



**International Commission of Jurists submission  
to the Committee against Torture  
on the combined 5<sup>th</sup> and 6<sup>th</sup> Periodic Reports of Greece**

*October 2011*

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**1. Introduction**

The International Commission of Jurists (ICJ) welcomes the opportunity to provide its views to the Committee against Torture for the consideration of the combined 5<sup>th</sup> and 6<sup>th</sup> Periodic Reports of Greece. In this submission, the ICJ highlights several issues which it considers should be of particular concern to the Committee in its consideration of the periodic reports of Greece. In particular, the ICJ is concerned at the failure of the Greek asylum system, in practice, to comply with the obligation of *non-refoulement* (Article 3 CAT) and at the prevalence of conditions of detention for migrants, as well as living conditions for migrants, that amount to cruel, inhuman or degrading treatment, in violation of obligations to prevent such treatment (Articles 2.1, 11 and 16 CAT). Although the state report of Greece has been taken into account in this submission, it is not referred to throughout, as recent legislative changes since the report was prepared have limited its pertinence to the issues addressed.

As will be explained further below, the Greek asylum system fails to protect adequately against transfers to face danger of torture or other serious violations of human rights. Undocumented migrants and asylum seekers are almost systematically detained, whether when first entering the country on account of their irregular entry or for suspicion of committing a criminal offence, during the examination of their claim, or while awaiting deportation.<sup>1</sup> They are held in conditions that have been found to amount to degrading treatment, yet alternatives to detention are given insufficient consideration.<sup>2</sup> Further, the European Court of Human Rights has found recently that the conditions of living for

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<sup>1</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010.

<sup>2</sup> *ibid.*

undocumented migrants, asylum seekers and persons transferred under the EU Dublin II system<sup>3</sup> to amount to inhuman or degrading treatment. The UNHCR has recommended against transfers to Greece of asylum seekers under Dublin II, “due to ongoing concerns about systemic problems in the Greek asylum and reception systems, and the resulting situation of asylum seekers, including those subject to the application of Dublin II.”<sup>4</sup>

### ***1.1 Overview of the situation of migrants and asylum seekers in Greece***

According to official data transmitted to the UNHCR by the Greek authorities, 95,239 persons arrived in Greece in an irregular manner in 2006. In 2007, the number stood at 112,364 and in 2008, at 146,337. At the end of August 2009, the number was reported to be 81,777.<sup>5</sup> By sea from Turkey only, 19,900 people arrived in an irregular manner in 2007, 15,300 (2008) 10,165 (2009) 1,765 (2010). Fifty-nine persons were reported missing in 2009 and five in 2010, while 24 were reported dead in 2009 and 36 in 2010.<sup>6</sup> In 2010, Greece faced 90 percent of all undocumented entries in the European Union.<sup>7</sup>

As for refugees and asylum seekers, there were 1,444 refugees and 55,724 asylum seekers residing in Greece, as at January 2011.<sup>8</sup> Government statistics show that in 2007, 25,113 persons applied for asylum in Greece, and 140 were granted refugee status. In 2008, the total was 19,884 applications for 358 grants reported. In 2009, Greece registered 15,928 applications and granted refugee status to 36 persons. During the first half of 2010, 4,701 applications were registered,<sup>9</sup> and 2,982 between January and June 2011.<sup>10</sup> However, the registration of applications has not kept pace with demand, and therefore the number of registered applications for asylum does not necessarily reflect the number of persons who would wish to apply.

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<sup>3</sup> EU Regulation 343/2003 (“the Dublin Regulation”) provides that one EU Member State can examine the asylum application for a third country national and provides criteria to identify which Member State is responsible. In practice, this is often the first EU State in which the applicant applied for asylum. The country responsible must take charge of the applicant and the asylum application, and take back the asylum-seeker, if he or she is present in another Member State.

<sup>4</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

<sup>5</sup> UNHCR, Observations on Greece as a country of asylum, December 2009 ; UNHCR statistics are reported in “Asylum Levels and Trends in Industrialised Countries” 2007, 2008, [www.unhcr.org](http://www.unhcr.org)

<sup>6</sup> UNHCR, “Asylum and Migration” <http://www.unhcr.org/pages/4a1d406060.html>

<sup>7</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]; UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Greece, A/HRC/WG.6/11/GRC/1, of 14 February 2011.

<sup>8</sup> UNHCR statistics <http://www.unhcr.org/cgi-bin/teaxis/vtx/page?page=49e48e726#>

<sup>9</sup> Combined fifth and sixth periodic reports of States parties due in 2009, Greece, CAT/C/GRC/5-6, June 30, 2010

<sup>10</sup> UNHCR statistics and operational data - Monthly data January-July 2011, <http://www.unhcr.org/pages/49c3646c4d6.html>

## 1.2 Ongoing legislative reforms

As indicated by the Greek Government, a reform of the national asylum system was undertaken in November 2009, through the adoption of an Action Plan and of new laws to implement it.<sup>11</sup> On 22 November 2010, Presidential Decree 114/2010 (PD 114/2010), entitled “Establishment of a unified refugee and subsidiary protection determination procedure for aliens and stateless persons”, entered into force. It replaced PD 90/2008 and abolished PD 81/2009.<sup>12</sup> It provides for a transitional asylum system designed to ensure the rapid review of asylum requests. It established a transitional asylum system, which assigns responsibility for determining asylum applications at first instance to Police Directorates and provides for the creation of independent Appeals Committees. The Decree was followed by a circular of the Chief of Police containing procedural guidelines on the implementation of PD 114/2010. Implementation of the decree began at the end of January 2011.

