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**THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION  
TO THE UN HUMAN RIGHTS COMMITTEE IN ADVANCE OF  
THE EXAMINATION OF GREECE'S SECOND  
PERIODIC REPORT UNDER ARTICLE 40 OF  
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Submitted on 26 September 2015

*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

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**The International Commission of Jurists' Submission to the Human Rights Committee in advance of the Examination of Greece's Second Periodic Report under Article 40 of the International Covenant on Civil and Political Rights**

**1. Introduction**

1. During its 115<sup>th</sup> session – 19 October to 6 November 2015 – the Human Rights Committee (the Committee) will examine Greece's implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR), including in light of the State Party's second periodic report under article 40 of the Covenant. In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to submit the following observations to the Committee.
2. In this submission, the ICJ expresses concern about the following issues:
  - i. the Greek asylum system's failure to comply in practice with the *non-refoulement* obligations and the right to an effective remedy (article 2.3, read in conjunction with articles 6, 7, 9 and 14 ICCPR, in particular);
  - ii. the immigration detention of refugees, asylum seekers and other migrants and the conditions of their detention (article 7, 9 and 10 ICCPR);
  - iii. the treatment and immigration detention of unaccompanied children (articles 7, 9 and 24 ICCPR); and
  - iv. the reception and living conditions of asylum seekers amounting to destitution (article 7 ICCPR).
3. The considered views of the ICJ set out in this submission have been informed, in particular, by a research mission to Greece that the ICJ carried out in September 2014. During its visit, the ICJ had the opportunity to meet the Directors of the Asylum Service and of the Appeals Authority, as well as Greek NGOs, including some of those providing legal advice to asylum seekers.

**2. Overview of the situation of migrants and asylum seekers in Greece**

4. Since the building by Greece in 2012 of a fence along the Evros river at the land border with Turkey, and as a result of increased surveillance measures, arrival routes into the country have been diverted to the Aegean Sea. Consequently, people's already perilous journey has become even more dangerous, with a growing number of individuals losing their lives in deadly incidents at sea.
5. In this context, the number of asylum seekers arriving in Greece continues to rise, presenting an unprecedented asylum emergency according to the UN High Commissioner for Refugees (UNHCR). As of 3 July 2015, 77,100 people were estimated to have arrived in Greece by sea since the beginning of the year.<sup>1</sup> UNHCR reported 50,000 new arrivals in July 2015 alone,<sup>2</sup> most coming from countries engulfed by armed conflict or with an otherwise dire record of human rights violations, including Syria (60 per cent of arrivals), Afghanistan, Iraq,

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<sup>1</sup> UN High Commissioner for Refugees (UNHCR), [UNHCR warns of growing asylum crisis in Greece and the Western Balkans amid arrivals of refugees from war](#), 10 July 2015 [accessed 27 July 2015].

<sup>2</sup> UN News Service, [UN urges bold action to tackle deepening refugee crisis in Greece](#), 7 August 2015 [accessed 13 August 2015].

Eritrea and Somalia.<sup>3</sup> According to Greek police data, in 2014 a total number of 43,518 persons were detected irregularly crossing into Greece by sea, and 1,903 by land.<sup>4</sup>

6. Greek Asylum Service statistics indicate that Greece received 9,430 international protection applications in 2014.<sup>5</sup> In the same year, Greece recognized 2,075 persons as refugees, and granted subsidiary and humanitarian protection to 885 and 990 persons, respectively, rejecting 17,120 applications, with a rejection rate of 81.2 per cent.<sup>6</sup> With respect of protection rates under the new asylum procedure, in December 2014 UNHCR indicated that, while, as of August 2014, the rate for first instance recognition was 17.2 per cent for refugee status and 7.6 per cent for subsidiary protection, “[t]he average rejection rate is still higher than in a number of other” EU Member States, and stood at 75.2 per cent.<sup>7</sup> Additionally, UNHCR reported a total of 43,883 pending asylum claims as of mid-2014.<sup>8</sup> Reportedly, there were 10,304 recognized refugees and 31,929 asylum seekers living in Greece as of December 2014.<sup>9</sup> According to the Greek Asylum Service, 1,235 international protection applications have been registered since the beginning of 2015.<sup>10</sup> Despite the large number of arrivals, Greece receives a proportionally low number of claims for international protection: most of the refugees arriving in Greece do not intent to stay in Greece, but wish to move on and apply for international protection in another European country.<sup>11</sup>
7. Greece’s economic crisis, combined with a constant increase in the number of new arrivals, are putting a severe strain on the country, in particular on small island communities that lack the means and infrastructures to cope with the situation. In light of the growing number of arrivals, despite the efforts of the Greek authorities, the Greek asylum system is unable to adequately address the reception needs of asylum seekers and refugees and the processing of international protection claims.<sup>12</sup>

### 3. The New Asylum Procedure

8. As indicated by the Greek Government,<sup>13</sup> significant legislative reforms and improvements have been put in place during the last few years to address the deficiencies in the national asylum system. Law 3907/2011 introduced a new

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<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR warns of growing asylum crisis in Greece and the Western Balkans amid arrivals of refugees from war*, op. cit.

<sup>4</sup> Hellenic Police, *Statistics 2013-2014* (Greek only); in AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, p. 7.

<sup>5</sup> Asylum Service, *Statistics 2014* (Greek only).

<sup>6</sup> Pro Asyl, *Asylbewerber nach Staatsangehörigkeit, 2014*. See also Asylum Service, *Statistics 2014*, in AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, op. cit., p.6.

<sup>7</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, December 2014, p. 26. However, UNHCR added that “It should be noted, however, that the protection rate for Syrians is 99.5 per cent, Eritreans 79.7 per cent, Somalis 66 per cent, Afghans 61.9 per cent, and Ethiopians 61.4 per cent (all figures as of August 2014).”

<sup>8</sup> UNHCR, *Mid-Year Trends 2014*, 7 January 2015.

<sup>9</sup> UNHCR, *2015 UNHCR subregional operations profile - Northern, Western, Central and Southern Europe* [accessed 27 July 2015].

<sup>10</sup> Asylum Service, Statistical data *July 2015* (Greek only) [accessed 27 July 2015].

<sup>11</sup> See for example Eurostat, *Five main citizenship of first time asylum applicants, 2<sup>nd</sup> quarter 2015*.

<sup>12</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR warns of growing asylum crisis in Greece and the Western Balkans amid arrivals of refugees from war*, op. cit.

<sup>13</sup> *Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties due in 2009, Greece*, 23 January 2014, §116.

legal framework for the asylum system: it created a new Asylum Service; an Appeals Authority; and a First Reception Service (FRS). The new Law further incorporated into Greek legislation the provisions of the *EU Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals* (the 'Return Directive'). In this connection, it expressly provides that return measures need to be compatible with the principle of *non-refoulement*.<sup>14</sup> The asylum procedure underwent a transitional phase that concluded on 7 June 2013 with the opening of the first Regional Asylum Office (RAO) in Athens.

