

COMMENTS

SYSTEMIC DEFICIENCIES IN IMMIGRATION DETENTION IN GREECE

OCTOBER 2024

Submission to the Council of Europe Committee of
Ministers in the case of M.D. v. Greece

Photo: Google Earth

RSA
REFUGEE SUPPORT AEGEAN

Introduction

1. Refugee Support Aegean (RSA) wishes to submit to the Committee of Ministers of the Council of Europe (hereafter “the Committee”) a contribution on the state of immigration detention applied by Greece in the context of deportation, return, screening and asylum procedures, relevant to the supervision of the execution of the *M.D. v. Greece* group of cases decided by the European Court of Human Rights (ECtHR),¹ pursuant to Rule 9.2 of the Rules of the Committee.
2. On 20 September 2024, the Greek government submitted to the Committee an Action Report on the execution of the *M.D. v. Greece* group of cases,² requesting termination of the supervision of the execution of the judgments concerned.
3. The present Rule 9.2 submission draws predominantly on RSA casework and documentation of removal and detention practice, analysis of official statistics released by Greek authorities in response to parliamentary questions,³ as well as monitoring of Greece by European Union (EU) institutions, not least in the context of Schengen evaluations by the Council of the European Union and infringement proceedings launched by the European Commission for incorrect transposition and implementation of related EU law. The contribution focuses in particular on deficiencies persisting from the end of 2020 to present.

We urge the Committee to continue the supervision of the execution of the *M.D. v. Greece* group of cases, on account of persisting evidence of systemic deficiencies in compliance with Article 5 of the European Convention on Human Rights in relation to the implementation of immigration detention in Greece, including:

- ❖ Systematic use of pre-removal detention against newly arriving asylum seekers with well-founded claims, originating mainly from Syria and Afghanistan where removal is neither legally nor practically feasible.
- ❖ Generalised lack of linguistic assistance and complete absence of free legal assistance from the state to detained persons, resulting in **less than 1.5%** of removal orders appealed before the Hellenic Police and **less than one in five** detention orders challenged before the courts through objections.
- ❖ Serious concerns relating to the effectiveness of judicial review against detention orders, not least due to extreme disparities between decision-making in objections (over **40%** of orders quashed) and *ex officio* review of prolongations of detention orders (only around **0.5%** of orders quashed), performed by the same courts based on the same legal standards.

¹ App No 60622/11, 13 November 2014.

² DH-DD(2024)1070.

³ Compiled by RSA, *Immigration detention in Greece in the first half of 2024*, October 2024, available [here](#); *Immigration detention in Greece in 2023*, May 2024, available [here](#); *Immigration detention in Greece in 2022*, April 2023, available [here](#); *Persisting systematic detention of asylum seekers in Greece*, June 2022, available [here](#).

Lawfulness of detention

4. By way of preliminary consideration, we wish to draw the attention of the Committee to four discrete forms of immigration detention laid down in the Greek legal framework and applied by the Greek authorities in practice:⁴

Procedure	Domestic designation	Authority ordering detention	Legal basis
Deportation	Detention	Hellenic Police	Article 76 L 3386/2005
Return	Detention	Hellenic Police	Article 30 L 3907/2011
Screening	Restriction on freedom	Reception & Identification Service	Article 40 L 4939/2022
Asylum	Detention	Hellenic Police	Article 50 L 4939/2022

5. Specifically, Greece maintains two parallel procedures for the removal of persons without authorisation to remain on its territory: **return** pursuant to L 3907/2011,⁵ transposing the EU Return Directive (2008/115/EC); and **deportation** pursuant to L 3386/2005,⁶ in derogation from the Return Directive. Under both procedures, a detention order for the purpose of removal is incorporated in the return or deportation decision (απόφαση επιστροφής / απέλασης) issued by the Hellenic Police operating under the Ministry of Citizen Protection. Such detention is implemented in pre-removal centres operated by the Hellenic Police, as well as police stations.
6. Deprivation of liberty inside the Reception and Identification Centres (RIC) and Closed Controlled Access Centres (CCAC) operated by the Reception and Identification Service (RIS) of the Ministry of Migration and Asylum is imposed during the reception and identification procedure (hereafter "**screening**") governed by Article 40(a) L 4939/2022 (hereafter "Greek Asylum Code").⁷ Albeit termed "restriction on freedom" (περιορισμός ελευθερίας), the measure amounts to administrative detention,⁸ as conceded in para 11 of the Action Report. This view is corroborated by the European Commission in its infringement proceedings against Greece for incorrect transposition of the Reception Conditions Directive (2013/33/EU),⁹ as well as by domestic case law.¹⁰
7. Finally, the Hellenic Police may order **detention of asylum seekers** for the purposes of the examination of their claim for international protection under Article 50 of the Greek Asylum Code, transposing Article 8 of the Reception Conditions Directive. Asylum detention is implemented in pre-removal centres, as well as police stations.

⁴ For the avoidance of potential confusion stemming from para 11 of the Action Report.

⁵ Gov. Gazette A' 7/26.01.2011.

