeds six months, it is concerned about reported cases of persons detained for longer periods [...]. The Committee is concerned that immigrants are sometimes detained for prolonged periods of time without regard for their individual circumstances, which may raise issues under article 9 of the Covenant [...]. The State party should ensure that detention of all irregular migrants is reasonably necessary and proportionate and for the shortest possible period of time, and that alternatives to detention are available in law and implemented in practice. In particular, the State party must ensure that any decision to detain asylum seekers [...] is based on their individual

http://www.mopocp.gov.gr/index.php?option=ozo_content&lang=&perform=view&id=5374&Itemid=607.

⁵⁶ Asylum Information Database (AIDA), Country report: Greece (Forth Update), November 2015, <http://www.asylumineurope.org/reports/country/greece>, p. 90.

⁵⁷ OHCHR, Regional Office for Europe, UN Human Rights Office welcomes Greece’s envisaged changes in migration policy, 18.02.2015, <http://www.unric.org/en/latest-un-buzz/29649-un-human-rights-office-welcomes-greecesenvisaged-changes-in-migration-policy>; UNHCR welcomes the envisaged changes in the administrative detention of third country nationals, 19.02.2015, <http://www.unhcr.gr/nea/artikel/24dcef5d13ebd29a1559fc4d7339ad10/unhcr-welcomes-the-envisaged-changes.html>.

⁵⁸ KATHIMERINI, “No food at the Refugee Accommodation Centres due to unlawful provision”, 22.9.2015, <http://www.kathimerini.gr/831778/article/epikairothta/ellada/xwris-sitish-ta-kentra-krathshs-metanastwn-logw-paranomhs-diata3hs>; Answer of the Deputy Minister of the Interior and Administrative Reconstruction, responsible for matters relating to public order, to a Parliamentary question, 7017/4/18877, 5 November 2015, <http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/9375105.pdf>.

circumstances and takes into account less invasive means of achieving the same end⁵⁹“.

3. Alternative measures to detention in Greece

a. National legislation

A compilation of legal instruments together with the general human rights and EU legal framework focus specifically on alternatives to detention for persons awaiting deportation or removal. The obligation of Greece to consider alternatives to administrative custody is explicitly enshrined in all these rules⁶⁰. For instance, the United Nations Commission on Human Rights and the European Court of Human Rights (hereinafter referred to as 'the ECtHR') point out that the non-consideration and non-application of alternatives to detention constitute a violation of rights under the International Covenant on Civil and Political Rights⁶¹ and the European Convention on Human Rights (hereinafter 'the Convention')⁶². Similarities

⁵⁹ UN Human Rights Committee (HRC), Concluding observations on the second periodic report of Greece, adopted by the Committee at its 115th session (19 October–6 November 2015), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGRC%2fCO%2f2&Lang=en, par. 27-28.

⁶⁰ For a summary see: European Union Agency for Fundamental Rights (FRA), Alternatives to detention for asylum seekers and people in return procedures, October 2015, http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-alternatives-to-detention-compilation-key-materials-2_en.pdf.

⁶¹ UN Human Rights Committee (HRC), C. v. Australia, CCPR/C/76/D/900/1999, 13 November 2002, <http://www.refworld.org/docid/3f588ef00.html>; On the interpretation of Article 9 of the ICCPR See Human Rights Committee, General comment No. 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

⁶² See, among others: ECtHR - Yoh-Ekale Mwanje v. Belgium, Application No. 10486/10, 20 December 2011; ECtHR - Rahimi v. Greece, Application No. 8687/08, 5 April 2011; ECtHR - Louled

have also been identified in the jurisprudence of the European Court of Justice (ECJ) in relation to the application of relevant provisions of the Return Directive⁶³. Furthermore, the Greek law itself (Law 3907/2011 and P.D. 113/2013), with the exception of the relevant provisions of Law 3386/2005, explicitly embodies these safeguards and the obligation of States to consider alternatives to administrative detention and to use detention as an exceptional measure of last resort. Yet, even if Law 3386/2005, does not explicitly mention the obligation to consider alternatives to detention before resorting to detention, this obligation arises out of international treaties, which are legally binding, and must, accordingly, be fulfilled under all circumstances. For instance, in the case *Rahimi v. Greece*, despite the fact that the provisions of Law 3386/2005 were applicable, the ECtHR noted that there had been a violation of the European Convention on Human Rights since the Greek authorities had not examined “whether it had been necessary as a measure of last resort to place the Applicant in the detention centre or whether less drastic action might not have sufficed to secure his deportation”⁶⁴.

As a result, the widespread Greek practice of systematic placement of third-country nationals in detention without prior consideration of alternatives is not an issue relating to absence of relevant legislation, but mainly to the effective implementation of the existing legal framework. However, for reasons of legal certainty and clarity, the obligation to always consider alternatives to detention before resorting to detention should also apply in those cases falling within the scope of law 3386/2005⁶⁵.

Massoud v. Malta, Application No. 24340/08, 27 July 2010; ECtHR - Nabil and Others v. Hungary Application No. 62116/12, 22 September 2015.

⁶³ ECJ, *Judgment in Case C-61/11 PPU Hassen El Dridi alias Soufi Karim*, 28/04/2011 και ECJ, *Judgment in Case C-146/14 PPU Bashir Mohamed Ali Mahdi*, 5/06/2014.

⁶⁴ ECtHR - *Rahimi v. Greece*, Op. cit. par. 109.

⁶⁵ This is also the recommendation of the UN Special Rapporteur on the human rights of migrants, «In the Special Rapporteur’s view, the obligation to always consider alternatives to detention (non-custodial measures) before resorting to detention should be established by Law», UN General

b. Alternative measures within the legal system of Greece

The term “alternatives to detention” can be understood worldwide as a wide range of non-custodial measures applicable to third-country nationals, that States use to manage the migration/asylum process. In this regard, the phrase ‘alternatives to immigration detention’ is not an established legal term, but is defined as “any law, policy or practice by which persons are not detained for reasons relating to their migration status”⁶⁶ covering a wide range of possible alternatives to detention, from freedom of movement until restrictions on movement and account must be taken of the type, duration, effects and manner of implementation of the measure in question so that in any case it does not amount to deprivation of liberty⁶⁷.

This definition, which attempts to combine different legal frameworks and administrative practices (e.g. mandatory detention), should be further clarified in the case of Greece (and for all EU member states which must obey the Community *acquis* in the field of asylum and migration). Given that the Greek legal system sets out the procedures which must be followed in managing the migration/asylum process of a third-country national and that the detention of a third-country national awaiting removal or an asylum seeker is allowed only in exceptional cases, under certain conditions, and only when grounds for detention exist, deprivation of liberty will not be justified where other less onerous alternatives to detention exist in the particular circumstances of the case:

Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, A/HRC/20/24, <http://www.refworld.org/docid/502e0bb62.html>, par. 53.

⁶⁶ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 7; UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, Op. cit. par. 56

⁶⁷ See ECtHR, *Guzzardi v Italy*, Application n. 7367/76, 06/11/1980; ECtHR - *Amuur v. France*, Op. cit.

a) deprivation of liberty is only lawful when a risk is found to exist (e.g. risk of absconding establishing the identity of asylum seekers who have applied for asylum in detention etc.) and

b) whether such a risk can be effectively mitigated by resorting to the application of less coercive measures⁶⁸.

In cases where no such risk exists, migrants should not be detained. It should be pointed out that, if detention ceases to be justified, the person concerned must be released immediately/not be detained and no alternative measure shall be used as an alternative to release.

In particular, concerning third-country nationals pending return/removal, alternatives to detention may be imposed after they had been granted voluntary departure and failed to depart voluntarily within the time specified⁶⁹ and during postponed return⁷⁰, provided there is a legitimate reason for detention and another sufficient but less coercive measure can be applied effectively in the individual case. During the period of voluntary departure, as a “right of temporary residence” is provided to the third-country national⁷¹, there is no legitimate reason for detention. Since a “right of temporary residence” is also provided during postponed return⁷², there is

⁶⁸ European Union Agency for Fundamental Rights (FRA), Fundamental rights: challenges and achievements in 2012, http://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf, p. 52 and European Union Agency for Fundamental Rights (FRA), Detention of third country nationals in return procedures, 30 November 2010, <http://www.refworld.org/docid/4ecf77402.html>, p. 53; UN High Commissioner for Refugees (UNHCR), Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva, June 2013, PPLA/2013/02, <http://www.refworld.org/docid/51a6fec84.html>, p. 10; Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 61-64.

⁶⁹ Article 22, Law 3907/2011.

⁷⁰ Article 24, Law 3907/2011.

⁷¹ Article 22 par. 5 Law 3907/2011.

⁷² Article 24 par. 4 Law 3907/2011.

no legitimate reason for detention and *a fortiori* for the imposition of alternatives to detention.

Third-country nationals not legally residing in the country, who are subject to return procedures		
Period allowed for voluntary departure (Article 22 L. 3907/2011)	Coercive (alternative) measures, if there is a legitimate reason and the requirements of Articles 30 and 31 L. 3907/2011 are met .	Postponement of removal (Article 24 L. 3907/2011)

■ cases, which may be subjected to alternative measures

Accordingly, as the Greek law prohibits the detention of individuals who are not detained and lodge an asylum application⁷³, alternatives to detention may be imposed when a detained third-country national awaiting removal lodges an asylum application, provided there is a legitimate reason for detention and another sufficient but less coercive measure can be applied effectively in the individual case.

Asylum seekers	
Individuals who are not detained and lodge an asylum application	Asylum seekers who lodge an asylum application while in detention awaiting removal, if there is a legal basis for detention and the requirements of Article 12 P.D.

⁷³ The only exception to this rule is found in Article 12 par. 3 P.D. 113/2013, according to which individuals who are not detained and lodge an asylum application, may be detained “on grounds of national security or public order”. However, the new draft Presidential Decree for the adaptation of the Greek legislation to the provisions of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 ‘on common procedures for granting and withdrawing international protection’, adopts the wording of P.D. 114/2010 and no such possibility is provided. Consequently, individuals who are not detained and lodge an asylum application may not be detained, See: <http://www.opengov.gr/types/wp-content/uploads/downloads/2015/11/asylo.pdf>.

cases, which may not be subjected to alternative measures

The clarification of the definition of alternatives to detention within the Greek (and European) legal framework is important because:

- Alternatives to detention must not extend enforcement measures against people who otherwise would be released. Alternatives to detention should lead to a systemic reduction in the detention estate, and not merely used to create additional capacity for detention⁷⁴.

-Administrative authorities have discretionary powers to impose further restrictions or obligations during various procedures, in line with existing provisions, but cannot impose custodial measures, if deemed necessary and appropriate, as is the case with persons who could be subjected to an alternative to detention. For instance, during postponed return, provided that all legal requirements are met, certain obligations may be imposed to third-country nationals so as to ensure that they remain at the disposal of the authorities, such as regular reporting etc., but no custodial measures may be imposed⁷⁵.

Lastly, national law provisions require that alternatives to detention are duly considered:

- before depriving the liberty of a person⁷⁶; and

⁷⁴ Jesuit Refugee Service, Europe Policy Position on Alternatives to Detention, 2012, <http://www.refworld.org/pdfid/50ac9c0f2.pdf>, p. 3.

⁷⁵ Article 24 par. 3 of Law 3907/2011.

⁷⁶ Article 30 par. 1 of Law 3907/2011 and Article 12 par. 2 P.D. 113/2013; See also: European Union Agency for Fundamental Rights (FRA), Detention of third country nationals, Op. cit. p. 52; UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Addendum: report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers, 18 December 1998, E/CN.4/1999/63/Add.3, <http://www.refworld.org/docid/45377b810.html>, par. 33.

- in all cases when an administrative or judicial authority deals with an application for extension of the detention (decision to extend detention, either the control is performed *ex officio*—automatic control- as per Article 30 par. 3 of Law 3907/2011 or in case a legal remedy has been lodged)⁷⁷.