9. Greece now considers applications for international protection under two regimes:
  - All applications lodged before 7 June 2013 are considered under Presidential Decree (PD) 114/2010, establishing the "Old Procedure".
  - All applications lodged after 7 June 2013 are considered under PD 113/2013,<sup>15</sup> establishing the "New Procedure".
10. Unlike the previous asylum system that employed law enforcement officers, under the New Procedure, the Asylum Service's personnel is made up of officers of the Ministry of Interior and Administrative Reconstruction (formerly, the Ministry of Public Order and Citizens Protection). The Asylum Service is responsible for the initial determination of international protection applications.<sup>16</sup> Asylum seekers are referred for registration to the competent RAO.<sup>17</sup> Nevertheless, according to UNHCR, only five out of the eleven RAOs provided by law had been established as of March 2015; in addition, the Asylum Service remains understaffed.<sup>18</sup> The operational RAOs are located in Attica (Athens, since 7 June 2013), Northern Evros (since 11 July 2013), Southern Evros (since 29 July 2013), Lesbos (since 15 October 2013) and Rhodes (since 2 January 2014). The ICJ is nevertheless concerned that a considerable number of pending applications, which were lodged under the old procedure, remains the competence of the police.

### 3.1. Access to the Asylum Procedure

11. Before the reform of the asylum system, the lack of effective access to the asylum procedure was already one of the most serious flaws of the Greek asylum system. With respect to this, in *M.S.S v. Belgium and Greece*, the Grand Chamber of the European Court of Human Rights (ECtHR) noted that, "the shortcomings in access to the asylum procedure and in the examination of applications for asylum" were affecting asylum seekers.<sup>19</sup> The Court furthermore stressed that the deficiencies in the Greek authorities' examination of the applicant's asylum request, as well as the risk faced by the applicant of being directly or indirectly returned to his country of origin, without serious examination of the merits of his asylum application and without being granted access to an

<sup>14</sup> Article 20 Law 3907/2011; Article 5 Directive 2008/115/EC.

<sup>15</sup> P.D. 113/2013 introduced in the Greek legal system the Asylum Procedure Directive as under the EU Directive no. 2005/85/EC.

<sup>16</sup> Article 1 Law 3907/2011. Under the Old Procedure, the Police performed this role. NB the police continue to determine claims that were lodged under the old procedure and are still pending. AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 20.

<sup>17</sup> UN High Commissioner for Refugees (UNHCR), [UNHCR observations on the current asylum system in Greece](#), December 2014, p.13 [accessed 25 September 2015].

<sup>18</sup> Article 3 Law 3907/2011. See also AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 20; UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, *op. cit.*

<sup>19</sup> ECtHR, *M.S.S v. Belgium and Greece*, Application n°30696/09, 21 January 2011, para 301.

effective remedy, constituted a violation of the right to an effective remedy, under article 13 read in conjunction with article 3 of the European Convention on Human Rights (ECHR).<sup>20</sup>

12. Despite much needed improvements brought about by the reform of the Greek asylum system (see above), consistent reports indicate that access to the asylum procedure remains a serious concern.<sup>21</sup> As mentioned above, UNHCR reported that, as of March 2015, not all the RAOs were operational and that the RAO of Attica (Athens) continued to have to deal with the large majority of applications. With respect to this, while the Asylum Service had a total capacity to deal with around 150 applications per week, according to the UNHCR, the Asylum Service estimated in December 2014 that around 200-250 people queued everyday at the RAO of Attica to register their claims.<sup>22</sup> The UNHCR warned that, "bottlenecks in the registration process have led to longer waiting times in rapidly deteriorating conditions".<sup>23</sup> As long as their applications are not officially registered, asylum seekers are not provided with any written proof of their status as asylum seekers and are at risk of being arrested and removed, notwithstanding the fact that removal in those circumstances would constitute a violation of the right to an effective remedy under article 2.3 ICCPR and may also amount to arbitrary *refoulement*, in violation of the Covenant, including, as relevant, under articles 6, 7, 9 and 14 ICCPR. With respect to this, the ICJ notes that the Greek Government has not provided any additional information on developments in this regard in its reply to the list of issues.
13. During its visit to Greece in September 2014, Asylum Service officials told the ICJ that a pilot project had been launched in August 2014, whereby persons wishing to apply for international protection at the RAO of Attica could schedule an appointment through Skype in three languages,<sup>24</sup> with additional ones to be added in the future.<sup>25</sup> In a positive development under the new procedure, the requirement of a fixed address to file an application for international protection, which the ECtHR found too restrictive to ensure effective protection against arbitrary *refoulement*,<sup>26</sup> is nowadays interpreted more flexibly, with claims being registered even when no address can be provided.<sup>27</sup>

### 3.2. Quality of the asylum procedure

14. During its visit in September 2014, the ICJ was told by many sources that, despite significant improvements in the processing of asylum claims since the establishment of the new system, some caseworkers, notwithstanding their

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<sup>20</sup> ECtHR, *M.S.S v. Belgium and Greece*, Application n°30696/09, 21 January 2011, para 321.

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, *op. cit.*, p.15-18; see also UN News Service, *UN urges bold action to tackle deepening refugee crisis in Greece*, *op. cit.*; Human Rights Watch, [Greece: Humanitarian Crisis on the Islands](#), 11 July 2015 [accessed 13 August 2015].

<sup>22</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, *op. cit.*, p. 17 [accessed 7 September 2015].

<sup>23</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR warns of growing asylum crisis in Greece and the Western Balkans amid arrivals of refugees from war*, *op. cit.*

<sup>24</sup> English, French and Arabic.

<sup>25</sup> Dari, Farsi. By the 17 October 2014, 215 appointments had been scheduled through this new online tool. See, UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, *op. cit.*, p.17.

<sup>26</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, 21 January 2011, "the police led them [i.e. asylum seekers] to believe that declaring an address was an absolute condition for the procedure to go ahead", para. 179.

<sup>27</sup> Article 7.2 PD 113/2013.

dedication, are inexperienced, leading to concern about the quality of decision-making. It has been reported that the failure to recruit experienced, specialized caseworkers is a consequence of the financial crisis, which, in turn, has resulted in the imposition of a freezing in the recruitment of civil servants within the entire Greek public administration.<sup>28</sup> The April 2015 report on Greece of the Asylum Information database (AIDA) states that efforts have been made in training caseworkers, who have all received training on topics relevant to the asylum procedure.<sup>29</sup>

15. The same report documents that difficulties with human resources, due to delay and complications in the administration of allocated funds, had led to a generalized understaffing of the Asylum Service,<sup>30</sup> but also to gaps in the provision of essential services, in particular interpretation. In this respect, the AIDA findings are consistent with those of the ICJ at the time of its 2014 visit to Greece.
16. Because of the general lack of funding, there is a shortage of interpreters, rendering communication in the context of asylum requests extremely difficult.<sup>31</sup>
17. Moreover, in the view of the ICJ, the right to legal aid is insufficiently guaranteed under Law 3907/2011, since article 13.3.f only provides legal aid for "guidance and legal advice", but it fails to ensure it with respect to legal representation or legal assistance.
18. In general, many services such as translation, legal assistance or even assistance to vulnerable persons/at-risk individuals are provided by local NGOs or international organizations.<sup>32</sup> However, they are generally dependent on the funding situation of the NGO in question and run a constant risk of interruption, especially in light of the current financial situation of Greece.

### 3.3. *Asylum appeal and judicial review*

19. Under the new procedure, appeals against refusals of applications for international protection by the Asylum Service have suspensive effect until the Appeals Committee delivers a final decision.<sup>33</sup> The ICJ welcomes the introduction of suspensive appeals as a meaningful improvement on the previous asylum

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<sup>28</sup> ICJ & ECRE, [Re: Execution of M.S.S. v. Belgium and Greece \(Application no. 30696/09\) in relation to Greece](#), Letter of the 2 March 2015, p. 2.

