

**SUMBISSION 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* (Appl. No 30696/09)**

In April 28th, 2014 the Greek Council for Refugees (hereinafter: “GCR”) communicated to the Committee of Ministers of the Council of Europe a paper focused on selected issues of concern related both to the asylum procedure in Greece and to immigration detention issues, within the framework of the execution of the ECtHR judgment *MSS v. Belgium and Greece* (appl. n. 30696/09) according to art. 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. The present submission means to provide to the Committee a comprehensive update on the above-mentioned issues.

GCR welcomes the fact that for the first time in Greece a Deputy Minister dealing exclusively with immigration policy issues has been appointed under the Ministry of Interior (i.e. the Deputy Minister of Immigration Policy) and supports the formally expressed intention of the new Greek government to respect the rule of law, human rights and international conventions¹. GCR also embraces the recent formal announcements of the Deputy Minister of Immigration Policy and the Deputy Minister of Public Order that the practice of indefinite detention in view of removal will be immediately terminated, that all vulnerable persons, asylum seekers and persons detained for more than six (6) months will be released and that the implementation of alternatives to detention will be examined in every case². All the above constitute undoubtedly serious steps forward, which need to be implemented without delay in order to bring the relevant national practice in line with the guarantees that the legislation in place provides for asylum seekers and third country nationals subjected to return procedures.

¹ OHCHR, Regional Office for Europe, *UN Human Rights Office welcomes Greece’s envisaged changes in migration policy*, 18.02.2015, <http://www.unhcr.org/en/latest-un-buzz/29649-un-human-rights-office-welcomes-greeces-envisaged-changes-in-migration-policy>

² Ministry of Interior, Press Release of the Deputy Ministers of immigration Policy and Public Order concerning Detention Centers, 17.02.2015, http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27&perform=view&id=50720&Itemid=1458&lang (in Greek)

Access to asylum

Access to the asylum procedure is still far from being guaranteed. Persons in need of international protection who do not manage to lodge their application are not protected from arrest, detention and return. A number of detainees that GCR staff has visited in pre-removal facilities had previously unsuccessfully tried to submit an asylum application. Up today, still not all Regional Asylum Offices (hereinafter: “RAO”) provided by law are operational throughout the country. The RAO of Attica, situated in Athens, keeps receiving the vast majority of asylum applications and does not have the capacity to correspond to the real needs. According to the Asylum Service’s estimations, reported by the UNHCR: “200 to 250 people queue every day at the RAO of Attica with the intention of registering an application for international protection. The RAO of Attica does not have the capacity to register such numbers. The RAO of Attica currently has the capacity to register around 150 applications for international protection per week, processing both applications of non-detained asylum-seekers and of those who are in pre-removal detention or in custody in correctional facilities”³. In its Observations on the current asylum system in Greece, dated December 2014, UNHCR stressed that “many persons who wish to lodge an application are unable to have their application registered within a given day. Refugee communities report that there were cases of asylum-seekers who presented themselves up to 30 times before they managed to register their asylum application”⁴. It should be noted that, according to the aforementioned Observations, taking into consideration the situation in Greece “UNHCR continues to advise Governments to refrain from returning asylum-seekers to Greece”⁵. GCR has reported a series of cases where access to the RAO of Attica had not been possible even for people belonging to vulnerable groups (e.g. single-parent families with young children), who had to present themselves repetitively in order to have their asylum claim finally lodged⁶. Moreover, a number of asylum seekers who had tried to fix an appointment for registration with the RAO of Attica via skype, a service established by the Asylum Service at the end of July 2014 (first only for French and English speakers, currently available in other languages too), have complained to GCR that their efforts were fruitless and so have witnessed GCR staff members trying to assist asylum seekers in this procedure⁷.

³ UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, December 2014, available at: <http://www.refworld.org/docid/54cb3af34.html>, p. 17

⁴ *Idem*

⁵ *Idem*, p. 37.

