GREEK COUNCIL FOR REFUGEES

SUBMISSION OF THE GREEK COUNCIL FOR REFUGEES

TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

IN THE CASE OF *M.S.S. v. BELGIUM & GREECE* (Application No 30696/09)

The present submission of the Greek Council for Refugees (GCR) focuses on: (I) **the asylum procedure** currently in place in Greece, with specific emphasis on the function of the services that have recently become operational (Asylum Service, Appeals Authority, First Reception Service), without however leaving out the weaknesses of the old asylum system, since it still directly affects thousands of asylum seekers, and (II) the critical issue of **detention**. As the subject of living conditions will be examined by the Committee later on, no relevant information is provided in this submission.

I. THE ASYLUM PROCEDURE

GCR welcomes the functioning of the new services established by Law 3907/2011 and appreciates the efforts made by the staff of these services to create an efficient asylum system for refugees entering Greece. Without underestimating these efforts, with the present submission GCR will focus on certain critical issues of the Greek asylum reality, with the aim to contribute to the overall improvement of the asylum system.

The new Asylum Service and the Appeals Committees of the new Appeals Authority, consisting of civil personnel rather than members of the police, were established by Law 3907/2011. However, after a long delay, they only started operating in June 2013. Since that date the Asylum Service has been in charge of the registration and examination of asylum applications at 1st instance, while the Appeals Authority has become the competent authority for the examination of appeals lodged against decisions rejecting asylum applications at 1st instance (Presidential Decree 113/2013). At the same time the management of the asylum applications registered before the operation of the new Asylum Service still remains within the

competence of the Hellenic Police. The appeals against the negative decisions issued at 1st instance by the police (backlog) are examined by other Appeals Committees, established by the so called "provisional" Presidential Decree 114/2010, which do not form part of the newly established Appeals Authority.

Notwithstanding the promising arrival of all the aforementioned new services, the newly-established system is still not deprived of deficiencies.

1. Access to asylum and the new asylum procedure

As soon as the new Asylum Service started operating (7-6-2014), the Aliens Department of Attica and all other police stations that until then were in charge of registering asylum claims throughout Greece have ceased doing so.

However, after the new Asylum Service's completion of its 10 months of operation, **full access to asylum is still not granted**. Even if 5 Regional Asylum Offices (R.A.O.) and the asylum unit ('αυτοτελές κλιμάκιο ασύλου') of Thessaloniki are currently in place throughout Greece[1], only 2 of them are clearly accessible by asylum seekers that are not in detention: the R.A.O. of Attica and the R.A.O. of Rhodes. The latter only recently started functioning (2-1-2014). The rest of them (R.A.O. of Northern Evros, R.A.O. of Southern Evros, R.A.O. of Lesvos and Asylum Unit of Thessaloniki) register asylum claims made *only* by third-country nationals under administrative detention[2]. Even if in 2 amongst the aforementioned offices, efforts are made to register asylum claims made by non-detained people (R.A.O. of Lesvos and R.A.O. of Southern Evros), the fact that these offices are located inside detention facilities deters people from approaching them, for fear of being arrested and detained. Consequently, the R.A.O. of Attica is currently in charge of registering the vast majority of asylum seekers' claims residing in Greece, which is obviously impossible to handle effectively due to the large numbers of asylum seekers seeking international protection. As a result, many asylum seekers will need to wait in a long queue and attempt to enter several times in order to have

[1] See Communication from Greece concerning the case of M.S.S. against Belgium and Greece (Application No. 30696/09) (French only) Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2512876&SecMode=1&DocId=2129548&Usage=2

[2] The asylum unit operating in the First Reception Centre (F.R.C.) of Fylakio, which is not an open center, also receives asylum applications made *only* by its residents.

their asylum application registered. While the asylum seeker keeps trying to submit his/her application without success, he/she does not enjoy any guarantees against refoulment or against arrest and detention in view of removal. There are cases of third county nationals who were arrested and detained in view of removal, due to the fact that they could not submit an asylum application, despite the fact that they have tried to do so several times[3]. Moreover, until they manage to lodge their application, asylum seekers are deprived of access to medical services and any other services provided to asylum seekers.

Especially with regards to **subsequent asylum applications**, an additional irregularity has been noticed: When asylum seekers enter the R.A.O., their application is not registered immediately and the asylum seeker is not provided with an asylum seeker's card. According to this practice, the subsequent asylum application is only registered when the competent police authority – which was the previously competent authority – communicates the file of the applicant to the competent R.A.O. and at this point a note of the R.A.O. with the applicant's name and a protocol number is provided to the person concerned. An asylum seeker's card is only provided to the applicant if/when a positive decision on the admissibility of the application is issued. There have been documented cases in which this waiting period for a decision on admissibility even exceeded 5 months. The practice **not to provide to the applicant an asylum card from the very first moment he/she appears before the R.A.O. asking for asylum (with a subsequent application) is highly problematic**, particularly since the above-mentioned note does not award the applicants any rights (as in the case of possessing an asylum seeker's card). Moreover, they are still considered undocumented and therefore arrest, issuance of a return decision and detention in view of removal are still tangible possibilities. There are known cases of people that were detained in view of removal, even if they had such a note in their possession. Finally, it should be noted, that a so-called