<sup>29</sup> Training sessions offered covered the following topics: International Human Rights Law and Introduction to International Refugee Law by UNHCR affiliated staff; European Asylum Support Office (EASO) Training Curriculum Module "Inclusion"; EASO Training Curriculum module "Evidence Assessment"; EASO Training Curriculum Module "Interview Techniques"; EASO Training Curriculum Module "Country of Origin Information", "Drafting and Decision Making" by UNHCR-affiliated staff and former members of the Appeals Committees established under PD 114/2010; "The Dublin Regulation" by staff of the Dublin Unit. See AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 25.

<sup>30</sup> According to information provided by the April 2015 report of AIDA, the Asylum Service suggests the recruitment of large number of caseworkers on a long-term basis, "provided funding can be secured". See AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 25.

<sup>31</sup> Human Rights Watch, [Greece: Humanitarian Crisis on the Islands](#), 11 July 2015 [accessed 13 August 2015].

<sup>32</sup> See, for example, UN High Commissioner for Refugees (UNHCR), *UNHCR warns of growing asylum crisis in Greece and the Western Balkans amid arrivals of refugees from war*, *op. cit.*

<sup>33</sup> Article 25.1.a PD 114/2010, as amended by Article 3.1 PD 167/2014, for applications lodged under the Old Procedure, and Article 25.2 PD 113/2013 for applications lodged under the New Procedure.



system. Nevertheless, several deficiencies in the current appeal procedure undermine the effectiveness of the right to an effective remedy for human rights violations. The appeal is a written procedure only, and appeals are only examined on the grounds of the information contained in the case file. The individual appealing the dismissal of her or his claim to the Appeals Committees may be invited to a hearing.<sup>34</sup> However, in its legal opinion of 22 October 2013, the State Legal Council<sup>35</sup> clarified that a "hearing is not obligatory for the cases examining applications for international protection including refugee status recognition".<sup>36</sup> Additionally, there is no free legal representation before the Appeals Committees, albeit asylum seekers "have the right to consult, at their own cost, a lawyer or other legal advisor on matter relating to their asylum application".<sup>37</sup> The AIDA 2015 report, as well as reports of the ICJ and the European Council on Refugees and Exiles have found that the failure to ensure that applicants have a right to appear before the Appeals Committees, coupled with the lack of legal aid and the fact that representation by a lawyer is not required by law greatly undermine the effectiveness of the appeal procedure in securing the appeal rights of the individuals concerned.<sup>38</sup>

20. Furthermore, according to Law 4249/2014, civil servants, such as the Director of the Appeals Authority, who is the head of the Appeals Committees' secretariat,<sup>39</sup> and the experts-rapporteurs,<sup>40</sup> who are all appointed by the Minister of Interior and Administrative Reconstruction,<sup>41</sup> are endowed with powers to potentially overrule or otherwise interfere with the Appeals Committees' decision-making. In light of this, the ICJ considers that the Appeals Committees' institutional independence is compromised. Moreover, it appears that the Appeals Committees are neither masters of their own procedure, nor can they fully assess a case of their own motion or on the basis of information sent to them directly. The fact that the mandate of the members of the Appeals Committees only lasts one year and that this term is subject to renewal by the Minister of Interior and Administrative Reconstruction also suggests a lack of institutional independence<sup>42</sup> and casts serious doubt on the institutional independence of the Committees system in law and in practice. The ICJ is concerned that, taken together, these flaws within the appeals system may render it futile and ineffective.

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<sup>34</sup> Article 26.4 PD 113/2013.

<sup>35</sup> The State Legal Council is a body within the Greek administration charged with the interpretation of administrative law. Its opinions are held as highly authoritative and are *de facto* binding within the public administration. Nonetheless, the State Legal Council does not have judicial status as do administrative courts and the Council of State.

<sup>36</sup> State Legal Council, opinion 339/2013, 22 October 2013 (unofficial translation).

<sup>37</sup> Article 10.1 PD 113/2013.

<sup>38</sup> AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 36. See also ICJ, [\*Joint Submission of the International Commission of Jurists \(ICJ\) and of the European Council on Refugees and Exiles to the Committee of Ministers of the Council of Europe in the case of M.S.S. v. Belgium and Greece \(Application no. 30696/09\)\*](#), May 2012, p.23ss.

<sup>39</sup> Law 4249/2014, amending the law 3907/2011. The Director of the Appeals Authority is now responsible for the "orderly and affective functioning of the Committees" (Article 122.5.d Law 4249/2014), while he was previously "in charge of the Authority's Secretariat and of assisting the Committees in their tasks" (Article 3.5 Law 3907/2011).

<sup>40</sup> "When the Appeals Authority receives appeals, the Director shall assign the relevant case files to experts-rapporteurs and allocates them to each Committee according to the provisions of the internal regulation of the Authority"; Article 26.2 PD 113/2013.

<sup>41</sup> Both the Director of the Appeals Authority and the experts-rapporteurs are civil servants under the authority of the Ministry of Interior and Administrative Reconstruction: they are not members of the Appeals Committee and, therefore, do not enjoy the "personal independence" guaranteed to the latter by article 3.4 of Law 3907/2011.

<sup>42</sup> Article 122.5.a Law 4249/2014.

21. In both the Old and the New Procedure, asylum seekers have the right to apply to the Administrative Court of Appeals against a decision of the Appeals Committees.<sup>43</sup> However, such a right does not have an automatic suspensive effect on the expulsion order and practical and legal obstacles limit its exercise. These include strict and complex procedural rules, such as the requirement that applications be written in Greek and filed by a lawyer, coupled with a limited access to legal assistance.<sup>44</sup>

### 3.4. Assessment and conclusions on the asylum system

22. International human rights law requires that, as well as being administered in an impartial and independent manner, a remedy be prompt, effective, accessible, enforceable and capable of leading to the cessation of or reparation for the human rights violation concerned.<sup>45</sup> In certain cases, the remedy must be provided by a judicial body,<sup>46</sup> but, even if it is not, it must fulfill the requirements of effectiveness and independence. The remedy must be effective in practice as well as in law, and must not be unjustifiably hindered by the acts of State authorities.<sup>47</sup> In cases of arbitrary *refoulement* in connection with a risk of torture or other ill-treatment, the absolute nature of the rights engaged requires strict compliance with the right to an effective remedy,<sup>48</sup> and means that the decision to expel must be subject to close and rigorous scrutiny.<sup>49</sup> Under the Covenant, article 2.3, taken together with *non-refoulement* obligations, including, in particular, under articles 6, 7, 9 and 14, requires as much.
23. The appeal procedure must be accessible in practice, must provide an effective opportunity for the individual to obtain high quality legal advice, and must allow a real possibility of lodging an appeal within prescribed time limits.<sup>50</sup> In *non-refoulement* cases, an unduly lengthy appeal process may render the remedy ineffective, in view of the seriousness and urgency of the matters at stake.<sup>51</sup> To provide an effective remedy, the appeal must have suspensive effect on the expulsion measure from the moment the appeal is filed, since the notion of an effective remedy requires that the national authorities give full consideration to the compatibility of a measure with human rights standards, before the measure is executed.<sup>52</sup> A system where stays of execution of expulsion orders are at the

<sup>43</sup> Article 29 PD 114/2010 and Article 29 PD 113/2013, citing Article 15 Law 3068/2002.

<sup>44</sup> AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 37.

