



**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*

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The International Commission of Jurists and the European Council on Refugees and Exiles are pleased to present to the Committee of Ministers of the Council of Europe this submission under Rule 9.2 of the *Rules of Procedure* of the Committee of Ministers, under its supervisory role on execution of judgments of the European Court of Human Rights and, in particular, in the implementation of the general obligations arising from the judgment *M.S.S. v. Belgium and Greece*. The present submission will focus on the respect of these obligations by Greece.

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

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

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<sup>1</sup> Paragraph 399.

<sup>2</sup> Paragraph 399.

application and without his having had access to an effective remedy (para.321).

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

According to official data published on the online domain of the Greek Police, 95,239 persons arrived in Greece in an irregular manner in 2006. In 2007, the number stood at 112,364 and in 2008, at 146,337. At the end of August 2009, the number was reported to be 81,777.<sup>3</sup> Among these, were people arriving by sea from Turkey, including 19,900 in an irregular manner in 2007, 15,300 in 2008, 10,165 in 2009 and 1,765 in 2010. According to the Action Plan provided by the Greek Government to the Committee of Ministers of the Council of Europe, there were 132,524 arrests of undocumented migrants in 2010 and 20,002 in the first three months of 2011.<sup>4</sup> The Ministry of Citizen Protection reported that in 2011 there were 99,368 persons arrested for illegal entry and residence.<sup>5</sup> Fifty-nine persons were reported missing in 2009 and five in 2010, while 24 were reported dead in 2009 and 36 in 2010.<sup>6</sup> In 2010, Greece was the recipient of 90 percent of all undocumented entries in to the European Union.<sup>7</sup>

As for refugees and asylum seekers, there were 1,444 refugees and 55,724 asylum seekers residing in Greece, as at January 2011.<sup>8</sup> Government statistics show that in 2007, 25,113 persons applied for asylum in Greece, and 140 were granted refugee status. In 2008, the total was 19,884 applications for 358 grants reported. In 2009, Greece registered 15,928 applications and granted refugee status to 36 persons. According to official data of the Ministry of Citizen Protection, during 2011, 9311 new asylum applications were submitted, and 9175 were rejected.<sup>9</sup> However, the registration of applications has not kept pace with demand, and therefore the number of registered applications for asylum does not necessarily reflect the number of persons who would wish to apply.

## 2. Ongoing legislative reforms

As indicated by the Greek Government, a reform of the national asylum system was undertaken in November 2009, through the adoption of an Action Plan and of new laws for its implementation.<sup>10</sup> On 22 November 2010, Presidential Decree 114/2010 (PD 114/2010), entitled "Establishment of a unified refugee and subsidiary

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<sup>3</sup> UNHCR, Observations on Greece as a country of asylum, December 2009; Official data are available at the online domain of the Greek Police at [http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=12080&Itemid=429&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12080&Itemid=429&lang=).

<sup>4</sup> *Plan d'action au sujet des mesures adoptées par les autorités grecques pour se mettre en conformité avec l'arrêt du 21 janvier 2011 de la Grand Chambre sur la requête no 30696/09, M.S.S. v. Belgique et Grèce*, Athens, 12 July 2011, CoE Doc. no. DH – DD(2011)567F\*, table at pp. 2-3.

<sup>5</sup> Hellenic Democracy, Ministry of Citizen Protection, Announcement of the Press Office of the Ministry of Citizen Protection concerning the 08/02/2012 announcements by the Press Office of the Greek Ombudsman on the application of Law 3907/11, published on 09/02/2012 (in Greek).

<sup>6</sup> UNHCR, "Asylum and Migration" <http://www.unhcr.org/pages/4a1d406060.html>

<sup>7</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]; UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Greece, A/HRC/WG.6/11/GRC/1, of 14 February 2011.

<sup>8</sup> UNHCR statistics <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48e726#>

<sup>9</sup> Source, Police: [http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=12630&Itemid=73&lang](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12630&Itemid=73&lang)

<sup>10</sup> Combined fifth and sixth periodic reports of States parties due in 2009, Greece, CAT/C/GRC/5-6, June 30, 2010.

protection determination procedure for aliens and stateless persons”, entered into force. It replaced PD 90/2008 and abolished PD 81/2009.<sup>11</sup> It provides for a transitional asylum system designed to ensure the rapid review of asylum requests. The transitional asylum system assigns responsibility for determining asylum applications at first instance to Police Directorates and provides for appeals to independent Appeals Committees. The Decree was followed by a circular of the Chief of Police containing procedural guidelines on the implementation of PD 114/2010. Implementation of the decree began at the end of January 2011.

On 26 January 2011, the Greek Parliament adopted the Law 3907/2011 on the establishment of an Asylum Service and an Initial Reception Service, reforming the asylum procedure. It establishes a new asylum authority, the Asylum Service, with civilian staff, under the Ministry of Citizen Protection, responsible for the adjudication of asylum applications at first instance,<sup>12</sup> replacing the role previously assumed by the police. It also provides for the establishment of an Appeals Authority.<sup>13</sup> The new Law also incorporates 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).

On 24 May 2012 a new draft Presidential Decree was presented by the Ministry of Citizen Protection entitled “Establishment of a unified procedure of recognition of refugee status or benefit of subsidiary protection to aliens and stateless persons in line with Directive 2005/85/EC of the Council “on minimum standards on procedures in Member States for granting and withdrawing refugee status”. This is currently undergoing an online public consultation with civil society before being approved.<sup>14</sup>

The Ministry of Citizen Protection indicated on 7 February 2012 that six appeals committees were functioning and were dedicated to clear the backlog of 47,000 asylum applications, while another four had been established as full Appeal Committees for cases submitted after 22 November 2010.<sup>15</sup>

The reforms are a welcome and serious attempt to address the human rights problems in the system. However, reforms remain largely incomplete, weakly implemented in practice, and have been hampered by lack of resources. Greece undoubtedly faces challenges in managing the continuing arrivals of migrants, in a time of financial crisis. The ICJ and ECRE recall that, under Article 3 ECHR, the

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<sup>11</sup> PD 81/2009 had deprived international protection applicants, including asylum-seekers, of their right to an effective remedy by abolishing first-instance appeals against rejection of asylum and other international protection claims.

<sup>12</sup> Article 1 Law 3907/2011

<sup>13</sup> Article 3 Law 3907/2011

<sup>14</sup> The draft Presidential Decree was submitted for an online public consultation and members of civil society were invited to provide their views and comments on the draft document. The online public consultation procedure will end on 1 June 2012 at 14.00 and subsequently, after consideration of its results, the finalized draft will be submitted to the President of Democracy for signature. The new Presidential Decree will enter into force, according to draft Art. 32 upon decision of the Minister of Citizen Protection and publication of the signed Draft in the Official Government Gazette. Ministry of Citizen Protection, Online Domain of Consultation, Source: <http://www.opengov.gr/yptp/?p=722>, accessed on 23/05/2012.

<sup>15</sup> Hellenic Democracy, Ministry of Citizen Protection, Announcement of the Press Office of the Ministry of Citizen Protection concerning the 08/02/2012 announcements by the Press Office of the Greek Ombudsman on the application of Law 3907/11, published on 09/02/2012. [in Greek]. See, section 5 of this submission for more detail on practices, backlog and staffing.

prohibitions on torture and other cruel, inhuman or degrading treatment or punishment are absolute, and that such treatment cannot be justified on the basis of policy imperatives, or economic constraints.<sup>16</sup> The ICJ and ECRE consider that, following the judgment in *M.S.S.*, the Greek government has not yet taken sufficient measures to ensure compliance with Article 3 ECHR.

### 3. Administrative detention

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

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

#### 3.1. Mandatory Detention and length of detention

The Law 3772/2009 extended the maximum administrative detention period to six months, and in certain circumstances, to twelve months. Amnesty International, in an assessment of the situation in Greece one year after the *M.S.S.* judgment, expressed deep concern “that asylum-seekers are routinely detained for prolonged periods of time that can reach up to six months.”<sup>17</sup>

The NGO ProAsyl in its report published in April 2012, found that “no substantial changes for the protection of people in need and the improvement of the detention conditions have taken place in the Evros region. On the contrary, both the systematic detention itself and the bad detention conditions lacking all legal safeguards are used as measures to deter migrants from entering Greece and from requesting international protection upon arrival.”<sup>18</sup> The continued use of detention imposed mainly on the basis of nationality and irrespective of the individual’s vulnerability, and particularly the extended use of detention against asylum seekers (those filing claims as detainees) was also highlighted in a recent interview conducted by ECRE

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<sup>16</sup> See in particular paragraph 223 *M.S.S. v Belgium and Greece* (Application no. 30696/09)

<sup>17</sup> Amnesty International, *Public Statement, Greece: A year on since the M.S.S. Judgment: Greece continues to violate asylum-seekers' human rights*, published on 26/01/2012, available at <http://www.amnesty.org/en/library/asset/EUR25/002/2012/en/10f8de7b-fa76-4245-9ef5-725a7776ec5f/eur250022012en.html>, accessed on 17/04/2012. [in English] General provisions on the length of detention can also be found in most recent Law 3907/2011 Art. 30 on detention, harmonized with Art. 15 of EU Directive 2008/115/EC as well as the new Draft Presidential Decree, draft Art. 12 harmonized with Art. 18 of EU Directive 2005/05/EC. Article 30 of Law 3907/2011 provides under paragraph 5 that the maximum detention period cannot be longer than six (6) months except for the circumstances set out in paragraph 6 of the same Article under which the maximum detention period cannot surpass the period of twelve (12) months. New draft Presidential Decree Article 16 paragraph 6 provides that detention of asylum seekers is enforced only for the absolutely necessary amount of time and cannot be longer than ninety (90) days. The same paragraph provides that if the applicant had previously been detained in view of their administrative deportation or return procedure, the total detention period, bearing in mind the reservations of Art. 30 Law 3907/2011 cannot surpass one hundred and eighty (180) days. It should be noted that the new draft Presidential Decree is currently under public consultation and does not constitute Greek Law yet.