[3] The "Campaign For Access to Asylum in Attica", in which 10 associations, entities, groups and NGOs (including GCR), participate, continues to monitor the access to asylum in Attica. The findings of this monitoring process, from the visits of the 5th and 27th of November 2013 at the building of the Asylum Service in Athens, have been recorded in the Joint Press Release "*First findings from the operation of the new Asylum Service",* 19.12.2013, according to which : "[….] *there are many people who wait for days, weeks or even months for their asylum applications to be registered, queuing up from the previous evening, among them vulnerable groups such as minors, sick people, single parents, victims of torture etc. The lack of an adequate mechanism for identifying vulnerable groups, the lack of adequate interpretation in all languages and the lack of protection from arrest for those who wish to apply for asylum but do not succeed in doing so, constitute some of the major obstacles in terms of access to the asylum procedure. In the case of detainees who wish to apply for asylum, they are in an even more disadvantaged position as concerns their access to the asylum procedure since the practice followed by police acts as a deterrent for the registration of the asylum application and also for the completion of its examination* […]", http://asylum-campaign.blogspot

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"repeat" or subsequent asylum application, is the only possibility to seek international protection in Greece for a large number of such applicants, as their previous application has usually been rejected or interrupted without respect to the minimum guarantees of a fair and efficient examination, due to the identified shortcomings of the previous asylum system in place.

Even if the new Asylum Service shows improved reflexes compared to its predecessor with regards to identification of **vulnerable cases** (e.g. unaccompanied minors, asylum seekers suffering from severe health problems or disabilities), the intervention of a NGO might sometimes be necessary in order to secure their access. It is worth mentioning that family reunification cases under Dublin II and III Regulations, which are by definition vulnerable cases (in the sense that they concern family members separated from each other, usually young children separated from their mother who is staying in another country of the EU, or parents separated from their children who are staying in another country of the EU), are not registered on the day they present themselves before the R.A.O., but are instead provided with an appointment for registration (i.e. a handwritten note on a small piece of paper), several weeks later.

Last but not least, concerning access to asylum, attention should be drawn to the numerous reports[4] and allegations made public – such as those related to Farmakonisi shipwreck dated 20.1.2014 or the shooting incident that took place off the island of Oinousses /Chios on 6.3.2014 [5] – concerning the **unlawful practices followed by the Greek authorities at its land and sea borders with Turkey**, which concern, amongst others, collective expulsions of *prima facie* refugees, use of excessive force, arbitrary detention in

.gr/search/label/%CE%94%CE%B5%CE%BB%CF%84%CE%AF%CE%B1%20%CE%A4%CF%8D%CF%80%CE%BF%CF%85 (in Greek)

[4] See Amnesty International, "*Frontier Europe – Human Rights abuses on Greece's borders with Turkey*", 9.7.2013, http://www.amnesty.org/en/library/info/EUR25/008/2013/en ; Pro Asyl, "*Pushed Back – Systematic human rights violations against refugees in the Aegean sea and at the greek-turkish land border*", 7.11.2013, http://www.proasyl.de/fileadmin/fm-dam/l_EU_Fluechtlingspolitik/proasyl_pushed_back_24.01.14_a4.pdf ; UNHCR Press Release, "*UNHCR seeks clarifications on the fate of Syrian Refugees in Evros*", 13.11.2013, http://www.unhcr.gr/nea/artikel/2768a7a2ced20c6daca7326788699f09/unhcr-seeks-clarifications-on-the-fa.html; UNHCR Briefing Note, "*Denied entry and pushed back: Syrian refugees trying to reach the EU*", 15.11.2013, http://www.unhcr.org/528618159.html;

[5] UNHCR Press Release, "*Statement on boat incident off Greece coast*", 21.1.2014, http://www.unhcr.org/52df83d49.html; GCR Press Releases, "*New Tragedy in Pharmakonisi*", 23.1.2014, http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/340-nea-tragodia-farmakonisi and "*The investigation concerning the boat wreck of 20th January 2014 near Farmakonisi, when 11 people lost their lives continues*", 20.2.2014,http://gcr.gr/index.php/en/news/press-releases-announcements/item/347-deltio-typou21022014; To Vima (newspaper), "*Chios: Three refugees injured by Coast Guard fire*", 7.3.2014, http://www.tovima.gr/en/article/?aid=574297

provisory, unofficial detention facilities, lack of any identification procedure. **Such alleged practices lead to denial of access to asylum and a violation of the non-refoulment principle**. Furthermore, in these cases, none of the requirements of the effectiveness of remedies provided by national law can be met. Those subjected the above-mentioned practices cannot challenge their unlawful removal *per se* before any authority, contrary to article 13 of the Convention [6].

Regarding the **Refuge Status Determination (RSD) procedure** before the new Asylum Service and the Appeals Committees of the new Appeals Authority, concerns are related to:

- The **quality of the interviews** and the relevant **1st instance decisions** [7]. The percentage of positive 1st instance decisions (13%)[8] is still below the EU average (29%)[9].
- The legislation[10] applicable on the procedure before the Appeals Committees (of the new Appeals Authority) examining the appeals against decisions issued by the Asylum Service, which only **provides for a written procedure during the examination of the appeals** by the Committee and **exceptionally** provides for **a personal interview with the appellant**[11]. The Appeals Committees are deprived of the competence to

[6] See answer (9.8.13) to a parliamentary question (18.7.13) provided by the Minister of Shipping and of the Aegean and the Minister of Public Order and Citizen's Protection "*Reported push-backs of illegal migrants and refugees who enter in the country: accountability, human rights protection, funds for granting international protection*", www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/8174770.pdf (in Greek); see also: Efimerida ton Sintakton (newspaper), "*The government deflated by the Hellenic Coastguard – only three –and not dozen – cases are under investigation*", 28.3.14, http://www.efsyn.gr/?p=185569