A best practice that has been identified with regard to the periodical and automatic review of detention is within 48 hours, followed by 7 days, and then every 30 days⁷⁸.

c. Assessment procedures for the placement of third-country nationals in detention/applying alternatives to detention: individual assessment of each case.

The need to apply alternatives to detention is to be assessed in light of the overall lawfulness and proportionality of the detention (including its necessity and reasonableness), in each case ⁷⁹.

Decisions to detain are to be based, *inter alia*, on the following:

- a) on an individualised assessment of the necessity to detain; otherwise the third-country national under removal/asylum seeker should not be detained/be released; and
- b) It must be shown that in light of the individual's particular circumstances, there were not less invasive or coercive means of achieving the same ends.

⁷⁷ ECJ Judgment in Case C-146/14 PPU Bashir Mohamed Ali Mahdi, 05/06/2014, par.64, "The 'supervision' that has to be undertaken by a judicial authority dealing with an application for extension of the detention of a third-country national must permit that authority to decide, on a case-by-case basis, on the merits of whether the detention of the third-country national concerned should be extended, whether detention may be replaced with a less coercive measure or whether the person concerned should be released".

⁷⁸ UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 86.

⁷⁹ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, <http://www.refworld.org/docid/503489533b8.html>, par. 34-35.

Thus, consideration of the necessity, appropriateness and proportionality of alternatives to detention in each individual case needs to be undertaken (age, sex or gender identity, health, disabilities, special needs of protection) and compliance with fundamental rights standards needs to be ensured (e.g. family or community ties)⁸⁰. In a number of countries, legislation or case law expressly require those who order or prolong an detention decision to give due weight to the personal circumstances of the person concerned, such as to a history of physical or mental health, a history of torture, family, age and duration of residence or whether anyone is reliant on the person for support⁸¹.

In light of the above, authorities must take into account the individual characteristics of the person concerned when deciding if a person should be detained. The said assessment should be based on objective criteria rather than on unproven assumptions or administrative convenience⁸².

However despite the fact that the obligation to decide on a case-by-case basis is enshrined in all the rules of international and national law ⁸³, in the Greek system such procedures are not legally binding and are not applied in practice or when applied the assessment is based solely on the nationality of

⁸⁰ The International Detention Coalition (IDC) has developed a model (Revised Community and Assessment Model) that identifies the principles and processes that prevent unnecessary detention. The model is built upon a) the establishment of a presumption of liberty in law, b) minimum standards which must be ensured, c) identification and evaluation of an individual's circumstances, d) holistic approach and "case management", e) imposition of obligations only if necessary, e) detention as a last resort. See: Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 16 -18; A similar model is suggested by Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 66-79.

⁸¹ European Union Agency for Fundamental Rights (FRA), Detention of third country nationals, Op. cit. p. 29.

⁸² UN High Commissioner for Refugees (UNHCR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011, <http://www.refworld.org/docid/4e315b882.html>, p. 6.

⁸³ For a summary see Michael Fordham QC, Justine N Stefanelli, Sophie Eser, Immigration Detention and the Rule of Law: Safeguarding Principles, British Institute of International and Comparative Law, June 2013, p. 39-40; See also Recital 6 in the preamble to Directive 2008/115/EU "decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay" as well as Article 8 par. 2 of the Directive 2013/33/EU "When it proves necessary and on the basis of an individual assessment of each case, [...]".

the third-country nationals⁸⁴, while the right to an effective remedy against a decision made by the authorities is not provided. The Greek Ombudsman along with the United Nations High Commissioner for Refugees in their recent studies call upon Greek authorities to ensure that the implementation of administrative detention is subject to an individual assessment and justification of its grounds⁸⁵.

Such an individual assessment may, *inter alia*, include: ⁸⁶

- interviews before placing third-country nationals in detention,
- access to effective complaints mechanisms as well as remedies against the detention grounds,
- grounds for detention should be interpreted in the light of legislation and case law,
- that many actors are involved (police, administrative authorities, judicial authorities, social services) when deciding if a person should be detained/on the extension of detention.
- periodic review in individual cases taking into account the vulnerability of many individuals, even if they have not been officially classified as “vulnerable” at the time of detention.

⁸⁴ European Migration Network (EMN), The Use of Detention and Alternatives to Detention in the Context of Immigration Policies, National Report: Greece, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/12a_greece_emn_national_report_detention_alternatives_en.pdf, p. 22; UN High Commissioner for Refugees (UNHCR), UNHCR observations on the current asylum system in Greece, December 2014, <http://www.refworld.org/docid/54cb3af34.html>, p. 30, “As neither the Asylum Service nor the police make a thorough individual assessment of the need for detention, the principle that detention for asylum-seekers should be an exceptional measure is undermined as most remain detained”.

⁸⁵ The Greek Ombudsman (2014) Returns of Immigrants - Special Report 2014 http://www.synigoros.gr/resources/epistrofes_gr_2014.pdf, p.6; UN High Commissioner for Refugees (UNHCR), "Greece as a Country of Asylum" - UNHCR's Recommendations, 6 April 2015 https://www.unhcr.gr/fileadmin/Greece/Extras/Greece/2015_GR_R.pdf, p. 5.

⁸⁶ European Migration Network (EMN), Synthesis Report – The Use of Detention and Alternatives to Detention in the Context of Immigration Policies, November 2014, <http://www.refworld.org/docid/546dd6f24.html>, p. 24-28; See also UN High Commissioner for Refugees (UNHCR), Second Global Roundtable, Op. cit. p. 3-4.

Therefore, an individual assessment should be prescribed by law and every decision to detain a person or apply alternatives to detention should be subject to such an assessment. In light of the above, the existing legislative provisions concerning First Reception (Article 7 of Law 3907/2011), which set out a procedure that includes identification and registration, medical control, provision of information to third-country nationals and the possibility to refer vulnerable persons to suitable facilities, along with recruitment and training of staff, could form the basis for the establishment of an individualized assessment process before any decision.

It is further noted that the implementation of the relevant legislation on First Reception itself, is an important tool for the individualized assessment of the newcomers, given that the authorities put in place an effective assessment of the particular circumstances and needs of newcomers along with referral, if necessary, to suitable accommodation facilities. An effective implementation of the legislation on First Reception in all circumstances matched with an appropriate assessment of particular needs of every individual could prevent detention at an early stage of the decision-making process at least for certain groups, such as vulnerable persons, given that places in suitable accommodation facilities are available.

i) Grounds for detention

The Greek legal framework does not foresee the imposition of detention or alternatives to detention based solely on the fact that a removal order has been issued⁸⁷ or that an asylum application has been lodged while the applicant was detained⁸⁸. In this regard, the Greek legislation, in virtue of the Community *acquis*, establishes a presumption of liberty.

⁸⁷ ECJ, *Judgment in Case C-61/11 PPU. Hassen El Dridi alias Soufi Karim*, 28.4.2011.

⁸⁸ Article 12 par. 1 of P.D. 113/2013.

The relevant legislation provides for an exhaustive list of grounds for imposition of alternatives or detention which are based on other minimum standards (maximum period, execution with due diligence, appropriate conditions, whether the removal is feasible, non-arbitrariness⁸⁹). Below you can find a summary of the grounds for detention, as laid down in Greek law.

Grounds for detention as per Law 3907/2011

- Risk of absconding⁹⁰

The risk of absconding may be considered a legally vague notion⁹¹, and what constitutes ‘risk of absconding’ is not defined in the Return Directive, which allows for persons to be detained if “reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond” exist⁹². Law 3907/2011 provides for a non-exhaustive list of objective criteria on which the notion of risk of absconding can be based on⁹³, including, *inter alia*, the non-compliance with voluntary departure obligation, explicit expression of intent of non-compliance, lack of documentation etc. The law itself provides

⁸⁹ “The notion of “arbitrariness” extends beyond lack of conformity with national law [...]. To avoid being branded as arbitrary, detention must be carried out in good faith; it must be closely connected to the ground of detention; the place and conditions of detention should be appropriate; given that a non-national who faces the prospect of torture or inhuman treatment if returned to his own country, and is not charged with any crime, may not be detained; and the length of the detention should not exceed that reasonably required for the purpose pursued”. (ECtHR- A. and others v. the United Kingdom, Application no. 3455/05, 19 February 2009, par. 67 και 74); “To the Views of the Committee [...] arbitrariness was defined as not merely being against the law, but as including elements of “inappropriateness, injustice and lack of predictability”” (A. v. Australia, Views, 560/1993 (HRC, Apr. 03, 1997) U.N. Doc. CCPR/C/59/D/560/1993).

⁹⁰ Article 30 par. 1(a) of Law 3907/2011.

⁹¹ Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 69.

⁹² Article 3 par. 7 of Directive 2008/115/EU; See: ECJ, Judgment in Case C-430/11, Md Sagor, 6 December 2012, par. 41, In the Court’s views “Any assessment in that regard (risk of absconding) must be based on an individual examination of that person’s case.”

⁹³ Article 18(f) of Law 3907/2011; See also: European Commission, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on EU Return Policy, 28.3.2014, COM(2014) 199 final
[http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2014\)0199/_com_com\(2014\)0199_eLawpdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2014)0199/_com_com(2014)0199_eLawpdf), p. 17 on the Criteria to assess the ‘risk of absconding’ used broadly by EU Member States.

that the authorities must base their assessment whether there is a risk of absconding or not “on objective criteria in an individual case” rather than only on one of the criteria mentioned above.

As mentioned in the “Return Handbook”⁹⁴ published upon Commission Recommendation⁹⁵ “the criteria fixed in national legislation should be taken into account as an element in the overall assessment of the individual situation, but it cannot be the sole basis for assuming automatically a “risk of absconding” [...] Any automaticity (such as “illegal entry= risk of absconding”) must be avoided and an individual assessment of each case must be carried out. Such an assessment must take into account all relevant factors including the age and health conditions of the persons concerned and may in certain cases lead to a conclusion that there is no risk of absconding even though one or more of the criteria fixed in national law are fulfilled. Lastly, absence of cooperation and other relevant indications/criteria need to be taken into account when assessing whether there is a risk of absconding and a resulting need for detention, but do not *per se* necessarily justify a detention measure”⁹⁶.

Moreover, the European Union Agency for Fundamental Rights suggests that relevant indications/criteria should be assessed in light of the individual circumstances of each case in order to determine if they can be considered as signs of the existence of a risk of absconding or not since, for example, failure to respect return or reporting duties, may be based on good reasons,

⁹⁴ Council Of the European Union, Annexe to the Commission Recommendation Establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks (11847/15), 6.10.2015, <http://www.statewatch.org/news/2015/oct/eu-com-annex-to%20returns-handbook.pdf>.

⁹⁵ European Commission, COMMISSION RECOMMENDATION of 1.10.2015 establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks 1.10.2015, C (2015) 6250 final, <http://data.consilium.europa.eu/doc/document/ST-11847-2015-INIT/el/pdf>.

⁹⁶ Council Of the European Union, Annexe to the Commission Recommendation Establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks (11847/15), 6.10.2015, <http://www.statewatch.org/news/2015/oct/eu-com-annex-to%20returns-handbook.pdf>, p. 12 και 78.

such as serious health grounds requiring the need to remain at rest or hospitalization⁹⁷.

It should also be noted that the Courts, competent to adjudicate in administrative disputes, have consistently ruled that even though a reason fixed in national legislation might exist (e.g. non-compliance with voluntary departure obligation, lack of documentation etc.) there is no reason to believe that a person who is the subject of return procedures may abscond if the person has community or family ties or can stay at a friend's house ⁹⁸.

- **Avoiding or hampering the preparation of return** ⁹⁹

This circumstance justifying detention is not further defined by the national legislation and the existence of this specific reason must be individually assessed in each case. Consideration of decisions related to return "should go beyond the mere fact of an illegal stay" ¹⁰⁰ and should be based on objective criteria rather than on unproven assumptions¹⁰¹. Also, the concept of "avoiding or hampering the preparation of return " is distinct from that of "Voluntary Repatriation" (voluntary departure). Voluntary repatriation can be defined as "an individual expresses a clear desire and makes an informed choice, in the absence of coercion, and after having received objective information, to repatriate to his country"¹⁰² and concerns individuals with a legal basis for remaining in a third country ¹⁰³. Therefore, the scope of Law

⁹⁷ European Union Agency for Fundamental Rights (FRA), Detention of third country nationals, Op. cit. p. 28.