<sup>45</sup> See, generally, ICJ, *Migration and International Human Rights Law, A Practitioners' Guide*, Updated Edition 2014, pp. 166ss.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Muminov v. Russia*, ECtHR, *op. cit.*, fn. 343, para. 100; *Isakov v. Russia*, ECtHR, *op. cit.*, fn. 324, para. 136; *Yuldashev v. Russia*, ECtHR, *op. cit.*, fn. 324, para. 110-111; *Garayev v. Azerbaijan*, ECtHR, Application No. 53688/08, Judgment of 10 June 2010, paras. 82 and 84.

<sup>48</sup> *Agiza v. Sweden*, Communication no. 233/2003, CAT, Doc CAT/C/D/233/2003, 24 May 2005, para. 13.8.

<sup>49</sup> *Jabari v. Turkey*, ECtHR, Application no. 40035/98, 11 July 2000, para. 39.

<sup>50</sup> *M.S.S. v. Belgium and Greece*, ECtHR, *op. cit.*, para. 318.

<sup>51</sup> *Ibid.*, para. 320.

<sup>52</sup> *Jabari v. Turkey*, ECtHR, *op. cit.*, para. 50; *Conka v. Belgium*, ECtHR, Application no. 51564/99, 5 February 2002, para. 79; *Gebremedhin v. France*, ECtHR, Application No. 25389/05, Judgment of 26 April 2007, paras. 58, 66; *Muminov v. Russia*, ECtHR, Application no. 42502/06, 4 November 2010, para. 101; *Concluding Observations on France*, CAT, UN Doc. CAT/C/FRA/CO/3, 3 April 2006, para.7; *Concluding Observations on Belgium*, CCPR, UN Doc. CCPR/CO/81/BEL, 8 December 2004, para. 21; *Concluding Observations on Morocco*, CCPR, UN Doc. CCPR/CO/82/MAR, 1 December 2004, para. 13; *Concluding Observations on Uzbekistan*, CCPR, UN Doc. CCPR/CO/83/UZB, 26 April 2005, para. 12; *Concluding Observations on Ukraine*, CCPR, UN Doc. CCPR/C/UKR/CO/6, 28 November 2006, para. 9; *Concluding Observations on Libyan Arab Jamahiriya*, CCPR, UN Doc. CCPR/C/LBY/CO/4, 15 November 2007, para. 18; *Concluding Observations on Belgium*, CAT, UN Doc. CAT/C/BEL/CO/2, 19 January 2009, para. 9;



discretion of a court or other body are not sufficient to ensure the right to an effective remedy, even where the risk that a stay will be refused is minimal.<sup>53</sup>

24. Greece undoubtedly faces challenges in managing continuing and ever-increasing irregular arrivals at a time of considerable economic difficulties. Nonetheless, international human rights law, including, notably, article 4 of the ICCPR, allows no derogation in respect of the principle of *non-refoulement* in relation to the right to life, the prohibition of torture or other ill-treatment or other serious violations of human rights.<sup>54</sup> Therefore, despite its difficult economic conditions, Greece remains under the obligation to set up and operate an effective asylum system so as to avoid breaches of the *non-refoulement* principle and of the right to an effective remedy, under article 2.3 ICCPR.
25. The reforms to the asylum system are a welcome and serious attempt to address some of the most serious and topical human rights challenges confronting Greece. However, these reforms remain largely incomplete and inadequately implemented in practice, with a critical lack of resources hampering their potential. In addition, the ICJ considers that the reforms have failed to put in place key safeguards necessary to ensure that the asylum process delivers both effective protection against arbitrary *refoulement*, as well as the right to an effective remedy.
26. The ICJ is concerned at the remaining practical obstacles to the effective implementation of Presidential Decree no. 113/2013. These include: long registration periods for international protection applications, including for people held in immigration detention; and the remaining backlog under the Old Asylum Procedure, which continues to apply to applications lodged before 7 June 2013. These practical problems lead to a continuing risk of removal contrary to *non-refoulement* obligations under the Covenant.
27. Because of the Appeals Committees' lack of institutional independence, the ICJ considers that the Appeals Authority fails to deliver an effective remedy, and it is concerned that the above-mentioned flaws, taken together, may render appeals futile and ineffective. The ICJ further considers that the right to appeal to the administrative courts against the Appeals Committees' decisions does not compensate for their lack of institutional independence since the effectiveness of the right to appeal to the courts, in turn, is greatly undermined by its lack of

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*Concluding Observations on Yemen*, CAT, UN Doc. CAT/C/YEM/CO/2, 19 November 2009, para. 22; *Concluding Observations on Belgium*, CAT, Report of the Committee against Torture to the General Assembly, 58th Session, UN Doc. A/58/44 (2003), p. 49, paras. 129 and 131: the Committee expressed concern at the "non-suspensive nature of appeals filed with the Council of State by persons in respect of whom an expulsion order has been issued". The Council of States in Belgium is the Supreme Court in administrative matters. See also, *Concluding Observations on Cameroon*, CAT, UN Doc. CAT/C/CR/31/6, 5 February 2004, para. 9(g); *Concluding Observations on Monaco*, CAT, UN Doc. CAT/C/CR/32/1, 28 May 2004, paras. 4(c) and 5(c); *Concluding Observations on Mexico*, CAT, UN Doc. CAT/C/MEX/CO/4, 6 February 2007, para. 17; *Concluding Observations on South Africa*, CAT, UN Doc. CAT/C/ZAF/CO/1, 7 December 2006, para. 15; *Concluding Observations on Australia*, CAT, UN Doc. CAT/C/AUS/CO/3, 22 May 2008, para. 17; *Concluding Observations on Azerbaijan*, CAT, UN Doc. CAT/C/AZE/CO/3, 8 December 2009, para. 22; *Concluding Observations on Canada*, CAT, UN Doc. CAT/C/CR/34/CAN, 7 July 2005, para. 5(c). See also, *C.G. and Others v. Bulgaria*, ECtHR, Application 1365/07, 24 April 2008, para. 62.

<sup>53</sup> *Conka v. Belgium*, ECtHR, *op. cit.*, paras. 81-85.

<sup>54</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992; UN Human Rights Committee (HRC), *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*, 9 November 1984.

automatic suspensive effect on the expulsion order and by the practical difficulties in gaining effective access to the courts.

**28. In light of the above, and consistent with Greece's obligations under article 2.3 ICCPR, read in conjunction with articles 6, 7, 9 and 14 ICCPR, the ICJ considers that:**

- **Greece should pursue a comprehensive reform in law and in practice of the asylum system to fully meet these obligations, notably by:**
  - **ensuring the opening and full operation of the remaining Regional Asylum Offices;**
  - **pursuing innovative projects to enhance effective access to the asylum procedures, including through electronic registration of claims;**
  - **providing in legislation free, prompt and effective legal assistance and representation before the Asylum Service, the Appeals Authority and the courts;**
  - **making sufficient resources available to ensure appropriate hiring, training and remuneration of the Asylum Service and Appeals Authority's staff;**
  - **ensuring the effective independence of the Appeals Committees;**
  - **providing automatic suspensive effect of the execution of the expulsion order pending appeals before the Administrative Court of Appeals.**

## **5. Detention**

### *5.1. Length and grounds of detention (article 9.1 ICCPR)*

29. Presidential Decree 116/2012, published in the Greek Government Gazette on 19 October 2012, has extended the maximum length of immigration detention for third-country nationals who apply for international protection. As a result, asylum seekers may be held in immigration detention for up to eighteen months, instead of six months, the maximum duration previously allowed.<sup>55</sup> The UN Special Rapporteur on the human rights of migrants expressed concern at "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>56</sup> The extension to 18 months of the total length of immigration detention for asylum seekers was also criticized by UNHCR.<sup>57</sup> Furthermore, under article 59 of Law 4075/2012, migrants and asylum seekers are discriminatorily identified as liable for detention on public health grounds, e.g. on suspicion of carrying an infectious disease or for living in conditions that do not comply with minimum standards of hygiene.