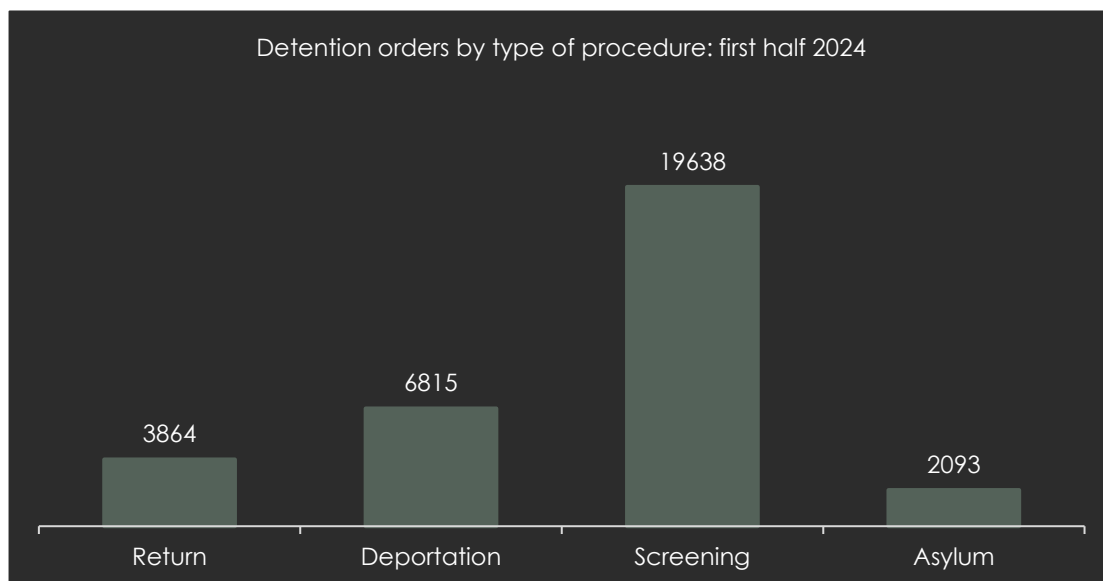
⁶ Gov. Gazette A' 212/23.8.2005.

⁷ L 4939/2022, Gov. Gazette A' 111/10.06.2022. Note also Articles 6 and 7(1) Screening Regulation (EU) 2024/1356.

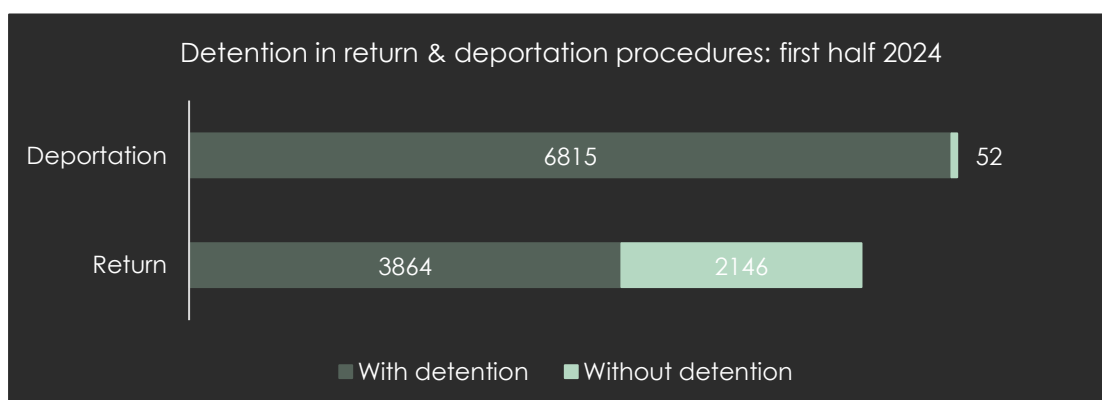
⁸ RSA & Stiftung PRO ASYL, *The state of the Greek asylum system, twelve years since M.S.S.*, July 2023, paras 18-20, available [here](#).

⁹ Letter of Formal Notice INF(2022)2156: European Commission, 'January Infringements package: key decisions', INF/23/142, available [here](#).

¹⁰ Administrative Court of Syros, AP21/2023, 6 October 2023.



8. The majority of detention orders in the first half of 2024 took the form of “restrictions on freedom” inside RIC / CCAC for the purpose of **screening**, according to official figures of the Ministry of Citizen Protection and the Ministry of Migration and Asylum.¹¹
9. As for detention orders taken by the Hellenic Police during the same period, most concerned **deportation** procedures. In fact, deprivation of liberty is a near-automatic adjunct to deportation orders issued under L 3386/2005 in derogation from Return Directive safeguards. According to official figures of the Ministry of Citizen Protection for the first half of 2024, 99.2% of deportation orders were accompanied by detention, whereas the detention rate in **return** decisions was 64.3%:



Pre-removal detention against newly arrived asylum seekers

10. Domestic law unequivocally provides that people arriving or present in the country without documentation must be immediately brought by Hellenic Police or Hellenic Coast Guard authorities to a RIC or CCAC for **screening**, prior to being channelled into

¹¹ Ministry of Citizen Protection, Reply to parliamentary question, 7017/4/26961-γ', 27 September 2024, available [here](#); Ministry of Migration and Asylum, Reply to parliamentary question, 220293/2024, 27 August 2024, available [here](#).

an asylum or removal procedure.¹² Therefore the law requires that “initial registration proceedings” take place inside RIC / CCAC and not in police stations, as put forward in para 12 of the Action Report.