<sup>18</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 8.

with officers of the UN High Commissioner for Refugees (UNHCR) office in Greece. It was reported that in practice detention was not used as an exceptional measure and that this resulted in its becoming a deterrent for people (particularly new arrivals) to apply for asylum.<sup>19</sup>

The European Commission in a Progress Report of March 2012, following a mission carried out in Greece between 14 and 17 February 2012, reported that “it appears that persons who make an application for asylum in the Evros region are systematically detained. Detention in such cases is applied for the whole period of the examination of the asylum claim”.<sup>20</sup> The European Commission, while observing that the situation is not in line with the EU *acquis* and with the jurisprudence of the European Court of Human Rights, stated that this mandatory detention policy combined with inappropriate detention conditions “has a deterrent effect on access to protection and undermines the right to asylum.”<sup>21</sup>

The European Committee on the Prevention of Torture (CPT) reported that in its 2011 visit it had “found yet again that huge numbers of irregular migrants were being held in police or border guard stations for the full length of their period of detention. In addition, migrants who may have been living in the country for a year or more pending their asylum application will be detained at the moment they attempt to renew their “pink card” if their application has been rejected in the meantime.”<sup>22</sup>

The ICJ and ECRE are concerned that the maximum length of administrative detention, as provided in Greek law, coupled with a policy that does not treat detention of asylum seekers as a last resort, may lead to violations of the Convention similar to those found in the *M.S.S.* case. Routine resort to long periods of detention raise concerns under Article 5.1.f ECHR, which permits detention only as long as required to prevent unlawful entry or with a view to deportation. In addition, and most significantly in regard to the *M.S.S.* case, such prolonged detention raises concerns under Article 3 ECHR, given the poor conditions in which many asylum seekers are detained.

However, in June 2011, the Administrative Court of Piraeus (Presidential Procedure, Decision No.: 448/9-6-2011) ruled that detention should be imposed and maintained only for strictly as long as necessary for the examination of asylum claims as well as any removal proceedings to be completed. These procedures must be developed and executed with due diligence and reviewed, after the expiration of three months, by a judicial body. Omission of such judicial control after three months was held to lead

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<sup>19</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate, conducted by ECRE on 11 April 2012.

<sup>20</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section III. The report highlights that “participants in the mission represented all concerned stakeholders: Commission Services, Task Force for Greece, UNHCR, IOM, FRONTEX and EASO”, in Background.

<sup>21</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section III.

<sup>22</sup> CPT, *Report on Greece*, published on 2012, based on their visit to Greece from 19-27 January 2011, available at [http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#\\_Toc289681102](http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#_Toc289681102), accessed on 17/04/2012. [in English]

to a lack of legal basis for the deprivation of liberty.<sup>23</sup> At present, the ICJ and ECRE are unaware of decisions of other administrative courts addressing this question or of whether this jurisprudence has been upheld by other courts or by the Council of State. The ICJ and ECRE invite the Committee of Ministers to request Greece to report on whether this jurisprudence has been applied by other courts in the country and is being implemented in practice by the Greek authorities.

### 3.2. *Conditions of Detention*

Although there have been some limited improvements,<sup>24</sup> at least in the Evros region, the ICJ and ECRE are concerned that the overall situation of conditions of detention of undocumented migrants and asylum seekers remains unacceptable.

The European Commission visited in February 2012 the detention facilities in police stations of Tycherio, Ferres and Soufli, including the detention centre in Fylakio. In its March 2012 Progress Report, the Commission noted the absence of overcrowding in these centres, separation of minors from adults and women from men, and improved access to open air spaces. The Commission, however, stressed that “these positive developments are mainly because fewer persons are detained because of changes in detention policy (certain nationalities that cannot be returned are released). There has been no strategic planning or systematic interventions with a view to alleviating the situation”.<sup>25</sup> Furthermore it reported that “[e]xisting facilities have not been sufficiently upgraded to ensure decent reception conditions including appropriate hygiene, adequate nutrition, access to medication, bedding materials and heating.”<sup>26</sup>

The CPT expressed concern in the report on its visit to Greece in January 2011, released in January 2012, that “the conditions in which irregular migrants are held would appear to be a deliberate policy by the authorities in order to deliver a clear message that only persons with the necessary identity papers should attempt to enter Greece.”<sup>27</sup> It found that:

“places in which irregular migrants are detained include a lack of maintenance of the building (especially the sanitary facilities), poor lighting and ventilation, insufficient personal hygiene products and cleaning materials, inability to obtain a change of clothes, lack of information provided to detained persons, no access to daily outdoor exercise, inadequate food. The

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<sup>23</sup> Greek Council for Refugees, Press Release: *New jurisprudence on shorter detention duration*, published on 15/06/2011, available at <http://www.gcr.gr/node/578> (in Greek), accessed on 17/04/2012 and Greek Newspaper EKathimerini: First instance decision on asylum procedures by the Administrative First Instance Courts of Athens, published on 24/06/2011, available at [http://news.kathimerini.gr/4dcgi/\\_w\\_articles\\_ell\\_1\\_24/06/2011\\_446906](http://news.kathimerini.gr/4dcgi/_w_articles_ell_1_24/06/2011_446906), (in Greek), accessed on 17/04/2012; Greek Council for Refugees, *Annual Report 2011*, published on 03/04/2012, available at <http://www.gcr.gr/sites/default/files/Ekthesi%20Pepragmenwn.pdf>, accessed on 30/04/2012. [in Greek]

<sup>24</sup> Detention conditions are currently regulated in Articles 31 and 32 of Law 3907/2011. In particular Article 30 paragraph 1 of Law 3907/2011 provides that for enforcement of detention or detention prolongation, the availability of suitable detention spaces and the possibilities of ensuring dignified living conditions for the detainees, must be taken into consideration by the relevant authorities.

<sup>25</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section II.

<sup>26</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section II.

<sup>27</sup> CPT, *Report on Greece*, published on 10/01/2012, based on their visit to Greece from 19-27 January 2011, available at [http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#\\_Toc289681102](http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#_Toc289681102), accessed on 17/04/2012. [in English], [Section A1§13]

situation was further aggravated by the overcrowding prevalent in most facilities, in particular as regards hygiene and access to medical care. In the Evros region, the result was that the conditions of detention in which irregular migrants were held, in at least four facilities, could be described as amounting to inhuman and degrading treatment.”<sup>28</sup>

The Greek Council for Refugees has also reported in 2011 the continued existence of “[i]nhumane - degrading conditions of detention of foreign nationals, including asylum seekers both in Turkish borders of the river Ebro, as well as in the police departments at the Greek territory.”<sup>29</sup>

Doctors without Borders also reported in June 2011 that, “[u]pon arrival [migrants] are systematically arrested and detained in Detention Centres (DCs) for migrants, Border Police Stations (BPSs) or other detention facilities. Living conditions in DCs do not meet national and international legal standards. Problems in the DCs where MSF worked included overcrowding, unacceptable hygiene conditions, irregular distribution of personal hygiene items and clothing, lack of provisions for the accommodation of vulnerable groups and inadequate time outdoors.”<sup>30</sup>

In January 2012, Amnesty International declared that “detention conditions in various immigration facilities and police stations where asylum-seekers, including unaccompanied or separated children, are being held remain of most serious concern”.<sup>31</sup>

The Greek Government has recently announced the building of 30 new detention centres for undocumented migrants in the next two years.<sup>32</sup> In a recent interview with ECRE, the European Commissioner for Home Affairs, Cecilia Malmström, reported that there have been preliminary requests for funds to the EU for the construction of the detention centres, but that Brussels is still waiting for “more specificity before we can make any decision on this”.<sup>33</sup> The first of these centres, in Amygdaleza, northwest of Athens, was opened on 29 April 2012 with a reported capacity for 1,200 persons. It has been reportedly considered by UNHCR to be in better condition than other detention centres in Greece.<sup>34</sup> However, UNHCR

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<sup>28</sup> CPT, *Report on Greece*, published on 10/01/2012, based on their visit to Greece from 19-27 January 2011, available at [http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#\\_Toc289681102](http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#_Toc289681102), accessed on 17/04/2012. [in English], [Section A1§13]

<sup>29</sup> Greek Council for Refugees, *The asylum situation in Greece in 11 points*, published in Greek on 25/11/2011, available at <http://www.gcr.gr/node/618>, accessed on 29/05/2012 (informal translation); and Greek Council for Refugees, *Inauguration of the new asylum services in Greece- but when will they be operational?*, published on 16/03/2012, available at <http://www.gcr.gr/node/647>, accessed on 19/04/2012. [in English].

