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Meeting: 1265 meeting (20-22 September 2016) (DH)

Communication from a NGO (Amnesty International) (19/05/2016) in the case of M.S.S. against Greece (Application No. 30696/09).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1265 réunion (20-22 septembre 2016) (DH)

Communication d'une ONG (Amnesty International) (19/05/2016) dans l'affaire M.S.S. contre Grèce (Requête n° 30696/09) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2016)454 : Communication from a NGO in M.S.S. v. Greece.

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AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: M.S.S. V. BELGIUM AND GREECE, APPLICATION NO 30696/09

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlement, adopted by the Committee of Ministers on 10 May 2006.

In light of Greece's obligations under the European Convention on Human Rights, as well as other provisions of international human rights and refugee law, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the general measures that the Greek government has taken to date to comply with the judgment of the Grand Chamber of the European Court of Human Rights in the case of *M.S.S. v Belgium and Greece*.

In the judgment, the Grand Chamber's indication of individual measures for its execution was made "*without prejudice to the general measures required to prevent other similar violations in the future*".¹

Amnesty International wishes to share with the Committee of Ministers the following concerns regarding the required general measures:

1. Shortcomings in the recent law reforms and practices in Greece on asylum determination procedures in light of the implementation of the EU-Turkey agreement of 18 March 2016, and continuing impediments of access to asylum;²
2. Shortcomings in law and policy reforms regarding immigration detention and substandard detention conditions;
3. Detention of unaccompanied children.

¹ M.S.S. v Belgium [GC], Application No. 30696/09, Judgment of 21 January 2011, para. 400.

² On content of EU-Turkey agreement see - http://europa.eu/rapid/press-release_MEMO-16-963_en.htm

1. Shortcomings in the recent law reforms and practice on asylum determination procedures in light of the implementation of the EU-Turkey agreement and continuing impediments in access to asylum

In its March 2015 assessment of the M.S.S. judgment regarding Greece, the Committee of Ministers at its 1222nd meeting noted that the recently established asylum services including the Asylum Service and the First Reception Service had a positive impact on the effectiveness of the asylum procedure, and encouraged the Greek authorities to pursue further implementation of the measures envisaged in the Greek Action Plan on asylum and migration management in relation to the asylum procedures.³ The Committee of Ministers also invited Greek authorities to take the necessary steps to guarantee the right to free legal aid in the asylum procedure.

The Committee of Ministers also requested from the Greek authorities information about the establishment of the remaining Regional Asylum Offices, as well as the completion of infrastructure aimed at ensuring effective access to asylum procedures and adequate examination of asylum applications at both instances.⁴

- a. Amnesty International's findings show that recent legislative reform of asylum determination procedures at the borders will make the exercise of the right to an effective remedy impossible or excessively difficult. New legislation also does not guarantee the right to free legal assistance, and limits the right to an oral hearing at second instance.**

Following the EU-Turkey agreement, Greece modified its asylum determination procedures in a law adopted on 1 April 2016.⁵ Several provisions of Law 4375/2016, which have been adopted in order to implement the EU-Turkey agreement, may hamper the effective exercise of the rights of asylum-seekers.

Article 60 para. 4 of **Law 4375/2016 introduces exceptionally speedy asylum determination procedures** (a total of fifteen days for the completion of the asylum process at first instance and second instance level) **at the borders.**⁶ Amnesty International believes that these time limits render the first instance and appeals procedures and the exercise of an effective remedy impossible or excessively difficult, particularly if one takes also into account that legal aid is scarce and inaccessible to the vast majority of asylum-seekers.

Further, **Law 4375/2016 does not guarantee free legal assistance for asylum determination procedures at first instance.** For the procedures before the Appeals Boards, the new legislation leaves the determination of the terms and requirements for the provision of such assistance to a future Ministerial Decision.⁷

Article 60 para. 4 (e) also **limits the right to an oral hearing before the Appeals Board under the exceptional procedures at the borders.** The possibility of an oral hearing depends on the discretion of the competent Appeals Board following an application by the asylum-seeker.⁸

³ 1222nd meeting (DH), 11-12 March 2015, CM/De (2015)/1222, 13 March 2015, available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c4f42; See also Greek Action Plan on Asylum and Migration Management, December 2012 available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/p4_exec_summary_/p4_exec_summary_en.pdf.