[7] According to the Greek authorities "the new asylum system is indeed still very young and staff relatively inexperienced", DH-DD(2013)1277E, 22 November 2013, 1186 DH meeting (3-5 December 2013) - Communication from a NGO (HLHR - Hellenic League for Human Rights) (12/11/13) in the case of M.S.S. against Belgium and Greece and reply of the Greek authorities (22/11/2013) (Application No. 30696/09) - Rules 9.2 and 9.3 of the Rules of the Committee of Ministers, https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2013)1277&Language=lanFrench&Site=CM, p.2 of the Comments of the Greek authorities

[8] Ministry of Public Order and Citizen Protection, *Statistics data concerning the functioning of the new Asylum Service (7.6.2013-29.11.2013)*, http://www.minocp.gov.gr/images/stories//2013/02122013-stat_asylum_gr.pdf (in Greek)

[9] EUROSTAT, *Asylum applicants and first instance decisions on asylum applications: 2013*, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF, p. 12, Table 9

[10] Article 26 par. 5 the PD 113/2013

[11] Article 26 par. 4 of the PD 113/2013: "*The procedure before the Appeals Committee shall be in written and the examination of the appeals shall be performed based on data from the case file. The Appeals Committee may invite the appellant to a verbal hearing, upon a relevant proposal by the Rapporteur, when serious questions are raised relating to the thoroughness of the appellant's interview conducted before the issuance of the contested decision, or the appellant has submitted new serious elements or the case is particularly complicated. The Appeals Committee obligatorily invites the appellant to a verbal hearing when appeals against decisions which revoke the international protection status are examined. A verbal hearing is precluded when the appealed decision rejects the application as inadmissible or was issued with the accelerated procedure or is issued pursuant to Article 24 of this Presidential Decree*".

ask for a verbal procedure at 2nd instance, since a verbal procedure takes place only after a relevant opinion ('εισήγηση') of the Expert-Rapporteur, which cannot be reviewed[12].

- The **practice of having an appeal lodged directly by the personnel of the Asylum Service itself, without taking into consideration the particularities of each case on an *ad hoc* basis**. Another aspect of not providing free legal aid to asylum seekers is that, even though the rejected ones are given the possibility to submit an appeal free of charge, they face a high risk of having their appeal rejected, since the vast majority of decisions on appeals are issued solely upon information included in the case file and therefore it is of great importance that the appeal is well substantiated in order to be accepted. Consequenty, although this practice cannot be negatively assessed *per se*, it might eventually go against the applicant's best interests.
- The setting of a fast procedure as a top priority, which may underestimate the specific characteristics and potential vulnerabilities of each case. For example, according to art. 17 of PD 113/2013, the reasonable amount of time that can be given to the applicant before the interview at first instance *"in order to sufficiently prepare himself and to consult a legal or other counselor […] including any prolongations, must not exceed seven (7) days or three (3) days when the interview is conducted under Article 24"*[13]. The possibility of postponing the scheduled 1st instance interview is almost impossible and consequently **the right to consult a legal counselor is often not respected**, taking into consideration the difficulty for asylum seekers –especially detainees- to have access to free legal aid. In addition, according to Ministerial Decision No 334/16-1-2014 setting the Operating Guidelines for the Appeals Authority, the Expert-Rapporteur shall deal with at least 60 cases per month or 3 cases per day[14]. The Appeals Committee has the obligation to examine the overall number of cases of the daily agenda, which includes at least 3 cases[15]. A fair and effective procedure should certainly be fast, but this is not the only element that should be assessed. The need for the applicant to properly prepare himself/herself, should also be considered.

[12] Article 6, par. 7 of the Decision No 334/16-1-2014 of the Minister of Public Order and Citizen Protection setting the Operating Guidelines for the Appeals Authority

[13] It is interesting to note that according to article 10 of PD 114/2010, which is still applicable on the procedure before the "backlog" Appeals Committees: " […] *Before the interview, the applicant is given, if s/he so wishes, a reasonable amount of time in order to sufficiently prepare himself and to consult a legal or other counselor who will assist him during the procedure. The reasonable amount of time is determined by the competent authority to examine and, including the prolongations, must not exceed two months* […]".

[14] Article 6 of the Decision No 334/16-1-2014 of the Minister of Public Order and Citizen Protection setting the Operating Guidelines for the Appeals Authority

[15] Article 7 of the Decision No 334/16-1-2014 of the Minister of Public Order and Citizen Protection setting the Operating Guidelines for the Appeals Authority

- Applicants who have been granted international protection are not automatically provided with relevant documentation (e.g. residence permit, travel documents), but remain for a long time with the asylum seeker's card and are deprived of any rights linked to their status.

Lastly, in assessing the new asylum system in Greece, it should be noted that the Commissioner for Human Rights of the Council of Europe, has recently and once again urged "*the EU member states to refrain from using the "Dublin Regulation" for returning Syrian refugees to other European countries* ***whose asylum systems are already overstretched or highly dysfunctional, in particular Bulgaria, Greece, Italy and Malta"***[16].

2. Procedural shortcomings of the old system

Even if access to asylum is no longer in the hands of the police, the management of asylum cases lodged until 6.6.2013 by this authority still remains under its competence.

