



To the members of
the Committee of Ministers
of the Council of Europe

2 March 2015

**Re : Execution of *M.S.S. v. Belgium and Greece* (Application no. 30696/09) in
relation to Greece**

Dear members of the Committee of Ministers,

The International Commission of Jurists (ICJ) and the European Council on Refugees and Exiles (ECRE) would like to address your Committee in relation to the execution of the judgement of the European Court of Human Rights in the case of *M.S.S. v. Belgium and Greece* 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.

The ICJ and ECRE have already presented written submissions in this case on 20 May 2012,¹ 25 February 2013² and 22 May 2014.³ In addition to our previous submissions, the ICJ and ECRE would like to submit further information and suggest a number of questions for the Greek Government in relation to its asylum system and reception policies.

The ICJ and ECRE also note that, according to recent news reports, both the new Deputy Minister for Citizen Protection, Yiannis Panoussis, and the new Deputy Minister for Immigration, Tasia Christodouloupoulou, announced major changes to Greece's immigration policies, including the abandonment of Operation Xenios Zeus⁴ and the closing of immigration detention centres, to be substituted by open centres. So far, the

¹ Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/11/ICJECRE-MSSSubmission-Final-1.pdf> .

² Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/02/ICJECRE-MSS-CommitteeMinisters-2ndsubmission-Final.pdf> .

³ Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Greece-ICJECRE-MSS-CommitteeMinisters-3rdsubmission-legal-submission-2014.pdf> .

⁴ see, our submission of 22 May 2014 at section 3.1.

information on these new policies appears to have been publicly reported only through media sources⁵ and the ICJ and ECRE have not yet been able to evaluate the full scope or effective impact of the measures. Nor, to our knowledge, has this information been presented before this Committee. **The ICJ and ECRE would, however, invite the Committee of Ministers not to close the examination of any aspect of the execution of this case until the new Government of Greece informs the Committee about any newly contemplated policies, legal reforms and practical measures as well as the concrete steps undertaken to implement them. Such developments may have a significant impact on all aspects of the execution of *M.S.S. v. Belgium and Greece*.**

1. The asylum system

In September 2014, the ICJ visited the premises of the Greek Asylum Service and met with the Directors of the Asylum Service and of the Appeals Authority. The ICJ also met with Greek NGOs, including some providing legal advice to asylum seekers. In December 2014 ECRE conducted a visit to Evros, focussing in particular on the First Reception Centre and the Detention Centre in Fylakio and also met with the Director of the Asylum Service and the Director of the First Reception Service in Athens.⁶

a) The Asylum Service

During this visit, the ICJ was informed that the Asylum Service had experienced some difficulties with resources, apparently partly due to delays and complications in the administration of allocated funds, which had led to gaps in the provision of essential services, especially interpretation. It was also reported that more caseworkers were needed.

At the time of the visit there was still no comprehensive system of legal aid established for asylum seekers. A new system was said to have been planned for 2015. The implementation of this system, as well as its effectiveness in practice, will need to be closely monitored. The ICJ was told by many sources that, although significant improvements in the processing of asylum claims have been registered since the new system was established, caseworkers remain inexperienced and, although some are working very well, there is inconsistency in the quality of decision-making. It was reported that this was due particularly to the policy of freezing on the recruitment of hiring of public officials within the entire Greek Government after the financial crisis, which did not allow for selection of experienced, specialised caseworkers.

The ICJ was told that difficulties remain with regard to the accessibility of the asylum system. Concerns have been raised that some of the centres are established in immigration detention centres and that non-detained asylum seekers are therefore reluctant to go there. The premises dedicated to the first screening and registration, including registration in the European database EURODAC, did not allow for confidential

⁵ <http://www.skynews.com.au/news/world/europe/2015/02/15/greece-to-close-migrant-detention-centres.html> ; <http://www.asylumineurope.org/news/16-02-2015/end-indefinite-immigration-detention-greece> ; <https://left.gr/news/i-t-hristodoylopoyloy-milaei-sto-leftgr-metanasteytiki-politiki-me-vasi-tis-arhes-toy> ; <http://www.smh.com.au/world/greece-pledges-to-shut-immigrant-detention-centres-20150215-13f4da.html> ; <http://greece.greekreporter.com/2015/02/05/greek-migration-minister-citizenship-to-all-children-born-in-greece/>

