Working Group on Arbitrary Detention:
Preliminary Findings from its visit to Greece (2 - 13 December 2019)

I. Introduction

At the invitation of the Government, the United Nations Working Group on Arbitrary Detention (WGAD) conducted an official visit to Greece from 2 to 13 December 2019. The WGAD was represented by Mr. José Antonio Guevara Bermúdez (Mexico, Chair-Rapporteur), Leigh Toomey (Australia, Vice-Chair) and Sètondji Roland Adjovi (Benin) and accompanied by staff from the Office of the United Nations High Commissioner for Human Rights. This is the second official visit of the Working Group to the country, the first visit having been conducted in 2013.

The Working Group extends its gratitude and appreciation to the Government of Greece for the invitation to undertake this country visit and for its fullest cooperation throughout the visit. In particular, the Working Group met with the officials of the Ministry of Foreign Affairs, Ministry of Citizen Protection, Ministry of Health, Ministry of Labour and Social Affairs, Hellenic Supreme Court of Civil and Criminal Justice, Supreme Court's Public Prosecutor Office, Public Prosecutor's Office in Thessaloniki, Ministry of Mercantile Marine and Island Policy, members of the Athens and Thessaloniki Bar Associations; National Centre for Social Solidarity, National Coordinator for Unaccompanied Minors, the Greek National Commission for Human Rights and the Office of the Greek Ombudsman. The Working Group thanks the United Nations Office of the High Commissioner for Refugees and United Nations Children's Fund for the support provided prior to and during the visit. The Working Group also recognizes the numerous stakeholders within the country who shared their perspectives on the arbitrary deprivation of liberty, including representatives from civil society. The Working Group thanks all of them for the information and assistance they provided.

The observations presented today constitute the preliminary findings of the Working Group. They will serve as a basis for future deliberations between the five members of the Working Group at its forthcoming sessions in Geneva. The Working Group will then produce and officially adopt a report about its visit that will be submitted to the UN Human Rights Council at its 45th session in September 2020.

The Working Group visited 20 places of deprivation of liberty, including police stations; holding cells of the Hellenic Coast Guard, immigration pre-removal detention facilities, prisons, a detention establishment for youth, psychiatric facilities as well as the Centre for children and young adults with disabilities in Lechaina. It was able to confidentially interview over 150 persons deprived of their liberty.

In determining whether the deprivation of liberty is arbitrary, the Working Group refers to the five categories outlined in its Methods of Work, namely: 1) when it is impossible to invoke any legal basis justifying the deprivation of liberty; 2) when the deprivation of liberty results from the exercise of certain rights guaranteed by the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights; 3) when the right to a fair trial has been seriously violated; 4) when asylum-seekers, immigrants or refugees are subjected to prolonged administrative detention without the possibility of an administrative or judicial review or remedy; and 5) when the deprivation of liberty constitutes a violation of international law on the grounds of discrimination of any kind.

The Working Group provides its preliminary findings on the deprivation of liberty in the context of the criminal justice system, migration, psychosocial disability and social care.

II. Good practices and positive developments

Ratification of international human rights instruments

The Working Group welcomes the ratification by Greece of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 11 February 2014 and the designation of the Greek Ombudsman as the National Preventive Mechanism (NPM). The Working Group recalls that regular independent oversight over all places of deprivation of liberty has a significant role in reducing the instances of arbitrary detention. The Working Group calls upon the NPM to strengthen its efforts to visit in a more regular manner all places of deprivation of liberty across the country. The Working Group also urges the Government to increase its efforts to engage constructively with the NPM, especially on the implementation of the recommendations issued by this body.

Alternatives to detention

The Government has underlined that it applies alternative forms of detention such as the obligation to report regularly to the authorities.

Law No. 4619/2019 has amended the Penal Code to reduce the length of penalties and encourage the use of non-custodial measures. Article 52 reduces the maximum penalty to 15 years for all offences, with the exception of life sentences. Sentences in youth detention facilities vary from 6 months to 5 years if the normal sentence applicable is up to 10 years' imprisonment, and from 2 to 8 years for a life sentence or other sentence (article 54). Article 55 provides for community service alternatives to detention, while minor offences only punishable by fines are no longer prosecuted.

