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# **Detention of third-country nationals as an 'ultimum refugium' within the EU**

**Reasoning, practice, systematic violations and the role of non-state  
actors: the case of Greece**

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*'We asked for workers. We got people instead.'*

Max Frisch

## **ABSTRACT**

The present thesis is dealing with immigration detention policy in EU, with a special focus on Greece. It aims to juxtapose theoretic and legal foundations of immigration detention to the everyday practice in Greece. Combining theory, law and practice we want to shed some light on the phenomenon of immigration detention. Our aim is double: firstly, to delegitimise the concept of immigration detention by showing the gap between theory, law and Greek practice and secondly, to explore the perception of and the reaction against the phenomenon by the Greek civil society.

For this purpose, we deploy a descriptive approach. In our first part we are exploring different theoretical and philosophical explanations of the notions of sovereignty, security and detention. Our second part is a legal analysis of the current framework on the detention of migrants and asylum seekers, in three distinctive levels: international, European and domestic (Greek) one and of the coherence between them. Our third part is following the methodological approach of law in political science context. It examines the implementation of immigration detention practice in Greece since 2000, the shift after the governmental change of January 2015 and the response of the Greek civil society and its limits.

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## **INTRODUCTION**

Since 2009, life in Greece and especially in Athens has proven to be a multi-challenging task. The ongoing and worsening economic crisis combined with a political and ethical turmoil seem to be changing the country drastically. These internal distortions have coincided with an unprecedented migration influx. The Greek governments of the period from 2009 to 2015, incapable and unwilling to deal with migration influx on a human rights based approach, slipped quickly into a security-inspired policy. Detention centres started becoming a public debate issue and so did the Police and the Coastguard practices against people crossing Greek borders without documentation. The radical rise of neo-fascism and neo-nazism at this point was further fuelling strict security policies. However, the Greek state has always been arguing that these are European obligations that need to be implemented.

In this context, the justification and legitimisation of immigration detention started appearing problematic. And while studying the different legal provisions, International, European and Greek ones, which set all types of guarantees for the detainees, the contradiction with our experience seemed bigger and more inexplicable. Consequently, the present thesis aims to juxtapose the theoretic and legal foundations of immigration detention to everyday practice. To our perception, such an approach, combining theory, law and practice, is the most suitable to analyse a phenomenon full of contradictions, as is immigration detention. Our aim is double: firstly, to delegitimise the concept of immigration detention by showing the gap between theory, law and Greek practice and secondly, to explore the perception of and the reaction against the phenomenon by the Greek civil society.

### **Methodology and outline**

Respecting the inherent interdisciplinarity of the Human Rights sector, our methodology in the present thesis has a critically descriptive approach. In our first part we are exploring different theoretical and philosophical approaches to the concepts of sovereignty, security and detention.

Our second part is a legal analysis of the current framework on detention of third-country nationals in the European territory. We will examine separately three legal levels: firstly, the international level, focusing on the relevant UN documents; secondly, the regional level, focusing on three legal documents of the European Union and the European Convention on Human Rights, and thirdly, the domestic legal order of Greece. The examination will follow the United Nations High Commissioner for Refugees (UNHCR) Detention Guidelines style.<sup>1</sup> Firstly, we will try to find the definition of detention in every legal order and then if detention is prescribed by law and if there are safeguards against its arbitrary implementation, such as an exhaustive list of grounds, a proportionality test and a consideration of the alternatives. The issues of non discrimination, maximum limits, procedural safeguards and conditions of detention are to be examined afterwards. Finally, the independent monitoring requirement will be looked at. After applying the above criteria to the three legal orders respectively, we will draw some conclusions regarding the coherence between them.

Our third part is following the methodological approach of law within the context of political science. It consists of three subsections. The first one is reviewing the implementation of immigration detention practice in Greece since 2000, using as intermediate points the international shift to security after 9/11, the tightening of border and immigration controls through legal and de facto changes in Greece after 2012, Frontex's involvement in Greek border control and alleged push-backs, the inhuman detention conditions and the judicial reaction to this situation (case law). In this first subsection, our sources are mainly numerous reports of international organisations, inspection bodies, foreign and domestic NGOs and the press. The second subsection is reviewing the developments in immigration detention policy after the governmental change on January 2015, based on personal interviews with governmental agents, UNHCR officers and individuals, as well as news from the press. Finally, our last subsection is dealing with the Greek civil society response to immigration detention. Through ten indicative interviews with activists, NGO workers, a journalist, a governmental agent, a UNHCR specialised officer and two former detainees, we will

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<sup>1</sup> UNHCR, 2012 (a).



attempt to outline the Greek civil society's reaction to immigration detention and its limits.

Before going on with the main body of the thesis we should clarify two things. Firstly, regarding the terminology used throughout the text. As set in the title, we are addressing here the detention faced by all third-country nationals, in the context of migration control, for the reason of entering Greek territory without valid documentation or in order to prepare their return. That is to say migrants, asylum seekers and refugees (before officially obtaining the 'refugee status') coming from countries outside the European Union and the Schengen Area. One would not find the term 'illegal migrants' in the present thesis, since we are strongly opposing its use in the migration discourse, because of its connotations of criminality.<sup>2</sup>

Secondly, we need our readers to take into account several obstacles faced during the last month concerning the preparation of the present thesis. Since the middle of June 2015 until the day this thesis was submitted, in early July 2015, Athens was in the middle of the worst political turmoil since the beginning of the crisis in 2009. Constant and never ending negotiations with the country's creditors, the announcement of a referendum, capital controls and two weeks bank-holiday, brought the country upside down. As a consequence, several of our interviews were postponed for later and eventually tacitly cancelled, since nobody would really think or talk for anything else than the economic and political actuality. Nevertheless, we managed to gather ten interviews as an indicative sample.

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<sup>2</sup> See also De Genova, p.3: 'Therefore, critical scholars cannot abide by the commonplace notion that these migrants or their movements may be understood in any simple sense to be 'illegal'. For this reason, throughout this book, we consistently deploy quotes wherever the terms 'legal', 'illegal' or 'illegality' refer to migrants or migration in a persistent effort to emphatically de-naturalize the reification of this invidious distinction.'

# 1. CHAPTER I: THEORETIC FOUNDATIONS OF IMMIGRATION DETENTION

## 1.1 Introductory thoughts

When reading the UN Guidelines on detention of migrants and asylum seekers and the EU Directives and domestic legislation regulating the same issue, a number of persistent questions keep coming to mind. How is the detention of people that have committed no crime justifiable? When, why and how has crossing borders become a reason good enough to justify violations of the right to liberty? Scholars argue that the right to leave any country is ‘fundamentally at the heart of the theory of human rights.’<sup>3</sup> Given that detention is the ultimate derogation from the freedom of movement, from what viewpoint is detention legitimised ‘not on account of what people have done, but merely on account of what they are’?<sup>4</sup>

Immigration detention has been described as an ‘anomaly for Western liberal democracies’<sup>5</sup> and it has been further claimed that ‘the untamed existence of a practice as violent as immigration detention is only possible because international human rights are incapable of fully addressing the human interests that are affected whenever the national state bases the exercise of power on its territorial sovereignty.’<sup>6</sup> The above argument implies that state sovereignty is the underlying cause of immigration detention. The final goal of immigration detention, though, is expulsion and thus, mobility control.<sup>7</sup> At the end of the day, the debate is organised around two central ideas: state sovereignty versus freedom of movement.

In order to classify populations on the move over time, different categories have been artificially constructed by law. For example, in Europe ‘guest workers’, ‘refugees’ and

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<sup>3</sup> Chetail & Bauloz, 2014, p. 10.

<sup>4</sup> De Genova & Peutz, 2010, p. 12.

<sup>5</sup> Cornelisse, 2010 (a), p. 4.

<sup>6</sup> Cornelisse, 2010 (b), p. 103.

<sup>7</sup> De Genova & Peutz, 2010, p. 9, where they describe the idea of the ‘deportation regime’ as consisting of three elements: expulsion, detention and mobility control.

‘asylum seekers’<sup>8</sup> have been enjoying legal recognition and certain legal entitlements for years. However, the creation of the category of ‘illegal migrants’ brought up concerns on how to confront this ‘illegality’ as well. De Genova considers ‘this branding of human mobility as “illegal” merely as a part of the larger strategy of these states and the incipient planetary regime constituted by their concerted efforts to regulate the freedom of movement.’<sup>9</sup> Furthermore, according to other scholars, this legal regime that governs mobility in any context, far from being a rationalised system of legal categories, norms and procedures, resembles ‘an experimental machine’<sup>10</sup>, since it constantly changes, it is inconsistent and contradictory, and it is frequently reactive rather than proactive.<sup>11</sup>

## **1.2. Sovereignty**

If state sovereignty is the root cause of immigration detention, as previously said above, it is worth examining briefly how this idea was born and developed in contrast with the human rights discourse.

The Peace of Westphalia treaties of 1648 are considered by scholars to be the founding acts of the principle of territorial sovereignty in international law. It meant that the sovereign states exercised exclusive and ultimate power over people because of their presence in a certain territory.<sup>12</sup> This way the notion of territory became the ultimate indicator and foundation of political authority. However, sovereignty in international law does not only entail exclusive authority over clearly demarcated territory but it assigns in practice each and every state with the responsibility over a distinct, territorially defined population.<sup>13</sup> By defending territorial borders and protecting its own population, the state ‘writes itself’.<sup>14</sup>

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<sup>8</sup> Karakayali and Rigo, 2010, p. 130.

<sup>9</sup> De Genova & Peutz, 2010, p. 2.

<sup>10</sup> Hall, 2012, p.8 and Douzinas, 2007, p. 123.

<sup>11</sup> Idem.

<sup>12</sup> Cornelisse, 2010 (b), p. 107.

<sup>13</sup> Idem.

<sup>14</sup> Hall, 2012, p. 9.

In the context of what has been described as the sovereign territorial ideal, access to national territory is determinative for the extent of rights to be enjoyed.<sup>15</sup> This identification of the rights of man with the rights of the citizen in the European nation-state system was thought by Arendt to be disastrous, with the consequences becoming clear in the twentieth century.<sup>16</sup>

This absolute power that sovereignty implied over people's lives, led, internally, to demands for citizenship rights, offering protection against the arbitrary use of state power and externally, to progressive constraints formulated by international law.<sup>17</sup> However, the national dimension of human rights has always remained decisional. For those not belonging to the territorial nation-state, rights had become illusory: the loss of national rights in practice meant the loss of human rights.<sup>18</sup>

Despite their claims to universality, human rights have not made any significant inroads in the state's assertion of its territorial sovereignty, according to Cornelisse.<sup>19</sup> She further explains that 'international law has not developed a language that is able to address the personal interests that are affected whenever the state bases its claims on sovereignty's territorial form.'<sup>20</sup> And if today migration is considered as a disturbing phenomenon, as a problem and a threat, this 'perceived naturalness of the way in which the modern notion of sovereignty has linked people, territory and authority and its particular construction of an inside and an outside' is the answer for Cornelisse.<sup>21</sup>

In our opinion, the above remark explains the contemporary portrayal of migration as a problem and a threat only partly. The other part of the explanation lies with the notion of security. As pointed out by Mary Bosworth, a scholar who has recently done some extensive field work in English immigration removal centres, 'concerns about border

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<sup>15</sup> *Idem*, p. 108.

<sup>16</sup> Cornelisse, 2010 (b), p. 110 and Arendt, 1951/1966, p. 291.

<sup>17</sup> Cornelisse, 2010 (a), p. 97.

<sup>18</sup> Cornelisse, 2010 (b), p. 110.

<sup>19</sup> Cornelisse, 2010 (b), p. 113.

<sup>20</sup> Cornelisse, 2010 (b), p. 113.

<sup>21</sup> Cornelisse, 2010 (b), p. 107.

control draw together the crucial nature of fears about race and national identity in policy development.<sup>22</sup> In addition to this, the economic dimension of migration should not be underestimated. ‘Foreign workers were inherently mistrusted, excluded from the native working classes and considered all too easily manipulated by capital.’<sup>23</sup>

### 1.3. Security

‘Security is not concerned with prohibiting things from happening, but with governing by ‘letting things happen’ so that the consequences and effects of different outcomes might be played off against one another.’<sup>24</sup>

During the last decade of 20<sup>th</sup> century, after the total collapse of the last communist regimes in the West, no power conflicts could be seen in the horizon and some scholars were foreseeing ‘the end of history’.<sup>25</sup> In September 2000, at the UN Millennium Summit in New York, the largest gathering of world leaders in history adopted the UN Millennium Declaration setting out eight time-bound goals, with a deadline of 2015.<sup>26</sup> In the preparatory report by the former UN Secretary General Kofi Annan we read:

The world is now in the fifty-fifth year without war among the major powers -the longest such period in the entire history of the modern system of states. In the area of Europe that now comprises the European Union- where most modern wars started- a security community has emerged: an association of states characterized by dependable expectations that disputes will be resolved by peaceful means. Moreover, nearly five decades of cold war -sustained by a nuclear balance of terror that could have annihilated us all instantly- have passed.<sup>27</sup>

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<sup>22</sup> Bosworth, 2014, p. 27.

<sup>23</sup> Bosworth, 2014, p. 28.

<sup>24</sup> Foucault 2007, pp. 45, 47.

<sup>25</sup> Famous book by Francis Fukuyama, *End of History and the last man*, Free Press, 1992.

<sup>26</sup> <http://www.unmillenniumproject.org/index.htm> last accessed on 11 July 2015.

<sup>27</sup> Report by United Nations Secretary-General Kofi Annan in preparation for the 2000 Millennium Summit. *We the Peoples: The Role of the United Nations in the 21st Century*. April 2000, available in <http://www.unmillenniumproject.org/documents/wethepeople.pdf>, last accessed on 11 July 2015.

The declaration adopted became known as the ‘Millennium Development Goals’<sup>28</sup> and the stress was mainly on poverty eradication. No special mention for migration and refugees was made. Nevertheless, fifteen years later, not only are poverty and hunger still among the principal problems worldwide, but the biggest refugee crisis since WWII is unfolding everyday as well. The title of UNHCR’s annual report for 2014, ‘World at War’ and a small note of UN High Commissioner for Refugees, Antonio Guterres, are illustrative: ‘We are witnessing a paradigm change, an unchecked slide into an era in which the scale of global forced displacement as well as the response required is now clearly dwarfing anything seen before.’<sup>29</sup>

In fact, things started to change quickly after the Millennium Summit, precisely after 9/11. The so called ‘war against terrorism’ brought a worldwide trend shift towards security. Security became the primal goal of all western countries. As years, the Security Council’s resolutions, wars and interventions are passing by, ‘discourses of dangerousness, risk and security, become so embedded in our social institutions they appear largely self-evident and uncontested.’<sup>30</sup> Bosworth further stresses ‘the deleterious effect’ of this security obsession: ‘As we trade away our legal protections in the name of security, the basis of citizenship and therefore, who we are, is irrevocably damaged.’<sup>31</sup>

In this ‘unfair trade’ story, the first victims have proven to be the undocumented migrants, the refugees and the asylum seekers. In other words, people claiming the right to a better life disregarding state borders. ‘Stripped of their past, with their future denied, they are always already destined for elsewhere. Their uncertain status is the source (and price) of our security’, as Bosworth has nicely put it.<sup>32</sup>

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<sup>28</sup> UN General Assembly, *United Nations Millennium Declaration, Resolution Adopted by the General Assembly*, 18 September 2000, A/RES/55/2, available at: <http://www.refworld.org/docid/3b00f4ea3.html>, last accessed on 11 July 2015.

<sup>29</sup> UNHCR, 2015 (b) p. 3.

<sup>30</sup> Bosworth, 2014, p. 163.

<sup>31</sup> *Idem*.

<sup>32</sup> *Idem*, p. 162.

#### 1.4. Detention

Detention, as well as deportation of unwanted foreigners make clear what sovereignty is about, both with regard to its aspect of monopolist violence and with regard to its claim to determine the ‘inside’ from the ‘outside’.<sup>33</sup> More specifically, immigration detention is considered to be a form of state violence so deeply embedded within the dominant understanding of the sovereign state and the global territorial structure of states that it escapes legal and political scrutiny.<sup>34</sup> A symbolic function is also attributed to immigration detention. For Walters it is its deterrent effect to the outside world,<sup>35</sup> while for De Genova it is detention’s way to make visible migrant ‘illegality’.<sup>36</sup> Detention is portrayed as the ultimate illustration of the consequences of a world fully divided into territorial nation-states.<sup>37</sup>

By employing detention, nation-states resort to the sharpest technique to achieve the related goals of imaginary unity and maintenance of the territorial order. Personal liberty and sovereignty are conceptually intertwined, as we saw here above. States seek to promote an interpretation of this link that reads as following: ‘the protection of personal liberty is the reason for the existence of sovereignty.’<sup>38</sup> However, in this case the only personal liberty that is protected is the one of state’s own citizens, while foreigners are considered a threat.

The practice of detention places foreigners outside the normal legal framework of the liberal state on account of the perceived threat they pose to the global territorial system.<sup>39</sup> A series of boundaries between insider/outsider, citizen/other, secure/dangerous, deserving and undeserving<sup>40</sup> is being produced and reproduced through detention. For many scholars detention centres are considered to be border zones where ‘the national border is “stretched” and displaced away from the territorial

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<sup>33</sup> Cornelisse, 2010 (b), p. 102.

<sup>34</sup> Cornelisse, 2010 (b), p.105.

<sup>35</sup> Idem, p. 116.

<sup>36</sup> Idem.

<sup>37</sup> Idem, p. 116.

<sup>38</sup> Idem, p. 118.

<sup>39</sup> Hall, 2012, p. 2.

<sup>40</sup> Idem.

edge, inhabited by people whose identity and status are in question and around whom multiple bordering procedures flourish.’<sup>41</sup> Detention centres actually create distance from the ‘others’ who threaten the desired social order.<sup>42</sup>

Whereas Foucault’s notions of governmentality and biopower generally focus on the productive and controlling nature of power, the strategies and technologies by which the state manages populations and sets minimum thresholds of care,<sup>43</sup> Arendt’s thoughts on the Nazis’ concentration camps give us a historic perspective into the subject of detention centre. Regardless of the initial idea of achieving racial purity, on which they were based, camps of one kind or another became ‘the routine solution for the problem of the domicile of the “displaced persons” throughout World War II in a large number of European countries, she argues.<sup>44</sup> This solution was ‘the only practical substitute for a nonexistent homeland’ and the ‘only “country” that a world fully divided into territorial nation-states, had to offer the stateless.’<sup>45</sup>

Further analysing the concentration camp, Agamben creates his famous notion of ‘bare life’, meaning the situation in which a person’s life is subjected to unlimited and unconditional power, which shapes their life without any possibility for protection. The camp, for Agamben, is a frightening zone of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence.<sup>46</sup> He further describes the camp as the place where the ‘state of exception’ is materialised, after being defined by sovereignty<sup>47</sup> and although designed to serve primarily a state of emergency, it becomes a ‘permanent spatial arrangement’ where the rule of law and exception blurs and everything becomes possible.<sup>48</sup> Agamben’s most pessimistic remark

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<sup>41</sup> Idem, p.15.

<sup>42</sup> Idem, p. 16.

<sup>43</sup> Bosworth, 2014, p. 7.

<sup>44</sup> Hall, 2012, p. 15 and she cites Arendt, 1951/1966, 279.

<sup>45</sup> Arendt, 1951/1966, 284.

<sup>46</sup> Walters, 2010, p. 93 and Agamben 1998, 32.

<sup>47</sup> Agamben, 1998, 174.