On 18 January 2011, the Greek Parliament adopted the Law 3907/2011 on the establishment of an Asylum Service and a First Reception Service, reforming the asylum procedure. It establishes a new asylum authority, the Asylum Service, with civilian staff, under the Ministry of Citizens’ Protection, responsible for the adjudication of asylum applications at first instance,<sup>13</sup> replacing the role previously assumed by the police. It also provides for the establishment of an Appeals Authority.<sup>14</sup> The new Law also incorporated into Greek legislation the provisions of the *EU Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals*. (The Returns Directive)

Greek authorities have indicated that five Independent Appeal Boards were operational by July 2011, to deal with the problem of the backlog of 47,000 asylum applications, and that another 17 Appeal Boards have already been set up.<sup>15</sup> Six new detention facilities have been constructed since 2001.<sup>16</sup>

The reforms are a welcome and serious attempt to address the human rights problems in the system. However, reforms remain largely incomplete, weakly implemented in practice, and have been hampered by lack of resources. Greece undoubtedly faces challenges in managing the continuing arrivals of migrants, in a time of financial crisis. The ICJ recalls that, under the Convention, the prohibitions on torture and other cruel, inhuman or degrading treatment or punishment are absolute, and that such treatment

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<sup>11</sup> Combined fifth and sixth periodic reports of States parties due in 2009, Greece, CAT/C/GRC/5-6, June 30, 2010.

<sup>12</sup> PD 81/2009 had deprived international protection applicants, including asylum-seekers, of their right to an effective remedy by abolishing first-instance appeals against rejection of asylum and other international protection claims.

<sup>13</sup> Article 1 Law 3907/2011

<sup>14</sup> Article 3 Law 3907/2011

<sup>15</sup> Report of the Working Group on the Universal Periodic Review - Greece, A/HRC/18/13, of July 11, 2011.

<sup>16</sup> *ibid.*

cannot be justified on the basis of policy imperatives, or economic constraints.<sup>17</sup> **The ICJ recommends that the Committee against Torture welcome the reforms to the asylum system as a positive step towards meeting Greece's obligations under the Convention, in particular obligations under Articles 2, 3, 11 and 16 CAT. The Committee should also, however, stress the need for further comprehensive reforms of policy and practice, in order to adequately comply with those obligations.**

## **2 Article 3 CAT: The obligation of *non-refoulement***

There has been longstanding concern that, under the Greek system, there is insufficient examination of the merits of individual asylum applications, and that groups of asylum seekers coming from the same country are sometimes denied refugee status or international protection, without the merits of their claims being examined on an individual basis,<sup>18</sup> and without a hearing in their case.<sup>19</sup> While some of these comments will address the questions around procedures for asylum seekers, including under refugee law, they are important for the Committee's consider because it is typically in this context and setting that the State Party must discharge its obligations under article 3 of CAT.

The European Court of Human Rights, applying principles of *non-refoulement* that reflect those underlying Article 3 CAT, recently found Greece to be in violation of the obligation of *non-refoulement* to face torture or other ill-treatment under Article 3 ECHR, and the right to an effective remedy for violations of the Convention rights under Article 13 ECHR, because of the deficiencies in the examination by Greek authorities of the merits of claims for refugee status<sup>20</sup>. The Court noted that:

for a number of years the UNHCR and the Council of Europe Commissioner for Human Rights as well as many international non-governmental organisations have revealed repeatedly and consistently that Greece's legislation is not being applied in practice and that the asylum procedure is marked by such major structural deficiencies that asylum seekers have very little chance of having their applications and their complaints under the Convention seriously examined by the Greek authorities, and that in the absence of an effective remedy, at the end of the

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<sup>17</sup> CAT, General Comment 2, Implementation of Article 2 by States parties, CAT/C/GC/2, January 24, 2008.

<sup>18</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; ECHR, *M.S.S. v Belgium and Greece*, Application No. 30696/09, January 21, 2011, para. 192; UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; Pro Asyl, "The truth may be bitter but must be told - The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard", October 2007; Amnesty International, Greece: briefing on the draft law on asylum, migration-related détention and retruns of third country nationals, January 10, 2011; UNHCR, Observations on Greece as a country of asylum, December 2009.

<sup>19</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; Pro Asyl, October 2007, *op cit*.

<sup>20</sup> *M.S.S. v Belgium and Greece*, *op cit*; ECtHR, *R.U. v Greece*, Application no. 2237/08, June 7, 2011 [French] para. 83.

day they are not protected against arbitrary removal back to their countries of origin.<sup>21</sup>

The ICJ recalls that the Committee against Torture has stated that a State party “should always assess its *non-refoulement* obligations under article 3 of the Convention on an individual basis and provide, in practice, all procedural guarantees to the person expelled, returned or extradited.”<sup>22</sup>

### **2.1 Access to a fair and effective asylum procedure under the current transitional system**

The ICJ is concerned at the many practical obstacles to the effective implementation of the Decree, PD 114/2010, which is applicable until the beginning of 2012, when the new Asylum Authority will begin functioning. These practical problems lead to continuing risks of deportations contrary to the obligation of *non-refoulement* under Article 3 CAT.