<sup>30</sup> Medecins Sans Frontiers, *Emergency Intervention in Migrants' Detention Facilities in Evros, Report*, December 2010- April 2011, published 15/06/2011, available at [http://www.doctorswithoutborders.org/publications/reports/2011/final\\_1106\\_Report\\_Evros\\_EN.pdf](http://www.doctorswithoutborders.org/publications/reports/2011/final_1106_Report_Evros_EN.pdf), accessed on 16/04/2012. [source document in English], pp. 8-9.

<sup>31</sup> Amnesty International, *Public Statement, Greece: A year on since the M.S.S. Judgment: Greece continues to violate asylum-seekers' human rights*, published on 26/01/2012, available at <http://www.amnesty.org/en/library/asset/EUR25/002/2012/en/10f8de7b-fa76-4245-9ef5-725a7776ec5f/eur250022012en.html>, accessed on 17/04/2012. [source document in English], para. 2.3.

<sup>32</sup> See, EKathimerini.com, Greek Newspaper, Minister: *EC to fund Centre for Migrants*, published on 25/04/2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_ws1\\_1\\_25/04/2012\\_439336](http://www.ekathimerini.com/4dcgi/_w_articles_ws1_1_25/04/2012_439336), accessed on 27/04/2012. [source document in English]; I Kathimerini, KKE Chief slams anti-immigrant backlash, 23/04/2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_ws1\\_1\\_23/04/2012\\_438868](http://www.ekathimerini.com/4dcgi/_w_articles_ws1_1_23/04/2012_438868), accessed on 30/04/2012. [source document in English]

<sup>33</sup> ECRE Interview with Cecilia Malmström, Commissioner for Home Affairs, Brussels, 11 May 2012, available at: [http://www.ecre.org/index.php?option=com\\_downloads&id=560](http://www.ecre.org/index.php?option=com_downloads&id=560)

<sup>34</sup> Ekathimerini.com, UN inspectors green light immigrant detention camp, published on 01/05/2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_ws1\\_1\\_01/05/2012\\_440065](http://www.ekathimerini.com/4dcgi/_w_articles_ws1_1_01/05/2012_440065), accessed on 01/05/2012. [source document in English]; Ta

expressed concern at the building of these new centres in light of the procedure, criteria and conditions under which the police conduct mass arrests of undocumented migrants and bring them to such detention centres, and of the difficulty in accessing international protection procedures.<sup>35</sup>

As previously highlighted, the European Commission found in its March 2012 Progress Report that Greece's mandatory detention policy combined with inappropriate detention conditions "has a deterrent effect on access to protection and undermines the right to asylum."<sup>36</sup>

The Director of the Greek Council for Refugees, Panos Christodoulou, has stated that "[t]he appalling conditions in the current detention centres in Evros and the rest of Greece and the way the police treats prisoners, makes us justifiably very cautious about what will happen in these new centres. Furthermore, at least so far, during arrest and detention of those entering the country irregularly, there is no procedure to identify vulnerable population (refugees, underage, torture victims, trafficking victims etc), and in many cases there are wrong records of nationalities and ages."<sup>37</sup>

On 28 February 2012, Doctors without Borders reported that "[t]here is no heating in the waiting areas of the three Evros border police stations, and migrants are not provided with extra clothes, sleeping bags, survival blankets, or other means of keeping warm."<sup>38</sup>

Doctors without Borders reported that in 2011, among the 2,689 people they cared for, "[t]he majority were suffering from respiratory infections, gastrointestinal problems, and skin infections due to the poor living conditions and overcrowding. Sixteen migrants were suffering from frostbite and were given first aid; a number of them were in severe condition and were referred to a hospital."<sup>39</sup> In 2011, MSF was already reporting that "more than 60 per cent of the migrants' medical conditions are directly caused by or linked to the degrading conditions."<sup>40</sup>

Information obtained through ECRE interviews of UNHCR personnel in Greece suggests that, renovations of existing detention centres are for the moment limited to

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Nea.gr, *The new detention centre of illegal immigrants in Amygdaleza is now functioning*, published on 29/04/2012, available at <http://www.tanea.gr/ellada/article/?aid=4716279>, accessed on 30/04/2012. [source document in Greek].

<sup>35</sup> <http://www.unhcr.gr/nea/artikel/e85872903d1e467c5bbc0251d9071f54/epifylaxeis-tis-ypa.html>

<sup>36</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform ("the Greek Action Plan") and border management issues – Progress Report, European Commission, March 2012, Section III.

<sup>37</sup> Greek Council for Refugees, *Article written by Panos Christodoulou* (director of Greek Council for Refugee, published on 05/04/2012, available at <http://www.grc.gr/en/node/660>, accessed on 27/04/2012. [source document in English].

<sup>38</sup> Medecins sans Frontieres, *Field News: Greece: Extreme Weather Conditions Cause Suffering for Migrants in Border Police Stations*, published on 28/02/2012, available at <http://www.doctorswithoutborders.org/news/article.cfm?id=5794&cat=field-news>, accessed on 17/04/2012. [source document in English]

<sup>39</sup> Medecins sans Frontieres, *Field News: Greece: Extreme Weather Conditions Cause Suffering for Migrants in Border Police Stations*, published on 28/02/2012, available at <http://www.doctorswithoutborders.org/news/article.cfm?id=5794&cat=field-news>, accessed on 17/04/2012. [source document in English]

<sup>40</sup> Medecins sans Frontieres, *Press Release: Greece: Migrants' Medical Problems Due To Inhumane Detention Conditions*, published 15/06/2011, available at <http://www.doctorswithoutborders.org/press/release.cfm?id=5384&cat=press-release>, accessed on 17/05/2012. (see also relevant Report available in English); Medecins Sans Frontieres, *Emergency Intervention in Migrants' Detention Facilities in Evros, Report*, December 2010-April 2011, published 15/06/2011, available at [http://www.doctorswithoutborders.org/publications/reports/2011/final\\_1106\\_Report\\_Evros\\_EN.pdf](http://www.doctorswithoutborders.org/publications/reports/2011/final_1106_Report_Evros_EN.pdf), accessed on 16/04/2012. [source document in English]

the area of Evros.<sup>41</sup>It remains a cause of concern for UNHCR that large numbers of aliens are held in regular police cells around the country that by no means meet the conditions for long term detention.<sup>42</sup>

The ICJ and ECRE consider that the conditions that persist in Greek detention centres have not been sufficiently improved since the *M.S.S.* judgment, to ensure compliance with the prohibition on inhuman or degrading treatment under Article 3 ECHR. The ICJ and ECRE note that severe overcrowding can amount to cruel, inhuman or degrading treatment either in itself<sup>43</sup> or in conjunction with other poor conditions of detention.<sup>44</sup> The cumulative effect of a number of poor conditions may lead to violation of this prohibition.<sup>45</sup> The European Court of Human Rights has found on several occasions including in the judgment in *M.S.S.* that the conditions of detention of third country nationals in Greece violated the prohibition on inhuman or degrading treatment in Article 3 ECHR.<sup>46</sup> It should also be noted that the European Court of Human Rights in *M.S.S.* found that even a short period of detention was unjustifiable in the case at issue, emphasising the fact that the applicant was an asylum seeker and therefore “particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously.”<sup>47</sup> The ICJ and ECRE recommend that the Committee of Ministers requests the Greek government to provide detailed information as to what further measures are planned to reduce the use and length of detention for asylum seekers, to protect against the detention of particularly vulnerable persons, and to decrease overcrowding and improve conditions of detention in order to ensure compliance with Article 3.

### 3.3. *The situation of detention at Athens airport*

The CPT had noted in its visit of 2011 that the “Athens Airport Centre continued to operate along the lines described in the report on the CPT’s 2009 visit. At the time of the 2011 visit, the unit for male irregular migrants was severely overcrowded: the nine “single-occupancy” cells (each 9m<sup>2</sup>) were in fact holding a total of 49 men and four women. Many detained persons had to sleep on mattresses, or just blankets, placed directly on the floor. The average length of detention was said to be one to two weeks, but the delegation came across persons who had been held in the centre for over 50 days. Further, detained persons were not offered any outdoor exercise and were only let out of the cells for a few minutes in the morning and the evening

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<sup>41</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate, conducted by ECRE on 11 April 2012.

<sup>42</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate, conducted by ECRE on 11 April 2012.

<sup>43</sup> *Kantnyrev v. Russia*, ECtHR, Application No. 37213/02, Judgment of 21 June 2007, paras. 50-51; *Labzov v. Russia*, ECtHR, Application No. 62208/00, Judgment of 16 June 2005, para. 44.