<sup>48</sup> Hall, 2012, p. 13.



however is that the camp is not ‘an anomaly belonging to the past...but hidden matrix and nomos of the political space in which we are still living.’<sup>49</sup>

Mary Bosworth has a slightly different approach on the matter. Rather than conceiving these places as concentration camps, or forms of discipline or governmentality, she states that they are best understood as sites of estrangement where the state’s power is relational, ‘dependent on other nation states, international agencies and the detainees themselves.’<sup>50</sup>

What the above analyses imply is that although the detainees’ lives inside the immigration detention centre are placed outside the regular legal regime, they are still strictly ruled and restricted by the law, and they are thus in a real sense included in the state’s sovereign power.<sup>51</sup> Adding to this argument and drawing on a more recent example of a camp in Guantanamo Bay, a place designated to hold foreigners who constitute a threat for the national security, Judith Butler, notably, states that the practice of detention is where the resurgence of contemporary sovereign power is most visible.<sup>52</sup>

Finally, another special characteristic of immigration detention is again highlighted by Bosworth’s field work: the ‘ontological insecurity’ affecting both detainees and the staff. ‘Denied recognition, placed in a low-trust environment in which they are prevented from exercising agency on all but a few matters, it is no wonder that detainees exhibit high levels of depression and distress.’<sup>53</sup> Surprisingly or not, there is also a bright side to uncertainty, it brings people together sometimes. ‘It can disrupt the flow of power and control at the same time as it is their medium. It raises the possibility of things being otherwise [...] and it may offer some grounds for challenge and resistance.’<sup>54</sup>

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<sup>49</sup> Idem.

<sup>50</sup> Bosworth, 2014, p. 216.

<sup>51</sup> Cornelisse, 2010 (b), p. 119.

<sup>52</sup> Hall, 2012, p. 13.

<sup>53</sup> Bosworth, 2014, p. 185.

<sup>54</sup> Idem.

## **2. CHAPTER II: LEGAL FRAMEWORK**

### **2.1. Introductory thoughts**

In an attempt to outline the legal terrain of third-country nationals' detention in the European territory, we will examine hereinafter three legal levels: firstly, the international level, focusing on the relevant UN documents; secondly, the regional level, focusing on three legal documents of the European Union and the European Convention on Human Rights by the Council of Europe, and thirdly, the domestic legal order of Greece. The examination will follow the UNHCR Detention Guidelines style.<sup>55</sup> Firstly, we will try to find the definition of detention in every legal order and then if detention is prescribed by law and if there are safeguards against its arbitrary implementation, such as an exhaustive list of grounds, a proportionality test and a consideration of the alternatives. The issues of non discrimination, maximum limits, procedural safeguards and conditions of detention, are to be examined afterwards. Finally, the independent monitoring requirement will be looked at.

After applying the above criteria in the three legal orders respectively, we will draw some conclusions regarding the coherence between them.

### **2.2. International Legal Order**

The right to liberty and security of the person is already recognised by the Universal Declaration on Human Rights (UDHR), wherein the prohibition of arbitrary arrest, detention and expulsion is declared in articles 3 and 9. Furthermore, article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) affirms the same principle. Therefore, the right to liberty and security is considered among the fundamental rights, although not absolute.

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<sup>55</sup> UNHCR, 2012 (a).

The UNHCR issued detailed guidelines in 2012 regarding the applicable criteria and standards relating to the detention of Asylum seekers and Alternatives to Detention.<sup>56</sup> The Guidelines cover the situation of asylum seekers especially, but can also apply mutatis mutandis to other categories of migrants.

### **2.2.1. Definition**

According to the UNHRC Guidelines, ‘detention refers to the deprivation of liberty or confinement in a closed place which an asylum seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities’.<sup>57</sup> The place of detention could be under public or private authorities, at land or sea borders, at airports or islands, on boats or in closed camps or even extraterritorially.<sup>58</sup>

### **2.2.2. Prescription by law**

As already stated in article 9(1) ICCPR, every decision for deprivation of liberty or detention should be in accordance with and authorised by national law, which identifies explicitly the grounds for detention.<sup>59</sup>

### **2.2.3. Non arbitrariness**

According to the Human Rights Committee (HRC), ‘arbitrariness is to be interpreted broadly to include not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability’.<sup>60</sup> Furthermore, every detention without individual examination of the case is considered arbitrary.<sup>61</sup> In order to avoid arbitrary detention, there are three elements that should be fulfilled for every individual case: an exhaustive list of detention grounds set forth by law, a proportionality test and a consideration of alternatives to detention in advance.

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<sup>56</sup> Idem.

<sup>57</sup> Idem, p. 9, para 5.

<sup>58</sup> Idem, p. 9, para 6.

<sup>59</sup> Idem, p. 14, para 16 and E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5.

<sup>60</sup> UNHCR, 2012 (a), p. 15, para 18 and *Van Alphen v. The Netherlands*, HRC, Comm. No. 305/1988, 23 July 1990, para. 5.8.

<sup>61</sup> UNHCR, 2012 (a), p. 16, para 20.

### **2.2.3.1.Exhaustive list of detention grounds**

Under international law there are three main purposes which can justify the detention of asylum seekers: public order, public health and national security.<sup>62</sup> All three purposes can similarly apply to undocumented migrants.

In order to protect public order, the authorities can lawfully detain an undocumented third-country national if there are strong grounds that they would abscond or refuse to co-operate with the authorities.<sup>63</sup> Moreover, in the context of accelerated procedures, the detention can take place in case of manifestly unfounded or clearly abusive claims.<sup>64</sup> Finally, verification of the person's identity could also justify their short detention, under the more general scope of the protection of public order.<sup>65</sup>

Another acceptable reason for detention is the protection of public health, but only in cases where it is individually justified or where an event of communicable disease or epidemic has occurred.<sup>66</sup> Finally, the protection of national security can serve as a legitimate reason for detention.<sup>67</sup>

However, we must point out that the UN has repeatedly stressed out that border crossing is an administrative, not a criminal issue,<sup>68</sup> therefore detention as a criminal measure is not permitted.<sup>69</sup>

### **2.2.3.2. Proportionality test**

Fair balance needs to be struck between the individual's right to liberty and security and the traditional power of the sovereign state to control and restrict access to its territory.<sup>70</sup>

The general principle of proportionality is to be respected in every individual case, and

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<sup>62</sup> UNHCR, 2012 (a), p. 16, para 21.

<sup>63</sup> *Idem*, para 22.

<sup>64</sup> *Idem*, p. 17, para 23 and UNHCR, 1983, para. (d).

<sup>65</sup> UNHCR, 2012 (a), p. 17, para 24 and UNHCR, 1983, para (b).

<sup>66</sup> UNHCR, 2012 (a), p. 18, para 29.

<sup>67</sup> *Idem*, p. 19, para 30 and see also for the meaning of national security: E/CN.4/1985/4, 28 September 1984, paragraphs 29-32.

<sup>68</sup> A/69/CRP. 1, 23 July 2014, p.8, para. 4.

<sup>69</sup> UNHCR, 2012 (a), p. 19, para 32 and A/HRC/7/4/, 10 January 2008, para. 53: "*criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary [and therefore arbitrary] detention.*"

<sup>70</sup> UNHCR, 2012 (a), p. 21, para 34.

therefore the necessity of the detention has to be inspected, along with the lack of less restrictive measures.<sup>71</sup>

### **2.2.3.3. Alternatives to detention**

The above remark brings us to the issue of the alternatives to detention. Required by the principle of proportionality,<sup>72</sup> the consideration by the state authorities of the alternatives to detention is an integral part of any lawful treatment of third-country nationals. Detention has to be a measure of last resort, when there are ‘no less invasive or coercive means of achieving the same ends’.<sup>73</sup> Besides, all alternative measures need to be explicitly and specifically regulated by laws<sup>74</sup> and practically available.<sup>75</sup>

### **2.2.4. Non discrimination**

A wide range of international legal provisions prohibits the detention on the basis of racial or any other kind of discrimination<sup>76</sup> and states are to be held accountable for any relevant action.<sup>77</sup>

### **2.2.5. Maximum limits**

The UNHCR has repeatedly affirmed that ‘the indefinite detention for immigration purposes is arbitrary as a matter of international human rights law’.<sup>78</sup> Furthermore, the indication of specific time limits for detention is part of the proportionality test, analysed above and should be explicitly regulated in national legislation.<sup>79</sup> Another important point, particularly useful for analysing the Greek case hereinafter, is made in the UNHCR Guidelines: ‘Maximum periods in detention cannot be circumvented by

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<sup>71</sup> *Idem*.

<sup>72</sup> *Idem*, p. 22, para 35.

<sup>73</sup> *Idem* and see also A/HRC/7/4/Add.1, 16 January 2008, para. 25, and E/CN.4/1999/63, para. 69 and A/HRC/13/30, 15 January 2010, para. 65.

<sup>74</sup> UNHCR, 2012 (a), p. 22, para 36 and UNHCR, 2011, para 2.

<sup>75</sup> UNHCR, 2012 (a), p. 22, para 37.

<sup>76</sup> *Idem*, p. 25, para 43 and more specifically Article 3, 1951 Refugee Convention; Article 2, UDHR; Article 2, ICCPR; Article 2(2), ICESCR; Article 2, CRC; Article 7, CMW and Article 5, CRPD as well as in regional instruments such as Article 2, ADRDM; Article 24, ACHR; Art. 14 ECHR; Article 21, CFREU and Articles 2 and 3, ACHPR.

<sup>77</sup> UNHCR, 2012 (a), p. 25, para 43 and see also UN Doc. A/59/18, 10 January 2004, para. 19.

<sup>78</sup> UNHCR, 2012 (a), p. 26, para 44 and *A v. Australia*, HRC, Comm. No. 560/1993, 3 April 1997, para. 9.2; *Mukong v. Cameroon*, HRC Comm. No. 458/1991, 21 July 1994, para. 9.8.

<sup>79</sup> UNHCR, 2012 (a), p. 26, para 46.

ordering the release of an asylum-seeker only to re-detain them on the same grounds shortly afterwards'.<sup>80</sup>

### **2.2.6. Procedural Safeguards**

Once arrested, the detained third-country nationals are given a number of procedural guarantees by international standards. Firstly, the information and reasoning on the arrest and the review procedure should be provided in a language and in terms comprehensible by the person concerned.<sup>81</sup> Then, free legal assistance should be provided on a basis of equality with nationals of the relevant state<sup>82</sup> and the communication between lawyer and detainee should be unimpeded and covered by confidentiality.<sup>83</sup> Furthermore, a review of the detention decision and of any prolongation by a judicial or other independent body is required as soon as possible.<sup>84</sup> However, in any case, the right of the detainee to bring their case before a court of law at any time must be respected.<sup>85</sup>

### **2.2.7. Conditions of detention**

Probably the most practically important aspect of the question of detention is the issue of the conditions of detention. A number of guarantees is set by international legal or soft-law documents, which among others include that the places of detention must be officially registered and no police cells should be used for immigration detention purposes;<sup>86</sup> detainees should be treated with respect and dignity, free from torture and degrading or inhumane treatment;<sup>87</sup> detainees' names, location of detention and data of

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<sup>80</sup> *Idem*.

<sup>81</sup> *Idem*, p. 27, para 47(i) and specifically Article 9 (2), ICCPR; Article 7 (4), ACHR and Article 6, ACHPR. See also E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5.

<sup>82</sup> UNHCR, 2012 (a), p. 27, para 47(ii).

<sup>83</sup> *Idem*.

<sup>84</sup> *Idem* and para 47 (iv).

<sup>85</sup> UNHCR, 2012 (a), p. 27, para 47(v) and specifically Article 9(4) ICCPR; Article 7(6) ACHR; Article 5(4) ECHR; Article 25, para 3 ADRDM; Article 7(6) ACHR; Article 6 read in conjunction with Article 7 ACHPR; Article 5 ECHR. See, for example, Article 2(3) ICCPR; Article 25 ACHR; Article 13 ECHR.

<sup>86</sup> UNHCR, 2012 (a), p. 26, para 48(i).

<sup>87</sup> UNHCR, 2012 (a), p. 26, para 48(ii). A number of human rights provisions are specifically relevant to conditions in detention, such as Articles 7 (prohibition against torture and cruel, inhuman or degrading treatment), 10 (right to humane conditions in detention) and 17 (right to family life and privacy) of the ICCPR. See also, UN GA Resolution 43/173, 9 December 1988; UN *Standard Minimum Rules for the Treatment of Prisoners*, 1955; A/RES/45/113, 14 December 1990.

the responsible persons should be accessible to those concerned;<sup>88</sup> special care should be taken for women, children and families;<sup>89</sup> and access to medical care,<sup>90</sup> open-air spaces,<sup>91</sup> education,<sup>92</sup> religious practice<sup>93</sup> and adequate food should be provided.<sup>94</sup>

### **2.2.8. Independent monitoring**

Scrutiny by independent national and international institutions is a necessary guarantee for the compliance of the immigration detention centres with the international human rights standards.<sup>95</sup> This monitoring might consist of regular or unannounced visits, paid by UNHCR or other civil society actors.<sup>96</sup>

## **2.3. Regional Legal Order: European Union**

There are three main legal instruments regulating the detention of third-country nationals in the territory of the European Union: the Returns Directive (2008/115/EC), the Reception Conditions Directive (2013/33/EU) and the European Charter of Fundamental Rights, all of which are complemented, as might be expected, by the relevant provisions of the European Convention on Human Rights. Since the individuals' deprivation of liberty by a member state constitutes derogation from the fundamental right to liberty, both European Union law and the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are imposing some safeguards on its implementation. European Union law further regulates differently between the detention of asylum seekers and persons in return procedures.

Before moving forward with our study, we should give special attention to the Schengen Borders Code (562/2006/EC) which applies throughout the whole European territory and requires that third-country nationals who do not fulfill the entry conditions

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<sup>88</sup> UNHCR, 2012 (a), p. 26, para 48(iv).

<sup>89</sup> *Idem*, (v).

<sup>90</sup> *Idem*, (vi).

<sup>91</sup> *Idem*, (viii).

<sup>92</sup> *Idem*, (xiii).

<sup>93</sup> *Idem*, (ix).

<sup>94</sup> *Idem*, (xi).

<sup>95</sup> UNHCR, 2012 (a), p. 40, para 66.

<sup>96</sup> *Idem*.

are refused entry into the EU.<sup>97</sup> Consequently, the Member States have incorporated this regulation accordingly.

### **2.3.1. Definition**

The Return Directive, although being the first European legal text providing for detention of undocumented third country nationals entering or residing in the European territory, does not provide with a clear definition of the term ‘detention’, other than as a ‘confinement of an applicant by [an EU] Member State within a particular place, where the applicant is deprived of his or her freedom of movement’.<sup>98</sup>

Under the ECHR the deprivation of liberty is regulated in article 5, whereas other restrictions regarding freedom of movement are regulated in article 2 of Protocol No. 4. According to the European Court of Human Rights (ECtHR), the difference between the above situations is one of degree or intensity and not of nature or substance.<sup>99</sup> Furthermore, the ECtHR assesses all elements of an individual case cumulatively (type, duration, effects and manner of implementation,<sup>100</sup> element of coercion,<sup>101</sup> physical discomfort or mental anguish caused on the person<sup>102</sup>) in order to pronounce if a deprivation of liberty is justly (?) established. In any case however, due regard is paid on the responsibility and duty of the police to maintain order and protect the public, which they are required to do under both national and ECHR law.<sup>103</sup>

### **2.3.2. Prescription by law**

Article 20 of the Returns Directive defines the Member States’ obligation to ‘bring into force the laws, regulations and administrative provisions necessary’ to comply with the Directive, and therefore also with the measure of detention for persons under return

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<sup>97</sup> FRA, 2014, p. 150.

<sup>98</sup> Returns Directive, art 2(h). See also FRA, 2014, p. 144.

<sup>99</sup> FRA, 2014, p. 144, where cited: ECtHR, *Guzzardi v. Italy*, No. 7367/76, 6 November 1980, para. 93

<sup>100</sup> *Idem*, p. 145, where cited: ECtHR, *Austin and Others v. the United Kingdom* [GC], Nos. 39692/09, 40713/09 and 41008/09, 15 March 2012, para. 57.

<sup>101</sup> *Idem* where cited: ECtHR, *Foka v. Turkey*, No. 28940/95, 24 June 2008; ECtHR, *Nolan and K. v. Russia*, No. 2512/04, 12 February 2009.

<sup>102</sup> *Idem* where cited: ECtHR, *Guzzardi v. Italy*, No. 7367/76, 6 November 1980; ECtHR, *H.L. v. the United Kingdom*, No. 45508/99, 5 October 2004.

<sup>103</sup> *Idem* where cited: ECtHR, *Austin and Others v. the United Kingdom* [GC], Nos. 39692/09, 40713/09 and 41008/09, 15 March 2012, para. 60.



procedure. Regarding the asylum seekers particularly, article 8(3) of the Reception Conditions Directive clearly states that ‘the grounds for detention shall be laid down in national law.’

Moving on to the level of the Council of Europe, article 5(1) ECHR provides that any deprivation of liberty should be ‘in accordance with a procedure prescribed by law.’ This provision has interpreted as referring also to the quality of law and its compliance with the rule of law.<sup>104</sup>

### 2.3.3. Non arbitrariness

As we saw in the UNHCR Detention Guidelines, arbitrariness is to be considered broadly. In the same line of thought, further safeguards, not always contained in UNHCR Guidelines, are imposed by the EU law and ECtHR rulings. A principle of good faith in the acts of the authorities was introduced by several ECtHR’s decisions,<sup>105</sup> while due diligence can be found in article 15(1) of the Return Directive<sup>106</sup> and in article 9(1) and recital 16 of the revised Reception Conditions Directive and article 28(3) of the Dublin Regulation.<sup>107</sup>

Another guarantee against arbitrariness is the requirement of a reasonable prospect of removal, justifying the continuation of the detention.<sup>108</sup> The ECtHR has affirmed this requirement in its ruling *Mikolenko v. Estonia*.<sup>109</sup> Where the reasonable prospect no longer exists, the person in detention should be immediately released.<sup>110</sup>

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<sup>104</sup> FRA, 2014, p. 155.

<sup>105</sup> *Idem*, p. 158, where cited ECtHR, *A. and Others v. the United Kingdom* [GC], No. 3455/05, 19 February 2009; ECtHR, *Saadi v. the United Kingdom* [GC], No. 13229/03, 29 January 2008 and ECtHR, *Longa Yonkeu v. Latvia*, No. 57229/09, 15 November 2011, para. 143.

<sup>106</sup> Art. 15(1) Returns Directive: “Any detention shall be...only maintained as long as removal arrangements are in progress and executed with due diligence”.

<sup>107</sup> FRA, 2014, p. 158.

<sup>108</sup> Art 15 (4) Return Directive.

<sup>109</sup> FRA, 2014, p. 160, where cited ECtHR, *Mikolenko v. Estonia*, No. 10664/05, 8 October 2009, para. 67.

<sup>110</sup> Art. 15 (4) Returns Directive.

### 2.3.3.1. Exhaustive list

Detention of a person solely for the reason that they lodged an asylum application is not acceptable.<sup>111</sup> However, detention of asylum seekers is foreseen by the Reception Conditions Directive in article 8(3) on six exhaustive grounds:<sup>112</sup>

- to determine or verify the applicant's identity or nationality;
- to determine elements of the asylum application, which could not be obtained in the absence of detention, in particular where there is a risk of absconding;
- to decide on the applicant's right to enter the territory;
- if they are detained under the Return Directive and submit an asylum application to delay or frustrate the removal;
- when the protection of national security or public order so requires; and
- in accordance with Article 28 of the Dublin Regulation, which under certain conditions allows detention to secure transfer procedures under the Regulation.

Furthermore, according to article 15(1) of the Return Directive, detention of third-country nationals who are subject to return procedures is allowed only on two grounds and under the condition that there is a risk of absconding or if the person is hindering the return process:<sup>113</sup>

- in order to prepare return;
- in order to carry out the removal process.