While the Working Group acknowledges that these provisions are positive steps forward, it would like to emphasize that there is still considerable scope for their implementation.

Provisions for early release

The Working Group was informed that prisoners who have served a percentage of their sentence are eligible for early release from detention. Under article 105B of the Penal Code, anyone serving a sentence involving the deprivation of liberty may be released when they have served 2/5 of the required time to be served in the case of a sentence up to five years, and 3/5 of the required time in the case of a sentence of between 5 to 20 years.

In addition, according to article 105B of the Penal Code, convicts who work, attend school or participate in vocational training are eligible for a reduction in their sentence to reflect the time spent working or in attending these programs. While the prisoners are not paid for this work and the Government should review it, their participation in the scheme is voluntary. A maximum of two sentence days is deducted from the sentence for every day of work or education undertaken. Article 1

of Presidential Decree 107/2001 makes similar provision for the reduction of sentences for prisoners who work at certain prison farms and other specific penitentiary institutions.

Furthermore, certain categories of prisoners are eligible for early release: persons above the age of 65 are eligible for a reduction in their sentence of two days for every day spent in detention, persons above the age of 75 who are serving a sentence of up to ten years' imprisonment may serve the remainder of the sentence at home with an electronic bracelet and persons who are assessed with more than 67% of disability, he or she can be released early after serving 1/3 of the sentence. However, the Working Group met with one detainee aged 70, and would therefore like to encourage the Government to ensure that these provisions are applied in practice.

The Working Group was informed that the early release provisions are implemented across Greece and was able to confirm this during its visits to detention facilities. For example, the Working Group observed that, despite the challenging conditions at the Korydallos Prison in Athens, the authorities deliver educational programs, including for finishing high school and studying at university, as well as various vocational project that may be used in reducing the sentence.

The reduction of sentences under these provisions is commendable as it provides convicts with the ability to undertake work and gain new vocational and other skills, and contributes to the earlier reintegration of prisoners into society. The provisions for early release are also an important means of addressing the very serious problem of overcrowding of detention facilities throughout Greece. The Working Group urges the Government to continue to extend this practice as much as possible within the prison population and other places of deprivation of liberty.

Cooperation by the authorities

The Working Group wishes to emphasize the full cooperation of the Government both prior to and during its visit in terms of securing all the requested meetings with stakeholders, provision of relevant data and information, and ensuring unimpeded access to all places of detention. This is a strong foundation for the Working Group to continue its dialogue with the authorities on detention practices across Greece.

III. Deprivation of liberty in the context of the criminal justice system

Presentation before a judicial authority

The Working Group recalls that anyone arrested or detained on a criminal charge has the right to be brought promptly before a judicial authority. During its visit, the Working Group ascertained that individuals are normally presented to the Public Prosecutor within 24 hours of arrest. While this is commendable, the Working Group considers that presentation to the prosecutorial authorities cannot be equated with presentation to judge required under article 9(3) of the International Covenant on Civil and Political Rights (ICCPR). As the UN Human Rights Committee has noted, prosecutorial authorities do not possess the requisite degree of independence to assess the necessity and

proportionality of detention. The Working Group therefore recommends that Greece complies with its obligations under the ICCPR.

Pre-trial detention

The Working Group recalls that, according to article 9(3) of the ICCPR, detention shall be exceptional rather than the general rule, and anyone detained on a criminal charge has the right to be tried within a reasonable time or released.

The Working Group notes with concern the widespread use of pre-trial detention in Greece. The imposition of pre-trial detention is in practice automatic, as the individual assessment of whether detention is necessary and proportionate does not take place. Pre-trial detention may also be imposed for up to 18 months, contrary to article 6(4) of the Greek Constitution, which stipulates that detention pending trial should not exceed one year in the case of felonies or six months in the case of misdemeanours. These periods may only be extended for up to six months in entirely exceptional cases.

Moreover, the separation of pre-trial detainees and convicted persons is not implemented in any of the facilities visited. Pre-trial detainees are also subject to the same treatment as those who have been convicted, contrary to the presumption of innocence that all persons are entitled to prior to conviction. The failure to separate pre-trial detainees and convicted prisoners is contrary to article 10(2)(a) of the ICCPR and rule 11(b) of the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

The Working Group urges Greece to abide by its international obligations to ensure that pre-trial detention is exceptional, and that persons detained pending trial are separated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons.