<sup>44</sup> Theo Van Boven, UN Special Rapporteur on Torture, *Annual Report to the Commission on Human Rights*, UN Doc. E/CN.4/2004/56, 23 December 2003, para. 49; *Belevitskiy v. Russia*, ECtHR, Application No. 72967/01, Judgment of 1 March 2007, paras. 73-79.

<sup>45</sup> *Dougouz v. Greece*, ECtHR, Application No. 40907/98, Judgment of 6 March 2001; *Z.N.S. v. Turkey*, ECtHR, Application No. 21896/08, Judgment of 19 January 2010.

<sup>46</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>47</sup> *M.S.S. v Belgium and Greece*, op cit, para. 232.

in order to clean themselves, and the delegation heard many complaints that detainees were not let out of the cells when they requested to go to the toilet.”<sup>48</sup>

In view of the fact that a majority of Member States are suspending transfers to Greece under the Dublin Regulation,<sup>49</sup> recent interviews conducted by ECRE with personnel of the UNHCR office in Greece suggest that measures have been taken by Greek authorities which have led to considerable improvement in the situation in Athens Airport; , This may also be the result of quicker transfers of detained migrants and asylum seekers to other centres.<sup>50</sup>

#### *3.4. Deliberate ill-treatment of detainees*

In its 2012 report, the CPT reported that it had “received many allegations of ill-treatment of irregular migrants by police officers in the Attica and Evros regions consisting primarily of punches and kicks to the head and body. This was particularly the case at Filakio Special holding facility. [...] At Athens airport holding centre, allegations were received that some 18 days prior to the delegation’s visit five police officers had entered one of the three rooms accommodating asylum seekers at 3 a.m, carrying batons, and made them line up in a row.”<sup>51</sup> The Committee recommended “the Greek authorities take rigorous action to counter any acts of ill-treatment being committed; that action should include instigating investigations into all allegations of ill-treatment.”<sup>52</sup> The ICJ and ECRE remain concerned at the lack of effective measures to prevent beatings and other ill-treatment of migrants in detention, in violation of Greece’s obligations under Article 3 ECHR.

#### *3.5. Safeguards against ill-treatment in detention*

Absence of accessible legal advice and lack of contact with the outside world, for those held in migration detention in Greece, mean that detainees are denied vital safeguards against ill-treatment in detention. Article 30.2 of Law 3907/2011, which provides for the challenge of the detention order, does not expressly provide for the right to free legal aid, as opposed to the provision on remedies against deportation orders included in Article 28.4.<sup>53</sup> Further, detainees experience difficulties in gaining contact with their families or with the local support groups. In some centres, no

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<sup>48</sup> CPT, *Report on Greece*, published on 10/01/2012, based on their visit to Greece from 19-27 January 2011, available at [http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#\\_Toc289681102](http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#_Toc289681102), accessed on 17/04/2012. [source document in English],

<sup>49</sup> Subsequent to the *M.S.S.* judgment, the majority of Member States stopped transfers back to Greece under the Dublin Regulation. However statistics from the Greek Dublin unit indicate that despite this judgment a number of countries continued to return persons there. For example in 2011 1 person was transferred back to Greece from Germany, 1 from Romania, 1 from France, 1 from Austria, 3 persons from Hungary, 5 from Switzerland and 43 from Bulgaria. In 2012 the following statistics for January-March 2012 indicated that 4 persons were transferred from Hungary to Greece and 4 persons from Switzerland to Greece under the Dublin Regulation. Source: Greek Dublin unit statistics.

<sup>50</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate, conducted by ECRE on 11 April 2012.

<sup>51</sup> CPT, *Report on Greece*, published on 10/01/2012, based on their visit to Greece from 19-27 January 2011, available at [http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#\\_Toc289681102](http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#_Toc289681102), accessed on 17/04/2012. [source document in English], [Section A2 §15]

<sup>52</sup> CPT, *Report on Greece*, published on 10/01/2012, based on their visit to Greece from 19-27 January 2011, available at [http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#\\_Toc289681102](http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.htm#_Toc289681102), accessed on 17/04/2012. [source document in English], [Section A2 §15]

<sup>53</sup> Article 28.4 of Law 3907/2011 states that “the necessary legal assistance and representation is provided on request free of charge [...] when, according to the judge’s opinion, the application to annul is not manifestly unfounded or inadmissible”. No mention of free legal aid is contained in Article 30 on detention.

phones are available and the mobile phones are confiscated.<sup>54</sup> Under Article 31 of Law 3907/2011 on detention conditions, the right to communicate with families and legal representatives, the right to be systematically provided with information, as well as well as the right of national, international and non-governmental organisations to visit the detention facilities are guaranteed. The ICJ and ECRE are currently unaware of how the improved legislation has been implemented in practice so far.

As the recent Progress Report of the European Commission has underlined, in February 2012 access to information concerning the rights of detainees continued to be problematic. The Commission found that “the relevant information leaflet is not provided to everyone while the number of interpreters is insufficient to cover all needs and languages. Moreover these facilities are not equipped with working spaces that would allow service providers to carry out their task appropriately.”<sup>55</sup>

As regards the detention centres in Evros, the NGO ProAsyl has recently documented that “legal counseling of the few NGO lawyers in the area is provided temporarily. It is limited to the group of asylum seekers. It is not sufficient to cover the needs of all detainees while it is anyway not possible to provide legal aid under these detention conditions.”<sup>56</sup> It also reported that “[i]n Evros, as well as in Rhodopi region, detainees are not provided with any information regarding the reason and duration of their detention, the possibility of their readmission or deportation, or about the legal remedies against detention and deportation. They are neither informed about their legal status, nor about their right to seek international protection, the details of the asylum procedure.”<sup>57</sup> On interpretation while in detention, ProAsyl documented that, “[i]n general, no interpretation was provided to the detainees, neither during their registration, nor during their detention. Many times, co-detainees, who knew some poor English, covered the lack of interpreters.”<sup>58</sup>

### 3.6. *Lack of judicial review of detention and of an effective remedy*

Although provided for by law,<sup>59</sup> in practice the right to appeal against detention orders can rarely be exercised, due to lack of information and legal advice.<sup>60</sup> This right is of vital importance to detained migrants, in particular where no clear individualised grounds for detention have been disclosed to the detainee or to his or her lawyer. The European Court of Human Rights, in *R.U. v Greece*, highlighted the fact that under Law 3386/2005, national courts can examine the decision to detain an irregular migrant, but that this law does not grant the courts power to examine the

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<sup>54</sup> Pro Asyl, October 2007, op cit; Detention in Europe, Greece – Legal basis for detention, March 21, 2011, [http://detention-in-europe.org/index.php?option=com\\_content&view=article&id=144&Itemid=176](http://detention-in-europe.org/index.php?option=com_content&view=article&id=144&Itemid=176)

<sup>55</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section II.

<sup>56</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 9.

<sup>57</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 48.

<sup>58</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 49.

<sup>59</sup> Articles 28 and 30.2 of Law 3907/2011

<sup>60</sup> *M.S.S. v Belgium and Greece*, op cit, para. 182; Detention in Europe, Greece – Legal basis for detention, March 21, 2011, [http://detention-in-europe.org/index.php?option=com\\_content&view=article&id=144&Itemid=176](http://detention-in-europe.org/index.php?option=com_content&view=article&id=144&Itemid=176)

conditions in which third country nationals are detained nor to request the release of a detainee in this respect.<sup>61</sup> The Court held that there was a violation of Article 3 and 13 ECHR, since there is no effective remedy available in Greece in respect of conditions of detention that violate international law prohibitions on torture or cruel, inhuman or degrading treatment.<sup>62</sup>

The new Law 3907/2011 provides for an automatic review of the detention order, “every three months, by the institution that issued the detention order.”<sup>63</sup> However, it does not expressly provide for the review of conditions of detention. The ICJ and ECRE are concerned at the lack of an express provision guaranteeing an automatic review of the detention based on the conditions of detention. As ProAsyl reported in respect to the present practices and jurisprudence of the administrative court of Alexandroupolis, “the court does not take into consideration the bad conditions of the detention centres, the lack of safeguards in detention and in the asylum procedure. It does not examine thoroughly the purpose and the necessity of the detention of each case individually, or the possibility of other alternative non-custodial measures. In the vast majority of cases the court examines only whether the complainant is a likely absconder and if he (or she) has residency or work in Greece.”<sup>64</sup>

The ICJ and ECRE call on the Committee of Ministers to recommend that the Greek Government take the appropriate measures to:

- Provide timely access to legal advice, including where necessary access to free legal assistance, to migrants held in detention;
- Allow detained migrants sufficient access to the outside world;
- Ensure that all detained migrants have access to judicial review of detention and to judicial remedies for conditions of detention that may violate Article 3 ECHR.

