





FORGOTTEN



Administratively detained irregular migrants and asylum seekers



With the support of EPIM

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This project has been supported by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations (NEF).



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ABBREVIATIONS

IOM International Organization for Migration

CPT European Committee for the Prevention of Torture

UN United Nations

HCDCP Hellenic Center of Disease Control and Prevention

PICUM Platform for International Cooperation on Undocumented Migrants

IDC International Detention Coalition

ECRE European Council on Refugees and Exiles

ICRC International Committee of the Red Cross

PREFACE

This report has been drafted by Katerina Lympelopoulou and Spyros Rizakos.

We would like to specially thank the detainees for their trust and their willing to share their experiences with us. We would also like to thank:

- The Hellenic Police for facilitating our visits in the detention centers and for giving us access to the detainees' police records.

- The Greek Asylum Service for giving us access to the detainees' records.

- The Greek and International civil society organizations for their valuable cooperation.

Finally, we would like to thank EPIM for financially supporting the Project for Monitoring Immigration Detention and for giving us the opportunity to collect data and draft this report.

I. FINDINGS AND RECOMMENDATIONS

i. FINDINGS

1. The number of administratively detained irregular immigrants and asylum seekers is significantly reduced compared to the prior to 2015 period.

2. The detention conditions diverge from the relevant legislation, regarding not only the international standards and the CPT recommendations, but also the governmental declarations¹ of February 17, 2015.

In particular, we observed:

- Use of detention areas that the CPT has deemed inappropriate for more than a few days detention as well as use of the Special Juvenile Detention Center in Amygdaleza which has been declared inappropriate for the detention of minors
- Inadequate maintenance of the facilities
- Lack of yard time
- Inadequate healthcare
- Lack of support by social workers and psychologists
- Inadequate and poor quality feeding
- Inadequate heating/ cooling conditions
- Lack of provision in clothes, shoes and personal hygiene items
- Lack of recreational activities
- Lack of interpretation services
- Lack of information to the detainees regarding:
 - their legal status;
 - the Rules of operation of the detention centers
 - the impending forced return
- Lack of free legal aid

¹ Press Release by Deputies of Interior and Administrative Reform Mr. Giannis Panousis and Mrs Anastasia Christodouloupoulou regarding Detention Centers, Available at: http://www.mopocp.gov.gr/index.php?option=ozo_content&lang=&perform=view&id=5374&Itemid=607, (5 September 2016)

3. The procedures followed by the competent authorities regarding administrative detention diverge from provisions laid down in the legislation and from the governmental declarations of February 17, 2015. In particular, we observed that:

In the Hellenic Police Departments there are serious long-standing systemic problems:

- Lack of an individualized approach based on the characteristics, the situation and the needs of foreign nationals who are under arrest
- Lack of use of alternatives to detention
- Systematic, unjustified detention of dubious legitimacy on the grounds of public order
- Detention of individuals whose removal violates the principle of non-refoulement
- Detention for a period longer than six months
- Re-arrest for the purpose of return despite prolonged and ineffective previous detention
- Detention of seriously ill people
- Failure to take into account data that arise over the period of detention regarding the health status of detainees and extension of the detention of vulnerable persons
- Lack of interpretation services, indispensable to the detainees in order to fully understand their legal status, the decisions that concern them and the documents they are asked to sign
- Lack of free legal assistance
- Lack of information regarding an imminent enforcement of forced return

In the Asylum Service:

- Serious delays in registering and processing of prisoners' asylum claims
- Recommendations to the police authorities on the detention of asylum seekers, have a standard and not binding wording, which results in the police authorities continuing to determine exclusively about the detention of the applicants.

4. Unaccompanied minors are still being detained due to lack of open accommodation facilities and due to deficiencies in age definition procedures and in identification of unaccompanied minors.

ii. RECOMMENDATIONS

TO THE GREEK AUTHORITIES

General Recommendations

Full implementation of the prescribed first reception procedures not only at the entry points but also within the mainland.

Full compliance with CPT recommendations regarding detention conditions.

Full implementation of the legal framework on the procedures of administrative detention and return.

Abolition of the administrative detention of unaccompanied minors and seriously ill people.

Special Recommendations

TO THE MINISTRY OF INTERIOR

- DIVISION OF PUBLIC ORDER AND PROTECTION OF CITIZENS (HELLENIC POLICE)

Discontinuation of use of police stations for holding administrative detainees over 48 hours.

Discontinuation of use of the Pre-removal Detention Centers in Tavros and Fylakio as well as the detention centers in Aliens Police Division of Salonica.

Logistic support so that the facilities and equipment of the detention centers are kept in good order.

Staffing of all detention centers with interpreters, social workers and psychologists.

Full implementation of the legal framework concerning the conditions in the Pre-removal Detention Centers.

Implementation of a medical screening system for entrants to a Detention Center, monitoring of their health and provision of medical care as well as adequate hygiene conditions in Detention Centers. The organization and supervision of this system should be assigned to independent authorities /entities with the additional advantage of preventing instances of detainee abuse.

Provision of adequate food in terms of quantity, quality and nutritional value, taking also into account the dietary needs of ill detainees.

Individualized assessment of all the arrested third-country nationals, in order to identify vulnerable persons and those whose return is in contrast to the principle of non-refoulement.

Use of detention only as a measure of last resort when alternative measures cannot be exploited.

Implementation of the age assessment procedure provided in the Joint Ministerial Decision No 1982/16.2.2016.

Prohibition of detention of seriously ill people.

Abolition of the administrative practice of evoking reasons of public order as grounds for detention.

Abolition of the practice of re-arrest for the purpose of return despite prolonged and ineffective previous detention when there is no immediate prospect of return.

Provision of information to the detainees regarding their legal status, the decisions that affect them, their rights and the impending enforcement of the return decision in a language they understand.

Provision of free legal assistance.

- DIVISION OF MIGRATION POLICY (ASYLUM SERVICE)

Prioritization of registration and examination of the detainees' asylum applications.

Full use of the important role assigned to the Asylum Service by the legislator regarding the detention of asylum seekers by issuing detailed and justified recommendations which take into account that detention should be a measure of last resort and have a wording binding for the Hellenic Police.

TO THE EUROPEAN COMMISSION

Strengthening of the monitoring role of the Commission concerning enforcement of the legislation in the field of administrative detention and compliance of the EU member states with CPT's recommendations.

Abolition of administrative detention of unaccompanied minors and seriously ill persons.

II. OVERVIEW OF DEVELOPMENTS WITHIN THE PROJECT IMPLEMENTATION PERIOD AND PROSPECTS

The project implementation period (September 2015-September 2016) has been marked by significant and dense developments and reversals.

Even before the project implementation in early 2015, the change of government after the January elections brought a significant reduction in the number of detainees. While previously, there were 7.000 or more detainees, this number fell to a few hundred, most of whom were detained on public order grounds.

Moreover, in the spring of the same year, the massive influx of a population consisting primarily of refugees and secondarily of migrants from Turkey to Greece begun and the so-called Balkan route, through which people entering Greece continued their journey to central Europe, opened. In this national and international context, the Greek authorities reasonably focused on– but also have been squandered by– the enormous task of registration and management of the incoming population. Thus, the number of the administrative detainees remained low.

However, we should note that the situation of the detention system in terms of facilities and provision of essential services to detainees was rapidly deteriorating, due to the financing gap from European Funds². As a result, our country has not been able to provide decent detention conditions not even to this low number of detainees. The continuous protests of detainees about the food provided are indicative in this respect.

The start of our project coincided with the peak of the refugee and migrant influx in Greece and their mass movement to central Europe. However, as we were heading towards the end of the year, the situation began to change with regard to the limitation of movement of the refugee and immigrant population. Many European countries began to erect fences at their borders, while pressure was exerted on our country to control its northern borders. Gradually, the nationalities of those allowed to cross the northern borders of the country and continue their journey, were narrowed down. On this basis, the Greek authorities had to address the issue of management

² *The financing gap was partly due to the structural change of European Funds, but mainly due to the state's administration stiffness. We stress that the financing gap has not been addressed yet!*

of an increasing population who would no longer be transiting, but would stay in the country.

In that respect, December 2015 was a turning point for administrative detention, as from then on the authorities started to detain nationals of North African countries (from the so-called Maghreb). Thus, hundreds of people were taken to the Pre-Removal Detention Center of Corinth and to the Aliens' Division Detention Center of Salonica. This shift was followed by the arrest of nationals of Pakistan and Bangladesh in early March 2016. At the same time, the authorities started to arrest also nationals of other countries – including Afghans (who are likely to meet the criteria for refugee status) holding expired police documents. Thus, the number of detainees increased significantly, despite the fact that the situation of the detention system –in terms of facilities and provision of essential services – remained problematic.

March 2016 was the second turning point, as two very significant developments took place; the closing of the northern borders of our country and of the Balkan route, and the EU-Turkey Joint Statement. All the people who had arrived on the Greek islands before the 20th of March were transferred to the mainland. Most of them were taken to open refugee camps, while some others to detention centers. All the people who arrived on the islands after the 20th of March have been arrested and detained in the so-called Hot Spots (which have been subsequently institutionalized as Reception and Identification Centers), following a procedure strongly criticized by civil society organizations as arbitrary.³

After the completion of the first reception procedures, those with a pending asylum application have been released under the restrictive condition of mandatory stay on the islands. For the approximately 50.000 people in various camps of the mainland –many of whom hold expired police notes– the authorities have followed the procedure of pre-registration of their asylum applications. However, it is estimated that a significant number of these people, amounting to over 10.000, have not been pre-registered and therefore lack legal documents.

³ According to the Press Release of the Asylum Campaign (31/3/2016) «the refugees and migrants who are registered in the islands of the Aegean Sea after the 20th of March 2016 are detained in the so-called hot-spots. Until now, no decision regarding their detention has been delivered to them and therefore, their detention is arbitrary and illegal». Available at: <http://www.aitima.gr/images/aitima/documents/2016-03-31-Deltio-typou-Kampanias-Asylo-GR.pdf> (5 September 2016)

The situation that has been created has already led to a further increase of administrative detainees and we fear that these numbers may dramatically increase once again.

In the islands, delays in the asylum procedures and the prolonged entrapment cause frustration and tension to refugees. Many people attempt to leave the islands (and the country) with forged papers, while protests and violent incidents are frequent. The authorities try to control the situation, resorting increasingly to the very controversial practice of arrest and detention on public order grounds. Similar events are also observed in the mainland.

The most serious problem, however, is the large number of people in the mainland –in or out of camps– lacking legal documents. In view of the fact that the Asylum Service continues not to ensure the possibility of access to the asylum procedure at the Regional Asylum Offices, and suggests to whoever wishes to submit an asylum application to follow the inadequate procedure through Skype, it becomes apparent that the majority of people wishing to submit an asylum application will remain without legal documents and will thus face the serious risk of being arrested and administratively detained.

III. PROJECT ACTIVITIES

AITIMA NGO delivered a project on monitoring immigration detention from September 15, 2015 until September 15, 2016. During this period, the following activities have been carried out:

- Visits to detention centers
- Interviews with detainees
- Investigation of cases of detainees based upon their files maintained by the competent authorities
- Meetings and contacts with the competent services, institutional actors, Civil Society Organizations and International Organizations

More specifically:

We carried out 31 monitoring visits:

- 5 visits to the Pre-Removal Detention Center of Amygdaleza
- 2 visits to the Pre-Removal Detention Center of Petrou Ralli
- 2 visits to the Women Detention Facility in Helliniko
- 1 visit to the Police Station of Drapetsona
- 3 visits to the Athens Airport Detention Facility
- 2 visits to the Aliens' Division Detention Center of Salonica
- 5 visits to Police Stations for Combatting Illegal Immigration (Salonica Police Station for Combatting Illegal Immigration, Agios Athanasios Police Station for Combatting Illegal Immigration, Mygdonia Police Station for Combatting Illegal Immigration)
- 4 visits to the Pre-Removal Detention Center of Corinth
- 1 visit to the Police Station of Nafplio
- 1 visit to Pre-Removal Detention Center of Xanthi
- 1 visit to Pre-Removal Detention Center of Drama (Paranesti)
- 1 visit to Pre-Removal Detention Center of Orestias
- 2 visits to the First Reception Center of Orestias
- 1 visit to the Amygdaleza Special Holding Facility for Unaccompanied Minors

B. We have investigated 277 individual cases of detainees by interviewing them and getting access to their files.

C. We carried out meetings with the competent Greek Authorities, institutional actors, Civil Society Organizations and International Organizations and more specifically:

- 7 meetings with the following Greek authorities:
 - Deputy Secretary General of Ministry of Interior
 - Director of the Aliens Directorate of the Attica Hellenic Police (2)
 - Director of the First Reception Service
 - National Center of Social Solidarity
 - Director of the Aliens Directorate of Salonica Hellenic Police
 - Director of the Pre-Removal Center of Amygdaleza
 - Chief of Staff of the Headquarters of the Hellenic Police

- 5 meetings with the following institutional actors:
 - Greek Ombudsman (2)
 - European Committee for the Prevention of Torture and Human or Degrading Treatment or Punishment
 - UNHCR Office in Greece

- 9 meetings/contacts with the following Civil Society Organizations:
 - Asylum Campaign (3)
 - Greek Council for Refugees
 - Greek Council for Refugees and Ecumenical Refugee Program (2)
 - President of the Afghan Community in Greece
 - Praksis
 - Greek Forum of Refugees

- 10 meetings with the following International organizations:
 - Platform for International Cooperation on Undocumented Migrants (3)
 - International Detention Coalition (3)
 - European Council on Refugees and Exiles (3)
 - International Committee of the Red Cross

IV. DETAILED PRESENTATION OF FINDINGS

A. DETENTION CONDITIONS

i. Legal framework

The detention conditions of irregular migrants are regulated at international, European and national level.

According to the «Return Handbook» of the Council of the European Union⁴ :

Whenever Member States impose detention for the purpose of removal, this must be done under conditions that comply with Article 4 Charter of Fundamental Rights of the European Union, which prohibits inhuman or degrading treatment. The practical impact of this obligation on Member States is set out in more detail in particular in:

1) the Council of Europe Guideline on forced return No 10("conditions of detention pending removal");

2) the standards established by the Council of Europe Committee on the Prevention of Torture ('CPT standards', document CPT/Inf/E (2002) 1 – Rev. 2013, available at: www.cpt.coe.int/en/docsstandards.htm), addressing specifically the special needs and status of irregular migrants in detention;

3) the 2006 European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers to Member States) as basic minimum standards on all issues not addressed by the above mentioned standards;

4) the UN Standard Minimum Rules for the Treatment of Prisoners(approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

These standards represent a generally recognized description of the minimum detention-related obligations of Member States in

⁴ «Return Handbook» of the Council of the European Union, page 108, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_el.pdf (3 August 2016).

any particular detention in order to ensure compliance with ECHR obligations and obligations resulting from the Charter of Fundamental Rights of the European Union when applying EU law.

