



**Second Joint Submission  
of the International Commission of Jurists (ICJ)  
and of the European Council on Refugees and Exiles (ECRE)  
to the Committee of Ministers of the Council of Europe  
in the case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09) and related  
cases**

*February 2013*

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The International Commission of Jurists (ICJ) and the European Council on Refugees and Exiles (ECRE) are pleased to present to the Committee of Ministers of the Council of Europe this second submission under Rule 9.2 of the *Rules of Procedure* of the Committee of Ministers, in accordance with its supervisory role on execution of judgments of the European Court of Human Rights and, in particular, in the implementation of the general obligations arising from the judgment *M.S.S. v. Belgium and Greece*. The present submission will focus on the respect of these obligations by Greece and, in particular, on the developments that have occurred since our previous submission in May 2012. As this is an additional submission, reference to the previous points raised will be omitted and we invite the Committee to refer to the legal analysis in the ICJ and ECRE's first submission.

As stressed by the Court in its judgment in *M.S.S.*, under Article 46 ECHR, the High Contracting Parties are "legally bound not only to pay the interested parties the sums awarded in just satisfaction under Article 41, but also to adopt the necessary general and/or, where applicable, individual measures".<sup>1</sup> The Court also highlights that "it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in order to discharge its legal obligation under Article 46 of the Convention, provided that those means are compatible with the conclusions contained in the Court's judgment."<sup>2</sup> This submission addresses the three violations identified by the Court in respect of Greece:

- the violation of Article 3 ECHR as a result of the conditions of detention in which the applicant was held (para.234);
- the violation of Article 3 as a result of the living conditions of the applicant whilst an asylum seeker in Greece (para.263-264);
- The violation of Article 13 in conjunction with Article 3 ECHR because of the shortcomings in the asylum procedure as applied to the applicant and the risk of *refoulement* to Afghanistan without any serious examination of his asylum application and without his having had access to an effective remedy (para.321).

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<sup>1</sup> Paragraph 399.

<sup>2</sup> Paragraph 399.

## 1. Overview of the situation of migrants and asylum seekers in Greece

According to the most recent statistics provided by the EU Border Agency FRONTEX for the third quarter of 2012 (July to September 2012), around “11 072 illegal border-crossings were detected on the Eastern Mediterranean route, a 75% reduction compared to the same period in 2011, and most other third quarters. The most common nationalities included migrants from Afghanistan, Pakistan, Bangladesh, Algeria and, following dramatic recent increases, migrants from Syria, who ranked second [...]” According to FRONTEX, following the launch of the Greek operation Aspida on 30 July 2012, “detections dropped off to almost negligible levels. [...] Detections of all nationalities decreased in response to the operation probably because migrants were deterred from approaching the border in the first place. However, this deterring effect was the least pronounced in the case of Syrians as the detections of this nationality were the last to decrease and the scale of their decline was the smallest. In the week subsequent to the current reporting period, Syrians were by far the most detected nationality in this region. [...] The reduced detections were reported by the Greek authorities despite it being particularly easy to cross the River Evros as the water level was so low during the summer that it was possible for migrants to wade across the river rather than use boats [...]”<sup>3</sup>

The construction of a fence to impede illegal crossing at the Evros border with Turkey has now been completed. The vigour with which this project has been accomplished considerably exceeds that devoted to reform of the asylum service and procedures. In July 2012, the Minister for Public Order and Citizen Protection announced that “In addition to the fence, though, controls at the entry points will be absolutely intensified within the next period. We will do our best to combat the problem of illegal migration. Any effort within the country is condemned if the entry gates remain open. Our goal, thus, will be to seal them. [...] we are going to have here everything we need to close the Evros crossings. I repeat: all that it takes”<sup>4</sup>.

The real results of considerably diminishing the crossings at the Evros border are countered by the increase of arrivals of migrants and asylum seekers on the Greek islands bordering Turkey through a more perilous and life-threatening route that migrants have turned to following the closing of the Evros border.<sup>5</sup> Amnesty International has stated that “the fence is inconsistent with, and will lead to the violation of, the right to seek and enjoy asylum from persecution, since it will prevent people who are seeking international protection from reaching Greece.”<sup>6</sup>

The problem arising from this strategy of border control has also been highlighted by the Parliamentary Assembly of the Council of Europe on 25 January 2013: “While these policies have helped reduce considerably the flow of arrivals across the Evros border with Turkey, they have transferred the problem to the Greek islands and have not helped significantly in dealing with the situation of irregular migrants, asylum seekers and refugees already in Greece. The building of a greater number of detention centres has not helped significantly either.”<sup>7</sup>

The ICJ and ECRE are concerned at the developments in Greece’s return and border control policy, including the construction of the fence at the Evros border which has compelled migrants and asylum seekers to undertake perilous journeys at the risk of their life.

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<sup>3</sup> FRAN Quarterly, Issue no. 3, July-September 2012, available at [http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/Fran\\_Q3\\_2012.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q3_2012.pdf) .

<sup>4</sup> *Press Release about the visit of the Minister of Public Order & Citizen Protection Mr. Nikolaos Dendias to Evros*, 25 July 2012, available at [http://www.yptp.gr/index.php?option=ozo\\_content&perform=view&id=4305&Itemid=549&lang=EN](http://www.yptp.gr/index.php?option=ozo_content&perform=view&id=4305&Itemid=549&lang=EN)

<sup>5</sup> *Land border sealed, Greek police chief says*, EU Observer, 27 December 2012, available at <http://euobserver.com/fortress-eu/118439>

<sup>6</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 3, available at <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf>.

<sup>7</sup> Para. 7, PACE Resolution adopted on 25 January 2013 Resolution 1918 (2013) available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19467&lang=EN> .

### Legislative reforms and systemic issues

The reforms undertaken by the Greek Government in recent years have been described in detail in our previous submission. However, several points require updating or further elaboration.

In our last submission, the ICJ and ECRE noted that, on 24 May 2012 a new draft Presidential Decree was presented by the Ministry of Citizen Protection entitled "Establishment of a unified procedure of recognition of refugee status or benefit of subsidiary protection to aliens and stateless persons in line with Directive 2005/85/EC of the Council "on minimum standards on procedures in Member States for granting and withdrawing refugee status". The organisations also highlighted that the government was conducting an online public consultation with civil society on the decree.<sup>8</sup> The Greek Council for Refugees has confirmed that the Decree is currently still under consultation as it has not yet been sent to the Council of the State in order to review its legality in accordance with the formal procedure.

On 16 March 2012, a draft Law for the ratification of Optional Protocol to the UNCAT Convention was made available for comments on the website of Ministry of Justice.<sup>9</sup> The draft Law provides that the Ombudsman is responsible for the inspection of the detention centres concerning the treatment of the detainees. However, because of the elections, the final adoption of the draft Law by the Greek Parliament was postponed and so far no further actions have been undertaken in this regard.

The ICJ and ECRE consider that Greek Government should provide further information on the legislative progress for these reforms.

### Administration of resources in the asylum system

The ICJ and ECRE wish to highlight reports demonstrating serious problems in Greece's capacity to absorb EU funding to ameliorate the conditions of asylum seekers, which are both a result of long standing structural problems but also extremely heavy cuts in public sector resources as a result of the current financial crisis. The UN Special Rapporteur on the human rights of migrants has "regret[ted] the bureaucratic hurdles in the Greek government relating to the disbursement of EU funds, including the European Refugee Fund, which provides funding to NGOs who, inter alia, operate shelters for asylum seekers. The under-utilisation of these funds has created significant difficulties for NGOs who rely on these funds in order to implement their programmes."<sup>10</sup>

Responding to a public consultation on a draft Decree aiming to restructure services of the Ministry of Citizen Protection, several Greek NGOs have expressed their disagreement and concerns about the change of responsibility for administration of the European Refugee Fund from the Ministry of Labour to the Ministry of Public Order and Citizen Protection.<sup>11</sup> In a letter to Commissioner Malmström, NGOs highlighted that "the departments of the Ministry of Public Order and Citizen Protection:

- systematically bar access to the asylum procedure
- systematically impose impediments to the access of organizations to the detention centres

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<sup>8</sup> The draft Presidential Decree was submitted for an online public consultation in June 2012. The finalized draft was submitted to the President of Democracy for signature. The new Presidential Decree will enter into force, according to draft Art. 32 upon decision of the Minister of Citizen Protection and publication of the signed Draft in the Official Government Gazette. Ministry of Citizen Protection, Online Domain of Consultation, Source: <http://www.opengov.gr/yptp/?p=722>, accessed on 23/05/2012.

<sup>9</sup> See material at: <http://www.opengov.gr/ministryofjustice/?p=1897>.

<sup>10</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>.

<sup>11</sup> The draft Decree was submitted for an online public consultation in February 2013. The NGOs contributing to were AITIMA, ARSIS, MdM, Hellenic Red Cross, GCR, Ecumenical Refugee Program (KSPM) of the Church of Greece, PRASKIS, Association for the Welfare of Minors, Med In, see <http://www.opengov.gr/yptp/?p=837>.