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<sup>55</sup> Article 13.4 PD 114/2010, as amended by PD 116/2012. According to article 13 PD 114/2010 the maximum duration of the asylum seekers' immigration detention was 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, introduced by Presidential Decree 116/2012, establishes that the original 180-day immigration detention maximum time limit can be further prolonged by up to 12 months by an administrative decision of the police.

<sup>56</sup> [Preliminary findings of the UN Special Rapporteur on the human rights of migrants](#), 3 December 2012.

<sup>57</sup> See, [press release of UNHCR Greece \(in Greek\)](#).

30. The ICJ notes that in their reply to the list of issues the Greek authorities have stated that practical efforts have been made to improve the situation of detained migrants and asylum-seekers. In this context, they have clarified that persons who have been detained for more than six months are released and measures alternative to detention are being used. In the same document, the Greek authorities have also indicated that the grounds justifying the detention of migrants awaiting deportation is subject to both administrative and judicial review and that both reviews take place *ex officio* every three months.<sup>58</sup> The Greek authorities further announced their intention to abolish article 59 of Law 4057/2012 and stressed that it is currently not enforced in practice.<sup>59</sup>
31. The ICJ notes that, following the apparent suicide of a detainee at Amygdaleza Pre-Removal Detention Centre and the then Deputy Interior Minister Yiannis Panoussis's visit to the same establishment, the Greek Government announced, in February 2015, that the Amygdaleza Pre-Removal Detention Centre would be closed within 100 days, and that, "action will be taken in order to put in place [an] open reception center instead". Notwithstanding this, at the time of writing, i.e., more than seven months following the above-mentioned visit, the Amygdaleza Pre-Removal Detention Centre remains operational.<sup>60</sup>
32. The ICJ recalls that, under article 9 ICCPR, detention, as a measure taken in pursuit of immigration control, should be a measure of last resort and should never be the rule.<sup>61</sup> Furthermore, in order to establish that detention is not arbitrary, for each and every case, taking into account the specific circumstances of the individual concerned, the State must show that detention is: (i) provided for by national law; (ii) carried out in pursuit of a legitimate objective prescribed in national law; (iii) non-discriminatory; (iv) necessary; (v) proportionate and reasonable; and (vi) carried out in accordance with the procedural and substantive safeguards of international law. Moreover, to demonstrate the necessity and proportionality of the detention, it must be shown that other less coercive measures have been considered and found to be insufficient.<sup>62</sup> The ICCPR also requires that the length of immigration detention imposed with a view to preventing an irregular entry or undertaken to enforce removal must be as short as possible.<sup>63</sup>

<sup>58</sup> HRC, *Replies of Greece to the list of issues*, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.17.

<sup>59</sup> *Ibid.*, p.21.

<sup>60</sup> AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 85. See also, Yahoo news, [Greece to move fast to close migrant centres after inmate suicide](#), 14 February 2015; CommonDreams, ['Shame': Greece Pledges to Shut Down Immigrant Detention Centers](#), 16 February 2015; or Al Jazeera, [Greece outlines radical immigration reforms](#), 5 March 2015; AIDA, Asylum Information Database, [AIDA Update: Greece's commitment on change in detention policy, treatment of Syrian applicants & other issues](#), 15 Mai 2015.

<sup>61</sup> See for example UN Working Group on Arbitrary Detention (WGAD), *Annual Report 2008*, UN Doc. A/HRC/10/21, 16 February 2009, paras. 67 and 82; Committee of Ministers of the Council of Europe (CMCE), *Guidelines on human rights protection in the context of accelerated asylum procedures*, 1 July 2009, 1062nd meeting of the Ministers' Deputies, principle XI.1.

<sup>62</sup> *A. v. Australia*, CCPR, Communication No. 560/1993, Views of 30 April 1997, para. 9.3: "The State must provide more than general reasons to justify detention: in order to avoid arbitrariness, the State must advance reasons for detention particular to the individual case. It must also show that, in the light of the author's particular circumstances, there were no less invasive means of achieving the same ends." *Saed Shams and Others v. Australia*, Communication No.1255/2004, 11 September 2007; *Samba Jalloh v. the Netherlands*, CCPR, Communication No. 794/1998, Views of 15 April 2002: arbitrariness" must be interpreted more broadly than "against the law" to include elements of unreasonableness.

<sup>63</sup> See, UN Working Group on Arbitrary Detention (WGAD), *Annual Report 1998*, E/CN.4/1998/44, para. 69, Guarantee 10; WGAD, *Annual Report 1999*, E/CN.4/1999/63, Principle 7; WGAD, *Annual Report 2008*, A/HRC/7/4, paras. 67 and 82.

33. This Committee has stated, in its General Comment no. 35, that such detention “must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. Asylum seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security. The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review. Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons. The inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention.”<sup>64</sup>
34. The ICJ is alarmed at the extension in domestic legislation of the maximum length of immigration detention of migrants, including, in particular, in respect of asylum seekers. The ICJ considers that 18 months in immigration detention is by definition excessive and thus unlawful since no admission or expulsion procedure lasting this length of time may be considered to have been pursued expeditiously and/or with due diligence.
35. Furthermore, the organization is concerned that, despite some measures taken to improve infrastructures, detention conditions in immigration detention facilities appear to remain degrading and thus in breach of Article 7 and 10 ICCPR (see below at section 5.2, Immigration detention conditions).
36. Notwithstanding the above, the ICJ welcomes the recent measures implemented by the Greek authorities to improve the situation of detained migrants and asylum-seekers, in particular the release of persons detained for more than six months. The ICJ also welcomes the Greek authorities’ above-mentioned intention to abolish article 59 of Law 4075/2012, which impermissibly discriminates against migrants and asylum seekers by expressly identifying them as liable for detention on public health grounds.
- 37. However, consistent with its obligations under article 9.1 ICCPR, the ICJ considers that Greece should:**
- **considerably reduce the maximum length of immigration detention provided in law and ensure that detention is a measure of last resort;**
  - **enshrine in law a prohibition against the resort to immigration detention unless, as a last resort and taking account the specific circumstances of the individual concerned, it can be shown that detention is (i) provided for by national law; (ii) carried out in pursuit of a legitimate objective prescribed in national law; (iii) non-discriminatory; (iv) necessary; (v) proportionate and**

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<sup>64</sup> UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para.18.