Regarding the ECHR, Article 5(1) provides the exhaustive list of justified derogations of the right to liberty. More specifically, the subparagraph (f) provides for detention of undocumented or under return third-country nationals in two situations:<sup>114</sup>

- to prevent an unauthorised entry into the country;
- of a person against whom action is being taken with a view to his or her deportation or extradition.

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<sup>111</sup> Reception Conditions Directive art. 8, Asylum Procedures Directive (2013/32/EU) art. 26.

<sup>112</sup> FRA, 2014, p. 148.

<sup>113</sup> FRA, 2014, p. 149.

<sup>114</sup> Idem, p. 150.

### **2.3.3.2. Proportionality test**

Apart from providing exhaustive grounds for detention, the Returns Directive, the Reception Conditions Directive and the ECHR put forward the Member States' obligation to provide a clear and explicit legal basis for the detention.<sup>115</sup>

Moreover, we find the requirement of a proportionality test in article 15(5) of the Returns Directive and in article 8(2) of the Reception Conditions Directive. As interpreted also by the Court of Justice of the European Union (CJEU), EU law requires a balance between the deprivation of liberty and the objective to be achieved, or whether removal (which is the objective) could be successfully implemented by imposing less restrictive measures, such as alternatives to detention.<sup>116</sup> On the contrary, no necessity or proportionality test is required under article 5(1) (f) ECHR.

### **2.3.3.3. Alternatives to Detention**

In article 15(1) of the Returns Directive we find the explicit obligation of the state members to exhaust 'other sufficient but less coercive measures that can be applied effectively' before detaining an undocumented third-country national. The exact same obligation can be found in article 8(2) of the Reception Conditions Directive and in article 28(2) of the Dublin Regulation for asylum seekers.

A rather innovative provision is found under article 8(4) of the Reception Conditions Directive. There the Member States are obliged to put forward concrete national laws regulating measures alternative to detention, such as 'regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place.'

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<sup>115</sup> Art. 20 Returns Directive, Art. 8(3) Reception Conditions Directive and art. 5(1) ECHR. See also FRA, 2014, pp. 154-5.

<sup>116</sup> FRA, 2014, p. 156, where cited: CJEU, C-61/11, El Dridi alias Soufi Karim, 28 April 2011, paras. 29-62.

#### 2.3.4. Non discrimination

The Returns Directive in its preamble, paragraph 21, contains a general non-discrimination clause,<sup>117</sup> while such a provision cannot be found in the Reception Conditions Directive.

Perhaps the most progressive provision on this matter internationally can be found under the Twelfth Protocol of the ECHR, article 1, where a general prohibition of discrimination ‘for any right set forth by law’ is regulated. However, the application of this provision is still quite limited, since only 18 member states of the Council of Europe (CoE) have ratified it.<sup>118</sup>

#### 2.3.5. Maximum limits

Probably the most important aspect from the detainees’ point of view is the duration of the detention. The legal provisions devoted to asylum seekers provide only for ‘as short a period as possible’,<sup>119</sup> while the Returns Directive provides for a specific time limit of up to six months, which is extendable by twelve months in exceptional circumstances, namely in cases of non-cooperation or where there are barriers to obtaining travel documentation.<sup>120</sup> In the context of article 5(1)(f) ECHR, although no time limit is specifically provided, the ECtHR has repeatedly considered the time limits as essential components of a law compliant to ECHR.<sup>121</sup>

#### 2.3.6. Procedural Safeguards

Once the detention order is issued, the person concerned possesses some procedural safeguards in order to challenge it. First of all, under EU law, the authorities have to

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<sup>117</sup> “Member States should implement this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation”.

<sup>118</sup> Information from here  
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=&DF=&CL=ENG>,  
accessed on 11 July 2015.

<sup>119</sup> Art. 9(1) Reception Conditions Directive revised and Art 28(3) Dublin Regulation.

<sup>120</sup> FRA, 2014, p. 160 and Art 15(5), (6) Returns Directive.

<sup>121</sup> FRA, 2014, p. 161, where cited: ECtHR, *Mathloom v. Greece*, No. 48883/07, 24 April 2012, ECtHR, *Louled Massoud v. Malta*, No. 24340/08, 27 July 2010 and ECtHR, *Auad v. Bulgaria*, No. 46390/10, 11 October 2011, para. 128.

provide written reasons in fact and in law, both to asylum seekers and persons under return procedures.<sup>122</sup> Furthermore, according to article 5(2) ECHR, the communication of the reasons of detention should be held ‘promptly and in a language which the person understands.’

The right to judicial review however, seems to be the core of all procedural safeguards. Both article 15(2) of the Returns Directive and article 9(3) of the Reception Conditions Directive provide for a speedy judicial review when detention is ordered by administrative authorities.<sup>123</sup> Further review is required in reasonable periods by a judicial authority in the case of asylum seekers and in the case of prolonged detention of persons in return procedures.<sup>124</sup> Finally, article 47 of the EU Charter grants the right to an effective remedy and public hearing within reasonable time to every individual within the EU law jurisdiction. In addition to these, article 5(4) ECHR also provides for a speedy judicial review of the detention decision for every individual.

### **2.3.7. Conditions of detention**

The Returns Directive in article 16(1) refers to detention conditions of persons in return procedures, without going into depth or analytical description of the ‘specialised detention facilities’. The same applies to article 10(1) of the Reception Conditions Directive for asylum seekers. In the latter, we only find a reference to the need of ‘open-air spaces’ for the detained asylum seekers.<sup>125</sup> Furthermore, article 17 of the Returns Directive and article 11 of the Reception Conditions Directive refer to detention conditions of vulnerable groups, but again without going into detail.

The ECtHR jointly examines the overall effect of individual elements when examining complaints about the conditions of detention. This includes: where the individual is detained (airport, police cell, prison); whether or not other facilities could be used; the size of the containment area; whether it is shared and with how many other people; availability and access to washing and hygiene facilities; ventilation and access to open

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<sup>122</sup> FRA, 2014, p. 164 and art. 15(2) Returns Directive, art. 9(2) revised Reception Conditions Directive.

<sup>123</sup> FRA, 2014, p. 165.

<sup>124</sup> Art. 15(3) Returns Directive and art. 9(5) Reception Conditions Directive.

<sup>125</sup> Art 10 (2) Reception Conditions Directive.

air; access to the outside world; and whether the detainees suffer from illnesses and have access to medical facilities. The individuals' specific circumstances are of particular relevance, such as if they are a child, a survivor of torture, a pregnant woman, a victim of trafficking, an older person or a person with disabilities.<sup>126</sup>

### **2.3.8. Independent monitoring**

Both Directives regulating detention of third-country nationals foresee the possibility for UNHCR representatives and non-governmental organisations to visit the detention facilities and even communicate with the detainees in privacy.<sup>127</sup>

## **2.4. Domestic Legal Order: Greece**

Regarding its international legal obligations, Greece is a party to most core international human rights treaties, with the exceptions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance (signature only, 2008).<sup>128</sup> Greece has also adhered to the principal international treaties relating to the protection of refugees, as well as to the prevention, suppression and punishing of trafficking.<sup>129</sup>

Moreover, on a regional level, as a member state of the CoE since 1949, Greece is a party to the ECHR and the European Social Charter.<sup>130</sup> Furthermore, as a member state of the European Union, Greece has an obligation to respect the Charter of Fundamental Rights of the European Union when implementing EU law.<sup>131</sup> The European Union's acquis on migration and asylum is applicable to Greece as well, but the state has

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<sup>126</sup> FRA, 2014, p. 167, where cited: ECtHR, *Dougoz v. Greece*, No. 40907/98, 6 March 2001; ECtHR, *Peers v. Greece*, No. 28524/95, 19 April 2001; ECtHR, *S.D. v. Greece*, No. 53541/07, 11 June 2009, ECtHR, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, 21 January 2011.

<sup>127</sup> Art 16(4) Returns Directive and art. 10(3), (4) Reception Conditions Directive.

<sup>128</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 5, para 11.

<sup>129</sup> *Idem*, para 12.

<sup>130</sup> *Idem*, para 13.

<sup>131</sup> *Idem*, para 14.

transposed only the Returns Directive,<sup>132</sup> while the transposition of the recast Reception Conditions Directive expires on 20 July 2015 and no draft has been proposed yet.<sup>133</sup> The Dublin III Regulation is directly applicable since 1 January 2014.<sup>134</sup> Greece is also a part of the Schengen area, which provided for the strengthening of external border controls and eliminated internal border controls.<sup>135</sup>

The main law governing migration is Law 3386/2005 which regulates the entry, residence and social integration of third-country nationals into Greek territory. Under Law 3386/2005, illegal entry is a criminal offence (art. 83.1): ‘Third-country nationals who exit or attempt to exit Greece or enter or attempt to enter Greece without legal formalities shall be punished by imprisonment of at least three months and a fine of at least one thousand five hundred euro (€1,500).’<sup>136</sup> Furthermore, Law 3907/2011 provides for the creation of an independent Asylum Service and an Appeals Authority, the establishment of a First Reception Service, and the adaptation of Greek legislation to the Return Directive.<sup>137</sup>

#### **2.4.1. Definition**

No specific definition of the term ‘detention’ can be found in the relevant Greek legislation.

#### **2.4.2. Prescription by law**

There are three main legal texts regulating detention of third country nationals in Greece,<sup>138</sup> although it is unclear why different laws are required for the same purpose<sup>139</sup>:  
a) article 76 of Law 3386/2005 on Entry, Residence and Social Integration of Third-

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<sup>132</sup> Transposed by the law 3907/2011 ‘on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally staying third country nationals" and other provisions’, Gov. Gazette 7/A/26-01-2011.

<sup>133</sup> ECRE & GCR, 2015, p. 88.

<sup>134</sup> Art. 49 Dublin III Regulation - recast (604/2013).

<sup>135</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 6, para 14.

<sup>136</sup> *Idem*, para 17.

<sup>137</sup> *Idem*, para 18.

<sup>138</sup> See also <http://www.globaldetentionproject.org/countries/europe/greece/introduction.html>, last accessed on 11 July 2015.

<sup>139</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 11, para 42.

Country Nationals on Greek Territory provides for detention of undocumented third-country nationals upon entrance in the country, b) article 30 of Law 3907/2011 on the Establishment of an Asylum Service and a First Reception Service, which transposed the EU Returns Directive and provides for detention of undocumented third-country nationals already residing on Greek territory and c) article 12 of the Presidential Decree 113/2013 which also transposed the Directive 2005/85 on minimum standards of procedures in Member States for granting and withdrawing refugee status, providing for detention of asylum seekers.

### **2.4.3. Non arbitrariness**

A number of safeguards against arbitral detention are set out in article 30 Law 3907/2011. Apart from those analysed below (exhaustive list of grounds, proportionality test and alternatives to detention), we find the authorities' obligation to execute the removal arrangements with due diligence,<sup>140</sup> to issue reasoned detention decisions on factual and legal basis<sup>141</sup> and to release all persons for whom a reasonable prospect of removal no longer exists.<sup>142</sup>

#### **2.4.3.1. Exhaustive list**

Three specific legal grounds for detention of undocumented third country nationals are provided in Greek legislation:

- displaying risk of absconding,
- avoiding or impeding the preparation of return or the removal process or
- presenting a threat to public order or national security.<sup>143</sup>

Law 4075/2012 expanded the grounds of detention, providing for migrants and asylum seekers to also be detained if they represent 'a danger to public health,' when they

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<sup>140</sup> Art.30(1) Law 3907/2011.

<sup>141</sup> Art.30(2) Law 3907/2011.

<sup>142</sup> Art.30(4) Law 3907/2011.

<sup>143</sup> Art. 76(3) Law 3386/2005 and art. 30(1) Law 3907/2011. See also <http://www.globaldetentionproject.org/countries/europe/greece/introduction.html>



‘suffer from an infectious disease.’<sup>144</sup> The specific provision has been heavily criticised in and outside Greece.<sup>145</sup>

Regarding the asylum seekers alone, under Presidential Decree 113/2013 they can be detained on three grounds, as well:

- for determination of their identity or origin,
- if they threaten national security or public order, according to the reasoned judgment of the police authority or
- if detention is considered necessary for the prompt and effective completion of the asylum application.<sup>146</sup>

#### **2.4.3.2. Proportionality test**

The first Law regulating detention of undocumented third-country nationals, Law 3386/2005, does not provide for any proportionality or necessity assessment. On the contrary, the other two instruments, Law 3907/2011 and PD 113/2013 contain provisions requiring some kind of proportionality test during the detention procedures, following the European Directives they are transposing.

More specifically, article 30(1) of Law 3907/2011 requires that the detention of third country nationals, upon return procedures, should be ongoing for just as long as it is absolutely necessary and should be decided after due consideration of the availability of detention facilities, as well as their appropriateness.<sup>147</sup> Furthermore, article 12 of PD 113/2013 is referring back to Law 3907/2011 and its provisions.

#### **2.4.3.3. Alternatives to detention**

Similarly to the above issue of proportionality, the issue of alternative measures to detention is only being set by the two more recent laws. Article 22(3) of Law 3907/2011

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<sup>144</sup> Art. 59 Law 4075/2012.

<sup>145</sup> See <http://www.globaldetentionproject.org/countries/europe/greece/introduction.html> and A/HRC/23/46/Add.4, 18 April 2013, p. 11, para 44: “The Special Rapporteur is concerned that these measures are discriminatory and target the most vulnerable migrants, and that they will lead to even more stigmatization.”

<sup>146</sup> Art. 12 (2) PD 113/2013.

<sup>147</sup> Art. 30(1) Law 3907/2011.

provides for four alternative measures, in order to prevent absconding of the third-country nationals:

- regular periodic reporting to the authorities,
- deposit of an adequate financial guarantee,
- submission of documentation and
- residence in directed residence.

Both Laws (3907/2011 and 113/2013) provide for detention only after the examination of the possible implementation of the above alternatives. Migrants have been routinely detained until recently however,<sup>148</sup> while in most cases the authorities were considering that ‘being in an irregular situation automatically constitutes sufficient reason for detention.’<sup>149</sup>

#### **2.4.4. Non discrimination**

No explicit provision regarding the obligation to apply non-discriminative detention-related laws can be found in the respective Greek laws. However, a Ministerial Decision issued at the beginning of 2015 includes the right of equal treatment in the list of the detainees’ rights.<sup>150</sup> Besides, Greece, as a member of the CoE, is bound by the ECHR’s relative prohibition of discrimination,<sup>151</sup> but not by the twelfth additional protocol, containing the general prohibition of discrimination.<sup>152</sup>

#### **2.4.5. Maximum limits**

The maximum permissible duration of detention has been repeatedly extended. In 2009, the maximum limit was increased from three to six months.<sup>153</sup> After transposing the Returns Directive, the limit was increased to 18 months, both for persons under return

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<sup>148</sup> The detention policy of the Greek state has changed after the governmental change on January 2015. For more information see Chapter III, Section 2 of the present thesis.

<sup>149</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 11, para 43.

<sup>150</sup> Ministerial Decision 803/2015, State Gazette B 118/2015, art.21(c).

<sup>151</sup> Art. 14 ECHR.

<sup>152</sup> For the list of ratifications see <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=09/06/2015&CL=EN>

<sup>153</sup> See also <http://www.globaldetentionproject.org/countries/europe/greece/introduction.html>.

procedures and asylum seekers in detention.<sup>154</sup> Initially, a six-month period in detention is foreseen, which can be extended to up to 18 months, if the detainee refuses to cooperate or there are delays in the receipt of the necessary documents from the third countries.

Then, in early 2014, the Greek Legal Council issued an advisory opinion (No 44/2014) allowing police to extend the length of detention beyond 18 months and potentially indefinitely in cases where detainees refuse to cooperate in their removal proceedings. This was taken up by a ministerial decision,<sup>155</sup> but the Greek Administrative Court ruled on May 2014 that indefinite detention, in the form of compulsory stay in a detention centre, as defined by the State Legal Council Opinion 44/2014 and adopted by Ministerial Decision 4000/4/59-st/2014, was unlawful.<sup>156</sup>

#### **2.4.6. Procedural safeguards**

There are several procedural safeguards granted to detained third-country nationals by the Greek laws such as the right to be informed of the reasons for their detention in a language they understand and the right to have access to legal counsel.<sup>157</sup> Moreover, the law also provides for the possibility to appeal initial detention orders before an administrative court,<sup>158</sup> while an automatic review of the legality of detention is to be carried out every three months by the police director who issued the order or, in case of extension of detention, by an administrative court.<sup>159</sup> However, the judicial review of the initial decision for detention takes place only after written objections have been submitted in Greek,<sup>160</sup> a provision which poses many problems when being implemented, as we will see hereinafter. Objections are not examined by a court

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<sup>154</sup> Art. 76(3) Law 3386/2005, art. 30(5),(6) Law 3907/2011 and art. 12(6) PD 113/2013.

<sup>155</sup> Ministerial Decision 4000/4/59-st/2014

<sup>156</sup> ECRE & GCR, 2015, p.81.

<sup>157</sup> Art. 76(3) Law 3386/2005, art. 30(2) and 31(2) Law 3907/2011.

<sup>158</sup> Art. 76(3) Law 3386/2005, article 30(2) Law 3907/2011.

<sup>159</sup> Art. 30(3) Law 3907/2011. See also <http://www.globaldetentionproject.org/countries/europe/greece/introduction.html>, last accessed on 11 July 2015.

<sup>160</sup> Art. 76(3) Law 3386/2005, art.30(2) Law 3907/2011.

composition but solely by the President of the Administrative Court, whose decision is non-appealable.<sup>161</sup>

#### **2.4.7. Conditions of detention**

Various establishments are used as detention facilities for immigration related reasons in Greece, such as police stations, border guard stations and coast guard facilities.<sup>162</sup> Although the Law<sup>163</sup> foresees the issuance of ministerial decisions determining common standards that should be applied in all detention facilities, this is not the case in practice,<sup>164</sup> as we will see in detail in the next chapter. The respective Ministerial Decision was only issued on 20 January 2015, setting a number of minimum common standards regarding the operation of the detention centres for third country nationals under return procedures. Among others, in this Decision we find provisions about the access of detainees to open air places, healthcare, adequate food and libraries.<sup>165</sup> The catalogue of the detainees' rights is also following the list of rights set by the UN Guidelines closely.<sup>166</sup>

The older Law (3386/2005) does not provide for any specific rights of persons in detention, while the newer one (3907/2011) transposes the Returns Directive's provision for the right to urgent medical care,<sup>167</sup> the right to communicate with legal counselors and members of their families<sup>168</sup> and the authorities' obligation to keep immigration-related detainees separated from prisoners under criminal law.<sup>169</sup>

#### **2.4.8. Independent monitoring**

Under article 31(4) Law 3907/2011, national and international organisations as well as NGOs are allowed to visit the detention facilities, after official authorisation. Moreover,

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<sup>161</sup> ECRE & GCR, 2015, p. 87.

<sup>162</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 12, para 48.

<sup>163</sup> Art. 81 Law 3386/2005. See also <http://www.globaldetentionproject.org/countries/europe/greece/introduction.html>, last accessed on 11 July 2015.

<sup>164</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 12, para 48.

<sup>165</sup> Art.6 MD 803/2015.

<sup>166</sup> Art. 21 MD 803/2015.

<sup>167</sup> Art.31(3) Law 3907/2011.

<sup>168</sup> Idem, art.31(2).

<sup>169</sup> Idem, art.31(1).

PD 113/2013 devotes a whole article<sup>170</sup> to the special role of UNHCR in the asylum procedure in Greece and its unconditional right to accede and inspect all detention facilities.

## **2.5. Coherence between the legal orders**

After reviewing three legal orders, the international, the European and the Greek one, the question emerging is the level of coherence between them, given especially their interrelations.