⁴ 1222nd meeting (DH), 11-12 March 2015, CM/De (2015)/1222, 13 March 2013, available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c4f42.

⁵ "Law 4375/2016 on the Structure and Operation of Asylum Service, the Appeals' Authority, and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions", available at: http://www.esfhellas.gr/elibrary/N4375-2016_FEK51A_03042016_prosfyges.pdf.

⁶ Persons belonging to vulnerable groups are exempted from these exceptional procedures and their applications are examined on their substance without going through the admissibility stage first. Vulnerable cases listed in the law include unaccompanied minors, persons with disabilities or persons with serious or incurable illness, the elderly, pregnant women, single parent families with minors, torture victims and survivors of shipwrecks and their families and victims of human trafficking. See Article 14 para. 8 of Law 4375/2016.

⁷ Article 44 para. 4 of Law 4375/2016.

b. Amnesty International is concerned that as a result of the EU-Turkey agreement and the new asylum determination procedures, many asylum-seekers will be returned to Turkey despite it being unsafe for them.⁹

Asylum claims for those falling under the exceptional procedures, as envisaged by Law 4375/2016, should undergo an initial individualized examination to assess whether a country, Turkey in the case of people arriving at islands in the Aegean Sea, can be considered a safe third country or a first country of asylum. Only in the case of this country not being deemed a safe third country or a first country of asylum, will the applicant's case be considered on its merits.¹⁰

In recent weeks, Amnesty International has been informed of several decisions of the Lesvos Regional Asylum Service that have found asylum applications by Syrian nationals inadmissible on the premise that Turkey fulfils the criteria of a “safe third country”. The decisions concluded that Turkey abides by the principle of *non-refoulement*, and that it was possible for applicants to seek international protection, and in cases where this is granted to recognize their rights equivalent to those laid down in the Geneva Convention Relating to the Status of Refugees (Refugee Convention).¹¹ The organization has been informed that appeals have been filed against the negative decisions before the competent Appeals Boards of Presidential Decree 114/2010.

Amnesty International's research shows that for several reasons, Turkey cannot be considered to meet the requirements for a “safe third country” or a “first country of asylum” under the Asylum Procedures Directive. First, it retains the geographical limitation to the Refugee Convention, which precludes non-Europeans from accessing long-term protection in Turkey.¹² Second, the organization has also identified the absence of a fully functioning asylum system in Turkey as well as obstacles to access in practice to rights granted under the Refugee Convention and other international human rights instruments. Third, in late 2015 and early 2016, Amnesty International research challenged Turkey's claimed adherence to the principle of *non-refoulement* and presented credible and consistent evidence of unlawful deportations to Afghanistan, Iraq, and Syria.¹³

c. Amnesty International's recent findings also show that despite the creation of more Regional Asylum Offices, serious impediments regarding access to asylum persist.

Amnesty International recognizes that Greece is one of the main points of entry into Europe for refugees and migrants, and as such it faces a disproportionate responsibility in meeting humanitarian needs. The closure of the Balkan route has compounded the refugee crisis in the country.

⁸ For further concerns on the legislation see: Greek Council for Refugees (GCR), GCR observations over Law 4395/2016, available at: <http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/551-oi-paratiriseis-tou-esp-epi-tou-nomou-4375-2016>.

⁹ EU-Turkey refugee deal a historic blow to rights, press release by Amnesty International, 18 March 2016.

¹⁰ See Articles 54, 55 and 56 of Law 4375/2016. For those for whom Turkey is considered to be a safe third country or first country of asylum to be returned to, there is a real risk of being returned there under the terms of the EU-Turkey agreement of 18 March 2016. Returns can take place if asylum seekers are unable to appeal against the Asylum Office decision declaring their claim inadmissible, or if the competent Appeals Board of Presidential Decree 114/2010 reject their appeals.

¹¹ Between the start of the implementation of the EU-Turkey agreement on 20 March 2016 and 5 May 2016, the Greek Asylum Service registered 3,600 asylum applications on the Greek islands and 6,605 intentions of third country nationals to apply for asylum. Until 8 May 2016, the Greek Asylum Service examined 489 asylum applications on their admissibility and rejected 89 as inadmissible – see summary of speech of Maria Stavropoulou, Director of the Greek Asylum Service, available at: <http://www.naftemporiki.gr/story/1101211/ypiresia-asulou-stis-6600-oi-katagrafes-sta-nisia>.