The UNHCR has emphasised the great difficulties encountered in gaining access to the Attica police headquarters, making it virtually impossible for asylum seekers to lodge asylum claims and to meet deadlines for important procedural steps, including the filing of an appeal.<sup>23</sup> It has been consistently reported that officers involved in the interviews and the decision-making process of the asylum claims lack relevant training.<sup>24</sup> Moreover, the access to information for newly arrived migrants on their legal situation, their rights and entitlements and the asylum procedure is greatly limited by the absence of accurate interpretation or translated information leaflets.<sup>25</sup> Finally, legal assistance is likely to remain inaccessible in most cases, due to the clear shortage of staff.<sup>26</sup>

Protection rates regarding refugee status are very low compared to other European states. According to the UNHCR, the “approach taken in Greece is not consistent with the standard or interpretative approaches taken by other Member States [...] flaws in the process are fundamental.”<sup>27</sup>

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<sup>21</sup> *M.S.S. v Belgium and Greece*, op cit para. 300; *R.U. v Greece*, op cit para 74.

<sup>22</sup> Concluding Observations of the Committee against Torture: Estonia, UN Doc. CAT/C/EST/CO/4, 19 February 2008, paragraph 12 (**our emphasis**). See also, Concluding Observations of the Committee against Torture: France, UN Doc.CAT/C/FRA/CO/3, 3 April 2006, paragraph 9.

<sup>23</sup> UNHCR, Observations on Greece as a country of asylum, December 2009 ; *M.S.S. v Belgium and Greece*, op cit para.179-180 and 245.

<sup>24</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; UNHCR, Observations on Greece as a country 2011.of asylum, December 2009 ; *M.S.S. v Belgium and Greece*, op cit para. 185.

<sup>25</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; *M.S.S. v Belgium and Greece*, op cit para. 178; UNHCR, Observations on Greece as a country of asylum, December 2009.

<sup>26</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; UNHCR, Observations on Greece as a country of asylum, December 2009 ; CPT, Public Statement concerning Greece, March 15, 2011.

<sup>27</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

UNHCR has noted that, although there have been significant improvements in the fairness of asylum procedures under Decree PD 114/2010, many practical problems remain, regarding access to the asylum procedure and registration of asylum claims.<sup>28</sup> Organisational and technical problems continue to result in significant delays in the proceedings. Many cases are postponed or interrupted because applicants fail to appear for the hearing, yet this has been shown to be often due to lack of information provided to the applicant.<sup>29</sup> UNHCR reports that information leaflets for applicants for asylum are neither updated, nor available in the most relevant languages, and that they are not given to the migrants upon arrival so as not to encourage them from applying for asylum status.<sup>30</sup> Lack of professional interpreters and trained interviewers in the police directorates also undermines the effectiveness and fairness of the asylum procedure and results in significant delays.<sup>31</sup>

Access to the asylum procedure is also seriously limited by the requirement of a fixed address.<sup>32</sup> The European Court found that the three-day limit asylum seekers were given to provide an address is too restrictive to provide effective protection against *refoulement*. Applicants are made to believe that this is a condition to set in motion the procedure<sup>33</sup> and as a result often fail to appear to make their application.<sup>34</sup> They are, however, not informed that they can be registered under an “unknown address” and lodge their application.<sup>35</sup> Under PD 114/2010, persons will be able to apply if they can provide an address within the jurisdiction of the competent Directorate, which according to the UNHCR constitutes a serious obstacle to the access to the asylum procedure.<sup>36</sup> In addition, it is also reported that applicants are not always informed of the decision taken on the merits of their claim.<sup>37</sup>

The inaccessibility of information concerning the asylum procedure and migrants’ legal status and entitlements, the lack of possibility of communication and the absence of legal assistance and trained staff in the police directorates and reception centres, as well as the length of the procedures contribute to an increased risk of *refoulement* in violation of Article 3 CAT. The ICJ notes that this Committee has, in previous concluding

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<sup>28</sup> Press release of the UNHCR on the Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]

<sup>29</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; *M.S.S. v Belgium and Greece*, op cit para. 177.

<sup>30</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; *M.S.S. v Belgium and Greece*, op cit para. 179-180.

<sup>31</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek].

<sup>32</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011; UNHCR, Observations on Greece as a country of asylum, December 2009

<sup>33</sup> *M.S.S. v Belgium and Greece*, op cit para. 179.

<sup>34</sup> Ibid para. 305-309.

<sup>35</sup> Ibid para. 308; UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

<sup>36</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

<sup>37</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]; UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

observations, found that limitations on access to the asylum procedure, and lack of access to legal aid for asylum seekers, contributed to violations of Article 3 CAT.<sup>38</sup>

## ***2.2 Fair and effective asylum procedures under the new legislation***

Article 1 of Law 3907/2011 establishes an Asylum Service, deciding on initial asylum applications and staffed with civilian personnel, while Article 3 provides for the Appeals Authority tasked with the examination of appeals against the initial decision by the Asylum Service to reject international protection claims. It also establishes appeals committees within the Appeals Authority, composed of an individual of recognized standing with expertise in refugee or human rights law, a representative of the High Commissioner, and an expert in refugee and human rights law. Under Article 5.7, the Asylum Service and Appeals Authority will have to be operational within 12 months after the entry into force of the law. They therefore have to set up by early 2012.