⁶ GCR Doc. No 3/08.01.2015, *Registration of asylum claims – Access to the procedure for vulnerable groups*, where 4 cases of single-parent families are reported.

⁷ GCR Doc. No 08/17.02.2015, *Difficulties concerning access to the Asylum Service*, where 19 such cases are reported.

As regards people wishing to file a subsequent application, not only are they obliged to face adversities related to their access to the procedure, but also find themselves before an extremely slow preliminary examination of their application, that in the vast majority of cases known to GCR has amounted to several months. As long as this preliminary stage lasts, applicants are granted no right or benefit otherwise attributed to asylum seekers. As no proper documentation is provided, the arrest of these applicants for identification reasons has in certain cases ended up in (irregular) detention.⁸

Access to the asylum procedure for detainees under removal procedures is not guaranteed either. A detainee having expressed his/her will to apply for asylum needs to wait for months in order to see his/her application registered, as the Asylum Service does not have the capacity to register all applications within a reasonable time. During this time, the potential asylum seeker remains detained in virtue of a removal order and is deprived of any procedural guarantees against his/her removal. The Greek Ombudsman reports that in Amygdaleza Detention Center, the number of detainees waiting to lodge their application is more than double compared to that of detainees who succeeded in doing so⁹, despite the fact that a special Asylum Unit is located in this Center in order to receive asylum claims from detainees.

Appeals Authority - Second instance examination

The function of the Appeals Committees of the Appeals Authority has been halted for almost three (3) months, due to the fact that the term of office of their members came to an end in June 2014 and no due steps had been taken for their immediate reformation. It is also important to point out that, although the National Committee for Human Rights (hereinafter: "NCHR"), i.e. the national independent mechanism monitoring the respect of human rights in Greece, had promptly composed the list from which the chairperson and one member of each three-member Appeals Committee is to be selected according to the law, the Ministry of Public Order and Citizen Protection appointed - amongst others - individuals not included in the aforementioned list, but deriving through an *ad hoc* distinct selection process. Furthermore, the Ministry increased the number of the Committees from eight (8) to ten (10), without informing the

⁸ Greek Ombudsman, *Delays in file transferring of subsequent application of asylum and arrest of asylum seekers*, February 2015, Doc. No 196167 (available only in Greek)

⁹ Greek Ombudsman, *Report after the monitoring visit at Amygdaleza Detention Center*, August 2014, http://www.synigoros.gr/resources/ekthesi_aftopsias_amigdaleza_2-18-2014.pdf (in Greek)



NCHR about its intention, in order to enable it to accordingly adjust the number of the respective chairpersons and members, as provided by Law 4249/2014.¹⁰

Asylum Procedure under PD 114/2010 (the “old system”)

The first instance examination and the overall management of asylum applications filed before June 2013 remains under the competence of the Hellenic Police. The examination of numerous such applications has been interrupted by virtue of acts issued by the Police Director or the General Secretary of Public Order of the Ministry of Public Order and Citizen Protection. According to these acts, the applicants are considered to have implicitly withdrawn their asylum application, based on the fact that either they did not present themselves to the appointment communicated to them for a personal interview, or they departed from the place where they resided without seeking permission or without informing the competent authorities in case they were obliged to do so, or they did not present themselves in order to have their asylum seeker’s card renewed within the next working day following its expiry. The above generate considerable skepticism, considering the problematic practice in place regarding both the communication of the invitation for interview to the asylum seeker and the renewal of the cards, as well as the difficulties in entering the Immigration Police in order to declare the alteration of their contact details. PD 114/2010 provided the applicants with the right to request the continuation of the examination of their asylum claim, stating the reasons for which in their case there is actually no implicit withdrawal of their application or appeal. In practice, the vast majority of such applications for continuation of the examination of the claim are systematically rejected by the competent police authorities. Furthermore, PD 167/2014, amending PD 114/2010, deprived asylum seekers from their right to request the continuation of the examination of their claim, where the respective interruption acts had been issued before December 1st 2014 (date of entry into force of PD 167/2014) and the person concerned had not present himself/herself before the competent authority in order to request the continuation of the examination of the claim, regardless of whether these acts had been previously dully communicated to the persons concerned or not.

