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M.S.S group of cases v. Greece¹

Information provided by the Greek authorities and from other sources on general measures regarding asylum procedure and conditions of detention for the execution by Greece of the judgments of the European Court

Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights

The opinions expressed in this document are binding on neither the Committee of Ministers nor the European Court

¹ Concerning the case of M.S.S v. Belgium and Greece (No. 30969/09), it is recalled that at their 1214th meeting (December 2014), the Deputies decided to close the examination of the M.S.S. case with respect to Belgium and adopted the Final resolution CM/ResDH(2014)272.

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I. Introduction

1. The Committee pursues its examination of this group of cases only with respect to Greece.
2. On 20 July 2011, the Greek authorities provided their action plan setting out the measures aimed at preventing similar violations. At their 1144th meeting, the Deputies endorsed the assessment presented in the memorandum prepared by the Secretariat (CM/Inf/DH(2012)19) containing a detailed assessment of the action plan.
3. At its meetings in June 2013 (1164th DH) and December 2013 (1186th DH), the Committee, bearing in mind that the effectiveness of the asylum system in Greece was expected to have a positive impact on conditions of detention and living conditions of asylum seekers, decided to focus on issues concerning the asylum procedure. In June 2014 the Committee noted that the data provided on the results of the operation of the three new asylum services (Asylum Service, Appeals Authority and First Reception Service) were encouraging and invited the authorities to respond to the outstanding questions identified in the memorandum on general measures regarding asylum procedure and conditions of detention for the execution by Greece of the judgments of the European Court (H/EXEC(2014)4 rev). The Committee furthermore decided to resume consideration of the issues regarding the asylum procedure and the conditions of detention at the latest at their meeting in March 2015.
4. In reply to the above-mentioned decision of the Committee of Ministers, on 9 and 12 January 2015, the Greek authorities provided extensive information on the measures aimed at aligning the asylum procedure with the Convention requirements and improving the conditions of detention of irregular migrants or asylum seekers. This information is summarised below.

II. As regards the asylum procedure

1) Information provided by the Greek authorities

A. Asylum procedure under the new asylum regime

5. The Greek authorities have continued taking measures to implement the above-mentioned action plan and prevent similar violations. In this regard, the authorities ensured that following to the start of the operation of the new Asylum Service in June 2013, ten units of the Asylum Service have been put in place throughout Greece. They are staffed with 193 employees regularly trained by the European Asylum Service Office (EASO).
6. Migrants are now informed about asylum procedure by employees of the Asylum Service and the First Reception Service in the language they can understand. In this regard relevant information is also provided by means of leaflets published in 19 languages. These leaflets are made available at police stations and outlets of NGOs as well as on the website of the Asylum Service (www.mopocp.gov.gr).
7. Free interpretation is provided to asylum seekers by 110 interpreters in 24 languages.
8. Free legal aid is made available to asylum seekers after the examination of their request through the State mechanism (L.3226/04) or NGOs both at first and second instance. These NGOs are funded by the State and the European Refugee Fund. The authorities however envisage transposing the EU Directive 2013/32/EU to create a mechanism aimed at automatic providing of free legal aid to asylum seekers, in particular within the context of the appeals proceedings.
9. Pursuant to the rules of the new asylum regime introduced in June 2013, applicants are now informed about the date of their interview immediately after the registration of their asylum application.
10. If minors under 14 lodge an asylum application, the Asylum Service informs the competent prosecutor to appoint a guardian for them.
11. The progress made in aligning the asylum procedure with the Convention requirements is clearly demonstrated by statistical data. In this respect, in 2014 alone:
 - 7 806 applications were lodged with the Asylum Service (on average 38 per day);
 - 1 625 decisions granted asylum or international protection (20.8%);
 - 5 437 decisions rejected asylum applications;
 - 1 050 decisions recorded inferred withdrawal of applications;
 - 235 applications were *expressis verbis* withdrawn;
 - 1 415 decisions rejected applications on admissibility grounds.
12. Since the introduction of the new Asylum Service in June 2013 until October 2014 as regards effectiveness of the asylum procedure:

at first instance:

- 2 816 applications were lodged by asylum seekers in detention;
- 474 decisions granted asylum or subsidiary protection to asylum seekers in detention;
- 1 144 applications were lodged by applicants belonging to vulnerable groups.

at second instance:

- 4 663 appeals were lodged against first instance decisions rejecting asylum applications;
- 278 decisions granted asylum (9.73%) or subsidiary protection (4.27%);
- 116 appellants were heard by the Appeals Authority.