The ICJ believes that the new law still omits safeguards necessary to ensure that the asylum process is effective in protecting against *refoulement*. First, in terms of the undocumented migrants' and asylum seekers' right to have access to **information** concerning their legal status and their entitlements, as well as concerning the asylum procedures, Article 13.3.e does not explicitly provide for dissemination of such information to migrants undergoing the first identification procedures.

The ICJ also believes that provisions of the law should explicitly ensure access to information in a language the migrants and asylum seekers understand, as well as to **translation** services throughout the procedure. Article 28 on remedies provides for linguistic assistance, yet such provisions should be included under Articles 13.3, 30.2 and 31.5 of the new Law.

Moreover, in the view of the ICJ, the right to **legal aid** is insufficiently guaranteed under Law 3907/2011. Article 13.3.f only provides for "guidance and legal advice", while Article 30.2 does not refer to legal aid at all in the process of objecting to a detention order. Neither of those provisions expressly ensures free legal assistance.

## ***2.3 Returns to Turkey***

Since a majority of migrants entering Greece come through Turkey, it is a particular concern that returns to Turkey under the readmission agreement between Greece and Turkey are a common practice.<sup>39</sup> It is especially problematic that Turkey does not accept responsibility for refugees from outside Europe<sup>40</sup> and removes individuals to

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<sup>38</sup> CAT Concluding Observations on Turkey, CAT/C/TUR/CO/3, 20 June 2011, para.15 recommendations (a) and (f)

<sup>39</sup> *M.S.S. v Belgium and Greece*, op cit para. 192; Pro Asyl, October 2007, op cit.

<sup>40</sup> It maintains the geographical limitation of the 1951 Refugee Convention.

neighbouring countries, including those where they may face torture, or other serious violations of human rights.<sup>41</sup>

## **Recommendations**

**The ICJ calls on the Committee against Torture to recommend that Greece, as a matter of priority, take further steps to legislate for and implement reforms of the asylum system necessary to comply with its obligations under Article 3 CAT. In particular it should:**

- **Ensure effective access to asylum and other forms of international protection for all migrants, and that there is individual consideration of the merits of the claim for protection;**
- **take prompt measures to implement law 3907/2011, and to ensure full compliance with the law in practice, in full respect of international human rights and refugee law;**
- **take steps to assist migrants and asylum seekers in effectively accessing the asylum procedure within the prescribed time limits;**
- **legislate for, and ensure in practice, effective provision of information to migrants, translated into languages they understand, regarding the procedure for registration of asylum claims, including the provision of clear and accurate information on the requirement of registration of an address;**
- **provide, in legislation and in practice, for translation and interpreters where necessary to ensure an accessible and fair asylum process;**
- **provide free legal aid to asylum seekers from the first instance stage;**
- **ensure adequate training for all officials involved in the asylum process, particularly in international human rights law and international refugee law;**
- **review the readmission agreement with Turkey to ensure that it complies with Greece's international law obligations of *non-refoulement*, including those under Article 3 CAT.**

### ***2.4 Appeals and absence of suspensive effect***

Although PD 114/2010 provides for a right to appeal against an order of deportation, several deficiencies in the appeal procedures undermine the effectiveness of the right to appeal. Asylum seekers do not have access to legal aid and may have difficulties in understanding their rights to appeal and the content of decisions in their case, since orders continue to be issued in Greek without translation.<sup>42</sup> Appeal procedures are in writing only, with strict deadlines and without automatic suspensive effect at the judicial level, leaving asylum seekers subject to removal at any time.<sup>43</sup>

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<sup>41</sup> UNHCR, *Asylum situation in Greece including for Dublin II Transferees*, January 31, 2011; UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010

<sup>42</sup> *M.S.S. v Belgium and Greece*, op cit para. 186.

<sup>43</sup> UNHCR, *Asylum situation in Greece including for Dublin II Transferees*, January 31, 2011; Amnesty International, *Greece: preliminary comments on the asylum-determination procedure reforms*, December 10, 2010;



The new law 3907/2011 provides under Article 28 for a quasi-judicial appeal carried out by administrative bodies, against deportation orders issued by police authorities. It further states that “the administrative bodies competent for ruling on the appeals [...] are also competent [...] to temporarily suspend [the] enforcement” of the deportation orders.<sup>44</sup> This wording does not clearly provide for an automatic suspensive effect since it could be interpreted as merely giving the possibility to the competent authority to suspend the deportation. Should this be a discretionary power, the law would fail to protect against the risk of *refoulement* pending the appeal. Without such automatic effect, the judicial remedy against transfer could be rendered futile and ineffective.