Since the first months of 2013 **having an asylum seeker's card renewed** by the competent authorities of the Aliens Department of Attica (Petrou Ralli) has been proven to be extremely difficult. By the end of September 2013 it has become practically impossible[17]. Following numerous complaints concerning this practice, the Greek Ombudsman[18] conducted a monitoring visit in the premises of the Aliens Department of Attica, after which this independent authority concluded that "***it is impossible for a renewal to occur and for any other administration service to be offered to asylum seekers, since access is impossible and completely random".***

[16] Council of Europe, Commissioner for Human Rights, "*Refugee Protection, Migration and Human Rights in Europe: notes from the field. Lecture given by Nils Muižnieks (The Institute for Human Rights, University College London Faculty of Laws, 4 March 2014)*", CommDH/Speech(2014)1, 05 March 2014, https://wcd.coe.int/ViewDoc.jsp?id=2167763&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383, p. 3

[17] For each case handled by GCR more than 2 written interventions and numerous verbal contacts with the relative personnel were required, and yet in some cases there was no result. In one particular case concerning a minor, 8 written interventions within 2 weeks were required in order for the latter to receive his documentation properly renewed

[18] Greek Ombudsman, "*Finding following the monitoring visit of the Ombudsman at the Aliens Department of Attica in 8.10.2013*", 172041/49072/2013, 19.11.2013 (in Greek).

The denial of the Aliens Department of Attica to **reissue missing or stolen pink cards**, the **inappropriate provision of information (ex. with no or not appropriate translation)**, the **denial to communicate decisions eventually revoking the interruption** of the examination of an application and provide applicants once again with an asylum seeker's card, the **denial to provide new documentation to those that were granted international protection**, the **delays regarding the issuance of 1st instance decisions** even 2 years after the personal interview has taken place, form a non-exhaustive list of weaknesses of the old system, which are impossible to ignore, even if the new Asylum Service is now in operation, since thousands of asylum seekers are still affected by it.

Additionally, as the Ombudsman confirms in its report following the above-mentioned monitoring visit, the **backlog** of cases pending before the previously competent authorities is such that it has become impossible to manage, as it has resulted in "***a completely chaotic situation within the archive of the Aliens Department of Attica***"[19]**,** where asylum seekers' files are piled up, without any order, anywhere, even on the floor.

Moreover, an extremely large number of pending cases are **wrongfully interrupted** due to non-appearance of the applicant for the conduct of the interview at 1st instance or before the Appeals Committees of PD 114/2010. Concerning **cases pending at 1st instance,** the authority in charge of the revocation of the interruption decision is the Director of the Police Directorate. According to common practice applications asking to have the procedure continued are **systematically rejected**, except if medical reasons certified by doctors of a public hospital are invoked. As regards to cases interrupted **while pending at 2nd instance**, they mostly occur due to inappropriate communication of relevant invitations to appear before the Appeals Committees of PD 114/2010. As access of asylum seekers to the Aliens Department of Attica in order to have the current address of residence registered is practically impossible, asylum seekers are often not informed on time of the invitation addressed for their interview, therefore missing the interview and having their case terminated. In such cases, the Committees have not been reluctant (as have been the police authorities) to revoke such interruption decisions. However there have still been enormous delays in the decision making process, with applicants having to wait for a decision without being in possession of any proper documentation (as the asylum seeker's card is removed in this case) even for more a period of

[19] *idem*

time exceeding 1 year. Moreover, it is highly problematic, that according to a recent law amendment[20], in case of non-appearance, the Appeals Committees do not interrupt the procedure, but have the obligation to issue a decision rejecting the application for formal reasons. This decision can only be challenged before administrative courts (instead of addressing an application explaining the reasons of non-appearance to the relevant Committee), which is lengthy, costly and thus difficult to access.

Finally, it is important to note that notwithstanding the improved recognition rates compared to the past, persons that have been granted a two-year **subsidiary protection status** or a two-year **residence permit for humanitarian reasons**[21], are **systematically refused the renewal of their protection status** even if the reasons the decision was based on are still valid (e.g. a fragile security situation in the country of origin, the respect to private and/or family life in the country of reception under art. 8 of the Convention etc.). **The fact that the new asylum legislation** (PD 113/2013) **abolished the residence permit for humanitarian reasons is in any case particularly alarming *per se***.

3. The First Reception Service

A First Reception Center (F.R.C.) has been operating in Fylakio (Orestiada) since March 2013, pursuant to Law 3907/2011 establishing the First Reception Service (F.R.S.). In this F.R.C. newcomers can receive information regarding their rights and the asylum procedure in a language they understand and can also lodge an asylum application before the relevant Unit of the Asylum Service.

Even though the F.R.C. has been operating for more than a year, it is not fully operational in relation to its capacity. Screening and identification services are provided by detached police officers, while the administrative and functional needs of the center are appointed to civil employees. Information regarding newcomers' rights and the asylum procedure is provided by UNHCR representatives. Health and psychosocial care, as well as interpretation services are outsourced to NGOs. Interpretation covers a big range of languages. However, for a number of languages interpretation takes place through teleconference. Even though according to Law 3907/2011, third-country nationals shall be able to maintain contact with

[20] Article 35, par. 12 (2) of PD 113/2013.
[21] According to art. 28 of PD 114/2010 (abolished), when an asylum seeker was denied both the refugee status and the subsidiary protection status, he/she might be granted a residence permit if humanitarian reasons existed.

social agencies and organizations throughout the duration of the first reception procedures, **access is not allowed to NGOs**, unless they are registered by and cooperate with the F.R.S. Therefore, in the F.R.C. operating in Orestiada there is currently no access to free legal aid.