The first point to be made is on the nature of the norms regarding immigration detention. On the one hand, at the international level, apart from article 3 and 9 UDHR and article 9 ICCPR, the rest of the norms could be best described as ‘soft law’. The UNHCR Guidelines, being the basis on which the legislation regarding immigration detention is developed, are a set of soft law rules intended to provide guidance to ‘governments, parliamentarians, legal practitioners, decision-makers, including the judiciary, as well as other international and national bodies.’<sup>171</sup>

On the other hand, European Union has chosen to regulate the issue of immigration detention through Directives, not Regulations. This way it gives the Member States a certain margin to transpose the respective rules in the most suitable way for their internal legal order. However, the freedom of movement of third country nationals within the Union is strictly regulated by the Schengen Borders Code-Regulation, as a general framework, and the Dublin Regulations in specific reference to people seeking international protection within the Union. This different treatment between the detention issues within every Member State and the freedom of movement of third country nationals within the Union somehow reflect the priorities of the Union. Issues of human rights have only recently become a primal goal for the Union.

At a CoE level, although the ECHR does not refer directly to immigration detentions, it has proven to be a powerful weapon towards the goal of protecting detained third

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<sup>170</sup> Art. 14 PD 113/2013.

<sup>171</sup> UNHCR, 2012 (a), p. 3.

country nationals, especially through its direct applicability and the dynamic interpretation of the ECtHR.

Finally, coming to the domestic level, we notice a fragmentation of the legal instruments regulating immigration detention. This is not a new problem for the Greek legal order; it is rather its central characteristic. Observing the situation in his most recent visit to Greece, the Special Rapporteur on the human rights of migrants pointed out that it is unclear to him why different laws are used to regulate immigration detention in Greece.<sup>172</sup>

Examining the substantive provisions of the three legal orders, we find that they are generally in accordance. Most of the UNHCR Guidelines have been incorporated into the European Directives and then transposed into the Greek implementation laws. There are two specific points which should be stressed here.

Firstly, there is the issue of maximum limits of detention. While the UNHCR Guidelines do not provide for a specific time limit, they prohibit indefinite detention as arbitrary and opposite to international human rights law.<sup>173</sup> The ECtHR also stresses in its rulings the need for explicit time limits in the legislation, which should also be proportional to every individual case. The Returns Directive, the first European instrument envisaging the issue of a maximum detention time, provides for a time limit of 18 months. In the process of transposing it to the domestic legal orders, ten Member States extended the maximum legal time limits of detention, which were in force before the transposition.<sup>174</sup> Until that time, the Greek legislation provided for a maximum of three months detention for immigration-related reasons. After the transposition, the maximum detention time raised up to eighteen months. However, as we already saw, an advisory opinion of the Legal Council of the State,<sup>175</sup> disregarding all international human rights standards, argued in favour of the indefinitely prolonged immigration

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<sup>172</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 11, para 42.

<sup>173</sup> UNHCR, 2012 (a), p.26, para 44.

<sup>174</sup> PICUM, 2015, p. 10.

<sup>175</sup> Greek Legal Council, Advisory Opinion No 44/2014.

detention in cases of lack of cooperation.<sup>176</sup> Fortunately, Greek administrative courts ruled against the above advisory opinion.

Secondly, there is the important matter of detention conditions. A number of basic principles is set down in the UN Guidelines, but almost none of them is adopted by the relevant European Directives. The ECtHR and the CJEU have used some of the Guidelines in their rulings regarding detention conditions and succeeded to upgrade the standards in practice. However, until very recently the conditions of detention were not discussed in Greek legislation at all. All three Laws<sup>177</sup> providing for immigration detention contained referral clauses to implementing decisions. Only as recently as early 2015 was such a Ministerial Decision<sup>178</sup> issued, regulating the detention conditions and the rights of the detainees in a detailed way. Although it is true that the respective Ministerial Decision is closely following the UNHCR Guidelines and could be described as protective and systematic, the fact that the issue of detention conditions and the detainees' rights is addressed in the lowest possible legal level of the Greek legal order (a Ministerial Decision) raises some concern. Furthermore, we cannot avoid noticing the huge delay in which the Greek State is finally regulating minimum common standards for the detention centres and analytic list of detainees' rights, given the fact that immigration detention is being implemented in the country since the beginning of 2000.

Finally, one last point should be made on the principle of non penalisation of irregular entry or stay. The UN Guidelines, referring to article 31 of the 1951 Convention, emphasise the prohibition of penalisation of irregular entry for asylum seekers. On this matter, the European Law is not regulating directly; it rather leaves the space open for national legislation. The Greek law however, being in total contrast with the international standards, provides for a minimum sentence of three months' imprisonment and a monetary penalty of at least one thousand five hundred (1,500) euro<sup>179</sup> for every person entering or exiting the Greek borders without valid documents.

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<sup>176</sup> PICUM, 2015, p.11.

<sup>177</sup> Law 3386/2005, Law 3907/2011 and PD 113/2013.

<sup>178</sup> MD 803/2015.

<sup>179</sup> Art. 2 Law 3386/2005.

Another provision in the same Law (art. 83(2)) envisages the prosecutor's discretion to refrain from the criminal prosecution. Greece's reluctance to amend the legal provision mentioned above is illustrative of the perception of immigration detention as a means to control and combat migration.



### **3. CHAPTER III: THE CASE OF GREECE**

Examining the human rights legal framework can hardly ever give us an accurate idea of what is actually happening in practice, since ‘freedom is never given its substance as a right, but only as a practice.’<sup>180</sup> Moreover, as Douzinas says, examining the harm that a violation inflicts often gives us the best insight about the ends of human rights.<sup>181</sup> An overview of the harm that has been being caused to detained undocumented migrants and asylum seekers in Greece for the past decades can be found in the following chapter.

#### **3.1 Section 1: How we got here**

##### **3.1.1. A long story short**

Greece is known primarily as a country of emigration, with large diasporic communities throughout the US, Europe and Australia as well as other perhaps less obvious locations such as Sudan, Egypt, Denmark and Ethiopia.<sup>182</sup> At the beginning of the ‘90s, after the ‘fall’ of the communist regimes in Eastern Europe, large numbers of people fleeing those countries, especially Albania, were migrating to Greece. At that time the country, without having a legal framework for controlling and managing migratory inflows,<sup>183</sup> saw these arrivals as an influx of cheap black labour, which would assist the Greek economy to grow. Migrants of that period were mainly occupied in agriculture or constructions, if men, and as house workers or in prostitution, if women. Towards the end of the decade, the Greek State tried to legalise many of these migrants, under the precondition of current employment.<sup>184</sup> More than 370, 000 people participated in the first phase of the regularisation programme of 1998. According to the national

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<sup>180</sup> De Genova & Peutz, 2010, p. 13.

<sup>181</sup> Douzinas, 2000, p. 293.

<sup>182</sup> Cabot, 2014, p. 33.

<sup>183</sup> Triantafyllidou, 2009, p. 8.

<sup>184</sup> See also No Lager, 2014, p. 1.

population census of 2001, there were 761, 813 aliens residing in Greece, mainly from Albania.<sup>185</sup>

However, the European developments of the Schengen Agreement<sup>186</sup> and the Tampere Summit<sup>187</sup> leading to harmonisation of border and immigration policies among Member States also provoked gradual changes to the Greek immigration policy. For example, the Greek Border Guard was established in 1998,<sup>188</sup> followed by another police body of ‘Special Guards’ in 1999. In addition to these, a readmission agreement was signed between Greece and Italy in 1999 and a second one between Greece and Turkey in 2002.<sup>189</sup> On the turn of the century, a large influx of Kurdish and Turkish political asylum seekers in Greece prompted the creation of the first immigrant camps outside the city of Patras.

Because of its geographical position, the country is exposed to two main migration paths: one from Asia, the Middle East and Africa through Turkey to the Aegean islands or to the northeastern region of Thrace, and a second path from former Communist countries at the northern Greek border (mainly Albania but also FYROM and Bulgaria).<sup>190</sup> Because of changing patterns of violence and poverty (notably the wars in Iraq and Afghanistan) and increasingly militarised policing measures in other regions of Europe’s Mediterranean coast,<sup>191</sup> migration flows into Greece kept growing over time. Arrests grew as well. Between 2003 and 2005, approximately 50,000 undocumented migrants were arrested, while the number of such arrests grew to 66,000 in 2005 and 95,000 in 2006.<sup>192</sup>

These first years of the ‘00s the detention of third country nationals without valid documents was implemented in a rather fragmented and unsystematic way, in places

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<sup>185</sup> National Statistical Service, Population Census 2001, available at [http://dlib.statistics.gr/Book/GRESYE\\_02\\_0101\\_00098%20.pdf](http://dlib.statistics.gr/Book/GRESYE_02_0101_00098%20.pdf) and Papastergiou & Takou, 2015, p. 7.

<sup>186</sup> Implemented in Greece since 1 January 2000. See European Council Decision 1999/848/EC, December 1999.

<sup>187</sup> In the Summit of Tampere EU decided to move towards a common EU asylum and migration policy. See Presidency Conclusions, Tampere European Council 15-16 October 1999, part A.

<sup>188</sup> Triantafyllidou, 2009, p. 9.

<sup>189</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 9, para 31-35.

<sup>190</sup> Triantafyllidou, 2009, p. 9.

<sup>191</sup> Cabot, 2014, p.3.

<sup>192</sup> Triantafyllidou, 2009, p. 9.

lacking any standards for this purpose. A report by the Committee to Prevent Torture after its visit in Greece in 2005 revealed major deficiencies in every aspect regarding the ‘Special Holding Facilities for Aliens’.<sup>193</sup>

### **3.1.2. International and European developments**

At the international level, the attack to the World Trade Centre in New York had already shifted the priorities over the topic of migration from protection and inclusion to security and control. For example, the main goal of the American ten-year enforcement plan for 2003-2012 was to promote ‘national security by ensuring the departure from the United States of all removable aliens.’<sup>194</sup>

In Europe, from then on, the entrance of a third-country national without valid documents in the European territory is considered a potential threat and in the name of the battle against terrorism, new informatic control systems are implemented, i.e. SIS II,<sup>195</sup> VIS,<sup>196</sup> EURODAC,<sup>197</sup> FADO.<sup>198</sup> Dublin II Regulation<sup>199</sup> and Frontex<sup>200</sup> entered the scene of immigration control as central actors, followed after a while by the famous Returns Directive.<sup>201</sup> The focus now is on preventing the arrival of undocumented migrants, and on returning those already present.<sup>202</sup>

Frontex operations in the western and central Mediterranean, starting from 2006, virtually ceased these migration routes,<sup>203</sup> pushing the burden to the southeast Mediterranean, especially the southern coast of Italy and the Greek-Turkish border.

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<sup>193</sup> CPT, December 2006, pp. 31-39.

<sup>194</sup> De Genova & Peutz, 2010, p. 4.

<sup>195</sup> For more information about the Schengen Information System II see [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm).

<sup>196</sup> For more information about Visa Information System see [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system/index_en.htm), last accessed on 11 July 2015.

<sup>197</sup> European Dactyloscopy System established by Council Regulation 2725/2000, December 2000.

<sup>198</sup> False and Authentic Documents Online European Image Archiving System established by Joint Action adopted by the Council of the European Union, 98/700/JHA, December 1998.

<sup>199</sup> Council Regulation 343/2003.

<sup>200</sup> UNHCR, 2012 (b), p. 1: ‘Frontex has been increasingly operating in Greece since 2006’.

<sup>201</sup> Directive 2008/115/EC of the European Parliament and the Council.

<sup>202</sup> UNHCR, 2012 (b), 2012, p. 3.

<sup>203</sup> Idem.

Greece's response was again fragmented: at the end of 2007, official and unofficial reports raised the number of detention facilities to 90.<sup>204</sup>

### 3.1.3. Increasing detention time

Until that point, the maximum time limit for immigration detention in Greece was still three months<sup>205</sup> and was generally respected, apart from the cases when a person released after three months holding a deportation order was arrested again and detained for another three months period. An amendment on the legal provision<sup>206</sup> regulating detention was adopted in July 2009, allowing for a maximum detention period of up to six months, with the possibility of extension to 12 months.<sup>207</sup> Around the same time, the police made large-scale arrests of undocumented migrants. The combination of the new provisions for extending detention periods combined with mass arrests put particular strain on the existing facilities.<sup>208</sup> At the end of 2009, UNHCR made the following remarks in its annual report on Greece as a country of asylum:

*While detention of asylum-seekers who arrive in an irregular manner is not mandatory under Greek legislation, in practice they are systematically detained, along with other irregular entrants. Administrative detention is legitimised through the issuance of a deportation order within 48 hours of the arrest, accompanied by a detention order, which is lifted only following court procedures ('objections against detention'). Alternatives to detention are not considered and no individual assessment of the need to detain an asylum-seeker takes place. At several entry points, the period of detention is prolonged if the individual applies for asylum.*<sup>209</sup>

The country's asylum system was insufficient as well. According to data released by the UNHCR, in 2010, Greece was globally the country with the fourth highest number of backlogged asylum cases (48,201), behind S. Africa, the US and Ecuador.<sup>210</sup>

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<sup>204</sup> See also 'Ergon Eksivrisi', 'Immigration Detention Facilities: confinement and the subject', 2008, pp.11-13.

<sup>205</sup> Art. 44(3) Law 2910/2001.

<sup>206</sup> Art. 76 (3) Law 3386/2005 as amended by art. 48 (2) Law 3772/2009.

<sup>207</sup> UNHCR, 2009, p. 9.

<sup>208</sup> Idem.

<sup>209</sup> Idem, p. 8.

<sup>210</sup> Cabot, 2014, p.4.

### 3.1.4. Sealing the land border and sweep operations

Pressure towards Greece started escalating. In March 2012, the Austrian Interior Minister, Johanna Mikl Leitner, stated that the Greek border was open ‘like a barn door’ and the German Interior Minister, Hans-Peter Friedrich, threatened to reintroduce Schengen border controls with Greece, if refugees continued to access European Union territory through the Greek-Turkish border.<sup>211</sup>

In order to eliminate entrances through the land border, the Greek government decided to construct a fence along the 10km land strip connecting Greece and Turkey, intending to give a final solution to the migratory influx and send out the message that Greece was taking its border management seriously.<sup>212</sup> There were initial attempts to submit the construction of the fence under the European Borders Fund, but this was rejected by the European Commission and the fence was eventually financed exclusively by national resources.<sup>213</sup> Replying to a parliamentary question on 06 December 2011, Commissioner Malmström stated that ‘the European Commission would not pay for the fence as it would not effectively discourage immigrants or smugglers who would simply seek alternative routes into the European Union, either via another section of Greece’s porous border with Turkey or through the border of another EU member state.’<sup>214</sup> The UN Special Rapporteur commended the European Union for refusing to fund the fence and deemed it as an inappropriate means of responding to migration influx.<sup>215</sup>

In addition to this, the operation ‘Aspida’ (shield in Greek) was launched in mid-August 2012, deploying 1,800 additional police officers along the Evros land border<sup>216</sup> and new detention centres for refugees and migrants were erected –for the most part financed by the European Union.<sup>217</sup> In urban areas, another police operation code-named ‘Xenios Zeus’ was carried out on exactly the same time. The name of the operation, taken by the

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<sup>211</sup> ProAsyl, 2014, p. V.

<sup>212</sup> Angeli, Dimitriadi & Triandafyllidou, 2014, p.6.

<sup>213</sup> Idem. The construction was carried out between October 2011 and December 2012 and final price was 3.16 million euro.

<sup>214</sup> FIDH, Migreurop & EMHRN, 2014, p. 64 and footnote 150.

<sup>215</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 18, para 79.

<sup>216</sup> Amnesty International, 2013, p. 7.

<sup>217</sup> ProAsyl, 2014, p. VI.

ancient Greek god who protected all the foreigners under the tradition of hospitality, is considered at least unsuccessful if not inappropriate.

The operation consisted of regular round-up missions in areas with a high concentration of irregular migrants, including street and house searches. It was impressive both in terms of geographic coverage (three major cities) and intensity, since every person who looked ‘foreign’ was stopped and checked.<sup>218</sup> Despite the Greek state’s financial and communication investment on ‘Xenios Zeus’ operation, it has proven to be ineffective, since during the first year only 6% of the third country nationals checked were found to be undocumented.<sup>219</sup>

Because of the above policy, migrants were led to more dangerous journeys, crossing the Aegean Sea in small rubber dinghies, often exploited by unscrupulous smugglers.<sup>220</sup> Between August 2012 and July 2013, 101 individuals, mostly Syrians and Afghans, among them children and pregnant women, have lost their lives in at least six known shipwreck incidents.<sup>221</sup>

Commenting on the Greek immigration policy, the Special Rapporteur on Human Rights of the Migrants regretted the systematic detention of all irregular migrants detected entering Greek territory, including families and unaccompanied children, as well as the ‘sweep operations’ and subsequent detention in the context of Operation ‘Xenios Zeus’<sup>222</sup> and noted that ‘while Greece has a right to control its own borders, sealing the border is impossible, and migrants will continue arriving regardless of Greek efforts to stop them.’<sup>223</sup>

### **3.1.5. ‘EU-solidarity’ - Frontex in Greece**

By the end of 2009, about 75%<sup>224</sup> of people detected entering the EU without documents arrived initially in Greece, while by the end of 2010 the same number was

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<sup>218</sup> Angeli, Dimitriadi & Triandafyllidou, 2014, p. 9.

<sup>219</sup> Idem.

<sup>220</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 9, para 30.

<sup>221</sup> Amnesty International, 2013, p. 7.

<sup>222</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 11, para 45.

<sup>223</sup> Idem, p. 9, para 30.

<sup>224</sup> FRA, 2011, p.12.

about 90%.<sup>225</sup> They entered mainly through the Greek-Turkish land border, a fact that can be attributed in part to the cooperation between the Greek and Turkish coast guards, and the deployment of Frontex in the area.<sup>226</sup> Indeed, the Joint Operation RABIT (Rapid Border Intervention Teams) 2010 was deployed, after a request by the Greek Minister of Citizen Protection,<sup>227</sup> as ‘a situation of “exceptional and urgent” pressure was experienced’ at the Greek-Turkish border, pursuing to stabilise the situation and decrease the migratory pressure and support national authorities in building capacity. After four months, operation RABIT was replaced by operations ‘Poseidon Land’ and ‘Poseidon Sea’.<sup>228</sup>

Apart from the Frontex operations, European solidarity towards Greece was developed also financially, through four special funds.<sup>229</sup> The construction and running costs of most detention facilities were co-financed by the EU at a 75% rate.<sup>230</sup> According to a study released in October 2014, estimating the overall cost assessment of the migration and detention policies implemented in Greece during the period 2008-2013, under European financial support, detention turned out to be a particularly costly enterprise, exceeding Greece’s available annual budget.<sup>231</sup>

However, what is the reason of the European Solidarity towards Greece? It is closely linked with the idea of a common Schengen area: ‘People entering at one border crossing point are free to move and circulate across all Schengen States without border controls. Thus, Member States situated at the external land and sea borders of the EU have to allocate much more resources to border management than others.’<sup>232</sup> In addition to this, the Dublin II Regulation, by putting the burden of examination of asylum applications on the country of first entry of the applicant, it ‘has thus far-reaching consequences for a country that has practically become the single most important entry

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<sup>225</sup> *Idem* where Frontex reports are cited. See also UNHCR, 2012 (b), p. 3.

<sup>226</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 8, para 24.

<sup>227</sup> FRA, 2011, p. 8.

<sup>228</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 8, para 27.

<sup>229</sup> FRA, 2011, p. 37: EU Refugee Fund, EU External Borders Fund, EU Return Fund and EU Fund for the Integration of third country nationals.

<sup>230</sup> Angeli, Dimitriadi & Triandafyllidou, 2014, p. 10.

<sup>231</sup> *Idem*, p. 11.