Under the Convention against Torture, people subject to removal and deportation or similar transfer orders have the right to contest such measures before an independent and effective judicial mechanism, which must have suspensive effect on the application of the expulsion measure until a final decision is reached.<sup>45</sup> This Committee has affirmed that a State should “provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture.”<sup>46</sup> It has clearly stated that “the right to an effective remedy contained in article 3 requires, in this context, an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise.”<sup>47</sup> In its Concluding Observations, this Committee has stressed that there must be suspensive effect of “appeals filed by any foreigner against whom an expulsion order is issued and who claims that he or she faces the risk of being subjected to torture in the country to which he or she is to be returned”.<sup>48</sup> Suspensive effect must take effect from the moment the appeal is filed.<sup>49</sup>

## Recommendations

### **The ICJ calls on the Committee Against Torture to urge Greece to take measures to ensure that the system of appeals fully complies with the obligation of *non-***

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<sup>44</sup> Article 28.2 of Law 3907/2011.

<sup>45</sup> Views of the Committee against Torture, *Mr. Ahmed Hussein Mustafa Kamil Agiza v. Sweden*, Communication No. 233/2003\*, CAT/C/34/D/233/2003, 24 May 2005, paragraph 13.7. See also, Human Rights Committee, *Mohammed Alzery vs. Sweden*, CCPR/C/88/D/1416/2005, 10 November 2006, para. 11(8). HRC, *Zhakhongir Maksudov and others vs. Kyrgyzstan*, CCPR/C/93/D/1461 and others, 31 July 2008, para. 12.7 (also on article 6); and, CPT/Inf (2005) 15, para. 30. See also, *Twenty Guidelines on Forced Return*, adopted by the Committee of Ministers of the Council of Europe at the 925th Meeting of the Ministers’ Deputies, 4 May 2005, Guidelines 5(1) and 5(3). CERD, *General Comment no. 30, Discrimination against Non-Citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 1 October 2004, paragraph 25.

<sup>46</sup> Concluding Observations of the Committee against Torture: Canada, UN Doc. CAT/C/CR/34/CAN, 7 July 2005, paragraph 5(c).

<sup>47</sup> Views of the Committee against Torture, *Mr. Ahmed Hussein Mustafa Kamil Agiza v. Sweden*, op cit para.13.7.

<sup>48</sup> *Concluding Observations of the Committee against Torture: Belgium*, Annual Report 2003, UN Doc. CAT A/58/44 (2003), paragraph 131(d).

<sup>49</sup> *Concluding Observations of the Committee against Torture: France*, UN Doc. CAT/C/FRA/CO/3, 3 April 2006, paragraph 7.

***refoulement* under Article 3 CAT, including by:**

- **Ensuring that the law guarantees the automatic and immediate suspensive effect of appeals against orders of deportation;**
- **Putting in place measures to ensure that free, prompt and effective legal assistance is provided to all persons subject to deportation orders, sufficient to ensure the effective exercise of their right to appeal the order;**
- **Ensuring that deportation orders and other relevant documents are translated into a language which the person subject to the order understands, so as to enable the exercise of his or her right to appeal against the order, and that the strict time limits do not impair the exercise of the right of appeal.**

## **2. Articles 2.1, 11, and 16 CAT: Conditions of detention for migrants and asylum seekers**

Greek authorities detain all new undocumented migrant arrivals, including asylum seekers and particularly vulnerable individuals such as victims of torture and human trafficking, disabled persons, pregnant women, minors and refugees from countries such as Iraq, Afghanistan and Somalia.<sup>50</sup> The Law 3772/2009 extended the maximum administrative detention period to six months, and in certain circumstances, even to twelve months. The ICJ notes that this Committee has previously criticised administrative detention lengths of up to 12 months, and has stressed that a State party “should take measures to ensure that detention of asylum-seekers and other non-citizens is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time.”<sup>51</sup> In particular, the Committee stressed that “non-custodial measures and alternatives to detention should be made available to persons in immigration detention.”<sup>52</sup>

It has been consistently and reliably reported that conditions of detention for migrants in Greece fall short and the requirements of CAT (Article 16) as well as other international law standards and the requirements of national law.<sup>53</sup> Detainees are held in conditions of severe overcrowding, up to three times the capacity of the cells.<sup>54</sup> They often cannot change their clothes and have inadequate access to showers and toilets, and sleep in

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<sup>50</sup> Pro Asyl, October 2007, op cit.

<sup>51</sup> *Concluding Observations of the Committee against Torture: Hungary*, UN Doc. CAT/C/HUN/CO/4: 6 February 2007, paragraph 9. See also, *Concluding Observations of the Committee against Torture: Italy*, UN Doc. CAT/C/ITA/CO/4, 16 July 2007, paragraph 9; *Concluding Observations of the Committee against Torture: Greece*, Annual Report 2001, UN Doc. CAT A/56/44 (2001), paragraph 88(a); *Concluding Observations of the Committee against Torture: Croatia*, UN Doc. CAT/C/CR/32/3, 11 June 2004, paragraph 8(g).

<sup>52</sup> *Concluding Observations of the Committee against Torture: Australia*, UN Doc. CAT/C/AUS/CO/3, 22 May 2008, paragraph 11(a). See also, *Concluding Observations of the Committee against Torture: Hungary*, UN Doc. CAT/C/HUN/CO/4: 6 February 2007, paragraph 9; *Concluding Observations of the Committee against Torture: Italy*, UN Doc. CAT/C/ITA/CO/4, 16 July 2007, paragraph 9.