⁹⁸ See for instance: Administrative Court of First Instance of Athens- Judgement 2536/2014.

⁹⁹ Article 30 par. 1(b) of Law 3907/2011.

¹⁰⁰ Recital 6 in the preamble to Directive 2008/115/EU.

¹⁰¹ UN High Commissioner for Refugees (UNHCR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011, <http://www.refworld.org/docid/4e315b882.html>, p. 6.

¹⁰² UN High Commissioner for Refugees (UNHCR), *Protection Training Manual for European Border and Entry Officials*, 1 April 2011, <http://www.refworld.org/docid/4ddf40d12.html>, chapter 7, The Return of Persons Not in Need of International Protection, <http://www.unhcr.org/4d9488969.htm>Law

¹⁰³ Council Of the European Union, Annexe to the Commission Recommendation κτλ., ό.π. p. 12-13; European Council on Refugees and Exiles, Position on Return, October 2003, <http://www.refworld.org/docid/3fa280814.html>, par. 8, providing a definition of Voluntary

3907/2011 does not cover the option of an assisted voluntary return programme since it applies only to third-country nationals pending return who are “staying illegally on the territory” .

The Return Directive covers only scenarios 2 and 3:

1. VOLUNTARY RETURN: voluntary return of legally staying third country nationals	2. VOLUNTARY DEPARTURE: voluntary compliance with an obligation to return of illegally staying third country nationals	3. REMOVAL: enforced compliance with an obligation to return of illegally staying third country nationals
2 + 3 = "Return" (within the meaning of Art 2(3) Return Directive)		

Source: Council Of the European Union, Annexe to the Commission Recommendation Establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks (11847/15), 6.10.2015, p. 13.

- **Detention for reasons of national security** ¹⁰⁴

Despite the fact that the possibility of maintaining or extending detention on grounds of national security or public order is not covered by the text of the Return Directive (2008/115/EC)¹⁰⁵, Law 3907/2011 foresees detention “for public order reasons” in breach of Union law. The Return Handbook highlights that “Member States are not allowed to use immigration detention for the purposes of removal as a form of "light imprisonment". [...] The legitimate aim to "protect society" should rather be addressed by other

repatriation as «an individual with a *legal basis* for remaining in a third country has made an informed choice and has freely consented to return to their country of origin or habitual residence; has given their genuine, individual consent, without pressure of any kind; and a number of legal and procedural safeguards have been fully respected»; UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, A/HRC/20/24, <http://www.refworld.org/docid/502e0bb62.html>, par. 65, concerning Voluntary return “However, care must be taken to ensure that the decision to return is fully voluntary and a result of a genuine, informed choice, particularly if the migrant is in a situation of closed detention when offered the option of an assisted voluntary return programme and that preparations have been made to ensure that his or her return is sustainable for the long term”.

¹⁰⁴ Article 30 par. 1(c) of Law 3907/2011.

¹⁰⁵ ECJ - C-357/09, PPU Said Shamilovich Kadzoev (Huchbarov), 30.11.2009.

pieces of legislation, in particular criminal law”¹⁰⁶. Accordingly, detention or imposition of alternatives to detention for public order reasons as foreseen by Law 3907/2011 does not serve a legitimate aim and the national legislation should be amended respectively.

In any case, the broad use of national security or public order reasons (incompatible with EU Law) by the authorities for the purpose of imposing detention largely indicates the false interpretation of the notions of national security and public order. The Greek Ombudsman mentions that “Detention of persons whose return is *a priori* infeasible is often based on vague public order grounds”¹⁰⁷.

As to the false interpretation of the notions of national security and public order by the authorities:

-In 16 out of 17 cases of *Objections* against detention lodged by GCR before Administrative Courts (end of 2013 - beginning of 2015), where detention had been imposed on national security or public order grounds, the Courts ruled that “from the nature of the offense it cannot be inferred that he presents a threat to national security or public order” or that “the gravity of the offense charged against him cannot make us believe that he constitutes a danger to public order” or that “the details of the case do not justify detention on public order grounds”¹⁰⁸.

¹⁰⁶ Council Of the European Union, Annexe to the Commission Recommendation Establishing a common "Return Handbook", p. 78.

¹⁰⁷ The Greek Ombudsman- Special Report 2014 Op. cit. p. 4; See also: Asylum Information Database (AIDA), Annual Report 2014/2015, Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis, <http://www.asylumineurope.org/annual-report-20142015#sthash.5Qu2WJnF.dpuf>, p. 92.

¹⁰⁸ See: Judgement 5728/2013 of the Administrative Court of First Instance of Athens (ACFIA), ACFIA Judgement 971/2014, ACFIA Judgement 1099/2014, ACFIA Judgement 2007/2014, ACFIA Judgement 1883/2014, ACFIA Judgement 4167/2014, ACFIA Judgement 4160/2014, ACFIA Judgement 4161/2014, ACFIA Judgement 4143/2014, ACFIA Judgement 3150/2014, Judgement 226/2014 of the of the Administrative Court of First Instance of Piraeus, ACFIA Judgement 4072/2014, Judgement 1738/2014, Judgement 45/29.1.2014 of the Administrative Court of First Instance of Piraeus,

Offenses of which they were accused or convicted	
Violations of Law 3386/2005 or Law 4251/2014 (illegal exit, forged travel documents etc.)	11 cases
Other offenses (breach, of Customs law/Law 2960/2001, resistance to authority, simple theft etc.)	6 cases

Country of origin of detained third-country nationals for public order reasons in the cases mentioned previously	
Undefined (Palestine)	1
Ivory Coast	1
Afghanistan	2
Eritrea	1
Iraq	1
Soudan	1
Syria	10

-A further 44 third-country nationals, mostly Somali and Eritrean nationals, handled by the Greek Council for Refugees (GCR) in December 2013, who had been detained on “public order, security and general public interest grounds” were released after the judicial review of the detention order with decisions made by the majority of the court, in accordance with Art. 30 par. 3 of Law 3907/2011, since the grounds for detention did not exist ¹⁰⁹.

- Other Conditions

Law 3907/2011 provides for compliance with further standards for the lawfulness of detention, if there is a reason to consider the detention, in an individual case. So, in each case:

- a real and tangible prospect of removal must exist; and
- the maximum length of detention established by law must not be exceeded.

Judgement 325/2014 of the Administrative Court of First Instance of Piraeus, Judgement 45/2015 of the Administrative Court of First Instance of Komotini, ACFIA Judgement 1537/2015.

¹⁰⁹ The so called operations of “Special Action” of the Greek Police, See: Document No. 1475/2013 of the Greek Council for Refugees (GCR) as well as the Document no, 175063/38526/2014 of the Greek Ombudsman.

Even when a reason for detention provided for by Article 30 par. 1 of Law 3907/2011 exists, unless the further guarantees mentioned above are observed, the detainee must be automatically released by virtue of the legally binding interpretation of the Return Directive from the European Court of Justice. For example, “where the maximum period of detention laid down by that directive has expired, the person concerned [is not allowed] not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose” ¹¹⁰. Furthermore, if the detention is not lawful, applying alternatives to detention is not justified as well.

For this reason, the obligation to report to the authorities which is imposed by the Administrative Court in the framework of the *Objections* procedure, in cases where detention is imposed or prolonged without legal limitations being observed, cannot be considered as alternative to detention. The same applies for situations where the removal order cannot be executed (e.g. detention of Syrian nationals) or when the detention is prolonged over the maximum length of detention established by law (e.g. detention over 18 months in accordance with the Opinion 44/2014 of the Legal Council of the State). In such cases, where the extension of detention is not an option, the lawfulness of detention shall be judged in light of the principle of proportionality. Not ceasing detention in a specific case on the grounds that another sufficient but less coercive measure cannot be applied effectively, leads to alternative measures becoming *unlawfully* alternatives to release¹¹¹.

¹¹⁰ ECJ - C-357/09, PPU Said Shamilovich Kadzoev (Huchbarov), 30.11.2009, par. 71.

¹¹¹ See UN General Assembly, Report of the Working Group on Arbitrary Detention, 18 January 2010, A/HRC/13/30, <http://www.refworld.org/docid/502e0fa62.html>, par. 65.

- **Establishing the identity/nationality of asylum seekers¹¹²**

The wide definitions that have been attributed to this particular ground for detention and the fact that most asylum seekers lack identity documentation, should not allow for a systematic use of detention of every asylum seeker, who lodges an application for asylum while held in detention. The European Council on Refugees and Exiles (ECRE) suggests that this ground may interpreted in such way as to permit, ‘through the back door’, detention of applicants for international protection solely because they lodged an application,¹¹³ contrary to what the law prescribes¹¹⁴. Detention for that purpose must be subject to further concrete limitations, for instance:

- It is important to ensure that the immigration authorities do not impose unrealistic demands regarding the identification documents and that also in the absence of documentation, identity can be established through other information¹¹⁵.

- Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason¹¹⁶.

- Minimal periods in detention may be permissible to carry out initial identity checks¹¹⁷ whereas detention for a prolonged period would not be justified. Moreover, what also needs to be taken into account is that in the Greek law

¹¹² Article 12 par. 3(a) of P.D. 113/2013.

¹¹³ European Council on Refugees and Exiles (ECRE), ECRE Information Note on 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, <file:///C:/Users/GCR-Orion/Downloads/EU%20of%20the%20European%20Parliament%20and%20of%20the%20Council%20of%2026%20June%202013%20laying%20down%20standards%20for%20the%20reception%20of%20applicants%20for%20international%20protection.pdf>, p. 14-15.

¹¹⁴ Article 12 par.1 of P.D. 113/2013.

¹¹⁵ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria, Op. cit. par. 25.

¹¹⁶ Ibid.

this particular ground for detention applies only to detained third-country nationals under return procedures who apply for asylum and, therefore, have already been subject to identification procedures. Also, in case an asylum seeker was identified via the first reception screen or he/she has deposited identity documents, the authorities shall normally refrain from detaining them or imposing an alternative to detention on this basis.

-For the speedy completion of the asylum procedure ¹¹⁸

This ground for detention appears to have mimicked the UK's Detained Fast-Track system¹¹⁹ and directly relates to the obligation of the authorities to take the necessary measures for a rapid completion of an asylum application¹²⁰ while it also relates to the overall objective of the rapid completion of the procedure for asylum seekers who apply while being detained¹²¹. As regards the length of the detention, we cannot accurately determine the period that would not exceed that reasonably required for the purpose of a speedy completion of the asylum procedure. For instance, the European Court of Human Rights has ruled that it was not incompatible with the provisions of the European Convention on Human Rights to detain an applicant for seven days to enable his claim to asylum to be processed speedily¹²²; on the contrary, the Court considered a four month period of detention (for the examination of an asylum case of an applicant pending return/removal) excessive and that there has been a violation of the Convention, bearing in mind that the request for asylum from a person

¹¹⁷ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, <http://www.refworld.org/docid/503489533b8.html>, par. 24; Human Rights Committee, General comment No. 35, Op. cit. par. 18.

¹¹⁸ Article 12 par. 3 (c) of P.D. 113/2013.

¹¹⁹ Asylum Information Database (AIDA), Annual Report 2014/2015, Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis, <http://www.asylumineurope.org/annual-report-20142015#sthash.5Qu2WJnF.dpuf>, p. 84.

¹²⁰ Article 12 par. 3(c) of P.D. 113/2013

¹²¹ Article 12, par. 6 of P.D. 113/2013.