Presumption of innocence

The Working Group recalls that everyone charged with a criminal offence has the right to be presumed innocent under article 14(2) of the ICCPR. The Working Group received credible information involving non-nationals in pre-trial detention who were detained exclusively on the basis of police testimony, including when there was other evidence that did not support the guilt of the persons involved. Similar instances were reported to the Working Group in cases of drug related crimes and organised crimes. The presumption of innocence imposes a burden on the prosecution of proving charges beyond reasonable doubt. The Working Group urges the judicial authorities to ensure that accused persons are afforded the right to the presumption of innocence and a fair consideration of all available evidence when making decisions to detain, regardless of the nationality of the accused.

Right to legal counsel

The Working Group was informed of numerous cases in which detainees accused of misdemeanours were not informed of their right to legal assistance, including legal aid. In most instances, the detainees appeared without a lawyer when brought to the Public Prosecutor when pre-trial detention was ordered. As a result, the detainees could not effectively defend themselves and were not given a fair opportunity to contest the pre-trial detention. The Working Group received information, however, that detainees who were accused of felonies, particularly in relation to serious drug offences, were informed of their right to access a lawyer of their choice or at no cost if they did not have sufficient means to afford legal assistance. The Working Group recommends that the provision of the right to legal assistance be extended to all persons who are accused of any type of crimes, particularly misdemeanours.

According to principle 9 and guideline 8 of the UN Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of this right. Assistance by legal counsel in the proceedings shall be at no cost for a detained person without adequate means.

The Working Group encourages the Government of Greece to ensure that all persons shall be promptly informed of the right to legal assistance by counsel of their choice upon apprehension or at no cost if they cannot afford a lawyer. The authorities must also ensure that all persons deprived of their liberty benefit from this right at any time during their detention.

Provision of information in other languages

The Working Group recalls that, according to articles 9(2) and 14(3)(a) of the ICCPR, every person who is arrested has the right to be informed in a language that he or she understands of the reasons of the arrest, and to be promptly informed of the charges. The authorities are also required to inform the detained person in a language that he or she understands of his or her rights, including the right to legal counsel and to request a court to consider the legality of the detention.

The authorities informed the Working Group that all detained persons are informed of the reasons for their detention, either orally or in writing. If the detained person is a foreign national who does not understand the Greek language, care is taken to explain their rights to them through an interpreter or a consular authority. Individual informative sessions are provided when necessary in special cases. Information bulletins in the language of the detainee are also available, but were not visible in most cases. The Ministry of Citizen Protection provided to the Working Group printed materials with the rights of detainees explained in various languages, but these materials do not appear to be consistently provided to detainees.

The Working Group received numerous reports that, owing to the lack of interpreters, detainees were not informed in a language that they understood of the reasons of their arrest, nor of their rights as detainees. According to article 14(3)(f) of the ICCPR, all persons charged with a criminal offence have the right to the free assistance of an interpreter if he or she cannot understand the language used in

court. While the challenges of providing interpretation are considerable in a context in which persons of many different nationalities and languages are in contact with the law, the Working Group urges the Government to provide interpretation services to all persons who have been deprived of their liberty.

Short trials

A fair trial requires time for the parties to present their evidence and, in particular, for the accused person to be given adequate time to be heard pursuant to article 14(1) and 14(3) (b) and (d) of the ICCPR. According to several credible reports, some criminal trials have been short, ranging from a few minutes to a few hours and concluded in a single day. There is also often no opportunity for the accused to address the court, while law enforcement agents are extensively heard. This practice is in direct violation of the rights to a fair trial, including the principle of the equality of arms. The Working Group calls upon the Government to ensure that the accused is given adequate time to present a defence and to address the court.

Overcrowding of detention facilities

The Working Group notes that severe overcrowding remains an issue in most detention facilities, which are over capacity. The Working Group is of the view that overcrowding could be resolved by reducing the use of pre-trial detention, establishing new separate facilities for remanded persons and implementing alternative measures to detention.

