Persisting systematic detention of asylum seekers in Greece

June 2022
Introduction

Greece continues to systematically impose deprivation of liberty against asylum seekers and to expose people seeking protection to serious violations of fundamental rights and to unsuitable conditions in pre-removal centres and police stations. The practice persists despite sharp criticism and mounting condemnations of the country by international bodies.

This note analyses current detention practice based on the latest available statistics on immigration detention and judicial review thereof, as well as on testimonies from refugees detained in Greece.

Systematic unlawful removal decisions and deprivation of liberty against asylum seekers on the Eastern Aegean islands

In 2021, the Hellenic Police issued 21,044 detention decisions throughout Greece. Of those, 15,666 were detention orders in the context of return procedures (governed by L 3907/2011), 4,553 under deportation procedures (governed by L 3386/2005) and 825 in the framework of the asylum procedure (governed by L 4636/2019, IPA).

Circumvention of the Return Directive and pre-removal detention of newly arrived asylum seekers

The Lesvos, Chios, Samos and Dodecanese Police Directorates continue to systematically infringe EU and domestic law by maintaining, from 2016 to present, the standard practice of blanket, indiscriminate deportation and detention orders against persons who have already undergone reception and identification procedures, have already expressed the intention to seek asylum already hold “applicant for international protection” status. Police authorities invoke Articles 17(2), 27(3) and 34 L 3907/2011, as well as L 3386/2005 to that end. Such decisions are issued despite the express and official admission from the Ministry of Citizen Protection that “all – almost – foreigners entering our country make an asylum application during the reception and identification procedure”.

It is worth recalling that, according to established principles as set out in Article 2(c) of the Qualification Directive and Article 2(c) IPA, “applicant for international protection” status is acquired upon the expression of a person’s intention to seek international protection, regardless of the authority before which the claim is made. Greek legislation specifies that asylum seeker status is acquired through the written or oral expression of the intention to lodge an application. Moreover, Article 9 IPA enshrines the right of asylum seekers to remain on the territory until the completion of their asylum procedure at first instance, in line with the principle of non-refoulement. For their part,

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2 Article 65(8) IPA.
3 See Article 2(2)(a) Return Directive.
5 CJEU, C-36/20 VL v Ministerio Fiscal, 25 June 2020, paras 93-94; C-808/18 Commission v Hungary, 17 December 2020, para 97.
6 Articles 2(c) and 65(8) IPA.
return-related provisions apply to third-country nationals “who illegally reside on Greek territory”, subject to an express prohibition on issuing return decisions to persons with a right to remain, including asylum seekers. In addition, L 3386/2005 expressly excludes from its scope “refugees and persons who have submitted an application for recognition as a refugee”. Finally, Article 46 IPA expressly provides that “Third-country nationals or stateless persons are not detained on the sole ground of making an application for international protection or for irregularly entering and/or residing in the country without a lawful residence permit”. These persons may only be detained under exceptional circumstances “... where necessary, following an individualised assessment and on condition that alternatives cannot be applied”, solely based on the exhaustive grounds laid down in that article.

Police authorities disregard not only the prior registration of persons’ intention to seek asylum and the corollary granting of a pre-registration number, but also the prior lodging of asylum applications by the Reception and Identification Service (RIS) and the storing of persons’ fingerprints in the Eurodac database as “category 1” (asylum seekers), per applicable practice on islands such as Kos. They therefore issue return or deportation decisions in direct contravention of the international, EU and domestic legal framework and in direct violation of the non-refoulement principle and of the prohibition on penalisation of refugees for irregular entry, enshrined in Articles 33(1) and 31(1) of the 1951 Refugee Convention.

**Case study: Ammar** is a Palestinian refugee from Gaza who arrived in Greece through Kos at the end of February 2022. In early March, he was transferred to the Closed Controlled Access Centre (CCAC) of Kos and underwent reception and identification procedures, during which the RIS completed the lodging of his asylum claim and stored his fingerprints as “category 1” in Eurodac. Following that process, however, the B’ Dodecanese Police Directorate issued a readmission and detention order against Ammar and held him in the Kos pre-removal centre. Ammar remained detained there until the issuance of a new detention order under Article 46 IPA in April 2022 and was only released after obtaining refugee status.