⁶ A report on the findings of ECRE's visit will be published soon.

interviews, although it was reported to the ICJ that preliminary interviews do take place there to assess which procedure and registration to follow. The same concerns that were highlighted by UNHCR in its submission to this Committee with regard to registration and its linkage to interpreters (UNHCR, p. 17), were reported to the ICJ. Whereas some progress was made with regard to the quality of the asylum procedure, delays in the registration of asylum applications, both in Athens and the Regional Asylum Offices, persist. In the context of a visit of ECRE to Athens and Greece to analyse the operation of the First Reception Centre in Fylakio, ECRE was told by the Director of the Asylum Service that the first priority is to maintain the current policy of ensuring that those applying for asylum in Greece receive a first instance decision within three months from the registration of their application. As a result, it is not possible for the Asylum Service to register every potential asylum seeker immediately as this would be impossible for the Asylum Service to handle with its limited resources.⁷ While 150 to 250 people present themselves on a daily basis in Athens, the Office is able to register only about 30 applications per day.⁸ A pilot project was launched in August 2014 whereby persons wanting to apply for asylum can ask for a registration appointment through Skype (in French, English, Arabic, Farsi and Dari), an initiative that is as such welcomed by refugee organisations.⁹

Asylum seekers who are not able to register their application are not provided with any written proof of their intention to apply as the policy of the Asylum Service is to register the asylum applications insofar as there is capacity to process asylum applications within a reasonable time. According to the Director of the Asylum Service, the previous practice of the Hellenic Police to issue appointment slips to asylum seekers before their application was actually registered resulted in abuses as those documents were often passed on or sold on the black market.¹⁰

The ICJ considers that further information is needed from the Greek Government on the following questions :

- **Has the funding of the Asylum Service been stabilized in order to ensure continuity of service and, if not, what plans have been made in this regard?**
- **Is there any plan to hire more personnel, including competent and experienced case-workers and children's social workers, despite the financial crisis?**
- **Is the structure of the first registration offices still open-plan, thereby not ensuring confidentiality of preliminary meetings, or are these meetings now held elsewhere?**
- **What are the plans to ensure access to the asylum procedure of asylum seekers?**
- **What provisions, if any, have been put in place for a new system of legal aid? What, if any, measurable impact has there been so far?**

b) The Asylum Appeals system

⁷ Forthcoming ECRE report on the First Reception Centre and Detention Centre in Fylakio .

⁸ See, AIDA, [Country Report Greece, Registration of the Asylum Application](#), Update August 2014.

⁹ According to UNHCR, a total of 215 appointments had been scheduled by 17 October 2014. See UNHCR, *Greece as a Country of Asylum*, p. 17.

¹⁰ Forthcoming ECRE report on the First Reception Centre and Detention Centre in Fylakio.

With regard to the asylum appeals system, the ICJ and ECRE reiterate their concern, set out in their previous submission of May 2014, in relation to the potential impact of the Appeal Committees internal rules on the Committees' independence and impartiality.¹¹ The same concerns have been expressed by UNHCR in their submission before this Committee (UNHCR, p. 26).

A first concern is with regard to the significant role of the secretariat of the committees, in their decision-making. The director of the appeals authority, a civil servant of the Ministry of Public Order and Citizen Protection, is responsible for the orderly and effective functioning of the committees. "Expert rapporteurs", also civil servants who are part of the secretariat of the authority under the Director, play an important role in decision-making, since they prepare a proposal for a decision in each case. It is effectively the expert-rapporteurs who decide whether a hearing will be held in the case, since a hearing can only be held on their proposal. This limits the ability of the members of the committee to conduct their own investigation into the facts of a case. In practice, very few hearings are held at the appeals stage, and this is particularly problematic given the lack of experience of caseworkers at first instance, which makes effective review on appeal even more important. The pressure on members of the appeal committees to decide a sufficient number of cases to meet case processing targets, further weakens their capacity for effective review.