Conditions of detention

During its visits to facilities in which people are deprived of their liberty, the Working Group noted that the conditions were in some instances better for Greek nationals than other foreign nationals. For example, at some prison facilities, the wards in which Greek nationals are detained appear to be significantly less crowded than other wards in which other nationals are housed, with a higher number of non-European nationals detained in each cell. In addition, several non-Greek detainees from other regions reported serious health issues, including physical and psychosocial disabilities that require urgent medical attention that has not been granted by the authorities.

The Working Group was, however, also informed of other cases of vulnerable individuals and groups who had received appropriate individualised treatment from the authorities, including persons who were accused of or had committed serious sexual offences that require protective measures and LGBTI persons. The Working Group invites the Government to ensure consistent application of individualised treatment in all places of detention.

Furthermore the Working Group is concerned that, in general, the medical services located in prisons are understaffed, which could result in a higher risk of deaths in custody. According to rule 24 of the Mandela Rules, prisoners should enjoy the same standard of health care that is available in the

community, and should have access to necessary health care services free of charge without discrimination.

Having visited detention facilities related to the criminal justice system, including police stations and prisons, the Working Group considers that they do not generally meet international standards, particularly the Mandela Rules, due to overcrowding, lack of adequate cleaning and sanitary services, and inadequate or non-existent health services. The lack of satisfactory conditions of detention often impacts upon a detainee's ability to participate in his or her criminal proceedings and to present an effective defence and appeal. It is therefore important for the Government to address the conditions within detention facilities as a matter of priority.

Monitoring of places of detention

The Working Group identified a general lack of awareness among detainees as to how to submit a complaint in relation to their detention and the conditions in which they are held. There is no visible mechanism in places of deprivation of liberty, such as a telephone number or relevant contact details, to present claims to the Greek Ombudsman on violations of human rights. Many detainees also reported that there were few, if any, visits to their places of detention by relevant monitoring mechanisms. The Working Group urges Greece to consider establishing a hotline for reporting in the prisons, to display such information throughout, and provide sufficient funding for regular and independent monitoring and oversight of places of detention.

IV. Detention of persons in the context of migration

The Working Group recognises the challenges involved in respecting international human rights standards in the current context of mass migration into the country and the arrival of large numbers of people seeking international protection. Following the closure of the borders at the Balkan corridor and the adoption of the EU-Turkey statement in March 2016, the administrative detention of migrants has significantly increased. As a result, in 2017, 68,112 persons were arrested for illegal entry or stay in Greece; 93,367 in 2018; and, as of 2 December 2019, 98,019 in 2019. As of 5 December 2019, 2 257 asylum seekers are detained in pre-removal detention centres (PRDCs) and 1273 persons are further detained in police stations.

The Working Group visited ten facilities in which asylum seekers may be or are deprived of their liberty, including police stations, border guard stations and cells maintained by the Hellenic Coast Guard, reception and identification centres (RICs) and PRDCs. It identified serious problems that may lead to the arbitrary and prolonged deprivation of liberty, including the inadequate individual assessment of the appropriateness and necessity of detention; detention exceeding in practice the maximum three-month period provided by law for asylum seekers due to the delays in registration of asylum applications, and detention in inappropriate facilities such as police stations that are not suitable for the long-term detention, including of asylum seekers. Equally, the Working Group identified gaps in the provision of interpretation and legal aid, resulting in the lack of access to judicial remedies against the detention decisions. It furthermore notes with particular concern the policy of geographical

restriction on the movement of asylum seekers from the islands and the lack of awareness of the consequences of breaching this restriction, namely placement in a PRDC.

Right to seek asylum

According to the Government, the Hellenic Police has been given clear orders to respect the right of detainees to submit an application for international protection and to exercise the legal remedies provided for by the law. The authorities claim that no foreign citizen in detention who has applied for international protection may be returned, until his/her application has been examined, since Greece fully respects the 1951 Geneva Convention relating to the Status of Refugees as well as the procedures laid out in EU Directive 2013/32/EU, incorporated into national law.

The Hellenic Coast Guard signed a Memorandum of Understanding with the UNHCR in Greece in September 2014, which was renewed in 2018. The Memorandum aims at protecting and safeguarding the fundamental rights of migrants and refugees, in accordance with the requirements of international, European and national law. Furthermore, representatives of civil society have access to all detention areas. This also applies to representatives from other actors involved in migration and refugee matters, such as the UNHCR.