#### **4. Living conditions**

In *M.S.S.*, the European Court of Human Rights found that the living conditions of the applicant whilst he was an asylum seeker in Greece, constituted “humiliating treatment showing the lack of respect for [the applicant’s] dignity”, and noted that this situation, combined with prolonged uncertainty, had aroused “feelings of fear, anguish or inferiority capable of inducing desperation, and had attained the level of severity required to fall within the scope of Article 3 of the Convention.”<sup>65</sup> The Court therefore held that, given national law obligations of Greece to ensure adequate material reception conditions, pursuant to *Directive 2003/9/EC* (the “Reception Directive”), the situation of extreme poverty brought about by the inaction of the

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<sup>61</sup> *R.U. v Greece*, op cit para 59; *A.A. v Greece*, op cit para. 47

<sup>62</sup> *R.U. v Greece*, op cit para. 61-65.

<sup>63</sup> Article 30.3 of Law 3907/2011. Article 30 paragraph 3 of Law 3907/2011 provides that in the case of detention prolongation, the relevant decision is transmitted to the President or an appointed First Instance Judge of the Administrative First Instance Court who rules on the legality of the prolongation and issues immediately their decision, which they register in brief in a transcript. A copy of this transcript is sent immediately to the competent police authority.

<sup>64</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 53.

<sup>65</sup> *M.S.S. v Belgium and Greece*, op cit, para.263.

State was treatment contrary to Article 3 ECHR (*paragraphs 254-264*). *The Court's judgment was based in particular on the following aspects of the applicant's situation:*

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

#### *4.1. Living conditions of asylum seekers*

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

Due to the shortage of places available in reception centres - around 1000 reception places available for 16000 asylum applications lodged in 2009, 10273 in 2010, and 9,311 in 2011-, a great number of asylum seekers, including unaccompanied children, remain homeless, living in unacceptable housing conditions and hygiene standards, often in public spaces or abandoned houses, with no resources or access to sanitary facilities, unemployed and without any support from the State.<sup>66</sup> In interviews conducted by ECRE with UNHCR Greece personnel it was confirmed that the living conditions of asylum seekers have remained substantially unchanged. Despite the authorities' increased awareness of reception shortages, the country's rapid and dire economic recession has negatively influenced the state's ability to respond to the actual needs.<sup>67</sup>

The Greek Council for Refugees has reported that "[t]he lack of measures for the reception of asylum seekers continued throughout [2011] and access to asylum has remained virtually nonexistent."<sup>68</sup> It has also stressed in October 2011 the "[p]roblematic or impossible renewal of legal documents (pink card) for asylum seekers without an intervention by GCR, other NGOs, or individual practitioners".<sup>69</sup> Furthermore, in interviews conducted by ECRE with UNHCR Greece personnel it was stated that, with the ongoing financial crisis, the difficulty of asylum seekers with asylum seeker cards ("pink cards") to find legal employment has remained serious, and no efficient action has been taken by the Government in this direction nor are there any specific statistics available about the unemployment rate of the refugee population.<sup>70</sup>

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<sup>66</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]. The number of available reception places has been confirmed also by ECRE interview with UNHCR Greece personnel. See, Interview with Ms. Daphne Kapetanaki, UNHCR Greece, Protection Associate, conducted by ECRE on 11 April 2012.

<sup>67</sup> See, Interview with Ms. Daphne Kapetanaki, UNHCR Greece, Protection Associate conducted by ECRE on 11 April 2012.

<sup>68</sup> Greek Council for Refugees, *Annual Report 2011*, published on 03/04/2012, available at <http://www.gcr.gr/sites/default/files/Ekthesi%20Pepragmenwn.pdf>, accessed on 30/04/2012. [source document in Greek, informal translation], p.7.

<sup>69</sup> Greek Council for Refugees, *The asylum situation in Greece in 11 points*, published in Greek on 25/11/2011, available at <http://www.gcr.gr/node/618>, accessed on 29/05/2012. [source document in Greek, informal translation], point 4.

<sup>70</sup> ECRE interview with UNHCR Greece personnel Ms. Polyxeni Passa, Protection Associate, Written Interview on Access of Asylum Seekers to Social Benefits (Living Conditions in Greece) on 01 May 2012.

Media reports of April 2012 documented the distribution of food by a charitable organisation called “Church of the Street” in front of the Ministry of Labour to migrants, most of whom were Afghan asylum seekers. One reporter was able to count around 700 people in a single day.<sup>71</sup>

The Minister of Citizen Protection announced on 29 March 2012 a series of massive evictions of undocumented migrants: “The second action encompasses the clearing up of all spaces which are occupied or illegally rented by aliens, who reside illegally in the country and those spaces. It is not possible that 20-30 people live in an apartment of 50-90 m<sup>2</sup> in horrible conditions which insult our ethics, insult our humanitarianism and insult public health. All those spaces have been listed and all those spaces will be emptied, those blocks of flats are also inhabited by Greeks and legal immigrants, working people who have children.”<sup>72</sup> While this statement of the Ministry once more confirms that dire situation of living conditions of asylum seekers and undocumented migrants, the ICJ and ECRE express concern at measures that purport to solve these problems through forced evictions or through the use of detention.

Once released from detention, unaccompanied children often remain homeless and without protection, due to the insufficient number of specialized accommodation centres and insufficient resources for those existing centres. They are exposed to the risks of becoming victims of trafficking in human beings, which may include being subjected to forced labour and/or prostitution, or drug trafficking.

Although the Greek National Action Plan for the Management of Migration Flows, approved in August 2010 under pressure of the European Union has provided for an increase in reception places and specialized facilities for children, and Greece has received initial EU emergency funding, it is unlikely that the situation will improve unless considerable resources are mobilized to ensure the operation, staffing and maintenance of such facilities.

In January 2012 the General Rules for the Operation of the Regional Initial Reception Services<sup>73</sup> were adopted and the first Reception Centre is estimated to be ready in late 2012. The newly appointed Director of the Initial Reception Service has recently informed ECRE that the Initial Reception Service started operating in September 2011, and is dedicated both to the establishment of the first Initial Reception Centre, foreseen to be open by the end of the year in Evros (Fylakio), as well as other Initial Reception Centres to follow, to hiring staff and set up internal regulations and training, in light of international “good practices”.<sup>74</sup> While the staffing has been

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<sup>71</sup> <http://www.irishtimes.com/newspaper/weekend/2012/0428/1224315282182.html>

<sup>72</sup> Ministry of Citizen Protection, *Declaration of the Minister of Citizen Protection Michalis Chrysochoides, concerning dealing with illegal immigration at the centre of Athens*, published on 29/03/2012, available at [http://www.minocp.gov.gr/index.php?option=ozo\\_content&lang=&perform=view&id=4186&Itemid=536](http://www.minocp.gov.gr/index.php?option=ozo_content&lang=&perform=view&id=4186&Itemid=536), accessed on 19/04/2012. [source document in Greek, informal translation]; Ekathimerini.com, *Police to raid overcrowded migrant apartments*, published on 24/04/2012, available at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_ws1e1\\_1\\_24/04/2012\\_439174](http://www.ekathimerini.com/4dcgi/_w_articles_ws1e1_1_24/04/2012_439174), accessed on 27/04/2012. [source document in English]

<sup>73</sup> Available in English at: <http://www.unhcr.org/refworld/docid/4f33bace2.html>

<sup>74</sup> The official online domain of the Initial Reception Service can be found at [http://www.minocp.gov.gr/asylo.php?option=ozo\\_content&perform=view&id=3780&Itemid=465&lang=&lang=EN](http://www.minocp.gov.gr/asylo.php?option=ozo_content&perform=view&id=3780&Itemid=465&lang=&lang=EN)

recognised as a difficult task due to the financial restrictions imposed on public administration in Greece, training of the Service's personnel has reportedly begun, in cooperation with the European Asylum Support Office (EASO).<sup>75</sup>

Reflecting the content of Article 11 of Law 3907/2011, the new Director of the Asylum Service stated in an interview with ECRE in February 2012 that those who apply for asylum while in initial reception centres will remain there for a maximum period of 15 days, during which their asylum applications will be examined, and that such period may be extended to 25 days (for instance in complex cases). Once this period has expired, the person will be either released in case the asylum decision remains pending or in case of vulnerable groups where deportation is not immediately possible, or granted international protection or transferred to pre-removal centres in all other cases where deportation is ordered.<sup>76</sup>

The Greek Council for Refugees reported in April 2012 that "the cases of racist violence against refugees and migrants in general have increased greatly and for the first time the phenomenon of entire Attica regions being subject to incidents of extremism was presented. In those incidents reactions of violence were observed against anyone who is or looks like a stranger. During this whole situation, the Police do not act, while in many of the cases now, members of it participate in incidents of racist violence."<sup>77</sup>

On 20 December 2011, two policemen were convicted to five years and five months imprisonment respectively for having abused residents in houses of Afghan refugees to obtain information about a fellow national. However, the initial charge of torture under Penal Code Art. 137A 1 and 2 was downgraded at the request of the public prosecutor, and the two policemen were in the end convicted of the lesser offence of misdemeanour for the offenses of corporal injury and damage. The execution of the punishment has been suspended pending appeals.<sup>78</sup>

The ICJ and ECRE consider that the living conditions of many asylum seekers remain unacceptable and recommends that the Committee of Ministers continue to monitor the situation and to request reports on progress from the Greek Government in the implementation of its obligations under the EU Reception Directive 2003/9/EC, including in light of Greece's obligations under the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

#### 4.2. Information for asylum seekers

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<sup>75</sup> ECRE written communication with the Director of the Initial Reception Service, Mr. Panagiotis Nikas on 23 May 2012.