11. The Hellenic Police consistently acknowledges that “all – almost – foreigners entering our country make an asylum application during the reception and identification procedure” in practice.¹³
12. Despite this, the Hellenic Police continues to contravene domestic law standards by systematically issuing **deportation** orders against new arrivals who enter screening proceedings in RIC / CCAC, apply for asylum in Greece and thereby enjoy a right to remain on the territory under Article 73(1) of the Greek Asylum Code.¹⁴
13. To illustrate, we note that the persons detained under deportation proceedings in the first half of 2024 originated primarily from Afghanistan (2,050), Syria (1,465), Egypt (756), Palestine (571) and Eritrea (432) according to Ministry of Citizen Protection statistics. Most of these nationalities in fact correspond to the main nationalities of people granted international protection by Greece so far in 2024, namely Afghanistan (11,341), Syria (9,514), Palestine (2,521) and Eritrea (1,343).¹⁵
14. Furthermore, since the last examination of the group of cases by the Committee, the Hellenic Police has maintained its practice of directly detaining several new arrivals in pre-removal centres without referring them at all to screening procedures in RIC / CCAC. This has particularly been applied to survivors of shipwrecks.¹⁶

Detention with no prospect of removal

15. The Hellenic Police continues to systematically issue pre-removal detention orders even where there is a complete absence of removal prospects. This remains the case for nationals of Syria and Afghanistan, even though forced removals to the two countries have been suspended as of 9 April 2013 and 8 July 2021 respectively,¹⁷ while forced removals of third-country nationals to Türkiye have been completely suspended since

¹² Articles 38(1) and 42 Greek Asylum Code.

¹³ Ministry of Citizen Protection, Reply to parliamentary question, 7017/4/26888-γ', 13 August 2024, available [here](#); Reply to parliamentary question, 7017/4/25899-γ', 16 March 2022, available [here](#).

¹⁴ RSA, *New Pact on Migration and Asylum: Impermissible regression of standards for asylum seekers*, July 2024, 21-22, available [here](#); *Persisting systematic detention of asylum seekers in Greece*, June 2022, available [here](#).

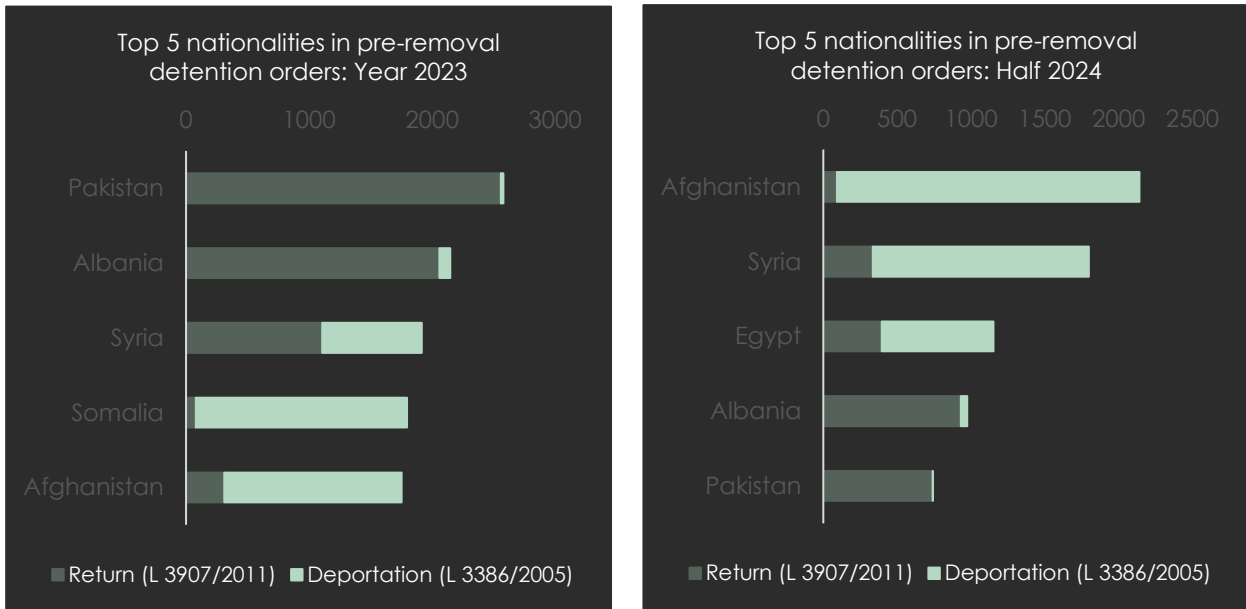
¹⁵ Figures for the first three quarters of the year: Ministry of Migration and Asylum, Reply to parliamentary question, 254434/2024, 11 October 2024, available [here](#).

¹⁶ Greek Ombudsman, *Ειδική Έκθεση – Επιστροφές Αλλοδαπών 2022*, 12 July 2023, 15, 24, available [here](#); RSA, 'Deaths at the borders: A pressing need for appropriate protocols for refugee and migrant shipwrecks', 24 February 2022, available [here](#).

¹⁷ *Inter alia*, European Commission, *Assessment of third countries' level of cooperation on readmission in 2023*, COM(2024) 340, 23 July 2024; Greek Council of State, 177/2023, 3 February 2023, para 41.

16 March 2020.¹⁸ The practice is echoed by Greek Ombudsman concerns at the fact that “while forced returns seem to drop, immigration detention increases”.¹⁹

16. In fact, official figures of the Ministry of Citizen Protection show that Syria and Afghanistan were **among the top five** nationalities of people deprived of their liberty for the purpose of return and deportation proceedings in the year 2023 and the **top two** nationalities in the first half of 2024:



17. The above evidence directly dispels the Greek government's view that pre-removal detention of persons who cannot be removed from Greek territory “has never been an issue ever since”, per para 9 of the Action Report.