- ostentatiously fail to act for the massive racist attacks against refugees and immigrants
- create a climate of impunity protecting their functionaries who violate human rights but also protecting perpetrators of racist attacks against asylum seekers and refugees".<sup>12</sup>

## Conclusions

The ICJ and ECRE continue to maintain that the approved reforms are a welcome and serious attempt to address the human rights problems in the system. However, the reality is that reforms remain still largely incomplete, weakly implemented in practice, and have been hampered by lack of resources and proper administration of available funds. Greece undoubtedly faces challenges in managing the continuing arrivals of migrants, in a time of financial crisis. The ICJ and ECRE recall that, under Article 3 ECHR, the prohibitions on torture and other cruel, inhuman or degrading treatment or punishment are absolute, and that such treatment cannot be justified on the basis of policy imperatives, or economic constraints.<sup>13</sup> This point is even more compelling since the Greek Government does not manage to absorb the EU funding dedicated to resolve the system's flaws. The ICJ and ECRE consider that, following the judgment in *M.S.S.*, the Greek government has not yet taken sufficient measures to ensure compliance with Article 3 ECHR and Article 13 ECHR.

## **2. Response to the violations of Article 3 resulting from the conditions of detention**

*In M.S.S., the European Court of Human Rights found that detention conditions in which the applicant was held amounted to degrading treatment in violation of Article 3 ECHR (paragraphs 230-234). In finding this violation, the Court took into account:*

- A. *The systematic placement of asylum seekers in detention without informing them of the reasons for their detention, as the applicant had alleged had occurred in his case (para.225-226)*
- B. *Accounts of brutality and insults by the police consistent with the applicant's allegations (para.227)*
- C. *Living conditions in detention centres: overcrowding, lack of space and ventilation, insufficient hygienic conditions. The detention conditions at Eleftherios Venizelos Airport were characterized by the Court as unacceptable.*

### *i) Conditions of detention of asylum seekers*

#### a) Detention policy

Already in the document communicated by the Greek Government to the Committee of Ministers of 12 July 2011 it was apparent that most of the new centres to be built were in fact detention centres.<sup>14</sup> Of the 14 centres foreseen, 10 of them were clearly referred to as "detention centres" or "*centres de rétention*". This suggests that the cornerstone of Greece's migration policy still remains detention instead of reception. This impression has been confirmed by the Greek Refugee Council which reports the priority given to the construction of detention centres.<sup>15</sup>

A PACE subcommittee held, after a recent visit to Greece, that "[d]etention is applied systematically without an individual assessment in each case. It is a matter of first resort rather than last resort. Alternatives to detention are currently not used or explored."<sup>16</sup> As a result, the Parliamentary Assembly of the Council of Europe held in its resolution 1918(2013) that Greece

<sup>12</sup> See the letter at [http://www.aitima.gr/aitima\\_files/Letter\\_to\\_Malmstrom\\_for\\_ERF\\_EN.pdf](http://www.aitima.gr/aitima_files/Letter_to_Malmstrom_for_ERF_EN.pdf) .

<sup>13</sup> See in particular paragraph 223, *M.S.S. v Belgium and Greece* (Application no. 30696/09).

<sup>14</sup> Memorandum DH-DD(2011)567F, 3 August 2011, pp. 9-10.

<sup>15</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>16</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, para. 34, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN>.

has "adopted a policy of systematic detention of irregular migrants and asylum seekers."<sup>17</sup>

During its visit to Greece in January 2013, the UN Working Group on Arbitrary Detention recalled that "administrative detention as such of migrants in an irregular situation is not in contravention of international human rights instruments. However, if there has to be administrative detention, the principle of proportionality requires it to be the last resort, permissible only for the shortest period of time and that alternatives to detention should be sought whenever possible. The practice of the Working Group demonstrates that non-application of alternatives to detention, lack of effective judicial review, as well as excessive length of such detention may render the detention of an individual arbitrary."<sup>18</sup>

Amnesty International has also stressed in its December 2012 report<sup>19</sup> that detention is used as a matter of course and not as a last resort. The Greek Council for Refugees has highlighted that, "[i]n practice, being an irregular immigrant in Greece constitutes per se a sufficient basis for apprehension and subsequent detention pending deportation. Although detention is foreseen by law as a measure of last resort, in most of the cases the competent authorities decide automatically for the detention of an irregular migrant pending deportation. Decisions are issued with standardized justification and without taking into consideration other factors, such as the situation in the country of origin. Detainees do not have access to information as concerns their status, rights in detention and possibilities to challenge their expulsion and deportation."<sup>20</sup>

Interviews conducted by ECRE with the Greek Council for Refugees have revealed that there is a practice of detention of people even when the purpose of detention, whether it is deportation or acceleration in asylum procedures examination, cannot be achieved. The interviews also revealed concerns that that detention is used as a mechanism of sanction.<sup>21</sup>

#### b) Operation Xenios Zeus<sup>22</sup>

As ECRE has reported: "According to a report published on 4 September by the Hellenic Police, up until then 16,836 foreign nationals have been brought in for questioning of which 2,144 have been arrested and detained for not fulfilling the legal requirements to reside in the country. Reportedly, a large number of those arrested en masse and brought in for questioning are of Asian, African and North African origin. This discriminatory practice indicates that four out of five persons intercepted have been subjected to this treatment arbitrarily and based on their perceived ethnicity. Those found without papers are placed in administrative detention, in overcrowded detention facilities either at the Attica Aliens Police Directorate, or other temporary detention facilities in Athens or northern Greece."<sup>23</sup> This new policy of mass arrests and detention in Athens and other cities, together with stronger patrolling at the Evros border, is known as "Operation Xenios Zeus".

The UN Special Rapporteur on the human rights of migrants, François Crépeau, reported, after a nine day visit from 25 November to 3 December 2012, that he deeply regretted "the Greek Government's new policy of systematically detaining everyone they detect irregularly entering

<sup>17</sup> Para. 6, PACE Resolution adopted on 25 January 2013 Resolution 1918 (2013), available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19467&lang=EN>.

<sup>18</sup> Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013), 31 January 2013, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>19</sup> Greece: the end of the road for refugees, asylum-seekers and migrants, Amnesty International, Index: EUR 25/011/2012, December 2012, available at <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf>.

<sup>20</sup> Greek Council for Refugees, Campaign for the access to asylum in the Attica area, para. 85. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>21</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>22</sup> Greece to deport undocumented migrants, EU Observer, 7 August 2012, available at <http://euobserver.com/justice/117178>.

<sup>23</sup> Letter to Commissioner Malmström regarding Xenios Zeus operation in Greece, ECRE, 14 September 2012, available at <http://www.ecre.org/component/downloads/downloads/648.html>. See also, *In crisis, Greece rounds up immigrants*, The Washington Times, August 2012, available at <http://www.washingtontimes.com/news/2012/aug/26/in-crisis-greece-rounds-up-immigrants/>; *Xenios Zeus detentions approached 66,000 in 2012*, Ekathimerini, 1 January 2013 available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_01/01/2013\\_476553](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_01/01/2013_476553).

the Greek territory, including unaccompanied children and families. I also regret the “sweep operations” in the context of operation “Xenios Zeus”, which have led to widespread detention of migrants in different parts of the country, many of whom have lived and worked in Greece for years.”<sup>24</sup>

The Parliamentary Assembly of the Council of Europe has also criticised the “policy of systematic detention of all irregular migrants” and the “widespread detention of irregular migrants” in Greek territory in August 2012 during operation Xenios Zeus, highlighting that of the almost 65,800 foreign nationals arrested between August and December 2012, only 4,100 were found to be in an irregular situation.<sup>25</sup>

Amnesty International has stressed the danger of Operation Xenios Zeus coupled with the serious inefficiency in registering asylum application at Petrou Ralli (see below) which generates high risks of arrest, detention and deportation of asylum seekers.<sup>26</sup>

The ICJ and ECRE express their serious concern at the adoption of an automatic detention policy by Greece. In their opinion, this policy runs contrary to the purpose of Article 5.1.f ECHR to avoid unauthorised entry or assure effective deportation. Furthermore, the two organisations would like to stress that, in light of the serious deficiencies in detention conditions for migrants (see, below) and of the discriminatory rationale of mass arrests in Operation Xenios Zeus, this policy of automatic detention may give rise to situations of violation of Article 3 ECHR.

### c) Length of detention

Article 13.4 of the Presidential Decree 114/2010 has been recently amended by Presidential Decree 116/2012 in order to extend the maximum period of detention for asylum seekers by twelve months, thereby permitting a total duration of detention of an asylum seeker for up to 18 months.<sup>27</sup> According to the article 13 PD 114/2010 the maximum duration of the asylum seekers’ detention is up to 90 days and according to the same article: *“If the applicant has been detained earlier in view of an administrative deportation order, the total detention time can not exceed 180 days”*. The new amendment, brought about in the new Presidential Decree 116/2012, published in the Greek Government Gazette on 19 October 2012,<sup>28</sup> established that this detention can be further prolonged by up to 12 months, by a Police administrative decision. The Greek Council for Refugees has applied to the Council of the State to revoke this Presidential decree on the grounds that it breaches international and EU law. At the time of writing, the litigation is still pending before the Court.

In addition, a new legislative provision was introduced in 2012 whereby the health status of a person can be used as a ground for detention of migrants and asylum seekers. This was issued on the basis of a decision of the Ministry of Health and Social Solidarity (G.I. 39a/02-04-2012) that includes obligatory control of migrants and asylum seekers for a number of diseases such as HIV and which is used as a de facto ground for detention by the Greek authorities. An application for revocation of this Ministerial decision has been lodged by the Greek Council for Refugees and ACT-UP<sup>29</sup> on the grounds that it breaches international and EU law.