(Non-)Renewal of the subsidiary protection status and of the residence permit granted on humanitarian grounds (art. 28 PD 114/2010)

¹⁰ Hellenic League for Human Rights, *Νέα επιστολή προς Nils Muiznieks, Επίτροπο Ανθρωπίνων Δικαιωμάτων, για την απουσία 2ου βαθμού εξέτασης αιτημάτων ασύλου*, September 2014, available at: <http://www.hlhr.gr/index.php?MDL=pages&SiteID=1072>

According to the Greek law, third country nationals granted with subsidiary protection status are given the right to submit an application requesting the renewal of the relevant permit thirty (30) days before the end of the period for which the status has been granted. Nevertheless, the vast majority of the such applications are rejected by virtue of unjustified decisions issued by the General Secretary of Public Order of the Ministry of Public Order and Citizen Protection. Although a right to appeal before the competent administrative authority against the decision rejecting the requested renewal is provided in these cases, rejected applicants who lodge an appeal remain deprived of identification documents. While appellants waiting for a decision on their appeal have to deal with extremely long delays, unable to exercise any rights attributed to asylum seekers (let alone to beneficiaries of international protection), they also have to face the constant danger of being arrested for identification reasons.

According to art. 28 of PD 114/2010, rejected applicants of international protection could be granted with a residence permit on humanitarian grounds, taking into account – indicatively - the objective impossibility of removal or return of the applicant to his/her country of origin or usual residence due to force majeure, such as serious health reasons of the applicant or of members of his/her family, international embargo imposed on his/her country, civil war followed by mass violations of human rights, or the fulfilment of the requirements of the *non-refoulement* clause provided in article 3 of the European Convention on Human Rights, or in article 3 of the New York Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. According to above-mentioned disposition, the holder of a permit issued on humanitarian grounds had the right to submit an application for its renewal to the authority which had issued the initial decision. However, in practice all applications for renewal of these residence permits, had been examined and systematically rejected by the General Secretary of Public Order of the Ministry of Public Order and Citizen Protection, even though, for a great number of such applications for renewal, this was not the competent decisive authority, as the relevant permits had been initially granted by the Appeals Committees. After a series of complaints lodged by GCR on this matter, the issuance of decisions in reply to applications for renewal of residence permits on humanitarian grounds was halted for over a year and numerous applicants were left in a limbo state, unable to exercise any rights. In December 2014, PD 167/2014, amended PD 114/2010 and provided that the General Secretary of Public Order of the Ministry of Public Order and Citizen Protection shall definitely rule on the application for renewal of such a permit, excluding any right to appeal against it. Following this legislative change, the majority of such applications coming to our attention have actually been rejected by the General Secretary.

What needs to be underlined in this respect, is that the majority of the people granted a protection status under PD 114/2010, are third country nationals who had lived in Greece for many years (i.e. even for a decade or more), waiting for the final examination of their asylum applications, forming the well-known “backlog” of pending cases. Therefore, the systematic rejection of status renewal applications without proper justification not only does it not guarantee the fair examination of the cases, but also puts at stake well established rights and bonds that the applicants have obviously created throughout such a long stay in Greece, bonds which were recognised in the initial decisions that granted them residence permits on humanitarian grounds (mostly based on art. 8 ECHR), but which were manifestly neglected when their holders requested to have their permits renewed.