13. In 2013 and 2014 a total of 43 000 and 64 996 irregular migrants were arrested for irregular entry respectively; 8 221 and 7 806 asylum applications were filed respectively.
14. Fast track asylum procedure was applied in 726 cases in the period from June 2013 to October 2014.
15. Until October 2014, UNHCR representatives participated in examination of 725 applications at first instance and in all cases at second instance.

B. Elimination of the backlog of asylum applications filed under the old asylum regime

16. The Greek authorities have taken measures aimed at eliminating the backlog of asylum cases originating from a large number of pending applications lodged before the introduction of the new Asylum Service in June 2013.
17. To this end, the authorities ensured that in the period from June 2013 until 30 November 2014 twenty committees, set up to eliminate this backlog, examined a total of 12 749 cases.
18. As a result, as of 20 December 2014, only four applications lodged before June 2013 were pending at first instance, while 27 486 such applications were pending at second instance. In aggregate, 52 744 asylum applications which were submitted before the start of the operation of the new Asylum Service in June 2013 were resolved. Out of this number, procedure was discontinued in 31 357 cases due to non-renewal of the asylum seeker's card. As of 20 December 2014, the backlog asylum cases were reduced by 65.74%. The authorities envisaged to eliminate the outstanding backlog of asylum cases by the end of 2016.

2) Information from other sources

19. It flows from the UNCHR document from January 2015 that important progress has been made in the implementation of the revised Greek Action Plan on Asylum and Migration Management, in particular as regards the quality of the asylum procedure at first instance and the quality of decisions. The UNCHR however considers that access to asylum procedure remains a challenge, partly because of the insufficient number of regional Asylum Service Offices to examine asylum applications. It furthermore highlighted that there is a major backlog of the asylum applications lodged before June 2013, which are still pending at second instance.

III. As regards detention

1) Information provided by the Greek authorities

A. Conditions of detention

20. The Committee of Ministers called upon the Greek authorities to inform it about the precise content of the global strategy they have developed in order to improve the conditions of detention of asylum seekers and irregular migrants and invited them to respond to the outstanding issues identified in the memorandum H/EXEC(2014)4 rev.
21. In their above-mentioned communications, the authorities indicated that their strategy concerning detention of irregular migrants was defined by the provisions of the EU legislation and the national law.

22. In particular, the policy of detention of the third country nationals is based on the following pillars:
- (i) detention is used as a matter of exception and only in cases prescribed by law (only 8% of the irregular migrants arrested from 1 January to 30 October 2014 were actually detained);
 - (ii) newly arrivals stay in the existing First Reception Units from 15 to 25 days in order to be identified, medically screened and registered; asylum seekers are detained as a matter of exception; in 2014, 22.31% of asylum seekers were detained, most of whom lodged repetitive or abusive applications;
 - (iii) 20% of irregular migrants against whom a deportation order was issued in 2013 were detained in three screening centres and seven pre-return centres.
23. Third country nationals awaiting deportation are not detained any longer in the detention facilities of police stations.
24. Conditions of detention in the First Reception Centre of Fylakio are compatible with international standards (5 sqm per each detainee, 24h access to outdoor space, access to entertainment premises equipped with television, table games etc., three meals per day, washrooms with cold and hot water 24h a day, premises for religious activities, area for children, telephones, free communication with lawyers and NGO representatives). As regards the screening centres and the pre-return centres, conditions of detention have improved.
25. New detention facilities or facilities undergoing refurbishment are built on the basis of a technical description developed according to international standards and recommendations of CPT and other stakeholders. Detention facilities in Pireaus, Aspropyrgos, Elliniko, Venna and Tycherio, which had been severely criticised by the CPT, were closed down. Likewise, a part of the Petrou Ralli detention facilities was closed for refurbishment and development of an outdoor and recreation area. The latest information indicates that these works have now been completed.
26. An *ad hoc* committee within the Ministry of Public Order was set up and tasked with carrying out inspections in facilities run by the police authorities, where third country nationals are detained. This committee is also vested with powers to make recommendations for improvement of conditions of detention. In 2014, the committee visited various detention facilities. As a result of these inspection visits, the committee submitted its recommendation to the Minister of Public Order, who forwarded them to the police authorities for implementation.
27. Health care services, including psychological support, are provided by the National Health Operations Centre 24h a day to detainees in almost all detention facilities.
28. Free legal aid is provided to detainees on the basis of memoranda of cooperation concluded with bars of Attica, Korinthos, Drama, Xanthi, Rodopi, Orestiada and Lesvos. Third country nationals subject to deportation are provided with a leaflet setting out the rights of asylum seekers and the relevant procedure.
29. As regards the conditions of detention of minors, the authorities highlighted that minors are not detained. The authorities developed a practice of age assessment of unaccompanied minors in cooperation with the National Health Operations Centre. All minors are referred to the competent prosecutor, who, under his capacity of a provisional guardian of unaccompanied minors, ensures the appointment of a guardian and the provision of accommodation and material assistance.