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<sup>24</sup> Preliminary findings of the UN Special Rapporteur on the human rights of migrants, 3 December 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>25</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN>, paras 27-28.

<sup>26</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 5, available at <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf>.

<sup>27</sup> PD 116/2012 – in Greek – please see: [http://www.unhcr.gr/no\\_cache/prostasia/nomiki-prostasia/o-nomos-stin-ellada/nomothesia-gia-to-asylo.html?L=0%252F&cid=799&did=1536&sechash=c77ffb52](http://www.unhcr.gr/no_cache/prostasia/nomiki-prostasia/o-nomos-stin-ellada/nomothesia-gia-to-asylo.html?L=0%252F&cid=799&did=1536&sechash=c77ffb52). The eighteen month period has been confirmed also by ECRE Interview with Spyros Rizakos (AITIMA), 12 February 2013.

<sup>28</sup> See at <http://www.nomotelia.gr/photos/File/201a-12.pdf>

<sup>29</sup> AIDS Coalition to Unleash Power – an international advocacy group for people with AIDS.

The UN Working Group on Arbitrary Detention has recently expressed concern “that according to domestic law, irregular migrants can be detained for a period of up to 18 months. It also note[d] with particular concern that the length of the maximum period of detention for asylum seekers awaiting a decision on their application was recently also extended for up to 18 months. [...] The Working Group is of the view that the imprisonment of a migrant or an asylum seeker for up to 18 months, in conditions that are sometimes found to be even worse than in the regular prisons, could be considered as a punishment imposed on a person who has not committed any crime. [...] In addition, through interviews with detainees, the Working Group found that the prolonged period of detention was often perceived by potential asylum seekers as a deterrent in order to discourage them from submitting their applications.”<sup>30</sup>

The UN Special Rapporteur on the human rights of migrants has regretted “the excessive duration of detention of migrants, which may be extended up to 18 months: this duration has often been justified as a deterrence mechanism for other potential migrants, whether or not a durable solution can be found in each individual case”.<sup>31</sup> The extension to 18 months of the total length of detention for asylum seekers was also criticised by UNHCR.<sup>32</sup>

The report of the Greek Government of 23 November 2012 suggests that the average period of detention for nationals of other countries with diplomatic cooperation on return (such as Georgia, Nigeria and Dominican Republic) “has increased lately (*holding facilities running on full capacity*)”.<sup>33</sup> Furthermore, it states that “for the other detainees, the average length of detention depends on the entry flow of illegal migrants and the capacity of the holding facilities”.<sup>34</sup> This report highlights that, despite a constant and considerable amount of migrants arriving at Greek borders every year, a plan and a precise idea of how many places are needed is not yet in place.

The ICJ and ECRE are alarmed at these measures to extend detention of migrants, considering that, despite numerous measures taken to improve the infrastructure, conditions in many migrant detention facilities still appear to remain degrading in breach of Article 3 ECHR. Furthermore, it is ICJ and ECRE’s understanding that no detention lasting 18 months can be justified under Article 5.1.f ECHR as such a long period of detention cannot be considered reasonable for avoiding unauthorised entry nor for allowing the undertaking of an effective return.

#### d) The Athens airport detention centre

The majority of States have stopped returns to Greece under the Dublin II Regulation in light of the *M.S.S. v Belgium and Greece* ruling. However, evidence shows that some Member States on an individual basis are still returning asylum seekers back to Greece. According to the NGO AITIMA in 2011 a total of 55 asylum seekers were transferred to Greece under the Dublin II Regulation and from January to September 2012 there were 38 transfers to Greece from other Member States.<sup>35</sup>

The airport of Athens is the main receiving point of Dublin II returnees and, as such, plays an important role in the assessment of the implementation of *M.S.S. v Belgium and Greece*.

While the Greek Council for Refugees has not witnessed significant improvements in the

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<sup>30</sup> Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013), 31 January 2013, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>31</sup> Preliminary findings of the UN Special Rapporteur on the human rights of migrants, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>32</sup> See, press release of UNHCR Greece (in Greek) at <http://www.unhcr.gr/nea/deltia-typoy/artikel/b007e6faf3f8f128db0b7075b5aafe33/ypati-armosteia-i-k.html>

<sup>33</sup> Memorandum DH-DD(2012)1157, 18 December 2012.

<sup>34</sup> Memorandum DH-DD(2012)1157, 18 December 2012.

<sup>35</sup> See European Network for Technical Cooperation on the Application of the Dublin II Regulation, *The Dublin II Regulation. Lives on Hold. Comparative Report* and the European Network for Technical Cooperation national report on Greece authored by the NGO AITIMA available at [www.dublin-project.eu](http://www.dublin-project.eu)

detention centre of Athens airport,<sup>36</sup> the NGO AITIMA has reported that "asylum seekers transferred to Greece from another Member State who apply for asylum in Greece for the first time are detained for the time needed for their fingerprints to be processed and checked. [...] the time of detention which was from one to four days in the past, has currently decreased to a couple of hours, but if transfers from other Member States resume, then the time of detention will increase again".<sup>37</sup>

The only national legal provisions which contemplate detention of asylum seekers are Articles 13(2) and (3) of Presidential Decree 114. However, as highlighted by the NGO AITIMA, these provisions are not applicable to asylum seekers returned to Greece under the Dublin II Regulation. Such provisions apply to asylum seekers arriving in groups through the border and not to those returned under Dublin II. AITIMA reports that "the Greek authorities do not apply the procedure prescribed in Article 13(3), i.e. they do not issue the relevant detention order in cases of asylum seekers transferred to Greece under the Dublin II Regulation. When asked about this detention the Police say that the asylum seekers are not in detention, but under surveillance."<sup>38</sup>

The ICJ and ECRE are concerned at the fact that the situation at Athens airport seems now to be acceptable only in light of the halt to Dublin returns to Greece caused by the M.S.S. judgment and the N.S. ruling of the Court of Justice of the European Union. This is untenable, as in order to implement the M.S.S. judgment, Greece should aim at ameliorating these conditions in light of pre-M.S.S. transfers.

The ICJ and ECRE are also concerned by the lack of legal basis for the detention of Dublin II returnees, which makes such a deprivation of liberty at variance with the principle of legality and in violation of Article 5.1 ECHR.

#### e) The construction of new centres

In our previous submission to this Committee, the ICJ and ECRE reported that the Greek Government had announced the building of 30 new detention centres for undocumented migrants in the two years to follow.<sup>39</sup> The first of these centres, in Amygdaleza, northwest of Athens, was opened on 29 April 2012 with a reported capacity for 1,200 persons, with European Commission funding.<sup>40</sup> Despite the fact that in, its report of November 2012, the Greek Government holds that the UNHCR "characterised the facilities [of the Amygdaleza Detention Centre] exemplary as regards accommodation and security",<sup>41</sup> the ICJ and ECRE would stress that, in reality, the UNHCR has expressed reservations regarding the centre. UNHCR's only positive assessment of the centre was that it was in better condition than others in Greece, a comparative estimate that does not qualify as "exemplary".<sup>42</sup>

A delegation of Green MEPs visited the centre of Amygdaleza on 10 November 2012. In a letter to the Minister of Citizens Protection reporting on their visit, the delegation found the "centre to be substandard and the conditions unacceptable for an EU member state."<sup>43</sup> Furthermore, they

<sup>36</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>37</sup> European Network for Technical Cooperation on the application of the Dublin II Regulation, National Report on Greece p. 39 available at [www.dublin-project.eu](http://www.dublin-project.eu).

<sup>38</sup> European Network for Technical Cooperation on the application of the Dublin II Regulation, National Report on Greece pp. 39-40 available at [www.dublin-project.eu](http://www.dublin-project.eu).

<sup>39</sup> See, EKathimerini.com, Greek Newspaper, Minister: *EC to fund Centre for Migrants*, published on 25/04/2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_25/04/2012\\_439336](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_25/04/2012_439336), accessed on 27/04/2012. [source document in English]; I Kathimerini, KKE Chief slams anti-immigrant backlash, 23/04/2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_23/04/2012\\_438868](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_23/04/2012_438868), accessed on 30/04/2012. [source document in English]

<sup>40</sup> *Answer given by Ms Malmström on behalf of the Commission*, Parliamentary questions, 30 August 2012, available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-006104&language=FR>

<sup>41</sup> Memorandum DH-DD(2012)1157, 18 December 2012.