¹²² ECtHR - Saadi v. United Kingdom, Application No. 13229/03 29/01/2008, par. 80.

already detained had to be examined in priority by the authorities¹²³. This particular reason for detention should also be interpreted in the light of the relevant provisions of law as a whole, and especially in light of the International Covenant on Civil and Political Rights, according to which it would be arbitrary to detain individuals further while their claims are being resolved in the absence of particular reasons specific to the individual, such as a risk of acts against national security¹²⁴ as well as in light of the UNHCR Guidelines relating to the detention of asylum seekers, which note that “this exception to the general principle – that detention of asylum seekers is a measure of last resort – cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time”¹²⁵. As a result, the imposition of detention for the completion of the asylum procedure does not seem to meet any of the above requirements.

- **Grounds of national security or public order** ¹²⁶

As mentioned previously, the false interpretation of the notions of national security and public order has proved highly problematic. Despite the fact that, contrary to the Return Directive, this particular ground for detention can be invoked in the asylum field, the mere presence of this reason should not lead to an automatic detention but a legal justification is required. The need to detain someone based on this ground needs to be legitimate. In this respect, the Council of State has ruled that:

- A previous criminal conviction does not imply an outright danger to public order and safety (1100/2008 Council of State),

¹²³ ECtHR- A.E. v. Greece (Application no 46673/10), 27 February 2015, par. 52-53.

¹²⁴ Human Rights Committee, General comment No. 35, Op. cit. par. 18.

¹²⁵ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards, Op. cit. par. 28.

¹²⁶ Article 12 par.3(b) of P.D. 113/2013.

- the nature and gravity of the offense should also be taken into account (427/2009 Council of State),
 - the adjudication process should be based on a whole-person concept as well as on other available and reliable information about the person (Ibid.).
- **General principles: *bona fide* asylum seekers should not be detained**

Apart from the particular reasons for detention foreseen in the national legislation, the case law of the European Court of Justice embodies the general principle of law according to which *bona fide* asylum seekers should not be detained. In the ECJ's views, in case a third-country national makes an application for asylum while being detained on the basis of the Return Directive, the detention might be exceeded only "on the basis of an individual assessment of each case and given that there are reasonable grounds to believe that the purpose of the application for asylum is solely to delay or frustrate enforcement of the return decision and on the ground that the extension was necessary for the preparations for enforcement of the removal decision"¹²⁷. Accordingly, the decisions to continue detention of *bona fide* applicants appear to deviate from the binding nature of ECJ judgments, where the application for asylum was made in good faith, even when the provisions of Article 12 par. 2 of P.D. 113/2013 apply.

¹²⁷ ECJ - C-534/11 Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie 30/05/2013, par. 63; The judgment in question was issued before the adoption of the Reception Conditions Directive, which provides for particular grounds for the detention of asylum seekers, determining, among other things, the conditions according to which an asylum-seeker may be detained so as to prepare his/her return and/or carry out the removal process, (See: Directive 2013/33/EU, Article 8 par. 2(d)). It seems, however, that it introduces a general requirement to control the (extended) detention of persons who made an application for asylum while being detained.

ii) Special Circumstances/Vulnerabilities

Detention should be enforced only until the reason for it ceases to exist and must be limited to the needs of the particular situation, taking account of any special vulnerability of cases deserving of special protection and assistance. Detention must not involve discrimination on the ground of age, sex or gender identity, health, disabilities or special needs of protection. Unless the standards mentioned above are not satisfied, detention can be found to constitute inhuman or degrading treatment in an individual case¹²⁸. Even in cases of detention of persons convicted of crimes, the ECtHR has ruled that «in a State which respects the rule of law, decisions to extend detention can only be justified if conditions of detention are humane¹²⁹».

The legislation specifies categories of third-country nationals in return procedures and asylum seekers who belong to vulnerable groups. These categories include minors, unaccompanied minors, disabled people, elderly people, pregnant women and women who have just given birth, single parents with minor children and victims of torture, rape or other forms of psychological, physical and sexual violence or exploitation and victims of human trafficking¹³⁰. However, detention of persons belonging to vulnerable groups, is not explicitly prohibited, unless one of a few limited exceptions applies¹³¹. While the law does not prohibit the detention of vulnerable

¹²⁸ UN High Commissioner for Refugees (UNHCR), *Alternatives to Detention of Asylum Seekers and Refugees*, Op. cit., p. 17; Sampson, R., Chew, V., Mitchell, G., and Bowring, *Law There Are Alternatives*, Op. cit. p. 40-42; Odysseus Network, *Alternatives to immigration and asylum detention in the EU*, Op. cit. p. 56-59 and 75-78; EctHR - *Khudobin v. Russia (application no. 59696/00)*, 26/10/2006

¹²⁹ *Kotsaftis v Greece*, 39780/06, 12 June 2008, par. 49.

¹³⁰ Article 18(h) of Law 3907/2011 and Article 17 of P.D. 220/2007.

¹³¹ Taken together, the provisions of Law 3907/2011 (Article 41 “prohibition of return for the following categories of persons” and Article 30 par. 4 “no detention of persons whose return is infeasible”) seek to not allow detention:

persons, it requires authorities to take into account “the specific situation of vulnerable persons”¹³² and to provide “special treatment to applicants belonging to vulnerable groups”¹³³. Given the legal obligation for the provision of special treatment along with other positive obligations on the part of the competent authorities (e.g. obligation to protect the right to health¹³⁴), the detention of vulnerable persons seems to fail the proportionality test even when a legal ground for detention exists. As a general rule, vulnerable persons should not be detained.¹³⁵

Good practice examples to ensure the actual protection of vulnerable individuals and that authorities respect their obligations, are national laws that outline mandatory actions in particular migration cases, including that certain vulnerable individuals cannot be detained¹³⁶. Despite the fact that Greece seems to embrace the general rule mentioned above¹³⁷, special measures have not been adopted so far and vulnerable people are systematically detained¹³⁸. Therefore, the prohibition of detention of vulnerable groups is the only solution that could guarantee a high level of protection for these groups.

(a) of minors whose parents or legal guardians reside legally in the country or of minors on whom reformatory measures have been imposed by a Court judgment

(b) of elderly (over 80 years of age)

(c) of pregnant women or women, in the first six months after giving birth

Since detention is not permitted for the above categories of persons, there is also no need to consider and implement alternative measures to detention. For the same reasons, detention of persons belonging to the categories in question should neither be permitted in the framework of P.D. 113/2013.

¹³² Article 20, par. 1 of Law 3907/2011

¹³³ Article 17 of P.D. 220/2007; See also Directive 2013/33/EU, Article 11 “Detention of vulnerable persons and of applicants with special reception needs” which reads as follows: health, including mental health, of applicants in detention who are vulnerable persons (minors, families) shall be of primary concern to national authorities of all member states, but at the same time does not explicitly forbid detention of vulnerable persons (has not yet been transposed into Greek law).

¹³⁴ See, eg. Article 5 par. 5 Constitution of Greece.

¹³⁵ UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 47.

¹³⁶ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives Op. cit. p.21.

¹³⁷ See: Press Release of the Deputy Ministers of immigration Policy on Detention centres, Op. cit. calling for “the immediate release of vulnerable persons (families, children, unaccompanied minors, pregnant women, persons who have been subjected to torture, sick people, elderly people).”

¹³⁸ Asylum Information Database (AIDA), Country report: Greece (Fourth Update), Op. cit. p. 93 ff.

The fact that detention is incompatible with the vulnerable position of certain individuals can also be shown in the international jurisprudence that has been established against the practice of detention of vulnerable persons, according to which vulnerability is a weighty matter in establishing whether the detention of certain individuals constitutes a violation.

See for instance:

UN Human Rights Committee, *C. vs Australia*.

the State party has not demonstrated that, in the light of the complainant's particular circumstances, there were not less invasive means of achieving the same ends, that is to say, compliance with the State party's immigration policies, by, for example, the imposition of reporting obligations, sureties or other conditions which would take account of the complainant's deteriorating condition" ¹³⁹.

European Court of Human Rights, *Yoh-Ekale Mwanje v. Belgium*.

"While acknowledging that the time-limit for detention has not been exceeded, the Court notes that the authorities knew the applicant's identity, that she resided at a fixed address known to the authorities, that she had always attended as instructed and that she had taken steps to regularise her situation. The applicant was HIV-positive and her health condition had deteriorated during her detention. Regardless of her situation the Authorities did not use a less invasive measure " ¹⁴⁰.

¹³⁹ UN Human Rights Committee (HRC), *C. v. Australia*, CCPR/C/76/D/900/1999, 13 November 2002, <http://www.refworld.org/docid/3f588ef00.html>, par. 8.2.

¹⁴⁰ ECtHR - *Yoh-Ekale Mwanje v. Belgium*, Application No. 10486/10, 20 December 2011; par. 40-41.

- **Unaccompanied minors**

Despite the fact that Greek legislation does not provide for a statutory prohibition of the detention of unaccompanied minors, existing provisions reflect a broad consensus regarding the detention of minors, which “should be an exceptional measure” and last only until minors are referred to reception facilities, whereas authorities shall pay no attention to the existence of reasons for detention (risk of absconding etc.)¹⁴¹. In fact, minors are detained due to the insufficient places in reception centres, when, irrespective of their legal status, in all actions concerning unaccompanied minors, the best interests of the child must be a primary consideration of the authorities and authorities must, at least, suggest the appointment of an interim guardian and an appropriate reception facility¹⁴².

Even though unaccompanied minors are generally in a vulnerable situation requiring special safeguards and care and should be entitled to this care in accordance with the provisions of national law, there are many reported cases of ill-treatment of unaccompanied minors. The Greek Ombudsman notes that “although detention of minor children should not only be exceptional but a measure of last resort, almost all unaccompanied minors are systematically detained, and no attention is paid to the conditions of detention (which are the same as for adult detainees) and when no reception centre is found and thus the detention is prolonged, this constitutes a *de facto* deterioration in their position”¹⁴³.

Greece has committed to a minimum of standards regarding unaccompanied minors:

¹⁴¹ Article 32 of Law 3907/2011; Article 12 par. 8 (b) of P.D. 113/2013 which reads as follows: “The detention of children separated from their families and unaccompanied children is allowed only for the shortest possible period of time until suitable accommodations are found».

¹⁴² See Articles 12, 18 and 19 of P.D. 220/2007.

¹⁴³ The Greek Ombudsman- Special Report 2014 Op. cit. p. 6.

- Unaccompanied children shall be entitled to “special protection and assistance provided by the State” ¹⁴⁴
- “The child's extreme vulnerability takes precedence over considerations relating to the status of an irregular immigrant”¹⁴⁵
- “Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof ”¹⁴⁶
- “Given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of an unaccompanied minor would comply with the principle of the best interests of the Child and the requirements stipulated in the Convention on the Rights of the Child” ¹⁴⁷.

Greece must fulfill the obligations assumed and, thus, abolish the detention of unaccompanied minors aligning national legislation with the Resolutions 1707 (2010)¹⁴⁸, 1810 (2011)¹⁴⁹ and 2020 (2014)¹⁵⁰ of the Parliamentary Assembly of the Council of Europe, according to which, as a rule, “unaccompanied minors should never be detained”. Greece must also immediately address the issue of temporary accommodation of unaccompanied children during the time needed to find a suitable place in a

¹⁴⁴ Article 20 of the Convention on the Rights of the Child (ratified by Law 2101/1992).

¹⁴⁵ ECtHR - Popov v France, Application Nos. 39472/07 and 39474/07, 19/01/2012, par. 91.

¹⁴⁶ CRC Committee, General Comment No. 6 (2005), The Treatment of Unaccompanied and Separated Children Outside their Country of Origin, UN Doc. CRC/GC/2005/6, 1 September 2005, par. 61; UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Op. cit. par. 54.

¹⁴⁷ WGAD, Report of Working Group on Arbitrary Detention, Chairperson-Rapporteur El Hadji Malick Sow, UN Doc. A/HRC/13/30, 15 January 2010, par. 60.

¹⁴⁸ Council of Europe, Parliamentary Assembly, Resolution 1707 (2010), Detention of asylum seekers and irregular migrants in Europe, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17813&lang=en>.