¹² Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013.

¹³ *Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, AI Index EUR 44/3022/2015, 16 December 2015; “Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal,” 1 April 2016; and “Turkey ‘safe country’ sham revealed as dozens of Afghans forcibly returned hours after EU refugee deal,” 23 March 2016.

Currently, there are seven Regional Asylum Offices around Greece (Attika, Lesvos, Northern Evros, Southern Evros, Rhodes, Thessaloniki and Samos) and five Asylum Units (Amygdaleza, Patra, Xanthi, Chios, Leros).¹⁴ However, accessing the asylum procedure remains highly problematic in the country, largely as a result of the insufficient resources available to the Greek Asylum Service for registering and processing applicants and the use of Skype as the main means that asylum-seekers can use to book an appointment in order to register their asylum applications or relocation requests.¹⁵

Between February and March 2016, Amnesty International interviewed several asylum-seekers who described the repeated attempts they made for several weeks to contact the Regional Asylum Service in Attika by Skype in order to book an appointment for the registration of their asylum application or relocation request. The Skype lines of the Attika Regional Asylum Office are open three days a week, for an hour in each of the designated days for Farsi/Dari speakers; two days a week, for an hour in each of the designated days for Syrian asylum-seekers; three days a week, for three hours in each of the designated days for persons wishing to apply for relocation.¹⁶

Persons stranded on mainland Greece who are unable to access the asylum procedure are also at risk of being arrested and detained by the Greek police after the papers requiring them to leave the country within a specific period expire.¹⁷

During its research mission on Chios at the beginning of April 2016, Amnesty International also found that the Greek Asylum Service lacked capacity to process the large number of asylum applications that had been lodged following the start of the EU-Turkey agreement. The only Asylum Service case-worker on the island told the organization that the surge of applications was beyond his capacity to process.¹⁸

Amnesty International's research in February and March 2016 has identified lack of systematic information to potential beneficiaries regarding the asylum process, relocation procedures and family reunification, both on the island detention centres and on the mainland. All refugees interviewed by Amnesty International on Lesvos and Chios in April 2016 said that they did not receive sufficient information about what the asylum process would entail.¹⁹ Non-governmental organizations and the United Nations Refugee Agency (UNHCR) also expressed their concerns that several refugees on Chios had not been given the opportunity to apply for asylum even though they had expressed their wish to do so and had been returned to Turkey following the beginning of the implementation of the EU-Turkey agreement.²⁰

¹⁴ See http://asylo.gov.gr/en/?page_id=49.

¹⁵ See, for example, *AIDA Country Report: Greece* prepared by the Greek Council for Refugees, November 2015. The difficulties registering asylum applications were also confirmed by Médecins du Monde (MdM) during an interview on 26 February and by the KSPM-Ecumenical Refugee Program of the Church of Greece on 24 March 2016; also see Greek Council of Refugees, Impossibility of accessing asylum, press release, 19 April 2016 available at: <http://www.gcr.gr/index.php/el/news/press-releases-announcements/item/554-adyndamia-prosvasis-sto-asylo>.; and the joint submission by the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles (ECRE) presented to the Committee of Ministers of the Council of Europe in the case of M.S.S. v. Belgium and Greece (Application no. 30696/09) and related cases on 24 March 2016 available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2016/03/Greece-ICJECRE-MSS-CommitteeMinisters-5thsubmission-legal-submission-2016-ENG.pdf>.

¹⁶ See Greek Asylum Service new announcement on the programme of the Skype line.

¹⁷ For illustrative cases of asylum-seekers arrested as a result of the impediments they faced regarding access to asylum, see Greek Forum of Refugees, Refugee arrests and lack of protection, press release, 27 April 2016.

¹⁸ Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal, 7 April 2016.

¹⁹ Ibid. Also, Trapped in Greece, An avoidable refugee crisis, 18 April 2016, Index number: EUR 25/3778/2016.