<sup>42</sup> See, press release of UNHCR Greece (in Greek) at <http://www.unhcr.gr/nea/artikel/e85872903d1e467c5bbc0251d9071f54/epifylaxeis-tis-ypa.html>

<sup>43</sup> See the letter at <http://www.statewatch.org/news/2012/dec/ep-greens-greece-letter.pdf>. Video of the visit is available here:

"heard complaints related to insufficient access to a lawyer, insufficient knowledge of own case and insecurity about future, insufficient access to medical help, food and washing opportunities, and lack of contact with family and outside world. [They] had the impression that the full range of asylum and deportation proceedings in Greece is subject to a serious lack of procedural safeguards."<sup>44</sup>

It appears that, to date, five new detention centres have been opened.<sup>45</sup>

#### f) Conditions of detention

On 31 January 2013, the UN Working Group on Arbitrary Detention reported, after its ten day visit to Greece (21-31 January 2013), that they "often found pre-trial and convicted detainees together in one cell, or administrative detainees, including irregular migrants and asylum seekers, together with criminal detainees". They reported of "[d]etainees [...] being held for months in police holding cells and border guard stations, although these facilities were designed for a maximum stay of 24 hours."<sup>46</sup> It has reported that "[i]n most detention facilities visited by the Working Group, the conditions fall far below international human rights standards, including in terms of severe overcrowding."<sup>47</sup> It also found that "these detainees had little or no information about why they were detained, and how long they would remain in detention."<sup>48</sup>

The UN Special Rapporteur on the human rights of migrants, in his recent visit to Greece in December 2012 reported the following: "In general, the detainees had little or no information about why they were detained, and how long they would remain in detention. This also applied to some of those who had engaged lawyers, and they complained that the lawyers simply take their money and do not follow up on their cases. [...] The medical services offered in some of the facilities by KEELPNO (Hellenic Centre for Disease Control and Prevention) were highly insufficient. Most of the detention facilities I visited lacked heating and hot water, and the detainees complained about insufficient amounts and poor quality of food, lack of soap and other hygiene products, as well as insufficient clothing and blankets. Of all the detention facilities I visited, Korinthos was the only which allowed the migrants to keep their mobile phones. In the other facilities, access to a phone was not guaranteed for those who did not have money to pay for the calls themselves."<sup>49</sup>

The Parliamentary Assembly of the Council of Europe, in its resolution 1918(2013) of 25 January 2013 following a visit to Greece, reported that there were "indications from the Greek authorities [...] that sub-standard detention centres will be closed in the course of 2013 and that women and children will no longer be detained, as soon as open reception facilities are established."<sup>50</sup> In the report annexed to the resolution, the PACE reported from a recent mission of its sub-committee that, "[n]otwithstanding the recent efforts of the new Greek Government to improve detention

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<http://www.youtube.com/watch?v=NgonnC2xrFU> .

<sup>44</sup> Ibidem.

<sup>45</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>46</sup> *Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*, 31 January 2013, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>47</sup> *Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*, 31 January 2013, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>48</sup> *Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*, 31 January 2013, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>49</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>. The UN Special Rapporteur visited the Tychoero Border Police Station in Evros, Venna and Komotini detention centres in the neighbouring Rodopi regional unit, the central police station in Mytilini on Lesbos, the central police station in Patras, the coast guard's detention facility at the port in Patras, Korinthos detention centre, Amygdaleza detention centre, Amygdaleza detention centre for minors, Agios Panteleimonas police station and Petrou Ralli detention centre.

<sup>50</sup> Para 4, PACE Resolution adopted on 25 January 2013 Resolution 1918 (2013) available at

<http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19467&lang=EN> .

conditions including by renovating facilities and building new centres such as the Amygdaleza centre, sub-standard conditions were confirmed by a visit of an ad hoc sub-committee of the Parliamentary Assembly to Greece. By way of example, in the Fylakio detention centre up to 72 irregular migrants were held together with asylum seekers and unaccompanied minors in a 100m<sup>2</sup> cell without light, heating or warm water. In the Petrou Ralli police station in Athens, the delegation met with a number of desperate women who were detained in substandard conditions without proper access to sanitation. All complained about lack of adequate clothing, lack of contact with the outside world and inadequate medical services.”<sup>51</sup>

In light of the increased arrivals to the Greek islands, it is worth referring also to the conditions of detention there. In September 2012, the Greek Council for Refugees visited the detention centres in Leros, Agathonissi and Kos. They reported that, on the inhabited island of Farmakonissi, there were 40 foreign nationals “located under unknown conditions”, in a situation of *de facto* detention where they were “guarded by military officers and free movement [was] not allowed”.<sup>52</sup> They had to remain there for an unidentified period of time until places became available in the detention centre of centre of Leros Police Department.<sup>53</sup>

In these islands, the Greek Council for Refugees noted the unavailability of interpreters, leading to mistakes in registration, including for minors, and lack of information which led to stress and anxiety. It was reported that “the judgment on lifting the segment of detention of the administrative act on deportation seems to be determined by practical and random factors, such as the possibility to detain them longer in the country’s various detention centres, seemingly overlooking vulnerability criteria [...]”.<sup>54</sup> The conditions of detention in these centres, addressed in detail in the report of the Greek Council for Refugees, appear to risk violation of Article 3 ECHR due to the material conditions of detention, the lack of information and of possibilities to contact families and relatives.<sup>55</sup>

In the island of Lesbos, the Greek Council for Refugees (GCR) found that, although information booklets were distributed, detainees had vague knowledge of their rights and that the detention decisions were served to them in Greek. Furthermore there were no interpreters for Arabic and Farsi.<sup>56</sup> The mission uncovered lack of hygienic conditions and insufficiency of food, sometimes covered by police officers and volunteers.<sup>57</sup> In Symi (Rhodes), the vast majority of the detainees were held in a yard which GCR found to be “a completely inappropriate area, open and exposed to all kinds of weather phenomena, including open to the view and comments by passers-by and citizens seeking the service of the PD”.<sup>58</sup> There where no shower or dining rooms and no mattresses, as detainees had to sleep on cardboard box mats.<sup>59</sup> The mission also found 8 people detained in an indoor 5 square meters detention cell “manifestly humid, frowsty and [...] not sufficiently ventilated”.<sup>60</sup> They also recorded lack of information on orders, procedures and their

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<sup>51</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, para. 30, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN> .

<sup>52</sup> Report of GCR Mission to Leros, Agathonissi and Kos, September 2012, pp. 1-2. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Leros\\_-\\_Agath\\_-\\_Kws\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Leros_-_Agath_-_Kws_Sep_2012_en.pdf)

<sup>53</sup> Report of GCR Mission to Leros, Agathonissi and Kos, September 2012, p. 2. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Leros\\_-\\_Agath\\_-\\_Kws\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Leros_-_Agath_-_Kws_Sep_2012_en.pdf)

<sup>54</sup> Report of GCR Mission to Leros, Agathonissi and Kos, September 2012, p. 3. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Leros\\_-\\_Agath\\_-\\_Kws\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Leros_-_Agath_-_Kws_Sep_2012_en.pdf)

<sup>55</sup> See Report of GCR Mission to Leros, Agathonissi and Kos, September 2012. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Leros\\_-\\_Agath\\_-\\_Kws\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Leros_-_Agath_-_Kws_Sep_2012_en.pdf)

<sup>56</sup> Report of GCR mission to Lesbos, November 2012, p. 2. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Lesvos\\_November\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Lesvos_November_2012_en.pdf)

<sup>57</sup> Report of GCR mission to Lesbos, November 2012, p. 4. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Lesvos\\_November\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Lesvos_November_2012_en.pdf)

<sup>58</sup> Report of GCR mission to Symi, September 2012, p. 2. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_Mission\\_Simi\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_Mission_Simi_Sep_2012_en.pdf)

<sup>59</sup> Report of GCR mission to Symi, September 2012, p. 2. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_Mission\\_Simi\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_Mission_Simi_Sep_2012_en.pdf)

<sup>60</sup> Report of GCR mission to Symi, September 2012, p. 2, Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_Mission\\_Simi\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_Mission_Simi_Sep_2012_en.pdf)

rights.<sup>61</sup>

In the centres of Komotini and Xanthi, near the Evros region, the Greek Council for Refugees found that “interpreters are not provided [and that], as a result, communication ranges from impossible to particularly difficult. Basic communication is carried out with the help of detainees that speak Greek”.<sup>62</sup> The detainees complained about the quality of the food and it was reported that “police often resort to violence as means of repression”.<sup>63</sup> While assessing that the Xanthi centre was better organised if compared with the one in Komotini, the Greek Council for Refugees had to conclude that “as regards detainees’ rights in both detention centres, the situation prevailing confirms UNHCR’s statement made years ago that Greece is now in a humanitarian crisis”.<sup>64</sup>

The European Commission in its evaluation of Greece’s National Action Plan on Asylum Reform and Migration Management in October 2012 reported that “[o]f particular concern is the fact that reception conditions in the detention centres for migrants, including asylum seekers, in the areas of Evros and the Aegean islands are substandard; the situation is particularly problematic in the islands where the police is clearly not equipped to provide solutions.”<sup>65</sup>

Amnesty International reported in its December 2012 report that “In July and August 2012, Amnesty International visited various detention facilities in Athens, and the Komotini police academy, which was being used to hold people for immigration purposes following the sweep operations against irregular migrants conducted in August. In the Elliniko detention facilities, conditions amounted to inhuman and degrading treatment. In both the New and Old Elliniko detention facilities, bedding was old and dirty, toilets were filthy and detainees had access to poor quality drinking water. Those held at Old Elliniko had no access to outside exercise and no natural light reached their cells.”<sup>66</sup>

The report transmitted to the Committee of Ministers by the Greek Government and dated 23 November 2012 stresses that contracts have been signed with cleaning companies, physicians, psychologists, interpreters and social workers. However the same report highlights that the contracts are short term ones of six months or even one to three months, which makes it difficult to assure an appropriate and stable service.<sup>67</sup>