<sup>76</sup> Interview with Ms. Maria Stavropoulou, Director, Asylum Service, Ministry of Citizen Protection, conducted by ECRE on 14/02/2012

<sup>77</sup> Greek Council for Refugees, *Annual Report 2011*, published on 03/04/2012, available at <http://www.gcr.gr/sites/default/files/Ekthesi%20Pepragmenwn.pdf>, accessed on 30/04/2012. [source document in Greek, informal translation], p. 8

<sup>78</sup> Greek Council for Refugees, Press Release, *The Trial of the Policemen of the Ag. Panteleimon Police Station has been completed*, published on 20/12/2011, available at <http://www.gcr.gr/node/624>, accessed on 23/04/2012. [source document in Greek, informal and partial translation]

The Ministry for Citizen Protection has announced that:

“[a]n information leaflet has been printed for asylum seekers under the title “Basic Information for the asylum seekers in Greece” in 15 languages (including Greek), in cooperation with UNHCR and the NGO “METAction”. The said leaflet was sent to the competent police services [...] both in print as well as in electronic versions in order to be distributed to the detained non legal entering aliens (eg. in detention centres) and to asylum seekers. Information on asylum procedures has been put up on the website of the Ministry of Citizen Protection and of the Greek police [...], under the thematic unit “Asylum and Migration”. [...] An information leaflet was distributed to the police services [...] by the NGO "METAction", the content of which is concerns the provision of interpretation in asylum procedures. This brochure is available to applicants in (18) languages. A database with “Information on asylum procedure- Countries of origins of asylum seekers” was created anew [...]”.<sup>79</sup>

However, on the basis of ECRE interviews with personnel of UNHCR Greece, instances have been observed in which the leaflet was not systematically made available in all detention facilities around Greece. Furthermore, a problem has been said to subsist of communication between the guards and the detainees as interpretation services outside of asylum interviews are not available.<sup>80</sup>In its March 2012 Progress Report, the European Commission found that “the relevant information leaflet is not provided to everyone while the number of interpreters is insufficient to cover all needs and languages. Moreover these facilities are not equipped with working spaces that would allow service providers to carry out their task appropriately.”<sup>81</sup>

The ICJ and ECRE consider that the Committee of Ministers should request information from the Greek government as to what further measures it plans to take to ensure consistent provision of information, translated where necessary, including in all detention centres.

### **5. Non-refoulement and the right to an effective remedy**

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

- *Lack of effective legal remedy: lack of rigorous scrutiny of a claim, lack of timely processing of an asylum application and a prompt response, lack of access to a remedy with automatic suspensive effect*

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<sup>79</sup> Hellenic Democracy, Ministry of Citizen Protection, Announcement of the Press Office of the Ministry of Citizen Protection concerning the 08/02/2012 announcements by the Press Office of the Greek Ombudsman on the application of Law 3907/11, published on 09/02/2012. [source in Greek, informal translation please see attached document]

<sup>80</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate, 11 April 2012.

<sup>81</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section II.

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

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

The ICJ and ECRE are concerned at the many practical obstacles to the effective implementation of the Decree, PD 114/2010, which was supposed to be applicable until the beginning of 2012, when the new Asylum Authority was to begin functioning. However, the functioning of the new Asylum Authority has been postponed by Law 4038/2012 until June 2012, due to a lack of resources.<sup>82</sup> These practical problems lead to continuing risks of deportations contrary to the obligation of *non-refoulement*.

UNHCR and national NGOs have reported that the Attica Police Headquarters in Athens, responsible for registering asylum applications in the region, receives only 20 applications a week, on Saturday mornings, and that long queues of applicants form outside the office starting from the Thursdays before, with people sleeping in line for several days without any sanitary facility, food or assistance.<sup>83</sup> Incidents of hindrance of the State authorities to access asylum registration in this Athens office

<sup>82</sup> Law 4038/2012. See also, Hellenic Democracy, Ministry of Citizen Protection, Announcement of the Press Office of the Ministry of Citizen Protection concerning the 08/02/2012 announcements by the Press Office of the Greek Ombudsman on the application of Law 3907/11, published on 09/02/2012. [source in Greek, informal translation please see attached document].

<sup>83</sup> Greek Council for Refugees, *Article written by Panos Christodoulou* (director of Greek Council for Refugee, published on 05/04/2012, available at <http://www.gcr.gr/en/node/660>, accessed on 27/04/2012. [source document in English]; Greek NGO Aitima, *Press Release, Serious Disruption in the Submission of Asylum Applications*, published on 12/01/2012, available at [http://www.aitima.gr/aitima\\_files/Deltio\\_Typoy\\_Prosvasi\\_sti\\_diadikasia\\_asyloy.pdf](http://www.aitima.gr/aitima_files/Deltio_Typoy_Prosvasi_sti_diadikasia_asyloy.pdf), accessed on 19/04/2012. [source document in Greek, informal translation]; AITIMA, *Press Release, [Serious Disruptions in Asylum Procedures in Petrou Ralli]*, published 15/03/2012, available at [http://www.aitima.gr/aitima\\_files/Deltio\\_Typoy\\_Prosvasi\\_sti\\_diadikasia\\_asyloy.pdf](http://www.aitima.gr/aitima_files/Deltio_Typoy_Prosvasi_sti_diadikasia_asyloy.pdf), accessed on 19/04/2012. [source document in Greek, informal translation]; Greek Council for Refugees, *Press Release, What is happening in Petrou Ralli?*, published 19/03/2912, available at <http://www.gcr.gr/node/651>, accessed on 19/04/2012. [source document in Greek, informal translation]; Greek Council for Refugees, *Inauguration of the new asylum services in Greece- but when will they be operational?*, published on 16/03/2012, available at <http://www.gcr.gr/node/647>, accessed on 19/04/2012. [source document in English]; Greek Reporter, *Dozens Line up in Athens every week to apply for asylum*, newsblog article, published on 24/03/2012, <http://greece.greekreporter.com/2012/03/24/dozens-line-up-every-week-in-athens-to-apply-for-asylum/>, accessed on 19/04/2012. [source document in English]; Interview with Ms. Daphne Kapetanaki UNHCR Greece, ProtectionAssociate, 11 April 2012. Information also confirmed in *Plan d'action au sujet des mesures adoptées par les autorités grecques pour se metre en conformité avec l'arrêt du 21 janvier 2011 de la Grand Chambre sur la requête no 30696/09, M.S.S. v. Belgique et Grèce*, Athens, 12 July 2011, CoE Doc. no. DH – DD(2011)567F\*, table at p. 13.

and of ill-treatment have been reported by NGOs.<sup>84</sup> In particular, the Greek NGO Aitima, while monitoring the situation and during protests, has witnessed the behaviour of competent police authorities to discourage submission of asylum applications and hinder access to asylum procedures “even for vulnerable groups such as women and unaccompanied minors.” It observed police practices of pushing away and chasing asylum seekers queuing to submit their applications, with police use of truncheons, and, on one occasion, on 1 March 2012, with the use of tear gas. AITIMA concluded that this is “a systematic long term policy with the conscious aim of preventing refugees from submitting their asylum claims in Greece.”<sup>85</sup> The European Commission reported in March 2012 that the “Aliens Police Department (Petrou Ralli) which receives the great majority of asylum applications in Greece, continues its policy of registering claims only for a few hours every Saturday, except for vulnerable persons who have access on a daily basis.”<sup>86</sup>

In ECRE interviews with UNHCR personnel in Greece in April 2012, it was reported that expulsion orders for newly arriving aliens will be issued, according to the law, 48 hours following the arrest, and access to asylum in this period is difficult due to the lack of basic procedural guarantees, lack of assistance, interpreters and information.<sup>87</sup> UNHCR personnel have also pointed out that problems may also occur in the notification of asylum decisions by the Greek authorities, as decisions are served in Greek and, due to inadequacies in interpretation, rejected asylum seekers may not understand their content.<sup>88</sup> In the interviews, UNHCR personnel reported that, during 2011, for detainees in the whole region of Evros, the number of whom could range from 500-850 persons, there were only three or four NGO lawyers available.<sup>89</sup>

Protection rates regarding refugee status are very low compared to other European states. According to the UNHCR, the “approach taken in Greece is not consistent with the standard or interpretative approaches taken by other Member States [...] flaws in the process are fundamental.”<sup>90</sup>

UNHCR has noted that, although there have been significant improvements in the fairness of asylum procedures under Decree PD 114/2010, many practical problems remain regarding access to the asylum procedure and registration of asylum claims.<sup>91</sup> Organisational and technical problems continue to result in significant

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<sup>84</sup> Greek Council for Refugees, *Annual Report 2011*, published on 03/04/2012, available at <http://www.gcr.gr/sites/default/files/Ekthesi%20Pepragmenwn.pdf>, accessed on 30/04/2012. [source document in Greek, informal translation, p.7;

<sup>85</sup> AITIMA, *Press Release, [Serious Disruptions in Asylum Procedures in Petrou Ralli]*, published 15/03/2012, available at [http://www.aitima.gr/aitima\\_files/Deltio\\_Typoy\\_Prosvasi\\_sti\\_diadikasia\\_asyloy.pdf](http://www.aitima.gr/aitima_files/Deltio_Typoy_Prosvasi_sti_diadikasia_asyloy.pdf), accessed on 19/04/2012. [source document in Greek, informal translation]. And approximately the same publication by Greek Council for Refugees, *Press Release, What is happening in Petrou Ralli?*, published 19/03/2912, available at <http://www.gcr.gr/node/651>, accessed on 19/04/2012. [source document in Greek, informal translation]

<sup>86</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section IV.