²⁰ UNHCR, Daily Report, 5 April 2016, available at: <http://data.unhcr.org/mediterranean/regional.php>; Greek Council for Refugees press release, 27 April 2016, available at: <http://www.gcr.gr/index.php/el/news/press-releases-announcements/item/557-deltio-typou-efarmogi-symfonias-ee-tourkias-kata-paravasi-themelidon-dikaionaton>; and HRW, Dispatches: EU Deportations Resume, Troubles Abound, by Fred Abrahams, 27 April 2016, available at: <https://www.hrw.org/news/2016/04/27/dispatches-eu-deportations-resume-troubles-abound>;

Amnesty International recommends the Committee of Ministers to urge the Greek government to clarify the following:

- Time-frame for the adoption of a Ministerial Decision setting the requirements of the granting of free legal assistance for the appeal procedure;
- Steps taken to develop clear and rights' compliant guidelines on how the safe third country rule will be applied;
- Provision of information on persons returned to Turkey under the EU-Turkey agreement including countries of origin, gender, age and dates when returned;
- Provision of information on asylum applications rejected by the Greek Asylum Service on the premise that Turkey is a "safe third country" or "a first country of asylum" including countries of origin, gender, age and dates when returned;
- Steps taken to increase the capacity of the Greek Asylum Service and eliminate impediments regarding access to asylum;
- Measures taken to ensure that new arrivals and refugees stranded on the mainland are informed about the asylum process, relocation and family reunification procedures.

2. Shortcomings in law and policy reforms regarding immigration detention and substandard detention conditions

In its March 2015 assessment of the M.S.S. judgment regarding Greece, the Committee of Ministers at its 1222nd meeting noted with interest the statement made by Greece that persons held for removal purposes were not held any longer at police stations.²¹ The Committee of Ministers welcomed the improvements regarding detention conditions in pre-removal centres, and urged the Greek authorities to improve the conditions in detention centres such as Petrou Ralli in Athens. The Committee of Ministers also urged the Greek authorities to ensure that detained asylum-seekers and irregular migrants have access to medical and psychological assistance.

- a. **Amnesty International's findings show that despite some initial positive reforms in immigration detention policy in the first half of 2015, the systematic detention of those being held in pre-removal centres has continued. In the wake of the EU-Turkey agreement at the end of March 2016, the Greek authorities have adopted legislation which allows the automatic detention of new arrivals on the islands. The automatic detention has resulted in many vulnerable individuals being held in dire conditions. Many have not been notified about the grounds of their detention, in violation of international and EU law.**

In February 2015, the Minister for Migration Policy and the Minister for Citizens' Protection took some steps to reform the policy of systematic and prolonged detention of asylum-seekers and irregular migrants. In particular, the authorities ceased to implement the widely criticized policy of indefinite detention and released a large number of asylum-seekers and irregular migrants held for more than six months.²²

However, the Greek authorities have yet to withdraw the 2014 Ministerial Decision endorsing the policy of indefinite detention. In addition, during a mission in February and March 2016 to visit immigration detention centres, Amnesty International spoke to several asylum-seekers and migrants who had been held for more than six months for the purposes of removal in various immigration detention centres in Attika.

National NGOs also point out that asylum-seekers and migrants held in pre-removal centres and police stations around Greece are not given an individualized assessment of the necessity to detain them in line with a legitimate purpose, and that alternatives to detention are not applied.²³

Also, following the selective border controls introduced by states along the Balkan route in November 2015, the Greek authorities started routinely detaining third country nationals from Maghreb countries who were apprehended in Greece for irregular entry and/or stay.²⁴

On 1 April 2016, Law 3907/2011 on the establishment of an Asylum Service and a First Reception Service was amended, replacing the First Reception Service with the Reception and Identification Service (RIS).²⁵ The provisions on immigration detention introduced by Law 4375/2016 raise several concerns:

²¹ 1222nd meeting (DH), 11-12 March 2015, CM/De (2015)/1222, 13 March 2013, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c4f42.

²² New Government's announcement of ending the policy of indefinite detention, as step towards the right direction, Public Statement, 11 February 2015, AI Index: 25/001/2015.