According to the Greek authorities, foreign citizens under detention are provided with "Information Notes" so that they are informed in a language they understand of their rights regarding detention and the asylum procedure. The presence of an interpreter is also a standard procedure and efforts are made to cover the interpretation needs of all departments involved, with interpreters appointed by the Government or provided by NGOs.

During its on-site visits and interviews, the Working Group observed that many detainees either did not understand their right to apply for asylum and/or the procedure involved in doing so, with some individuals incorrectly believing that the process was initiated when they were fingerprinted. There is no established scheme for providing legal aid during the first instance asylum application, and interpretation was not consistently provided, with asylum seekers relying on second-hand information from fellow applicants.

The Working Group was informed that no information is provided by the police to the detainees on their right to apply for international protection or the procedural stages; such information is only provided by non-government actors. No further information appears to be provided regarding the detention time limits. In addition, both the original detention decisions and their reviews following ex-officio review by the judicial authorities are only drafted in Greek. Most PRDCs do not have interpretation services for most languages, and when interpreters exist, they do not undertake the interpretation of all procedural steps, documents and everyday issues, especially taking into consideration the high number of detainees in many PRDCs.

Furthermore, some persons who had been detained on separate criminal charges but were also applying for asylum experienced significant barriers to pursuing their claims when they were unable to attend their interviews with the Asylum Service. In addition, the Working Group was informed that these criminal charges could affect determination of the asylum claim.

The right to seek asylum is recognised under article 14(1) of the Universal Declaration of Human Rights. In addition, as the Working Group recognised in its Revised Deliberation No. 5, the right to personal liberty is fundamental and extends to all persons at all times, including migrants and asylum seekers irrespective of their citizenship, nationality or migratory status. All detained migrants must have access to legal representation and interpreters.

Protective custody

According to the Government, article 19 of Presidential Decree 220/2007 obliges the competent authorities, such as the Reception and Identification Service, the Asylum Service and the Police, to undertake all the necessary measures for the representation of unaccompanied minors. This entails the competent authorities informing the Prosecutor for Minors or, when there is no such Prosecutor, the Prosecutor at the local First Instance Court, who acts as a temporary guardian. Moreover, Law 4554/2018, which will enter into force on 1 March 2020, foresees that all unaccompanied minors in Greece are appointed a professional guardian.

According to article 118 of Presidential Decree 141/1991, children can be placed under protective custody until they are referred to appropriate reception facilities or until they are reunited with the persons responsible for them. Protective custody under Greek law does not always amount to detention but, in practice, it has mostly been implemented through the detention of children in pre-removal detention facilities or police stations. In some cases, children have been placed under protective custody in hospitals, also under the care or supervision of police forces.

According to data from the National Centre for Social Solidarity (EKKA), as of 30 November 2019, there were 257 children held in protective custody. EKKA prioritises unaccompanied minors in administrative detention for placement in alternative emergency accommodation or proper shelters. However, the Government points to the considerable lack of such places in order to cover the needs of all unaccompanied minors in Greece. The Working Group was informed that while the number of unaccompanied minors in the country has reached approximately 5000, there are 1376 places in long-term accommodation and 840 in short term accommodation.

The Working Group confirmed the existing substantial burden on shelter facilities, resulting in many unaccompanied children being held in protective custody in unacceptable conditions in facilities that are not appropriate for the detention of children, such as police stations and pre-removal facilities on the mainland. Although officials appear to be providing the best support available in the circumstances, the Working Group noted that some children were being held for prolonged periods (ranging from a few days to more than two months) in conditions similar to those of criminal detention, especially in police stations. These children were being held together with adults, in dark cells, with no access to recreational or educational activities, and no information on what would happen to them in future. There is no maximum time limit on the period in which a child may be held in protective custody.

Furthermore the Working Group was informed that the prosecutor, as institution responsible for the care and security of the children under protective custody, does not visit the children in the detention facilities.