The ICJ and ECRE would like to draw the Committee’s attention to a judgment delivered by a Greek criminal court on 10 February 2013 in which the judge acquitted a group of migrants of the offence of absconding and fleeing from a detention centre in light of the fact that their conditions of detention were inhuman and degrading in breach of Article 3 ECHR.<sup>68</sup>

The ICJ and ECRE remain of the view that, despite efforts to refurbish certain centres, the conditions that persist in Greek detention centres have not been sufficiently improved, since the *M.S.S.* judgment, and since their last report in May 2012, to ensure compliance with the prohibition on inhuman or degrading treatment under Article 3 ECHR. Furthermore, the ICJ and ECRE are particularly concerned at conditions in detention centres in Greek islands bordering

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<sup>61</sup> Report of GCR mission to Symi, September 2012, p. 3-4. Available at

[http://www.gcr.gr/sites/default/files/image/GCR\\_Mission\\_Simi\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_Mission_Simi_Sep_2012_en.pdf)

<sup>62</sup> Report of GCR mission to Komotini and Xanthi, September 2012, p. 1. Available at

[http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Komotini\\_-\\_Ksanthi\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Komotini_-_Ksanthi_2012_en.pdf)

<sup>63</sup> Report of GCR mission to Komotini and Xanthi, September 2012, p. 2. Available at

[http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Komotini\\_-\\_Ksanthi\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Komotini_-_Ksanthi_2012_en.pdf)

<sup>64</sup> Report of GCR mission to Komotini and Xanthi, September 2012, p. 4. Available at

[http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Komotini\\_-\\_Ksanthi\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Komotini_-_Ksanthi_2012_en.pdf)

<sup>65</sup> *Note on Greece’s National Action Plan on Asylum Reform and Migration Management*, EU Doc 15358/12, 23 October 2012, p. 2, available at <http://www.statewatch.org/news/2012/oct/eu-com-greece-migration-15358-12.pdf>.

<sup>66</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, pp. 8-9

<sup>67</sup> See, Memorandum DH-DD(2012)1157, 18 December 2012.

<sup>68</sup> Criminal Court of Igoumenitsa, 2 October 2012, 682/2012 (584676), decision available only in Greek at

<http://revdh.files.wordpress.com/2013/01/tribunal-correctionnel-digoumenitsa-2-octobre-2012.pdf>. See a summary in English at <http://www.statewatch.org/news/2013/jan/08-greece-italy.htm>

Turkey.

The ICJ and ECRE note that severe overcrowding can amount to cruel, inhuman or degrading treatment either in itself<sup>69</sup> or in conjunction with other poor conditions of detention.<sup>70</sup> The cumulative effect of a number of poor conditions may lead to violation of this prohibition.<sup>71</sup> The European Court of Human Rights has found on several occasions, including in the judgment in *M.S.S.*, that the conditions of detention of third country nationals in Greece violated the prohibition on inhuman or degrading treatment in Article 3 ECHR.<sup>72</sup> It should also be noted that the European Court of Human Rights in *M.S.S.* found that even a short period of detention was unjustifiable in the case at issue, emphasising the fact that the applicant was an asylum seeker and therefore “particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously.”<sup>73</sup>

*ii) Conditions of detention of unaccompanied minors*

The UN Working Group on Arbitrary Detention found, after its January visit to Greece, that unaccompanied minors “are often not properly registered and are systematically detained”.<sup>74</sup> It “note[d] with concern that the current national legislation does not provide for a statutory prohibition of the detention of these minors. In the course of its visit, the Working Group found that, due to the limited capacity of existing reception facilities, unaccompanied minors often remain in detention for prolonged periods of time, awaiting an opening in such facilities.”<sup>75</sup>

The UN Special Rapporteur on the human rights of migrants found that “unaccompanied or separated migrant children are often released from detention, without any particular status, and without the appointment of a guardian, even though the public prosecutor is supposed to appoint guardians to all unaccompanied children. [He] met migrant children who lived in abandoned buildings or under highway overpasses, without any proper status and without any institutional support apart from the action of some civil society organisations.”<sup>76</sup>

A delegation of Green MEPs which visited the Amygdaleza centre on November 2012 found “at Amygdaleza detention centre [...] detained unaccompanied minors. [...] [They] were shocked by the easy admittance of the continuing practice of deportation of unaccompanied minors.”<sup>77</sup>

Amnesty International reported that “[t]he Amygdaleza immigration detention centre for unaccompanied male children was holding children in substandard conditions for up to three months in August 2012 because of the insufficient number of places in reception centres. Amnesty International visited centres in Athens and Evros where children were being detained with adults and/or were registered as adults”.<sup>78</sup>

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<sup>69</sup> *Kantjyrev v. Russia*, ECtHR, Application No. 37213/02, Judgment of 21 June 2007, paras. 50-51; *Labzov v. Russia*, ECtHR, Application No. 62208/00, Judgment of 16 June 2005, para. 44.

<sup>70</sup> Theo Van Boven, UN Special Rapporteur on Torture, *Annual Report to the Commission on Human Rights*, UN Doc. E/CN.4/2004/56, 23 December 2003, para. 49; *Belevitskiy v. Russia*, ECtHR, Application No. 72967/01, Judgment of 1 March 2007, paras. 73-79.

<sup>71</sup> *Dougoz v. Greece*, ECtHR, Application No. 40907/98, Judgment of 6 March 2001; *Z.N.S. v. Turkey*, ECtHR, Application No. 21896/08, Judgment of 19 January 2010.

<sup>72</sup> *M.S.S. v Belgium and Greece*, op cit, para. 231-234; *R.U. v Greece*, ECtHR, Application No.2237/08 of June 7, 2011, para. 63-64; *S.D. v Greece*, ECtHR, Application No. 53541/07 of June 11, 2009, para. 49-54.

<sup>73</sup> *M.S.S. v Belgium and Greece*, op cit, para. 232.

<sup>74</sup> *Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*, 31 January 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>75</sup> *Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*, 31 January 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12962&LangID=E>

<sup>76</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>77</sup> See, the letter at <http://www.statewatch.org/news/2012/dec/ep-greens-greece-letter.pdf>. Video of the visit is available here: <http://www.youtube.com/watch?v=NgonnC2xrFU>

<sup>78</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 9, available at <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf>.

In a recent report on unaccompanied minors arrested by the police authorities in Orestiada, the Greek Council for Refugees found that the "actual number of children entering the Greek territory through this specific prefecture cannot be estimated [because] [m]any families are separated while crossing the borders one way or the other, while there are high numbers of children found dead either from drowning in the Evros river or from hypothermia. Most of their bodies remain unclaimed."<sup>79</sup> In sum, in its report, GCR concluded that the major problems found were: "Long-lasting detention in inhumane and degrading conditions - due to lack of sufficient and appropriate reception facilities-, the complete absence of any official mechanism in tracing family members, the lack of initial and individualized assessment of protection needs by qualified professionals, and, finally, the inefficiency of the national Guardianship system which deprives children of any actual possibility to participate in the decisions made for them."<sup>80</sup>

In its mission to Lesbos, the GCR found two unaccompanied minors from Afghanistan who had not revealed their age as they believed that they would be released earlier in this way. The delegation was told by the Head of State Security and Aliens that "age-minority is registered as per detainees' statement and it is confirmed based on the personal criteria and experience of the applicable police employees. As a result, not informed right, minors state false data and are registered as adults".<sup>81</sup> In Symi (Rhodes), the GCR "identified unaccompanied minors among detainees that purported to be adults. They were thoroughly informed of the procedure followed in the case of unaccompanied minors [...]. Eventually, there were overall ten (10) minors that wished to declare their exact age and be transferred to an appropriate hosting facility".<sup>82</sup>

The ICJ and ECRE consider that the very poor conditions of detention in several detention centres, the situation of unaccompanied minors detained together with adults, the lack of proper screening and the lack of information which lead minors to hide their age, risk amounting to degrading treatment in violation of Article 3. Furthermore, the two organisations are concerned that detention of unaccompanied minors is not ordered as a measure of last resort and alternative measures are not actively sought by the Greek authorities which renders the detention arbitrary in light of Article 5.1.f, due to their vulnerable situation in light of the Court's jurisprudence in *Rahimi v Greece*.<sup>83</sup>

*iii) Violation of Article 13 resulting from the lack of an effective remedy to complain about the conditions of detention*

Although provided for by law,<sup>84</sup> in practice the right to appeal against detention orders can rarely be exercised, due to lack of information and legal advice.<sup>85</sup> This right is of vital importance to detained migrants, in particular where no clear individualised grounds for detention have been disclosed to the detainee or to his or her lawyer. The European Court of Human Rights, in *R.U. v Greece*, highlighted the fact that under Law 3386/2005, national courts can examine the decision to detain an irregular migrant, but that this law does not grant the courts power to examine the conditions in which third country nationals are detained nor to request the release of a detainee in this respect.<sup>86</sup> The Court held that there was a violation of Article 3 and 13 ECHR, since there is no effective remedy available in Greece in respect of conditions of detention that violate international law prohibitions on torture or cruel, inhuman or degrading treatment.<sup>87</sup>

<sup>79</sup> Greek Council for Refugees, Report Unaccompanied Minors at the Greek-Turkish Borders, June 2012 available at: <http://www.gcr.gr/sites/default/files/evros.pdf>, p. 4

<sup>80</sup> Greek Council for Refugees, Report Unaccompanied Minors at the Greek-Turkish Borders, June 2012. available at <http://www.gcr.gr/sites/default/files/evros.pdf>, p. 13

<sup>81</sup> Report of GCR mission to Lesbos, November 2012, p. 3. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_mission\\_Komotini\\_-\\_Ksanthi\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_mission_Komotini_-_Ksanthi_2012_en.pdf)

<sup>82</sup> Report of GCR mission to Symi, September 2012, p. 1. Available at [http://www.gcr.gr/sites/default/files/image/GCR\\_Mission\\_Simi\\_Sep\\_2012\\_en.pdf](http://www.gcr.gr/sites/default/files/image/GCR_Mission_Simi_Sep_2012_en.pdf)

<sup>83</sup> *Rahimi v Greece*, Application No.8687/08.