¹⁴⁹ Council of Europe, Parliamentary Assembly, Resolution 1810 (2011) Unaccompanied children in Europe: issues of arrival, stay and return, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17991&lang=en>.

¹⁵⁰ Council of Europe, Parliamentary Assembly, Resolution 2020 (2014) Final version The alternatives to immigration detention of children, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21295&lang=en>.

reception centre, while increasing its accommodation capacity. To this effect, see also the suggestion of the Greek Ombudsman for a “ few days stay in special areas offering a protected environment for children and not in detention centres, until the procedure for their referral to accommodation facilities is completed” ¹⁵¹ and the UNHCR’s Recommendations for ensuring adequate protection of unaccompanied and separated children¹⁵². Only by effectuating these changes will be Greece fulfilling its obligations.

For instance, in the case *Rahimi v. Greece*, concerning the detention of a fifteen year-old unaccompanied Afghan, who was placed in a detention centre pending an order for his deportation for two (2) days, in view of the ECtHR’s findings, Greece had failed to comply with its obligations under Article 5 of the Convention. In the Court’s opinion:

“the detention appeared to be the result of automatic application of Article 76 of L. 3386/2005 with no consideration of the particular circumstances of the complainant as an unaccompanied minor [...] The authorities failed to take into account the best interests of the child principle. They also failed to consider whether detention of the complainant in Pagani Detention Centre is a measure of last resort and whether they could resort to less invasive means for ensuring his removal ” ¹⁵³.

Regarding state practice and legislation, one-third of the EU Member States, has abolished detention of unaccompanied minors in the immigration framework¹⁵⁴. This shows that there are effective alternatives to detention of

¹⁵¹ The Greek Ombudsman- Special Report 2014 Op. cit. p. 8.

¹⁵² "Greece as a Country of Asylum" - UNHCR's Recommendations, 6 April 2015, https://www.unhcr.gr/fileadmin/Greece/Extras/Greece/2015_GR_R.pdf, p. 5.

¹⁵³ ECtHR - *Rahimi v. Greece*, Op. cit. par. 108-109; See also ECtHR - *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, Application No. 13178/03, 12/10/2006.

¹⁵⁴ European Union Agency for Fundamental Rights (FRA), *Detention of third country nationals etc.*, Op. cit. p. 58; According to the report, Austria and Latvia prohibit the detention of children under the age of 14, the detention of children under the age of 15 is prohibited in Poland and the Czech Republic (non asylum-seekers), while Belgium, France, Bulgaria, Ireland, Slovenia, Slovakia, Spain and the Czech Republic (asylum-seekers) prohibit the detention of children under the age of 18, European Migration Network (EMN), *Synthesis Report*, p. 20; See also European: Migration Network,

unaccompanied children. These include, *inter alia*, the placement of children in foster families, in protected reception centres or in residential homes which are supervised by professionals specialized in child protection¹⁵⁵. Therefore, Greece should make every effort to end the placement of unaccompanied children in immigration detention facilities for the purpose of effectively protecting children. It should also be noted that in accordance with the Greek Penal Code, juvenile detention is only allowed for minors over 15 years of age, under the additional condition that, “the offense, if committed by an adult, would be punished by a term of imprisonment for life”¹⁵⁶.

Furthermore, improving age assessment procedures is essential to ensuring children can benefit from the protection to which they are entitled in line with the recommendations of the Greek Ombudsman ¹⁵⁷. There is also need to put in place a procedure for rapidly appointing suitable legal guardians for unaccompanied children.

It should further be noted that there are a few privately run (by NGOs) "Transit Accommodation Centres" offering a protected environment for unaccompanied children, which are located at the borders and in Athens, providing temporary accommodation until the required administrative procedures are completed and while authorities search for a place in a

Annual Report on Immigration and Asylum 2014, p. 30-31, http://emn.ie/files/p_201506160344022014emn_annual_report_on_immigration_and_asylum.pdf.

¹⁵⁵ UN High Commissioner for Refugees (UNHCR), Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015, available at: <http://www.refworld.org/docid/5523e8d94.htm>; International Detention Coalition, “Captured Childhood” Policy Document, 2012, <http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>, p. 65-72; European Migration Network(EMN), Policies, practices and data on unaccompanied minors in the EU Member States and Norway, Synthesis Report, May 2015, http://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf.

¹⁵⁶ Article 127 par. 1 of Penal Code, as amended by Law 4322/2015.

¹⁵⁷ See: Greek Ombudsman, “The issue of age assessment for unaccompanied minors”, October 2014, http://www.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf

reception facility¹⁵⁸. These examples demonstrate that abolishing detention of unaccompanied children is a realistic option and should be taken into account by the Greek authorities, in order to develop child protection strategies with a special focus on unaccompanied children.

- **Minor children , family members**

A particular issue concerning protection arises when the parents of a minor child are detained awaiting deportation under the laws of a country (expulsion/return) or in the asylum process framework. In the UN Special Rapporteur's on the human rights of migrants opinion, "the detention of children whose parents are detained should not be justified on the basis of maintaining the family unit: instead, alternatives to detention should be applied to the entire family"¹⁵⁹. In a case, concerning the detention of a family awaiting deportation, the ECtHR was of the view that:

*"the best interests of the child cannot be limited to simply maintaining family unity. Rather, the authorities must put in place all of the measures necessary to limit as much as possible the detention of families with children and to preserve their right to a family life effectively"*¹⁶⁰.

Indeed, the prohibition of detention of families and the adoption of different strategies, seems like the right solution. A good practice, aimed at maintaining family unity and resolving such cases in the best interests of the child, has been developed; families pending removal or during the asylum

¹⁵⁸ Actions implemented by the NGOs PRAKSIS (See <http://goo.gl/ej7NDm>) and METADRASI (<http://www.metadrasi.org/content/actions>).

¹⁵⁹ UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, Op. cit.par. 72 (h).

¹⁶⁰ ECtHR - Popov v France, Application Nos. 39472/07 and 39474/07, 19/01/2012, par. 147; See also: ECtHR - Muskhadzhiyeva and Others v. Belgium, Application No. 41442/07, 19/01/2010; EΔΔΑ, ECtHR - V.M. and others v. Belgium, Application no.60125/11, 7 July 2015, 13/12/2011.

procedure, who would otherwise be detained, are placed in “open family units” ¹⁶¹ (see below).

4. Conditions for the implementation of alternative measures

Besides the fact that alternatives to detention need to be legal, necessary and proportionate in an individual case, successful alternatives rely on a range of standards, which ensure dignity and respect for human rights and which States must uphold for all individuals. These standards promote trust in the system, help to ensure the proper functioning of migration governance systems and the effectiveness of alternatives.

It should be noted that many of the standards mentioned below constitute existing legal obligations on the part of the authorities in the asylum process (e.g. first reception conditions, obligation to provide information, legal assistance) as well as rules for managing the return of irregular migrants (e.g. legal assistance, obligation to provide information, judicial review). Accordingly, ensuring compliance with these minimum standards when applying alternatives to detention will not incur additional costs given that such obligations have already been undertaken by the State. Implementing alternatives is not a task that requires investment in new resources; alternatives do not need to be anything more than what already happens to people in the community: any community measure is or can be considered an alternative. The key is to ensure that all individuals concerned are integrated into such programs. Further standards, such as interim legal status

¹⁶¹ UN High Commissioner for Refugees (UNHCR), Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015, available at: <http://www.refworld.org/docid/5523e8d94.htm>; Jerome Phelps, Alternative to Detention in the UK: from enforcement to engagement?» at Forced Migration Review, University of Oxford, Refugee Studies Center, Issue 44, September 2013, <http://www.fmreview.org/detention>, p. 48.

and work rights for individuals who have been placed in an alternative to detention programme, may require new legislation, but would not mean additional costs. Even though alternatives to detention have been shown to be nearly universally more cost-effective than detention, the findings mentioned above should not lead to the conclusion that the implementation of a system of alternative measures does not need to receive adequate public funding¹⁶²; in contrast, they need to be appropriately funded in order to be successful.

Empirical evidence shows that¹⁶³, important factors in the success of an 'alternative' include:

a) Ensuring dignified and humane conditions

One of the main elements of successful alternatives is to ensure that basic needs of the individuals are met. Research findings suggest that if individuals live in stable accommodation and can meet their basic needs, they appear to be in a better position to remain in contact with authorities and are better able to remain in compliance with their duties while awaiting the outcome of an asylum application or removal process. Furthermore, if individuals can meet their basic needs, trust in the system is promoted, individuals appear less likely to abscond in a country of 'transit' and, in some cases, voluntary departure rates can be increased. On the other hand, there is no evidence

¹⁶² UN High Commissioner for Refugees (UNHCR), Second Global Roundtable on Reception and Alternatives to Detention, Op. cit. p. 2.

¹⁶³ UN High Commissioner for Refugees (UNHCR), Options Paper 2: Options for governments on open reception and alternatives to detention, 2015, <http://www.refworld.org/docid/5523e9024.html>, p. 1; Jesuit Refugee Service, From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom, December 2011, <http://www.refworld.org/docid/4f0c10a72.html>, p. 37-42; Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, p. 27- 34; Volker Türk, Alice Edwards, Introductory Note to the Summary Conclusions of the Global Roundtable on Alternatives to Immigration Detention, Oxford Journals Law, International Journal of Refugee Law, Volume 23, Issue 4, p. 873-875.

that lack of state support to individuals may increase departure rates, since such strategies are linked with a higher risk of absconding; people may be forced to consider alternative strategies for survival rather than adhering to immigration authority obligations if they are unable to provide for themselves¹⁶⁴. A study that surveyed more than 30 States highlights that alternative measures will not be effective in ensuring compliance “if asylum seekers are kept away from essential services or labour markets for extended periods”¹⁶⁵.

This social welfare support can be provided by the State (e.g. financial aid or direct provision of goods, access to free medical treatment and education), or/and individuals can be granted a work permit for the period of time that the alternative measure is applied. Along with social support needs that should be covered, the right to legal residence and access to social assistance must be granted to individuals who have been placed in an alternative to detention programme while their claims for protection are being processed¹⁶⁶.

b) Provision of clear and consistent information and advice through the entire procedure

Providing clear and consistent information in a language that individuals can understand, can help them decide faster and make an informed choice and compliance is thereof improved. In the absence of information and advice,

¹⁶⁴ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, p. 13-14, 28-30; Jesuit Refugee Service, From Deprivation to Liberty, Op. cit. p. 39-40 και 47; Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 105-107.

¹⁶⁵ UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit. p. 47.

¹⁶⁶ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, p. 31.

third-country nationals, including asylum seekers, often rely on false information provided by smugglers¹⁶⁷.

Individuals must be provided with clear and concise information about:

- the full range of legal options to stay, as well as advice if there are no avenues to regularise stay
- the entire asylum or immigration process,
- the rights and duties if placed in an alternative to detention programme,
- the consequence of non-compliance.

The third-country nationals must be given the possibility to obtain legal advice on asylum or immigration processes, not only because it is a right that should be provided to them, but also because it can increase individuals' trust in the system and compliance during the asylum/immigration determination process, makes individuals have a better understanding of their options, and as a consequence the said individuals are more likely to avail themselves of voluntary return when necessary¹⁶⁸. "Even if in reality certain options are closed off [...] it would still be important for migrants to have every option thoroughly explained and explored so they can be assured that every step has been taken. This is how trust can be built"¹⁶⁹. Moreover, in some cases one may learn that certain individuals can stay, and as a consequence measures for their deportation should not be taken¹⁷⁰.

¹⁶⁷ D. Angeli A. Dimitriadi A. Triandafyllidou, "Assessing the Cost-effectiveness of Irregular Migration Control Policies in Greece", Op. cit. p. 56-57.

¹⁶⁸ UN High Commissioner for Refugees (UNHCR), Options Paper 2: Options for governments on open reception and alternatives to detention, p. 1; UN High Commissioner for Refugees (UNHCR), Building Empirical Research into Alternatives to Detention, Op. cit. p. 13; UN High Commissioner for Refugees (UNHCR), Canada/USA Bi-National Roundtable on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons, February 2013, <http://www.refworld.org/docid/515178a12.html>, p. 3.