Greek authorities arbitrarily and systematically impose deprivation of liberty as a result of an unlawful derogation from the Return Directive and of the use of deportation proceedings against asylum seekers. According to official data of the Ministry of Citizen Protection for 2021, almost all deportation decisions issued under L 3386/2005 by way of derogation from the Return Directive were accompanied by detention. Conversely, 65% of return decisions under L 3907/2011 included detention:

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7 Article 17 L 3907/2011.  
8 Article 21(5) L 3907/2011.  
9 Article 2(c) L 3386/2005.  
10 Note the specific reference to registration of “intentions” by police authorities in the Directorate of the Hellenic Police Circular No 1604/16/1195968 of 18 June 2016.  
11 Based on Article 65(1) and (7) IPA, upon registration of all necessary elements.  
12 Articles 9(1) and 24(4) Eurodac Regulation.  
Pre-removal detention orders: 2021

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<tr>
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<th>Removal decisions</th>
<th>Detention orders</th>
<th>Detention rate</th>
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<tbody>
<tr>
<td>Deportation: L 3386/2005</td>
<td>4,578</td>
<td>4,553</td>
<td>99.5%</td>
</tr>
<tr>
<td>Return: L 3907/2011</td>
<td>24,124</td>
<td>15,666</td>
<td>65%</td>
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In the particular case of Kos, the B’ Dodecanese Police Directorate issued 989 deportation decisions with detention and only 2 deportation decisions without detention. Conversely, it issued 81 return decisions with detention and 78 without detention.\(^\text{14}\) This means that, whereas 51% of return decisions pursuant to L 3907/2011 involved detention, 99.8% of deportation decisions pursuant to L 3386/2005 were accompanied by detention.

Finally, the circumvention of the Return Directive at the borders is compounded by Article 1 L 4825/2021 which prioritises the use of deportation procedures over return procedures in those cases, without even complying with the minimum standards set by Article 4(4) of the Directive and Article 19(2) L 3907/2011.

**Detention conditions**

Detention conditions in pre-removal detention centres remain problematic and incompatible with human rights and EU and domestic legal standards, as has recently been recalled by the Council of the European Union in relation to Tavros, Amygdaleza and Kos in particular.\(^\text{15}\)

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\(^{14}\) Ministry of Justice, Reply to parliamentary question, 43/2022, 11 March 2022, available at: https://bit.ly/3N43ePN.

\(^{15}\) Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of return, 13662/21, 10 November 2021, para 9, available at: https://bit.ly/3xbpqZS.
2,335 people were detained in pre-removal centres at the end of 2021. However, access of detained persons to necessary services in detention remains extremely restricted in practice. No psychiatrists, psychologists, social workers or interpreters were present in any of the country’s pre-removal centres at the end of last year. There were only two doctors in Amygdaleza, one per facility in Tavros, Corinth, Paranesti and Fylakio, while Xanthi and Kos had no doctor.

**Case study:** Walid* and his two minor daughters survived a shipwreck in Antikythera at the end of 2021, which claimed the lives of his wife, his third daughter and his mother-in-law. Following their rescue by the Greek authorities, survivors were detained in the Amygdaleza pre-removal centre for more than one month without access to hot water or sufficient heating. Walid and his daughters were held in one room, next to the room of a seven-member family.

Furthermore, detention conditions still fall short of even basic standards of dignified living in police stations across the territory, where 380 people were held at the end of 2021:

**Case:** Said* is a refugee from Afghanistan and has been in Greece since 2018. In September 2021, he was arrested and detained in the Igoumenitsa police station for over three months. Said was held together with other people in a cell without beds, a table, chairs or windows. They slept on dirty blankets on the floor, had no access to hot water and were only given two meals a day. The police station did not offer interpretation services and only allowed phone use one hour per week.

**De facto** detention in Closed Controlled Access Centres (CCAC)

The operation of Closed Controlled Access Centres (CCAC) established by Greece through EU funding and support raises another dimension of unlawful deprivation of refugees’ and migrants’ liberty. In the CCAC inaugurated in 2021 on Samos, rejected
asylum seekers are subject to a prohibition on exit from the facility. According to the Administrative Court of Syros, such a prohibition amounts to arbitrary deprivation of liberty.\textsuperscript{16} Yet, although the Court deemed this practice unlawful, people who lack a valid International Protection Applicant Card remained de facto confined within the CCAC without any possibility to exit the facility.\textsuperscript{17} The Ministry of Migration and Asylum nevertheless states expressly that rejected asylum seekers who have not been issued a detention order are allowed to enter and exit the CCAC in line with its house rules “without any general prohibition on exit from the CCAC”.\textsuperscript{18}

**Judicial review of immigration detention**

**Access to remedies**

Whereas the Hellenic Police issued a total of 21,044 detention orders in return, deportation or asylum procedures in 2021, only 2,803 “objections against detention” were lodged before the administrative courts. This means that less than one out of seven detention orders were brought before the courts through the remedy foreseen in Greek law.