Before being transferred to the F.R.C., **a deportation decision and a decision ordering detention in view of deportation are issued** by the Greek police against the newly arrived third-country nationals. **The F.R.C. is not an open center**. The stay of the newly arrived in the F.R.C. cannot exceed 25 days. Once this period is over, non-vulnerable asylum seekers are **transferred to detention centers**, as it is rather unlikely that their asylum application be examined within this period.

Over the past 2 years there has been a noteworthy increase of the number of arrivals through the Greek-Turkish sea borders and nowadays the Eastern Aegean islands are the main entry point to the country[22]. However, **the F.R.C. in Orestiada (Greek- Turkish land borders) is the only center in operation throughout the country,** unable to address the actual first reception needs. Few-membered Mobile Units of the F.R.S. are also functioning in detention centers on the islands of Lesvos and Samos. A similar Mobile Unit was also operating for several months on the island of Chios, but is no longer in operation. Integral to these Mobile Units, is an information group, staffed by UNHCR representatives, which provides information regarding detained third-country nationals' rights and the asylum procedure. The health and psychosocial care as well as interpretation services are once again appointed to NGOs. Registration and identification is conducted both by the civil personnel of the Mobile Unit and by the police with the assistance of Frontex. Therefore, **variations between the registration of the Mobile Unit and that of the police** regarding age or nationality have been reported.

Age assessment is one of the most important tasks that first reception mechanisms shall address, as there is a great number of **undocumented unaccompanied minors** entering the country. Up to 29.10.2013 there was no procedure regarding age assessment. Minors provided with first reception services were expected to undergo medical examination when their age was disputed. The outcome of the majority of the medical exams was that the person undergoing the exam was an adult. As a consequence, a noteworthy number of

[22] Frontex, "*Annual Risk Analysis 2013*", http://frontex.europa.eu/news/annual-risk-analysis-2013-published-WuhFH2 and also UN High Commissioner for Refugees (UNHCR), "*Current Issues of Refugee Protection in Greece*", July 2013, http://www.refworld.org/docid/524432564.html

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unaccompanied minors were registered as adults and sent to detention, while no special treatment and protection was offered to them. On 29.10.2013 a Ministerial Decision regarding age assessment within the context of first reception services was set into force, setting an age assessment protocol for the first time. Even though the identification of minors has been greatly improved in comparison to the past, cases where minors have been transferred to detention centers for adults are still documented.

As a consequence of the shortage of first reception services provided by the Greek state in comparison to the actual needs, **there have been several cases of newly-arrived asylum seekers in need of international protection who have ended up detained in pre-removal centers** only to be transferred after some months of detention to the F.R.C. facilities. Moreover, cases where members of the same family had been transferred to different detention facilities, following the first reception procedures, have also been reported.

II. DETENTION [23]

Following the Court's judgment in *M.S.S. v. Belgium and Greece*, where a violation of art. 3 was found due to the detention conditions in Greece and where it was also noted that "*according to various reports by international bodies and non-governmental organizations, the systematic placement of asylum seekers in detention without informing them of the reasons for their detention is a widespread practice of the Greek authorities*[24]" and following 1186th meeting of the Committee of Ministers, where the Committee "*decided to focus their forthcoming examination not only on the asylum procedure but on the conditions of detention*", we would like to bring to your attention the following issues regarding detention:

1. Conditions of detention

[23] GCR is currently visiting, upon availability, detention facilities in police stations and detention centres for aliens in the region of Athens, the region of Thessaloniki and Fylakio (Orestiada). During 2013 – 2014 GCR has also visited, while on mission, detention centres in Korinthos, Komotini, Xanthi, Paranesti (Drama) and in the islands of Lesvos, Samos, Rhodes and Kos(For GCR's findings during its mission in Lesvos and Samos see relevant reports (in Greek), available at: http://www.gcr.gr/index.php/en/publications-media/activity-reports/item/334-lesvos-oktovrios-2013, http://www.gcr.gr/index.php/en/publications-media/activity-reports/item/338-samos-ioylios-2011)

[24] ECHR, *M.S.S. v. Belgium and Greece*, application no. 30696/09, 21.1.2011, §226

From August 2012, 5 new detention centers have been created, often referred to as "pre-removal detention centers", in Amygdaleza, Korinthos, Xanthi, Komotini and Paranesti (Drama)[25]. Despite the establishment of these centers and the fact that some old and inappropriate detention centers were shut down (eg. Venna and Aspropirgos detention centers), **detention conditions remain substandard**. This is due to the fact that: (a) third country nationals are still held for prolonged periodes of time in police stations and in old and inapropriate detention centres, and (b) detention conditions even in the new ("pre-removal") detention centers do not meet minimum standards.

In assessing detention conditions, the **length of detention** should also be taken into consideration, since it is imposed for prolonged periods of time. As per common practice, this can be up to 18 months, which further aggravates the already severe consequences of the substandard conditions on the health and well being of the detainees. "**A*s far as detention conditions are concerned, the conclusion [...] is that the police is unable to ensure conditions which respect the fundamental right of detainees, as detention facilities for aliens have been turned into sui generis prisons, given the large and escalating number of detainees held for many months***», states the Greek Ombudsman in a report, published after visiting Amigdaleza, Korinthos and Petrou Ralli detention facilities[26]. The recent findings of Médecins Sans Frontières, are also indicative with regards to detention conditions in Greece. According to M.S.F., "***migrants and asylum seekers in***

[25] DH-DD(2013)711revE, 29 octobre 2013, 1179 DH meeting (24-26 September 2013), Communication from Greece (additional information) concerning the case of M.S.S. against Belgium and Greece (Application No. 30696/09) - Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2013)711&Language=lanFrench&Ver=rev&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 , p. 53