At a national level, Law 3907/2011, transposing into Greek legislation the provisions of Directive 2008/115/EC⁵ for returning illegally staying third-country nationals, stipulates the imposition –or continuation– of detention, taking into account the possible lack of appropriate spaces and difficulties in ensuring decent living conditions of the detainees,⁶ the detention of third-country nationals for the purpose of return in specialized detention facilities, the right of the detainees to communicate with their lawyers, their family members, the consular authorities and NGOs, the provision of emergency health care and treatment for vulnerable persons and the provision of information to the detainees on their rights and obligations.⁷

More specifically, the families shall be provided with separate accommodation, while minors shall have the possibility to engage in leisure activities, to have access to education and should be provided with accommodation in institutions with personnel and facilities which take into account the needs of their age.⁸ According to P.D. 113/2013, transposing into Greek legislation the provisions of Directive 2005/85/EC⁹, asylum seekers shall be provided with equivalent guarantees in regard with the detention of minors, the provision of medical care, the safeguarding of the right to legal representation and they shall be informed in a language which they may reasonably be supposed to understand, on the grounds and the time-frame of their detention. Law 4375/2016, transposing into Greek legislation the provisions of Directives 2013/33/EU¹⁰ and 2013/32/EU,¹¹ provides for equivalent guarantees regarding the detention of asylum seekers. In compliance with law 4375/2016, the detention of an asylum seeker constitutes

5 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EL:PDF>, (5th September 2016)

6 Art.. 30 par. 1 Law 3907/2011

7 ar. 31 Ibid

8 Ibid

9 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EL:PDF>, (5th September 2016)

10 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EL:PDF>, (5th September 2016)

11 <http://eur-lex.europa.eu/legal-content/EL/TXT/PDF/?uri=CELEX:32013L0032&from=EL>, (5th September 2016)

a ground for accelerating the asylum procedure, taking into account the possible lack of appropriate spaces and difficulties in ensuring decent living conditions of the detainees. These difficulties, as well as the vulnerability of the applicants, shall be also considered for the imposition or prolongation of detention. Furthermore, more guarantees are stipulated concerning the detention of minors, including information on the right to free legal aid.

We should also note that some of the provisions of the 2013/33/EU Directive have not been transposed into Greek legislation and, in particular, the article 10 par. 2 of the aforementioned Directive, according to which *«detained applicants shall have access to open-air spaces»* and the article 11 par. 1, in compliance with which *« the health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities. Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health»*.

However, according to the constant jurisprudence of the Court of Justice of the European Union, the provisions of a directive may, exceptionally, have direct effects in a Member State even if the latter has not yet adopted a transposing act in cases where: (a) the directive has not been transposed into national law or has been transposed incorrectly; (b) the provisions of the directive are imperative and sufficiently clear and precise; and (c) the provisions of the directive confer rights on individuals.¹²

In addition, the conditions in Pre-Removal Detention Centers are regulated by the Joint Ministerial Decision No. 8038/23/22, dated 21/1/2015, which refers to the establishment and operation of Pre-Removal Detention Centers of Third-Country Nationals and their Rules of Operation. The provisions of the above-mentioned Joint Ministerial Decision, comply, in general terms, with the international standards. More specifically, they provide for decent living conditions, yard time, leisure activities, access to medical treatment and psychological support, information on rights and obligations, access to legal aid and special care for vulnerable persons.¹³ Furthermore, standards are set in relation to the admission process of the detainees at the infirmary

¹² http://www.europarl.europa.eu/atyourservice/el/displayFtu.html?ftuid=FTU_1.2.1.html (5th September 2016)

¹³ Art. 6 Joint Ministerial Decision No 8038/23/22-ιγ, dated 21/1/2015

of the detention center for preventive examination by doctors, psychologists and social workers.¹⁴ The provision of personal hygiene and cleaning items from the guards of the detention centers, the existence of laundry and dryer machines to ensure that detainees are able to maintain their personal hygiene and the cleaning of places of detention by a private cleaning company are also foreseen.¹⁵ Finally, the rights of the detainees are explicitly recognized, including the right to undisturbed exercise of their religion, access to correspondence or telephone communication, access to a lawyer, provision of legal aid, information on their rights and obligations upon arrival to the detention centers in a language which they may reasonably be supposed to understand, provision of proper nutrition three times a day under the responsibility of the Pre-Removal Detention Centers and access to newspapers, magazines and books.¹⁶

Moreover, regarding the detention conditions of minors, the art. 32 Law 3907/2011 stipulates that *«minors shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education, in accordance with the provisions of article 72 law 3386/2005. Unaccompanied minors shall as far as possible be provided with accommodation in institutions with personnel and facilities taking into account the needs of their age. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal»*.

According to CPT Standards¹⁷:

As soon as possible after the presence of a child becomes known to the authorities, a professionally qualified person should conduct an initial interview, in a language the child understands. An assessment should be made of the child's particular vulnerabilities from the standpoints of age, health, psychosocial factors and other protection needs, including those deriving from violence, trafficking or trauma. Unaccompanied or separated children deprived of their liberty should be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a guardian or legal representative. Review mechanisms should also be introduced to monitor the ongoing quality of guardianship.

¹⁴ *Ibid*, art.8

¹⁵ *Ibid*, art. 11

¹⁶ *Ibid*, art. 21

¹⁷ Council of Europe, CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2011, page 76, available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>, (5th September 2016)

Steps should be taken to ensure a regular presence of, and individual contact with, a social worker and a psychologist in establishments holding children in detention. Mixed gender staffing is another safeguard against ill-treatment; the presence of both male and female staff can have a beneficial effect in terms of the custodial ethos and foster a degree of normality in a place of detention. Children deprived of their liberty should also be offered a range of constructive activities (with particular emphasis on enabling a child to continue his or her education).

In order to limit the risk of exploitation, special arrangements should be made for living quarters that are suitable for children, for example, by separating them from adults, unless it is considered in the child's best interests not to do so. This would, for instance, be the case when children are in the company of their parents or other close relatives. In that case, every effort should be made to avoid splitting up the family.

Besides, CPT has made the following recommendations¹⁸ to the Greek authorities in relation to the Pre-Removal Detention Centers:

- official occupancy rates should be revised so as to offer a minimum of 4 m² of space per detainee in multi occupancy accommodation, and are respected in practice;
- all multi-occupancy rooms should be equipped with tables and chairs commensurate with the number of persons detained and each person is provided with personal lockable space;
- detainees should be offered clean bedding and the ability to wash their clothes;
- all detainees should be offered at least one hour of yard time every day;
- a programme of activities (educational, recreational and vocational) should be developed in each Center;
- at least one common association room, equipped with television and games, should be established in every Center;
- every Center should be equipped with a multi-faith room;
- detainees should be provided with sufficient quantities of personal hygiene and cleaning products (including washing powder) (paragraph 72);
- steps should be taken to ensure that regular maintenance work is carried out in all pre-Removal centers

¹⁸ CPT Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, page. 83, available at: <http://www.cpt.coe.int/documents/grc/2014-26-inf-eng.pdf>, 5th September 2016).

More specifically, CPT trusts that Pre-Removal Detention Centers of Tavros (Petrou Ralli) and Orestias, *with their totally inappropriate carceral design*¹⁹, should only be used for holding persons for short periods.

Similar recommendations have been made by CPT in relation to special holding facilities. CPT also recommended that all detainees should be offered a bed and have ready access to toilet facilities, including at night.²⁰ CPT stressed that the Amygdaleza Special Holding Facility for Unaccompanied Minors, should no longer be used for the detention of unaccompanied minors; instead, more suitable premises, preferably open, should be found.²¹

Regarding the detention conditions in police stations, CPT recommended that the Greek authorities *take urgent steps to ensure that detained irregular migrants are transferred without delay to centers specifically designed to meet the requirements of this population.*²²

However, during our visits to detention centers of irregular migrants, we have seen that there are deviations from relevant legislation, international standards and CPT recommendations. More specifically:

- Use of spaces considered inappropriate by CPT for long-time detention (Pre-Removal Detention Center of Tavros, Pre-Removal Detention Center of Orestias, Police Station of Drapetsona, Police Station of Naflpio, Aliens' Division Detention Center of Salonica, Police Station of Agios Athanasios and Mygdonia) and of the Amygdaleza Special Holding Facility for Unaccompanied Minors deemed also inappropriate for the detention of minors
- Poor maintenance of the facilities
- No yard time in the Special Holding Facilities (Athens Airport Holding facilities, Aliens' Division Detention Center of Salonica) and in the police stations

¹⁹ *Ibid*, page 37.

²⁰ *Ibid*, page 44.

²¹ *Ibid*, page 46

²² *Ibid*, page 81. Furthermore, CPT has recommended that Greek authorities take measures to ensure that, all the persons detained for more than 24 hours, are provided with soap, toilet paper, shampoo, shaving foam, toothbrush and toothpaste, as well as, all detainees have access to appropriate lighting, shower, hot water and are offered yard time every day

- Inadequate health care
- Lack of support by social workers and psychologists
- Inadequate and poor feeding
- Inadequate heating/cooling conditions
- Lack of provisions in clothes, shoes and personal hygiene items
- Lack of provision of recreational activities

- Lack of interpretation services
- Lack of information to the detainees regarding:
 - their legal status;
 - the operational regulations of the detention centers;
 - the impending execution of forced return.

- Lack of free legal aid

ii. Detailed presentation of findings

Note: The findings about the detention conditions derived from interviews with detainees, during our visits. We were able to form our own opinion only in the cases that we had been given full access to areas of detention.

a. Pre-removal Detention Centers

Pre-removal detention center of Amygdaleza

General findings

On the 5th, 6th and 9th of November 2015 and on the 15th and 16th of April 2016 we visited the Pre-removal Detention Center of Amygdaleza. During our visits on the 5/11/2015, 6/11/15 and 9/11/15, 280 persons were detained, while on the 15/4/16 and 16/4/16, 240 persons were detained. We note that we have not been given full access in the detention areas, so we were not able to have a thorough understanding of the conditions. However, as far as we were able to see, detainees move freely all day long within the fenced area, which includes the containers where they stay, a corridor, a container for recreational activities and a container for worship. There are problems in the facilities, as the equipment in some containers (air-condition, hot water, toilets) is not functioning properly and damages are not being repaired. The inadequate and poor feeding is a very important problem for detainees who have often complained and protested concerning this issue.

Detailed Observations

According to our findings based on the conversation we had with the detainees:

In some containers the equipment is not functioning properly (air-condition, hot water, toilet). There is insufficient provision of items for personal hygiene. Although there are washing machines, they are not used. Food is insufficient and of low nutritional value. There is no provision of clothes and shoes from the authorities. Sometimes these are provided by the Church. Yard time is sufficient, as detainees can get out of the container whenever they like. In every detention section there is a container used as a recreational area, where there is a TV set and chairs. Also, in every detention section there is a container used as a worship area. Outside of the fenced area of each detention section, there is a container supposed to be used as visiting area. However, these containers are not used for any visits. In fact, the visitors are able to see the detainees at each detention section fence. Mobile phones are not allowed and detainees use card phones if they can afford them.

At the detention center there is one doctor and nurses from the Hellenic Center for Disease Control and Prevention. However, the medical personnel is not present every day. Moreover, there is no full coverage in medicines. Also, there are no interpretation services to facilitate the communication between the medical personnel and the detainees. There is no preventive medical examination upon admission, while a doctor visits the detention areas only in very urgent cases. There were reports about difficulties in accessing medical care. In the aforementioned center with the material conditions described above, there are detainees facing serious health problems. It is obvious that their stay at the detention center not only poses difficulties in their treatment but may also cause a deterioration of their health condition.

Regarding detainees' information about their rights, there is an announcement posted at the Police Officers' area but not at the detention areas resulting in lack of adequate information. At the same time, there are no interpreters in order to facilitate communication between the police staff and the detainees regarding their legal status.

Pre-Removal Detention Center of Tavros (Petrou Ralli)

General findings

On November 12, 2015 and on May 24, 2016 we visited the Pre-Removal detention center of Tavros. During our visits, approximately 180 persons were detained. We had access only to the inside corridor and the outdoor space of the detention center, so we were not able to have a thorough understanding of the conditions. As far as we were able to see, the space where detainees live for 22 hours per day is very small. Equally limited is the space in which the police staff can move. Obviously, these conditions have a negative effect mostly to the detainees but also to those who work there, and may lead to tensions. The inadequate and poor feeding is a significant problem for detainees, who have complained and protested for this reason many times.

Detailed Observations

According to our findings from our conversation with the detainees:

In each cell, there are 2-8 detainees. There is not sufficient natural light as there are windows only at the corridor. There is also lack of sufficient heating. Bedding is provided but is dirty. Many detainees complained for bugs which is the cause of skin problems. The cleaning service is cleaning only the corridors but not the cells. There is free access to the toilets; however, these are not clean. There is lack of items for personal hygiene. Food is not sufficient, is of low nutritional value and sometimes its taste is sour. Clothes and shoes are not provided. There is not sufficient provision for recreational activities. There is no access to a TV set, a radio, books, newspapers, but only a limited opportunity of sport activity in the outdoor space. There is no worship area. Mobile phones are not allowed and detainees use card phones if they can afford them. Yard time is given only for one hour in the morning and sometimes for one hour in the afternoon, except for Saturdays and Sundays.

At the Detention Center, there is one general doctor, one psychiatrist and one nurse from the Hellenic Center for Disease Control and Prevention. However, the medical personnel is not present every day. Moreover, there is no full coverage in medicines. Also there is no interpretation for the communication between medical personnel and detainees. There is no medical examination upon admission at the center, neither systematic doctor's visits to the detention areas.

Nevertheless, the detainees themselves have not expressed any complaint regarding access to medical care. At this center with the aforementioned material conditions, there are detainees who face serious health problems. It is obvious that their stay at the detention center not only poses difficulties in the ir treatment but may also cause a deterioration of their health condition.

Lastly, detainees have inadequate information of their legal status due to lack of interpretation services.

Pre- removal detention center of Corinth

General Findings

On February 18 and 19, 2016 we visited the Pre- Removal detention center of Corinth, which is based on the former military camp of Corinth. On our first visit, the total number of detainees was 347 persons , the majority of whom were Moroccans (238) and Algerian citizens (104). During our next visits at the above-mentioned Center on June 16 and 23, 2016, we found out that 490 were detained and most of them were Pakistani citizens (351). The main problems were the insufficient number of Police staff, which caused serious problems to the daily operation of the Center, and the total lack of information regarding the legal status of the detainees. It should be noted that during our first visits (18/2/16 and 19/2/16), we had been given access to the areas of detention and therefore we formed our own view on the detention conditions, while during our follow-up visits we were not given access to these areas.