¹⁶⁹ Jesuit Refugee Service, From Deprivation to Liberty: Alternatives to detention, Op. cit. p. 47.

¹⁷⁰ Find below relevant information on the operation of Return / Family Houses in Belgium.

This informed decision-making is often part of an integrated process known as *case management*. The concept is that each person is assigned a “case manager” (independent agent) who is responsible for their entire case, including providing clear and consistent information and advice about the asylum process as well as other migration and/or return processes, as applicable, including about any conditions on their release and the consequences of non-cooperation. The case manager is also responsible for providing access to legal counsel or other kind of support¹⁷¹.

Towards the end of 1990s Sweden introduced a caseworker system for asylum seekers uses a case management model based on early intervention and a rights framework. The case worker who is appointed for each case is responsible for the asylum process (information, rights) and supports the asylum-seeker in solving everyday life questions (allowances, school, housing etc.), referring him/her to legal counseling or other services. The case worker is also tasked to inform the asylum-seeker on any decisions by the Authorities and prepare the asylum-seeker for all possible migration outcomes. Considering that Sweden is among those EU Member States with high numbers of asylum seekers, the use of detention is extremely limited. The effectiveness of this early intervention case management model means that Sweden rarely has to resort to coercion when removing failed asylum seekers. For instance, in 2012, 65% of third country nationals who were ordered to leave Sweden did so without enforcement action (of 19,905 third country nationals ordered to leave Sweden, 12,988 returned voluntarily and 614 returned through an assisted voluntary return program). Four years after the introduction of the caseworker role, Sweden had the

¹⁷¹ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards, p. 44-45.

*highest levels of returns on refused asylum seeker cases in Europe, with 76% voluntarily departing*¹⁷².

In Greece, the obligation to provide information is set out in various pieces of legislation concerning a number of different services. For instance, as stipulated in Law 3907/2011, regulating the First Reception procedures, newcomers should receive information on “their rights and duties as well as on the requirements for being granted international protection status” (Article 7 par.1(d)). The same law provides also that the Asylum Service, in the context of its mission, is competent for “informing applicants for international protection of the examination procedure of their applications, including the rights and obligations under this” (Article 1 par. 2(c) Law 3907/2011). A coherent strategy that guarantees the provision of information in a timely and appropriate manner must be adopted, but we must take into account the fact that effective functioning of the First Reception Service is challenging given that the First Reception Service is significantly understaffed and that sufficient first reception facilities have not yet been created. As a consequence the majority of new arrivals do not benefit from reception services as foreseen by legislation¹⁷³.

¹⁷² UN High Commissioner for Refugees (UNHCR), Options Paper 2: Options for governments on open reception and alternatives to detention, Op. cit. p. 2.

¹⁷² Jesuit Refugee Service, From Deprivation to Liberty: Alternatives to detention, Op. cit. p. 47; Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 143; International Detention Coalition, Seeking to Implement Alternatives, Written evidence to the UK Parliamentary into the use of immigration detention, IDC SUBMISSION, September 2014, <https://detentioninquiry.files.wordpress.com/2015/02/international-detention-coalition.pdf>, p. 5; International Detention Coalition, Case management as an alternative to detention – The Australian Experience, p. 5.

¹⁷³ UN High Commissioner for Refugees (UNHCR), UNHCR observations on the current asylum system in Greece, December 2014, <http://www.refworld.org/docid/54cb3af34.html>, p. 9, mentioning that «In total, the FRS was able to register and screen 6,228 individuals during January - September 2014. This corresponds to only around 20 per cent of the total number of new arrivals in this period».

c) Access to legal assistance

Apart from the provision of reliable information on the process, access to early legal advice and assistance is a further minimum standard that, not only ensures respect for human rights but also fosters trust in the system and consequently promotes the successful implementation of an alternative measure. Legal advice ensures that individuals are properly advised about their migration situation; that they have explored all options to remain in the country legally as well as the legal processes surrounding their case (compliance or non-compliance, possible outcomes etc.). Evidence shows that the access to early legal advice and assistance helps to promote an individual's trust in the system and the understanding of the migration policies and may consequently improve compliance¹⁷⁴. A recent study found that "the single most important factor that fostered trust was access to early trusted legal advice and assistance"¹⁷⁵. Lastly, the use of legal counsel is seen to reduce costs overall by ensuring decision-makers are not required to delay proceedings or spend time clarifying claims made by applicants without representation¹⁷⁶.

d) Fairness of Migration Status Determination process (including Refugee Status)

Where processes regarding resolution of migration status are protracted, individuals will be at risk of becoming stuck in situations of legal uncertainty

¹⁷⁴ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 31-32; Jesuit Refugee Service, From Deprivation to Liberty, Op. cit. p. 47; UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 88; UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit. p. 45; UN High Commissioner for Refugees (UNHCR), Canada/USA Bi-National Roundtable on Alternatives to Detention, p. 8.

¹⁷⁵ UN High Commissioner for Refugees (UNHCR), Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva, June 2013, PPLA/2013/02, available at: <http://www.refworld.org/docid/51a6fec84.html>, p. 22 and 35.

¹⁷⁶ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 31-32.

or if an individual believes the system is unfair (e.g. difficulty obtaining information on immigration processes, lack of transparency of the decision-making process, such as reasons for negative decisions), it can also impact a person's belief in the system and willingness to accept final outcomes, such as a voluntary departure or deportation. A fair and efficient process, which involves the timely resolution of cases, is a necessary additional condition for believing in the system, which, however, should not slide to an unconditional implementation of fast-track procedures¹⁷⁷.

e) Procedural safeguards

Alternatives to detention need to be subject to due process safeguards so as to be considered fair and not arbitrarily imposed or extended. The most notable procedural safeguards include those listed below. It should be noted, however, that if the alternatives to detention applied are very strict, unduly prolonged or disproportionate, this may lead to non-compliance¹⁷⁸.

5. Safeguards concerning the imposition of Alternative Measures

The range of alternatives to detention should not lead to the conclusion that there is a simple menu of alternative measures for authorities to choose from.¹⁷⁹ Given that alternatives to detention may affect the right to personal liberty, decisions to apply them must be subject to certain safeguards to

¹⁷⁷ Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 32; Jesuit Refugee Service, From Deprivation to Liberty, Op. cit. p. 32; UN High Commissioner for Refugees (UNHCR), Building Empirical Research into Alternatives to Detention, Op. cit. p. 22.

¹⁷⁸ UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit. p. 47; Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 32; Jesuit Refugee Service, From Deprivation to Liberty, Op. cit.

¹⁷⁹ UN High Commissioner for Refugees (UNHCR), Building Empirical Research into Alternatives to Detention, Op. cit. p. 11.

prevent their application in an arbitrary manner¹⁸⁰. Among other things, these safeguards include:

- a) Alternatives to detention must be provided by law¹⁸¹.
- b) Alternatives to detention should be imposed and tailored to individual circumstances. A national practice systematically imposing an alternative to detention would suggest that the system is arbitrary and not tailored to individual circumstances¹⁸². Also, alternative arrangements would need to take into account the specific situation of particular vulnerable groups (e.g. authorities must ensure that their premises are accessible if an obligation for reporting is imposed on persons with reduced mobility).
- c) The conditions or criteria for each alternative must not discriminate against particular groups of non-nationals, including on the basis of their nationality, religion, economic situation, immigration or other status¹⁸³.
- d) Any alternative measure must be aimed at and necessary to fulfil a legitimate objective, as well as being proportionate to that objective. It must also be established that the measure is the least intrusive means of achieving the objective¹⁸⁴.
- e) The measure imposed shall not constitute a *de facto* deprivation of liberty. Such a case constitutes an alternative form of detention; (e.g. house arrest¹⁸⁵). In views of the ECtHR, in order to decide whether a measure

¹⁸⁰ See UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, <http://www.refworld.org/docid/45139c394.htm> Law

¹⁸¹ UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit. p. 19.

¹⁸² See, for instance, the Guidelines on the Applicable Criteria and Standards of the UN High Commissioner for Refugees concerning the Release on bail/bond as an alternative measure: "Systematically requiring asylum-seekers to pay a bond and/or to designate a guarantor/surety, with any failure to be able to do so resulting in detention (or its continuation), would suggest that the system is arbitrary and not tailored to individual circumstances."; UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards, Op. cit. p. 43.

¹⁸³ Amnesty International, Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention, POL 33/001/2009, 2009, <https://www.amnesty.org/en/documents/document/?indexNumber=POL33%2F001%2F2009&language=en>, p. 12.

¹⁸⁴ Op. cit. p. 9.

¹⁸⁵ EctHR Lavents v. Latvia, no. 58442/00, 28/11/2002.

constitutes deprivation of liberty or restriction upon liberty, the concrete situation and a whole range of criteria such as the type, duration, effects and manner of implementation of the measure must be taken into account ¹⁸⁶.

f) Any restrictions must be in conformity with the fundamental rights of each person (e.g. the right to family life ¹⁸⁷, the obligation to respect human dignity ¹⁸⁸).

g) Alternatives to detention should not become alternatives to release. Safeguards should be put in place to ensure that those eligible for release without conditions (e.g. Unlawful detention) are not diverted into alternative measures¹⁸⁹.

h) Maximum periods of imposition of alternatives to detention should be provided by law¹⁹⁰, decisions on the imposition shall be subject to review by a judicial or other competent independent authority¹⁹¹.

i) The possibility of administrative or judicial review or remedy ¹⁹².

Finally, the UN Special Rapporteur on the human rights of migrants calls upon States to promote the use of the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)¹⁹³, for persons subject to alternatives to immigration detention. These Rules require, among other things, that supervision shall not be carried out in a way that would harass

¹⁸⁶ See, for instance: ECtHR, *Guzzardi v Italy*, Application n. 7367/76 , 06/11/1980; ECtHR - *Amuur v. France*, Op. cit.

¹⁸⁷ *Mengesha Kimfe v. Switzerland* (Application no. 24404/05), 29/07/2010.

¹⁸⁸ According to the European Union Agency for Fundamental Rights (FRA) "Given the interference with the right to privacy, the use of Electronic monitoring as an alternative to immigration detention must be avoided", See: European Union Agency for Fundamental Rights (FRA), *Detention of third country nationals*, Op. cit. p. 51.

¹⁸⁹ UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, Op. cit. par. 73.

¹⁹⁰ *Odysseus Network*, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 123.

¹⁹¹ UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, Op. cit.

¹⁹² *Ibid.*, See also Amnesty International, *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention*, Op. cit. p. 10-11.

¹⁹³ UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution/adopted by the General Assembly, 2 April 1991, A/RES/45/110, <http://www.refworld.org/docid/3b00f22117.html>.

the individuals concerned, jeopardise their dignity or intrude on their privacy or that of their families. Methods of supervision that treat persons solely as objects of control should not be employed ¹⁹⁴.”

6. Examples of alternative measures

A wide range of alternatives to detention can be used to ensure that asylum-seekers or third-country nationals under expulsion will be available for removal procedures. The Greek law provides for a non-exhaustive list of four measures: regular reporting to the authorities, deposit of a financial guarantee, deposit of identity documents and the obligation to stay at a designated place¹⁹⁵. Some examples of alternative measures and ways for implementing them are listed below. As mentioned previously, no single alternative to detention will be fully replicable in another context, as alternatives to detention need to be developed and implemented in a way that is context-specific, taking into account the particularities of each country context¹⁹⁶.

a) Reporting to the authorities

Reporting to the authorities is the most widely used, the cheapest and least constraining way for States to use as an alternative to detention, and is often combined with designated residence or other obligations¹⁹⁷. Reporting

¹⁹⁴ European Council on Refugees and Exiles (ECRE), Research Paper on Alternatives to Detention; Practical Alternatives to the Administrative Detention of Asylum Seekers and Rejected Asylum Seekers, September 1997, <http://www.refworld.org/docid/3c0273224.html>, point D.