- **reasonable; and (vi) carried out in accordance with the procedural and substantive safeguards of international law;**
- **include in legislation a detailed list of measures alternative to immigration detention that must be considered in each individual case, before resorting to detention.**

## 5.2. Immigration detention conditions

38. Before the asylum system reform mentioned above, immigration detention conditions were consistently and reliably reported as falling short of relevant international standards, including articles 7 and 10 ICCPR, as well as national law.<sup>65</sup> The European Court of Human Right found on several occasions that the detention conditions of third-country nationals in Greece violated the prohibition on inhuman or degrading treatment in article 3 ECHR.<sup>66</sup> In this context, the ICJ notes the establishment of new immigration detention centres. However, the organization is gravely concerned that the detention conditions of those detained solely for the stated purpose of controlling immigration do not appear to have substantially improved.<sup>67</sup>
39. The April 2015 AIDA report on Greece, citing the Greek Ombudsman,<sup>68</sup> highlighted that immigration detention conditions remained unacceptable and needed to be urgently addressed.<sup>69</sup> In this context, the report pointed out the serious health risks for those detained, not only because of substandard detention conditions, but also because of the lack of medical services available. It identified people in detention with serious chronic and communicable diseases, some of whom had interrupted their treatment: “[n]ot only were these people detained in conditions harmful to their health for lengthy periods of time, but no measures were taken to protect other detainees from possible disease transmission.”<sup>70</sup>
40. In addition, the April 2015 AIDA report stressed that: “the lack of interpreters and the limited provision of information regarding their rights is another major cause of frustration, anxiety and tension for the detained migrants. In most detention facilities for migrants, even in the larger ones, there is no permanent presence of interpreters or intercultural mediators, with the exception of interpreters hired for the needs of specific EU-funded projects and for limited periods of time.”<sup>71</sup>
41. The ICJ recalls that anyone deprived of his or her liberty and regardless of the type of detaining measures to which s/he is subjected must enjoy the protection of article 7 ICCPR, prohibiting torture and other ill-treatment, as well as article 10

<sup>65</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek Only].

<sup>66</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>67</sup> See for example EU Fundamental Rights Agency, [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), December 2013, p. 22; GCR, [Submission of the Greek Council for Refugees to the Committee of Ministers of the Council of Europe in the case of M.S.S. V. Belgium & Greece](#), 2 March 2015. See also ECtHR, *Mahammad v. Greece*, Application no. 48352/12, 16 January 2015.

<sup>68</sup> Greek Ombudsman, [Report after the monitoring visit at Amygdaleza Detention Centre](#), August 2014, (Greek only).

<sup>69</sup> AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, op. cit., p. 85.

<sup>70</sup> *Ibid.*, p. 85.

<sup>71</sup> *Ibid.*, p. 85.

ICCPR, which makes specific provision for the right of any detained persons to be treated with humanity and respect for their dignity. According to this Committee's General Comment no. 21, article 10.1 ICCPR "imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7 ... but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons."<sup>72</sup> In this context, conditions of detention that violate article 10 may also violate article 7 of the ICCPR. In addition, this Committee has acknowledged in General Comment 35 on article 9 of the Covenant that, "[u]nlawful' detention includes both detention that violates domestic law and detention that is incompatible with the requirements of article 9, paragraph 1, **or with any other relevant provision of the Covenant**"<sup>73</sup> (**emphasis added**).

42. In light of the above, the ICJ considers that deprivation of liberty in circumstances where detention conditions breach article 7 and/or 10 of the Covenant constitutes a violation of article 9 of the Covenant.

**43. In light of the above, and consistent with Greece's obligations under articles 7, 9 and 10 ICCPR, the ICJ considers that:**

- **Greece should take urgent measures to ensure that nobody in immigration detention is held in conditions that violate article 7 and/or 10 of the Covenant.**

#### **6. Immigration detention and treatment of unaccompanied children (articles 24, 9 and 7 ICCPR)**

44. Over 6,100 migrant children, including many entitled to international protection, are reported to have crossed the Greek border in 2014, with around 1,100 of them being unaccompanied.<sup>74</sup>

45. The UN Working Group on Arbitrary Detention (WGAD) found, after a visit to Greece in January 2013, that unaccompanied minors "are often not properly registered and are systematically detained."<sup>75</sup> It further noted that national legislation does not provide for a statutory prohibition of their immigration detention. It also established that, due to the limited capacity of existing reception facilities, unaccompanied minors often remained in immigration detention for prolonged periods of time.<sup>76</sup> Amnesty International and, more

<sup>72</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 10 April 1992.

<sup>73</sup> UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 44; see also para. 14.

<sup>74</sup> Human Rights Watch, *EU: Abuses Against Children Fuel Migration*, 23 June 2015. These numbers cannot account for the many children traveling alone who, out of lack of proper information, claim to be over 18 years old.

<sup>75</sup> *Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013)*, 31 January 2013; see also, Human Rights Watch, *Greece: Humanitarian Crisis on the Islands*, 11 July 2015, *op. cit.*

<sup>76</sup> *Ibid.*



recently, Human Rights Watch reported the same concern.<sup>77</sup> The ICJ recalls its previous findings that, generally, conditions of detention of migrants in Greece amounted to inhuman or degrading treatment. The organization considers that this is even more the case in respect of undocumented, unaccompanied or otherwise separated children held in immigration detention in Greece, given their inherent vulnerability.

46. The ICJ recalls that article 24 ICCPR guarantees children's right to enjoy protection measures as required by their status as minors, without discrimination. The Committee on the Rights of the Child's *General Comment on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin* states that "in the exceptional case of detention [...] special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. [...] Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counseling where necessary. [...] [U]naccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative."<sup>78</sup> The same General Comment of the Committee on the Rights of the Child also states that, in all decisions relating to children, their best interests must not only be the primary consideration, but that the decisions taken must clearly reflect the fact that this approach has been followed. This is specifically mentioned in relation to administrative decisions concerning asylum and immigration.<sup>79</sup>
47. The ICJ considers that, in the context of child detention, the best interests principle should prevail over the mere interest of immigration control and should be used as the key evaluation tool in all decisions affecting asylum-seeking and other migrant children. The organization draws the attention of this Committee to a recent advisory opinion of the Inter-American Court of Human Rights, in which the Court ruled that, "deprivation of liberty of a child in this context [i.e. immigration detention] can never be understood as a measure that responds to the child's best interest."<sup>80</sup>

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<sup>77</sup> Human Rights Watch, *Greece: Humanitarian Crisis on the Islands*, 11 July 2015, *op. cit.*; Amnesty International, *Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions*, July 2010, p. 30.

<sup>78</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para. 63.

<sup>79</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, para. 1-2; UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005), ob. Cit.*, paras 62-63.

<sup>80</sup> The Court further concluded that "States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in a country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority", IACtHR, Rights and guarantees of children in the context of migration and/or in need of international protection, Advisory Opinion no. OC-21/14 of 19 August 2014, para. 154-160. IACtHR, Rights and guarantees of children in the context of migration and/or in need of international protection, Advisory Opinion no. OC-21/14 of 19 August 2014, para 154.