B. Effective remedy to challenge conditions of detention

30. Lastly, the Greek authorities noted that the European Court indicated in its admissibility decision rendered on 8 July 2014 in the case of *S.B v. Greece* (appl.no.73554/2011) that pursuant to

legislative amendments introduced in 2011, conditions of detention could now be challenged on the basis of Article 76 of the law no. 3386/2005. In particular, the Court noted that Article 55 of the law 3900/2010 (in force since 1 January 2011) amended Article 76 of the law 3386/2005. Pursuant to the amended provision of Article 76 of the law 3386/2005, administrative judges now can examine lawfulness of detention of foreign nationals subject to deportation. Conditions of detention are examined as a part of examination of lawfulness of such detention. The Court also observed that applicants have started to avail themselves of this remedy. It also noted that the provision of Article 30§1 of the law 3907/2011 (in force since 26 January 2011) provided that the availability of adequate detention facilities and the possibility to ensure appropriate conditions of detention would be taken into account when ordering or extending detention of these persons.

31. The Greek authorities therefore consider that the remedy provided under Article 76 of the law 3386/2005 combined with Article 30 of the law 3907/2011 is effective.

2) Information from other sources

32. In 2014, the CPT issued its report on the visit to Greece carried out from 4 to 16 April 2013 (CPT/Inf(2014)26). This report also includes relevant information concerning conditions of detention of asylum seekers and irregular migrants.
33. The CPT visited four pre-return centres (Amygdaleza, Komotini, Paranesti, and Xanthi) and three special holding facilities (Athens airport, Fylakio and Petrou Ralli).
34. The CPT noted as regards the pre-return centres that there was limited living space in Amygdaleza, Komotini, and Paranesti, while certain premises were in deplorable state of repair (Komotini, Block B in Xanthi) or needed continuing maintenance (Paranesti). The CPT however found that a number of facilities were generally clean and in a good state of repair (Amygdaleza, Xanthi, Block B in Paranesti) as well as that there was access to outdoor area even though no sports or other recreational activities were available.
35. As regards the special holding facilities at the Athens airport, Fylakio and Petrou Ralli, the CPT found that the conditions of detention were substandard (overcrowding, no access to outdoor exercise, dilapidated premises, restricted access to natural light, poor artificial lighting, no access to toilets during night).
36. As regards detention of minors, the CPT noted that they came across unaccompanied minors in several pre-return centres and that the authorities had not taken any steps to ensure that these minors were separated from adults or at least supervised more closely by staff from the centres.
37. In his report following a visit to the Amygdaleza pre-return centre carried out on 21 August 2014, the Greek Ombudsman similarly noted that a number of unaccompanied minors were detained with adults due either to lack of space in the minors detention unit or to their registration as adults. As regards the general conditions of detention at the centre, the Ombudsman noted that the infrastructure was not adequate, bearing in mind the prolonged detention of the detainees and their number.
38. It is furthermore noted in the UNHCR observations that several pre-return detention centres are often overcrowded with average space per detainee less than four square meters (as is the case of Fylakio). Poor diet is noted in all detention facilities and basic needs are inadequately met. Furthermore it is stressed that though access to fresh air and courtyards has improved, recreation and leisure activities are still limited in most facilities. Shortcomings in heating and cooling in some detention facilities affect the health of the detainees. Lastly, it is noted that detention facilities provide an inappropriate environment for detainees with special needs who do not have access to any special treatment or care.