Detailed findings

Two buildings are used for detention. The capacity of each building is 192 people. There are also other buildings that are not used due to lack of sufficient Police staff. 8-12 people are detained in each cell. The detention areas were dirty. Detainees reported that they are trying to clean the cells themselves with water since they are not provided with cleaning materials. There is a toilet in each cell, while showers are in the corridor. There is hot water only for one hour in the morning. The detainees are given some items for personal

hygiene upon admission. However, once these items are used up, they are not given more. There are air-conditioning units but not in all cells. Each detainee gets only one blanket. The detainees reported skin infections caused by the dirty beddings. There is no special worship area. No recreational or educational activities are provided (e.g. television, library). No clothes and shoes are provided. Regarding food, two contracted catering companies offer three meals per day. However, according to the detainees, the quantity of meals is not adequate and the quality is poor.

During our first visit, the detainees told us that they had access to the corridor until 6 p.m., when the cells were locked. The duration of yard time was about one hour per day, but not on a daily basis. Given the lack of guards, the detainees have inadequate access to the yard. Some of them reported that sometimes they are not allowed to access the yard for many days. However, on our follow-up visits in June, detainees told us that they could go to the yard for two hours, on a daily basis.

In relation to the provision of medical services, during our first visits, the commander of the center, informed us that there is a doctor of the Hellenic Center of Disease Control & Prevention (HCDPC) three times a week, while the «Doctors Without Borders» (MSF) visit the center twice a week. Psychological support is also provided by the NGOs «Praxis» and «Arsis» twice a week. However, the detainees reported difficulties concerning access to medical services. As a result of the lack of police staff, it is not possible to allow access to the services to many detainees at the same time. On our follow-up visit in June 2016, the commander of the center informed us that medical services were provided only by the doctor of HCDPC four times a week.

The detainees can use their mobile phones. There are no card phones, so those who do not possess a mobile phone cannot communicate with the outside world.

Moreover, they are not informed about their legal status, as there is no interpretation service. Many detainees reported that they were not served with their detention decision²³.

23 From the investigation of their files maintained by the police authorities, it transpired that some of them had refused to sign the proof of receipt because of lack of interpretation about the document's content.

Drama (Paranesti) Pre-removal Center

General findings

On March 7, 2016, we visited the Drama Pre-Removal Center (an ex-military camp), where 170 people were detained on that date. Previously, the buildings of the ex-military camp had been used as detention areas. Since 2014, the authorities have been using new facilities consisting of six wings with containers, one of which is used for the detention of unaccompanied minors (during our visit, there were no minor detainees). We were allowed access to one wing which was not used, so that we could get an idea for the rest of them. Generally, the conditions of detention seem to be satisfactory and some good practices regarding recreation have also been observed.

Detailed findings

In every wing, there is a container used for recreation which is equipped with a table, chairs and two tv sets (one satellite). The detainees are provided with books and table games. According to the commander of the center, detainees may also engage in vegetable cultivation in the outdoor area. In each wing, there is a container used for worship. Two rooms are used for this purpose. A third room is used as laundry. Regarding heating, there are convectors and air-condition sets that operate all day long in each container. There are two toilets and showers in each container. There is also hot-water 24 hours a day as the center is equipped with both electric and solar boilers. The detainees are provided with items for personal hygiene. They are also provided with clothes and shoes. They can use their mobile phones and there is also a card phone. Provision of yard time is satisfactory, as the detainees are free to move in the space outside of the containers from 7.00 till 23.00. However, there is lack of space for practicing sports.

Regarding medical care, there is no doctor in the center and therefore no medical screening is taking place upon admission. If needed, the detainees are taken to the nearby local medical center. The detainees did not report difficulty in accessing medical care. In relation to food provision, they get the sum of 5,87 euro per day, which is enough for two meals.

In the outdoor space, there is information posted including the Center's Rules of Operation, the rights of detainees and contact details of embassies and civil society organizations. However, there is lack of information regarding legal status, since there is no interpretation service.

Pre – removal detention Center of Xanthi

General Findings

On March 8, 2016, we visited the Pre-removal Detention Center of Xanthi. The total number of detainees during our visit was 160 persons, while the capacity of the facility is 480 persons. We were not allowed access to the detention areas and therefore, we could not form our own opinion on the detention conditions. Overall, it seems that the conditions are satisfactory and good practices regarding recreation of the detainees are also observed.

Detailed findings

The size of each room is 23 square meters and it accommodates up to 8 detainees. Each room is also equipped with a TV, a refrigerator and an air-conditioner. There are worship areas. Detainees have free access to the outdoor space all day long. They are provided with recreational activities indoors (table games, puzzles, painting) and outdoors (billiard, sport activities).

There is free access to sanitary facilities. However, some detainees reported that the toilets are dirty and hot water supply is inadequate. Items for personal hygiene are given upon admission but there is no provision for clothing and shoes.

Regarding food, detainees are offered 3 meals per day. However, the food is of inadequate quantity and of poor quality and nutritional value. Detainees also reported that the menu is not adapted to their dietary habits, so quite often they don't eat the food.

In relation to medical care, there is no doctor at the center and, if needed, the detainees are taken to the hospital. As we were informed by the commander of the center, the Police staff has followed a good practice in order to fill the gap caused by the lack of a doctor: upon admission, there is a screening process for the identification of persons with health problems, who are then referred to the hospital, while a medical file is maintained for every detainee. However, no proper medical screening takes place upon admission because of the lack of a doctor. Under these circumstances, we consider the medical care as inadequate.

Moreover, upon admission to the Center, the police staff is trying to provide detainees with information about their rights. In the briefing area, the rules of operation of the centre and detainees' rights are posted. However, from our conversation with the detainees, it transpired that they lack information about their legal status due to lack of interpretation services.

Pre-removal Detention Center of Orestias

General Findings

On April 25, 2016 we visited the Pre-removal Detention Center of Orestias. On that date, 112 people were detained. Four of them were asylum seekers, while the rest were detained until their transfer to the First Reception Center, in order to be subjected to first reception procedures. Among detainees there were families with under-aged children. We have not been given access to the inner sections of the holding facility, thus, we have not been able to form our own opinion on the spaces of detention.

Detailed findings

According to interviews and discussions with the detainees:

Although there is enough space in the cells, there is lack of planning in order to separate vulnerable persons and families from the rest of the detained population. One of the detainees told us that his child suffered from a breathing problem caused by smoking in the center. There is no air-conditioning in the cells. People are provided with bed sheets which are dirty.

Access to hygiene facilities may be free, but there is no hot water, so the use of the facility is impossible, especially for children and babies. Personal hygiene items are not provided and detainees need to buy them on their own. Clothing and shoes are not provided either.

Regarding food provision, three meals are provided. However, the food is inadequate and of bad quality. In addition, no care is taken for the special nutritional needs of detainees. Some of them told us that they have to buy milk for their children at their own expense. There is no provision for recreational or other activities. There are TV sets only at the corridors. Also, there is no space for religious worship.

Detainees are allowed access to the outside areas for 10 to 20 minutes per day, but not on a daily basis. There is no provision for use of separate spaces for men and families. Use of cell phones is prohibited and communication is only possible through a card phone, if the detainees can buy a card. No medical services are provided. In case of health issues, detainees are transferred to a health center or a hospital. There are no social workers and psychologists. Finally, from our discussions with the detainees it transpired that provision of information regarding their legal status and the grounds of their detention is insufficient, as no interpretation services are provided.

b. Special Holding Facilities

Athens Airport Holding facilities

General Findings

On November 19 and 20, 2015 and on June 6, 2016, we visited the Athens Airport's Holding Facilities. The total number of people detained was approximately 30. We were given full access to the detention facilities. There are two spaces: one is used for the administratively detained and the other is used for the persons arriving to the airport without entrance permit. These persons are either detained in order to be deported soon or they have submitted an asylum application which is pending. The main problem of these two detention facilities is the lack of an outdoor yard.

Detailed Observations

According to our findings, based on our visit and our conversation with the detainees:

The facility used for the administratively detained consists of separate cells, where the detainees remain for 24 hours a day. They are allowed to exit the cells only if they need to go to the toilet. On the other hand, the facility used for the persons arriving to the airport without entrance permit, consists of rooms and toilets/showers. The detainees can only move within this indoor, limited space.

A lack of personal hygiene items has been observed. There is no provision for recreational activities (TV, radio or library). Pre-hospital medical care is provided by the station of National Center of Emergency Pre-hospital Care (E.K.A.B), which is located at the airport.

Due to lack of interpretation services, the provision of information to the detainees on their legal status is inadequate, as well as their communication with the police staff.

Hellinikon Women's Detention Facility

General Findings

On November 13, 2015 and on May 27, 2016, we visited Hellinikon Women's Detention Facility. We were not allowed access to the detention areas, so we have not been able to form our own opinion on the conditions.

Detailed Observations

According to our findings from our conversation with the women detained:

Living space per detainee is sufficient, since the number of the detained women is still in low levels compared to the total capacity of the facility. The detainees themselves clean their cells and the toilets, whereas the cleaning service is cleaning only the outdoor space. There is no heating in the cells. The food is of low nutritional value. As for the recreational activities, there are TV sets in the corridors and a library with books written in several languages. The detainees are offered yard time 2 hours in the morning and 2 hours in the afternoon. There is no worship room.

Health care is insufficient as there is no doctor present and, in case of emergency, the detainees are transferred to the hospital.

There is also lack of provision of information on their legal status and the grounds of the detention, due to lack of interpretation. This fact also hinders the communication of detainees with the police staff.

Aliens' Division Detention Center of Salonica

From our visit and the conversation we had with detainees we found out the following:

General findings

On January 25, 2016 and on July 8, 2016 we visited the Detention Facilities of Aliens Division in Salonica. The total number of people detained was 89 on 25/1/16. However, 10 days before our

visit, 220 had been detained thereto. On our next visit on 8/7/2016, there were 110 detainees.

We were not allowed full access to the areas of detention. However, we had the opportunity to see the cells from the corridor and to get a sufficient idea of the conditions. The main problems of the detention center are the lack of outdoor space for exercise and the insufficient heating. Also, the detainees are subjected to body search upon admission that goes beyond what is absolutely necessary, resorting to violation of the detainees' dignity.

Detailed findings

The procedure followed upon admission of the detainees is problematic, since according to their accounts, during body search, they are ordered to take off all their clothes and underwear, which exceeds the necessary actions and is offensive for their dignity.

The detention area consists of 9 cells of about 50 square meters each, with 10-14 detainees per cell. There are no beds. The detainees sleep on mattresses on the floor.

One of the biggest problems is the lack of outdoor space for exercise. The detainees are obliged to remain in their cells 24 hours a day.

There are two toilets in each cell, but quite often only one of them is functioning and there is also one shower. Hot water is available only for two hours in the morning. There are air-conditioning devices in the cells but some are not functioning. The heating is not sufficient, a fact that was obvious during our visit. The detainees clean their cells with cleaning materials that they buy at their own expenses. There is no special worship area. Clothing, shoes, or items for personal hygiene are not provided.

Regarding food, detainees get 5,87 euro per day. With this money, they buy breakfast (from the police canteen), one meal (from a catering company) as well as items for personal hygiene, cleaning materials and phone-cards (from the police canteen). Although the prices of the police canteen are very low and the deal with the catering company is good (as a quite satisfactory meal costs 2,50 euro), it is obvious that, even with these arrangements, the detainees' nutrition is insufficient.

There are TV sets at the corridor and a library with a limited number of books. By talking to the detainees, we found out that there is lack of provision of information on their legal status and the detention grounds, since no interpretation is provided. A document detailing their rights is posted at the admission area, but not in the cells. On the other hand, the detainees were fully informed about the IOM programme for voluntary return.

There is insufficient medical care. More specifically, there is no medical examination upon admission. Doctors from a public hospital visit the detention center once a month and examine the detainees for tuberculosis and skin infections. There is no doctor at the detention center. When they are ill, they are taken to the hospital. However, according to our estimation, access to medical care is difficult.

Special Holding Facility of Amygdaleza for Unaccompanied Minors

General Findings

On April 15, 2016 we visited the Special Holding Facility of Amygdaleza for Unaccompanied Minors. On that day, 22 minors were detained. We should note that we were allowed access to the detention areas, so we were able to form our own opinion. One of the basic problems that we came across is the lack of doctors, psychologists and social workers. This is a very important matter taking into account the vulnerability of the juvenile. Furthermore, there is no provision for recreational, sport and other educational activities, which are of great importance for minors, especially under these conditions. Finally, there is lack of information regarding their legal status.

Detailed Findings

Minors are detained in 4 rooms of 55 square meters each. The number of the detainees was small, taking into account the facility's capacity, therefore there was enough space for each detainee. Rooms have a window but there is no heating and, consequently, the detainees complained of the cold. A charwoman is responsible for cleaning the area on a daily basis. Minors are provided with bed sheets which are not clean. Clothing and shoes are not provided. Some of the minors we spoke with did not wear shoes, because they have not been provided with any. Access to hygiene facilities was unimpeded and personal hygiene items are supplied. Regarding food provision,

the minors are given three meals per day but the food is of inadequate quantity of poor quality. Minors can communicate only using the card phones, provided that they can afford a card. Sometimes they are allowed to use their cell phones but only for a few minutes.

In the overall facility, there is a common room with only one television set. There are no other activities (e.g. board games, library, sport activities). Sometimes, the minors play football in the yard. They can move freely in the detention areas and have access to the yard during the day, until 6 p.m.

There is no doctor, psychologist and social worker. Some of the minors reported their difficulties in accessing medical services. During their admission at the Center, they are subjected to medical exams for tuberculosis and scabies, which are required for their later transfer to accommodation shelters.

Finally, interpretation services are not provided and, thus, detainees were not informed about their rights and their exact legal status.

c. Police stations

Police Station of Drapetsona, Piraeus

General Observations

On November 16, we visited the detention areas of the Police Station of Drapetsona, where approximately 20 people were detained. We were allowed full access to the areas of detention. The detainees can move around indoors, in restricted areas consisting of cells and a corridor. The overall situation is unacceptable: there is not enough natural or artificial light, and the sanitary facilities (toilets and showers) are in poor condition. On the other hand, it should be noted that the detainees stressed that their treatment from the police personnel was very good.