[26] Greek Ombudsman, "*Monitoring visits in Amigdaleza, Korinthos and Attica Directorate of Aliens (Petrou Ralli): Problems and Suggestions*", 156952/2131/2013, 29.5.2013, http://www.synigoros.gr/resources/diapistwseis-stp-29-05-2013--2.pdf (in Greek), p.2; also see inter alia: Council of Europe, Parliamentary Assembly, "*Following visit to Greece, PACE delegation urges greater European solidarity in handling flows of irregular migrants*", 15.1.2013, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=8305&L=2&; Council of Europe: Parliamentary Assembly, "*Migration and asylum: mounting tensions in the Eastern Mediterranean*", 23.1.2013, http://www.refworld.org/docid/51384f992.html; UN Working Group on Arbitrary Detention, "*Statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*", 31 1.2013, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E ; 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 ; 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 ; UNHCR Greece, "*Observation on administrative detention of the Head of Office*", 28.8.2013, http://www.unhcr.gr/fileadmin/Greece/Extras/other/Detention_Observations_by_Head_of_Office_EN_2013.pdf ;

detention suffer from medical problems caused or aggravated by the substandard conditions, the length of detention and the lack of consistent or adequate medical assistance" [27].

Amongst others, concerns about detention conditions include:

- **Overcrowded, dirty or inappropriate detention facilities**
- **Lack of or limited yarding**: No yarding or outdoor activity is provided in police stations, where an signifcant number of irregular migrants and asylum seekers are detained for many months. Likewise, in detention centers the possibility for yarding is limited.
- **Limited or insufficient healthcare services**: Healthcare services are not provided in police stations. In detention centers for aliens, healthcare services are provided on a project-base system of funding and are thus systematically interrupted. In Fylakio detention center there is a complete absence of governement funded medical assistance as of May 2013. From August 2013 until March 2014 relevant needs were covered by M.S.F., approximately 3 times per week. There is currently no medical staff present in the center. In February 2014, at Paranesti pre-removal detention center, through a mission realised by GCR staff, it was discovered that no doctor or medical stuff had been present at the center for many months.
- **Lack of clothing**, provided by charities alone.
- **Bad quality and insufficient quantity of food.**
- **Lack of hygiene products and hot water.**
- **Highly problematic communication with the "outside word".**
- **No leisure activities or any other kind of recreation.**

The judicial control of detention conditions remains ineffective. Despite the amendment of the relevant legislation[28], objections against detention ('αντιρρήσεις κατά κράτησης') – **the only judicial means provided to challenge detention and to complain *inter alia* about detention conditions - remain ineffective and any control over the lawfulness of detention is highly restricted**. In October 2013, in a case concerning the detention of an unaccompanied minor, the European Court of Human Rights found a violation of article 5 par. 4 of the Convention, as the competent Greek court did not take into consideration the amendment of

[27] Médecins Sans Frontières, "*Invisible Suffering*", 1.4.2014, http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf, p. 8

[28] Art. 76, par. 4, Law 3386/2005 as it was amended by Law 3900/2010 provides that "*the competent judge* […] *also judges on the lawfulness of detention*"

the legislation[29]. Based on the cases that GCR has supported before administrative courts, it should be mentioned that **complaints concerning the conditions of detention are systematically rejected as not proven**, despite the fact that an important number of reliable reports from international organisations, the Greek Ombudsman and NGOs are brought to the attention of the courts. In addition, courts seem to understand that as a **precondition** to order the release of a detainee, including asylum seekers, the person in question must have a known and stable residence, without taking into consideration complaints about the lawfulness of detention and despite the fact that the Greek state fails to fulfil its obligation to provide reception conditions (including housing) to asylum seekers.

Finally, **most of the detainees do not have acces to free legal aid** and it is thus impossible to lodge a complaint. According to Greek legislation, free legal aid is provided solely in order to challenge return decisions, under strict limitations, but not in order to challenge detention imposed in view of removal or asylum procedures, or to submit an action for damages ('αγωγή αποζημίωσης'). The existing programs of free legal aid implemented by NGOs are extremely limited, particularly if the increasing number of detainees is taken into consideration. Even in this case, acces to detention facilities is not always guaranteed for members of NGOs. **GCR has repeatedly faced obstacles regarding access to various detention facilities**[30], despite the contrary assertions of the Greek authorities[31].

2. Access to asylum in detention

Serious delays have been noticed regarding access to the asylum procedure for detainees. On average, the *registration* of an asylum seeker's application may take from 2 to 4 months following the day the person expressed his/her will to apply for asylum up until their application is finally registered. In the meantime the asylum seeker is detained under a return or deportation order and does not enjoy any

[29] ECHR, *Housein v. Greece*, application no. 71825/11, 24.10.2013, §§ 79-84

[30] GCR in a letter dated 10.12.2013 addressed to the competent Greek authorities, has mentioned problems of access to the detention facilities of Komotini, Paranesti(Drama) and Xanthi and to detention centers of Samos and Lesvos.