A second concern relates to appointments to the appeals committees and security of tenure of their members. Law 3907/2011 (n 15) provides that the "chairman and the third member of the Committee, as well as their alternates, shall be appointed by the Minister of Citizen Protection from among a list drawn up by the National Commission for Human Rights [NCHR] according to its Rules of Procedure"¹² and that the "Members of the Committee shall enjoy, during the exercise of their tasks, personal independence."¹³

On 24 March 2014, Law No. 4249/2014¹⁴ modified the rules of composition of the Appeals Authority. On the one hand, it reduced the mandate of the Appeals Committees' members from two years to one year, renewable.¹⁵ On the other hand, it obliges the NCHR to provide "at least twice as many candidates as needed to staff the committees. Should the NCHR fail to provide the said list within the allotted time, or should it fail to provide the requested number of candidates, the list shall be established and communicated to the Minister by the Appeals Authority within 10 days from the related request. In case the Appeals Authority is unable, for whatever reason, to comply with the time limit or number of candidates required for the list, the 3rd members of the committees will be appointed by the Minister, based on the same criteria as those applicable to the NCHR."¹⁶

In the most recent appointments to the appeal committees, the recommendations of the NCHR have been rejected by the Ministry and replaced by the Minister's own nominations. This is justified by the Ministry on the basis of the amended law. The Minister stated that

¹¹ See our submission of May 2014 for references to relevant national and international law.

¹² Article 3.3 of Law 3907/2011 (n 15).

¹³ Article 3.4 of Law 3907/2011 (n 15).

¹⁴ "Law 4249 of 2014 on the Reorganisation of the Greek Police, Fire Brigade and the General Secretariat for Civil Protection, the Upgrading of the Services of the Ministry of Public Order and Citizen Protection and the Regulation of other issues concerning the competence of Ministry of Public Order and Citizen Protection and other provisions, 24 March 2014, available at <http://www.policenet.gr/portal/downloads/astunomia-idruse-leitourgia-uperesion/636.html>.

¹⁵ Article 122 para.5.a of Law No. 4249/2014 (n 20)

¹⁶ Article 122 para.5.b. of Law No. 4249/2014 (n 20)

the NCHR had not nominated a sufficient number of candidates. The NCHR, however, contends that the Ministry increased the number of vacancies on the authority without informing the NCHR of the modification. In a public letter, the NCHR alleges that the Ministry “has acted beyond its lawful competence, exercising unlimited discretion and following a procedure that raises serious questions of legality and of operational and substantive independence of the appeals committees.”¹⁷

During its visit in September 2014, the ICJ was told that the one-year tenure was due to the impossibility to finance longer tenure under the Appeals Authority’s budget. The ICJ was also told that, in the Greek constitutional order, under article 101 of the Constitution, administrative bodies such as the appeals authority cannot be formally independent. Nevertheless, this does not seem to be an obstacle to the Greek Government taking measures to ensure effective review that would comply with Article 13 ECHR, by ensuring the personal independence of committee members and re-enforcing the credibility of the appointment process.

In its submission of May 2014, the ICJ and ECRE concluded that the institutional independence of the Appeals Committees was seriously compromised where civil servants, such as the Director of the Appeals Authority and the experts-rapporteurs, who are ultimately appointed by the Minister for Citizen Protection, have, in practice, binding powers able to potentially interfere with the work of the Appeals Committees. They reported that Appeals Committees were neither masters of their own procedure, nor could they fully assess a case of their own motion or on the basis of information sent to them directly and not through their Secretariat. The fact that the Committee members’ mandate was only two years and subject to renewal by the Minister for Citizen Protection also suggested a lack of institutional independence. Furthermore, the fact that the new legislation had reduced this appointment period to one year and increased the discretion of the Ministry in the appointment of the Committee members shed serious doubts on the institutional independence of the Committee system in law and in practice. The fact that legal aid is not available at the Asylum Service and Appeals Committees stage was also considered to undermine the effectiveness of this remedy. For these reasons, the ICJ and ECRE considered that the Appeals Authority and its committees, as their rules stood, cannot be considered to be a mechanism that administers an effective remedy under article 13 ECHR, read in conjunction with article 3 ECHR.