<sup>53</sup> UNHCR Greece 16 June 2011

<sup>54</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; UNHCR, Observations on Greece as a country of asylum, December 2009.

insanitary conditions sometimes with only artificial lightening and without ventilation. Lack of access to daily outdoor exercise, lack of access to medical care, and the inability to communicate with their relatives or to have sufficient meaningful contact with the outside world, compound these poor conditions.<sup>55</sup> Finally, it has been reported that single men, women and children are sometimes kept together.<sup>56</sup>

The ICJ notes that severe overcrowding can amount to cruel, inhuman or degrading treatment either in itself<sup>57</sup> or in conjunction with other poor conditions of detention.<sup>58</sup> The cumulative effect of a number of poor conditions may lead to violation of this prohibition.<sup>59</sup> The European Court of Human Rights has found on several recent occasions that the conditions of detention of third country nationals in Greece violated the prohibition on inhuman or degrading treatment in Article 3 ECHR,<sup>60</sup> which reflects the standard applicable under Article 16 CAT. Such findings are also supported by the reports of the UN Special Rapporteur on Torture following his visit in Greece in 2010<sup>61</sup> and of the European Committee on the Prevention of Torture. According to the latter, its visit carried out in January 2011 demonstrated that “the information provided by the authorities was not reliable” and that the conditions of detention had worsened.<sup>62</sup> In light of these findings, the ICJ considers that conditions of detention of migrants in Greece violate the obligations to prevent cruel, inhuman and degrading treatment under Articles 2, read with Article 16 CAT, and raise issues under Article 11 CAT (also read with Article 16) in relation to the duty to keep detention arrangements under systematic review, with a view to preventing ill-treatment.

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<sup>55</sup> *M.S.S. v Belgium and Greece*, op cit; *A.A. v Greece*, ECtHR Application no. 12186/08, of July 22, 2010; UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; Pro Asyl, October 2007, op cit; This is also regularly documented by UNHCR field visits, the 2010 report of the CPT on the visit of September 2009, and the Council of Europe Commissioner for Human Rights visits of December 2008 and February 2010.

<sup>56</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]; UNHCR, Observations on Greece as a country of asylum, December 2009.; CPT, Public Statement concerning Greece, March 15, 2011; .UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

<sup>57</sup> *Kantjyrev v. Russia*, ECtHR, Application No. 37213/02, Judgment of 21 June 2007, paras. 50-51; *Labzov v. Russia*, ECtHR, Application No. 62208/00, Judgment of 16 June 2005, para. 44.

<sup>58</sup> Theo Van Boven, UN Special Rapporteur on Torture, *Annual Report to the Commission on Human Rights*, UN Doc. E/CN.4/2004/56, 23 December 2003, para. 49; *Belevitskiy v. Russia*, ECtHR, Application No. 72967/01, Judgment of 1 March 2007, paras. 73-79.

<sup>59</sup> *Dougoz v. Greece*, ECtHR, Application No. 40907/98, Judgment of 6 March 2001; *Z.N.S. v. Turkey*, ECtHR, Application No. 21896/08, Judgment of 19 January 2010.

<sup>60</sup> *M.S.S. v Belgium and Greece*, op cit, para. 231-234; *R.U. v Greece*, ECtHR , Application No.2237/08 of June 7, 2011, para. 63-64; *S.D. v Greece*, ECtHR , Application No. 53541/07 of June 11, 2009, para. 49-54.

<sup>61</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010

<sup>62</sup> CPT, Public Statement concerning Greece, March 15, 2011; CPT, following its visit to Greece from 20 to 27 February 2007, 8 February 2008

## Recommendations

**The ICJ urges the Committee against Torture to recommend that Greece, in the framework of its Action Plan:**

- **Take immediate steps to reduce reliance on detention for migrants, and consider less restrictive alternatives to detention wherever possible;**
- **take urgent steps to bring material conditions of detention for migrants into line with obligations under the Convention and ensure that these conditions are kept under continuous review in accordance with Article 11 CAT.**

### *2.1 Detention of non-accompanied children*

In Greece, the manner of detention of minors, and in particular non-accompanied children is a significant problem. Children are sometimes held with adults and single men, and it has been reported that there have been non-accompanied minors 10 years of age kept in detention.<sup>63</sup>

Article 32 of Law 3907/2011 provides for the detention of unaccompanied minors and families with minors as a “measure of last resort”.<sup>64</sup> It further states that “the best interest of the child shall be a primary consideration in the context of the detention of minors pending removal.”<sup>65</sup> Pursuant to Article 32, detention of minors is to be avoided and special accommodation should be provided “as far as possible.”<sup>66</sup> Because it is a flexible rather than strict provision and considering the lack of institutions and facilities in Greece designed to accommodate children, in practice it will be ineffective in preventing the detention of the majority of unaccompanied minors.