Remedies to challenge the lawfulness of detention

1. Accessibility

18. **Deportation** and **return** decisions issued by the Hellenic Police in most cases incorporate a detention order, as described earlier. These decisions may be challenged on points of fact and law through an **administrative appeal** (*ενδικοφανής προσφυγή*) before the Hellenic Police within a short deadline of five days.²⁰ Exhaustion of said remedy is a prerequisite for judicial review of removal orders before the first-instance administrative courts (*διοικητικά πρωτοδικεία*).²¹

¹⁸ On the former, *S.Z. v. Greece* App No 66702/13, 21 June 2018, paras 28 and 56. On the latter, see e.g. CJEU, C-134/23 *Elliniko Symvoulío gia tous Prosfyges*, 4 October 2024, para 27; Administrative Court of Corinth, Π2087/2024, 25 June 2024; Administrative Court of Kavala, AP394/2024, 24 May 2024.

¹⁹ Greek Ombudsman, *Ειδική Έκθεση – Επιστροφές Αλλοδαπών 2022*, 12 July 2023, 14.

²⁰ Article 77 L 3386/2005; Article 28(1) L 3907/2011.

²¹ Article 15(1) L 3068/2002, Gov. Gazette A' 274/14.11.2002, in conjunction with Article 45(2) PD 18/1989, Gov. Gazette A' 8/09.01.1989.

19. **Objections** (αντιρροήσεις) before the administrative courts are the remedy foreseen in domestic law for the purpose of challenging detention in **return, deportation, screening** and **asylum** proceedings.²² As regards screening, objections may be filed not against an initial “restriction on freedom” decision but against an extension thereof.

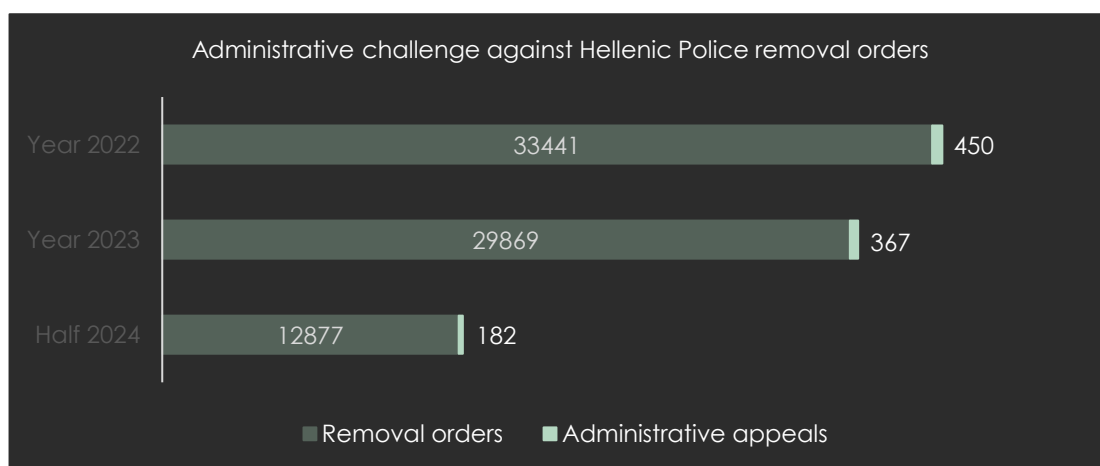
20. As for **ex officio judicial review** of detention orders by the administrative courts, we wish to clarify that the domestic legal framework:

- ❖ Provides for automatic judicial review solely in the context of prolongation of **return** or **asylum** detention orders.²³ The initial detention order is not subject to automatic judicial review.
- ❖ Does not extend the scope of automatic judicial review of detention to **deportation** proceedings under Article 76 L 3386/2005, where deprivation of liberty is imposed in almost all cases. Nor does it provide for *ex officio* review of detention imposed in **screening** under Article 40 of the Greek Asylum Code.

The limited scope of *ex officio* review in the Greek legal framework does not therefore allow for the conclusion that “all decisions ordering detention of asylum seekers are subject to preventive judicial control” and that there is “an automatic judicial review procedure of TCNs detention” in all cases, per paras 11 and 23 of the Action Report.

Statistics

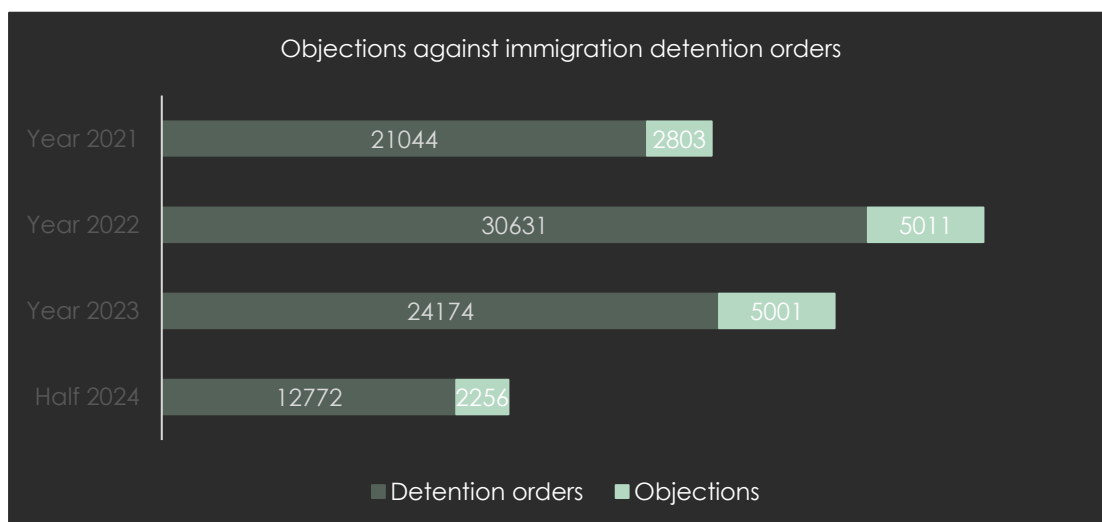
21. **Administrative appeals** before the Hellenic Police against removal orders remain at dramatically low, near-zero levels. The share of deportation and return decisions challenged via an appeal before the Hellenic Police was no more than **1.3%** in 2022, **1.2%** in 2023 and **1.4%** in the first half of 2024, according to official statistics released by the Ministry of Citizen Protection:



²² Respectively, Article 30(2) L 3907/2011; Article 76(3) L 3386/2005; Articles 40(b) and 50(6) Greek Asylum Code.

²³ Article 30(3) L 3907/2011; Article 50(5) Greek Asylum Code.

22. As for **objections** against detention before the administrative courts, official statistics made available by the Ministry of Justice demonstrate on average that **less than one out of five** detention orders are challenged through objections before the courts:



Absence of linguistic assistance

7. Persons detained in **pre-removal centres** and **police stations** under Hellenic Police detention orders continue to face systemic barriers to access to information on the reasons for their detention and on means to challenge it. Hellenic Police detention orders, whether issued as part of return or deportation orders or as self-standing orders in the asylum procedure, are written in Greek and are not translated in writing or orally in a language understood by the persons concerned.²⁴
8. The issue persists, not least due to the absence of interpretation services in Hellenic Police facilities. In July 2023, the Greek Ombudsman stressed that “the lack of interpretation constitutes a substantial issue for all pre-removal detention centres, since it affects all the rights of detainees, adequate information on detention, ensuing procedures, identification of vulnerable persons etc.” The Ombudsman adds that “what is missing is the full communication possibilities for detainees with sufficient interpretation in the pre-removal centres, matter of substance as well as legality, related to linguistic assistance for the purpose of legal assistance of detainees (Article 13(3) Return Directive) and of translation of the main elements of all decisions that concern them, with a view to ensuring an effective remedy (Article 12(2) Return Directive).”²⁵ These findings remain valid to date, as no pre-removal centre has interpreters dedicated to ensuring communication between detained persons and police authorities, to our knowledge.
9. We note that the interpreters made available by Health Units SA (*Ανώνυμη Εταιρεία Μονάδων Υγείας*, AEMY) in pre-removal centres only support communication with AEMY medical personnel and do not facilitate contact with police authorities. Even AEMY interpreters, however, are extremely scarce across the pre-removal centres. The

²⁴ RSA, *Persisting systematic detention of asylum seekers in Greece*, June 2022, 5, available [here](#).

²⁵ Greek Ombudsman, *Ειδική Έκθεση – Επιστροφές Αλλοδαπών 2022*, 12 July 2023, 26.

number of AEMY interpreters across all pre-removal centres was **zero for 2,335 detainees** at the end of 2021, **seven for 2,303 detainees** at the end of 2023 and **six for 1,884 detainees** at the end of June 2024.

10. We further note that Hellenic Police decisions do not specify the competent administrative court before which the person concerned may lodge objections.²⁶ As for the “information document” cited in para 17 and Annex 5 of the Action Report, the Court’s findings on the lack of accessibility of leaflets remain pertinent.

11. As for persons detained in **RIC / CCAC** during screening, the “restriction on freedom” order (*απόφαση περιορισμού ελευθερίας*) issued by the RIS is a standardised document written only in Greek. Facilities managed by the RIS face a systematic lack of interpretation services, predominantly owed to persisting issues in the Ministry of Migration and Asylum’s management of contractual arrangements with the NGO Metadrasī for the delivery of interpretation services under an EU-funded programme. This has been a recurrent, consistently documented concern throughout 2023 and 2024 that remains unaddressed to date:

- ❖ In April 2023, the European Commission received confirmation from the Ministry of Migration and Asylum that it has not come to an agreement with Metadrasī on the contractual terms of interpretation services to be provided in RIC, CCAC and other camps throughout the country.²⁷
- ❖ In October 2023, Metadrasī announced its decision to withdraw 80% of interpretation services from RIC, CCAC and other camps, due to a five-month delay in payments on the part of the Ministry of Migration and Asylum. Metadrasī also withdrew most of its interpreters from the Asylum Service due to a six-month delay in payments.²⁸
- ❖ In January 2024, Metadrasī announced an eight-month delay in payments on the part of the Ministry of Migration and Asylum for services provided by the organisation’s interpreters in RIC, CCAC and other camps. The organisation warned that “the problem, communicated and announced on 30/10/2023, has expanded and as of the end of January we risk yet another dramatic decrease in interpretation and departure of hundreds of interpreters.”²⁹ The matter was raised in Parliament through written questions to the Ministry of Migration and Asylum.³⁰

²⁶ The relevant part of the decision only states: “Against the present decision you may lodge objections before the President or the designated judge of the Administrative Court of the Region where you are detained”.

²⁷ European Commission, *Conclusions of the Meeting with Sec Gen Logothetis – 07.04.2023*, Ares(2023)2923660, 10 April 2023.

²⁸ Metadrasī, ‘Αναγκαστική μείωση της διερμηνείας στα Κέντρα παραμονής μεταναστών και προσφύγων και στις διαδικασίες ασύλου: Πολύμηνη καθυστέρηση καταβολής των οφειλόμενων από το Υπουργείο Μετανάστευσης και Ασύλου’, 30 October 2023, available [here](#).