<sup>232</sup> FRA, 2011, p. 36.

point of migratory flows into the EU.<sup>233</sup> After its amendment, the Dublin III Regulation 604/2013 keeps in force the abovementioned problematic provision and adds only a reserve of the rule in cases of risk of inhuman and degrading treatment, in the member state responsible for the examination of the application.

In the end of 2014, Migreurop estimated that European solidarity towards migration influx in Greece was primarily directed to the increase of external border controls, despite the well-known human rights violations taking place in the country.<sup>234</sup> Moreover, ‘establishing a policy for the reception of migrants in the region does not seem to be a priority either for Greece or for the EU.’<sup>235</sup>

### **3.1.6. Push-backs**

Although explicitly forbidden by article 19(1) of the Charter of Fundamental Rights of the European Union, collective expulsions (push-backs) have been continuously reported to take place on the Greek-Turkish border in the past. Collective expulsion can lead to direct or indirect refoulement, which is prohibited under both European and International law.<sup>236</sup>

During 2013, UNHCR in Greece,<sup>237</sup> Amnesty International<sup>238</sup> and ProAsyl<sup>239</sup> conducted field research recording repeated incidents of ‘unofficial returns’ (push-backs) either in the sea or the land border. Increased numbers of testimonies led to the conclusion that this illegal practice was widely employed by the Greek border guards and coastguards.<sup>240</sup> All those who claimed to be pushed back by the Greek authorities reported that they were never given an opportunity to explain their situation or

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<sup>233</sup> Idem.

<sup>234</sup> FIDH, Migreurop & EMHRN, May 2014, pp. 74-75.

<sup>235</sup> Idem.

<sup>236</sup> See also Amnesty International, 2013, p. 9.

<sup>237</sup> UNHCR, 2013.

<sup>238</sup> Amnesty International, 2013.

<sup>239</sup> ProAsyl, 2014.

<sup>240</sup> Amnesty International, 2013, p. 9.



challenge their deportation<sup>241</sup> and received violent or degrading treatment, while vulnerable cases were not given any special attention.<sup>242</sup>

*Some of the refugees and migrants navigating the Aegean Sea on small inflatable boats, overloaded far beyond capacity, described how they were at first relieved to see Greek coastguard boats only to discover what they believed to be a rescue was in fact an operation to send them back to their point of departure. In some cases, people deliberately damaged their boats once they spotted Greek coastguard, hoping they would be rescued and taken to Greece.*<sup>243</sup>

According to the findings of ProAsyl either on coast guard boats, islands or in informal detention places in Evros, refugees were arbitrarily detained for some hours, without being officially registered, without access to the outside world and without any food or water. In all cases, push-back victims were not officially registered by the competent authorities, nor were they asked for any personal details, apart from their nationality, which in the majority of cases reported was Syrian.<sup>244</sup> The ill-treatment on behalf of the Greek authorities could in several cases amount to torture.<sup>245</sup>

Although the Greek government was publicly refusing any such incidents, Frontex had already registered eight cases of alleged push-backs through its internal reporting mechanism by the end of August 2013.<sup>246</sup> At least three incidents of push-backs had been reported in Farmakonisi, an inhabited island close to the Turkish coast, until the end of 2013.<sup>247</sup> An estimated 123 people dead and 32 missing were reported from September 2012 to September 2013.<sup>248</sup>

Farmakonisi was meant to be the place where another tragedy was going to take place. On 20 January 2014, eight children and three women died when their vessel sank near Farmakonisi, in what seemed to be another push-back operation of the Greek Coast Guard. The incident attracted the attention of the media, with some help of the

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<sup>241</sup> Idem, p. 10.

<sup>242</sup> Idem, p. 13.

<sup>243</sup> Idem, p. 11.

<sup>244</sup> ProAsyl, 2014, p. X.

<sup>245</sup> Idem, p. 10.

<sup>246</sup> Idem, pp. 5-6 and footnote 38.

<sup>247</sup> Idem, p. 26.

<sup>248</sup> Idem, p. 36.

organisations who revealed it. The investigation into the case was closed after six months.<sup>249</sup>

### **3.1.7. Detention in the centre of migration policy**

In April 2012, the Greek Government announced the building of new detention centres with a capacity to hold up to 10,000 people, financed by the European Union, while at the same time expansion works were carried out in order to facilitate the detention of an increased number of migrants in the five pre-removal detention centres that currently existed.<sup>250</sup>

Since October 2012, asylum seekers can now also be detained for up to 18 months,<sup>251</sup> as well as migrants in return procedures; the Special Rapporteur on Human Rights of Migrants, who visited Greece at the end of 2012, regretted the excessive duration of detention of migrants, which is the maximum provided for in the EU Returns Directive.<sup>252</sup> The justification of the long detention duration as a deterrent mechanism for other potential migrants<sup>253</sup> does not seem to be accepted. Moreover, at the same period Greece is routinely detaining migrants whose deportation is impossible, *inter alia*, due to the situation in their country of origin or the non-cooperation of consular authorities and the Special Rapporteur reaffirms that this practice does not seem to comply with the purpose of detention as stated in the law, namely, to prepare for deportation and consequently should be immediately abandoned.<sup>254</sup>

As Amnesty International reports, the possibility of being detained and re-detained for up to 18 months solely because of their irregular status in Greece caused serious distress for people in detention. They could not understand why they were being held for so long and said that they received no information about how much longer they might be

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<sup>249</sup> Public appeal of the families of the dead available in <http://www.proasyl.de/en/home/farmakonisi-we-demand-justice/>, last accessed on 11 July 2015.

<sup>250</sup> CoE, 2013, p. 10, para 27.

<sup>251</sup> Presidential Decree 116/2012 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC, published in the Greek Government Gazette on 19 October 2012.

<sup>252</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 11, para 46.

<sup>253</sup> *Idem*.

<sup>254</sup> *Idem*, p. 12, para 47.

detained.<sup>255</sup> The practice of immediate detention without examination of every individual case and without the possibility of alternative measures is reported here as well.<sup>256</sup>

Since the beginning of 2013, under new Greek Government policy, all migrants who are detected when irregularly entering Greece are systematically detained for the sole purpose of their irregular migration. By criminalising the irregular status of migrants, the Greek authorities accept detention as the necessary consequence.<sup>257</sup> Moreover, detention time has already increased to 18 months for all migration related detainees, as we saw here above, and while the length of detention would appear to be a political measure aimed at deterring potential migrants from entering Greece, this has not had a deterrent effect.<sup>258</sup> It is just the despair and vulnerability of those detained that has increased.<sup>259</sup>

At the same period, The United Nations Working Group on Arbitrary Detention reported the following:

*[The United Nations Working Group on Arbitrary Detention] is of view that the imprisonment of a migrant or an asylum seeker for up to 18 months, in conditions that are sometimes found to be even worse than in the regular prisons, could be considered as a punishment imposed on a person who has not committed any crime. This appears to be a serious violation of the principle of proportionality, which may render the deprivation of liberty arbitrary. In addition, through interviews with detainees, the Working Group found that the prolonged period of detention was often perceived by potential asylum seekers as a deterrent in order to discourage them from submitting their applications.*<sup>260</sup>

### **3.1.8. Conditions of detention**

In addition to the issues mentioned above, conditions of detention facilities are found to be generally inadequate, severely overcrowded, lacking well-trained staff and

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<sup>255</sup> Amnesty International, 2013, p. 17.

<sup>256</sup> Idem.

<sup>257</sup> CoE, 2013, p.10, para 26.

<sup>258</sup> CoE, 2013, p.11, para 33.

<sup>259</sup> Idem.

<sup>260</sup> A/HRC/27/48/Add.2, 30 June 2014, p. 13, para 75.

formalised regulations and financially constrained.<sup>261</sup> The conditions are described as a ‘humanitarian crisis which should not exist in the European Union’.<sup>262</sup> Several reports of this period demonstrate the unacceptable conditions inside the immigration detention centres around the country, with the 2009 CPT report being the most illustrative:

*The findings of the 2008 visit to Greece confirm that persons apprehended by Greek law enforcement agencies continue to run a considerable risk of being ill-treated.*<sup>263</sup>

Elsewhere, the report goes on to state that:

*The CPT recalls that its first visit to Greece took place in March 1993. To date, more than 15 years after that visit, the Committee finds itself in the regrettable position that it has to repeat many of its recommendations concerning the prevention of ill-treatment... The CPT has gone to great lengths over the years to convince the Greek authorities to implement the Committee’s recommendations. The Committee has visited Greece eight times since 1993 and has also held high-level talks with the Greek authorities on two occasions, most recently in February 2007. Until now, to little avail.*<sup>264</sup>

The Doctors without Borders organisation had also released several reports on the sanitary and health conditions inside Greek detention facilities. They identify the inadequate detention conditions as the primal reason behind the diseases spread among the detainees.<sup>265</sup> The lack of access to medical care is another issue routinely reported by all organisations. The same point came out from our research. Bilal, one of the former detainees we interviewed, stressed particularly the lack of medical care and the spread of infections among the detainees.<sup>266</sup> As a result, the psychological distress is a widespread symptom in detention centres. The above mentioned inhumane living conditions in combination with ill-treatment from by the police officers, lack of information, lack of communication with the outside world and prolonged detention

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<sup>261</sup> UNHCR, 2009, p.8.

<sup>262</sup> UNHCR, 2010.

<sup>263</sup> CPT, 2009, p.26, para 52.

<sup>264</sup> CPT, 2009, p. 27, para 54.

<sup>265</sup> MSF, 2014, p. 9.

<sup>266</sup> Interview 10, answer 3.

periods, conditions that lead the detainees to despair and depression, resulting in becoming either violent towards the officers or self-destructive.<sup>267</sup>

At the beginning of 2011, after a visit in several detention centres of Evros, north Greece, FRA described the detention conditions there as inhuman<sup>268</sup> and noted that in practice, except for cases requiring immediate hospitalisation, everyone was detained temporarily for the initial period required for identification and processing in one of the detention centres, including persons belonging to vulnerable groups such as pregnant women and babies.<sup>269</sup> Limited human resources, heavy workload and absence of interpreters lead to general lack of information of the detained persons regarding the reasons and the time of detention, as well as their rights.<sup>270</sup>

Even the Hellenic Federation of Border Guards protested about the conditions of detention, describing them as dangerous, both for the detainees and the officers.<sup>271</sup> Another fact, showing the huge lack of preparation of Greek authorities regarding the detention issues, is the reported reluctance of the police officers to enter the cells in order to distribute food to the detainees, who were considered carriers of infectious diseases.<sup>272</sup>

Until the end of 2012, Greek authorities continued to place newly arrived migrants in cells in police directorates,<sup>273</sup> although Law 3907/2011 finally transposed the Returns Directive and aimed to respond to criticism of systematic detention, by creating new structures called 'reception centres' and 'pre-removal detention centres'.<sup>274</sup> The establishment of these reception centres was supposed to indicate a new policy whereby the situation of every individual would be assessed separately, vulnerable cases would be treated accordingly and therefore no longer automatic detention would take place. Detention and removal measures were only supposed to be taken after the initial

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<sup>267</sup> MSF, 2014, pp. 13-14 and Amnesty International, 2013, p. 21.

<sup>268</sup> FRA, 2011, p. 18.

<sup>269</sup> FRA, 2011, p. 22.

<sup>270</sup> *Idem.*

<sup>271</sup> FRA, 2011, p. 26.

<sup>272</sup> FRA, 2011, p.28.

<sup>273</sup> FRA, 2013, p. 81.

<sup>274</sup> FIDH, Migreurop & EMHRN, 2014, p. 66.

screening procedure. However, as the FIDH-Migreurop-EMHRN fact-finding mission notes, while systematic imprisonment seemed to have been abandoned, in practice the new ‘legal packaging masks a completely different reality: reception centres are places where freedom of movement was limited ... resulting for some in transfer to official detention centres... [thus] “reception” is in fact a euphemism for a new type of detention.’<sup>275</sup> A similar finding came out of our interviews. More specifically, Mr Rizakos told us about the stories he got from former detainees he was legally assisting. They were claiming that conditions in preremoval centres are usually worse than in police station cells, because of the large numbers of detainees in the preremoval centres (up to 90 people in a big room) and the guards’ tendency to use violence in order to control such a big crowd.<sup>276</sup>

Indeed, UNHCR in its report on Greece at the end of 2014 affirms the above finding:

*UNHCR is concerned that pre-removal detention is used for categories of individuals who should not be subject to administrative detention. This includes (i) asylum-seekers who were unable to register their asylum application before having been detained due to limited access to the asylum procedure, as described above, (ii) Syrians, as well as other persons whose return to their country of origin (e.g. Somalia, Eritrea) is not feasible, and who are unlawfully detained because they are considered a danger to public order, (iii) Syrians, as well as other persons whose return to their country of origin is not feasible, who are detained for prolonged periods of time pending the verification of their identity and nationality, (iv) persons with specific needs, including victims of torture and (v) unaccompanied separated children (UASC) who, due to serious deficiencies in the practical implementation of age assessment processes, are registered and detained as adults.*<sup>277</sup>

It further notes that

*Third-country nationals who are intercepted in Greece without residence status or documentation are subject to administrative detention. The purpose of this policy is to identify individuals, to manage removals, including to boost voluntary returns, and to deter further arrivals. During the last two years, detention policies and practices have become more restrictive, affecting many who are in need of international protection, mainly through*

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<sup>275</sup> Idem, p. 68.

<sup>276</sup> Interview 4, answer 3.

<sup>277</sup> UNHCR, 2014, p. 28.

*significant prolongation of the detention period. When detention is imposed, it is done without a proper individual assessment or consideration of alternatives to detention. Particularly concerning is the absence of a proper judicial review, and the prolongation of the detention for periods that can exceed the maximum 18-month timeframe allowed by the Returns Directive. The conditions of administrative detention are also seriously problematic.*<sup>278</sup>

### **3.1.9. Procedural safeguards**

Together with indefinite detention, undocumented migrants were often facing procedural obstacles in the process of applying for international protection. Indeed, many detainees who wished to apply for international protection while being in detention reported that they were discouraged from doing so by the police officers who informed them that asylum seekers are supposed to be held longer than persons who do not apply for asylum.<sup>279</sup> In interviews with Amnesty International, the Greek authorities confirmed that asylum seekers would be held in detention until their asylum application had been processed. They stated that this was necessary arguing that the asylum system had previously been abused.<sup>280</sup>

When the Special Rapporteur on Human Rights of Migrants visited Greece, at the end of 2012, he was concerned by the violation of several other procedural safeguards: the lack of professional interpretation,<sup>281</sup> the lack of information over the reasons of detention in a language that detainees could understand,<sup>282</sup> the lack of automatic judicial review,<sup>283</sup> the lack of legal assistance,<sup>284</sup> the limited contact with the outside world,<sup>285</sup> the insufficient training and sensitisation of staff in detention officers<sup>286</sup> and lack of less coercive measures.<sup>287</sup>

In what appears to be a very concentrated description of the detention practice in Greece until the beginning of 2013, the Committee on Migration, Refugees and Displaced

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<sup>278</sup> *Idem.*

<sup>279</sup> Amnesty International, 2013, p. 18.

<sup>280</sup> Amnesty International, 2013, p. 18.

<sup>281</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 13, para 54.

<sup>282</sup> *Idem*, para 55.

<sup>283</sup> *Idem*, para 56.

<sup>284</sup> *Idem.*

<sup>285</sup> *Idem*, p. 14, para 59.

<sup>286</sup> *Idem*, para 60.

<sup>287</sup> *Idem*, para 62.

persons of the Parliamentary Assembly of the Council of Europe achieves to give the whole picture:

*Detention is applied systematically without an individual assessment in each case. It is a matter of first resort rather than last resort. Alternatives to detention are currently not used or explored. Moreover, procedural safeguards are lacking. There is no automatic judicial review of detention decisions. Legal aid and information to detainees about the reasons for and the length of their detention are far from sufficient, and interpretation and access to a lawyer is not guaranteed, thus making it almost impossible to challenge detention.*<sup>288</sup>

### **3.1.10. Case Law on immigration detention**

All the testimonies and reports on the unacceptable conditions in the Greek detention centres lead to a stunning ECtHR ruling, *M.S.S. v. Belgium and Greece*,<sup>289</sup> which suspended the return of asylum seekers to Greece, according to the Dublin II Regulation, as a violation of article 3 ECHR, since they face a real risk of being subjected to inhuman or degrading treatment. More specifically, according to the court, all these reports

*describe a similar situation to varying degrees of gravity: overcrowding, dirt, lack of space, lack of ventilation, little or no possibility of taking a walk, no place to relax, insufficient mattresses, dirty mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care [...] [as well as complaints] of insults, particularly racist insults, proffered by staff and the use of physical violence by guards.*<sup>290</sup>

According to a non-legal interpretation this judgment ‘implies that the Greek state’s poor adherence to EU law at the level of individual asylum seekers undermines the EU as a territorial, legal and moral entity.’<sup>291</sup>

However, even before banning the returns to Greece altogether, the ECtHR had repeatedly condemned the country for the unacceptable detention conditions and the lack of procedural safeguards for the detainees. For example, the cases of *Tabesh v.*

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<sup>288</sup> CoE, 2013, p. 12, para 34.

<sup>289</sup> ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011

<sup>290</sup> *Idem*, para. 162.

<sup>291</sup> Cabot, 2014, p.25.



Greece on 26 November 2009,<sup>292</sup> *S. D. v. Greece* on 11 June 2009<sup>293</sup> and *A. A. v. Greece* on 22 July 2010<sup>294</sup> concerned asylum seekers who were held unlawfully in inhuman and degrading detention conditions. In all three cases the Court found violations of Article 3 (prohibition of inhuman or degrading treatment) and of Article 5(1) and 5(4) (right to liberty and security).<sup>295</sup>

The detention of minors was also addressed by the Court in the case *Rahimi v. Greece* on 5 April 2011.<sup>296</sup> *Rahimi* was a minor migrant from Afghanistan, who had entered Greece without legal authorisation and was held in a detention centre in Lesbos together with adults and subsequently released with a view to his expulsion and without any assistance for accommodation or legal counselling. The Court found violation of Article 3, Article 13 (right to an effective remedy) and Article 5(1) and 5(4).

On 17 January 2012, another judgment against Greece was published. The case of *Zontul v. Greece*<sup>297</sup> concerned the rape of an immigrant held in an asylum seekers' detention centre with a truncheon by one of the Greek coastguard officers supervising him. According to the applicant, the authorities had refused to allow him to be examined by a doctor and those responsible had not been adequately punished, since the Greek Appeals Tribunal had not considered that his rape with a truncheon constituted an aggravated form of torture.<sup>298</sup> The Court found a violation of Article 3.

The detention of a an Afghan family, including an eight-month pregnant woman and four minors, in the Pagani detention centre on the island of Lesbos, was the object of the case *Mahmudi and Others v. Greece*.<sup>299</sup> The Court took into account several reports documenting the inhuman conditions of the detention centre in order to conclude that

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<sup>292</sup> ECtHR, *Tabesh v. Greece*, No. 8256/07, 26 November 2009.

<sup>293</sup> ECtHR, *S. D. v. Greece*, No. 53541/07, 11 June 2009.

<sup>294</sup> ECtHR, *A. A. v. Greece*, No. 12186/08, 22 July 2010.

<sup>295</sup> ECtHR, Press Country Profile: Greece, May 2015, p. 6.

<sup>296</sup> ECtHR, *Rahimi v. Greece*, No. 8687/08, 5 April 2011.

<sup>297</sup> ECtHR, *Zontul v. Greece*, No. 12294/07, 17 January 2012.

<sup>298</sup> ECtHR, Press Country Profile: Greece, May 2015, p. 6.