In February 2019, the European Court of Human Rights found that the automatic placement of unaccompanied asylum-seeking children under protective custody in police facilities, without taking into consideration the best interests of the child, violated article 5(1) of the European Convention on Human Rights (ECHR). The Working Group urges the Government to uphold its obligations under the Convention of the Rights of the Child and ECHR by putting an end to the detention of children under the protective custody scheme in police stations or other facilities related to the criminal or immigration systems.

The Working Group invites the Government to ensure that the best interest of each child is prioritized and that children who enter the country in an irregular manner are not detained and are placed in facilities appropriate to their age. As the Greek Ombudsman has observed, this could be achieved by transitioning to community-based care, foster care, supported independent living, and the gradual reduction of institutional structures.

Age assessment

According to article 14(9) of Law No. 4375/2016, whenever there is doubt as to whether a third-country national or stateless person is a minor, an age assessment shall be undertaken and, until the assessment ruling is issued, the person is presumed to be a minor. In addition, according to article 6 of the Joint Ministerial Decision 92490/2013, age assessment of persons claiming to be minors is to be conducted in three consecutive stages consisting of: clinical examination by a paediatrician; psychological and social evaluation by qualified experts, and medical examination of skeletal age. Article 6(8) of the Decision provides for procedural guarantees throughout the age assessment, including guaranteeing that the person is represented throughout the procedure, obtaining of consent for the examinations, and ensuring that the primary consideration is the best interest of the child.

The Working Group notes that these provisions are not being applied in practice. At present, the police reportedly rely primarily on x-ray and dental examinations under the third step of the age assessment procedure, and these examinations are not sufficient to accurately assess a person's age. Persons claiming to be children are reportedly not generally represented or informed of their rights in a language that they understand during the assessment. In order to challenge the outcome of the assessment, the person must submit an appeal to the Secretariat of the RIC within 10 days of notification of the decision, which poses difficulties for persons based within a RIC who cannot access relevant documentary proof of their age within such a short timeframe. In addition, the assessment procedure appears to be ad hoc and only applies to persons undergoing reception and registration procedures, as well as those who have applied for international protection. The guarantees applicable to age assessment do not apply to unaccompanied children who are in protective custody under the responsibility of the Hellenic Police.

As a result, unaccompanied minors and other children are being detained unnecessarily due to inaccurate assessment procedures, and are treated as and detained with adults. The Working Group recommends that the authorities consistently apply the guarantees outlined above when conducting age assessments, particularly the presumption that a person is a child unless the contrary can be conclusively proven. The Working Group reiterates the Greek Ombudsman's call to the Government in 2018 to put a complete end to all administrative detention of migrants under 18.

Vulnerability assessment

Greek law does not prevent the detention of vulnerable individuals or groups. However, the law contains guarantees for such individuals. According to article 14(8) of Law No. 4375/2016 and article 11(2) of Law No. 3907/2011, vulnerable people include unaccompanied minors; persons with disabilities; elderly persons; pregnant women; single parent families with children, victims of torture or other serious form of psychological, physical, or sexual violence or exploitation (for example, persons with post-traumatic stress disorder), and victims of trafficking. The vulnerability of an individual must be assessed by the Reception and Identification Service prior to registration of an asylum application or during the asylum process, and is used in determining whether to detain or prolong detention.

The determination of vulnerability is critical to the immigration and asylum procedures, at least until the new law on international protection enters into force which no longer associates the vulnerability assessment with the type of asylum procedure to be followed. Currently, when a person is determined to be part of a vulnerable group specified in the legislation, the geographical restriction to remain on the island at which he or she arrived or was received is lifted, and the person can travel freely within Greece without risk of arrest. The consideration of asylum applications is also reportedly faster for those persons who are recognised as belonging to a vulnerable group under the regular asylum procedure.

Persons who are vulnerable are, however, detained in practice, and the Working Group was informed of cases in which individuals did not undergo a proper identification of vulnerability and individualised assessment prior to the issuance of a detention order. There are also delays between the time of arrival and the conducting of vulnerability assessments due to the understaffing and lack of medical and psychosocial experts. The Working Group urges the authorities to prioritise the hiring of sufficient experts, particularly in the islands, to carry out vulnerability assessments and to ensure that they are conducted in every case.