²⁹ Metadrasī, ‘Οκτώ μήνες μη καταβολής των οφειλόμενων για την παροχή διερμηνείας’, 15 January 2024, available [here](#).

³⁰ Hellenic Parliament, *Να εξασφαλίσει το Υπουργείο ότι θα πληρωθούν άμεσα τα δεδουλευμένα των διερμηνέων του πεδίου*, 24 January 2024, available [here](#).

- ❖ In May 2024, Metadrasi stopped interpretation services in RIC, CCAC and other camps, following the expiry of the implementing agreement with the Ministry of Migration and Asylum. The organisation noted that the Ministry had made no payment at all throughout the duration of the last implementing agreement.³¹ The issue was raised again by different Members of Parliament through written questions to the Ministry of Migration and Asylum.³²
- ❖ In July 2024, the Ministry of Migration and Asylum confirmed in response to parliamentary questions that the implementing agreement (εκτελεστική σύμβαση) for the provision of interpretation services by Metadrasi in RIC, CCAC and other reception facilities has expired and that a new agreement has yet to be signed.³³
- ❖ At the time of writing, Metadrasi has not resumed interpretation services either in RIC, CCAC and other camps, or in Asylum Service offices.

12. We therefore stress that people deprived of their liberty under “restriction of freedom” orders in RIC and CCAC do not have effective access to interpreters in order to obtain comprehensible information on the reasons for their detention, contrary to the submissions made in para 16 of the Action Report.

13. Furthermore, the “restriction on freedom” extension order notified to persons deprived of their liberty inside RIC / CCAC refers to the right to lodge objections before the competent administrative court in line with Article 40(b) of the Greek Asylum Code, without however specifying which court is competent for the location where the person is held. The issues identified by the Court in relation to the accessibility of remedies thereby persist. For example, “restriction on freedom” extension orders issued by CCAC Leros as recently as October 2024 fail to mention that the competent administrative court is located on Rhodes, a different island.³⁴ For its part, the leaflet cited in para 16 and Annex 4 of the Action Report is delivered to asylum seekers after they have lodged their asylum application and is therefore unrelated to their rights and obligations during the screening process. Hence, as can be seen in Annex 4, the document makes no reference to the screening process whatsoever.

14. Greece has therefore taken no steps to remedy the deficiencies identified by the Court, despite recommendations made in November 2021 from Ministers, represented under the Council of the European Union, urging Greece to “systematically provide third-country nationals subject to return procedures with effective access to linguistic assistance in order to ensure the right to be heard and to ensure access to effective

³¹ Metadrasi, ‘Λήξη της παροχής διερμηνείας στη διαδικασία ασύλου και στα Κέντρα Υποδοχής και Ταυτοποίησης σε όλη την Ελλάδα’, 14 May 2024, available [here](#).

³² Hellenic Parliament, Απαράδεκτη διακοπή της παροχής διερμηνείας στη διαδικασία ασύλου και στα Κέντρα Υποδοχής και Ταυτοποίησης σε όλη την Ελλάδα, 20 May 2024, available [here](#); Διακοπή παροχής υπηρεσιών διερμηνείας στην Υπηρεσία Ασύλου και τις Δομές Υποδοχής Φιλοξενίας Αιτούντων Ασυλο, 15 May 2024, available [here](#).

³³ Ministry of Migration and Asylum, Reply to parliamentary question, 184424/2024, 2 July 2024, available [here](#); 184457/2024, 2 July 2024, available [here](#).

³⁴ Article 13(1)(A)(24) L 5028/2023, Gov. Gazette A' 54/10.03.2023.

remedy in accordance with Article 47 of the Charter of Fundamental Rights of the European Union and to comply with Article 12(2) of Directive 2008/115/EC".³⁵

Absence of free legal assistance

15. Domestic law provides persons subject to return proceedings with a right to free legal assistance for the purpose of challenging the return decision, including detention.³⁶ In a similar vein, it makes express reference to asylum seekers' right to free legal assistance for the purpose of challenging detention imposed in the asylum process.³⁷
16. The exercise of that right has never been made possible to date, however. There is still a complete absence of free legal assistance from the Greek state to persons in immigration detention, in both removal and asylum proceedings. Since the last examination of the matter by the Committee,³⁸ the persisting failure on the part of Greece to comply with its European Union and domestic law obligations to offer free legal assistance to persons in immigration detention has led to:
 - ❖ Recommendations from Ministers, represented under the Council of the European Union in November 2021, urging Greece to "systematically provide third-country nationals subject to return procedures with effective access to free legal assistance, in compliance with Article 13(3) and (4) of Directive 2008/115/EC";³⁹
 - ❖ Infringement proceedings from the European Commission in September 2022 through an additional Letter of Formal Notice to pending case INFR(2014)2231 relating to incorrect implementation of Directive 2008/115/EC.⁴⁰
17. No legal aid scheme has been established as of yet to allow persons subject to immigration detention to access the administrative appeal against removal and the objections remedy against detention in return, deportation, screening and asylum proceedings,⁴¹ nor has Greece adopted the necessary secondary legislation to define

³⁵ 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 1, available [here](#). See also European Commission, Reply to written question P-5159/2021, 19 January 2022, available [here](#).

³⁶ Article 28(4) L 3907/2011.

³⁷ Article 50(7) L 3907/2011.

³⁸ Council of Europe Committee of Ministers, Resolution CM/ResDH(2020)315, 8 December 2020.

³⁹ 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 2.