Given the poor conditions of migration detention in Greece, the detention of children is a particular concern, and carries a particular risk of violations of the freedom from cruel, inhuman and degrading treatment.<sup>67</sup>

## Recommendations

**The ICJ requests the Committee against Torture to recommend that Greece review its law and practice to ensure that children are held in detention only in the most exceptional circumstances, for the shortest possible period of time, and in facilities that are appropriate to their age and in compliance with obligations under Articles 2, 11 and 16 CAT.**

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<sup>63</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010; Pro Asyl, October 2007, op cit; UNHCR, Observations on Greece as a country of asylum, December 2009

<sup>64</sup> Article 32.1 of Law 3907/2011

<sup>65</sup> Article 32.5 of Law 3907/2011

<sup>66</sup> Article 32.4 of Law 3907/2011

<sup>67</sup> *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, ECtHR, Application no.13178/03, Judgment of 12 October 2006

## ***2.2 Procedural protection against ill-treatment in detention***

### *2.2.i Safeguards following detention*

Absence of legal advice, and lack of contact with the outside world, for those held in migration detention in Greece, mean that detainees are denied vital safeguards against ill-treatment in detention.<sup>68</sup> Article 30.2 of Law 3907/2011, which provides for the challenge of the detention order, does not expressly provide for the right to free legal aid, as opposed to the provision on remedies against deportation orders.<sup>69</sup> Detained third-country nationals have in practice very little opportunity to receive qualified free legal advice.<sup>70</sup> Further, detainees experience difficulties in gaining contact with their families or with the local support groups. In some centres, no phones are available and the mobile phones are confiscated.<sup>71</sup> Under Article 31 of Law 3907/2011 on detention conditions, the right to communicate with families and legal representatives, the right to be systematically provided with information, as well as well as the right for national, international and non-governmental organisations to visit the detention facilities should now be guaranteed.

### *2.2.ii Lack of judicial review of detention and of an effective remedy*

Although provided for by law,<sup>72</sup> in practice the right to appeal against detention orders can rarely be exercised, due to lack of information and legal advice.<sup>73</sup> The right to challenge the lawfulness of detention judicially, is a right not subject to restriction or derogation and a fundamental protection against torture or ill-treatment in detention as well as against arbitrary detention as has been recognised by this Committee in General Comment 2.<sup>74</sup> This right is of vital importance to detained migrants, in particular where no clear individualised grounds for detention have been disclosed to the detainee or to his or her lawyer. In the specific context of migration detention, this Committee has considered that a “State party should ensure that such asylum-seekers are brought before

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<sup>68</sup> The importance of these safeguards for compliance with CAT has been recognised by this Committee in General Comment 2, para.13

<sup>69</sup> Article 28.4 of Law 3907/2011 states that “the necessary legal assistance and representataion is provided on request free of charge [...] when, according to the judge’s opinion, the application to annul is not manifestly unfounded”.

<sup>70</sup> *UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece*, October 20, 2010; UNHCR, *Observations on Greece as a country of asylum*, December 2009 ; Amnesty International, *Greece: briefing on the draft law on asylum, migration-related détention and retruns of third country nationals*, January 10, 2011 ; UNHCR, *Asylum situation in Greece including for Dublin II Transferees*, January 31, 2011.

<sup>71</sup> Pro Asyl, October 2007, op cit; Detention in Europe, Greece – Legal basis for detention, March 21, 2011, [http://detention-in-europe.org/index.php?option=com\\_content&view=article&id=144&Itemid=176](http://detention-in-europe.org/index.php?option=com_content&view=article&id=144&Itemid=176)

<sup>72</sup> Articles 28 and 30.2 of Law 3907/2011

<sup>73</sup> *M.S.S. v Belgium and Greece*, op cit, para. 182; Detention in Europe, Greece – Legal basis for detention, March 21, 2011, [http://detention-in-europe.org/index.php?option=com\\_content&view=article&id=144&Itemid=176](http://detention-in-europe.org/index.php?option=com_content&view=article&id=144&Itemid=176)

<sup>74</sup> CAT, General Comment 2, Implementation of Article 2 by States parties, CAT/C/GC/2, January 24, 2008, para. 13.

a judge so that he or she may rule on the legality of their detention. The State party should also guarantee that they have a right to effective remedies.”<sup>75</sup>

In his preliminary findings on Greece in 2010, the UN Special Rapporteur on Torture stated that “in the absence of a regular or automatic judicial review it is in practice extremely difficult for migrants to challenge their detention.”<sup>76</sup> The European Court of Human Rights has highlighted the fact that under Law 3386/2005, national courts can examine the decision to detain an irregular migrant, but that this law does not grant the courts power to examine the conditions in which third country nationals are detained nor to request the release of a detainee in this respect.<sup>77</sup> The Court held on several occasions that there was a violation of Article 3 and 13 ECHR, since there is no effective remedy in Greece to claim against conditions of detention that violate international law prohibitions on torture or cruel, inhuman or degrading treatment.<sup>78</sup>

The new Law 3907/2011 provides for an automatic review of the detention order, “every three months, by the institution that issued the detention order.”<sup>79</sup> The new law does not expressly provide for the review of conditions of detention.

## **Recommendations**

**The ICJ urges the Committee Against Torture to recommend that Greece take appropriate legislative and practical measures to:**

- **Provide access to legal advice, including where necessary free legal assistance, to migrants held in detention;**
- **Allow detained migrants access to the outside world, including effective communications with lawyers and family members;**
- **ensure that all detained migrants have access to judicial review of detention and to judicial remedies for conditions of detention that may violate Articles 2 and 16 CAT.**

### **3 Articles 2.1 and 16: Living conditions of asylum seekers**

The material situation for asylum seekers is extremely difficult. This situation is the direct result of the inadequacies and delays in the asylum system, to an extent that places Greece in violation of its obligations to prevent cruel, inhuman or degrading treatment through legislative, administrative, judicial and other measures, under Articles 2 and 16 CAT.