Detailed Observations

According to our findings based on our site visit and conversation with the detainees:

The living space per detainee seems to be sufficient since the number of detainees is still low compared to the total capacity of the facility. The dormitories and the toilets have no access to natural light and the artificial light at the corridor is poor. The sanitary facilities are filthy and, in their majority, non-functioning. The food is poor and of low nutritional value. There is no yard time. There is a library, which is the only provided recreational activity. Furthermore, detainees are not informed about the grounds of their detention and their legal status in a language they understand due to the lack of interpretation services.

Salonica Police Stations for Combating Illegal Immigration

On January 26, we visited the Police Stations for Combating Illegal Immigration in Salonica at Agios Athanasios and at Mygdonia. On July 9, 2016 we visited the Police Station for Combating Illegal Immigration at Agios Athanasios again.

General Findings

We were not granted access to the detention areas of the Police Stations for Combating Illegal Immigration, so we have not been able to witness the situation ourselves.

Detailed Findings

According to what the detainees disclosed to us:

In the Salonica Police Station for Combatting Illegal Immigration, 4 women were detained in a cell of 15-20 square meters. There is only a small window, so there is no sufficient natural light. The beddings are dirty. Air-condition is insufficient and there is no hot water. The detainees clean the toilet themselves just with water. The toilet is not fully separated from the cell and therefore no decent conditions are ensured. No items for personal hygiene are provided. The detainees are given 5,87 euros for food, which is enough for breakfast and one meal, usually the same every day and of low nutritional value. There are no interpretation services. There is no yard time. Detainees are

provided with clothes and shoes. There is no doctor at the Police Station and, therefore, no medical examination upon admission. In case a detainee has a medical problem, she is taken to the hospital.

In the Police Station for Combatting Illegal Immigration at Agios Athanasios there were 4 detainees in a cell of about 20 square meters (however, 10 days before, there were 22 detainees). During our visit on 9/7/2016, 18 persons were detained in 2 cells of approximately 20 square meters. The detainees reported that the natural light was inadequate. No items for personal hygiene are provided. The detainees clean the toilet themselves just with water. They are given 5,87 euros for food, which is enough for breakfast and one meal, usually the same every day and of low nutritional value. There are no interpretation services. There is no yard time. Regarding recreation there is only a TV set. There is no doctor at the Police Station and there is no medical examination upon admission. If a detainee faces a health problem, he is taken to the local medical center. However, in our estimation access to medical care is difficult.

In the Police Station for Combatting Illegal Immigration at Mygdonia there were 4 adult detainees (however 10 days before our visit, there were 16 detainees; 8 adults and 8 unaccompanied minors). As we were informed there is a small window, so there is not sufficient natural light. The air-conditioning is inadequate and there is no hot water. Detainees clean the toilet themselves only with the use of water. No items for personal hygiene are provided. They are given 5,87 euro for food, that is enough for breakfast and one meal, usually the same every day and of low nutritional value. There is no interpretation. No yard time is provided. Regarding recreation there is only a TV set. There is no doctor at the Police Station and there is no medical examination upon admission. If a detainee has a medical problem he is taken to the local medical center. According to our estimation, access to medical care is difficult.

Police Station for Combatting Illegal Immigration at Mygdonia-Juvenile Detention Areas

General Findings

On 9/7/2016, we visited the detention areas in the Police Station for Combatting Illegal Immigration at Mygdonia. On that day, 7 minors were detained. We note that we were refused access to the detention areas and therefore we were not able to form our own opinion on the conditions. As came out from our discussions with the minors, the conditions are not appropriate for detention of irregular immigrants and especially for unaccompanied minors.

Detailed findings

All minors were detained in one room of approximately 20 square meters. Before our visit, 14 people were detained. Children from different nationalities are detained in the same room, and this causes tensions. There is a window in the room and there is adequate natural and artificial light. There are two air-conditioning devices. Minors were cleaning the room themselves with products provided by the service. There are no beds –minors are sleeping on mattresses on the floor. Bed sheets are provided but they are dirty. No clothing nor shoes are provided. Access to hygiene facilities is unimpeded but the conditions are very poor and the minors have to clean the facilities themselves. Personal hygiene items are provided but they are insufficient. Minors communicate with the outside world using card phones provided they can afford a card.

Regarding food provision, minors are given 5.87 euro, enough for two meals. Meals are low in nutritional value, while some of the minors told us that there is no variety in the food provided. Apart from one television set, no other recreational activities are provided (e.g. board games, library, sport activities). Furthermore, there is no yard time. There are no doctors, psychologists or social workers in the detention facility,. Upon their admission at the Center, the minors are subjected to medical exams for tuberculosis and scabies, which are required for their later transfer to accommodation shelters.

Finally, no interpretation services are provided and as a result the detainees are not informed on their rights and their exact legal status.

Police Division of Nafplio

General Findings

On 16/2/2016, we visited the Police Division of Nafplio. The total number of detainees on that day was 6 people. We were allowed full access to the detention areas, thus, we formed our own opinion on the detention conditions. The main problem was the lack of yard time, since detainees were able to move only in the cells and the corridor. It should be noted that there is an outdoor space that could be transformed into a yard for exercise.

Detailed findings

There is a toilet and a shower in every cell. There is also hot water. However the facilities are old. The detainees themselves clean their cells. There are not sufficient supplies of personal hygiene items. No recreational or educational activities are provided (e.g. television, library). There is no special area for worship. Mobile phones are not allowed. There is a card phone, which the detainees can use, if they can afford to buy a card. No clothes nor shoes are provided. Regarding food, the service has a contract with a catering company, which provides two meals per day. Medical care is insufficient, since there is no doctor in the detention center. If the detainees get ill, they are taken to the hospital. However, according to our estimation, access to medical care is difficult. Information to detainees about their legal status is insufficient, since there are no interpretation services.

B. DECISION MAKING

I. GENERAL OBSERVATIONS

By investigating the cases of the detainees we found out that:

- There has been an improvement concerning the total number of the persons detained since the beginning of 2015, as a significant decrease of the numbers has been observed. Additionally, the maximum time limit of 18 months is no longer exhausted.
- The serious, long-standing systemic problems concerning the detention procedures followed by the departments of the Hellenic Police remain unsolved.
- There are problems in the procedures followed by the Asylum Service in relation to the detained asylum seekers.

In summary, we report the following:

Regarding the Hellenic Police Departments:

- Lack of an individualized approach based on the characteristics, the situation and the needs of the arrested foreign nationals
- Alternatives to detention are not applied
- Systematic, unjustified detention of dubious legitimacy on public order grounds
- Detention of individuals whose removal violates the principle of *non-refoulement*
- Over six months detention despite the government's announcements
- Detention of people facing serious health problems
- Re-arrest for the purpose of return, despite previous prolonged and ineffective detention
- Failure to take into account data that arise over the period of detention regarding the health status of detainees and extension of detention of vulnerable persons
- Lack of interpretation services, indispensable for the detainees in order to fully understand their legal status, the decisions that concern them and the documents they are asked to sign
- Lack of free legal assistance
- Lack of information regarding an imminent enforcement of the return decision
- Detention of unaccompanied minors and implementation of the problematic age assessment procedure
- Irregular detention in view of first reception procedures

Regarding the Asylum Service

- Serious delays in the recording and processing of detainees' asylum applications
- Recommendations to the police authorities on the detention of asylum seekers, have a standard and not binding wording, which results in the police authorities continuing to determine exclusively about the detention of the applicants.

ii. DETAILED PRESENTATION OF FINDINGS

a. Lack of first reception procedures

i. Legal Framework

At the beginning of 2011, Law 3907 established the operation of the First Reception Service. According to Article 7 of that Law *all third-country nationals who are arrested while entering the country without legal formalities shall be subjected to First Reception Procedures. First Reception procedures for third-country nationals shall include: (a) verification of their identity and nationality (b) registration (c) medical examination, and any necessary medical care and psycho-social support, (d) information about rights and obligations, in particular about the conditions under which one can be placed under international protection and (e) identifying those who belong to vulnerable groups, so that the relevant procedures are followed.*

Further, Article 11 par.1 of the same law provides for the screening and referral of applicants for international protection to the competent Regional Asylum Office. *If an application and the appeal thereof are rejected while a third-country national remains in the First Reception Center or Unit, s/he shall be referred to the authority competent for including him/her under deportation, return or readmission procedures.*

According to art. 11 par. 2, *the Head of the Center or Unit, upon recommendation of the Head of the medical screening and psychosocial support cell, refers persons belonging to vulnerable groups to the competent body of social support or protection” while at paragraph 3 “the remaining third country nationals are referred to the authority which is competent to decide, under the applicable provisions of the legislation, whether to place them in the deportation, return or readmission procedures.*

In compliance with law 4375, published on the 2/4/2016, the Reception and Identification Service has been established in order to *effectively conduct the reception and identification procedures of third country nationals or stateless persons who enter the country without the legal formalities*²⁴.

²⁴ Law 4375/2016 article 8 par. 2

The First Reception Service consists of the Central Service and the Regional Reception Services which are: (a) First Reception and Identification Centers, (b) First Reception Mobile Units, (c) Open Temporary Reception Structures for third country nationals or stateless persons who have requested international protection, (d) Open Temporary Accommodation Facilities.

Reception and identification procedures are equivalent to those stipulated by Article 7 of Law 3907/2011 and include the registration of personal data, fingerprinting and recording of the relevant data, the verification of identity and nationality, medical examinations and provision of any necessary medical care and psycho-social support, information on the rights and obligations, care for those belonging to vulnerable groups, reference to the competent service of those who wish to apply for international protection, reference of the persons who did not apply for asylum and of those whose application for international protection has been rejected during their stay in the First Reception and Identification Center to the services competent for including them under deportation, return or readmission procedures.

ii. Findings

In relation to the first reception procedures, until early April 2016, when Law 4375/2016 entered into force, the establishment and operation of the First Reception Service was provided by Law 3907/2011. Despite the fact that the legal framework stipulated the establishment of First Reception Centers across the country since 2011, until recently only one First Reception Center in Orestias was in operation. As a result, it was the Hellenic Police that carried the burden of managing third country nationals entering or staying in the country without legal formalities.

The competent services of the Hellenic Police (Aliens' Divisions, Police Directorates) do not have staff qualified to carry out the first reception procedures. But even when contracts are signed with qualified staff or NGOs for the provisions of medical and psychosocial support, these services are not used for the initial assessment of the situation and needs of each arrested person and the possible use of alternatives to detention or the referral to other services but they are provided after a detention and return decision has been issued.

At the same time, the system which is adopted by the Hellenic Police for more than a decade is impersonal and standardized. The service that carries out the arrest, which does not have any specifically trained staff or interpreter, sends the registration file to the Aliens'

Division which in turn issues the detention and return order. The police officer who issues these orders does not even meet or assess individually the arrested person. Obviously, such a process results in not identifying vulnerable individuals, including unaccompanied minors, ill people, victims of torture and victims of trafficking. Also, due to this process people in need of international protection or those whose return would violate the principle of non-refoulement are not identified.

b. Issuing and enforcement of the return decision and detention for the purpose of return, when the return violates the principle of non-refoulement

i. Legal Framework

According to article 20 of Law 3907/2011 *the competent authorities for carrying out return related tasks observe the principle of non-refoulement and according to article 24 the removal is obligatorily postponed when the principle of non-refoulement is violated.* In addition, under Article 78^A of Law 3386/2005 (inserted by Article 18 of Law 4332/2015) *no deportation decision is issued when the conditions of the non-refoulement principle apply, as reflected in article 3 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, ratified by Law 1782, 1988 (A' 116), in article 7 of International Covenant of Civil and Political Rights, ratified by Law 2462/1997 (A' 25), in articles 31 and 33 of the Geneva Convention relating to the Status of refugees of 1951, ratified by legislative decree 3989/1959 (A' 201) and in article 3 of the European Convention on Human Rights, ratified by legislative decree 53/1974 (A' 256). In this case, a non removal certificate for humanitarian reasons is granted by the competent authority of article 76 par. 2 of Law 3386/2005, which entails for the holder the same rights and obligations as the removal postponement certificate under article 24 of law 3907/2011.*

ii. Findings

Given the aforementioned lack of first reception procedures and individual assessment of each person arrested, the imminent issuing of a removal postponement decision is based on the nationality of the person, provided that he/she has documents proving the nationality. Thus, nationals from Syria, Somalia, Eritrea, Myanmar, Mauritania and

Palestine are granted with a removal postponement decision, because the Hellenic Police services estimate that the return in their case would violate the principle of non-refoulement. However, when the police authorities consider that there are reasons of public order, a detention order and a return decision are issued even for the nationals of these countries. Regarding other nationalities, for which there is no recommendation by UNHCR on complete cessation of forced returns but on individualized assessment (Sudan, Afghanistan), the Hellenic Police issues return decisions and detains the nationals of these countries on the purpose of return and in some cases executes forced returns. Finally, Hellenic Police issues return decisions and detains for the purpose of return nationals of other countries, although their return might violate the principle of non-refoulement (e.g. citizens of Iran, Nigeria, Cameroon).

The competent services of Hellenic Police consider that the third country nationals who do not wish to return to their country of origin because that would put them in danger, apply for asylum.

However, the competent services of our country are obliged –under national, European and international law– to respect the principle of non-refoulement, regardless of whether an asylum application will be lodged. Therefore, the services are required to:

- be organized in such a way so that they are informed of the situation in countries of third country nationals and to constantly update their data
- cooperate with the United Nations High Commissioner for Refugees for the accomplishment of this purpose
- carry out individualized assessments of each third country national in order to examine whether a possible return would violate the principle of non-refoulement, and if this is the case, issue a removal postponement decision. The aforementioned individualized assessment must be carried out both at the stage of initial arrest so that, if the principle of non-refoulement applies, a removal postponement decision is issued, according to article 78A of Law no. 3386/2005, and then –certainly before the enforcement of the return decision– if the principle of non-refoulement still applies, the person should be granted with a removal postponement decision according to article 24 of Law 3907/2011.

From the cases we investigated and we hereto present, it appeared that, inter alia, forced returns are executed in violation of the principle of non-refoulement and recognized refugees are detained for the purpose of return.

Cases of detainees

- An Afghani national, J.M, originating from the province of Maidan Wardak and member of the ethnic group of Hazara, was detained for five months in the Pre-removal Detention Center at Amygdaleza and then was forcibly returned in violation of the principle of non-refoulement, as in Maidan Wardak province members of the Hazara group face persecution by the nomadic tribe Kutsi, as well as by the Taliban. The State cannot offer protection, while internal relocation is impossible because of the deteriorating security situation in Afghanistan and the persistent discrimination against the Hazara ethnic minority. It should be noted that two days before the forced return, our organization informed the Aliens Attica Sub-directorate for the fact that any return procedure would violate the principle of non-refoulement.