¹⁹⁵ Article 22 par. 4 of Law 3907/2011.

¹⁹⁶ UN High Commissioner for Refugees (UNHCR), Second Global Roundtable on Reception and Alternatives to Detention, Op. cit. p. 2.

¹⁹⁷ Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 90; In the views of the European Migration Network, the measure is implemented in 23 out of 24 member

consists of an obligation to present oneself to the authorities at specified times and it can also be performed via telephone, whereas the frequency of reporting can range, in line with the principle of proportionality, bearing in mind the individual profile, any risk of absconding, vulnerability etc. If the individual has regular contacts with the administration through the procedure (e.g. to renew documentation, conduct the asylum interview or receive financial allowances), reporting sessions may not be necessary. Adding reporting requirements to regular appointments needs to be carefully examined. An older research concerning asylum seekers revealed that the risk of non-compliance to reporting obligations was rather low (20%)¹⁹⁸. Therefore, adding physical reporting at reporting centres might not be justified, proportionate to the objective and/or necessary.

The data provided by the Asylum Service indicate that in Greece over 78 % of the asylum seekers fully comply with the obligation to report to the Regional Asylum Office, regardless of whether they were detained or not when they applied for asylum, of the identified shortcomings in the reception conditions of asylum seekers and the special circumstances formed in 2015 concerning the secondary movement to an EU country. Policy makers should bear in mind this evidence.

	2015 ¹⁹⁹			2014			2013 ²⁰⁰		
	Total	Not detained	Detained	Total	Not detained	Detained	Total	Not detained	Detained
Number of asylum seekers	10,718	8,431	2,287	9,432	6,540	2,892	4,816	4,242	574

states participating in a relevant research in 2014, European Migration Network (EMN), Synthesis Report, Op. cit. p. 34.

¹⁹⁸ The research was conducted in 76 countries in the first quarter of 2003. See: UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit. p. 25.

¹⁹⁹ The figures for 2015 relate to the period from 1.1.2015 until 31.10.2015.

²⁰⁰ The figures for 2013 relate to the period from 7.6.2013 until 31-12.2013.

Total decisions issued for interruption of the procedure (due to implicit withdrawal ²⁰¹⁾	2,233 (20.83%)	1,732 (20.54%)	501 (21.91%)	947 (10.04%)	889 (13.59%)	58 (2.01%)	200 (4.15%)	191 (4.50%)	9 (1.57%)
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Source: Statistics of the Asylum Service for the years 2015, 2014 and 2013²⁰² and data of the Asylum Service concerning the decisions issued for interruption of the procedure²⁰³.

Good practices with regard to the imposition of the measure of Reporting to the authorities are identified, *inter alia*, in schemes where²⁰⁴:

- frequency of reporting is no more than required and reduced over time,

²⁰¹ As per Article 14 par. 3 of P.D. 113/2013, "An asylum claim will be treated as implicitly withdrawn where the applicant: a. did not respond to requests to provide important information for their application, as foreseen in Article 4 of P.D. 96/2008 or b. fails to attend an asylum interview although he/she was invited to attend it as foreseen in Article 17, unless he/she provides an acceptable explanation with reliable evidence or c. absconded from where he/she was being detained or did not comply with the imposed alternatives to detention or d. leaves his/her place of residence without prior authorisation or without notifying the authorities or leaves the country without permission whilst an outstanding claim is being considered or e. fails to comply with reporting obligations as provided for in Article 9 par. 1(c), or other reporting obligation within 15 days from the day when the Asylum Service or the Appeal's Authority asked him/her to contact them or to appear before them or f. failed to renew his/her asylum seeker card on the next working day after it had expired".

²⁰² Ministry of the Interior and Administrative Reconstruction, Asylum Service, Statistics of the Asylum Service (from 1.1.2015 until 31.10.2015), http://asylo.gov.gr/wp-content/uploads/2015/11/Greek-Asylum-Service-statistical-data-October-2015_gr.pdf; Ministry of the Interior and Administrative Reconstruction, Asylum Service, Statistics from the operation of the new Asylum Service (January-December 2014) http://asylo.gov.gr/wp-content/uploads/2015/01/Greek-Asylum-Service-statistical-data-2014_gr.pdf; Ministry of the Interior and Administrative Reconstruction, Asylum Service, Statistics from the operation of the new Asylum Service (from 7.6.2013 until 31-12.2013), http://asylo.gov.gr/wp-content/uploads/2014/06/asylum_statisticaldata2013_gr.pdf.

²⁰³ The Document dated 23.22.2015 of the Asylum Service to the Greek Council for Refugees on the provision of statistical data concerning the decisions issued for interruption of the procedure.

²⁰⁴ UN High Commissioner for Refugees (UNHCR), Options Paper 2: Options for governments on open reception and alternatives to detention, Op. cit. p. 7.

- reporting frequency and duration is specified case by case (e.g. reporting via telephone for persons with reduced mobility), a periodic review of reporting conditions is foreseen
- locations for reporting are accessible
- reporting to different authorities is foreseen, to avoid retraumatisation (e.g. to social workers instead of to the police)
- reasons for non-compliance need to be properly assessed and some flexibility should be shown where there are good reasons for non-compliance.

According to the UN High Commissioner for Refugees, overly onerous reporting conditions can lead to non-cooperation (for example, reporting that requires an individual to travel long distances at their own expense, especially when the applicant does not have the financial capacity) and can set up individuals willing to comply to instead fail²⁰⁵.

Although it is the most widely used alternative to detention, little research and evaluation has been conducted on the efficiency and impact of reporting schemes.

In Sweden, a supervision order issued for an individual who has been released (supervision order) might be combined with regular reporting to the Authorities. In 2013, among the 4,546 cases, approximately 400 decisions on reporting to the Authorities were taken; these included 250 persons who were released from detention. The compliance rate was 77,1%, while 93 cases (or 22,9%) were registered as not having complied to the measure. The frequency of reporting is decided case-by-case, whereas the implementation of reporting is undertaken by the nearest police

²⁰⁵ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards, Op. cit. p. 41.

authority or the Swedish Migration Board so as to facilitate the scheme. Failure to report regularly does not automatically lead to a detention decision, but a new investigation on the case will take place. Also, in practice, asylum seekers have to surrender their documents at the beginning of this procedure.

b) Deposit of a financial guarantee and provision of sureties by third parties

A wide range of alternatives to detention is based on financial penalties for non-compliance. This includes provision of surety/bail or a written agreement, guaranteeing the faithful performance of acts and duties²⁰⁶. In particular:

-Provision of surety/bail (deposit of a financial guarantee for ensuring compliance of an individual with immigration procedures). In the context of criminal law, it is not uncommon to allow the release of a detained person on condition of bail, but is infrequently used in asylum and pre-removal proceedings, partly because it is assumed that many asylum seekers or third-country nationals in return procedures would not have the necessary means to put up bail ²⁰⁷. Given the vulnerable financial situation of many asylum seekers, efforts to minimize financial disadvantage must be made:

-The amount of bail should be viewed in relation to the means of the person concerned (for example in the UK a figure of between £2,000 and £5,000 is usual, but each case should be assessed on its individual merits; it may

²⁰⁶ UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, Op. cit. p. 15; UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 55 επ.; Amnesty International, Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention, Op. cit. p. 15-16.

²⁰⁷ European Union Agency for Fundamental Rights (FRA), Alternatives to detention, Op. cit. p. 2.

therefore be appropriate to accept from the person a nominal sum -e.g. £5²⁰⁸).

-The bond can be paid by a third party or the following schemes can be implemented:

- *Bond*. The term 'bond' is used to denote a written agreement, guaranteeing the faithful performance of acts and duties by the third-country national and is sometimes combined with sureties paid by the individual concerned or another person or a guarantor (e.g. family or community member) or when an organisation vouches for the faithful performance of acts and duties of the individual concerned, whereas if the person should fail to meet his/her duties, they are liable to pay some or all of the agreed amount. An important concern relating to the fact that the financial discrimination inherent in a bail system is particularly likely to disadvantage those who have no or limited resources and/or community or family ties is addressed when a non-profit entity or a community member can act as the "bondsperson" for the said individuals.

Canada operates since 1996 a regular bail system, which is supplemented by a government-funded professional bail programme (the Toronto Bail Program or TBP) which aims to release persons from detention who have no or limited resources and community or family ties and, in this way, removes the financial discrimination inherent in the immigration bail

²⁰⁸ UK Enforcement Instructions and Guidance, par. 57.6.1, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371511/Chapter_57_v7_November_2014.pdf.

system²⁰⁹. The TBP acts as the bondsperson for individuals and families who do not otherwise have sufficient resources or family or other ties to put up bail and accepts both asylum applicants as well as persons pending deportation. The TBP conducts an intensive selection interview with the individuals concerned, who are then released to the 'supervision' of TBP. The TBP pays no money over to the authorities to secure the release of any migrants from detention; instead, the signing of an agreement between the individual and TBP takes place and the duties of each individual assumes the following responsibilities:

- There is a requirement that they cooperate with the TBP and with any immigration procedures, including, for example, the attainment of documents to facilitate their removal in case their asylum application or another application or the granting of a residence permit has been rejected;
- Individuals are required to report twice weekly to the offices of TBP. Reporting requirements are softened as trust develops between the two parties and there are no lapses in reporting. Phone reporting can be later instituted, rather than reporting in person;
- Individuals should attend to all arranged meetings;
- Individuals must inform TBP if they change address. TBP can conduct spot checks; and
- Proof that an individual has participated in any assigned programmes (e.g. education, vocational training, work).

²⁰⁹ UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 57.

Failure to report or otherwise comply with conditions of release will lead to TBP informing the authorities, which in turn sets in enforcement action.

The programme has achieved considerable success in terms of its compliance rates. In 2009-2010, 96,3% (of a total of 250-275 individuals) complied with the programme, whereas in the year 2012-2013 there was an increase amounting to 95.1% of a total of 415 supervised individuals.²¹⁰ Finally, the cost of the TBP is particularly attractive, costing a mere \$10-12 CAD per person per day compared with the average cost in jails being \$179 CAD per person per day.²¹¹

A number of fundamental ingredients are the basis for the success of the program:

- the concept of 'voluntary compliance'; and*
- the holistic approach based on 'community supervision'. TBP provides individuals with assistance and advice on how to navigate the asylum, immigration and social services systems or to file necessary paperwork. The TBP assists individuals to find housing, and to access healthcare, social welfare, and work (where permitted), including applications for work permits as well as with mental health matters²¹².*

Yet, the programme has faced a number of complaints. The TBP is accused of being too selective in the individuals being released; that

²¹⁰ Op. cit. p. 59; UN High Commissioner for Refugees (UNHCR), Options Paper 2: Options for governments on open reception and alternatives to detention, Op. cit. p. 8.

²¹¹ The figures relate to 2013; See: UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 60.

²¹² UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 59; Options Paper 2: Options for governments on open reception and alternatives to detention, Op. cit.

*many persons released to TBP ought to have been released on minimal conditions; and for the fact that TBP can also act as an alternative to traditional forms of release where, for example, the authorities rely too heavily on it and it becomes a prerequisite to release*²¹³.

c) Obligation to surrender documents

The obligation to surrender passports or travel documents is a measure that essentially serves to reduce the risk of absconding. In such a case persons should be provided with official substitute registration documentation²¹⁴. The said obligation is foreseen in the asylum legislation (P.D. 113/2013 Art. 9 par. 1(b)) and handing over documents to authorities in the ordinary course of asylum proceedings is not, strictly speaking, an alternative to detention.²¹⁵ Additionally, when asylum seekers surrender identity documents in the course of ordinary asylum proceedings, it goes without saying, that they shall not be subjected to arbitrary detention or to alternative measures for the purpose of verifying identity or nationality²¹⁶. Lastly, States should make use of such arrangements as alternatives and not detain individuals solely because they arrive without documents.

²¹³ Ibid.