Opportunity to challenge detention and removal decision

The Greek authorities have pointed out that the right of foreign citizens to challenge the measure of detention in case of expulsion was provided for in article 76 of Law 3386/2005, a right that can be exercised anytime during the duration of the detention.

The Working Group was informed that asylum applications are submitted before the Asylum Service in the first instance. If the application is rejected, the applicant can appeal the decision in the second instance before an Independent Appeals Committee under the Appeals Authority. An appeal must be lodged within five days at border procedures. Legal aid funding for lawyers is only provided on appeal and, if a person did not have their own lawyer during the initial first instance hearing, taking into consideration that the Asylum Service lawyers do not suffice to cover all demands, it is practically impossible to find a lawyer within the prescribed time in order to prepare for the appeal.

Asylum seekers may also lodge an application for annulment of the second instance decision before the Administrative Court of Appeals within 60 days from the notification of the decision. However, the effectiveness of this legal remedy is severely undermined by a number of obstacles, including that a

lawyer can only file the application for annulment. No legal aid is provided in order to challenge a second instance negative decision on an asylum application and the capacity of NGOs to file this application is very limited taking into account the number of persons in need of international protection in Greece. In addition, the application for annulment does not automatically suspend deportation, and there is no guarantee that the applicant will not be removed during lengthy delays in hearing the matter.

The Working Group urges the Government to expand the availability of publicly funded legal aid so that persons seeking international protection can access legal advice at all stages of the process from the time of filing their application until a final determination is made.

Support to lawyers and human rights defenders

In its 2013 report, the Working Group has recommended that lawyers and civil society organizations, as vital stakeholders who must be protected, should be ensured full access to all detention facilities, and a systematic, independent monitoring system should be established for them.

The authorities have informed the Working Group of the National Mechanism for the investigation of incidents of ill treatment, arbitrary conduct in the discharge of duties or misuse of power by law enforcement and detention facility agents that has been established by article 56 of Law 4443/2016 within the Greek Ombudsman. The National Mechanism is a supplementary mechanism to the independent functions of the judicial system and of the internal procedures of security forces disciplinary bodies, which will further guarantee that such incidents are fully and effectively investigated by an independent authority.

Pushbacks at the Greece-Turkey border

The Working Group was informed that some newly arrived persons in the Evros region are arrested, detained in very poor conditions, and summarily returned across the Greece-Turkey land border without being given the opportunity to apply for international protection in Greece. In some cases, individuals had made previous attempts to cross the border, but were forcibly removed to Turkey in each case. Pushback practices are not permitted under Greek law and are contrary to the right to seek asylum. The Working Group is therefore of the view that detention for this purpose has no legal basis. The Working Group urges the Government to put an immediate end to pushbacks and to ensure that such practices, including any possible acts of violence or ill-treatment that has occurred during such incidents, are promptly and fully investigated.

Legislative amendments and the announced policy on migration

The Working Group also takes note of the entry into force of parts of Law No. 4636/2019 on 1 November 2019, with other provisions entering into force from 1 January 2020. The new provisions appear to introduce more restrictive procedures that may compromise the general legal principle that

detention of asylum seekers is exceptional and should only be resorted to where provided for by law and where necessary to achieve a legitimate purpose.

According to article 46 of Law 4636/2019, persons applying for international protection can be detained, if necessary, regardless of whether they apply for asylum while in detention or not. In addition, the Asylum Office will no longer provide a recommendation regarding the detention to the police, but only information.

The Working Group is also aware that the new law will extend the maximum detention period from 3 to 18 months, which may reach 36 months if added to immigration detention. This appears to treat the detention of migrants and asylum seekers as the rule and not the exception. The Working Group is concerned that these provisions are not in line with the principle of proportionality, necessity and reasonableness, which should govern measures of deprivation of liberty.

The Working Group is aware of the Government's plans to establish five new centres in order to create more space to accommodate asylum seekers. It is not clear whether and to what extent these centres will be closed so that residents are in effect deprived of their liberty. The Working Group received numerous allegations that the facilities, as created by the new law and in accordance with the Government's policy, will be closed ones, as opposed to open centres such as the existing RICs. The authorities have argued that the term closed only means that the entrance and exit of the centre will be controlled.