²³ AITIMA, Monitoring immigration detention, Quarterly Report September-December 2015, available at: <http://aitima.gr/images/aitima/documents/EPIbulletinDec2015/bulletinenglish.pdf>

²⁴ Balkan border blocks leave thousands stranded, Amnesty International press release, 20 November 2015. Maghreb countries include Algeria, Libya, Mauritania, Morocco and Tunisia.

²⁵ Provisions related to the Reception and Identification Service of the new "Law 4375/2016 on the Structure and Operation of Asylum Service, the Appeals' Authority, and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions" are under Section 1, Chapter B, Articles 8 to 17 and Section 2, Chapter A, Article 25 to 32.

- Amnesty International's recent research has shown that while the First Reception Service (now RIS) tasked, amongst others, with the identification of vulnerable refugees and migrants has been operational since 2013, the Greek authorities are still failing to ensure that all those in need of special care are systematically identified and cared for - such as women at risk of gender-based violence, those with medical needs, persons with disabilities, the elderly and unaccompanied children.²⁶ The new legislation is likely to make the identification of vulnerable individuals much more difficult since it removes the identification of vulnerable persons from the competencies of the newly introduced RIS. Instead, Article 9 of Law 4395/2016 defines as one of the reception and identification procedures *"the concern for those who belong to vulnerable groups in order to undergo the appropriate procedure and be provided with specialized care and protection"*.²⁷
- Article 14 of Law 4395/2016 introduces the automatic detention of all third country nationals arriving at the country's points of entry upon their transfer to a Reception and Identification Centre (RIC). Article 14 paragraph 2 envisages the "restriction of liberty" of all new arrivals entering an RIC on the basis of a decision issued by the RIC Director. The initial period of detention in an RIC is three days and can be extended to a maximum of 25 days if the required Reception and Identification procedures have not been completed. Amnesty International wishes to stress that automatic, group-based detention is by definition arbitrary and therefore unlawful. Also unlawful is the absence of a provision providing for a remedy to challenge before a court the lawfulness of the initial detention decision issued by the RIS Director.
- Article 80 para. 10 of Law 4395/2016 also indicates a turn to a more punitive detention policy following the implementation of the EU-Turkey agreement. The above provision envisages that state-run transit refugee camps can be converted to immigration detention centres or Reception and Identification Centres with a Ministerial Decision issued by the Minister of Interior and Administrative Reconstruction.²⁸

In tandem with legislative reforms, the Greek authorities moved from hotspots on the islands as open reception centres to detention centres. This policy change, which took place at the end of March 2016, has resulted in thousands of people being arbitrarily detained - in some cases for weeks - while they await news on their asylum applications. During Amnesty International's mission on Lesbos and Chios in April 2016, around 4,200 refugees and migrants were detained in both Moria and Vial detention centres. Most had arrived after the EU-Turkey Agreement.²⁹

Only two of the refugees and migrants interviewed by Amnesty International during its April 2016 mission were able to show their detention orders based on their individual circumstances. The majority of refugees and migrants that Amnesty International spoke to did not have a detention order.³⁰ The organization also observed that the automatic detention of those arriving on the Greek islands has led to a failure to take the special circumstances and needs of particular asylum-seekers into account. Many individuals interviewed by the organization on Lesbos and Chios belonged to particularly vulnerable groups such as unaccompanied children, heavily pregnant women and people with disabilities, and they should not have been detained.³¹

In April 2016, KSPM-Ecumenical Refugee Programme, an NGO in Greece, informed Amnesty International that its lawyers had identified around 150 asylum-seekers who had arrived on Lesbos a day before the EU-Turkey agreement

²⁶ Trapped in Greece, An avoidable refugee crisis, 18 April 2016, AI Index number: EUR 25/3778/2016.

²⁷ The withdrawal of several organizations, including UNHCR's suspension of certain activities, from the Moria camp following the EU-Turkey deal, is likely to make the gaps in vulnerability screening even greater.

²⁸ Greek Council for Refugees), Observations over Law 4395/2016, available at: <http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/551-oi-paratiriseis-tou-esp-epi-tou-nomou-4375-2016>

²⁹ In recent weeks, the Greek authorities on Lesbos have reportedly released 452 asylum-seekers with the restriction that they cannot leave the island until their asylum claims are determined – see <http://emprosnet.gr/article/83346-sto-mantamado-70-anilikoi-prosfyges>

³⁰ Amnesty International has interviewed a total of 89 refugees and migrants during its April 2016 mission.