[31] See DH-DD(2012)1157E, 18 December 2012, 1164 DH meeting (5-7 March 2013) - Communication from Greece concerning the case of M.S.S. against Belgium and Greece (Application No. 30696/09) - Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, , available at: https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2012)1157&Language=lanEnglish&Site=CM; Ministry of Public Order and Citizen Protection, Office of Parliamentary Control, prot. no 7017/4/16901,28.9.2013, available at: http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/8204315.pdf

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procedural guarantees regarding forcible return. In July 2013, representing a detainee who had failed several times to submit a (subsequent) asylum application while in detention, GCR filed for interim measures at the European Court of Human Rights. It has to be noted that this detainee had been identified as a victim of torture by the Medical Rehabilitation Centre for Torture Victims. The Court, applying Rule 39, ordered the authorities not to proceed with the execution of the removal decision and set a deadline of 14 days for the Government to inform the Court whether the asylum application had been registered and if not, what the authorities were planning so that the detainee would be able to file for asylum (appl. no 48425/2013).

The asylum procedure for detainees, is lengthy and may last for months, if the whole period is taken into consideration. Namely, from the moment the detainee explicitly expresses the will to submit an asylum application up to the time that a decision on his/her application is issued. For example, at present, a period of 4 months is often needed in order for the R.A.O. of Northern Evros to issue a 1st instance decision. The law provides that in order to continue to detain a third-country national who applied for asylum while he was in detention, in view of the speedy and effective examination of his/her application or for the purpose of verifying his/her personal details, a relevant opinion ('εισήγηση') from the Asylum Service is required. Nevertheless, even ***bona fide*** **asylum seekers remain in detention during the whole period of the RSD procedure**, for reasons related either to the Asylum Service or the Greek police authorities. The latter have the right, within the framework of the asylum procedure, to issue a detention decision by invoking grounds of public order.

3. Systematic, indiscriminate and prolonged detention

Detention is **systematically** imposed on irregular migrants and asylum seekers, without an individual assessment of each case. Alternatives to detention are not implemented[32]. According to the Greek Ombudsman, **detention of asylum seekers "*has become the general rule*[33]"** and is routinely applied, even

[32] UN Human Rights Council, Report of the Special Rapporteur etc., *op.cit*, § 62: "*As noted earlier, despite the fact that Law 3907/2011 provides for the detention of migrants only when less coercive measures cannot be implemented, in practice, no such measures exist and irregular migrants are systematically detained*"

[33] See Greek Ombudsman, *idem*, p.9: "*The Ombudsman notices that the continuing detention of asylum seekers, which is described in law as an exceptional procedure based on specific reasoning, has become the general rule*"; Council of Europe: Parliamentary Assembly, *Migration and asylum etc.*, idem, § 34: *"(Detention) is a matter of first resort rather than last resort. Alternatives to detention are currently not used or explored*"

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for **vulnerable** (e.g. unaccompanied minors, victims of torture, persons with disabilities) or **non-removable** (e.g. Syrian, Somali, Eritrean nationals) persons in need of international protection. As mentioned above, in most of the cases asylum seekers remain in detention during the whole RSD procedure.

Non-removable third-country nationals (i.e. coming from countries that the Greek authorities do not consider safe, and thus no return is feasible[34]), who are arrested on the grounds of their irregular status, are detained until their nationality is verified. This process is not always fast, and may last for weeks or in some cases for months, especially for detainees not arrested on the Greek borders, but in other areas of the Greek territory. Also, even after their nationality is verified, their release is not always automatic and direct. **The above procedure is not applied for non-removable persons who claim asylum while in detention**. If Syrians and other third-country nationals from countries that are not considered safe by the Greek authorities (i.e. people who *prima facie* are in need of international protection) apply for asylum while in detention, they **remain detained in most of the cases until the RSD procedure is completed**, despite the fact that their nationality is verified and their return is in any case not feasible.

Greek authorities also systematically impose administrative detention based on return/deportation decisions to third-country nationals whose removal is not feasible, including nationals of Syria and Somalia, by **invoking reasons of public order**. Despite the fact that reasons of public order cannot justify detention in view of removal[35], it must be stressed that the reasons on which decisions ordering detention are based cannot even justify, as such, the alleged threat to public order[36]. Following a GCR letter[37] regarding detention in view of return of Syrian nationals for alleged reasons of public order, the Greek Obudsman stated that "***the imposition and prolongation of detention for Syrian nationals on the grounds that they***

[34] According to the Greek authorities, at present, Syria, Eritrea, Somalia, Palestine, Myanmar and Mauritania are considered as countries which are not safe, see DH-DD (2013) 1225F, 13 Novembre 2013, 1186 réunion (3-5 décembre 2013), (DH) - Communication de la Grèce relative à l'affaire M.S.S. contre Belgique et Grèce (Requête n° 30696/09) - Informations mises à disposition en vertu de la Règle 8.2. a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables, https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2013)1225&Language=lanFrench&Site=CM, p. 6, par. 25

[35] see ECJ, Case C-357/09 PPU *Said Shamilovich Kadzoev (Huchbarov)*, §70 and ECHR, *Chahal v. United Kingdom*, application no 22414/93, 15.11.1996, §§112-113

[36] e.g. According to common practice, which is against the case law of the Greek Council of State, a third–country national is supposed to be a threat to the public order if a criminal prosecution has started against him/her or if there is a court sentence for minor offences, often related to their being refugees (e.g. illegal exit), and even if the sentence has been suspended by the court.

[37] GCR, "Detention of Syrian nationals", 1129/4.9.2013

are dangerous for public order, seems to be almost a routine[38]. In December 2013, GCR addressed a letter to the competent authorities and the Ombudsman[39], demanding the release of forty four (44) non-removable Somali and Eritrean nationals, detained in view of removal for alleged reasons of public order. These people were arrested in the context of a "Special Operation" organized by the Greek police, which posed serious questions as to the extent that these arrests consisted of practices of ethnic profiling and did not respect the principle of non discrimination, since the arrested persons were all of sub-saharian african origin.

