

UNIVERSITÉ DE MONTPELLIER

European Master's Degree in Human Rights and Democratisation

Academic Year 2014/2015

# **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**

Author: Athanasia Georgopoulou

Supervisor: Christophe Maubernard

## **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.

## Table of Contents

|  |    |
|--|----|
| Introduction.....  | 1  |
| 1. Chapter I: Theoretic Foundation of immigration detention..... | 4  |
| 1.1. Introductory thoughts.....                                  | 4  |
| 1.2. Sovereignty.....  | 5  |
| 1.3. Security.....   | 7  |
| 1.4. Detention.....  | 8  |
| 2. Chapter II: Legal Framework.....                              | 12 |
| 2.1. Introductory thoughts.....                                  | 12 |
| 2.2. International Legal Order.....                              | 12 |
| 2.2.1. Definition.....   | 13 |
| 2.2.2. Prescription by law.....                                  | 13 |
| 2.2.3. Non arbitrariness.....                                    | 13 |
| 2.2.3.1. Exhaustive list of detention grounds.....               | 14 |
| 2.2.3.2. Proportionlity test.....                                | 14 |
| 2.2.3.3. Alternatives to detention.....                          | 15 |
| 2.2.4. Non discrimination.....                                   | 15 |
| 2.2.5. Maximum limits.....                                       | 15 |
| 2.2.6. Procedural safeguards.....                                | 16 |
| 2.2.7. Conditions of detention.....                              | 16 |
| 2.2.8. Independent monitoring.....                               | 17 |
| 2.3. Regional legal order: Europe.....                           | 17 |
| 2.3.1. Definition.....   | 18 |
| 2.3.2. Prescription by law.....                                  | 18 |
| 2.3.3. Non arbitrariness.....                                    | 19 |
| 2.3.3.1. Exhaustive list of detention grounds.....               | 20 |
| 2.3.3.2. Proportionlity test.....                                | 21 |
| 2.3.3.3. Alternatives to detention.....                          | 21 |
| 2.3.4. Non discrimination.....                                   | 22 |
| 2.3.5. Maximum limits.....                                       | 22 |
| 2.3.6. Procedural safeguards.....                                | 22 |
| 2.3.7. Conditions of detention.....                              | 23 |
| 2.3.8. Independent monitoring.....                               | 24 |
| 2.4. Domestic legal order: Greece.....                           | 24 |
| 2.4.1. Definition.....   | 25 |
| 2.4.2. Prescription by law.....                                  | 25 |
| 2.4.3. Non arbitrariness.....                                    | 26 |
| 2.4.3.1. Exhaustive list of detention grounds.....               | 26 |
| 2.4.3.2. Proportionlity test.....                                | 27 |
| 2.4.3.3. Alternatives to detention.....                          | 27 |

|  |    |
|--|----|
| 2.4.4. Non discrimination.....                               | 28 |
| 2.4.5. Maximum limits.....                                   | 28 |
| 2.4.6. Procedural safeguards.....                            | 29 |
| 2.4.7. Conditions of detention.....                          | 30 |
| 2.4.8. Independent monitoring.....                           | 30 |
| 2.5. Coherence between the three legal orders.....           | 31 |
| 3. Chapter III: The Greek Case.....                          | 35 |
| 3.1. Section A: How we got here.....                         | 35 |
| 3.1.1. A long story short.....                               | 35 |
| 3.1.2. International and European developements.....         | 37 |
| 3.1.3. Increasing detention time.....                        | 38 |
| 3.1.4. Sealing the land border and sweep operations.....     | 39 |
| 3.1.5. ‘EU-solidarity’ and Frontex in Greece.....            | 40 |
| 3.1.6. Push-backs.....                                       | 42 |
| 3.1.7. Detention in the centre of migration policy.....      | 44 |
| 3.1.8. Conditions of detention.....                          | 45 |
| 3.1.9. Procedural safeguards.....                            | 49 |
| 3.1.10. Case law on immigration detention .....              | 50 |
| 3.2. Section B: After January 2015.....                      | 53 |
| 3.2.1. Governmental change.....                              | 53 |
| 3.2.2. Detention practice today.....                         | 55 |
| 3.3. Section C: Civil society response to detention.....     | 58 |
| 3.3.1. No Lager.....   | 59 |
| 3.3.2. Autonomous group from northern Athens.....            | 60 |
| 3.3.3. Initiative Against Detention Centres.....             | 61 |
| 3.3.4. Piraeus Open Migrants School.....                     | 62 |
| 3.3.5. Aitima.....   | 62 |
| 3.3.6. Babel Daily Centre.....                               | 63 |
| 3.3.7. A journalist.....                                     | 64 |
| 3.3.8. Transparency and Human Rights Secretary-General.....  | 64 |
| 3.3.9. UNHCR Associate Protection Officer for Detention..... | 65 |
| 3.3.10. Saba.....  | 68 |
| 3.3.11. Bilal.....   | 69 |
| 3.3.12. Concluding thoughts on civil society response.....   | 71 |
| Conclusion.....  | 73 |
| Bibliography.....  | 74 |
| Annexes  |    |
| I. Table of case law.....                                    | 87 |

|      |                           |     |
|------|---------------------------|-----|
| II.  | Table of legislation..... | 89  |
| III. | Interviews.....           | 91  |
|      | Interview No1.....        | 91  |
|      | Interview No2.....        | 93  |
|      | Interview No3.....        | 94  |
|      | Interview No4.....        | 94  |
|      | Interview No5.....        | 96  |
|      | Interview No6.....        | 97  |
|      | Interview No7.....        | 98  |
|      | Interview No8.....        | 99  |
|      | Interview No9.....        | 101 |
|      | Interview No10.....       | 102 |