- R.H., Irani national, was detained for half a month in the Athens Airport Police Department and a return decision was issued against him on 06/12/2015 and 12/12/2015, although he had been granted refugee status in Greece. More specifically, as the aforementioned person had been returned from Norway, there had been previous correspondence between the Norwegian and the Greek authorities and, therefore, his file included an accompanying document of the Norwegian authorities, stating that the person was readmitted to Greece because he was a recognized refugee while mentioning the relevant decision of the Asylum Service. We note that the second return decision stated that the asylum application of the aforementioned person had been rejected (!). Moreover, the police authorities transferred the recognized refugee to the consular authorities of his country –by which he is persecuted– in order for him to be recognized as a citizen of Iran and be returned to his country. After a written intervention of our organization, he was released with a six-month removal postponement decision (!)

- Syrian national H.Y. was arrested on 08/01/2016 and held in the Pre-removal Detention Center in Tavros on public order grounds, as he had been sentenced by the Athens Court of First Instance to two months imprisonment, wholly suspended for three years for violation of Art. 29 par. 7 of Law 4251/14. On 08/04/2016 a decision, ordering the prolongation of his detention was issued. According to this decision, he was an Algerian national. The aforementioned person told us that he was a recognized refugee in Norway, a fact that we brought to the attention of the Police authorities. At a later date, we submitted to the police authorities, copies of the Norwegian documents, proving that he had been granted the refugee status. He was finally released on 30/05/2016.

- Afghani national A.A. had been detained from 26/01/2016 until 31/05/2016 in the Pre-removal Detention Center in Xanthi, although he was a holder of a residence permit (subsidiary protection) and of a travel document issued by the Italian authorities. We brought all these facts to the attention of the police authorities on 17/3/2016.

- Y.Z., Eritrean national had been detained for six months at the Women Detention Center in Helliniko on public order grounds, although she could not be returned as, according to the UNHCR Guidelines for Refugees and the relevant Order of the Hellenic Police Headquarters, no returns of Eritrean nationals are carried out. We further note that the aforementioned person reported to us that she was prosecuted in her country of origin on the grounds of gender (genital mutilation and rape).

- Eritrean nationals D.B. and B.B. were arrested on 13/02/2016 and on 29/02/2016 respectively and detention decisions were issued against them on public order grounds, despite the fact that they could not be returned to Eritrea. Their applications for international protection were lodged on 07/04/2016 and 25/05/2016 respectively, and finally they were released on 28/05/2016.

c. Detention on public order grounds

i. Legal Framework

According to Article 30 of Law 3907/2011 *third-country nationals subjected to return procedures, in accordance with par. 1 of Article 21, are detained for the preparation of return and the removal process only if, in this specific case, there are not other adequate and less restrictive measures that can effectively be implemented, such as those provided in par. 3 of Article 22. The measure of detention is applied when: a) there is a risk of absconding or b) the third-country national avoids or hampers the preparation of return or the removal process or c) there are reasons of national security.*

According to the "Return Handbook":

"No detention for public order reasons: The possibility of maintaining or extending detention for public order reasons is not covered by the text of the Directive and Member States are not allowed to use immigration detention for the purposes of removal as a form of "light imprisonment". The primary purpose of detention for the purposes of removal is to assure that returnees do not undermine the execution of the obligation to return by absconding. It is not the purpose of Article 15 to protect society from persons who constitute a threat to public policy or security. The –legitimate– aim to "protect society" should rather be addressed by other pieces of legislation, in particular criminal law, criminal administrative law and legislation covering the ending of legal stay for public order reasons. See also ECJ in Kadzoev, C-357/09, par. 70: "The possibility of detaining a person on grounds of public order and public safety cannot be based on Directive 2008/115. None of the circumstances mentioned by the referring court (aggressive conduct; no means of support; no accommodation) can therefore constitute in itself a ground for detention under the provisions of that directive." The past behaviour/conduct of a person posing a risk to public order and safety (e.g. non-compliance with administrative law in other fields than migration law or infringements of criminal law) may, however, be taken into account when assessing whether there is a risk of absconding (see section 1.6. above): If the past behaviour/conduct of the person concerned allows drawing the conclusion that the person will probably not act in compliance with the law and avoid return, this may justify a prognosis that there is a risk of absconding".²⁵

²⁵ Return Handbook, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf, page 79.

"The concept of "risk of absconding" is distinct from that of "risk to public policy". The concept of "risk to public policy" presupposes the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. A Member State cannot deem a third-country national as posing a risk to public policy on the sole ground that that national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law. Other factors, such as the nature and seriousness of that act, the time which has elapsed since it was committed and any matter which relates to the reliability of the suspicion that the third-country national concerned committed the alleged criminal offence is also relevant for a case-by-case assessment which has to be carried out in any case" .²⁶

According to the Greek Ombudsman (document No.175063/49247, dated 19.11.2013):

"The Hellenic Police seems to be indifferent to the specific characteristics of each category of third country nationals and the existing legal grounds for their differential treatment. This apparently results in return decisions which lack bearing in law {...} and include in their reasoning both laws 3386/2005 and 3907/2011. This serves the purpose of imposing detention to all the above categories collectively, on the legal basis of public order (despite the fact that the protection of public order is not included in the legal conditions for using article 30 of law 3907/2011 to impose detention) in a way that is far from corresponding to precise and sufficient reasoning. The competent Police authorities invoke –in order to justify the imposition of detention– either past criminal court proceedings or past sentences to deprivation of liberty, which however have been suspended, without taking into consideration that only judicial authorities are competent for the imposition of a sentence for deprivation of liberty or of restrictive measures in the context of criminal procedures, while administrative detention is imposed in the context of the execution of a return decision with the sole purpose of the enforcement of the alien's removal".

²⁶ *Ibid*, page 37-38.

ii. Findings

Presently, a large number of administrative detainees are being held by the Hellenic Police on grounds of “public order”. We note that police authorities often invoke Article 76 par. 3 of Law no. 3386/2005, according to which, *if the alien is considered, on the basis of the general circumstances, suspect for escape or dangerous for the public order or avoids or obstructs the preparation of his Removal or the procedure of his expulsion, his temporary detention is ordered, upon decision of the bodies referred to in the previous paragraph, until the issue, within three (3) days, of the decision regarding his deportation, in order to impose detention for public order reasons.*

Most of the persons detained on public order grounds, i.e. because they are considered dangerous, have been nevertheless released according to a decision of a judicial authority, which obviously, considered that these persons do not constitute a danger to the public order. Specifically, detainees on public order grounds include:

- persons on whom a suspended sentence has been imposed
- persons who have lodged an appeal which has suspensory effect
- persons who have been conditionally released
- persons who have served their sentences
- persons on whom a judicial expulsion had been imposed but has been subsequently lifted.

The Hellenic Police continues this practice despite the objections formulated by the Ombudsman on its legitimacy and the criticism of the civil society organizations.

Besides the issues concerning the legitimacy of this practice, we should also note that:

a. detention on public order grounds often exceeds a period of six months, despite the ministerial pronouncements of February 2015.

b. among those detained on public order grounds are included:

- persons whose return is not feasible, either because it violates the principle of non-refoulement, or because of practical problems
- persons who face serious health problems
- people who have developed ties with the country²⁷

d. Detention of persons who face serious health problems –lack of consideration of data arising during the detention regarding the health status of detainees– extension of the detention of vulnerable persons

i. Legal Framework

The right to health is protected at an international, European and national level. According to Article 25 of the Universal Declaration of Human Rights, *everyone has the right to a standard of living adequate for his/her health and well-being and that of his/her family, including food, clothing, housing, medical care and necessary social services*. Further, in accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights, *the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. Article 35 of the EU Charter of Fundamental Rights states that *everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities*. At the national level, Article 5 § 5 of the Constitution provides that *everyone has the right to protection of health*, while according to Article 21 § 3, *the State shall care for the health of citizens*.

Health protection of third-country nationals subjected to return procedures is enshrined in EU and national law. Article 20 of Law 3907 / 2011²⁸ imposes that competent authorities, when applying

²⁷ See indicative cases in the relevant chapters

²⁸ Greece: Law No. 3907 of 2011....., *op.cit.*

the provisions on the return of third country nationals, *“take due account of the health situation of the third country nationals and respect the principle of non-refoulement”*. According to Article 30 of the aforementioned law, third country nationals who are the subject of return procedures *“are kept in detention in order to prepare the return and to carry out the removal process, only if, in a specific case, no other adequate but less restrictive measures can be applied effectively”* and the detention *“is imposed and maintained for as short a period as possible and as long as removal arrangements are in progress and executed in due diligence. In any case, the imposition or continuation of the measure of detention must take into account the availability of adequate detention facilities and the ability to provide decent living conditions for the detainees”*. Furthermore, under Article 31, *“emergency health care and essential treatment is provided to detained third country nationals. Particular attention shall be paid to the situation of vulnerable persons”*. Additionally, in accordance with Article 29 of that Law, during the period of voluntary removal of a third country national and during the period when the removal has been postponed, the competent authorities shall ensure that they are able *“to provide emergency healthcare and necessary treatment in accordance with Article 84 par. 1 of L.3386 / 2005”* but also *“take into account the special needs of vulnerable persons”*.

It should be noted that under Article 18 (i) law 3907/2011, the concept of “vulnerable persons” includes minors, unaccompanied minors, disabled people, elderly people, pregnant women, women having recently given birth, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or exploitation as well as victims of trafficking.

However, according to the “Return Handbook”, *“contrary to the definition of vulnerable persons used in the asylum acquis (see for instance: Article 21 of the Reception Conditions Directive 2013/33/EU or Article 20(3) of the Qualification Directive 2011/95/EU), the definition in the Return Directive is drafted as an exhaustive list. The need to pay specific attention to the situation of vulnerable persons and their specific needs in the return context is, however, not limited to the categories of vulnerable persons expressly enumerated in Article 3(9). The Commission recommends that Member States should also pay attention to other situations of special vulnerability, such as those mentioned in the asylum acquis: being a victim of human trafficking or of female genital mutilation, being a person with serious*

illness or with mental disorders. Likewise, the need to pay specific attention to the situation of vulnerable persons should not be limited to the situations expressly referred to by the Return Directive (during the period of voluntary Removal, during postponed return and during detention). The Commission therefore recommends that Member States should pay attention to the needs of vulnerable persons in all stages of the return procedure".

II. Findings

It is obvious that detention is a particularly burdensome measure for people who face health problems/disabilities. Not only it does not facilitate the treatment of their problems, but it is also likely to worsen them. Therefore, to the extent that, according to the legislation, detention is a last resort measure, it is obvious that it should be avoided for those with health/disability problems as the Member States should apply alternatives to detention in their case. From the above international, European or national laws, it is concluded that:

- Member States should ensure the protection of health both in terms of prevention and in terms of treating health problems.
- Detention of irregular immigrants and asylum seekers is an exceptional measure applicable only if in a particular case other adequate and less restrictive measures cannot be effectively implemented.

The combination of the above sets out a framework which should be part of the treatment of irregular immigrants and asylum seekers who face health/disability problems.

Furthermore, the material conditions of detention in our country diverge significantly from the provisions in the legislation and the international standards. Among other issues, severe problems are observed regarding food, heating, hygiene and healthcare. **It is obvious that these conditions aggravate the situation of the detainees with health problems.**

Nevertheless, according to our findings, among the detainees there are persons who face serious physical and mental illnesses (epilepsy, cardiac diseases, diabetes, schizophrenia, etc.), victims of torture and victims of violence.

Besides that, even when the competent authorities are informed by doctors –of the pre-removal centers or the public hospitals– or by civil society organizations on the seriousness of the situation of certain detainees, it has been observed that they may not take immediate measures for their release.

Finally, when a detainee facing a serious health problem is released, s/he is not being referred to an appropriate facility, where s/he could be provided with the necessary treatment.

Specific cases of detainees²⁹

- Pakistani citizen B.A. was detained for 6 months on the grounds of public order (which was related by the Police to a sentence of 5-month imprisonment that he had already served), even though he was suffering from a severe mental disorder. We note that, on 29/05/2015, during his detention at the Pre-Removal Detention Center of Xanthi, he climbed on the roof of the wing B of the Center, from where he finally came down, after the intervention of the psychologist of the psychosocial support team of the Center. After that, during his detention at the Amygdaleza Pre-Removal Detention Center, he was hospitalized from 22/09/2015 until 09/10/2015 at the psychiatric ward of Nikaia General Hospital "Agios Panteleimon", due to "a major depressive episode, with psychotic symptoms and suicidal thoughts," which was "related to his existing psychopathology and the social situation of the detainee (stay at the detention Center)," according to his medical certificate dated 09/10/2015. The doctor of the Amygdaleza Pre-Removal Detention Center had repeatedly informed the authorities on the seriousness of the situation of the above mentioned person, with his extensive reports dated on 12/10/2015, 13/10/2015, 15/10/2015

²⁹ It should be noted that our last update on the cases of the persons that we mention herein that they continue to be held, was in late August.

and 10/11/2015, in which he mentioned his long-standing psychiatric record and his deviant self and hetero-destructive behavior, *“something which raises the question of whether he should be detained in the Center”*. Besides, the seriousness of his condition was obvious during our visit at the Amygdaleza Pre-Removal Detention Center on 05/11/2015, as this person could not communicate with anyone. At last, he was released on 19/11/2015, after he was given a 6-month postponement of removal, but without being referred to a facility that would be appropriate for his situation.

- Moroccan citizen H.M. was detained for 6 months on the grounds of public order which was related by the Police to a 10-month suspended jail sentence and a judicial deportation order which had been lifted. The above mentioned person suffered from epilepsy, and during his detention he had epileptic seizures as laid down in the medical certificates delivered from the General Hospital of Athens “G. Gennimatas” on 31/05/2015, from the General Hospital of Athens “Korgialeneio Mpenakeio” on 19/06/2015, as well as from the doctor of the Amygdaleza Pre-Removal Detention Center on 14/10/2015. What is more, as shown in the medical certificate delivered on 29/10/2015 from the same doctor, the aforementioned person suffered from respiratory disorders, as on 08/10/2015 he was referred to the “Sotiria” Regional Chest Diseases Hospital, where he was hospitalized for 8 days and was diagnosed with “bronchiectasis” whereas, on 26/10/2015, he was referred back to an out of hours pulmonary division.