Detention Conditions

Detention conditions remain substandard and far from being in line with the country’s legal obligations under national, European and international law. Major concerns regard overcrowding (not meeting even the 3m² per person, set as a standard by the ECtHR¹¹), dirty or inappropriate facilities, limited yarding or inappropriate yarding space, limited or insufficient healthcare services, lack of clothing, bad quality and insufficient quantity of food, lack of hygiene products, highly problematic communication with the “outside world”, no leisure activities or any other kind of recreation. The findings of the CPT delegation on their visit of April 2013¹², published in October 2014, and the latest report of the Greek Ombudsman following a visit to Amygdaleza Pre-removal Detention Center (August 2014)¹³ prove the above-mentioned statement and underline that unacceptable conditions of detention constitute a permanent problem that needs to be addressed. Moreover, the judicial control of the detention conditions still remains ineffective. A new case of the European Court of Human Rights found a violation of article 5 par. 4 of the ECHR, as the complaints concerning detention conditions had not been examined by the competent Greek Court, despite the amendment of the relevant national legislation¹⁴. The recent announcement of the new Greek government

¹¹ ECtHR, *Bygghlavshvili v. Greece*, application n. 58164/10, 25.9.2012, § 58

¹² Council of Europe: Committee for the Prevention of Torture, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013*, 16.10.2014, CPT/Inf (2014) 26, <http://www.refworld.org/docid/543f7ba54.html>

¹³ Greek Ombudsman, *Report after the monitoring visit at Amygdaleza Detention Center*, August 2014, (in Greek), http://www.synigoros.gr/resources/ekthesi_aftopsias_amigdaleza_2-18-2014.pdf

¹⁴ ECtHR, *MD v. Greece*, application n. 60622/11, 13.11.2014, §§ 62-69.

that Amygdaleza Pre-removal Detention Center will close down in 100 days¹⁵ and that action will be taken in order to put in place open reception centers instead, is undeniably a positive step forward which should be applied to all similar facilities.

Detention of Unaccompanied Minors

The Greek legislation does not prohibit the detention of unaccompanied minors (hereinafter: “UAM”). Greek authorities should revise this legislation, in order to guarantee that “*unaccompanied minors should never be detained*”, in line with Recommendation No 1900 (2010) of the Parliamentary Assembly of the Council of Europe¹⁶. According to the Greek legislation, detention of UAM is permitted until a place in a special shelter for minors is found¹⁷. Unfortunately, this procedure may last for months, taking into consideration the extremely reduced capacity of the shelters in place, compared to the vast demand. According to Law 3907/2011, a special detention facility should be used for UAM. However, the existing special detention center for UAM, situated in Amygdaleza (Attica)¹⁸ does not meet the basic standards, which is why CPT recently requested that this facility is “*no longer used for the detention of unaccompanied minors*”.¹⁹ Moreover, due to the capacity of the aforementioned special detention center, UAM are currently detained in separate wings of pre-removal detention centers (for adults), in conditions not differing from those adults are subjected to, which are *a fortiori* unsuitable for children. In August 2014, the Greek Ombudsman, following several complaints received, among others by GCR, regarding the detention of UAM in detention facilities for adults, conducted a monitoring visit to the Amygdaleza Pre-removal Detention Center, where UAM were detained. According to the report published after this visit:

- Detainees who were obviously unaccompanied minors were registered by the Hellenic Police (i.e. the authority in charge of arrest and detention) as adults.
- There was a lack of any standard age assessment procedure.
- It was not clear whether first reception services are provided to all persons arrested entering the country irregularly.

¹⁵ TVXS.GR, *Amygdaleza will close in 100 days*, 17.2.2014, <http://tvxs.gr/news/ellada/panoyisis-i-amygdaleza-tha-kleisei-se-100-imeres>

¹⁶ Council of Europe: Parliamentary Assembly, Recommendation 1900 (2010): *The detention of asylum seekers and irregular migrants in Europe*, 28 January 2010, REC 1900 (2010), <http://www.refworld.org/docid/4b6bee412.html>, § 9.1.9.

¹⁷ L. 3907/2011, art. 32; PD 113/2013, art. 12.