⁴⁰ European Commission, 'September Infringements package: key decisions', INF/22/5402, 29 September 2022, available [here](#).

⁴¹ Greek Government, *Action Plan in the M.S.S. v. Greece group*, DD(2024)934, 20 August 2024, para 50: "with the purpose of being able to systematically provide free legal assistance to TCNs subject to return procedures (legal advice and interpretation assistance in order to challenge their deportation order), the competent authorities have opted the implementation of a Free Legal Assistance Programme, similar to the Programme adopted by the Asylum Service for applicants for international protection. For this purpose they plan to propose for inclusion and funding under the Asylum, Migration and Integration Fund of the sub-projects «access to free legal assistance to third country

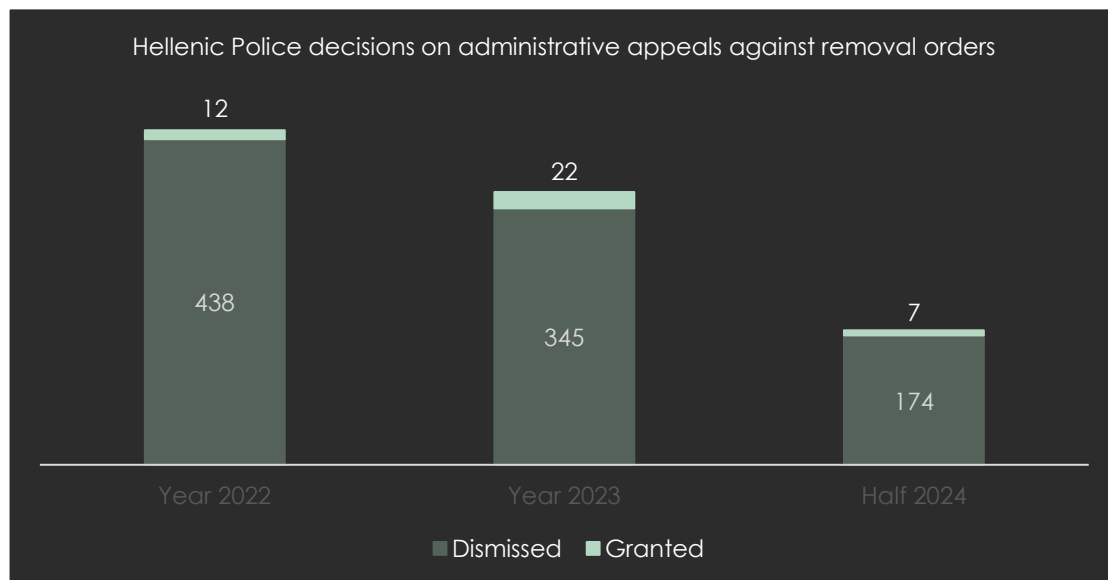
the terms of such a scheme.⁴² The shortcomings identified by the Court are therefore far from being “fully addressed” as incorrectly put forward by the Greek government in para 22 of the Action Report.

18. In light of the above observations, we believe that the remedies made available by domestic law against detention remain largely inaccessible to persons deprived of their liberty for immigration purposes. This is reflected in official statistics of the Greek state.

2. Effectiveness

Administrative review by the Hellenic Police

19. The extremely few **administrative appeals** lodged against removal orders, most of which include detention, are overwhelmingly dismissed by the Hellenic Police. Figures of the Ministry of Citizen Protection show that the acceptance rate of administrative appeals against deportation and return decisions stood at no more than **2.6%** in 2022, **6%** in 2023 and **3.8%** in the first half of 2024:



20. Hellenic Police decisions on administrative appeals appear to be identical and to lack specific reasoning on the submissions made by appellants. In cases supported by RSA, decisions merely state that “the foreigner lacks residence documents and the return decision was issued without a departure deadline, according to the provisions of

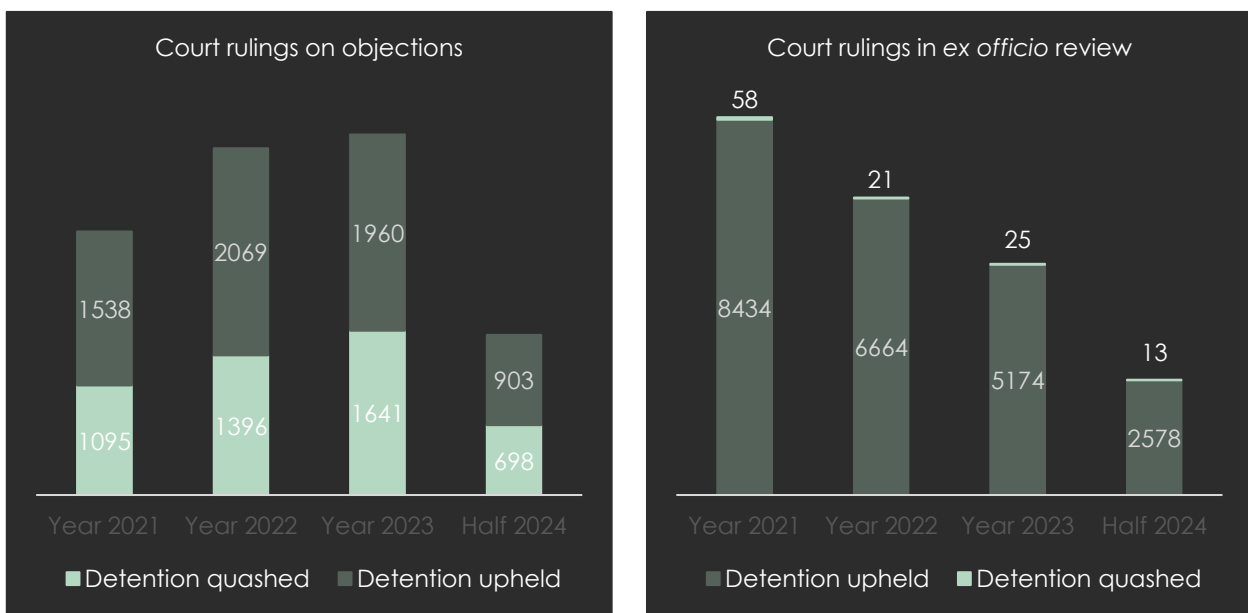
nationals subject to a return procedure», with a budget of (1.080.000,00) €, and «linguistic assistance to third-country nationals subject to a return procedure», both of which shall extend eligibility of expenditure until 31-12-2029.”