- Iraqi citizen D.D. was detained for 6 months on the grounds of public order which was related by the Police to a 15-month jail sentence suspended for 3 years as the case was pending under appeal. This person suffered from schizophrenia, he was hospitalized for 10 days at Dromokaiteio Psychiatric Hospital (from 03/08/2015 to 14/08/2015) and was discharged with prescribed drug treatment and a recommendation for psychiatric follow-up. During our visit at Amygdaleza Pre-Removal Detention Center, we were informed from other detainees that this person has a psychiatric problem and thus, we talked with him. We reported his case to the doctor of the Center, who, until then, had not examined this person. After

this, on 13/11/2015 he was referred again to Dromokaiteio Psychiatric Hospital and finally, on 15/11/2015, he was released with a 6-month postponement of removal without being referred to a facility that would be appropriate for his situation.

- Sudanese citizen A.M., despite having a serious health problem, was held from 14/10/2015 until 15/06/2016, when released under Art. 46 of Law 4375/2016, which provides that asylum seekers may not be detained for more than three months. Specifically, he suffered from dysregulated diabetes and he was also in need of surgery for bladder hernia. Moreover, he claimed that he was a victim of torture in his country of origin and because of this he had been a beneficiary of the program for the support of torture victims of Doctors Without Borders (MSF) before his arrest. We would like to note that we submitted a written report to the Aliens Sub-directorate of Athens mentioning all of the above. The aforementioned person has appealed against the revocation of his refugee status³⁰ but has been detained on grounds of public order despite the suspension of judicial expulsion and his having served his sentence (he was released in 2013). We also note that he could not be deported, as the revocation of refugee status did not negate the danger that he would face if he was forced to return to his country of origin as the grounds on which he has been granted the refugee status were still valid.

- Tunisian national O.F. was released on 20/10/2015 as the 15-month prison sentence imposed on him was suspended for three years on the condition that he would attend a rehabilitation program. However, when the aforementioned person was released, the police authorities issued a detention order as well as a return decision on 06/11/2015, whereas on 06/02/2015 they decided to prolong his detention instead of releasing him and letting him join a rehabilitation program as set by the judicial authorities. It should also be noted that his subsequent asylum application had been rejected but the Appeals Committee referred him to the Ministry of Interior in order to apply for a residence permit on humanitarian grounds, which he did on 11/02/2016. Finally, we note that this particular detainee was suffering from hepatitis C and was HIV positive. He was released on 05/03/2016.

³⁰ *With the support of the Greek Council for Refugees*

- Afghani national G.Y. was transferred by the police authorities from "Agios Pavlos" Prison Hospital in Korydallos to the Pre-removal Detention Center of Tavros on 23/12/2015, where he has been detained since on grounds of public order. The aforementioned person has serious health problems, as he suffers from Hepatitis C and is HIV positive. From 27/11/2015 until 12/01/2016, he was hospitalized to Regional General Hospital of Piraeus "Tzanio" suffering from tuberculous enteritis and lymphadenitis. On 15/01/16 he was taken to "Attikon" General University Hospital due to fever, while on 22/01/2016 until 02/02/2016 he was hospitalized in University General Hospital of Athens "Laiko", where, after starting the antiretroviral treatment, he was diagnosed with immune reconstruction syndrome (IRIS), intestinal tuberculosis and tuberculous peritonitis, and was discharged with a recommendation for regular infection and psychiatric monitoring. Since then, he regularly visits the hospital for medical supervision.

- Irani national I.M. was released from Korydallos Prison Hospital "Agios Pavlos" on 13/05/2016, when the police authorities took him to the Pre-removal Detention Center of Tavros, where he has been held on grounds of public order. As indicated on the discharge note delivered on 13/05/2015, the above mentioned person is HIV positive, he was receiving psychiatric treatment during his hospitalization, and was discharged with a recommendation for psychiatric supervision. Nevertheless, he was arrested on 12/9/2015 and a detention order was issued, which was subsequently extended on 12/12/2015, 12/03/2016 and 12/06/2016.

e. Re-arrest for the purpose of return despite previous prolonged and ineffective detention

i. Legal Framework

According to art. 30 par. 4 of Law 3907/2011:³¹

"When it becomes manifest that there no longer exists a reasonable prospect of removal for legal or other considerations, or that the conditions laid down in paragraph 1 no longer exist, detention ceases and the third-country national shall be released immediately" while in accordance with paragraph 5 of the same article "detention shall be maintained for as long as the conditions of paragraph 1 are fulfilled and is necessary to ensure successful removal. The maximum period of detention may not exceed six months". Paragraph 6 provides that "the timeline of paragraph 5 may be extended for a limited period not exceeding twelve months in cases where, despite of all reasonable efforts by the competent authorities, the removal operation is likely to last longer owing: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from the third countries".

According to the Return Handbook of the EU Council:

*"Re-detention of the same person at a later stage may only be legitimate if an important change of relevant circumstances has taken place (for instance, the issuing of necessary papers by a third country or an improvement of the situation in the country of origin allowing for safe return), if this change gives rise to a "reasonable prospect of removal" in accordance with Article 15(4) and if all other conditions for imposing detention under Article 15 are fulfilled"*³².

According to the Greek Ombudsman's Report³³ on Successive Return Orders:

"The second return decision prolongs the detention of the third-country national who remains in the country not because of some fault on his part but because the first return decision cannot be enforced. This practice circumvents the provisions for the maximum detention

³¹ Greece: Law No. 3907 of 2011..., *op.cit.*

³² Return Handbook of the EU Council, page 88, available in English at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf

³³ Ombudsman's report on Successive Return Orders, pages 4-5, available at, http://www.synigoros.gr/resources/_porisma_apelasi_21_01.pdf, (5 September 2016)

period, as the 3-month limit which is set out by law 3386/2005 (art. 6 par. 3), constitutes an absolute time limit that cannot be exceeded due to technical or other problems”.

- *“However, the case is different when the return of the third-country national is possible but the 3-month limit has elapsed. In this case, the arrest as well as the detention of the third-country national is possible without any further legal requirement but only for a very limited period of time. More specifically, this time limit can be justified mutatis mutandis by article 6 of the Constitution, which states that the detention of a person without the issuing of an arrest warrant is possible for a maximum of 4 days. This time limit could be prolonged (always in proportion with the above mentioned provision) for 2 days only for reasons of force majeure and after the issuing of a specifically justified decision by the competent police commissioner”³⁴.*

Finally, the jurisprudence of the Administrative Courts is in line with the above. We refer to the indicative decision 461 / 02.12.14 Administrative Court of First Instance of Corinth whereby:

“If the third-country national has been detained for the maximum period of 18 months and the removal procedure has not yet been completed, i.e. the return decision in the light of which the person had been held has not yet been enforced and therefore s/he has been released, his/her re-detention may not exceed the maximum time limit of 18 months for the purpose of enforcement of a previous unexecuted return decision or of a new decision issued based on the same data except when an imminent removal from the country is ensured, in which case he/she can be held but only for a very limited period of time. Otherwise, there is a violation of the aforementioned provision, regarding the maximum time limit of 18 months and therefore, the detention is not legitimate. (cf.. ECHR D.J. in Greece 10.5.2007)”.

ii. Findings

Nonetheless, during our visits we noted that the police authorities are enforcing the detention measure, despite the previous ineffective detention.

³⁴ Ibid

Cases of detainees:

- Algerian citizen M.Y. is detained for the purpose of return at the Pre-removal detention Center in Tavros despite his previous ineffective detention. More specifically, he had been previously arrested on 21/11/2012. A decision for the extension of his detention was issued on 21/02/2013. New decisions for the extension of his detention have been issued on 21/05/2013, 21/08/2013, 21/11/2013 and finally on 21/02/2014. Therefore, as shown above, this person had been detained for 18 months, without a reasonable prospect of successful removal. On 4 May 2015, after he was released according to the decision of Athens Three-Member Appeal Court of Felonies, which imposed on him a suspended sentence of two year imprisonment for the offence of resistance to public authority, he was again arrested by the Police. He was initially given a decision for the detention of an asylum seeker on public order grounds but his asylum application was rejected on 28/9/2015, and a detention order as well as a return decision were issued on 28/9/2015. On 28/3/2016 and 28/6/2016, the competent authorities issued a prolongation of his detention.

- Pakistani national I.M. was arrested on 30/10/2013 and was held in the Amygdaleza Pre-removal Detention Center. Decisions on extending his detention were issued on 30/1/2014 and 30/4/2016. He had been subsequently transferred to the Pre-removal Detention Center of Corinth, where he has been held until 23/02/2015, when he was released. On 29/03/2016, he was arrested again and was taken to the Pre-removal Detention Center of Amygdaleza, whereas a decision ordering the extension of his detention was issued on 29/6/2016. On 17/07/2016, he was transferred to the Pre-removal Detention Center of Corinth. In view of the above, he is being held again despite his previous ineffective detention.

f. Persons who have ties with Greece

i. Legal Framework

According to Article 19 of Law 4251/2014, as amended by Article 8 approx. 23 Law 4332/2015, *“the Minister of Interior and Administrative Reform or the Coordinator of Administrative Decentralization, may exceptionally grant residence permits to third country nationals residing in Greece and proving that they have developed strong ties with the country”*, while art. 19A par. g of the same law provides for the granting of residence permits on humanitarian grounds to the parents of under-aged Greek nationals.

ii. Findings

During our visits in the Detention Centers we found out that there are detainees who have developed ties with the country and could benefit from the aforementioned provisions.

Cases of detainees:

- Moroccan citizen A.C. was detained from 24/9/2015 until 3/4/2016 at Amygdaleza pre-removal detention Center, even though he has developed ties with Greece, as he previously had a 10-year residence permit.
- Georgian citizen G.J. was detained for 5 months at the Pre-removal Detention Center of Tavros on the grounds of public order related by the Police to an already served sentence of imprisonment for neglect of minor oversight. The aforementioned person has family in Greece, his wife is Greek and they have four children, two of which are minors.
- Senegalese national C.O. was sentenced to 8 year imprisonment for robbery and serious physical injury by the One-member Felony Court of Appeals of Athens and was released according to the decision of the Three-member Felony Court of Athens that accepted his appeal and declared him not guilty for these offences. On 15/6/2016, the police authorities took him

from Korydallos prison, where he was detained, and issued a detention order which mentioned that he was considered a threat to public order as he had been previously recorded for infringement of certain articles of the Penal Code and of the Laws 3459/06 and 3386/05. We note that the aforementioned person is the father of two under-aged nationals, a fact that we brought to the attention of the police authorities. He was finally released on 16/06/2016.

g. Irregular detention in view of submission to first reception procedures

i. Legal Framework

According to art. 121 par. 13 of Law 4249/2014 *"the third and fourth subparagraphs of article 83 par. 2 of Law no. 3386/2005 are replaced as follows: "The Commander of the police or port authority shall, after preparing an arrest report, lead directly and deliver the third-country national to the competent administrative authority for first reception procedures in accordance with law 3907/2011"..."*.

According to art. 30 of Law 3907/2011 *"Third-country nationals who are the subject of return procedures, in accordance with par. 1 of Article 21, are detained in order to prepare the return and carry out the removal process only in the case when other adequate and less restrictive measures, such as those provided in par. 3 of Article 22, cannot be applied effectively. The measure of detention is applied when: a) there is a risk of absconding or b) the third-country national concerned avoids or hampers the preparation of return or the removal process or c) there are reasons of national security. Detention is imposed and maintained for the minimum time period necessary for the preparation of the removal process, which is developed and executed with due diligence. In any case, the availability of suitable places of detention and the possibility of ensuring decent living conditions for detainees should be taken into account when imposing or extending a detention order. The detention order shall contain legal and factual justification, shall be issued in written form, in accordance with the provisions of article 76 par. 2 of L.3386 / 2005, and, if a return decision has not been issued, the latter shall be issued within three (3) days."*

Moreover according to Article 78a of Law 3386/2005 (inserted by Article 18 of Law. 4332/2015):

"No return decision is issued when the principle of non-refoulement applies, as enshrined in Article 3 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, ratified by Law no. 1782/1988 (A' 116), Article 7 of the International Covenant on Civil and Political Rights, ratified by Law no. 2462/1997 (A' 25), in Articles 31 and 33 of the Status of Refugees 1951 Geneva Convention, ratified by Legislative Decree 3989/1959 (A' 201) and Article 3 of the European Convention on Human Rights ratified by Legislative Decree 53/1974, (A' 256). In this case, the competent authority of Article 76 par. 2 of Law no. 3386/2005 grants a certificate of non-removal on humanitarian grounds, which entails for the holder the rights and obligations of the certificate of non- removal under Article 24 of Law 3907/2011".

ii. Findings

During our visit to the Pre-removal Detention Center of Orestias, we found that the majority of detainees (except for four people) were held in order to be transferred to the First Reception Center and be subjected to first reception procedures. We observed that detention for the purpose of transfer to First Reception Centers can last from two to ten days and **has absolutely no legal basis**, as detention is imposed in cases of removal, while apprehended third country nationals should directly be subjected to first reception procedures. It is noted, however, that the First Reception Center is not operating in full capacity, resulting in delays in the reception of newly arrived third country nationals. Finally, we note that the aforementioned problem was identified by the European Council on Refugees and Exiles (ECRE) in cooperation with the Greek Council for Refugees in February 2015 Report³⁵, but the situation has not changed until today.

We hereby present some indicative cases of the above practice:

- Syrian national A.M. was arrested on 20/04/2016, and the Police Department issued a detention decision on the same date ordering his detention until his transfer to the First Reception Center.

³⁵ <http://www.ecre.org/component/downloads/downloads/992.html>

- Syrian national A.A. was arrested on 20/04/2016, and the Police Department issued a detention decision on the same date ordering his detention until his transfer to the First Reception Center.
- Algerian national M.W. was arrested on 06/02/2016, when a detention decision was issued by the Police Department of Alexandroupoli, which ordered his detention until his transfer to the First Reception Center. The aforementioned person was transferred to the First Reception Center on 12/02/2016.

h. Lack of interpretation services which would ensure that detainees fully understand their legal status, the decisions that concern them and the documents they are asked to sign

i. Legal Framework

According to article 27 par. 2 of law 3907/2011³⁶:

“The services competent for handling alien-related matters shall ensure, upon request by the person concerned, written or oral translation of the main points of return decisions, as specified in paragraph 1, including information on the remedies available in a language that the third-country national understands or it is reasonably considered that he understands. Paragraph 2 shall not apply to third country nationals who have illegally entered the Greek territory and who have not subsequently obtained an authorization or a right to stay in Greece. In this case, decisions related to return, as referred in paragraph 1, shall be given by means of a standard form as set out in article 1, paragraph 2 of the joint Ministerial Decision No. 4000/4/46-a from 22/07/2009. This form is translated into at least five of the languages used more frequently or understood better by third country nationals who enter illegally into the Greek territory”.