<sup>84</sup> Articles 28 and 30.2 of Law 3907/2011.

<sup>85</sup> *M.S.S. v Belgium and Greece*, op cit, para. 182; Detention in Europe, Greece – Legal basis for detention, March 21, 2011, [http://detention-in-europe.org/index.php?option=com\\_content&view=article&id=144&Itemid=176](http://detention-in-europe.org/index.php?option=com_content&view=article&id=144&Itemid=176)

<sup>86</sup> *R.U. v Greece*, op cit para 59; *A.A. v Greece*, op cit para. 47

<sup>87</sup> *R.U. v Greece*, op cit para. 61-65. It should be noted that Law 3386/2005 still applies to cases where persons are apprehended at

The new Law 3907/2011 provides for an automatic review of the detention order, "every three months, by the institution that issued the detention order."<sup>88</sup> However, it does not expressly provide for the review of conditions of detention. The ICJ and ECRE are concerned at the continued lack of an express provision guaranteeing an automatic judicial review of all aspects of the lawfulness of the detention including on the conditions of detention.

The ICJ and ECRE are aware of the decision of the Administrative Court of Pireaus (no. 448/9-6-2011) which provides for judicial review of detention every three months. However, interviews conducted with the Greek Council for Refugees reveal that this jurisprudence has not been followed by other courts. The interview revealed that, in practice, the administrative judges still apply a limited judicial control concerning detention, examining only the risk of absconding and the risk of national security, and that the examination *ex officio* of the reasons to prolong the detention is a *pro forma* validation exercise.<sup>89</sup>

The UN Special Rapporteur on the human rights of migrants reported that "there is no automatic judicial review of decisions to detain migrants. Furthermore, access to an interpreter and lawyer is not guaranteed, thus making any objection against the detention decision virtually impossible, particularly as detention and deportation orders are written in Greek."<sup>90</sup>

In its July 2012 report, the Greek Council for Refugees recalled that "Art. 76 (3) of Law 3386/2005 provides for a possibility for an irregular migrant or asylum seeker to express objections against the decision for his or her detention before the president or the judge of the court of first instance in the region of his detention. But this remedy cannot be considered effective. It only provides for limited review of the grounds justifying detention, but not for direct review of the lawfulness of detention. Detention conditions, absence of free legal aid, lack of trained personnel, absence of social assistance [...] make the remedy ineffective. Article 30 (30) of law 3907/2012 regulates only the cases of extension of detention, and not the detention *per se*. Review is carried out by the same authority that issued the detention order."<sup>91</sup> They also reported that, "[a]s concerns detentions of condition, the law does not explicitly provide for any judicial review. Greek courts are not empowered to examine living conditions in administrative detention and to order the release of a detainee on those grounds".<sup>92</sup>

Article 30.2 of Law 3907/2011, which provides for the challenge of the detention order, does not expressly provide for the right to free legal aid, as opposed to the provision on remedies against deportation orders included in Article 28.4.<sup>93</sup>

The ICJ and ECRE consider that further appropriate measures need to be taken by the Greek government to:

- Provide timely access to legal advice, including where necessary access to free legal assistance, to migrants held in detention;
- Allow detained migrants sufficient access to the outside world;
- Ensure that all detained migrants have access to automatic judicial review of detention

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the border areas of Greece.

<sup>88</sup> Article 30.3 of Law 3907/2011. Article 30 paragraph 3 of Law 3907/2011 provides that in the case of detention prolongation, the relevant decision is transmitted to the President or an appointed First Instance Judge of the Administrative First Instance Court who rules on the legality of the prolongation and issues immediately their decision, which they register in brief in a transcript. A copy of this transcript is sent immediately to the competent police authority.

<sup>89</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>90</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>91</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, para. 96. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>92</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, para. 98-99. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>93</sup> Article 28.4 of Law 3907/2011 states that "the necessary legal assistance and representation is provided on request free of charge [...] when, according to the judge's opinion, the application to annul is not manifestly unfounded or inadmissible". No mention of free legal aid is contained in Article 30 on detention.

including with regard to conditions of detention that may violate Article 3 ECHR.

### **3. Responses to the violations of Article 3 resulting from the living conditions of asylum seekers following their release**

In *M.S.S.*, the European Court of Human Rights found that the living conditions of the applicant whilst he was an asylum seeker in Greece, constituted “humiliating treatment showing the lack of respect for [the applicant’s] dignity”, and noted that this situation, combined with prolonged uncertainty, had aroused “feelings of fear, anguish or inferiority capable of inducing desperation, and had attained the level of severity required to fall within the scope of Article 3 of the Convention.”<sup>94</sup> The Court therefore held that, given national law obligations of Greece to ensure adequate material reception conditions, pursuant to *Directive 2003/9/EC* (the “Reception Directive”), the situation of extreme poverty brought about by the inaction of the State was treatment contrary to Article 3 ECHR (*paragraphs 254-264*). *The Court’s judgment was based in particular on the following aspects of the applicant’s situation:*

- *Extreme poverty, no housing, inability to cater to basic needs such as food and personal hygiene (para.254)*
- *Lack of possibility for the applicant to improve his situation such as by access to the jobs market (para.261)*
- *Lack of information about accommodation for asylum seekers (para.257-260)*

#### *i) Living conditions of asylum seekers*

The material situation for asylum seekers remains extremely difficult and continues to give rise to situations comparable to that of the applicant in *M.S.S.*, in violation of Article 3 ECHR.

Despite the appointment of a Reception Service director, it seems that no new first reception centre has been yet built nor a screening centre in Evros, although they had been announced.<sup>95</sup> According to the NGO AITIMA, “asylum seekers are entitled to accommodation. However, there are only about 900 places in reception centres while – according to the UNHCR statistics – there are over 40,000 asylum seekers residing in Greece.”<sup>96</sup>

The Subcommittee of PACE also reported that, “[w]hile there are around 1 000 reception places for asylum seekers, this is an insufficient number to accommodate all asylum seekers”, and that “many irregular migrants and asylum seekers end up in occupied buildings or flats under appalling conditions or they sleep on the streets. They face social exclusion and precarious living conditions. According to Amnesty International, “Greece’s failure to respect the rights of migrants and asylum seekers is taking on the proportions of a humanitarian crisis”, as even the most basic requirements of safety and shelter are not guaranteed.”<sup>97</sup> Finally the PACE subcommittee found that, “[o]n the Aegean islands, the situation is becoming more and more dramatic. Local authorities often fall short of providing reception and detention facilities. Migrants and asylum seekers, including pregnant women and families with small children, have to face overcrowding or sleep on the streets.”<sup>98</sup>

The European Commission highlighted in October 2012 that “open reception capacities remain

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<sup>94</sup> *M.S.S. v Belgium and Greece*, op cit, para.263.

<sup>95</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>96</sup> European Network for Technical Cooperation on the application of the Dublin II Regulation, National Report on Greece p. 23 available at [www.dublin-project.eu](http://www.dublin-project.eu).

<sup>97</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN> , paras. 43-45.

<sup>98</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN> , para 45.

insufficient throughout the country while the responsible authorities have not yet identified structures that could be used for accommodation purposes nor have they explored possibilities for EU funding.”<sup>99</sup>

The ICJ and ECRE wish to highlight that a new circular issued by the Ministry of Labour on 19 October 2012 now restricts access to the labour market for asylum seekers, while previously asylum seekers in Greece had a right to access it in national law. The new rule establishes that priority in jobs access should be given to Greek, EU citizens, refugees, and foreigners of Greek origin and that their unavailability for the position should be first demonstrated for an asylum seeker to access the job market.<sup>100</sup> In light of the present economic crisis and of an unemployment rate among the highest in the EU (26.8%), this limitation clearly represents a *de facto* barrier to access the job market.<sup>101</sup>

The ICJ and ECRE consider that the living conditions of many asylum seekers remain unacceptable.