48. The ICJ considers that the extremely poor conditions of detention in several immigration detention centres, coupled with the detention of unaccompanied children with adults, amount to violations of article 7 ICCPR of those detained. In addition, while not repeated here, the general concerns set out in section 5 above apply *a fortiori* to the immigration detention of children.
49. In addition to being concerned about the immigration detention of unaccompanied children, including as a result of their detention conditions, the ICJ is gravely concerned at the inadequacy of children's guardianship system in Greece. Guardianship of unaccompanied asylum-seeking or migrant children is regulated by Presidential Decree no. 220/2007, transposing the EU Directive 2003/9/EC (the 'Reception Directive') into the national legislation. The Public Prosecutor has an obligation to appoint guardians for all unaccompanied children.<sup>81</sup> However, in practice, because of the lack of appropriate personnel, it is often the Public Prosecutor him- or herself who is appointed as a guardian. This does not allow for a real and adequate contact with the child. Despite relevant domestic legal obligations, mainly due to a lack of staff and resources, the guardianship system thus remains practically ineffective.<sup>82</sup> The Greek authorities themselves have noted that, "in practice, given the large amount of minors in irregular situation and the lack of funding for the compensation of guardians, the legal framework sometimes revealed itself insufficient"<sup>83</sup>, and that "due to the large number of unaccompanied minors, the competent prosecutor [...] is not able to fulfill his/her duties."<sup>84</sup>
50. As a result of the inadequacy of the guardianship system and of the lack of places in reception centres for unaccompanied minors, many children are not accommodated in a protective environment.<sup>85</sup> Furthermore, UNHCR reported that "for a variety of reasons, including the type and quality of accommodation provided, the negative perception of the protection situation in Greece, and predetermined views as regards preferred final destination countries, the majority of children abscond."<sup>86</sup>
51. The ICJ notes that the Greek authorities have created a special committee within the Ministry of Justice to examine the legal framework for the appointment of guardians for unaccompanied children in an irregular situation with a view to improving matters. However, while the authorities have stated that the issue of unaccompanied minors is a priority and that the special committee has formulated some proposals for a new legal framework, progress appears to be hampered by the lack of funding.<sup>87</sup>

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<sup>81</sup> Article 19.1 PD 220/2007.

<sup>82</sup> *Communication from the authorities in the M.S.S. and Rahimi groups of cases against Greece (Applications No. 30696/09, 8687/07)*, Committee of ministers, Document DH-DD(2015)323, 24 March 2015.

<sup>83</sup> *Communication from a NGO (Greek Council for Refugees) (29/05/2015) in the M.S.S. and Rahimi groups of cases against Greece (Applications No. 30696/09, 8687/08)*, Committee of ministers, Document DH-DD(2015)606, 10 June 2015.

<sup>84</sup> HRC, Replies of Greece to the list of issues, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.19.

<sup>85</sup> *Communication an NGO (Greek Council for Refugees) in the M.S.S. and Rahimi groups of cases against Greece (Applications No. 30696/09, 8687/07)*, Committee of ministers, Document DH-DD(2015)606, 10 June 2015.

<sup>86</sup> UN High Commissioner for Refugees (UNHCR), [Observations on the Current Situation of Asylum in Greece](#), December 2014, p. 22.

<sup>87</sup> *Communication from the authorities in the M.S.S. and Rahimi groups of cases against Greece (Applications No. 30696/09, 8687/07)*, Committee of ministers, Document DH-DD(2015)323, 24 March 2015; see also, HRC, Replies of Greece to the list of issues, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.19.

52. Finally, the ICJ stresses that the guardianship system is currently unable to adequately respond to the need for protection of unaccompanied migrant and asylum-seeking children.

**53. In light of the above, and consistent with Greece's obligations under articles 7, 9 and 24 ICCPR, the ICJ considers that:**

- **Greece should enact legislation banning the resort to detention of unaccompanied children solely for immigration purposes;**
- **Greece should provide in primary legislation a list of appropriate reception measures, as alternatives to depriving them of their liberty;**
- **Greece should put in place a proper and adequately staffed guardianship system not reliant on the public prosecutor's office but on experts in childcare and children's rights.**

## **7. Reception and living conditions (article 7 ICCPR)**

54. The First Reception Service (FRS), composed of a Central Service (FRC) and of Regional Services (or Mobile Units), provides for a new system for "the registration, the assessment, the reliable determination of the identity and the country of origin, the medical screening and the psycho-social profiling of third country nationals undergoing the initial reception procedure."<sup>88</sup> It is tasked with the referral to either the Asylum Service for registration of an asylum claim or the police for removal, as well as with referral of persons with specific needs, including unaccompanied children, to appropriate structures.<sup>89</sup> Its aim is to gradually replace the systematic use of detention as a response to the irregular entry of third-country nationals in Greece.

55. Because of lack resources, the FRS is reportedly understaffed and, as a result, only an insufficient number of first reception facilities have been created. As of April 2015, only one fixed FRS facility, in Fylakio-Orestiada, out of the eight foreseen by the Greek authorities, and two Mobile Units on the islands of Samos and Lesbos were operational.<sup>90</sup>

56. Reportedly, the most serious concerns arise in relation to the situation in the Greek Islands, where the large majority of refugees and other migrants arrive. The reception facilities are inadequate and, as a direct consequence of the financial crisis, there are no resources to recruit much needed staff and for other necessary improvements. As reported by the Integrated Regional Information Networks (IRIN), last 30 June 2015, "[j]ust two mobile reception units to determine the nationality of new arrivals and provide them with basic medical and humanitarian assistance, are running on the islands of Samos and Lesbos while former detention centres on Samos, Levos and Chios, now called identification centres, are full to overflowing. UNHCR Greece spokesperson Ketty Kehayoiylou confirmed that conditions at the centres were overcrowded and that

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<sup>88</sup> HRC, Replies of Greece to the list of issues, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.21.

<sup>89</sup> Law 3907/2011. Vulnerable groups are defined by article 11 Law 3907/2011 as including unaccompanied children, people with disabilities or suffering from incurable diseases, elderly persons, pregnant women, single parents with children, victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation and victims of trafficking.

<sup>90</sup> AIDA, *Asylum Information Database, Country Report, Greece*, 27 April 2015, *op. cit.*, p. 27. See also First Reception Service, *Annual Report 2013* (April 2014) (in Greek); UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the Current Situation of Asylum in Greece*, December 2014, p.9.

local police and coast guards, while doing their best, were over-stretched and struggling to process so many new arrivals.”<sup>91</sup>

57. The tensions on the islands due to the very large numbers of arrivals, the overcrowding in, and the inadequate conditions of, reception facilities are well documented.<sup>92</sup> For instance, in April 2015, Greek authorities, overwhelmed by the situation, led all migrants waiting for registration to the football stadium of Kos, where they locked them in for over 24 hours. The overcrowding, the heat and the insufficient provision of food and water led to clashes with the police, before people were eventually released.<sup>93</sup>
58. In July 2015, Human Rights Watch reported little to no improvement in the conditions of reception of migrants than what was reflected in earlier reports. The human rights organization’s report documented very different conditions from one place of arrival to the other and inconsistent applications of the procedures, particularly concerning registration and information provision. In some cases, such as on the island of Lesbos, the overcrowding forced refugees and other migrants to sleep on the streets. Some screening centres are reported to be chronically overcrowded, with unsanitary conditions and inadequate access to food and healthcare.<sup>94</sup>
59. Many have no way but to endure extremely precarious conditions, finding makeshift shelter in empty buildings or living on the streets, forced to bear unacceptable hygiene standards.<sup>95</sup> UNHCR reported that many individuals do not even bother to request accommodation, because of the knowledge common among them that places in reception centres are extremely scarce and of very low standard, as well as overcrowded with up to eighteen persons per room.<sup>96</sup>
60. In the context of the reception and living conditions of refugees, asylum seekers and other migrants present in Greece, the ICJ is also concerned at the rise of xenophobia and racism in the country. The Parliamentary Assembly of the Council of Europe had stressed that: “[m]igrants, 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>97</sup>

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<sup>91</sup> Integrated Regional Information Networks (IRIN), [Greek financial showdown overshadows refugee crisis](#), 30 June 2015.

<sup>92</sup> See, for example, BBC, [Migrant 'chaos' on Greek islands - UN refugee agency](#), 7 August 2015.