¹⁸ The Amygdaleza Pre-removal Detention Centre for adults should not be confused with the Amygdaleza Special Holding Facility for UAM, which is a separated detention facility in the same area.

¹⁹ Council of Europe: Committee for the Prevention of Torture [2013], *op.cit.* § 78-81

- Detention conditions did not correspond to the standards they should²⁰.
- Detaining UAM with adults is considered unacceptable in view of the State obligations arising from the Convention on the Rights of the Child.

Successively, in October 2014, the Greek Ombudsman has published a special Report concerning the age assessment procedure for unaccompanied minors²¹. This Report was a call to the Greek authorities to create a legal framework regulating the age assessment procedure²², up today inexistent. In December 2014, the Ministry of Public Order announced that a special group of doctors has been established in order to facilitate age assessment procedure for minors²³. However, this is not a legally binding framework and in any case it remains to be confirmed whether the composition of the group announced and the methods followed comply with the international standards set for age assessment²⁴, respecting the best interest of the child. It also remains to be confirmed whether the number of the staff deployed for this corresponds to the existing needs. Moreover, despite the obligation of the state to provide first reception services to all persons arriving in the country²⁵, not all UAM (i.e. one of the most vulnerable groups of newcomers), receive first reception services. GCR documented a group of 58 UAM that had arrived at the end of August – beginning of September 2014 in the island of Lesbos, where a First Reception Service Unit is in place. Only three (3) UAM of this group, were offered first reception services. All the UAM of the group were put in detention and were then transferred to Amygdaleza Pre-removal Detention Center, where they remained detained for more than three (3) months²⁶, waiting for a place in a shelter for UAM to be found²⁷. In February 2014, the competent Deputy Ministers of Immigration Policy and Public Order announced that

²⁰ Greek Ombudsman, *Report after the monitoring visit at Amygdaleza Detention Center*, August 2014, http://www.synigoros.gr/resources/ekthesi_aftopsias_amigdaleza_2-18-2014.pdf, p. 3, (in Greek).

²¹ Greek Ombudsman, *The issue of age assessment for unaccompanied minors*, 6.10.2014, http://www.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf, (in Greek).

²² The only relevant legislation dealing with the age assessment of UAM concerns the procedure applied where first reception services are provided (Ministerial Decision 92490/4.10.2013, Government Gazette Issue B', 2745/29.10.2013). As mentioned above first reception services are not provided to all persons entering the country. This procedure is not applied to UAM in detention facilities.

²³ Ministry of Public Order and Protection of Citizens, Hellenic Police Directorate, *Age Assessment*, doc n.1604/14/2116634, 10.12.2014, (in Greek).

²⁴ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, <http://www.refworld.org/docid/3ae6b3360.html>

²⁵ L. 3907/2011, art. 7.1.

²⁶ GCR visited these UAM in Amygdaleza Pre-Detention Center in November 11th and 12th, 2014.

²⁷ GCR doc no. 1056/2014, 28.11.2014, *Transfer of UAM to a special accommodation place*



all UAM will be set free and transferred to accommodation places²⁸. GCR can only welcome the aforementioned statement, but remains concerned as regards its implementation, due to the significant lack of capacity regarding the shelters for UAM currently operating, compared to the existing needs. Last but not least, it should be noted that, taking into consideration the best interest of the child, the Greek authorities are expected to legislate against immigration detention of children, while establishing a comprehensive approach on the matter of guardianship, in agreement with the Greek Ombudsman's relevant recommendations²⁹.

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²⁸ Ministry of Interiors, Press Release of the Deputy Ministers of Immigration Policy and Public Order concerning Detention Centers, 17-02-2015, http://www.astynomia.gr/index.php?option=ozo_content&lang=%27.%27&perform=view&id=50720&Itemid=1458&lang (in Greek).

²⁹ Greek Ombudsman, *The issue of age assessment for unaccompanied minors*, 6.10.2014, http://www.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf (in Greek).

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