<sup>87</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate 11 April 2012.

<sup>88</sup> Interview with Ms. Daphne Kapetanaki, UNHCR Greece, Protection Associate, 11 April 2012.

<sup>89</sup> Interview with Ms. Arianna Vassilaki, UNHCR Greece, Senior Protection Associate, 11 April 2012.

<sup>90</sup> UNHCR, *Asylum situation in Greece including for Dublin II Transferees*, January 31, 2011.

<sup>91</sup> Press release of the UNHCR on the Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]

delays in the proceedings. Many cases are postponed or interrupted because applicants fail to appear for the hearing, yet this has been shown to be often due to lack of information provided to the applicant.<sup>92</sup>

Before 2011, the lack of professional interpreters and trained interviewers in the police directorates also undermined the effectiveness and fairness of the asylum procedure and resulted in significant delays.<sup>93</sup> However, progress has been noted as to the provision of interpretation: Since the beginning of 2011 NGO METAction in collaboration with UNHCR, and the Ministry of Citizen Protection, has undertaken to provide training, deployment, supervision and evaluation of interpreters for the asylum procedure, in all (14) Police Authorities competent for the examination of asylum claims, and in the Appeals' Committees. In this context, METAction has provided interpretation services in more than 7,500 cases, either through interpreters' physical presence, or through a teleconference system, during the period March 2011- March 2012.<sup>94</sup> Progress in the training of police personnel was further reported by UNHCR whereby such personnel involved in the asylum procedure receive training at least once by UNHCR officials.<sup>95</sup>

The European Commission in its March 2012 Progress Report has highlighted that “[t]here is a lack of information concerning the right to apply for international protection. Moreover [...], inappropriate detention conditions and the systematic detention of applicants deter applications. It is also unclear how access to appropriate procedures is ensured for people who express a need for protection during the screening process.”<sup>96</sup>

The Committees established under the transitional regime have begun to address the backlog, which is estimated to be approximately 47,000 cases. Pursuant to a law published in the Government Gazette 385/Y.O.Δ.Δ./2011 in November 2011, ten Committees were established in order to examine asylum claims at second instance (six Committees examining the backlog cases and four Committees examining at second instance the new asylum claims). Five Committees as such were already functioning and dealing with the backlog since February 2011. Since November 2011, ten Committees have been in place in total. The Ministry of Citizens Protection announced on 9 February 2012 that, “the pending cases in second instance at the end of 2011 were reduced from 47.155 to 29.807” after “the necessary service actions for the identification of the active cases” were taken.<sup>97</sup> While welcoming the impressive effort of the Greek authorities in clearing the backlog, the ICJ and ECRE note that, until November 2011 there were only five Committees. This means that each

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<sup>92</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; *M.S.S. v Belgium and Greece*, op cit para. 177.

<sup>93</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek].

<sup>94</sup> ECRE Interview with Ms. Antigoni Angelaki, NGO METAction, 10 April 2012.

<sup>95</sup> ECRE Written Communication with UNCHR, 25 May 2012.

<sup>96</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section IV.

<sup>97</sup> Hellenic Democracy, Ministry of Citizen Protection, Announcement of the Press Office of the Ministry of Citizen Protection concerning the 08/02/2012 announcements by the Press Office of the Greek Ombudsman on the application of Law 3907/11, published on 09/02/2012. [source in Greek, informal translation please see attached document].

Committee, composed of three people,<sup>98</sup> in one year would have had to resolve around 3470 cases, i.e. 9-10 cases per day, without taking a single day of holiday in the whole year. In light of this, and while noting the good faith displayed the Greek authorities and of the appeals committees, the ICJ and ECRE express concern at the criteria used to dismiss cases as “inactive” and invite the Committee of Ministers to request disaggregated statistics explaining how these cases have been identified. The ICJ and ECRE recommend that the Committee of Ministers question the Greek Government on the criteria used to identify “active” cases and to report how many cases were dismissed or resolved within the exhausted backlog.

The NGO ProAsyl referred in a recent report to the increase of the recognitions rate of international protection from one percent to 12.35 percent between February and July 2011 announced by the Government. ProAsyl, while recognising an improvement, notes that “among this 12,35% are people (basically originating from Iraq, Iran and Afghanistan) whose claims were pending over the last 10 years and it was easy to predict, that they were in need of international protection according to the Geneva Convention, the Directive or due to long lasting residence in Greece.”<sup>99</sup>

Access to the asylum procedure also continues to be seriously limited by the requirement of a official address, as asylum seekers are often homeless.<sup>100</sup> Under PD 114/2010, persons are able to apply if they can provide an address within the jurisdiction of the competent Directorate, which according to the UNHCR constitutes a serious obstacle to the access to the asylum procedure.<sup>101</sup>

The inaccessibility of information concerning the asylum procedure and migrants’ legal status and entitlements, the lack of possibility of communication and the absence of legal assistance and trained staff in the police directorates and reception centres, as well as the length of the procedures contribute to an increased risk of *refoulement*. The ICJ and ECRE are aware that since April 2011 the Greek government has obtained the assistance of the newly established European Asylum Support Office (EASO). In April 2011 EASO signed a two-year operating plan for the deployment of Asylum Support Teams to Greece and within the framework of that plan a total of 10-15 Member State experts will be deployed to Greece in 2012.<sup>102</sup> The ICJ and ECRE recommend the Committee of Ministers to monitor the actions undertaken in the field of training in international refugee law and human rights law of Greek officers in asylum proceedings, detention, and removal procedures.

## 5.2. *Fair and effective asylum procedures under the new legislation*

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<sup>98</sup> Article 26, P.D. 114/2010.

<sup>99</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 6.

<sup>100</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; UNHCR, Observations on Greece as a country of asylum, December 2009

<sup>101</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; Under Draft Presidential Decree published on 23 May 2012 currently under online public consultation, draft Article 9 establishing the obligations of applicants, it is mentioned under paragraph 1(c) that asylum seekers are obliged to inform immediately the competent receiving or examining authorities of their address and their contact details as well as for any change of this information. They should also accept every service of documents or notification at the most recent place of residence or their declared place of residence.

<sup>102</sup> European Asylum Support Office, Work Programme 2012, September 2011

Article 1 of Law 3907/2011 establishes an Asylum Service, deciding on initial asylum applications and staffed with civilian personnel, while Article 3 provides for the Appeals Authority tasked with the examination of appeals against the initial decision by the Asylum Service to reject international protection claims. It also establishes appeals committees within the Appeals Authority, composed of an individual of recognized standing with expertise in refugee or human rights law, a representative of the High Commissioner, and an expert in refugee and human rights law. Under Article 5.7, the Asylum Service and Appeals Authority will have to be operational within 12 months after the entry into force of the law.

As mentioned above, the beginning of the new system, despite an initial deadline of 1 January 2012, is now not expected to be set up before June 2012 and further delays may result from the economic crisis the country is facing. With regard to the asylum reforms, the Greek Ombudsman stressed in February 2012 that “[o]ne year since the establishment of new rules and procedures for granting asylum and other forms of international protection, none of the services established by the law has functioned yet, despite the increasing needs and serious problems [...]”<sup>103</sup>

The European Commission has highlighted that in Greece “[a]ppropriate staffing of services remains one of the main obstacles to the proper implementation of the Action Plan. This is the result of several factors: current block on recruiting in order to meet EU imposed fiscal consolidation rules; inefficient and slow recruiting procedures; inflexible labour market which does not allow for temporary contracts; current restructuring of public administration which hampers mobility within services. The new Asylum service has only managed to recruit 11 persons out of the 700 planned.”<sup>104</sup>

In a recent interview with ECRE, EU Commissioner for Home Affairs Cecilia Malmström stated that “Greece is under a lot of pressure, that is true, but the humanitarian situation in Greece is not acceptable and the Greeks must do much more. Money is there, technique is there but they also have to have the real willingness to really use that money in a good way or to take assistance from NGOs and others”, and suggested that, to solve the problem of public sector recruitment freeze, “Greece could make much better use of employing people from NGOs to some of the work. There are some really strong and good NGOs in Greece.”<sup>105</sup>

As stated by the new Director of the Asylum Service, the whole institution will require around 290 staff members, who, because of a hiring freeze in public administration, can be recruited only through secondment or transfer from other government departments. The staffing of the new Asylum Service is therefore experiencing delays and the outsourcing of some of its activities to the private or

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<sup>103</sup> Greek Ombudsman, Independent Authority, *Press Release, 08/02/2012, Asylum Procedure: Problems worsen as the new asylum service is not functional yet*, available at <http://www.synigoros.gr/resources/20120131-dt-asylo---aytoyia-evroy-final--2.pdf>, accessed on 17/04/2012. [source document in Greek, informal translation]

<sup>104</sup> Implementation of the Greek National Action Plan on Migration Management and Asylum Reform (“the Greek Action Plan”) and border management issues – Progress Report, European Commission, March 2012, Section I.