The ICJ and ECRE further acknowledged that this lack of institutional independence could, in principle, be compensated for by the possibility of appeal to the administrative courts against the Appeals Authority decisions. The ICJ and ECRE stressed, however, that these procedures are not automatically suspensive of expulsion. In addition, access to these procedures was not easy in practice, due to the difficulties in acquiring legal aid. Therefore, the two organizations considered that, at present, Greece does not yet provide an effective remedy against *non-refoulement*, as required by the M.S.S. judgment.

The ICJ and ECRE note that the Greek authorities, in their submissions of 9 January 2015¹⁸ and of 19 January 2015,¹⁹ have not mentioned any legislative reform or amendment enacted with regard to asylum procedure since the ICJ visit of September

¹⁷ http://www.nchr.gr/images/English_Site/NEWS/GNCHR_PublicStatement_AppealsCommittees.pdf

¹⁸ Document no. DH-DD(2015)33F.

¹⁹ Document no. DH-DD(2015)82F.

2015, nor are the two organizations aware of any reform having been approved in this field. In light of the signals on reform of the asylum system given by the new Greek Government and reported by the press (see, above) it is important that the Committee of Ministers receive updated information on issues of the functioning and independence of the asylum and appeals authorities. Since the situation regarding these authorities remains for the moment unchanged, the ICJ and ECRE maintain and renew their conclusions and recommendations contained in their May 2014 report to this Committee.

c) Reception conditions and accommodation for children

Reception conditions for asylum seekers remain extremely problematic in Greece today as the reception capacity is largely insufficient in light of the number of asylum seekers present on the territory. While close to 8,500 persons applied for asylum in Greece in 2014, there are about 1100 places available in reception centres and apartments.²⁰ The lack of reception places, including for particularly vulnerable asylum seekers such as unaccompanied children and victims of torture and ill-treatment, is worrying as it often results in prolonged periods of detention in substandard conditions and people having to fend for themselves.

A visit by ECRE to the First Reception Centre in Fylakio revealed that there are important deficiencies in the way the first reception system operates in the Evros region. The purpose of the first reception procedures is to identify third country nationals and refer them to the relevant procedures, be it the asylum procedure or return procedure, within 15 days, extendable to 25 days in case of vulnerable third country nationals. However, the lack of sufficient and suitable accommodation for asylum seekers and vulnerable groups such as unaccompanied children as well as the delays in the formal registration of asylum seekers in the First Reception Centre in Fylakio, results, in many cases, in the continued detention of asylum seekers (for a 'speedy completion of their asylum application'), including unaccompanied children, either in the adjacent Detention Centre in Fylakio in substandard conditions or other detention centres. Moreover, while the conditions in the First Reception Centre are far better than those in the adjacent Fylakio Detention Centre, persons held in the First Reception Centre are de facto deprived of their liberty as they are accommodated in units surrounded by barbed wire and are not allowed to leave the premises of the First Reception Centre pending the 'first reception procedures' being carried out.²¹

ECRE and ICJ consider that further information is needed from the Greek government on the steps taken to address the lack of open reception accommodation for asylum seekers and unaccompanied children in particular and the issues identified with regard to the operation of the First Reception Centre in Fylakio. These include delays in registration of asylum applications, resulting in unnecessary detention of asylum seekers, the conditions in the centre and the substandard conditions in the Fylakio Detention Centre.

²⁰ According to the European Commission, 1160 places were available as of September 2014, while the latest UNHCR report mentions a total number of 1063 by the end of October. See European Commission, Assessment Implementation Greek Action Plan, p. 12 and UNHCR, [Greece as a Country of Asylum. UNHCR Observations on the Current Situation of Asylum in Greece](#) (hereinafter 'Greece as a Country of Asylum', December 2014, P. 19).

²¹ For detailed findings, see Forthcoming ECRE report on the First Reception Centre and Detention Centre in Fylakio.

The ICJ and ECRE hope that these observations and questions will assist the Committee in its examination of the execution of *M.S.S. v. Belgium and Greece* and related judgments. The two organizations remain at the Committee's disposal for any information needed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Róisín Pillay'.

Róisín Pillay

Director, Europe Programme, ICJ

A handwritten signature in black ink, appearing to read 'Michael Diedring'.

Michael Diedring

Secretary General, ECRE