²¹⁴ UN High Commissioner for Refugees (UNHCR), Alternatives to Detention of Asylum Seekers and Refugees, Op. cit. p. 35; Sampson, R., Chew, V., Mitchell, G., and Bowring, Law There Are Alternatives, Op. cit. p. 66.

²¹⁵ Amnesty International, Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention, Op. cit. p. 14.

²¹⁶ P.D. 113/2013, Article 12 par. 2 Subpar.1.

d) Obligation to stay at a designated place

The obligation to stay at a designated place requires the individuals to reside at a specific address, to obtain prior approval to change their address, to stay within a particular administrative region or to stay at a designated Accommodation Centre (public or privately run). Where States use measures such as the obligation to stay at an assigned place as an alternative to detention, which may amount to restrictions to personal freedom of movement, they must ensure that the restriction of individuals' right to freedom of movement does not constitute a *de facto* deprivation of liberty (e.g. house arrest ²¹⁷ or the Greek example of "obligation to stay at a detention centre"²¹⁸). Additionally, with regard to the obligation of residence at reception facilities, since the Greek law foresees the obligation to provide accommodation to asylum seekers who lack financial resources ²¹⁹, the accommodation in facilities for those individuals (asylum seekers) who are not detained and lodged an asylum application cannot be considered an alternative to detention, since the detention of asylum seekers who are not already detained is prohibited²²⁰. On the other hand, if an individual that has applied for asylum while being detained, is being released into an open or semi-open reception centre with the condition to reside at that address, this would be considered an alternative to detention²²¹.

²¹⁷ EctHR Lavents v. Latvia Op. cit.; UN Human Rights Council, Report of the Working Group on Arbitrary Detention, 24 December 2012, A/HRC/22/44, <http://www.refworld.org/docid/511cca5e2.html>, par. 59; See also: UN Human Rights Council, Opinion adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2–6 May 2011, No. 16/2011 (China), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/112/32/PDF/G1211232.pdf?OpenElement>, par. 11-17.

²¹⁸ See: Opinion 44/2014 of the Legal Council of the State.

²¹⁹ Article 12 ff. P.D. 220/2007.

²²⁰ On the possibility of detention of individuals (asylum seekers) who are not detained and lodged an asylum application See Footnote 73

²²¹ European Migration Network (EMN), Synthesis Report, Op. cit. p. 42.

A good practice with regard to the obligation to stay at a designated place, usually a public unit, comes from the Belgian authorities which decided to take measures to limit the administrative detention of families with children ²²². In October 2008, Belgium established 'return houses', which were aimed at facilitating the return of families with minor children who had no right to remain in Belgium - without having recourse to detention (known as «Family Identification and Return units» or «return houses»), whereas in 2009, the programme was expanded to include asylum-seeker families with children arriving at the border. This programme was financed by the European Return Fund. By the end of 2013 there were 23 family units in 5 different locations, spread around Belgium with a capacity of 135 beds.



Source: europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures; Jesuit Refugee Service, From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom, December 2011, <http://www.refworld.org/docid/4f0c10a72.html>

²²² For details on the Return Houses see, among others: UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 69-73; European Migration Network (EMN), Synthesis Report, Op. cit. p. 35; Liesbeth Schockaert, «Alternatives to detention: Open family units in Belgium» in Forced Migration Review, University of Oxford, Refugee Studies Center, Issue 44, September 2013, <http://www.fmreview.org/detention>, p. 52-54; Odysseus Network, Alternatives to immigration and asylum detention in the EU, Op. cit. p. 97-98; Council of Europe: Commissioner for Human Rights, Examples of good practice in the field of protection and promotion of human rights: example from Belgium: alternatives to detention of families with minor children, 2010, <http://www.refworld.org/docid/4eccaee22.html>; Jesuit Refugee Service, From Deprivation to Liberty, Op. cit. p. 18-23.

The conditions of the programme are the following:

- *Return houses are urban apartments or houses which are furnished and equipped.*
- *Family members have freedom of movement with some restrictions (e.g. one person should stay in the house at all times and the family can't go out between 22.00 and 8.00 hours).*
- *Each family is supervised by a "coach"²²³, who is a public sector employee and is responsible to prepare the family for all possible migration outcomes, making sure that the asylum procedure has been a "clear" one while he/she is tasked with lending support to a family during its residence in the family unit.*
- *Each family member is entitled to free legal assistance.*
- *NGO staff visit the family units regularly and can have discussions involving coaches and families together.*
- *If a family fails to cooperate or absconds the house, the Authorities might use detention as a last resort.*

The "coach":

- *Is the first person families meet when getting to the house and collects all necessary information for all the procedures regarding the families.*
- *Informs the families about the legal procedures (asylum procedure etc.) and prepares families and individuals for all possible immigration outcomes, whether return or legal stay.*
- *Makes sure the families get everything they need for their everyday life (coupons to buy food, clothes, medicine, medical care etc.)*

²²³ Referred to as "coach" or "agent de soutien".

- *Takes care of all appointments for the family: with lawyers, medical practitioners, schools, Authorities etc.*

This holistic approach of every possible solution, including looking into possibilities to stay is said to have:

- *Increased the rates of voluntary returns of families. At first, when the “coaches” informed families only on return options, the rate of voluntary returns was around 10%, whereas when families were informed by “coaches” for all possible immigration outcomes, the rate of voluntary returns of families, for which a negative decision on their residence application was taken, increased to 30%.*
- *The number of families absconding has fallen.*

Practical experience has shown that a family chooses to return not as a result of being pressured by the authorities but as a conscious decision, provided that they believe that the asylum procedure has been fair²²⁴.

From October 2008 until 28 March 2014, 633 families, with 1,224 minor children, stayed in the family units.

617 families have, in the meantime, left the family units for various reasons:

450 (72,9%)	Families complied to the measure (including departure to country of origin or a third country, granting of certain status or other reasons).
166 (26,9%)	Families absconded

Source: European Migration Network (EMN), The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Belgium, June 2014.

²²⁴ UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security, Op. cit. p. 70; Liesbeth Schockaert, «Alternatives to detention: Open family units in Belgium», Op. cit. p. 53.

- 269 families returned to their country of origin or a third country (64 —forced removals, 44 —Dublin cases, 38 with support of the International Organisation for Migration, 19 voluntary returns without assistance);
- 181 families were liberated since they had been granted a residence permit or the asylum procedure was not completed in the expected time (amongst others: 47 recognized refugee status / 22 subsidiary protection status, 12 medical grounds, 10 court decisions, 23 new pending asylum procedures);
- 166 families absconded;
- 1 of these families has been put for a short period in detention centre because of illness of a mother and was afterwards transferred to a reception centre;
- 1 child was transferred to an open centre for minors because it was established that the child was not related to the adults who were accompanying it.²²⁵

7. Implementing alternative measures

Over the last few years Greece has invested heavily in the implementation of a policy based, to a great extent, on detention. This policy not only led to serious human rights violations, but does not seem to have achieved its intended purpose either. In this text we discussed mainly the promotion of alternatives to detention, provided that alternative measures themselves, are in accordance with existing provisions of law, proportionate to the

²²⁵ European Migration Network (EMN), The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Belgium, June 2014, http://www.emnbelgium.be/sites/default/files/publications/be_report_emn_study_detention_and_alternatives_to_detention_2014_-_finalawpdf, p. 55.

objective and imposed on a case-by-case basis. The development of such measures can become a significant global counter-trend to the approach of the refugee and migration phenomenon.

Greece detains migrants on a large scale and there's a need for a cultural shift towards engagement with migrants on an individual basis in place of reliance on enforcement. If the laws on detention were applied completely and impartially, the risk of arbitrary detention of many third-country nationals would be reduced and there would be no need to examine alternatives to detention.

In order to ensure that policies and procedures are implemented in line with the legal obligations, which Greece has assumed, and the promotion of alternatives to detention in Greece, in light of the above, authorities need to focus on developing a coherent plan which must be driven by changes to legislation, regulation and practice.

These changes include, *inter alia*:

1. Relevant legislation needs to be amended, so as to ensure that the obligation to always consider alternatives to detention before resorting to detention applies also to those cases falling within the scope of Law 3386/2005.
2. Establishment by law of an individualized assessment process, with the assistance of specialized professionals, before any decision to detain is made, taking into account the particular circumstances of the case.
3. Safeguarding Principles concerning the imposition of alternatives to detention need to be set out by law; *inter alia*, maximum period, periodic review by administrative and judicial authorities, access to effective complaints mechanisms and remedies etc.

4. Actions to reinforce the capacities of First Reception Service and ensuring that the authorities have put in place an effective assessment of the particular circumstances and needs of each person; that all newcomers are provided with clear and concise information and that they are referred, if necessary, to suitable accommodation facilities. Additionally, it must be ensured that the measures restricting the individual's liberty in a First Reception Centre are not *de facto* equivalent to the deprivation of liberty.

5. Ensure that the interpretation of legitimate grounds for detention comports with the spirit and letter of the existing body of rules (possibly through the issuance of a circular/guidelines); that no person is detained and no alternative measure is imposed in case a legitimate ground for detention does not exist; and that alternatives to detention are always considered before resorting to detention, bearing in mind the individual profile and the principle of proportionality with regard to their implementation.

6. Adoption of a coherent strategy that guarantees minimum standards for successful alternatives (living conditions, provision of information and legal assistance throughout the procedure, fair and effective decision-making process regarding the granting of residence status, safeguards for the imposition of alternatives to detention).

To this end authorities could:

- use existing facilities (e.g. accommodation, Health facilities) and services (e.g. information),
- fundraise so as to reinforce the applicable measures or develop new measures,
- amend existing laws (e.g. issuance of work permits for persons subjected to alternatives to detention).

7. The systematic collection and evaluation of reliable data as to the effectiveness of policies, the individual profiles, the particular circumstances and needs of each third-country national staying in the country.

8. Designing and implementing policies for alternative measures, on the basis of reliable data, concerning all third-country nationals (and not only those belonging to vulnerable groups), who might fall within the scope of Articles 30 of Law 3907/2011 and 76 of Law 3386/2005. Such policies should be introduced as pilot projects and include a Results-Based Monitoring and Evaluation System. Policy-making on alternatives to detention must take into account the views and experience of all the bodies, organisations and experts while it must be open to public deliberation, democratic control and redesign.

9. Special circumstances and needs of asylum seekers must be examined, whereas policy makers should bear in mind that evidence provided by the Asylum Service indicate that nearly 80 % of the asylum seekers fully comply with the obligations imposed on them through the asylum process (for instance, the obligation of regular reporting to the Regional Asylum Office for card renewals, interviews etc.) regardless of whether they were detained or not when they applied for asylum.

10. Prohibition by law of the detention of vulnerable persons, in particular, of unaccompanied minors and families with minor children.

(a) As to unaccompanied children: since there is a broad consensus, reflected also in the existing laws, that the detention of minors should be an exceptional measure only for the purpose of referring children to suitable reception facilities, which could offer protection to them:

- the detention of unaccompanied minors should be abolished,
- the issue of temporary accommodation for unaccompanied children during the time needed to find a suitable place in a reception centre should be addressed. In this regard, attention should be paid to the suggestions of the Greek Ombudsman and the Recommendations of UNHCR and authorities must draw upon the good practice of "Transit Accommodation Centres" run by non-governmental organisations.
- the accommodation capacity of reception centres for unaccompanied minors should be increased.
- effective age assessment procedures in line with international standards, should be established by law, and the protection that States are obliged to provide to children must be ensured by, *e.g.*, reinforcing guardianship systems

(b) as to families with minor children, and given that in the best interests of the child, children should not be detained and family unity should be maintained, it is proposed:

- to not detain families with minor children
- to establish appropriate procedures and accommodation facilities for families with minor children, having regard to the rights of families (irrespective of their legal status - asylum seekers/pending removal) while implementing policies in the asylum and immigration framework. To this end, examples of good practice in the field of protection of families with children, such as the Return Houses in Belgium, which were financed by the European Return Fund, must be taken into account.