It is important for the Government to ensure that any new centres remain open and do not reinforce the practice of detaining asylum seekers. However, the plans also reportedly include the creation of centres for unaccompanied minors staffed by doctors and psychologists, which may be a positive development if they are not closed centres.

V. Deprivation of liberty in the context of psychosocial disability and social care

The Working Group was informed that psychosocial disabilities, including depression and anxiety disorders, are increasingly common in Greece as a result of the economic crisis in recent years. The Ministry of Health has committed to prioritising the deinstitutionalisation of persons with psychosocial disabilities whenever possible, which is a commendable approach and has resulted in community-based care being made available to more individuals. For example, the Dromokaiteio Psychiatric Hospital in Attica provides hospices, boarding houses, and supported-living apartments to allow persons who would otherwise have required hospitalisation to live independently in the community.

With regards to the care institution for children and young adults with disabilities in Lechaina, the Working Group would like to encourage the Government to continue with the deinstitutionalisation process and, in the meanwhile, to provide it with sufficient financial and material resources and personnel including doctors, nurses, auxiliary personnel, as well as occupational therapists and physiotherapists, in order to enable the institution to fully comply with the Convention on the Rights of Persons with Disabilities.

However, psychiatric clinics and units within hospitals continue to receive a large number of involuntary admissions, with approximately 60% of admissions at Dromokaiteio Psychiatric Hospital being of an involuntary nature. According to the Ministry of Health, there were 8,300 involuntary commitments in 2018 across Greece out of a total 21,500 cases of psychiatric hospitalisation. The

procedure for involuntary admission is problematic in several respects, including the fact that police officers are frequently required by an order of the Public Prosecutor to arrest persons who have been reported by relatives or neighbours to be suffering from a psychosocial disability, rather than the arrest being carried out by appropriately qualified medical personnel. In addition, according to Law 2071/1992, following an assessment of the mental health of such individuals, a court must consider the involuntary admission within 10 days. However, lengthy delays are reportedly common before a judge hears the matter, and when the matter is heard, the proceedings are usually not conducted in the presence of the individual concerned, or of his or her legal counsel. Finally, while involuntarily admitted individuals are given a statement of their rights upon admission, including the right to legal representation, they frequently do not have access to a lawyer to challenge their mental health assessment either because they do not have capacity to contact legal counsel or were unaware of or unable to understand this right.

A draft law is currently being developed in relation to the deprivation of liberty of persons with psychosocial disabilities, and the Working Group urges the Government to address these issues as part of the development of that legislation. Such reforms could include the automatic release of involuntarily admitted individuals if their case cannot be reviewed by the courts within the statutory deadline of 10 days, and ensuring that a guardian is appointed in cases where the individual is lacking capacity to represent him or herself or is unable to seek the assistance of a lawyer.

According to the information received, some individuals are detained involuntarily for prolonged periods, in some cases for years, because they are experiencing mental and/or physical health conditions. This is often because the individuals have no other family or other support in the community. While this can be an invaluable means of providing social care, such cases must remain under regular review by the courts so that the involuntary admission does not become indefinite deprivation of liberty against the will of the individual concerned.

Finally, the Working Group was informed that the legal basis for the involuntary admission of persons with psychosocial disabilities in private clinics is not clear due to the absence since 1992 of a Ministerial decision covering private facilities. It is important that this gap in the law is addressed as soon as possible, given the increasing use of private clinics due to insufficient capacity to house individuals in public facilities. The Ministry of Health should also conduct regular visits to all places where persons with psychosocial disabilities are held, whether private or public facilities, in order to monitor the length and conditions of involuntary admission and to bring cases that may amount to arbitrary deprivation of liberty to the attention of the Public Prosecutor and the courts.

Conclusion

These are the preliminary findings of the Working Group. The Working Group is mindful of the complexity of the legal framework and the current challenges in relation to the deprivation of liberty in a variety of settings in Greece. It looks forward to engaging in a constructive dialogue with the Government of Greece in the coming months, while determining its final conclusions in relation to this country visit. The Working Group acknowledges with gratitude the willingness of the Government to invite it to Greece and notes that this is an opportunity for introducing reforms to address situations that may amount to arbitrary deprivation of liberty.