<sup>93</sup> The Guardian, [Kos migrants: 'They said they'd give us papers, then locked us in like a prison'](#), 14 April 2015; Al Jazeera, [Migrants clash as Greek island of Kos overwhelmed](#), 16 August 2015; The Independent, [Kos migrants 'locked inside stadium for 24 hours, beaten by police' and 'suffering panic attacks'](#), 17 September 2015; New York Times, [Greece Rounds Up Migrants on Kos, Locking Them in Stadium Overnight](#), 12 August 2015.

<sup>94</sup> Human Rights Watch, *Greece: Humanitarian Crisis on the Islands*, 11 July 2015, *op. cit.* On Samos, HRW reported that access to running water is limited to 30 minutes per day. Addressing the conditions of the Island of Kos, HRW’s report stated “[c]hildren and adults alike were sleeping in squalid conditions in an abandoned hotel on makeshift beds, without electricity and with limited running water, or in tents provided by Doctors without Borders. Others slept outdoors in public areas. Nearly all of those interviewed by Human Rights Watch said that authorities provided little food and some said they had not eaten for days.”

<sup>95</sup> [Migration and asylum: mounting tensions in the Eastern Mediterranean](#), Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, paras. 43-45.

<sup>96</sup> UNHCR *Observations on the Current Situation of Asylum in Greece*, *op. cit.*, p.20.

<sup>97</sup> Para 8, [PACE Resolution adopted on 25 January 2013 Resolution 1918](#) (2013). In this context, Article 2 Law 4203/2013 suspends all state financing of political parties whose leaders or a

61. Since 2009, high numbers of attacks on refugees, asylum-seekers and other migrants have been reported. In 2012, 154 incidents of racist violence, including two racially-motivated murders were recorded, most of them having occurred in Athens or in the surrounding areas.<sup>98</sup> The Greek authorities reported 109 alleged hate crimes and hate speech incidents in 2013, and 80 in 2014.<sup>99</sup> Most of the reported attacks follow the same pattern, taking place mainly in public places at night, often involving groups of people masked and dressed in black: they often carry clubs or bottles as weapons and “most attacks are accompanied by insults and exhortations to leave Greece”.<sup>100</sup>
62. Furthermore, victims are often reluctant to report attacks, because of a lack of trust in the police, including because people in an irregular situation are vulnerable to arrest and deportation.<sup>101</sup>
63. In implementing the EU Framework Decision no. 2008/913/JHA, Greece amended its criminal code in 2008, establishing racist motivation as an aggravating circumstance to take into account in the sentencing of some criminal offences.<sup>102</sup> In response to the rise in racism and xenophobia in September 2014, Parliament adopted Law 4285/2014,<sup>103</sup> aiming at the strengthening of anti-racism criminal legislation. The law introduced more severe sentences for hate-motivated offences.<sup>104</sup> In addition, the Greek Government stated in its reply to the list of issues that, under certain conditions, Law 4332/2015 grants victims of racist acts, or material witnesses in such cases a residence permit on humanitarian grounds while proceedings are ongoing.<sup>105</sup>
64. The ICJ welcomes these concrete and meaningful steps taken to improve State response to racist violence. Nevertheless, Law 4285/2014 has been criticized by NGOs for being unable effectively to protect victims of racist violence that wish to lodge a complaint and the *de facto* situation seems to have changed very little.<sup>106</sup> In its report of 2015, ECRE, acknowledging some progress, in particular at the legislative level, nonetheless pointed out that the situation of migrants and asylum seekers in Greece is still characterized by social exclusion and inadequate living conditions.<sup>107</sup>

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number of their elected official are charged with membership in a “criminal organization”. See HRC, Replies of Greece to the list of issues, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.7.

<sup>98</sup> RVRN, 2012 annual report of the Racist Violence Recording Network, *April 2013*.

<sup>99</sup> HRC, Replies of Greece to the list of issues, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.9.

<sup>100</sup> HRW, *Hate on the streets : xenophobic violence in Greece*, 2012. See also ECRI, *ECRI Report on Greece*, 24 February 2015, p.23 and following.

<sup>101</sup> *Greece: the end of the road for refugees, asylum-seekers and migrants*, Amnesty International, Index: EUR 25/011/2012, December 2012, p. 10. See also HRW, *Hate on the streets : xenophobic violence in Greece*, 2012. It is rare that attackers are arrested and police inaction is the rule: “[i]n practice, the police appear ill-equipped or ill-disposed to investigate reports of racist violence. [...] While responders will provide immediate assistance—calling an ambulance, for example— Human Rights Watch heard repeatedly that police discourage victims from filing official complaints.”

<sup>102</sup> HRW, *Hate on the streets: xenophobic violence in Greece*, *op. cit.*

<sup>103</sup> Law 4258/2014, amending Law 927/1979.

<sup>104</sup> Article 79.3 of the Criminal Code was replaced by Law 4285/2014 by Article 81A. Colour was also added to the list of grounds. Sentences remained impossible to suspend. See also ECRI, *ECRI Report on Greece*, 24 February 2015, p.9.

<sup>105</sup> Law 4332/2015. See also HRC, Replies of Greece to the list of issues, 4 August 2015, CCPR/C/GRC/Q/2/Add.1, p.7.

<sup>106</sup> Hellenic Foundation for European & Foreign Policy (ELIAMEP), *Migration in Greece Recent Developments in 2014*, October 2014, p. 4.

<sup>107</sup> ECRI, *ECRI Report on Greece*, 24 February 2015, *op. cit.*

65. The ICJ wishes to emphasize that article 7 ICCPR aims at protecting “both the dignity and the physical and mental integrity of the individual”.<sup>108</sup> This Committee further stated that “Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. [...] Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”<sup>109</sup>
66. The ICJ notes that, its judgment *M.S.S. v. Belgium and Greece*, 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>110</sup> The Court therefore held that, given national law obligations of Greece to ensure adequate material reception conditions, pursuant to EU Reception Directive, the situation of extreme poverty brought about by the inaction of the State was treatment contrary to article 3 ECHR.<sup>111</sup>
67. Given that obligations under article 7 ICCPR mirror those under article 3 ECHR, the ICJ submits that, in light of the obligation under article 31.3 of the Vienna Convention on the Law of Treaties to take into consideration the “relevant rules of international law applicable in the relations between the parties” (in this case ECHR obligations applicable to Greece), “degrading treatment” under article 7 ICCPR should be considered to include situations of destitution, as found by the European Court of Human Rights in the abovementioned judgment.
68. The ICJ is concerned that the material situation of refugees and asylum seekers in Greece remains extremely difficult and continues to give rise to situations comparable to that of the applicant in *M.S.S. v. Belgium and Greece*, in violation of Greece’s obligations to prevent degrading treatment under article 7 ICCPR.
- 69. In light of the above, and consistent with Greece’s obligations under article 7 ICCPR, the ICJ considers that the Greek authorities should:**
- **adopt a comprehensive national strategy to address the root causes of racism and intolerance, and to foster integration;**
  - **set up a system to encourage reporting of violent crimes, as well as provide appropriate means of reparation, including compensation, for the human rights abuses suffered;**
  - **undertake a thorough educational effort with police and investigative forces on fighting hate crimes as one of their key responsibilities;**
  - **address the social and economic conditions of refugees and asylum seekers to ensure that they do not endure destitution; and**
  - **provide at least access to basic healthcare, food, water and housing.**

<sup>108</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 20, op. cit.*

<sup>109</sup> *Ibid.*

<sup>110</sup> ECtHR, *M.S.S v. Belgium and Greece, op. cit.*, para. 263.

<sup>111</sup> *Ibid.*, para. 254-264.