³⁶ Greece: Law no. 3907/2011, *op.cit.*

According to the Return Handbook:

“The request to receive a translation may be formulated by the returnee or his/her legal representative. The Member State is at liberty to choose whether a written or oral translation is provided warranting of course that the third-country national can understand the context and content. It is not possible to require a fee for providing a translation since this would undermine the spirit of the provision, which is to provide the returnee with the necessary information to allow him/her to fully understand his/her legal situation. It is up to national implementing legislation and administrative practice to decide what language the third-country national is reasonably presumed to understand. This assessment may be done in the same way and according to the same criteria as in asylum procedures, taking into account that due to the complexity of asylum procedures the requirements for translation in this area may be higher (an analogous provision referring to the notion of a language the applicant is “reasonably supposed to understand” can be found in Article 12 of the recast Asylum Procedures Directive 2013/32/EU, Article 22 of the recast Qualification Directive 2011/95/EU and Article 5 of the recast Reception Conditions Directive 2013/33/EU). This provision requires Member States to make all reasonable efforts to provide for a translation into a language the person concerned actually understands and the non-availability of interpreters may only be a valid excuse in cases of extremely rare languages for which there is an objective lack of interpreters. In the case where translators into the relevant language exist but are not available for reasons internal to the administration, the lack of translation cannot be justified.”³⁷

Moreover, article 28 of Law 3907/2011 sites that “the competent aliens authorities are obliged to provide information and all possible assistance to a third country national seeking legal advice, representation by a lawyer, and linguistic assistance in order to exercise the rights contained in this article”.

According to the Return Handbook:

“Linguistic assistance implies not only an obligation to provide for a translation of a decision (this is already covered by Article 12(2)) but also an obligation to make available assistance by interpreters in order to allow the third-country national to exercise the procedural rights afforded to him/her under Article 13. In this context, it should be recalled that in the case of Conka vs. Belgium (Judgment of 5

³⁷ Return Handbook, page 69

February 2002, No. 51564/99) the ECHR identified the availability of interpreters as one of the factors which affect the accessibility of an effective remedy. The rights of the third-country national to receive linguistic assistance should be granted by Member States in a way which provides the person concerned with a concrete and practical possibility to make use of it ("effet utile" of the provision)³⁸

ii. Findings

Despite the relevant legislative provisions and the guidelines of the European Commission, from our discussion with the detainees, we found out that they ignore their exact legal status as well as the content of the documents handed to them by the police authorities since no interpretation services are provided in the detention centers we visited. Many detainees told us that they sign documents without knowing their content.

i. Lack of free legal aid

i. Legal Framework

Apart from the provision of art. 28 par. 3 of Law 3907/2011, which –as already mentioned– states that *"the competent authorities are obliged to offer information and any possible assistance to third country nationals who request legal counselling and representation"*, par. 4 of the same article states that: *"the necessary legal assistance and representation is provided upon request free of charge in accordance with the provisions of Law 3226/2004 (O.G. 24 A') when, according to the judge's opinion, the application to annul is not manifestly unacceptable or manifestly unfounded, by analogous application of article 15 paragraphs 3-5 of Directive 2005/85/EC, as transposed into Greek legislation by the presidential decree 114/2010 (O.G. 195 A'). This paragraph shall enter into force on 24/12/2011"*. Moreover, according to article 46 par. 7 of Law 4375/2016, *"detainees seeking international protection in the case of a challenging detention order are entitled to free legal assistance in accordance with the procedure laid down in the provisions of Law 3226/2004 (A' 24), which shall apply accordingly"*.

38 *Ibid*, page 72

According to the Return Handbook:

“Legal assistance and legal representation: Paragraph 4 specifies in which cases and under which conditions Member States have to cover the costs for legal advice and representation –referring in essence to the conditions enumerated in the Asylum Procedures Directive. Member States must provide both legal assistance and legal representation free of charge if the conditions foreseen in the Directive and the national legislation of implementation are met. The request for free legal assistance and/or legal representation can be made by the returnee or his/her representative at any appropriate moment of the procedure. Provision of legal advice by administrative authorities: Legal advice may in principle be offered also by the administrative authorities responsible for issuing the return decisions, if the information provided for is objective and unbiased (“effet utile”). It is important that the information be provided by a person who acts impartially/independently so as to avoid possible conflicts of interests. Therefore, this information cannot be provided, for instance, by the person deciding on or reviewing the case. A good practice, already in use in some Member States, is to separate between the decision making authorities and those providing legal and procedural information. However, should a Member State decide to allocate the latter responsibility to the decision making authorities, a clear separation of tasks should be ensured for the personnel involved (e.g. by creating a separate and independent section in charge of providing only legal and procedural information)”.³⁹

ii. Findings

As mentioned above, from our findings it became apparent that detainees are not informed about their legal status, the possibilities to challenge the decision for their detention and return or for their right to free legal aid. Moreover, there is no free legal aid offered and therefore legal representation depends on the financial situation of the detainees.

³⁹ *Ibid*, pages 72-73

j. Lack of information on the imminent execution of a return order

i. Legal Framework

According to the “20 Guidelines on forced return”⁴⁰ which are included in the basic principles on irregular migration of the Council of Europe:

“Guideline 15. Cooperation with returnees”

1. *“In order to limit the use of force, host states should seek the cooperation of returnees at all stages of the removal process so that they comply with their obligations to leave the country.*
2. *2. In particular, where the returnee is detained pending his/her removal, he/she should be given information as far as possible in advance about the removal arrangements and the information given to the authorities of the state of return. He/she should be given an opportunity to prepare that return, especially by making the necessary contacts both in the host state and in the state of return, and if necessary, to retrieve his/her personal belongings which will facilitate his/her return in dignity”.*

“1. The removal operations should develop, insofar as possible, with the cooperation of the returnee, even where a form of supervised or forced return is organised as a result of the choice of the returnee not to voluntarily comply with the removal order. When a returnee has not been convinced by a voluntary return programme to voluntarily comply with the removal order, it will be advisable not to rely simply on the threat to use coercive measures.

2. The second paragraph of this Guideline is best explained by quoting from the 13th General Report of the CPT (CPT/Inf(2003)35, para. 41): “Operations involving the deportation of immigration detainees must be preceded by measures to help the persons concerned organise their return, particularly on the family, work and psychological fronts. It is essential that immigration detainees be informed sufficiently far in advance of their prospective deportation so that they can begin to come to terms with the situation psychologically and be able to inform the people they need to let know and to retrieve their personal belongings. The CPT has observed that a constant threat of forcible deportation hanging over detainees who have received no prior

⁴⁰ Available at http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf

information about the date of their deportation can bring about a condition of anxiety that comes to a head during deportation and may often turn into a violent agitated state. In this connection, the CPT has noted that, in some of the countries visited, there was a psycho-social service attached to the units responsible for deportation operations, staffed by psychologists and social workers, who were specifically responsible for preparing immigration detainees for their deportation (through ongoing dialogue, contacts with the family in the country of destination, etc.). Needless to say, the CPT welcomes these initiatives and invites those States which have not already done so to set up such services".⁴¹

ii. Findings

However, during our research, we came across cases of detainees who had not been informed about their imminent return, even when they were leaving the detention center either for the final formalities in the Aliens Division or to be taken to the airport.

Some detainees were not aware that they were about to be deported until they arrived at the airport.

k. Minors

A. Age assessment of minors

Serious deficiencies occur in our country regarding the age assessment of minors. Until February 2016, our legislation provided a comprehensive procedure of age assessment of minors only in the context of First Reception Centers. Therefore, the implementation of the aforementioned legislation, concerned the sole First Reception Center that existed in Orestias. In February 2016, such a procedure has also been adopted for the cases of asylum seekers of contested age. However, both before the adoption of the above-mentioned legislative framework and after that, the skeletal age measurement with the use of radiology –a method of contested liability– has been widely used.

⁴¹ Council of Europe, *Twenty Guidelines on Forced Return*, 2005, page. 45 (5/9/2016)

i. Legislative Framework

The Ministerial Decision 92490/4-10-2013 specifies the procedures of age assessment of minors at First Reception Centers. According to paragraph 3 of article 6 *«in case there is specifically justified doubt as to the age of the third country national, and the person may possibly be a minor, then an age assessment is undertaken by the medical control and psychosocial support team, to which the person is referred to for an assessment.»* According to par. 4 of the same article *«initially, the age assessment will be based on macroscopic features, such as height, weight, body mass index, voice and hair growth, following a clinical examination from a paediatrician, who will consider the somatometric data. [...]The paediatrician will justify his/her final estimation based on the aforementioned examination data and observations»* and according to par. 5 *«in case age cannot be adequately determined through the examination of macroscopic features, an assessment will follow by the psychologist and the social worker of the division in order to evaluate the cognitive, behavioural and psychological development of the individual. The psychosocial divisions' evaluation report will be submitted in writing.»* In accordance with par. 6 *«wherever a paediatrician is not available or when the interdisciplinary staff cannot reach any firm conclusions and only as a measure of last resort, the person will be referred to a Public Hospital for specialised medical examinations»,* such as left wrist and hand x-rays, dental examination and panoramic dental x-ray for the estimation of the person's age. In compliance with par. 7 *«the estimations and the assessment results are delivered to the Head of medical control and psychosocial support division, who recommends to the Head of the Center the official registration of age, noting also the reasons and the evidence supporting the relevant conclusion».* According to par. 9 of the same article *«in any case, the application of the principle of equal treatment and the ensuring of the best interests of the minor should be a primary obligation when implementing the provisions of the current article»,* and finally in accordance with par. 10 *«during the procedure of age determination as well as in case of doubt after its completion, the presumption in favour of childhood prevails».*

The Greek Ombudsman in his findings on the issue of age assessment of unaccompanied minors has made the following recommendation:

«The broadening, mutatis mutandis, of the scope of the above-mentioned Ministerial Decision (92490/2013) on the age determination of all unaccompanied minors who claim to be underaged without being subjected to first reception procedures. It is evident that the third country nationals that are obviously minors, including children or those who possess documents from their country of origin, proving their exact age, should be registered as minors without further referral for medical examinations»⁴²

Regarding the age assessment of unaccompanied asylum seekers, the Joint Ministerial Decision no. 1982/2016 has been published on the 16/2/2016. According to this decision, if at any stage of the asylum procedure a doubt arises on whether the person is a minor, the Head of the Regional Asylum Office *«refers the applicant to a competent structure of the public health system or to a supervised body of the Ministry of Health in the territory of the Regional Asylum Office, where there is a pediatrician, a psychologist and a social service»*. The procedure of age assessment of minors is similar to the procedure introduced by the Ministerial Decision 92490. Moreover, *«in any case, the ensuring of the best interests of the minor should be a primary obligation»* while *«during the procedure of age determination as well as in case of doubt after its completion, the presumption in favour of childhood prevails»*.

Finally, Law 4375/2016 provides guarantees for minors and refers to the Joint Ministerial Decision 1982/16.2.2016, regarding the procedure followed for the age determination of minors. Nevertheless, the aforementioned law does not impose the implementation of this procedure for the detainees that have not applied for asylum.

⁴² Greek Ombudsman, *The issue of age assessment of unaccompanied minors*, October 6 2014, page 9. Available at: http://www.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf (September 5 2016)

ii. Findings

During our visits at the Detention Centers, we interviewed detainees who have been registered as adults but claimed that they were minors. In most cases, no provision was made in advance by the police authorities for their inclusion in age determination procedures and their segregation from adult detainees. In the cases where our Organization brought up the issue, the detainees were referred to the hospital for skeletal age measurement⁴³, which is the main method of age determination in practice.

From the investigation of detainee cases, shortcomings were detected regarding the age assessment of minors followed at the First Reception Center of Orestias. More specifically, the investigation revealed that in some cases, the comprehensive procedure prescribed by Ministerial Decision 92490/4.10.2013 is not fully implemented.

Specific cases of minors

- During our visit to the Pre-Removal Center of Xanthi on 8/3/2016, we talked to the national of Algeria, M.W., who claimed to be a minor. The investigation of his file revealed that he was arrested on 5/2/2016 by the Border Guard Unit of Feres for the infringement of art. 83 of Law 3386/2005. During his arrest, he claimed that he was born on 1/6/2000. He was then referred to the Prosecutor of Alexandroupolis, who set orally the trial date for the 26/2/2016. On 6/2/2016 the Police Directorate of Alexandroupolis issued a decision ordering his detention «*until the date of his transfer at the First Reception Center of Fylakio in order to be subjected to first reception procedures*». On 10/2/2016, the Police Directorate of Alexandroupolis requested from the First Reception Center of Fylakio to receive him as an unaccompanied minor in order to be subjected to first reception procedures and he was brought to the above-mentioned service on 12/2/2016. However, at the First Reception Center he was recorded as born on 1/1/1997. We note that, at his registration form, there are the signatures of

⁴³ «The age determination through specific medical examinations is currently contested by the international scientific community, as divergences are observed between the skeletal age depicted in the x-rays and the biological age –divergences that might increase in relation to the age and the tribe of the person», Greek Ombudsman, *The issue of age assessment of unaccompanied minors*, page. 4, October 4 2014, available at: www.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf (September 5 2016).

the registration and identification office only but no signatures by the medical control and information office. On 17/2/2016, a decision to refer him to the Greek police was issued without any doubts arising regarding his age and he was then transferred to the Pre-Removal Detention Center of Orestias in order to be subjected to return procedures as an adult. The Police Directorate of Alexandroupolis issued a detention decision on 18/2/2016, and a return decision on 21/2/2016. The above-mentioned person denied to sign the proof of receipt of the return decision claiming that he is a minor. On 26/2/2016, he was tried by the Juvenile Court of Alexandroupolis, which imposed on him the educational measure of reprimand. On 7/3/2016, he applied for asylum and, on 8/3/2016, he was convoked for a personal interview by the Asylum Unit of Xanthi. During his interview he stated that he was born on 11/6/1998. He also submitted a copy of his identity card, as the original was in Algeria, but the interviewer informed him that the original document was necessary for age determination. He was then transferred to the Pre-Removal Detention Center of Xanthi and the Police Directorate of Xanthi issued a detention decision. On 18/3/2016, a negative decision was issued by the Asylum Service. On 22/3/2016, he appealed against this decision and was released.

-During our visit to the Pre-Removal Detention Center of Xanthi on 8/3/2016, we talked to the national of Algeria J.A. The investigation of his file revealed that, on 18/1/2016, he was registered by the Unit of Registration and Identification of the First Reception Center as born on 7/6/1999 and a decision restricting his freedom was issued. We should note that the registration form has not been signed by the medical control and information unit. According to the reply of the First Reception Service to our organization *the medical control unit and the psychological support team followed the procedure adopted by Ministerial Decision 92490/4-10-2013 because there was a specifically justified doubt as to his age. Then, according to par. 6 of the Ministerial Decision, given that there was no pediatrician at the First Reception Center, he was referred to a public hospital and more specifically to Didimoticho Hospital in order to be subjected to a skeletal age examination*⁴⁴.