As regards to **detention of unacompanied minors** (UAM), UAM who are wronglfully registered as adults during arrest[40] remain in detention with adults, while waiting for their age to be verified. However, no specific process is foreseen regarding the age assessment of unaccompanied minors. The process that usually takes place (i.e. X-ray examination, examination by a forensic doctor or a dentist) contains **wide margins of error**[41]. Unaccompanied minors mention that even this process is conducted with **long delays**. The improper registration of unaccompanied minors as adults may have a negative impact on their asylum claim, since throughout the RSD procedure they do not enjoy the protection of the fundamental guarantees provided for by law. The above-mentioned Ministerial Decision published in October 2013 regarding age assessment, concerns only procedures of first reception (for which the F.R.S. is in charge) and not unaccompanied minors held in detention centers.

Moreover, according to common practice, **detention is applied for prolonged periods of time, up to the maximun limit provided by law (18 months)**. Following several legislative changes, administrative detention of irregular migrants and asylum seekers is **permissible by law up to 18 months**[42]. However, the

[38] Greek Ombudsman, "Detention of aliens coming from Syria", 171931/37998/26.9.2013.
[39] GCR, "Detention of non deportable foreign nationals", 1475/12.12.2013.
[40] According to MSF, during 2013-2014more than 100 cases of minors registered as adults have been identified, see Médecins Sans Frontières, idem, p. 17
[41] Coram Children's Legal Centre, "*Happy Birthday? Disputing the age of children in the immigration system*", May 2013, http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf, p.8,
As an example we mention the following case: An unaccompanied minor in Komotini detention center was improperly registered as adult and remained in detention for almost 12 months. Despite the fact that he provided to the competent authorities a copy of his birth certificate, he was refered for X-ray examination, following which he was assessed as adult. He was released only when the Belgian authorities accepted the request for family reunification with his mother in Belgium under the provisions regarding unaccompanied minors of the Dublin Regulation
[42] With the exception of asylum seekers detained for the speedy and effective examination of their asylum application (6 months), see article 12, par. 4 PD 113/2013

lawfulness of detention should not simply be confirmed as per the authorities' respect to this 18 month limit. The automatic consecutive extension of detention for a period up to 18 months, without any individual assement, renders the lawfulness of detention highly disputable, especially as regards the proportionality, the obligation to prioritize asylum applications from persons in detention and the due diligence that authorities must demonstrate during the removal procedure.

Finally, the length of **detention is used as a tool in order to exercise pressure** against detainees. During the summer of 2013, asylum seekers being held in detention for almost 12 months were **informed that if they withdrew their asylum application, they would be released,** or otherwise held for 18 months. Detainees who withdrew their application, were actually set free with a note from the police to leave the country within 7 days[43]. In February 2014, the Advisory Opinion no. 44/2014[44] of the Legal Council of the State (L.C.S.), stated that **indefinite detention** may be imposed in case of non cooperation of the detainee to his/her return. According to this Advisory Opinion, the competent authorities should ask the detainee to consent to his/her "voluntary" return, before the maximun 18 month detention period is exhausted. Otherwise, after the 18 month detention period, the competent authorities can impose an obligation to stay in a defined location of mandatory residence, i.e. a detention center[45]. This Advisory Opinion of the L.C.S. has been adopted by a Decision of the Ministry of Public Order and Citizens Protection. Decisions idefinitely prolonging detention, have already been communicated to detainees held for 18 months. This amendement might also affect detained asylum seekers, in case the asylum procedure is not completed before the ending of the 18 months period[46].

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[43] In a letter dated 10.9.2013, addressed to the Ministry of Public Order, GCR has mentioned 31 cases of detainees that withdrew their application in this framework.

[44] see http://www.nsk.gov.gr/webnsk/gnwmodothsh.jsp?gnid=1868995 (in Greek)

[45] GCR, "*Indefinite detention: a direct infringement of national, European and international law*", 9 April 2014, , available at: http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/352-ep-aoriston-kratisi-mia-eftheia-prosvoli-tou-ethnikoy-evropaikoy-kai-diethnoys-dikaiou; UNHCR Greece, "*UNHCR asks the Greek Government to review the measure for prolonged administrative detention*", 15 April 2014, http://www.unhcr.gr/nea/artikel/2b713d4f68c7e44faa2b8917ee2ecf86/i-ypati-armosteia-z-3.html; HLHR, Press release 25.3.2014, http://www.hlhr.gr/index.php?PageLang=english

[46] This is especially the case for asylum seekers under the old asylum system (PD 114/2010), waiting for a decision of the Appeals Committees, or asylum seekers who applied for asylum after they had already been detained for many months.

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The Greek Council for Refugees welcomes the efforts of all recently istalled services to establish a better asylum system for refugees entering Greece. Nevertheless, considering the above-mentioned weaknessess of the new procedures and practices and the fact that thousands of third-country nationals are still directly affected by the old system, combined with the concerning conditions in which detainees are put through for extensive periods of time, unable to challenge their detention, it is clear that there are still significant steps to take. Full access to asylum, including access to Greek territory for persons in need of international protection, a fair and effective asylum procedure, full access to first reception services and free legal aid should be granted to all asylum seekers entering Greece, while an immediate revision of the policy of widespread, systematic and prolonged detention of asylum seekers and persons in need of international protection under deplorable conditions, is absolutely imperative.

ATHENS, 25.4.2014

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