³¹ Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal, 7 April 2016.add link

was adopted and had been registered by the police as having arrived after the beginning of the implementation of the EU-Turkey agreement. According to the KSPM-Ecumenical Refugee Programme, the refugees identified were informed by the police only orally about their detention and not about the grounds of their detention and for several days they were held without a detention order being issued and/or communicated to them by the Greek authorities.³² The absence of the issuance of a detention order was confirmed in three cases concerning three families by the First Instance Administrative Court of Mytilene. The three families (10 individuals) had challenged their detention on the 31st March 2016. The Court rejected the objections against their detention as inadmissible on the ground that no detention orders existed.³³

b. The organization's findings presented in this submission show that detention conditions in immigration detention centres and in border guard stations in Greece remain substandard.³⁴

Amnesty International visited the immigration detention centres of Petrou Ralli, Elliniko and Amygdaleza in the region of Attiki in February and March 2016; and the Moria immigration detention centre on Lesbos and the VIAL immigration detention centre on Chios in April 2016. Key concerns identified by the delegates and/ or reported by the detainees were overcrowding, poor quality of food, lack of blankets and privacy, dirty mattresses, lack of hot water and hygiene products, inadequate access to medical care and lack or limited contact with the outside world.

Overcrowding was a major cause of concern in Moria and at the time of the organization's visit the centre was 1,000 people over capacity. In VIAL, several families were packed in tight quarters and had very little outdoor space where they could move freely.

People in Moria, VIAL, Petrou Ralli and the Amygdaleza immigration detention facility for adults complained about the poor quality of food. Access to food was also restricted and mothers with babies in VIAL described not being able to get the right kind of food and sufficient milk for their children.

Many refugees spoke about the lack of access to doctors and other medical staff in all the centres visited. This was especially acute for vulnerable groups in need of highly specialized medical assistance. For example, in Moria there were only three doctors available to provide medical care for 3,150 people, while at VIAL teams providing medical care said onsite health services were only available during limited hours, and there were shortages of medicines and other supplies. There were no doctors at the Elliniko immigration centre that is designated only for women at the time of the organization's visit in February 2016.

Police and detained refugees and migrants informed Amnesty International that there was no psycho-social support and interpretation services provided to those detained in Amygdaleza, Elliniko and Petrou Ralli, which increased the likelihood of persons belonging to vulnerable groups not being identified. Detainees in the three facilities also complained about not being able to communicate with their families, since mobile phones were not allowed and they could not afford to buy a phone card. Persons belonging to vulnerable groups showed real distress as a result of their prolonged detention in very poor conditions, including several asylum-seekers and migrants with advanced symptoms of HIV-AIDS at Petrou Ralli. Two refugees, one of them female, also described how they had been beaten by police officers when the authorities had initially attempted to deport them back to their countries. The reported ill-treatment against the female asylum-seeker took place on 5 November 2015 and a criminal complaint has been filed against the police.

³² E-mail correspondence with KSPM-Ecumenical Refugee Programme, 12 April 2016. According to the NGO, the number of asylum-seekers and migrants who had arrived before the 20th March 2016 but were registered as having arrived after that date could be higher.

³³ Decision of First Instance Administrative Court of Mytilene, 31 March 2016; source: KSPM-Ecumenical Refugee Programme.

³⁴ Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal, 7 April 2016.

Amnesty International recommends the Committee of Ministers to urge the Greek government to clarify the following:

- Steps taken to ensure immediate withdrawal of the Ministerial Decision adopting indefinite detention and information about the use of alternatives to detention;
- Number of persons detained for immigration purposes and current detention capacity along with their countries of origin, gender and age and locations of immigration detention centres;
- Measures to ensure the systematic identification of persons with special needs upon their arrival to Greece's points of entry or while detained in pre-removal facilities in mainland Greece.
- Measures taken to end the detention of refugees and migrants at police and border guard stations;
- Measures taken to improve detention conditions and provide effective access to services, including medical and psycho-social assistance and the services of an interpreter;
- How many allegations of ill-treatment against refugees and migrants in detention have been received by Greek police in 2015 and 2016, and what measures have been taken to effectively investigate and prevent such incidents?