<sup>105</sup> ECRE Interview with Cecilia Malmström, Commissioner for Home Affairs, Brussels, 11 May 2012, available at : [http://www.ecre.org/index.php?option=com\\_downloads&id=560](http://www.ecre.org/index.php?option=com_downloads&id=560)

NGO sector is being considered.<sup>106</sup> The Greek Council for Refugees, while welcoming progress in legislation, expressed concern at these austerity measures in staffing which “will create more delays and influence the efficient staffing of the Reception Service, the Asylum Service and the Appeals Authority in numbers of staff as well as in relevant qualifications.”<sup>107</sup>

The ICJ and ECRE believe that the new law still omits safeguards necessary to ensure that the asylum process is effective in protecting against *refoulement*. First, in terms of the undocumented migrants’ and asylum seekers’ right to have access to **information** concerning their legal status and their entitlements, as well as concerning the asylum procedures, Article 13.3.e does not explicitly provide for dissemination of such information to migrants undergoing the first identification procedures.<sup>108</sup>

The ICJ and ECRE also believe that provisions of the law should explicitly ensure access to information in a language the migrants and asylum seekers understand, as well as to **translation** services throughout the procedure. Article 28 on remedies provides for linguistic assistance, yet such provisions should be included under Articles 13.3, 30.2 and 31.5 of the new Law.<sup>109</sup>

Moreover, in the view of the ICJ and ECRE, the right to **legal aid** is insufficiently guaranteed under Law 3907/2011. Article 13.3.f only provides for “guidance and legal advice”, while Article 30.2 does not refer to legal aid at all in the process of objecting to a detention order. Neither of those provisions expressly ensures free legal assistance<sup>110</sup>.

Finally, as stated by the new Director of the Asylum Service and confirmed in the Action Plan presented by the Greek government to the Council of Europe,<sup>111</sup> the public administration will aim at processing asylum applications in initial reception centres within 15 days, with the possibility to extend to 25 days for complicated cases.<sup>112</sup> According to the new Director of the Asylum Service in all other cases, the

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<sup>106</sup> Interview with Ms. Maria Stavropoulou, Director, Asylum Service, Ministry of Citizen Protection, conducted by ECRE on 14/02/2012; reflected also by *Plan d’action au sujet des mesures adoptées par les autorités grecques pour se mettre en conformité avec l’arrêt du 21 janvier 2011 de la Grand Chambre sur la requête no 30696/09, M.S.S. v. Belgique et Grèce*, Athens, 12 July 2011, CoE Doc. no. DH – DD(2011)567F\*, table at p. 11.

<sup>107</sup> Greek Council for Refugees, *Inauguration of the new asylum services in Greece- but when will they be operational?*, published on 16/03/2012, available at <http://www.gcr.gr/node/647>, accessed on 19/04/2012. [source document in English]

<sup>108</sup> It should be noted that Article 8 paragraph 1(a) of the new Draft Presidential Decree submitted for online public consultation on 23 May 2012 provides that asylum seekers should be informed in a language they understand for the procedure followed, their rights and obligations (...), should be provided the services of an interpreter and numerous other guarantees during the examination of their claim on first and second instance in line with Art. 10 of the Directive 2005/85/EC. This new draft does not yet constitute a Law of the Greek State.

<sup>109</sup> *Ibid*, 105

<sup>110</sup> In Article 10, paragraph 2 of the new Draft Presidential Decree submitted for online public consultation on 23 May 2012 it is mentioned that “The terms and conditions for the provision of free legal aid to applicants during the examination of their claim on second instance, as set out in Chapter D, are determined by a joint ministerial decision of the Minister of Finance, the Minister of Citizen Protection and the Minister of Justice”, in line with Art. 15 and 16 of EU Directive 2005/85/EC. This new draft does not yet constitute a Law of the Greek State.

<sup>111</sup> *Plan d’action au sujet des mesures adoptées par les autorités grecques pour se mettre en conformité avec l’arrêt du 21 janvier 2011 de la Grand Chambre sur la requête no 30696/09, M.S.S. v. Belgique et Grèce*, Athens, 12 July 2011, CoE Doc. no. DH – DD(2011)567F\*, table at pp 7.

<sup>112</sup> Interview with Ms. Maria Stavropoulou, Director, Asylum Service, Ministry of Citizen Protection, conducted by ECRE on 14/FF02/2012

administration aims at processing cases as efficiently as possible, within time limits that will be specified in the asylum procedure legislation (in draft in May 2012).<sup>113</sup>

The ICJ and ECRE are concerned that such procedure may amount to an accelerated asylum procedure. As a very minimum it should respect the guarantees provided by the Council of Europe Guidelines on human rights protection in the context of accelerated asylum procedures.<sup>114</sup> According to these Guidelines accelerated procedures may be used only in clearly defined circumstances, provided in national law; should respect the right to an individual and fair assessment of the asylum application; and should not be applied in complex cases. The asylum seeker must maintain the rights to lodge an application; to registration; to information; to personal interview; to present evidence and receive legal assistance; and to a reasoned decision. Furthermore, the ICJ and ECRE are concerned at the generalised application of accelerated procedures, and recall that in the case *I.M. v. France* the European Court of Human Rights has found a violation of Article 13 and 3 ECHR triggered by the application of accelerated procedures for first asylum applications. The wide use of accelerated procedures may increase the risk of violations of the principle of *non-refoulement* as a result of a less thorough or complete lack of a proper examination of the substance of asylum applications which generally characterises such procedures. The ICJ and ECRE find that this would create a situation of risk of *non-refoulement* equivalent to that appreciated by the European Court in the *M.S.S.* case. Furthermore ICJ and ECRE are concerned that the Greek authorities have not been able to take sufficient steps to ensure adequate staffing of the new Asylum Service.

### 5.3. Appeals and absence of suspensive effect

Although PD 114/2010 provides for a right to appeal against an order of deportation, several deficiencies in the appeal procedures undermine the effectiveness of the right to appeal. Asylum seekers do not have access to legal aid and may have difficulties in understanding their rights to appeal and the content of decisions in their case, since orders continue to be issued in Greek without translation.<sup>115</sup>

The new law 3907/2011 provides under Article 28 for a quasi-judicial appeal carried out by administrative bodies, against deportation orders issued by police authorities. It further states that “the administrative bodies competent for ruling on the appeals [...] are also competent [...] to temporarily suspend [the] enforcement” of the deportation orders.<sup>116</sup> This wording does not clearly provide for an automatic suspensive effect, since it could be interpreted as merely giving the possibility to the

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<sup>113</sup> Article 16 paragraph 1 of the new Presidential Decree submitted for online public consultation on 23 May 2012 states that the submission of an application to accelerated procedures should be justified by the operator (...). The accelerated procedure is not differentiated compared to the regular procedure on the examination of the claim at first instance but only during the examination of a possible appeal. This new draft does not yet constitute a Law of the Greek State.

<sup>114</sup> Adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers’ Deputies. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1469829&Site=CM>

<sup>115</sup> Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012, p. 52.

<sup>116</sup> Article 28.2 of Law 3907/2011.

competent authority to suspend the deportation. Should this be a discretionary power, the law would fail to protect against the risk of *refoulement* pending the appeal. Without such automatic effect, the judicial remedy against transfer could be rendered futile and ineffective.<sup>117</sup>

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

- Take prompt measures to implement law 3907/2011, transposing the EU Returns Directive, and to ensure full compliance with the law in practice, in full respect of international human rights and refugee law;
- Ensure effective access to the asylum procedure and other forms of international protection for all migrants, and that there is individual consideration of the merits of the claim for protection, including through an effective implementation of the Asylum Procedure Directive 2005/85/EC;
- Adopt legislation for, and ensure in practice, effective provision of information to migrants, translated into languages they understand, regarding the procedure for registration of asylum claims, including the provision of clear and accurate information on the requirement of registration of an address;
- Provide, in legislation and in practice, for translation and interpreters where necessary to ensure an accessible and fair asylum process;
- Provide for free legal aid to asylum seekers from the first instance stage;
- Enhance and further develop training for all officials involved in the asylum process particularly in the areas of international human rights law and international refugee law;
- Ensure in law and in practice that appeals against deportation orders have automatic suspensive effect.

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<sup>117</sup> Article 25 of the new draft Presidential Decree submitted for online public consultation on 23 May 2012 provides in paragraph 2 that during the period that the right for an administrative appeal can be exercised, until after its exercise and until the service of the decision on the appeal, every measure of deportation, readmission or return of the applicant is suspended. This new draft does not yet constitute a Law of the Greek State.