<sup>299</sup> ECtHR, *Mahmudi and Others v. Greece*, No. 14902/10, 31 July 2012.



concerned had not yet been possible, constituted reason enough for the judge to extend the detention.<sup>305</sup>

It is noteworthy however that in January 2013 the Criminal Court of First Instance of Igoumenitsa<sup>306</sup> acquitted fifteen migrants who were charged with escaping from a police station cell in Igoumenitsa, where they were being detained for different periods, between nine and forty five days. The Court was based to ECtHR's case law and accepted that the detention conditions were a serious and imminent threat for their health.<sup>307</sup> The judge was also reported to have said 'You escaped humiliation, that's why you are innocent.'<sup>308</sup>

## **3.2. Section B: After January 2015**

### **3.2.1. Governmental change**

The national elections in Greece in January 2015 brought a new left-wing government in power. Given the contemporary debt crisis and the ongoing negotiations between the Greek state and its lenders, the current focus is mainly on economy. However, there are also significant changes going on in the field of migration policy. Before the elections SYRIZA, the leftish party who won the majority, had announced the creation of a Ministry of Migration and the closure of specific immigration detention centres, among other measures.<sup>309</sup> Soon after the victory of SYRIZA protests started breaking out in several detention centres around the country by detainees who had been long waiting

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<sup>305</sup> A/HRC/23/46/Add.4, 18 April 2013, p. 13, para 57.

<sup>306</sup> Decision No 682/2012 of Criminal Court of First Instance of Igoumenitsa.

<sup>307</sup> The above decision is also mentioned here: CoE, 2013, p. 11. para 29.

<sup>308</sup> As reported here: <http://tvxs.gr/news/ellada/athooi-katigoroymenoi-metanastes-poy-apedrasan>, <http://www.tovima.gr/society/article/?aid=501726>, last ccessed on 11 July 2015 and here: <http://www.902.gr/eidisi/metanastes/6688/igoymenitsa-athoothikan-15-metanastes-katigoroymenoi-gia-apodrasi-drapeteysan>, last accessed on 11 July 2015.

<sup>309</sup> See for example: <http://www.irinnews.org/report/101047/the-real-winners-of-greece-s-elections-refugees>, last accessed on 11 July 2015.

and hoping for their release. At the beginning of February 2015, two detainees committed suicide and another one died from pathological causes.<sup>310</sup>

After these incidents, governmental officials visited the detention centre of ‘Amygdaleza’, near Athens, and the entrance of the public and the press was permitted for the first time. Soon after articles, photos<sup>311</sup> and videos<sup>312</sup> of that visit flooded the conventional and social media, reporting inhuman detention conditions and desperate people.

Following his visit to Amygdaleza detention centre and after expressing his shock for what he saw,<sup>313</sup> the Alternate Minister of Citizen Protection, Mr. Ioannis Panousis, together with the Alternate Minister of Migration Policy, Ms. Anastasia Christodoloupoulou made a joint statement, which was welcomed by UNHCR as a move in the right direction.<sup>314</sup> Recognising and addressing a number of problems concerning the administrative detention of third country nationals in Greece, they announced immediate measures to be taken:

- revocation of the Ministerial Decision allowing for the prolongation of detention beyond 18 months,
- immediate release and referral to accommodation facilities of vulnerable groups,
- release of asylum seekers as well as persons whose detention exceeds a six month period and
- Immediate implementation of measures to substantially improve detention condition, as well as the use of alternative measures to detention.<sup>315</sup>

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<sup>310</sup> UNHCR Greece, Press Release, 19 February 2015, available at: <http://www.unhcr.gr/nea/artikel/24dcef5d13ebd29a1559fc4d7339ad10/unhcr-welcomes-the-envisaged-changes.html>, last accessed on 11 July 2015.

<sup>311</sup> See for example some photos here: <https://left.gr/news/fotografies-apo-stratopedo-sygentrosis-metanaston-tis-amygdalezas>, last accessed on 11 July 2015.

<sup>312</sup> See for example a video of that day: <https://www.youtube.com/watch?t=510&v=IEUt55FpKCCc>, last accessed on 11 July 2015.

<sup>313</sup> See for example: <http://www.reuters.com/article/2015/02/14/us-greece-politics-immigrants-idUSKBN0LIOMJ201502144>, last accessed on 11 July 2015.

<sup>314</sup> UNHCR, 2015 (a).

<sup>315</sup> Idem.

Indeed, until the end of February, more than 300 people were released from Amygdaleza and five other detention centres around the country.<sup>316</sup> Domestic and international NGOs welcomed this policy shift as well. ‘The Greek Council for Refugees welcomes the actions taken by the new government to restore the rule of law. The enforcement of detention as a last resort and the use of alternative measures has been one of GCR’s long standing demands towards the authorities,’ the GCR Director Sandy Protogerou is reported to have said.<sup>317</sup> The Director of International Detention Coalition, Grant Mitchell, also said: ‘The recent shift in Greek policy is extremely welcome. There is no evidence that detention deters irregular migration and it is in fact extremely harmful to individuals and costly to the state.’<sup>318</sup>

### **3.2.2. Detention practice today**

This shift in Greek migration policy issues was immediately followed by a huge, unprecedented, increase of arrivals in the Greek islands. UNHCR in Greece estimates that, until the 3<sup>rd</sup> of July, 77.100 refugees have arrived since the beginning of 2015,<sup>319</sup> the vast majority of whom coming from Syria. At the moment that the present thesis is being written, the Greek islands of eastern Aegean Sea are flooded by people, mainly refugees, arriving by hundreds every day. The coincidence in time with the touristic period, so much anticipated by the local communities in the context of the current economic crisis, has created an explosive mixture.

Regarding the new detention policy of Greece, one of the six advisors to the Minister of Migration Policy, told us<sup>320</sup> that since the joint statement of the two Ministers in late February, the detention time never exceeds the initial provision of Law 3386/2005 for a six-month detention. Prolongation of detention is applied only in cases of severe criminal offence. Regarding the implementation of the SYRIZA’s manifesto commitment to shut down all detention centres, Mrs Spyropoulou explained that when

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<sup>316</sup> See for example: [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_26/02/2015\\_547697](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_26/02/2015_547697), last accessed on 11 July 2015.

<sup>317</sup> International Detention Coalition, 2015.

<sup>318</sup> *Idem*.

<sup>319</sup> UNHCR, 2015 (c).

<sup>320</sup> Discussion with Georgia Spyropoulou, Advisor to the Minister, Ministry of Migration Policy, Athens, 21 June 2015.

the Greek government informed the European Commission for its intention to close all detention centres in Greece, the Commission's answer was that any such action should be accompanied by a budgetary adjustment; that is to say return of money to the European Commission. Under the present financial condition of Greece, such action is simply out of the question. Consequently, five months after SYRIZA coming to power, detention centres are still operating. However, discussions with the Commission are ongoing on the basis of cost effectiveness of detention centres. The Ministry of Migration Policy is arguing that maintaining the centres costs more than shutting them down.<sup>321</sup> This is an argument that the Commission seems willing to take into consideration, according to Mrs Spyropoulou.

Regarding the way of operation of the newly founded Ministry of Migration Policy, most of our interlocutors held the opinion that it is severely understaffed, it is usually dealing with the issues of actuality first and still has not developed a far-reaching migration policy plan.

Discussing the detention practices of the present government, a Senior Protection Officer of UNHCR in Greece expressed the opinion<sup>322</sup> that still many steps to be taken. For example, according to an initial ministerial announcement, detention of minors was supposed to stop being implemented and they would be transferred to accommodation facilities. However, due to lack of staff adequately trained to conduct age assessment and the lack of available places in accommodation facilities, to date minors are being detained for as much as three months, in the Amygdaleza detention centre.

During our interview, the UNHCR Associate Legal Officer for Detention, George Dafnis, explained the main changes in detention practice after January 2015, as deriving from his field research:

- a) Most of the detainees that have exhausted the period of 6 months are released.
- b) Asylum seekers are released after the exhaustion of the above mentioned detention period (6 months).

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<sup>321</sup> This was clearly showed in Angeli, Dimitriadi & Triandafyllidou, 2014.

<sup>322</sup> Discussion with Daphne Kapetanaki, Senior Protection Officer, UNHCR office in Athens, Athens, 16 June 2015.

c) Identified vulnerable cases are not detained and UASC are detained until their transfer to reception facilities.

e) While before the joint announcement of the two Alternate Ministers more than 1,700 detainees were detained in the pre-removal centre of Amygdaleza, less than 500 third-country nationals are detained currently. Similarly, most pre-removal detention facilities currently host much fewer people than their capacity. However, all remain open and there is no sign that they are going to be closed.

f) Regarding the detention conditions, they have been ameliorated just because the detention facilities are not overcrowded. However, there are still serious gaps, including the lack or insufficiency in medical services at the detention facilities.

In general, although the detention policy has been much ameliorated, particularly due to the fact that detention is not normally prolonged for more than 6 months, there are a lot of necessary actions to be taken by the Police HQs and the two Alternate Ministers towards the implementation of their announcement and a less restrictive policy of detention.<sup>323</sup>

Information is being gathered by organisations, activists and individuals as well. For example, according to an activist who visited the Drapetsona police station on 11 June 2015,<sup>324</sup> there were detained migrants in the cells, despite the reassurances of the Ministry of Citizen Protection that this practice has been abandoned. When asked about how they perceive governmental policy on immigration detention, our interviewees from the civil society gave conflicting responses. The activists had a rather negative opinion of the change, arguing that nothing substantial changed, apart from some detainees' releases in February 2015.<sup>325</sup> The NGO workers and the journalist, being more informed and having a picture closer to the one described by the UNHCR Detention Officer here above, hold a positive, yet critical position.<sup>326</sup>

According to one of our interlocutors who is well aware of the situation, there are two main reasons why the new government has not yet achieved the changes it announced. Firstly, they had not taken into account all the hard data they had to deal with. For example, closing down the detention centres funded by the European Commission

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<sup>323</sup> Interview 8, answer 5.

<sup>324</sup> Email from Eleni Polykreti, Activist, Member of the team 'RefugeesGr', 11 June 2015.

<sup>325</sup> Interviews 1, 2 & 3, answers 5.

<sup>326</sup> Interviews 4,5 & 6, answers 5.

would result to budgetary adjustment and probable return of money, which the government was not capable of fulfilling.<sup>327</sup> Secondly, there was a slight shift in the political will of the Minister of Citizen Protection. Although shocked by the detention conditions he faced in Amydgaleza on early February 2015, he currently holds the opinion that detention is a suitable practice for immigration control. Concerning the detention conditions after February 2015, the same interlocutor explains that they are slightly better because there are fewer people being detained and for a shorter period. As for deportations, a really small number of deportable foreigners are actually being deported, because of lack of respective state funds, while there are still cases of non-deportable ones under detention. Finally, regarding the great numbers of Syrians arriving in Greece at the time this thesis is being written, people with access to the field report that most of them succeed in leaving the country either by plane, with false travel documents, either on foot, taking the ‘west-Balkans road route’<sup>328</sup> passing through FYROM.

### **3.3. Section C: Civil society response to detention**

“As soon as there is a power relation, there is the possibility of resistance”

Michel Foucault

As stated in the theoretical part of the present thesis, detainees in immigration detention centres are subject to the direct sovereign power of the state. According to Foucault’s above insight, being subjected to such a power could lead to actions of resistance. In the case of the Greek immigration detention centres, such reactions can be found not only among migrants’ and refugees’ movements but among the Greek civil society as well. A series of NGOs, political entities, autonomous antifascist groups and even individuals have been struggling against Greek immigration detention centres, each using their own *modus operandi*. Without forgetting that ‘NGOs in Greece are caught in ambivalent positions with regard to the form and extent of their responsibilities’,<sup>329</sup> we interviewed

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<sup>327</sup> This point was also made by the Minister’s advisor hereabove.

<sup>328</sup> UNHCR, 2015 (c).

<sup>329</sup> Cabot, 2014, p. 75.



several NGO members and individuals dealing with immigration detention issues, trying to outline their knowledge, attitude and activity on the matter. We then moved to the interim step which is the media, asking one journalist who is dealing with the topic of migration and immigration detention for many years. On the other side of the balance we found a governmental official and an international organisation's officer. We will deliberately place the governmental opinion first and then conclude with the UNHCR Detention Officer.

### **3.3.1. No Lager**

Although some type of detention centres could be found in Greece since the end of '90s, as stated here above, they started spreading around the border areas towards the middle of '00s. In the report of 'No Lager', an assembly of autonomous groups and initiatives against immigration detention, we read about more than 90 detention 'sites' in 2008, specialised facilities or police stations, where undocumented third country nationals are being held in degrading conditions.<sup>330</sup> The 2008 CPT report supports this statement: 'the findings of the 2008 [CPT] visit to Greece confirm that persons apprehended by Greek law enforcement agencies continue to run a considerable risk of being ill-treated.'<sup>331</sup> 'No Lager' is an example of a self-organised group of far-leftwing individuals and anarchists, which was formed in 2013 in order to act against immigration detention.<sup>332</sup> Their main actions consist of demonstrations outside detention facilities, the organisation of public discussions over the topic, the keeping in contact with detainees in order to provide them with material or legal assistance while in detention and once released. This low-level activity enables them to interact directly with the foreigners in question and obtain first-hand information. They use maximalistic discourse, demanding the immediate and total ban of immigration detention. The papers and documents they release show that they are well informed both in the practical and the legal aspect of the matter. However, due to ideological constraints, this group is not cooperating with other, more institutionalised civil society actors. It is worth noting that when we approached them via email asking them to respond to our interview form, they

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<sup>330</sup> No Lager, 2014, p. 4.

<sup>331</sup> CPT, 2008, p. 26, para 52.

<sup>332</sup> Information collected from: <https://nolager.espiv.net/>, last accessed on 11 July 2015.

refused to do so explaining that promoting academic knowledge is not among their scopes.<sup>333</sup> They would be happy to see us in their assembly helping the movement against immigration detention in practice and not theoretically, as they said, replying anonymously to our email.

### **3.3.2. Autonomous group from northern Athens**

However, a 30-year-old member of another autonomous antifascist group of the northern neighbourhoods of Athens which has similar overall characteristics with ‘No Lager’ and was also founded on the same year, talked to us about his experience in the anti-immigration detention movement. Regarding his knowledge on the legal framework regulating immigration detention and detainees’ rights, Kostas said he is pretty well aware of the detention framework and detainees’ rights in Greece, but he could not claim the same for the international and European level. He assumes that the other frameworks are similar though. As for the Greek legal context, he wanted to particularly stress the frequent changes and the fragmented way of implementation of the respective rules.<sup>334</sup> Despite ‘No Lager’s’ refusal to give us some insight into their modus operandi, Kostas’ description on his involvement in the anti-immigration detention movement could allow us to draw an analogy between the two groups. First aid items, referral to lawyers and psychological support is what Kostas, together with his group, first offered to the detainees they met in three detention centres they visited, two in Athens and one in Mitilini. Given that these groups are primarily political entities, they always have the tendency to raise the matter to a political level. Like ‘No Lager’, Kostas’ group also believes that simply by providing detainees with material or psychological support they do not really address the core of the problem. They put much stress on making their findings public in assemblies and demonstrations, trying to raise awareness and mobilise the people to act.<sup>335</sup> These political objections coincide

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<sup>333</sup> Email from ‘No Lager’, 20 June 2015.

<sup>334</sup> Interview 1, answer 1.

<sup>335</sup> Interview 1, answer 1.

with Miriam Ticktin's analysis<sup>336</sup> on the distinction between 'political' action, aimed toward radical change that disrupts the status quo and the 'antipolitics' of humanitarianism.<sup>337</sup> As Cabot puts it, Miriam Ticktin

[...] argues following Giorgio Agamben that in claiming to stand outside politics through the moral imperative to offer care and support, humanitarian organizations often reproduce structures of power and violence. The migrants, asylum seekers and refugees they serve often remain caught in these dynamics of exclusion. Therefore, she argues compellingly, rather than enabling radical change, aid organizations often reinforce the 'established order'.<sup>338</sup>

'No Lager' and Kostas' team are very much following this line.

### **3.3.3. Initiative Against Detention Centres**

Apart from the above political groups, there are several other low-level organisations and other entities that are actively participating in the anti-immigration detention movement in Greece. We had the chance to talk with Niovi, a 35-year-old member of the 'Open Initiative against Detention Centres'. This Initiative was founded at the end of 2013, like 'No Lager', with slightly different characteristics from the latter. As we read in the initiative's web page, its main goals are 'to shut down detention centres, to forbid long-term detention of refugees in camps and police cells, to grant political asylum to refugees coming from war zones (primarily the Syrians), to obtain free access to detention centres for social and political organisations, medical and legal organizations, NGOs and solidarity groups.'<sup>339</sup> The Initiative addresses every citizen concerned with the matter, aiming to create a big campaign with international impact. The main actions undertaken consist of assemblies, demonstrations and events raising public awareness. However, some of the initiative's literature we happened to review did not contain very accurate information regarding the exact location of several detention centres and the legal provisions mentioned there were not up to date. In comparison to 'No Lager', the 'Open Initiative against Detention Centres' seems to be more inclusive and popular, but less 'technically accurate' and aggressive. Niovi

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<sup>336</sup> Cabot, 2014, p. 112.

<sup>337</sup> Idem.

<sup>338</sup> Cabot, 2014, p. 112.

<sup>339</sup> Declaration found in: <https://nodetention.wordpress.com/contact/>.

somehow confirmed this remark by saying that she has only basic knowledge of the legal framework and she only knows detainees' rights through their violations. As for particular actions, one she could recall was a demonstration through the streets of the city of Corinthos, accompanied by brochure distribution. The demonstration ended up in front of the detention centre of the city, one of the biggest and the 'toughest' in the country, where they were attacked with teargas by the police.<sup>340</sup>

### **3.3.4. Piraeus Open Migrants School**

Another group addressing immigration detention, but from another perspective, is the 'Piraeus Open Migrants School'. Founded in 2006, it is an organisation of teachers and professors that provides free Greek language lessons to migrants and is regularly organising events, excursions and festivals trying to promote the integration between Greeks and foreigners.<sup>341</sup> They have also formed smaller teams who visit detention facilities in order to teach Greek to the detainees and facilitate their integration into society after their release or simply help them understand and communicate with the Greek authorities, claim their rights and feel safer. We had the chance to take an interview from Giannis Baveas, a 46-year-old Greek teacher and treasurer of the 'Piraeus Open Migrants School' since 2012. He talked about his experience teaching Greek to a detained migrant for three months, through prison bars in the transfer department of the Piraeus Police Headquarters. Regarding the legal framework of detention, Giannis admitted he knows very little about it.<sup>342</sup> This might seem quite surprising, given his position in the board of the organisation, however, considering his main profession and the main scope of the 'Piraeus Open Migrants School', it is not inexplicable.

### **3.3.5. Aitima**

Moving to a more professional level of the Greek civil society, we tried to get in contact with NGOs working with detained or released migrants and refugees. First we talked with the head of the NGO 'Aitima' (meaning claim/request in Greek), Spyros Rizakos.

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<sup>340</sup> Interview 2, answer 3.

<sup>341</sup> Information collected through: <http://asmpeiraia.blogspot.gr/>.

<sup>342</sup> Interview 3, answer 1.

‘Aitima’ was founded in 2008 having the legal assistance to migrants and refugees and their representation in front of the authorities as its main tasks. Mr Rizakos is a 55-year-old lawyer who has been working on detention issues since 2003. Consequently, his knowledge of the legal framework is extensive. He argued that European and domestic legislation on the topic are identical.<sup>343</sup> In the context of his work with ‘Aitima’ Mr Rizakos has visited many detention facilities around the country (Amygdaleza, Corinthos, Fylakio and various police stations) as a member of free legal assistance teams or reporting delegations. Regarding the involvement of ‘Aitima’ in the anti-immigration detention movement, he said that the only thing an NGO can do is to constantly report any violations to the domestic authorities or the international forum, trying to attract publicity. ‘Aitima’ has been doing so for the past years, but detention had been a central political decision of the former government, untouched by the NGOs’ criticism, according to Mr Rizakos.<sup>344</sup> Although this kind of action is being criticised by activists as too moderate or ineffective, we should not forget that the ECtHR’s groundbreaking decisions on inhuman and degrading detention conditions in Greece<sup>345</sup> were much based on such NGOs’ reports.