⁴² In August 2024, Greece amended its return legislation to delegate the regulation of matters regarding the process and criteria for free legal assistance by way of adoption of a Joint Ministerial Decision: Article 39(2) L 3907/2011, inserted by Article 46 L 5130/2024, Gov. Gazette A' 127/02.08.2024. No regulatory act has been adopted at the time of writing, however.

articles 21, 22, 23 of L. 3907/11". This is the case even for asylum seekers who enjoy a right to remain on Greek territory for the duration of their asylum process.⁴³

Judicial review by the administrative courts

21. The rate of detention orders quashed upon judicial review following objections against detention at the administrative courts stood at **41.6%** in 2021, **40.3%** in 2022, **45.6%** in 2023 and **43.6%** in the first half of 2024.
22. In sharp contrast, the rate of detention orders quashed upon *ex officio* judicial review by the same courts was no more than **0.7%** in 2021, **0.3%** in 2022, **0.5%** in 2023 and **0.4%** in the first half of 2024:



23. The above figures corroborate a worrying trend of persisting, extreme disparities between the effectiveness of judicial review of detention upon objections and that of *ex officio* judicial review of prolongations of return and asylum detention orders. In almost all cases, *ex officio* judicial review appears to be a mere rubberstamp of Hellenic Police detention orders by the administrative courts, even though the same courts rule on objections based on the very same legislative provisions.
24. An illustration of rudimentary, standardised reasoning in *ex officio* rulings may be found in a series of recent decisions of the Administrative Court of Komotini, stating: "the above decision, by which the detention of said foreigner was prolonged... is lawful, given that, based on the elements transmitted to the Court by the Police Directorate of Xanthi, the conditions and terms for his detention in accordance with the provisions of article 50 of L. 4939/2022 continue to apply",⁴⁴ without any reference to the individual circumstances of the case whatsoever.

⁴³ RSA, *Immigration detention in 2022: Sharp rise in detention orders, no access to remedies and legal aid in Greece*, 4, available [here](#).

⁴⁴ Administrative Court of Komotini, AP590/2023, 11 December 2023; AP546/2023, 15 November 2023; AP499/2023, 11 October 2023; AP497/2023, 11 October 2023; AP442/2023, 15 September 2023.

25. The staggering differences in the effectiveness of objections and *ex officio* review are all the more crucial in light of our aforementioned observations on the persisting lack of accessibility of remedies, bearing mind that four out of five detention orders issued by the Hellenic Police are not challenged in court by the affected persons due to persisting non-compliance on the part of the Greek state with its linguistic and legal assistance obligations.
26. In essence, the chances of quashing a detention order are near zero unless a person manages to access legal assistance and representation by their own means.⁴⁵
27. Furthermore, serious concerns persist with regard to the effectiveness of examination of objections against detention. Recalling that the majority of objections are in fact dismissed by the administrative courts, we namely point to the following examples:
- ❖ Rejection of objections by asylum seekers on the ground that they have no permanent residence address in Greece, no sufficient funds and no stable social, professional or economic ties to the country,⁴⁶ in stark disregard of legal standards on the right of asylum seekers to reception conditions throughout their asylum procedure in the host state.
 - ❖ Failure to assess the objection grounds raised by the person in relation to the absence of grounds for detention.⁴⁷
 - ❖ Failure to assess objection grounds relating to detention conditions, as recently reiterated by the Court in *H.T. v. Germany and Greece*.⁴⁸
28. Even where they accept objections by agreeing that no grounds for detention apply in the individual case before them, the administrative courts often err in law by imposing alternatives to detention without a ground for detention.
29. The lack of predictability of the objections remedy is compounded by the absence of appeal possibilities against rulings issued by the administrative courts on objections.⁴⁹
- * * *
30. The aforementioned findings demonstrate persisting, systemic deficiencies in Greece's compliance with Article 5 of the Convention in relation to the implementation of immigration detention. We would therefore urge the Committee to continue the supervision of the execution of the *M.D. v. Greece* group of cases.

⁴⁵ RSA, *Persisting systematic detention of asylum seekers in Greece*, June 2022, 7.

⁴⁶ Administrative Court of Komotini, AP81/2024, 5 February 2024; AP586/2023, 4 December 2023.

⁴⁷ Administrative Court of Komotini, AP81/2024, 5 February 2024.

⁴⁸ App No 13337/19, 15 October 2024, paras 106-109.

⁴⁹ ECRE, *AIDA Country Report Greece, 2023 Update*, June 2024, 240, available [here](#).



<https://rsaagean.org/systemic-deficiencies-in-immigration-detention-in-greece/>



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