These figures demonstrate the chronic, serious and well-documented barriers to refugees’ and migrants’ access to the remedy of objections against detention.\textsuperscript{19} On the one hand, detention orders are only written in Greek and persons concerned are not informed in writing or orally, in a language they understand, of the reasons for their detention or of available remedies. It is worth recalling that none of the seven pre-removal centres across the territory – holding a total of 2,335 people – had interpreters or social workers at the end of 2021.\textsuperscript{20} On the other hand, the state continues not to comply with its obligation to offer free legal assistance for review of immigration and asylum detention.\textsuperscript{21} This has particularly severe repercussions on the effectiveness of judicial review of immigration detention, as discussed below.

The Council of the European Union has highlighted systematic non-compliance in its recent recommendations to Greece regarding systematic provision of “effective access to linguistic assistance” and “effective access to free legal assistance”.\textsuperscript{22} The European Commission has stated that it “is working closely with Greece to ensure the correct implementation of this recommendation, including in the context of the


\textsuperscript{17} GCR et al., ‘Κλειστή Δομή Σάμου: ο εγκλωβισμός συνεχίζεται’, 10 February 2022, available at: https://bit.ly/3JEV8dD.

\textsuperscript{18} Ministry of Migration and Asylum, Reply to parliamentary question, 203240, 9 April 2022, available at: https://bit.ly/3OeqTNT.

\textsuperscript{19} RSA & Stiftung PRO ASYL, Submission in S.D. v. Greece, October 2020, para 18 et seq., available at: https://bit.ly/34XlWIK.


\textsuperscript{21} Article 9(6) Reception Conditions Directive; Article 13(3)-(4) Return Directive.

\textsuperscript{22} Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of return, 13662/21, 10 November 2021, paras 1-2, available at: https://bit.ly/3xbpqZS.
Schengen evaluation carried out in 2021 and will not hesitate to launch, if appropriate, infringement proceedings.”

Ineffective judicial review

Administrative courts rejected 1,538 and approved 1,095 objections against detention in 2021. The majority of decisions were taken by the Administrative Courts of Athens (830), Corinth (610), Kavala (252) and Piraeus (244).

In the context of ex officio detention review during the same period, however, the administrative courts upheld 8,434 detention orders and quashed only 58. Most ex

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officio reviews were conducted by the Administrative Courts of Corinth (4,128), Kavala (1,489) and Athens (1,281). Of those, 6,557 concerned detention of asylum seekers and 1,935 related to pre-removal detention.\(^{25}\)

According to official statistics, administrative courts approved 41.6% of objections lodged before them in 2021 but quashed no more than 0.68% of detention orders reviewed ex officio, whilst applying the same legal standards. Even where objections have been accepted, courts often err by imposing alternatives to detention e.g. residence in a specific place / island and notification of residence address to the Police,\(^{26}\) and/or reporting obligations,\(^{27}\) even though detention grounds do not apply.

The sharp disparity between the two figures, i.e. the rate of release based on approved objections and on ex officio judicial review, raises serious questions and demonstrates deficiencies in judicial scrutiny and the severe effects of non-compliance by the state with its duty to offer free legal assistance to people deprived of their liberty. In short, chances of release from detention are almost zero unless a person manages to access legal assistance and representation by their own means. This should be read against the backdrop of increasing restrictions on the work of civil society organisations offering free legal assistance to detainees, through a systematic effort on the part of the Greek government to cultivate a hostile environment for NGOs, as repeatedly denounced by Council of Europe\(^{28}\) and United Nations bodies.\(^{29}\)

In conclusion, judicial review of detention remains ineffective, on account of persisting, serious gaps in compliance with procedural and substantive standards, in quality of review and in uniformity of case law. This is due to the nature of the remedy of objections against detention (written procedure, presidential procedure, without any appeal possibilities against Administrative Court rulings),\(^{30}\) in conjunction with

\(^{25}\) Ibid.


\(^{30}\) Angeliki Papapanagiotou-Leza & Stergios Kofinis, ‘Can the Return Directive Contribute to Protection for Rejected Asylum Seekers and Irregular Migrants in Detention? The Case of Greece’, 281-299 in Madalina Moraru, Galina Cornelisse & Philippe De Bruycker (eds), Law
deficiencies regarding information provision to detainees and the lack of free legal assistance.