⁴⁴ During our visit at the First Reception Center of Fylakio on 26/4/2016, we requested copies of the medical certificate regarding his age and of the recommendation of the psychosocial support unit but we were not provided with the requested documents.

On 2/2/2016, a decision extending the restriction of his freedom and an age determination decision were issued. The latter stated that he was an adult (18 years old) and that according to the day and month of his registration, he was born on 18/1/1998. On 3/2/2016, he expressed his will to apply for international protection and the First Reception Service was informed. Following the issuing of a referral decision on 9/2/2016, he has been transferred to the Pre-Removal Detention Center of Orestias. On 12/2/2016, the Police Directorate of Orestias issued a detention decision, ordering his detention until the issuing of a decision on his application for international protection. He was then transferred to the Pre-Removal Detention Center of Xanthi, where we met him and talked to him.

B. Detention of minors

i. Legal Framework

- According to article 3 of the Convention on the Rights of the Child, *«In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration»*. In compliance with article 20 of the Convention, *«a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State»*. Finally, in accordance with article 37, *«States Parties shall ensure that: {...} (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so, and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child*

deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or another competent, independent and impartial authority, and to a prompt decision on any such action.

- Moreover, according to article 24 of the International Covenant on Civil and Political Rights *«every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State», while article 10 of the same Covenant provides that « all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. {...} Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. {...} Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status».*

Finally, in accordance with article 24 of the Charter of Fundamental Rights of the European Union, *« children shall have the right to such protection and care as is necessary for their well-being. [...] In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain a personal relationship and direct contact with both his or her parents on a regular basis unless that is contrary to his or her interests».*

Regarding the legal framework of minor nationals of third countries that are subjected to return procedures, article 20 of Law 3907/2011 provides that the competent authorities *«shall take due account of: a) the best interests of the child, b) family life {...} and respect the principle of non-refoulement», while article 32 of the same law provides that «unaccompanied minors and families shall only be detained as a measure of last resort and for the shortest appropriate period of time, only when no other adequate and less coercive measure can be used for the same purpose».*

Finally, according to article 46 of Law 4375/2016 regarding the detention of asylum seekers the competent authorities {...} *« shall*

avoid the detention of minors. Minors who have been separated from their families and unaccompanied minors shall not be detained as a rule. Only in very exceptional cases, unaccompanied minors who applied for international protection while in detention according to the relevant provisions of Law 3386/2005 and Law 3907/2011, may remain in detention as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors. This detention is exclusively imposed for the necessary time required for the safe referral to appropriate accommodation facilities, and cannot exceed twenty-five (25) days. When, due to exceptional circumstances, such as the significant increase in arrivals of unaccompanied minors and, despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities, detention may be prolonged for another twenty (20) days. Minors who have been separated from their families and unaccompanied minors shall be detained separately from adult detainees».

According to the Standards of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment:

«The CPT considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor. Following the principle of the "best interests of the child", as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied and separated children, is rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status. When, exceptionally, a child is detained, the deprivation of liberty should be for the shortest possible period of time; all efforts should be made to allow the immediate release of unaccompanied or separated children from a detention facility and their placement in more appropriate care. Furthermore, because of the vulnerable nature of a child, additional safeguards should apply whenever a child is detained, particularly in those cases where the children are separated from their parents or other carers, or are unaccompanied, without parents, carers or relatives⁴⁵».

45 Council of Europe, CPT Standards, CPT/Inf/E (2002) 1- Rev. 2011, page 81-82

ii. Findings

In regard to the registered minors, the police authorities impose the measure of detention until their transfer to Accommodation Centers for minors. During our visits, we established that the minors that we talked to, were detained for approximately 1,5-2 months until they were transferred to an accommodation facility.

- Some minors had been detained to Police Stations and Pre-Removal Detention Centers until their transfer to the Special Detention Facility for unaccompanied minors at Amygdaleza
- During their admission to the Special Detention Facility, no individual evaluation and vulnerability assessment were carried out. During our visits, we found particularly vulnerable children, who were victims of abuse in their countries of origin and were in need of special care
- Some minors told us that members of their families were residing legally in Greece
- The minors had not been informed about their legal status, their right to legal representation and the duties of the Juveniles Prosecutor as their provisional guard

Furthermore, during our visits to the Pre-Removal Detention Centers and the Police Stations, we found people who claimed to be minors but had been registered as adults. In these cases, the police authorities had not taken measures for their separation from the other detainees until the completion of the age determination procedure. Some of them told us that they had been harassed by adult detainees, as they were all detained in the same cell. Moreover, in most cases, despite the fact that it was obvious that they were minors or they stated to the detention authorities that they were minors, no provision was made for their referral to age determination procedures and their segregation from adult detainees.

The exemplary case of a minor detainee

- The national of Afghanistan, R.F., despite the fact that, according to her identity card, she was born in 2002, during her entry in Greece she has been registered as born in 1999 and as the accompanied daughter of a woman, who was not her mother. After that, when her real family came to Greece, she stayed with them at the open center for refugees on the site of the Greek capital's old international airport at Helliniko.

On 1/6/2016, R.F. was arrested and transferred to the Women's Detention Center of Helliniko, while a return decision was issued against her. On 13/7/2016, our Organization requested the Children's Ombudsman mediation in order to ensure that the minor would be accorded the appropriate treatment. On 25/7/2016, the Children's Ombudsman referred to the Juvenile Prosecutor. On 3 August 2016, our Organization informed the latter about this case. The following day, «Arsis» NGO submitted an application to the Juvenile Prosecutor in order to assign the girl's custody to her mother. We note that, as reported in the above-mentioned application, R.F. attempted to commit suicide and was transferred to the Athens General Hospital "Evangelismos on 2/8/2016". Finally, the Prosecutor ordered her release on 4/8/2016. As shown above, R.F. had been detained for two months at the Women' Detention Center of Helliniko with adult women, without the competent authorities taking care to provide for her transfer to an accommodation center for minors or her reunification with her mother.

I. Detention of asylum seekers

i. Legal framework

According to article 12 of P.D. 113/2013:

«1. An alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has submitted an application for international protection, and that he/she entered and stays illegally in the country. 2. An alien or a stateless person who submits an application for international protection while in detention shall remain in detention, if this has been imposed pursuant to the applicable law. If detained according to the relevant provisions of Law 3386/2005 and Law 3907/2011 as in force, exceptionally and if it is judged that alternative measures may not apply, as the ones mentioned in article 22 par. 3 of Law 3907/2011, he/she shall remain in detention for one of the following reasons: a. For the determination of the actual data of his/her identity or origin, or b. If he/she constitutes a danger for national security or public order, according to the reasoned judgment of the police authority, or c. If detention is deemed necessary for the prompt and effective completion of the examination of his/her application, including applications submitted within Regional First Reception Services. In this case, the examination authorities shall take the necessary measures for the prompt completion of the procedure. 3. The competent

Hellenic Police services may decide to detain an applicant concerned, in exceptional cases and if they consider that no alternative measures can be applied, when it is judged that the applicant is a danger to national security or public order for reasons explained specifically in the detention order. 4. The detention order is taken by the respective Police Director and, in the cases of the General Police Directorates of Attica and Salonica, by the competent Police Director for aliens issues and shall include a complete and comprehensive reasoning. In cases (a) and (c) of paragraph 2 of this Article, the detention order is taken upon a proposal of the Head of the respective examination authority. In case (b) the Head of the competent Regional Asylum Office or the Director of the Appeals Authority is informed immediately, who shall ensure for the prioritized examination of the application or the appeal respectively. 5. Applicants are detained in detention areas as provided in Article 31 of Law 3907/2011. 6. The detention of applicants is imposed for the minimum necessary period of time and may not, in principle, exceed three (3) months. If the applicant is already detained, the total detention period, without prejudice to the provisions of Article 30 of Law 3907/2011, may not exceed six (6) months for case (c) of paragraph 2 and twelve (12) months for cases (a) and (b) of paragraphs 2 and 3. In the last three cases, the detention may be further extended for up to six (6) months, with a newer and duly justified decision of the bodies of paragraph 4 regarding the continuation of existence of the reasons that imposed it. The detention of an applicant for international protection constitutes a ground for accelerating the asylum procedure, taking into account the possible lack of appropriate spaces and difficulties in ensuring decent living conditions of the detainees. These difficulties shall also be considered for the imposition or prolongation of detention».

Law 4375/2016 modified the maximum time limit for the detention of asylum seekers. According to art. 46 par. 4 «a. The detention of applicants is imposed for the minimum necessary period of time. Delays in administrative procedures that cannot be attributed to the applicant do not justify the continuation of the detention. b. The detention of applicants for the reasons of the cases (a), (b) and (c) may last only 45 days and can be extended for another 45 days if the Asylum Service does not withdraw its recommendation for detention (par. 3) c. The detention of applicants for the reasons of cases (d) and (e) of par. 2, may not exceed three (3) months. d. Regardless of the completion of the above-mentioned limits of cases (b) and (c), the total detention period may under no circumstances exceed the limits given in article 30 of Law 3907/2011».

ii. Findings

Processing of the asylum application

Our interviews with the detainees and the investigation of their files revealed that there are not significant delays by the competent police authorities in the registration of expression of their wish to apply for asylum.

However, there are delays in the registration and examination of their applications by the Asylum Service. More specifically:

Delays have been noted in the registration of asylum applications by the Asylum Unit of Amygdaleza, as an one to three month period is required from the date of the recording of the person's will to apply for asylum until the registration of the application (in the cases that we investigated the average time was 1,5 months). These delays have also the side-effect of prolonging detention, as after the submission of the asylum application, the Asylum Service is the authority competent to issue a recommendation to the Police regarding detention (in the cases that the detention has been imposed for the purpose of identity and nationality verification, or for the prompt and effective examination of the asylum application). Furthermore, the interview takes place from approximately two to four months after the registration date, while the decision is issued after one or two months.

Delays have also been noted in the registration of asylum applications at the Regional Asylum Office of Patras, which is competent for the registration of asylum applications of those detained at the Pre-Removal Detention Center of Corinth⁴⁶. At the Regional Asylum Office of Salonica, the registration of the asylum application takes place in less than 15 days, while the interview is set approximately one month later.

⁴⁶ On 28/7/2016, the Asylum Unit of Corinth was established and is currently competent for receiving and examining international protection applications of the detainees of the Pre-removal Center of Corinth.

Exemplary cases of detainees

- Afghan national G.Y., detained at the Pre-Removal Detention Center of Tavros, expressed his will to apply for asylum on 25/5/2016. On 29/6/2016, our Organization submitted an application for acceleration of the registration at the Asylum Unit of Amygdaleza because the above-mentioned person suffered from serious health problems⁴⁷. The date of registration of his asylum application had been set on 29/8/2016, when it was postponed for reasons not related to the detainee.
- Iraqi national A.M., detained at the Pre-Removal Detention Center of Amygdaleza, applied for asylum on 17/7/2015, and his interview took place on 16/11/2015. The decision on his application was issued on 26/11/2015.
- Eritrean national D.B., detainee at Athens International Airport Holding Facilities and then at Pre-Removal Detention Center of Amygdaleza, expressed his will to apply for asylum on 8/4/2016. His application has been registered on 25/5/2016, and its examination has been set on the 3/10/2016.
- The Congolese national B.M., detainee at the Special Detention Center of Helliniko, expressed her will to apply for asylum on 9/5/2016. On 22/6/2016, her asylum application was registered by the Asylum Unit of Amygdaleza, and her interview was set for the 28/9/2016.

⁴⁷ His case has already been mentioned, see section d. Detention of problems with serious health problems

Asylum Service recommendations

According to the report of UNHCR:⁴⁸

*« An administrative guidance has been issued by the Asylum Service, according to which asylum-seekers should be released immediately following their asylum interviews determination if their claims are considered well-founded».*⁴⁹ Furthermore, *«the Asylum Service does not recommend the detention of asylum-seekers “for the verification of the applicant’s identity or origin” if they present the required documentation as per administrative guidance, or have passed through first reception procedures (see previous section of this paper on First Reception)».*⁵⁰ Finally, *«According to administrative guidance, the Asylum Service does not endorse the detention of asylum-seekers from Syria, Somalia, and Eritrea, as well as of Palestinians who present a travel document or identity card».*⁵¹ The Iraqi nationals are now also included to the aforementioned category.

Moreover, the statistics of the Asylum Service, provided to us upon request, have shown that the following recommendations were issued in 2015: 1391 recommendations for continuation of the detention, 629 recommendations for lifting detention and 181 withdrawals of the recommendation for detention.

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

49 *Ibid*, page 30.

50 *Ibid*, reference 125.

51 *Ibid*, reference 126.

From the investigation of files at the Regional Asylum Offices, we have established that the Asylum Service in its recommendations for the continuation of detention states the following:

«If it is judged that alternative measures may not apply, as the ones mentioned in article 22 par. 3 of Law 3907/2011, we recommend the continuation of detention of the above-mentioned person for the determination of the actual data of his identity or origin, according to art. 12 of P.D. 113/2013 on the condition that the 18 month maximum time-limit of detention has not been exceeded⁵² taking into account the possible lack of appropriate spaces and difficulties in ensuring decent living conditions of the detainee, according to article 13 par. 6 of P.D.113/2013⁵³».⁵⁴

However, in our opinion, with the practice of following the aforementioned standard wording, the Asylum Service does not make full use of the important role assigned to it by the legislator regarding the asylum applicants' treatment. Therefore, the police authorities continue to impose the measure of the detention, judging exclusively whether alternative to detention measures may apply and taking into account the possible lack of appropriate spaces and difficulties in ensuring decent living conditions. This practice renders largely unenforceable the reform introduced by P.D. 113/2013 and remained into force by Law 4375/2016, according to which the Hellenic Police, in most cases, can only issue a detention decision of an applicant upon relevant recommendation by the Asylum Service.

Furthermore, the investigation of the files of detainees revealed the following:

- In some cases, after the registration of the asylum application, the Asylum Service informs the police authorities that it will not recommend the continuation of detention. This is usually the case for asylum-seekers from Syria, Somalia, and Eritrea, Palestine and Iraq.
- The Asylum Service followed the practice of withdrawal of recommendations for detention, after the lodging of appeal against a first instance rejection, given that the Appeals Committees had not been operating from September 2015 until recently.

⁵² Currently the recommendation mentions: "according to article 46 par. 2 (a) law 4375/2016, for the period of time prescribed by article 46 par 4 (b)

⁵³ Currently the recommendation mentions: "according to article 46 par. 7 law 4375/2016"

⁵⁴ Underlining added



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