### **3.3.6. Babel Daily Centre**

Another Greek NGO, famous for its significant and extensive work with vulnerable migrants and refugees in need of psychological assistance, is the ‘Babel Daily Centre’. It provides free socio-psychological support to migrants and refugees in need. ‘Babel’s’ main aim is to fight against the double prejudice that migrants with psychological problems face. It is the oldest and most famous NGO providing such type of assistance.

As Ioanna Alexia, a 29-year-old psychologist participating in ‘Babel’ explained, they mainly work with former detainees who visit ‘Babel’s’ office in order to ask for help. The main feelings that former detainees share are despair, stress and anger.<sup>346</sup> Ioanna has also visited and worked inside many detention facilities around Athens (Amygdaleza, Petrou Ralli, Aspropyrgos, Elliniko, Airport detention facility and police

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<sup>343</sup> Interview 4, answer 1

<sup>344</sup> *Idem*, answer 2.

<sup>345</sup> ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011.

<sup>346</sup> Interview 5, answer 3.

stations' cells) while working for another medical NGO and that is how she obtained fairly good knowledge of the Greek legal framework about detention and detainees' rights.<sup>347</sup> 'Babel's' work, although totally personalised, thus affecting only a small number of people at a time, has a huge positive impact on the quality of the everyday life of the people concerned. It is worth noting that while conducting the field research for the present thesis, 'Babel' had been mentioned many times by the activists we were in touch, as the place where migrants and refugees with psychological issues can find immediate help and relief.

### **3.3.7. A freelance journalist**

Placed between the authorities and the society, journalists have much to contribute to the public discussion over immigration detention. Since 2009 and the beginning of the Greek crisis, there has been a tremendous change in the domain of Greek media. Several TV stations and newspapers have declared bankruptcy, while independent web pages were appearing every day. Social media claimed a big part of the public's daily information, especially regarding the younger ages. At the same time, xenophobia and racist speech is constantly present. Angeliki Boubouka is a 43-year-old freelance journalist who used to work for one of the biggest Greek newspapers before the crisis. She has been researching and writing several articles on immigration and immigration detention during the last 20 years and has therefore obtained a very good knowledge of the international, European and domestic legal framework on immigration detention.<sup>348</sup> However, Aggeliki admitted that the increased public interest and awareness on the issue, owed to the sociopolitical changes in Greece and the big migration influx into the country, has provoked further journalistic interest, during the last three years.

### **3.3.8. Transparency and Human Rights Secretary-General**

As we have mentioned here above, after January 2015 there has been a governmental change in Greece, with a left-wing party holding government office for the first time in Greek political history. The change in the 'habitus' of governmental officials is obvious

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<sup>347</sup> Idem answers 1&2.

<sup>348</sup> Interview 6, answer 1.

for anyone trying to approach them; in the past it would have been impossible for a master student to communicate directly with the Transparency and Human Rights Secretary General of the Ministry of Justice. Fortunately, in our case a simple email asking for the Secretary's contribution to our research was enough. Maybe this was thanks to Mr Papaioannou's, the Secretary General's, personal active involvement with the civil society institutions. Before his appointment as a Secretary General in the Ministry of Justice he was the president of the National Commission for Human Rights for many years. Consequently, he has a very good knowledge of the international, European and domestic legal framework for detention and he has personally met migrants and refugees both in detention and after their release, while conducting field research for the National Commission's and Greek Ombudsman's joint report on Greek detention centres.<sup>349</sup> To our perception, this is a big chance for the Greek civil society to take advantage of people like Mr Papaioannou who are its natural allies and try to expand its activities and create a more robust web of organisations. Nevertheless, even well educated and competent people in governmental positions cannot overcome the severe financial constraints that the country is facing at the time that the present thesis is being written.

### **3.3.9. UNHCR Associate Protection Officer for Detention**

There is one 'umbrella' organisation for every individual or group occupied with migration and refugees in Greece. This is UNHCR. In the past, the Office in Greece has been conducting refugee status determination interviews, awarding the refugee status to those entitled, since the state was lacking the respective expertise and administrative structure. Furthermore, UNHCR used to work on individual cases, assisting refugees through the Greek legal and administrative system. However, this kind of action has not been part of the Greek UNHCR Office for almost 20 years now. Since the undertaking of the Refugee Status Determination process by the Greek state, the UNHCR Office in Greece has been focusing on policy and advocacy activities. However, given the relatively small number of people and groups occupied with migration and refugees in Greece and the fact that UNHCR has a steady flow of money, disconnected from the

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<sup>349</sup> Interview 7, answer 2.

ever problematic financial condition of the Greek state, the Greek Office of UNHCR is still functioning as the core reference for everyone in this field. On the one hand, this practice keeps the UNHCR Office close to the field with first-hand information; on the other hand, it causes internal conflict to the officers, between their mandate to focus on policy and their capacity to actually help in practice here and now. While working as an intern in the Protection Department of the UNHCR Office in Greece, I often saw the Protection Officers struggling between the Office's official no-involvement position and their personal relations with activists and NGO workers who were asking for practical help.

Having these things in mind, we met George Dafnis, the UNHCR Associate Legal Officer for Detention. Naturally, the question whether he has knowledge of the international, European and domestic legal framework on detention, was not applicable in his case. George has visited every Greek screening, pre-removal and detention facility and several police stations where migrants and asylum seekers are illegally detained.<sup>350</sup> He describes the UNHCR mandate in the above facilities as following: 'UNHCR provides information for detainees in all the above facilities with limited capacity and monitors the detention conditions and policy, as well as identifies vulnerable cases, tries to reduce arbitrary detention and promotes alternatives to detention.'<sup>351</sup> Regarding its interaction with the official civil society and especially the NGOs, UNHCR is regularly organising free capacity building workshops and Giorgos is personally presenting all legal updates and sharing his experience from detention facilities with NGO workers. Finally, UNHCR is also co-financing, together with the Greek government, several NGO projects regarding immigration detention.

Looking at all our interviews together, before moving on to two former detainees' testimonies, we realise that there are two points where almost all interviewees agree: the feelings they have towards detainees and former detainees and the non-justification of the detention policy in Greece. A deep feeling of sorrow is being shared by Kostas (autonomous antifascist group), Giannis (Piraeus Open Migrants School), Mr Rizakos

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<sup>350</sup> Interview 8, answer 3.

<sup>351</sup> Idem.



(Aitima NGO), Ioanna (psychologist in Babel) and George (UNHCR Detention Officer), while Kostas, Mr Rizakos and Ioanna also share feelings of rage and anger for their inability to help effectively.<sup>352</sup> Another interesting finding is that the three people coming from low/unofficial civil society groups (Kostas, Niovi and Giannis) share the feeling of solidarity with the detainees or former detainees. This is maybe indicative of the higher level of the activists' personal engagement in comparison to NGO workers and it also explains their aggressive modus operandi. Another point in common among the activists, in contrast with NGO workers, is their poor knowledge of the legal framework.

When questioned about their opinion on the justification of immigration detention and the reasons behind the intensive deployment of this practice by the Greek authorities, almost all interviewees unanimously held the opinion that migrant and refugee detention is by no means justified. Most of them mentioned the case of criminal offences as an acceptable derogation of the non-detention principle. Kostas gave a geopolitical perspective in his answer by arguing that it is an 'attack to common sense to imprison people who have been displaced because of the EU's, and consequently Greece's as a member state, political and military interventions in those regions [countries of origin]'.<sup>353</sup> As for the reason behind the deployment of such a practice by the Greek state, they all pretty much agree that it is primarily due to Greece's obligations under European law. They generally see a European central policy choice behind the systematic detention of third-country nationals and a pressure towards Greece to impede those people from reaching central Europe. Kostas and Angeliki gave an internal sociopolitical dimension to the systematic detention. There is a conservative part of the Greek population, they argue, which considers migrants and refugees as a threat, so the detention of the latter pleases the former and makes them feel safer. George, the UNHCR Detention Officer, after stressing that detention should be a last resort measure, deployed only after all alternatives have been considered and exhausted, he

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<sup>352</sup> See also the analysis for the ethical tragedy of NGO workers in Greece by Cabot, 2014, p. 73 and after.

<sup>353</sup> Interview 1, answer 4.

claims that ‘Greece often uses detention to boost the voluntary returns as well as to deter migration flows’.<sup>354</sup>

Before concluding with some thoughts on the interviews and the overall Greek civil society engaged with immigration detention, we shall add here the testimonies of two former detainees.

### **3.3.10. Saba: ‘I will never forget Greece and what Greeks did for me.’**

Saba is a 32-year-old refugee woman from Eritrea. She speaks English with a low voice, she is smiling but also seems a bit afraid. She is suffering from epileptic seizures. We met her one evening after her visit to the ‘Babel Daily Centre’ where she had an appointment with a psychologist. Before leaving her country in 2012, she was in detention for three years by the local regime. She managed to pass through Greece and reach Rome, Italy. There she was caught for illegal entry and returned to Greece, where she was detained in the Petrou Ralli Aliens Department for two months in 2013. She was held there for just two months because of her bad health condition. When we asked her whether she received any information regarding her rights while in detention or if she was offered any alternatives to detention, she responded immediately: ‘I didn’t know my rights. Nobody informed me. They didn’t offer any alternatives’.<sup>355</sup> As for the detention conditions she experienced, she said that generally they were not good, but she considers herself to be particularly lucky. She was held in a room with only 3 other women and was allowed to go outside, in the courtyard, twice per day. What she wanted to stress though, was the help she received from lawyers and doctors who visited her every day in the detention centre. They helped her get out in a short period of time and apply for asylum. After receiving the refugee status, Saba is now hosted in a shelter and ‘Babel’ doctors take regular care of her. She expressed her gratitude many times for the support and solidarity she experienced in Greece. She is now preparing to leave Greece for Norway, to find her sisters there, but she said that she will never forget the Greeks that stood by her. When she was asked about her opinion on the justification of immigration detention, she replied that she was very surprised that this is happening in

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<sup>354</sup> Interview 8, answer 4.

<sup>355</sup> Interview 9, answers 1&2.

Greece. ‘When I left my country, I thought Greece and Europe was a safe place, but it is not.’<sup>356</sup> Finally, regarding the developments after the governmental change, she said that some things are better regarding medical treatment in hospitals, but for her personally, not much has changed.<sup>357</sup>

### **3.3.11. Bilal: ‘I like being free. Ελεύθερος.’**

The second testimony comes from Bilal, a 25-year-old Afghan. According to his narrative, Bilal left Afghanistan when he was only 8 years old and since then he was living in Pakistan where he was working in a call centre. He left Pakistan chased by Talibans who wanted him to work for them as a translator. He passed through India, Iran and Turkey until he reached Greece through the Evros river. He was caught and given a deportation order to leave Greece within a month. Instead he went to Athens, hiding in an apartment for 6 months and then went to Patras in order to try to cross the Adriatic Sea to Italy. In 2012, he was caught in Patras and was held in a coastguard’s facility for 5 days. Then he was sent to Akrata, another small city next to Patras and finally he ended up in the Corinthos detention centre for sixteen months and three days. As in the case of Saba, no alternatives were offered to him and no one explained to him his rights as a detainee. Bilal is describing his experiences in detention facilities smiling and using very good Greek. He did not want to go into detail about the days in Patras and Akrata. ‘Twelve people in one small room, without blankets. It was difficult there, but it is over. Do not ask how it was.’<sup>358</sup> In the Corinthos detention centre, one of the biggest in Greece, although overpopulation was a central issue (75 people in a big room) the main problem, according to Bilal, were the bad hygiene conditions and the total lack of medical care. The blankets and mattresses provided were old (he recalls the manufacture date imprinted on one mattress: 1975) and dirty. After a while, all detainees had dermatological problems. Scratching was so intense, that Bilal still has visible marks on his arms. In addition, there were no doctors visiting the detention centre. No washing machines and no shoes or clothes provided to those who did not have any. Moreover, there was hot water once a week, even in winter.

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<sup>356</sup> Interview 9, answer 4.

<sup>357</sup> Idem, answer 5.

<sup>358</sup> Interview 10, answer 3.

He recalled an event of unrest in the detention centre in 2013. Detainees locked themselves into the rooms and started a hunger strike demanding decent living conditions. The guards promised to provide everything they asked for and gave them four hours to leave the rooms. Soon after, they broke in using massive quantities of tear gas. ‘After that I was sleeping for two days and then I was dizzy for three days’ said Bilal. However, he recalled good police officers as well. Some of them acted like a ‘mafia’ as he said, but others were kind to them. Bilal’s story affirmed in a way one of Butler’s remarks about ‘the sovereign power being increasingly dislocated from the core agencies of the state and judicial authorities and being found in the suspension of law and the exercise of prerogative power in the name of security and emergency by what she calls “petty sovereigns” -executive administrators and managerial officials, whose discretionary power is heightened yet unmoored from systems of legitimacy and accountability.’<sup>359</sup>

When asked about the justification of immigration detention, Bilal tried to show understanding of Greece’s problem with the huge migration influx, but he stressed that he is not a criminal to be incarcerated. He further complained: ‘Even in Korydallos [Athens’ biggest criminal prison] it is better. A person in Corinthos had spent six years in Korydallos and he told me so. Why is our life worse in these [detention] facilities?’<sup>360</sup> Finally, he did not think that things are any better since the elections and the governmental change in January 2015. ‘I just like being free. Ελεύθερος [meaning free in Greek].’<sup>361</sup>

### **3.3.12. Concluding thoughts on civil society response**

What we tried to do in this last part of the chapter is an x-ray of the Greek civil society engaged with immigration detention issues. Of course, the sample here is small and just indicative, due to time and space constraints. Nevertheless, we can still draw some guiding lines and get the basic idea of how this ‘micro-system’ works. We call it ‘micro-system’ because it is both comparatively small in size and complex enough.

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<sup>359</sup> Hall, 2012.

<sup>360</sup> Interview 10, answer 4.

<sup>361</sup> Idem, answer 5.

Individuals, autonomous political groups and low specialisation organisations, forming the unofficial civil society, are working side by side with official NGOs, under the umbrella of UNHCR. One preliminary remark is the lack of cooperation, coordination and consistency between the members of the unofficial civil society on the one hand, and between unofficial and official civil society on the other. As we showed above, some of the autonomous groups refuse to cooperate with anyone else because of ideological objections, but this is not the case for the rest of them. Unprecedented financial constraints, understaffed organisations and huge migration influx at the present time are among the reasons. Already back in 2010, Heath Cabot, after her extensive fieldwork, hosted by Greek Refugee Council, the biggest NGO dealing with refugees in Greece, observed that ‘Greek NGOs [...] are in concrete and highly visible ways, frequently at the limits of capacity in terms of resources and labour power.’<sup>362</sup>

However, there is another Greek ‘idiom’ that might play a role here. Professional activism is almost unknown in Greece. Activists and NGO workers are considered to work ‘voluntarily’, thus professional requirements such as organisation, strategy planning, cooperation and networking are not widely shared among the people of this domain. The bright side is that this lack of professionalism is counter-balanced by a surplus of solidarity and direct human contact. As shown by their interviews, activists, NGO workers, UNHCR officers share feelings of sorrow and rage for this situation. Moreover, Saba confirmed in her answers that this solidarity is actually received and much appreciated by those in need. Although these actions do not change the structure of the system radically, they offer immediate relief to migrants and refugees in need, especially in the absence of state protection.

Reading this surplus of solidarity in a slightly different way, Cabot points out that ‘Workers often characterised the assistance that they provided as intensely individual and unofficial, grounded in personal offers of kindness rather than institutional, material forms of support.’<sup>363</sup> This strange reaction of the Greek NGO workers, led Cabot to a brilliant insight, according to our opinion. She connects it to the ancient Greek cultural

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<sup>362</sup> Cabot, 2014, p. 75.

<sup>363</sup> Cabot, 2014, p. 101.

norm of ‘filoksenia’ [meaning literally ‘love towards the stranger’ in Greek]. ‘Most often translated as hospitality, it is a long-standing vernacular framework through which “strangers” or “foreigners” are not incorporated but welcomed. Yet in being welcomed as guests, strangers are further marked as outsiders in a territory of home.’<sup>364</sup>

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<sup>364</sup> Cabot, 2014, p. 100.

## CONCLUSION

Immigration detention seems to be a losing game for undocumented migrants and asylum seekers entering Europe and hoping to find a land of freedom, equality and prosperity. For some years now, the scales between citizens' security and foreigners' protection have been tipping against the latter. In the case of Greece, the interconnected tri-dimensional legal framework of international, European and domestic Law, although quite coherent internally, fails to deliver the protection declared. Detention, if ever applied, should be the measure of last resort, the 'ultimum refugium', as the three legal frameworks state.

However, every legal declaration is collapsing in front of the Greek state practice. Up to now, systematic detention as a measure of first resort was applied almost indiscriminately to undocumented migrants, asylum seekers and refugees in Greece. The EU has been funding the construction and functioning of Greek detention centres, despite the fact that the violations committed there have been widely and repeatedly reported and this method of immigration control has proven to be ineffective. It is difficult to believe that the EU has no knowledge of this situation.<sup>365</sup> It is rather more probable that 'other EU member states appear only too happy for Greece to act as their gatekeeper. But the policies and practices along the Greek border do not just shame Greece: they shame the European Union as a whole. They expose the bitter irony of European countries pressing for peace abroad while denying asylum to, and risking the lives of those who seek refuge in Europe from conflicts in their homelands'<sup>366</sup>, says the Amnesty International. The shift in Greek immigration detention policy, after the governmental change, despite the maintenance of the same legal framework, clearly shows that when there is a (political) will, there is a way.

Theoretically contested, but legally solved, immigration detention is a horrible reality when it comes to Greek practice. While more and more people were being detained, the notion of solidarity emerged through the Greek society. Power provokes resistance, said

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<sup>365</sup> Fotiadis, 2015, p. 42 where the researcher and journalist claims that, during 2013, European Commission was well aware that the Greek state was systematically detaining even Syrian refugees, using money from the European Returns Fund, but the Commission was not reacting due to political reasons.

<sup>366</sup> Amnesty International, 2013a, p. 6.

Foucault. Autonomous groups are appearing mainly after 2012-13, but they do not achieve to connect to NGOs traditionally dealing with immigration detention. Nevertheless, they all contribute a great deal to the amelioration of everyday life of a limited number of detainees and former detainees. Unfortunately, the whole action is fragmented and the Greek civil society does not seem to be able to carry the burden that the state is incapable of carrying. Lack of financial and human resources are the primal reasons. Are they the only ones? While discussing about foreigners' rights in Greece, a Greek immigration scholar observed with some mockery: 'You don't get anything in Greece because you are entitled to it, but because Greeks are "kind" enough to give it to you.'<sup>367</sup>

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<sup>367</sup> Cabot, 2014, p. 101.



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*M.S.S. v. Belgium and Greece* [GC], No. 30696/09, 21 January 2011.

*Nolan and K. v. Russia*, No. 2512/04, 12 February 2009.

*Peers v. Greece*, No. 28524/95, 19 April 2001.

*Rahimi v. Greece*, No. 8687/08, 5 April 2011.

*Saadi v. the United Kingdom* [GC], No. 13229/03, 29 January 2008.

*S.D. v. Greece*, No. 53541/07, 11 June 2009.

*Tabesh v. Greece*, No. 8256/07, 26 November 2009.

*Zontul v. Greece*, No. 12294/07, 17 January 2012.

## **CJEU**

*El Dridi alias Soufi Karim*, C-61/11, 28 April 2011.