*ii) Information for asylum seekers*

The UN Special Rapporteur on the human rights of migrants reported from his mission in Greece that “[t]hose who had applied for asylum often had no information about the status of their case, and others had not been able to apply for asylum from the detention facility”.<sup>102</sup>

In a recent interview with ECRE, the Greek Council for Refugees confirmed that “detainees do not have access to legal advice from detention. The detainees can be informed on their right to contact a lawyer (freelancer or NGO) most of the times by social workers or doctors whose presence inside some detention centres is not standard. In that case, in few detention centres, they have restricted access to a phone booth and there have also been allegations that police deny this access (one should take into account the fact that detainees do not have sufficient or no money at all). The practice of the competent authorities, concerning the different possibilities of the detainees, varies. The lack of relevant interpretation inside the detention centres creates even more obstacles to the communication of the detainees with the authorities. Generally the lack of information by the authorities is evident in this case.”<sup>103</sup> They also confirmed that the leaflet on asylum procedures is not in practice distributed nor is it updated.<sup>104</sup>

The Greek Council for Refugees reports that asylum seekers in detention “are not informed by the authorities on their right to apply for asylum. Yet if an application is lodged, there is no prior notification of the detainees concerning the date of their examination of their application. It has been reported to GCR that sometimes the authorities ask the detainees to undersign a document declaring that they do not wish to apply for asylum, without clarifying the content of the above mentioned document. This happens even in cases when the detainees have previously declared to GCR that they wish to lodge an application.”<sup>105</sup>

The ICJ and ECRE consider that further measures are needed to ensure consistent provision of information, translated where necessary, including in all detention centres.

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<sup>99</sup> *Note on Greece's National Action Plan on Asylum Reform and Migration Management*, EU Doc 15358/12, 23 October 2012, p. 2, available at <http://www.statewatch.org/news/2012/oct/eu-com-greece-migration-15358-12.pdf>.

<sup>100</sup> See, circular (in Greek) at [http://www.unhcr.gr/no\\_cache/prostasia/nomiki-prostasia/o-nomos-stin-ellada/nomothesia-gia-atomika-kai-koinonika-dikaiomata.html?L=0%2F&cid=825&did=857&sechash=6e84bbfb](http://www.unhcr.gr/no_cache/prostasia/nomiki-prostasia/o-nomos-stin-ellada/nomothesia-gia-atomika-kai-koinonika-dikaiomata.html?L=0%2F&cid=825&did=857&sechash=6e84bbfb)

<sup>101</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>102</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>103</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>104</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>105</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

### iii) Xenophobia

The Parliamentary Assembly of the Council of Europe stressed the "rise of xenophobia and racism in Greece. Migrants, asylum seekers and refugees have become scapegoats and the target of an alarming growth in violent attacks by individuals and vigilante groups. The situation has been exploited and made worse by the increasing political influence of Golden Dawn, a fascist party with a clear racist agenda."<sup>106</sup> The situation is confirmed by other sources.<sup>107</sup>

The UN Special Rapporteur on the human rights of migrants stated that he was "deeply concerned about the widespread xenophobic violence and attacks against migrants in Greece, and I strongly condemn the inadequate response by the law enforcement agencies to curb this violence, and to punish those responsible. I have also been informed of several cases of police involvement in these attacks. Many of these cases go unreported as irregular migrants fear they will be detained and deported if they contact the police."<sup>108</sup>

The European Council on Refugees and Exiles has stressed in a letter to Commissioner Malmström that the Operation Xenios Zeus "has led to the rounding up of thousands of migrants on the basis of their perceived ethnicities in a seemingly discriminatory manner and may have resulted in cases of arbitrary arrest and detention". It also stressed that "This operation, which has received extensive coverage by the media, only contributes to intensify the rise of xenophobia and anti-migrant sentiment in Greek society. Racist violence has become daily occurrence in the centre of Athens and around Greece."<sup>109</sup>

The Council of Europe Commissioner for Human Rights recently found that, "[b]etween October 2011 and December 2012, more than 200 racist attacks were recorded by the racist violence recording network headed by UNHCR and the National Commission for Human Rights."<sup>110</sup>

Amnesty International reported a "dramatic rise in the number of racist attacks in 2012. Victims, and particularly those in an irregular situation, are unwilling to report to the police as they are vulnerable to arrest. The draft legislation proposed for fighting racist violence does not include any provision that would protect victims who are in an irregular situation from arrest and deportation."<sup>111</sup>

Reportedly, the Minister for Public Order, Nikos Dendias, has recently announced the creation of a new police unit against racial violence following the attacks against migrants and asylum seekers.<sup>112</sup> This move was welcomed by the Council of Europe Commissioner for Human Rights who urged "the Ministry of Public Order to take all necessary measures in order to create an independent and effective police complaints mechanism that would enhance the public's trust in police forces. Such a mechanism is also necessary for the coast guard."<sup>113</sup>

In addition, in December 2012 the Ministry of Justice announced a set of measures to combat racism and xenophobia, including the appointment of a Prosecutor to monitor hate and racist

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<sup>106</sup> Para 8, PACE Resolution adopted on 25 January 2013 Resolution 1918 (2013) <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19467&lang=EN>

<sup>107</sup> European Network for Technical Cooperation on the application of the Dublin II Regulation, National Report on Greece p. 8 available at [www.dublin-project.eu](http://www.dublin-project.eu).

<sup>108</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>109</sup> *Letter to Commissioner Malmström regarding Xenios Zeus operation in Greece*, ECRE, 14 September 2012, available at <http://www.ecre.org/component/downloads/downloads/648.html>.

<sup>110</sup> *Racial violence a real threat to democracy in Greece*, CoE Commissioner for Human Rights, 1 February 2013, available at [http://www.coe.int/t/commissioner/News/2013/130201Greece\\_en.asp](http://www.coe.int/t/commissioner/News/2013/130201Greece_en.asp)

<sup>111</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 10, available at <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf>.

<sup>112</sup> *Anti-racism police unit heralded*, E-kathimerini.com, 29 October 2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_29/10/2012\\_467801](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_29/10/2012_467801)

<sup>113</sup> *Racial violence a real threat to democracy in Greece*, CoE Commissioner for Human Rights, 1 February 2013, available at [http://www.coe.int/t/commissioner/News/2013/130201Greece\\_en.asp](http://www.coe.int/t/commissioner/News/2013/130201Greece_en.asp)

crimes, legislative amendments penalising racist and xenophobic acts, awareness raising and information activities to alert the wider public, including hot lines, and the setting up of a state-run Network recording racist violence (similar to the one currently run by NGOs) and a centralised database of all reported incidents.<sup>114</sup>

The ICJ and ECRE take note that the European Court, in finding a violation of Article 3 ECHR as a result of the applicant's living conditions in M.S.S., included among the relevant factors "the ever-present fear of being attacked and robbed and the total lack of any likelihood of his situation improving".<sup>115</sup> The ICJ and ECRE submit that the present situation of xenophobia coupled with violent attacks, to which, until recently, there has been an inadequate State response, substantially contributes to the poor living conditions of asylum seekers to a level that humiliates them and puts them in constant fear and risk of personal attack, leading to a situation of degrading treatment under Article 3 ECHR. The ICJ and ECRE consider that the Greek Government should provide further information on the progress of this set of measures to combat racism and xenophobia.

#### **4. Response to the violation of Article 13 in conjunction with Article 3 resulting from the shortcomings in the examination of asylum requests**

*The European Court of Human Rights found that M.S.S was at risk of refoulement from Greece in violation of Article 3 ECHR and did not have access to an effective remedy under Article 13 ECHR (paragraphs 299-322), in particular on the basis of the following findings:*

- *Lack of effective legal remedy: lack of rigorous scrutiny of a claim, lack of timely processing of an asylum application and a prompt response, lack of access to a remedy with automatic suspensive effect*
- *Inadequacies in the asylum application procedure: Problems of access to the asylum procedure due to the short three- day time limit for application; insufficient information about asylum procedures; difficulties in obtaining access to the Attica Police Headquarters; shortage of interpreters; lack of training of relevant officials; lack of legal aid; excessive, lengthy delays in receiving a decision; stereotyped and unreasoned replies ; lack of appeal to second instance committees; (paras.301-311)*
- *low recognition rates for asylum or subsidiary protection granted by the Greek authorities as compared to other EU Member States (para.313)*
- *Access to Supreme Administrative Court for Judicial Review: lack of communication on behalf of the Court regarding the procedures; no information on organizations which offer legal aid;; shortage of lawyers in the legal aid list; lengthy procedures before the Supreme Admin Court; the appeal to the Supreme Administrative Court does not offset the lack of guarantees surrounding the examination of asylum applications on the merits (para.316- 320)*

##### *5.1. Access to a fair and effective asylum procedure under the transitional system*

The ICJ and ECRE have already expressed their observations on the new asylum system in their previous submission of May 2012. As the new asylum system is not yet operational, the two organisations will limit their findings to the present situation in light of the legislation in force.

The ICJ and ECRE are concerned at the many practical obstacles to the effective implementation of the Decree, PD 114/2010, which was supposed to be applicable until the beginning of 2012, when the new Asylum Authority was to begin functioning. However, the functioning of the new

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<sup>114</sup> See at <http://www.unhcr.gr/1againstracism/%CF%85%CF%80%CF%8C-%CF%84%CE%B7%CE%BD-%CE%B5%CF%80%CE%BF%CF%80%CF%84%CE%B5%CE%AF%CE%B1-%CE%B5%CE%B9%CF%83%CE%B1%CE%B3%CE%B3%CE%B5%CE%BB%CE%AD%CE%B1-%CE%BF%CE%B9-%CF%85%CF%80%CE%BF%CE%B8%CE%AD%CF%83/>

<sup>115</sup> Para. 254.