3. Detention of unaccompanied children

In its March 2015 assessment of the M.S.S. judgment regarding Greece, the Committee of Ministers at its 1222nd meeting urged the Greek authorities to take all the necessary measures so that alternatives to detention are sought for all unaccompanied children, taking into account that, in the case of their exceptional detention, children are detained separately from adults and under conditions appropriate to their vulnerable situation.³⁵

Further to Amnesty International's submission to the Committee of Ministers in November 2015³⁶, recent findings described below show that the situation of unaccompanied children remains deeply problematic. Recently introduced legislation fails to abolish the detention of asylum-seeking and migrant children, and such children are routinely held for prolonged periods in substandard conditions in border guard stations, immigration detention centres and RICs due to shortages in transit and long-term shelter spaces.³⁷ Often the authorities do not have the mechanisms in place to identify unaccompanied children as such.

In February 2016, Amnesty International visited the border guard station in Evzoni, a town near Idomeni and the Amygdaleza immigration detention centre for unaccompanied children in Athens.

In Evzoni, the children described very poor detention conditions including lack of natural light, lack of heating and hot water, and the presence of mice. According to the police and the children, the toilet in the detention area was blocked and the odour coming from the toilet to the adjoined police office where Amnesty International was conducting interviews was unbearable. Amnesty International further observed that there was no space for outside exercise while in Amygdaleza, there was only a small covered yard where the children could play football for some hours during the day. In both places, there were no interpreters and no psycho-social support. In Evzoni, there was no doctor visiting the station and in case of illness the children were transferred to the nearby hospital, while if a child fell ill in Amygdaleza, the police called the doctor from the adults' facility to conduct medical checks.

In both facilities, police were not aware of a Ministerial Decision adopted in 2013 which clarifies the procedures that should be followed in order to determine the age of children, and instead conducted age determination by sending the children for wrist or dental x-rays to the local hospital.³⁸ Delegates also met with some individuals in Petrou Ralli and the Amygdaleza immigration detention centre for adults, who said that they were 16 or 17 years old and had been registered as adults.

The closure of the Balkan route and the implementation of the EU-Turkey agreement have led to an increase in the periods that unaccompanied children are being held in detention until a place is found at a shelter.³⁹ According to

³⁵ 1222nd meeting (DH), 11-12 March 2015, CM/De (2015)/1222, 13 March 2013, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c4f42.

³⁶ See

<https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2860108&SecMode=1&DocId=2340796&Usage=2>.

³⁷ Article 46 para. 4 β of Law 4395/2016 states that unaccompanied asylum-seeking children are detained as a measure of last resort and solely for being referred securely to a shelter. On the other hand, the same provision reduces the maximum period that unaccompanied children can be held to 45 days.

³⁸ See Ministerial Decision No. 92490, 29 October 2013. According to the UN Committee on the Rights of the Child (CRC), identification measures of unaccompanied or separated children such as age assessment "...should not only take into account the physical appearance of the individuals but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such". See CRC, General Comment No. 6 (2005), para 31.

³⁹ In March 2016, Amnesty International was also informed by an activist in Idomeni about the very poor detention conditions under which several unaccompanied male children were being held at the Polykastro police station. The children were in detention for twenty days and had no access to outside exercise while access to medical assistance was limited (E-mail correspondence with an activist, 22 March 2016).

the National Centre for Social Solidarity (EKKA) - the state organization responsible for the placements in reception facilities, social housing and shelters for unaccompanied children - there were 347 shelter spaces for unaccompanied children as of 8 March 2016, and 119 unaccompanied children were waiting to be placed in a shelter.⁴⁰

Detention for a prolonged period in very poor conditions led many unaccompanied children held at the Moria immigration detention centre to stage a protest that turned to a riot on 26 April 2016. Greek police responded with chemical irritants. According to the lawyer of one of the children, police failed to intervene in order to protect the children and did not allow those injured immediate access to medical assistance.⁴¹ Police allegedly beat some of the injured children the next morning. On 4 May 2016, the prosecutor of Mytilene on Lesbos concluded that the Moria immigration detention centre was not an appropriate place for the unaccompanied children to reside, and 70 unaccompanied children were reportedly transferred to a refugee camp run by the NGO Praksis in the village of Madamados.⁴²

Amnesty International recommends that the Committee of Ministers urges the Greek government to clarify the following:

- Provide information on current reception capacity at shelters for unaccompanied children and plans to increase such capacity;
- Steps taken to introduce uniform age assessment procedures for police, the Asylum Service and RIS.
- Steps taken to investigate incidents of ill-treatment of children.