Joint cases of *N.S. v. United Kingdom* and *M.E. v. Ireland*, C-411-10 and C-493-10, 21 December 2011.

## **GREEK COURTS**

Decision No 682/2012 of Criminal Court of First Instance of Igoumenitsa

## **ANNEX II: TABLE OF LEGISLATION**

### **International**

Universal Declaration on Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

### **Council of Europe**

Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Fourth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1963)

Twelfth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000)

### **European Union**

European Charter of Fundamental Rights (2000)

Schengen Borders Code (562/2006/EC)

Returns Directive (2008/115/EC)

Asylum Procedures Directive (2013/32/EU)

Reception Conditions Directive (2013/33/EU)

Dublin II Regulation (343/2003/EC)

Dublin III Regulation (604/2013)

## **Greece**

Law 3386/2005 on Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory

Law 4075/2012

Law 3907/2011 on the Establishment of an Asylum Service and a First Reception Service and transposition of Returns Directive 2008/115/EC

Presidential Decree 113/2013 on minimum standards of procedures in Member States for granting and withdrawing refugee status

Greek Legal Council, Advisory Opinion No 44/2014

Ministerial Decision 4000/4/59-st/2014

Ministerial Decision 803/2015



## **ANNEX III: INTERVIEWS**

### **Questions (for interviews 1-8)**

1. What is your knowledge of the legal framework on detention of migrants and asylum seekers in the international, European and Greek level? Do you know the detainees' rights?
2. Have you ever met in person migrants and asylum seekers under detention or after their release? What are your feelings towards these people? Are you involved in any action/activity related to immigration detention?
3. Have you ever visited an immigration detention facility? And if yes, for what reason? Could you describe briefly your experience?
4. To your personal opinion, is detention of migrants and asylum seekers justified, and how? Why do you think this practice is deployed in Greece?
5. After the recent governmental change, is there any shift in the immigration detention policy and practice in Greece? And if so, what exactly?

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### **Interview No 1**

Mitridis Kostas - 30 years old - Private Employee (Member of an autonomous group of the northern Athens)

- 1) I am not well informed on an international and European level, though I guess I can have a fairly clear view based on what is in force on a national level, which I think I am pretty aware of, as far as it can be possible. The last mention, due to the fact that there are certain ambiguities in the legal framework which, apart from these ambiguities, changes frequently and, even more, it is not actually implemented aside from exceptional occasions and always after a lot of suffering by those concerned.
- 2) I have met immigrants in detention some of whom were set free, others who were previously in detention and others who were living in an "illegal" status trying to avoid arrest. Emotions were mixed: sorrow, rage, feeling of guilt for their position and especially the characteristic feeling of drowning conveyed by someone in such a

dead end. The action I took was to help with first aid items, to refer them to lawyers that could help and to support them psychologically, putting myself next to them, expressing my solidarity to them. However, someone quickly understands that this kind of support to these people has a very limited perspective on the realistic-material level. This is why I consider my contribution through my participation in the unmediated solidarity movement that organizes meetings, demonstrations and other such actions, to be more important.

- 3) I have been out of the detention center in Panagi in Lesvos, in Amygdaleza in Attiki, in the transportation department in P. Ralli and in various police departments that actually operate as detention centers due to the fact that the official ones are overcrowded. In most of the occasions I was found there during protests. Watching closely the barbarity of the unreasonable detention of these people fills you with grief and rage. The strongest emotion, though, is solidarity that is expressed between the detained and those who protest and of course the courage immigrants get when they know that some other people out there care about them and are interested, breaking the racist paroxysm of the Mass Media and of a big part of the society.
- 4) No, it is not justified in any case. We are talking about people who were forced to leave their countries, either due to immediate military interventions or financial policies implemented by the E.U. and , consequently, by Greece as well, since we are part of the E.U. It is an attack in common sense for the uprooted to be imprisoned by those who are responsible for this. More specifically, the Greek state implements the immigrants' detention because this is the mission it has in the framework of E.U. and that is why it is financed. Moreover, (the Greek state implements the detention policy) in order to satisfy the conservative reflexes of a big part of the Greek society. The most important achievement of outlawing immigrants is that they become an easy prey for local bosses to exploit due to their bad condition. In short, the Greek state takes part in the military and financial wars that cause the immigration. Then it imprisons immigrants and is paid for that and finally, it delivers those who are released ready for exploitation by the local bosses...
- 5) Aside from some communication declarations referring to the closure of detention centers in the beginning of the new government, no substantial change has taken

place. Detention centers are baptised as reception or hospitality centers and things remain the same.

## **Interview No 2**

Niovi Diatsigou - 35 years old - Member of the 'Initiative against Detention Centres'

- 1) I know the basics of the legal framework, I have not studied the whole of it. I know the rights of those under detention due to their constant violation.
- 2) Yes, I have met some of them in person. It is not easy to describe my feelings. The only thing I wanted was to express my solidarity to them.
- 3) I visited a few months ago the detention center in Korinthos within the framework of a call of the open initiative against the detention centers for a demonstration towards this detention center. The demonstration started from a central city spot and during protest until we reached the detention center informative material was distributed. There was tension when we arrived there and we were attacked by the police forces with teargas. Later on a small group was allowed to enter the place and informed us on what they saw and learned.
- 4) Under no circumstances and for not any reasons is the detention of the immigrants or the asylum seekers justified. Greece implements it because it serves the official European migration policy.
- 5) The expectations for changes towards a positive direction fell apart soon. The first weeks after the government shift some detained people were left free (those who were in detention for more than 18 months), however, arrests continue, detention conditions remain wretched, camps are refilled (even with people who have already completed the 18-month detention limit and get arrested for a second or third time)

### **Interview No 3**

Giannis Baveas - 46 years old - Professor of Greek in the 'Piraeus Open Migrants School' and treasurer for the past three years

- 1) Unfortunately, my knowledge on this is short and fragmentary.
- 2) Yes, I have met (immigrants and refugees) twice or three times before. My feelings for these people are sorrow, tenderness, solidarity. In one of my students who was held for 3 months in the police transfer center in Piraeus, I used to go there every week and teach him Greek through the prison bars.
- 3) The police transfer center in Piraeus, in Asklipiou str., where there are third world conditions (although I am not sure if it still hosts refugees).
- 4) In my opinion, the registration and the detention of those who have a criminal record are only justified.
- 5) I am not sure that anything has changed drastically aside from the release of hundreds of suffering souls, without provision for anything more than that.

### **Interview No 4**

Spyros Rizakos - 55 years old - Lawyer-Sociologist and Director of the NGO 'Aitima'

- 1) Very well. I personally deal with detention matters as a lawyer from 2003, on a national and an international level. The European and national legislation match after all on the rights issue. Our organization is a member of the international network of NGOs International Detention Coalition.
- 2) Yes, I have personally spoken with many people throughout these years who were at the time or previously detained. The first thing somebody observes is their deteriorated mental condition. Especially of those who are in a prolonged detention. Before the government shift the detention lasted for even more than 18 months. The feelings caused by this situation is grief and anger. Grief for what these people are going through and anger because we can do nothing to help them. We tried to

intervene a lot, protesting for the violations and the conditions that we encountered. This is a central policy of the previous government, though. There is little we can do aside from the interventions and nothing actually effective. In May 2014 we sent together with ECRE and GCR a letter, regarding the prolonged inactivity of the system to adapt to its obligations to protect human rights in the country.

- 3) Yes, I have visited several detention centers around Greece many times. For example, I have entered the detention centers in Amygdaleza, in Korinthos, in Fylakio, in Orestiada and in many police stations. Especially in the last ones, the detention of people is prohibited for more than a few hours, however they are kept for over a year in police stations such as the one in Agios Panteleimonas for instance. One year without a single walk in the forecourt. Among others, each center has different problems. The pre-departure centers particularly are completely inadequate since they are old camps that have been transformed. For example the detention center in Petrou Ralli has a lot of deficiencies. From interviews with ex-detained it has arisen something unexpected even for me. They were frequently telling me that conditions in pre-departure centers were usually worse than in police departments. This was happening because, for instance, they were putting in a single room 90 people, which meant that they could not calm down or even stand. Due to the large amount of people, police officers were unable to handle the situation and resorted to violence very easily.
- 4) Nobody should be kept just for an administrative violation. It is unfair as far as I am concerned, since other factors are missing. Moreover, it is unacceptable for asylum seekers who cannot be deported to be detained. I believe the detention works as a prevention to these people so as to go back or not to come at all. It is a political choice. It should have been the ultimate measure to resort to, as the International Law indicates.
- 5) Certainly some things have changed. One should point out, though, that announcements have not been carried out yet, except for the six-month detention limit. From our research it results that people are no longer in detention for more than 6 months. This is a progress compared to the previous status of an almost indefinite detention. However, there are still people who cannot be deported, people

who seek asylum as well as vulnerable people that are held (in detention centers). In some units there is a certain improvement in the medical services, such as in Petrou Ralli.

## **Interview No 5**

Alexia Ioanna - 29 years old - Psychologist (Babel Daily Centre)

- 1) I know the topic pretty well. Until 2013, I was working inside detention centers and had a better knowledge of the framework in comparison to now.
- 2) As part of my job in the Medical Intervention, I have met many people who are under detention and as part of my job in the K.H. Babel I have worked with people after their release. The meeting with people in detention for me involved feelings of sorrow and despair for the detained and feelings for anger and hopelessness for the conditions and the reality of the detention.
- 3) I have visited the following detention centers: Amygdaleza, Underaged Amygdaleza, P. Ralli (foreigners), Aspropyrgos (foreigners), El. Venizelos (airport's detention center), Elliniko, Marousi as well as some police stations. I have also visited the Center for first reception in Samos. It is not easy to describe this experience in short. The detention centers are an environment of unfreedom and violence of many forms and in several occasions with difficult staying conditions (place, population, cleanliness). People are wretched (mostly in prolonged detention), with feelings of despair, anxiety and anger.
- 4) No, it is not justified, unless in occasions with penal accusations. The reason it is implemented is unknown to me. The institution of imprisonment has a long history in humanity. I guess the detention of foreigners aims to stop the immigration and often results in the intimidation and poverty of this population.
- 5) I am not aware of the exact changes in the legislation and its implementation, with regard to the refugees' detention right now. As far as I know I believe that a positive change has happened. Nevertheless the change regarding the immigrants and the

refugees (and in general the minorities and everyone who is “different”) does not have to do with a political or legal change but with a change and some more care for culture.

## **Interview No 6**

Angeliki Boubouka - 43 years old - Freelance Journalist

- 1) I know the legal framework in general as a journalist, since I had dealt with relevant issues some times during the past 15-20 years. I believe I ‘ve learned more things the last 3 years due to the rise of the immigrating flows, the political/social contrasts that take place and the increase of the social awareness and the informing on the matter. I know pretty well their basic rights and the specific protection the asylum seekers deserve on an international, european and national level.
- 2) I have not met any.
- 3) I haven’t visited any.
- 4) I believe their detention is unjustified, since there is no reason to force restrictive measures upon people on the move seeking ways of surviving. I believe that Greece implements it (the detention policy) firstly for compliance reasons, to a long perception established in Europe- and to the legislation that derives from this perception- that separates emigrants and refugees as unwanted to its societies and tries to prevent them from settling here. The –even temporary- detention works as a reassurance to the societies that have accepted this separation, since it is a symbolic promise that the unwanted foreigners live in isolation and soon will be driven off. Another reason why I believe the detention policy is implemented in Greece is because it operates as a diversion to the Greek state’s disability to fundamentally deal with the following:

- a) Practical issues regarding the immigrating flows (= inability to organise the reception, registration and support of them until they leave, those who want to)
  - b) The embodiment (for short or big periods of time) of part of them in the greek society, as well as
  - c) The pressure from the E.U. to restrain emigrants and refugees and keep them away from other member-states
- 5) I believe that the current greek government has made some positive changes regarding this issue. The reception of the immigrants and the asylum seekers does not automatically result in their detention at the entrance points by the police and the coastguard as it used to do the previous years, but in the registration of them in open areas. There is also provision for setting this kind of open areas with basic infrastructure at the entrance spots, even if it has not been carried out yet. Of course, the above have to do with the fact that the beginning of the new government coincided with the big rise of the emigrating flows from Mediterranean in 2015, which does not leave time for building detention camps for so many people, even if the government wanted to. However, in combination with the policy change regarding the entrance prevention in the greek maritime borders (= the coastguard does not drown them before they reach the greek coasts) I think that the lack of detention in the entrance spots reflects the mood for a different policy in the migration issue. This mood for policy change I believe is expressed with the resistance of the government to the pressure of the conservative parts of the local societies (and of the right opposition) to prevent the immigrants'/refugees' entrance in the islands or not to send them in the inland.

### **Interview No 7**

Kostis Papaioannou - 48 years old - Transparency and Human Rights Secretary-General, Ministry of Justice



- 1) Pretty well. I am aware of their rights pretty well.
- 2) Yes, both in detention and afterwards. I took part in the publication of a report and of recommendations to the Greek state on behalf of the National Committee for Human Rights and the Citizen's Counsel after an autopsy conducted in all the detention centers in the Evros region.
- 3) (See previous answer). The experience was revealing because it showed the direct relation between detention conditions, security and behavior of guards and guarded.
- 4) Only under very strict time and other conditions, that are distant to the current situation.
- 5) Yes, towards the positive direction but it hasn't been implemented yet (the different policy) and the circumstances make this implementation extremely tough.

### **Interview No 8**

George Dafnis - 31 years old - UNHCR Associate Legal Officer/Detention

- 1) I have an excellent knowledge of all the three legal frameworks.
- 2) I meet migrants and asylum seekers in detention all the time. I feel sorrow and rage for their lost time in detention. They have to start from zero once released. But I also feel happy whenever they are released, because until very recently, it was not easy at all to be released.
- 3) I have visited every pre-removal detention centre and screening facility and a lot of police stations where migrants and asylum seekers are illegally detained. UNHCR provides information for detainees in all the above facilities with limited capacity and monitors the detention conditions and policy, as well as identifies vulnerable cases, tries to reduce arbitrary detention and promotes alternatives to detention.

As for the detention conditions, Greece has been condemned several times for inhuman detention conditions by the ECtHR, since the detention conditions are

largely below the international standards. The main problem, at least till the end of 2014, was the routine prolongation of detention, even over 18 months.

- 4) According to the international and European law there are certain provisions that allow the use of detention for migrants and asylum seekers, but only as a measure of last resort and exceptionally. Alternatives to detention should be explored beforehand and detainees should be released when the reason of detention, provided by law, no longer exists. Greece uses detention often to boost the voluntary returns, as well as deter migration flows.
- 5) Following the formal announcement of the Alternate Ministers of the new Ministry of Interior and Administrative Reconstruction on the 17th of February for the immediate revocation of the Ministerial Decision allowing for the prolongation of detention beyond 18 months, the immediate release and referral to accommodation facilities of vulnerable groups, the release of asylum seekers as well as persons whose detention exceeds the six months, the immediate implementation of measures to substantially improve detention conditions, the use of alternative measures to detention as well as the closure of the pre-removal center of Amygdaleza some positive developments have taken place.
  - a) The most of the detainees that have exhausted the period of 6 months are released.
  - b) Asylum seekers are released after the exhaustion of the a/m detention period (6 months).
  - c) Identified vulnerable cases are not detained and UASC are detained till their transfer to reception facilities.
  - e) While before the joint announcement of the two Alternate Ministers more than 1700 detainees used to be detained in the Pre-removal center of Amygdaleza, less than 500 TCNs are detained currently. Similarly, the most pre-removal detention facilities host currently much less than their capacity. However, all remain open and there is no sign that they are going to be closed.

f) Regarding the detention conditions, they have been ameliorated just because the detention facilities are not overcrowded. However, there are still serious gaps, including the lack/insufficiency of the provision of medical services in the detention facilities.

In general, although the detention policy has been much ameliorated, particularly due to the fact that the detention is not normally prolonged for more than 6 months, there are a lot of necessary actions to be taken by the Police HQs and the two Alternate Ministers towards the implementation of their announcement and a less restrictive policy of detention.

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### **Questions (for interviews 9-10)**

1. Where, why and for how long have you been detained? Were you offered any alternatives to detention?
2. What do you know about the international, European and Greek legal framework governing detention of migrant and asylum seekers? Do you know the detainees' rights? Did anyone explained them to you while in detention?
3. Can you briefly describe the conditions of detention? Where there any doctors, lawyers or activists visiting the facility?
4. To your personal opinion, is detention of migrants and asylum seekers justified, and how? Why do you think this practice is deployed in Greece?
5. After the recent governmental change, is there any shift in the immigration detention policy and practice in Greece? And if so, what exactly? Has anything changed for you personally?

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### **Interview No 9**

Saba - 43 years old - Refugee woman from Eritrea, former detainee

- 1) I was in Petrou Ralli for 2 months in 2013 because I didn't have papers. They caught me in Rome and brought me back. I wanted to go to Norway. They never

offered any alternatives. I was released because I have serious health issues. I was 3 years in detention in Eritrea, before coming here.

- 2) I don't know the law and I didn't know my rights when I was detained. Nobody informed me there.
- 3) We were 4 women in one small room. We could go outside two times per day, in the morning and in the evening. Doctors and lawyers came inside and they helped me a lot. They were seeing everyday because I am sick and I need help. I was very lucky. I am very lucky. But generally the conditions inside were not good.
- 4) I am really surprised that this is happening here. When I left my country I thought that Greece and Europe is a safe place. I am very surprised, I cannot say anything else.
- 5) Not much. I don't think that things have changed for me.

## **Interview No 10**

Bilal - 25 years old - Asylum seeker man from Afghanistan

- 1) I came into Greece through the Evros river, from Turkey. Others were cutting the fence with a tool. I was caught and given a deportation order to leave Greece within a month. Instead I came to Athens, hiding in an apartment for 6 months and then went to Patras to go to Italy. In 2012, I was caught in Patras because I didn't have papers. Then they sent me to Akrata. Then to Corinthos detention centre for sixteen months and three days. No alternatives were offered to me.
- 2) No one explained my rights to me and I didn't know anything.
- 3) In Patras, 48 hours in a container and in Akrata, 18 days in a police station, it was difficult. Twelve people in one small room, without blankets. It was difficult there, but it is over. Do not ask how it was. In Corinthos we were 75 people in a big room. We had blankets and mattresses but they were really old and dirty. I remember reading on one mattress the year: 1975. Then we all had dermatological problems. Scratching all the time. Look at the marks on my

arms. No doctors were visiting us. No washing machines and no shoes or clothes if we didn't have any. And we had hot water once a week, even in winter.

Once I had a health problem, my mouth became swollen and they took me to the hospital in Corinthos. But there were so many people waiting there. We came back to the detention centre without seeing any doctors. I stayed like this for a week.

In 2013 there was a riot in the detention centre. We locked ourselves into the rooms and started a hunger strike demanding decent living conditions. The guards promised to provide everything we asked for and gave us four hours to leave the rooms. Soon after, they broke in using massive quantities of tear gas. After that I was sleeping for two days and then I was dizzy for three days. But there were some good police officers too. Some others acted like a 'mafia'. Some private lawyers were coming in the detention centre. They took a lot of money for the people there and they did nothing. There was just one guy, Giorgos, who didn't take money and helped a lot of people to get out of the centre. And there were also some people from NGOs in Europe, I remember from France, Italy, UK and Norway, who visited the centre but without a camera.

- 4) I know Greece has a big problem with many refugees. But we are without any crime here. Even in Korydallos it is better. A person in Corinthos had spent six years in Korydallos and he told me so. Why is our life worse in these [detention] facilities?
- 5) Nothing is any better after January 2015. I just like being free. Ελεύθερος.

2015

# Detention of third-country nationals as an *ultimum refugium* within t reasoning, practice, systematic violations and the role of non-state actors: the case of Greece

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