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<sup>75</sup> Concluding Observations of the Committee against Torture: Luxembourg, UN Doc. CAT/C/LUX/CO/5, 16 July 2007, paragraph 5.

<sup>76</sup> UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, October 20, 2010

<sup>77</sup> *R.U. v Greece*, op cit para 59; *A.A. v Greece*, op cit para. 47

<sup>78</sup> *R.U. v Greece*, op cit para. 61-65.

<sup>79</sup> Article 30.3 of Law 3907/2011

Due to the shortage of places available in reception centres - less than 1000 reception places available for 16000 asylum applications lodged in 2009 and 10273 in 2010-, a great number of asylum seekers, including unaccompanied children, remain homeless, living in unacceptable housing conditions and hygiene standards, often in public spaces or abandoned houses, with no resources or access to sanitary facilities, unemployed and without any support from the State.<sup>80</sup> In addition, the UNHCR has reported that “authorities evacuate locations where third-country nationals, including asylum-seekers, reside as squatters, because of conditions that pose a risk to public health, but make no provision for their relocation.”<sup>81</sup>

Moreover, the delays in the procedures for determination of asylum claims have serious and adverse consequences in terms of living conditions, as asylum seekers remain in extreme poverty and uncertainty for long periods, facing risks of violence and xenophobic reactions.<sup>82</sup>

Once released from detention, unaccompanied children often remain homeless and without protection, due to the lack of specialized accommodation centres. They are exposed to the risks of becoming victims of trafficking in human beings (forced labour, prostitution, etc.) or drug trafficking for instance.

Pursuant to *Directive 2005/85 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status in the Member States* (the “Procedures Directive”), Greece is required to guarantee certain material reception conditions, including accommodation, food and clothing, in kind or in the form of monetary allowances, and ensure the allowances are sufficient to protect the asylum seeker from extreme need. Nevertheless, the European Court of Human Rights found that living conditions of asylum seekers failed to meet these standards and violated the prohibition on inhuman or degrading treatment under Article 3 ECHR. The Court found that living conditions of asylum seekers in Greece constituted “humiliating treatment showing the lack of respect for [the applicant’s] dignity”, and noted that this situation, combined with prolonged uncertainty, had aroused “feelings of fear, anguish or inferiority capable of inducing desperation, and had attained the level of severity required to fall within the scope of Article 3 of the Convention.”<sup>83</sup> The ECtHR therefore held that, in particular given national law obligations on Greece to ensure adequate material reception conditions, the situation of extreme poverty brought about by the inaction of the State was treatment contrary to Article 3 ECHR.

The ICJ considers that the obligation to take effective measures to prevent cruel, inhuman or degrading treatment under Articles 2 and 16 CAT is violated where, as a result of the acts and omissions of the State, in particular the failure to provide accommodation and

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<sup>80</sup> UNHCR, Situation of refugees in Greece – observations and proposals of the UNHCR, of June 16, 2011 [Greek]; Council of Europe Commissioner for Human Rights, UNHCR, Aire Centre and Amnesty International interventions in *M.S.S. v Belgium and Greece*, op cit, para.244-246; UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011.

<sup>81</sup> UNHCR, Asylum situation in Greece including for Dublin II Transferees, January 31, 2011

<sup>82</sup> Greek Ombudsman, Delays in the examination of pending asylum claims, January 24, 2011

<sup>83</sup> *M.S.S. v Belgium and Greece*, op cit, para.263.

the failure to provide for essential material needs, coupled with delays in the asylum process, asylum seekers are placed in a situation of homelessness and extreme destitution for extended periods.

Although the Action Plan has provided for an increase in reception places and specialized facilities for children, and Greece has received an initial EU emergency funding, it is unlikely that the situation will improve unless considerable resources are mobilized to ensure the running, staffing and maintenance of such facilities.

## **Recommendations**

### **The ICJ calls on the Committee Against Torture**

- **to recognise that living conditions for migrants in Greece may in some cases amount to proscribed treatment within the definition of cruel, inhuman or degrading treatment in Article 16 CAT recommend that Greece take concerted action to prevent such conditions, in compliance with its obligations under Article 2, read in conjunction with Article 16 CAT;**
- **to recommend that Greece take urgent measures to make resources available to provide for the material needs of migrants, in particular those who are homeless;**
- **to recommend that Greece give priority to the opening of new reception centres to accommodate migrants in conditions that comply with its obligations under the Convention.**

## **4. Ratification of the Optional Protocol to CAT**

Greece has signed<sup>84</sup> but not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>85</sup> The ICJ welcomes Greece's signature of the Protocol, and looks forward to an early ratification, which would be an important additional signal of Greece's intent to address the problems of ill-treatment and poor conditions of detention, including migration detention, that have been consistently identified by international courts and review bodies.

## **Recommendations**

**The ICJ recommends the Committee Against Torture to recommend that Greece ratify the OPCAT and prepare implementing legislation, including the establishment of a national monitoring mechanism, without delay.**

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<sup>84</sup> Greece signed the OPCAT on 3 March 2011.

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en)

<sup>85</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/11/GRC/1, of 14 February 2011.