Asylum Authority has been postponed by Law 4038/2012 until March 2013,<sup>116</sup> although others, including the UN Special Rapporteur on the human rights of migrants,<sup>117</sup> report that it will not be functional until the summer of 2013, due to a lack of resources.<sup>118</sup>

As confirmed by the document submitted by the Greek Government to the Committee of Ministers of 15 January 2013, asylum applications are still received only at the Department of Asylum of the Direction for Foreigners in Attica on Saturday morning. It is submitted by the Greek Government that vulnerable people can present an application any day of the week.<sup>119</sup>

Many other stakeholders also confirm that the situation in the Petrou Ralli Police Directorate remains critical.<sup>120</sup> Reports have also highlighted that police officers sometimes act in order to discourage the filing of application at Petrou Ralli, including by dispersing the waiting lines of asylum seekers which form even from Wednesday.<sup>121</sup>

The Greek Council for Refugees, together with other national NGOs, carried out a monitoring mission at the beginning of 2012, to the waiting queues at Petrou Ralli.<sup>122</sup> Their findings, published in July 2012, remain valid.<sup>123</sup> They reported that "asylum seekers are prohibited from waiting outside the entrance of the Attica Aliens Directorate. They are confined to a side street in the proximity of the building. Depending on the weather conditions a group of ca. 80-200 migrants [...] are waiting in line along the street-side. [...] The majority of asylum seekers [...] start gathering [...] already from Thursday morning (some of them even from Wednesday)". [...] The police use various practices to disperse the crowd and discourage them from forming waiting lines earlier than Friday evening".<sup>124</sup> The report documents episodes of use of force and chemicals by the police.<sup>125</sup> The persons waiting have no access to toilet, water or food for fear of losing their place.<sup>126</sup> "Around 6 a.m. [...] the police officers "choose" the first 20 applicants waiting in line".<sup>127</sup> The others are ordered to leave.<sup>128</sup>

The European Commission in its evaluation of Greece's National Action Plan on Asylum Reform and Migration Management reported that "[a]ccess to the asylum procedure is impaired, inter alia, since the Petrou Ralli police station only registers 20 to 40 asylum applications per day and the provision of information and interpretation, especially in detention centres, is insufficient; the wide use of detention of migrants may also deter requests to access protection".<sup>129</sup> The situation of Petrou Ralli also raised the concerns of the PACE subcommittee<sup>130</sup> and Amnesty International.<sup>131</sup>

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<sup>116</sup> Law 4084/2012, Article 4.

<sup>117</sup> *Preliminary findings of the UN Special Rapporteur on the human rights of migrants*, 3 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12858&LangID=E>

<sup>118</sup> Law 4038/2012. See also, Hellenic Democracy, Ministry of Citizen Protection, Announcement of the Press Office of the Ministry of Citizen Protection concerning the 08/02/2012 announcements by the Press Office of the Greek Ombudsman on the application of Law 3907/11, published on 09/02/2012. This has been confirmed by the Greek Refugee Council in the Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>119</sup> Memorandum DH-DD(2013)38, p. 8.

<sup>120</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>121</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>122</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>123</sup> Interview with GCR of 6 February 2013, conducted by ECRE. See also Amnesty International *Greece: The end of the road for refugees, asylum seekers and migrants*, December 2012, page 5.

<sup>124</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, paras. 5-6. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>125</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, para. 6. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>126</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, para. 7. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>127</sup> Report of GCR on the campaign for the access to asylum in the Attica area, July 2012, para. 9. Available at <http://www.gcr.gr/sites/default/files/image/17-10%20anafora%20en.pdf>

<sup>128</sup> See also, BBC, *Greece asylum: journey into a broken system*, 19 February 2013, at <http://www.bbc.co.uk/news/world-21509198>.

<sup>129</sup> *Note on Greece's National Action Plan on Asylum Reform and Migration Management*, EU Doc 15358/12, 23 October 2012, available at <http://www.statewatch.org/news/2012/oct/eu-com-greece-migration-15358-12.pdf>.

<sup>130</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN>, para. 39.

The ICJ and ECRE consider that the situation at Petrou Ralli is unacceptable in light of the Greek Government's obligations under the ECHR, and in particular, its obligations to implement the *M.S.S.* judgment.

Interviews conducted with the Greek Council for Refugees confirm that the police are still responsible for first instance asylum procedures which decides which nationalities are destined to accelerated procedures and delay other nationalities deemed to be eligible for ordinary asylum procedures, without providing objective motivations for their discrimination.<sup>132</sup> A report of the NGO AITIMA on Dublin returnees highlighted that "the Police are inadequate to handle asylum cases. They are a mechanism dealing with the deportation of illegal aliens and they don't have the background to deal with or protect asylum seekers. Moreover, most of the Greek Policemen lack necessary knowledge concerning aliens and many harbour negative feelings toward them. Therefore, Police often act in a discriminatory manner against migrants. Arbitrariness is very common and there have also been cases of Police brutality against asylum seekers."<sup>133</sup>

The subcommittee of the PACE, which recently visited Greece, reported that, "[d]espite the current efforts by the Greek authorities to reform the asylum and migration management framework, the country still does not have a fair and effective asylum system in place".<sup>134</sup> The subcommittee found that "[t]he current asylum system is still characterised by difficulties of access to the procedure, poor asylum interviews and very low recognition rates (1% to 2%). A side effect of measures aimed at increasing border controls and systematically detaining irregular migrants and asylum seekers is that persons in need of international protection are confronted with increased obstacles in accessing the asylum procedure and registering their claims".<sup>135</sup> They also held that "[f]or persons in need of international protection it is extremely difficult to claim asylum in detention. This is due to the lack of legal assistance, interpretation and information on their detention situation. The necessary contacts with legal representatives are often not established and there are problems in terms of individual follow up on claims."<sup>136</sup>

Amnesty International found in its December 2012 report that "the Asylum Authority, as it is called, has yet to receive and process a single application as a result of the significant staff recruitment problems that it is facing."<sup>137</sup>

Interviews with the Greek Council for Refugees reveal that it is almost impossible to file an application for asylum from detention due to the lack of legal aid and interpretation.<sup>138</sup>

The inaccessibility of information concerning the asylum procedure and migrants' legal status and entitlements, the lack of possibility of communication and the absence of legal assistance and trained staff in the police directorates and reception centres, as well as the length of the procedures, contribute to an increased risk of *refoulement*. The ICJ and ECRE are aware that

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<sup>131</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 5, <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf> .

<sup>132</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

<sup>133</sup> European Network for Technical Cooperation on the application of the Dublin II Regulation, National Report on Greece p. 13 available at [www.dublin-project.eu](http://www.dublin-project.eu).

<sup>134</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN> , para 35.

<sup>135</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN> , para. 36.

<sup>136</sup> *Migration and asylum : mounting tensions in the Eastern Mediterranean*, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN> , para. 37.

<sup>137</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 6, <http://www.amnesty.org/en/library/asset/EUR25/011/2012/en/443c4bcd-7b2e-4070-916c-087008f6762f/eur250112012en.pdf> .

<sup>138</sup> Interview with GCR of 6 February 2013, conducted by ECRE.

since April 2011 the Greek government has obtained the assistance of European Asylum Support Office (EASO) and that this collaboration is foreseen to last, at present, until March 2013.

The ICJ and ECRE would like to draw the attention of the Committee to the European Court of Human Rights' ruling of last September 2012 which found that the situation of delays in the judicial review of expulsion orders is still not in line with the State's obligations under Article 13 ECHR read in conjunction with Article 3 ECHR: "*l'audience pour l'examen de la demande de sursis à exécution, introduite le 10 février 2010 et fixée initialement au 15 mars 2011, a eu lieu le 26 janvier 2012 et que l'arrêt qui a rejeté cette demande a été rendu le 7 février 2012. La procédure relative au recours en annulation est toujours pendante. Or, de tels délais ne sont pas de l'avis de la Cour, raisonnables pour examiner des recours relatifs à des questions d'expulsion, d'autant plus que la demande de sursis vise justement à faire obtenir une décision rapide, avant la fin de la procédure principale.*"<sup>139</sup>

The ICJ and ECRE consider that Greek government should take, as a matter of priority, further steps to implement reforms of the asylum system necessary to comply with obligations under Article 3 and Article 13 ECHR. In particular Greece should:

- Take prompt measures to implement law 3907/2011, transposing the EU Returns Directive, and to ensure full compliance with the law in practice, in full respect of international human rights and refugee law;
- Ensure effective access to the asylum procedure and other forms of international protection for all migrants, and that there is individual consideration of the merits of the claim for protection;
- Adopt legislation for, and ensure in practice, effective provision of information to migrants, translated into languages they understand, regarding the procedure for registration of asylum claim, including the provision of clear and accurate information on the requirement of registration of an address;
- Provide, in legislation and in practice, for translation and interpreters where necessary to ensure an accessible and fair asylum process;
- Provide for free legal aid to asylum seekers from the first instance stage;
- Enhance and further develop training for all officials involved in the asylum process particularly in the areas of international human rights law and international refugee law;
- Ensure in law and in practice that appeals against deportation orders have automatic suspensive effect.

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<sup>139</sup> *Ahmade v. Greece*, Application no. 50520/09, para 115.