⁴⁰ E-mail correspondence with EKKA on 9 March 2016.

⁴¹ Information provided by Mrs Elektra Koutra, lawyer, NGO Pleiades.

⁴² Ibid; see also press article 10 May 2016, available at: <http://emprosnnet.gr/article/83346-sto-mantamado-70-anilikoi-prosfyges>

CONCLUSIONS

As detailed above, Amnesty International research establishes that serious impediments with access to asylum persist. The recent legislative reform on asylum determination procedures at the borders will make the exercise of an effective remedy impossible or excessively difficult. The implementation of the EU-Turkey agreement is also likely to lead to thousands of asylum-seekers being returned to Turkey, despite it being unsafe for them.

Amnesty International's research also establishes that a large number of refugees and migrants are systematically detained in substandard conditions and the Greek authorities fail to systematically identify persons belonging to vulnerable groups. Finally, the situation of unaccompanied children remains very problematic, since they continue to be routinely detained for prolonged periods due to shortages in transit and long-term shelter spaces

RECOMMENDATIONS

Amnesty International urges the Committee of Ministers to strongly recommend to the Greek Government authorities to:

- Increase the capacity of the Asylum Service to register and process asylum applications and potential relocation beneficiaries, and to swiftly prepare and submit “take charge” requests for asylum-seekers who can benefit from provisions of the Dublin III Regulation that consider the best interest of the child, family unity dependents and humanitarian grounds;
- Ensure systematic provision of adequate information to all refugees and migrants arriving in Greece on asylum procedures, the EU relocation scheme and family reunification possibilities.
- Ensure that access to asylum procedures is effective, including by providing appropriate time frames for lodging supporting materials for persons in detention and by ensuring legal and linguistic assistance;
- Develop clear and rights-compliant guidelines on how the safe third country rule will be applied and ensure that the individual circumstances, as well as up-to-date, independent information on the treatment and status of asylum-seekers in Turkey, is taken into account;
- Ensure that detention is used as a measure of last resort, with alternatives to detention considered; all decisions to detain must be based on a detailed and individualised assessment of the necessity to detain in line with a legitimate purpose;
- Ensure that those with specific vulnerabilities are systematically identified and special processes and services are put in place to ensure that their basic rights, safety and security are protected.
- Ensure that all detainees are given the opportunity to challenge the lawfulness of their detention with access to legal aid;
- Ensure that conditions in detention are humane and dignified;
- Ensure that all children are immediately released from detention.
- Ensure that prompt, thorough, independent and impartial investigations are conducted into all allegations of ill-treatment of refugees, asylum-seekers and migrants by law enforcement officials.

LINKS TO AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE:

- [Amnesty International, *Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*](#), AI Index EUR 44/3022/2015, 16 December 2015.
- ["Turkey 'safe country' sham revealed as dozens of Afghans forcibly returned hours after EU refugee deal."](#) 23 March 2016.
- Amnesty International, ["Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal"](#) 1 April 2016.
- [Greece: Thousands of refugees and asylum-seekers stranded at the mercy of European leaders](#), by Fotis Filippou, Amnesty International Director of Campaigns, Europe, 11 March 2016.
- [I was the first Afghan refugee turned away at the border](#), by Kristin Hulaas Sunde, 15 March 2016,
- [EU-Turkey refugee deal a historic blow to rights](#), press release, 18 March 2016
- [Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal](#), press release, 1 April 2016.
- [Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal](#), press release, 7 April 2016
- [Trapped in Greece: An avoidable refugee crisis, Amnesty International Report](#), 18 April 2016, Index: 25/2778/2016
- [Chios chronicle: Here is how Europe welcomed a young Afghan man who fled the Taliban](#), piece, by Conor Fortune, News Writer at Amnesty International, 22 April 2016, available at: