

**ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ**

**ΕΘΝΙΚΗ ΕΠΙΤΡΟΠΗ ΓΙΑ ΤΑ ΔΙΚΑΙΩΜΑΤΑ ΤΟΥ ΑΝΘΡΩΠΟΥ**

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**ΠΑΡΑΤΗΡΗΣΕΙΣ ΕΠΙ ΤΟΥ**

**«ΣΧΕΔΙΟΥ ΈΚΘΕΣΗΣ ΤΗΣ ΟΜΑΔΟΣ ΕΡΓΑΣΙΑΣ ΓΙΑ ΤΙΣ ΑΥΘΑΙΡΕΤΕΣ**

**ΚΡΑΤΗΣΕΙΣ, ΟΣΟΝ ΑΦΟΡΑ ΕΠΙΣΚΕΨΗ ΤΗΣ ΣΤΗΝ ΕΛΛΑΔΑ**

**(21-31 ΙΑΝΟΥΑΡΙΟΥ 2013)»**

**ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ**  
**ΕΘΝΙΚΗ ΕΠΙΤΡΟΠΗ ΓΙΑ ΤΑ ΔΙΚΑΙΩΜΑΤΑ ΤΟΥ ΑΝΘΡΩΠΟΥ**

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**Παρατηρήσεις επί του «Σχεδίου Έκθεσης της Ομάδος Εργασίας για τις  
Αυθαίρετες Κρατήσεις, όσον αφορά επίσκεψή της στην Ελλάδα (21-31  
Ιανουαρίου 2013)»**

## **I. Εισαγωγή**

Το Υπουργείο Εξωτερικών (Δ4 Διεύθυνση Ανθρωπίνων Δικαιωμάτων) απέστειλε στην Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου (ΕΕΔΑ), με το υπ' αριθ. ΑΠ60015/12 Δεκεμβρίου 2014 έγγραφο της Διευθύντριας της Δ4 Διεύθυνσης-Πληρεξουσίας Υπουργού Α', το «Σχέδιο Έκθεσης της Ομάδος Εργασίας για τις Αυθαίρετες Κρατήσεις, όσον αφορά επίσκεψη της στην Ελλάδα (21-31 Ιανουαρίου 2013)».

Η ΕΕΔΑ θέλει να εκφράσει την ικανοποίησή της για το γεγονός ότι το Υπουργείο Εξωτερικών ζητάει τις παρατηρήσεις της, τις οποίες και αποστέλλει σύμφωνα με τη διάταξη του άρθρ. 1, παρ. 6 περ. (α), του ιδρυτικού της νόμου 2667/1998 (ΦΕΚ Α' 281/18.12.1998).

Δεδομένου όμως, ότι η αποστολή του σχεδίου Έκθεσης -εμπιστευτικά-, πριν από τη δημοσιοποίησή του, αποσκοπεί στην επισήμανση τυχόν λαθών, τόσο επί των πραγματικών περιστατικών, όσο και επί του παρόντος ισχύοντος νομικού πλαισίου και στην διατύπωση σχετικών διορθώσεων στα αγγλικά, η ΕΕΔΑ περιορίζεται στην επισήμανση των εξής:

## **II. Ειδικότερες Παρατηρήσεις**

### **Overview of Institutional and Legal framework**

#### **▪ Par. 16 and Recommendation (v), p. 34:**

Paragraph 16 and the relevant Recommendation under (v) should be modified in order to take into account the following observations:

The Greek National Commission for Human Rights (hereinafter, the GNCHR) was founded by Law no. 2667/1998 (OJHR A' 281, 18.12.1998) as an independent entity with consultative status vis-à-vis the Greek Government and the State authorities, in compliance with the Paris Principles and started its operations on January 10, 2000. In terms of its general jurisdiction and functions, the GNCHR is mandated to promote and protect human rights, to provide advice on national legislation's accordance to international standards and obligations of the country, to conduct research into human rights, to monitor domestic human rights situations, to prepare and submit reports on the national situation with regard to human rights in general, to draw the attention of the Government to situations in any part of the country where human rights are violated and to make proposals for initiatives to put an end to such situations.

It has to be noted that, in the current fiscal conjuncture of the country, the GNCHR's smooth conduct of activities is considerably affected and is subject to financial restrictions that may have a negative effect on its operational room for maneuver and performance in the future.

▪ **Par. 18:**

Paragraph 18 should also take into consideration the following information:

Overcrowding in Greek prisons has intensified and constitutes a permanent problem. According to the latest Council of Europe's annual penal statistics, published in May and covering 2011, Greek prisons were at 151.7 % capacity on September 1 that year, with 12.479 inmates crammed into 8.224 available places. Among those, 4.254 were pre-trial detainees. The number of inmates has continuously increased. In January 2010, Greek prisons held 11.364 inmates, according to the Justice Ministry's website. On November 1, they reached 13.147<sup>1</sup>.

▪ **Par. 25 and Appendix II, p. 37 and Recommendation (u):**

It should be noted that Greece has recently ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law No 4228/2014). As a consequence:

The ratification should be mentioned in par. 25 concerning the "International Human Rights Obligations" and in "Appendix II".

"Conclusions" under (u) should be adjusted respectively, as follows:

"(u) Provide the necessary resources to the Ombudsman's office so that it could conduct regular unannounced visits to the detention facilities all over the Greek territory, including all places where migrants are deprived of their liberty, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

## **I. General background on Migration**

▪ **Par. 38:**

Paragraph 38 should be modified so as to take into account the adoption of the EU "asylum legislative package". More specifically, since the –Working Group's visit to Greece in January 2013, new EU rules have been agreed upon, setting out common high standards and stronger co-operation to ensure that asylum seekers are treated equally in an open and fair system, wherever they apply. More specifically, the Dublin Regulation was revised and the new Regulation (EU) n° 604/2013<sup>2</sup> has entered into force and applies from January 1<sup>st</sup>, 2014. The new Regulation "Dublin III", nonetheless, maintains the principal criteria for determining the Member State responsible for examining an application for international protection and, in its

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<sup>1</sup> BA. Council of Europe, *Annual Penal Statistics, Survey 2011*, 3 May 2013, Doc. PC-CP (2013) 5, p. 41, [http://www3.unil.ch/wpmu/space/files/2013/05/SPACE-1\\_2011\\_English.pdf](http://www3.unil.ch/wpmu/space/files/2013/05/SPACE-1_2011_English.pdf).

<sup>2</sup> Regulation (EU) n° 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

current form, seems, according to the special Rapporteur on the human rights of migrants, François Crépeau, to overburden the Greek asylum system<sup>3</sup>.

▪ **Par. 43 and 120:**

Paragraphs 43 and 120 should also be adjusted so as to take into account the evolution of the Greek asylum system. Since the Working Group's visit to Greece, last January, the Greek asylum system has undergone many changes towards a more fair and effective asylum-determination procedure system. A new Asylum Service was established under Law no. 3907/2011<sup>4</sup>. It is the first autonomous structure in Greece that is in charge of the examination of international protection claims and belongs to the Ministry of Citizen Protection and Public Order and began its activities on June 7, 2013.

The Asylum Service is composed of the Central Service, situated in Athens, and of thirteen (13) Regional Asylum Offices situated in the Greek administrative divisions that are gradually put into operation. On July 11, 2013 the Regional Asylum Office in the region of northern Evros started to register its first applicants for international protection in the First Reception Center in Fylakio. On July 29, 2013 a second Regional Asylum Office started operating in the region of southern Evros in Iasmos Komotini, while another Regional Asylum Office in the island of Lesbos started its operations on 15 October 2013. A small registration team started working as well in the Pre-removal Detention Centre of Amygdaleza in Attica region.

Along with the Asylum Service, the Appeals Authority was also established by Law no. 3907/2011. Asylum seekers, whose claims have been rejected in the first instance, have the right, according to the law, to appeal against the decision rejecting their claim within a specific period of time.

▪ **Par. 46 and 77:**

Paragraphs 46 and 77 and the statistical data on the results of the Operation Xenios Zeus should be updated so as to point out the intensification of police sweeps. While the draft is limited to the period from August to November 2012, it is important to highlight the existence of statistical data concerning a longer period from August 4, 2012 to February 22, 2013, which is the most recent period for which National statistics are available. During these six months, police had stopped almost 85.000 people of foreign origin on the streets of Athens that were taken to a police station for examination of their identification papers and legal status. Only 4.811 (about 6%) were found to be residing unlawfully in Greece. By April 8, 2013, 5.194 foreigners had been arrested for lacking a legal basis in the country. It is impossible to know how many people were subjected to immigration stops in the street but not taken to police stations because the police have not published these statistics<sup>5</sup>.

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<sup>3</sup> UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Mission to Greece*, 18 April 2013, A/HRC/23/46/Add.4, par. 84, 118, p. 19, 22.

<sup>4</sup> Law no. N 3907/2011 Official Government Gazette A-7/26.01.2011 entitled "Establishment of an Asylum Service and a First Reception Service, adaptation of the Greek law to the provisions of the 2008/115/EC Directive «relating to the common rules and procedures applied by the member states regarding the return of illegally resident third country nationals» and remaining provisions".

<sup>5</sup> Human Rights Watch (HRW), *Unwelcome Guests. Greek Police Abuses of Migrants in Athens*, June 2013, p. 1, 14.

## II. Findings

### A. Positive aspects

- **Par. 48:**

As far as paragraph 48 and the legislative reforms on migration and asylum are concerned, special mention should be made to the more recent legislative efforts which have been made to improve the asylum seekers' and refugees' protection system. For this purpose, special mention should be made of Presidential Decree 141/2013 (OJHR A' 226/21.10.2013) for the *Adaptation of the Greek legislation to the provisions of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, as well as Presidential Decree 113/2013 (OJHR A' 146/14.6.2013) on the *Establishment of a single procedure for granting the status of refugee or of subsidiary protection beneficiary to aliens or to stateless individuals in conformity with Council Directive 2005/85/EC "on minimum standards on procedures in Member States for granting and withdrawing refugee status" (L 326/13.12.2005) and other provisions.*

- **Par. 49:**

Paragraph 49 should be amended so as to note the correct date of the creation of the First Reception Service, which was not established in 2002, but in 2011 by Law no. 3907/2011. The First Reception Service is an autonomous body reporting to the Ministry of Public Order and Citizen Protection.

It should also be noted that the above Centers are guarded, but they cannot be qualified as "closed centers", since all accommodated migrants have the right to apply for leave at any time.

### B. Criminal Justice

- **Par. 65 and 90:**

The Working Group notes as "particularly serious" the situation of detainees after sweep or round-up operations carried out by the Police raids, often arrested following a racial-profile ("victim-profiling") (par. 65). Accordingly, in par. 90 it recalls that any detention on discriminatory grounds constitutes arbitrary detention. However, this is not underlined by the "Conclusions" (pages 30-31) and no relevant recommendation is proposed (pages 31-34).

As a consequence:

It should be separately noted in the list of Conclusions that "Any detention on discriminatory grounds constitutes arbitrary detention". In this direction, but also as a general measure against arbitrary detentions, the Working Group could precisely recommend to "Ensure a human rights-based police education".

## C. Detention of migrants in an irregular situation

### ▪ Par. 74:

As far as paragraph 74 on the legal framework regulating the detention of third country nationals is concerned, it should be completed so as to include the legislative provisions with regard to international protection applicants.

In particular, article 12, par. 1, of Presidential Decree 113/2013 provides that “*An alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has submitted an application for international protection, and that he/she entered and stays illegally in the country*”, while in accordance with paragraph 2 of the same article “*an alien or a stateless person who submits an application for international protection while in detention shall remain in detention, if this has been imposed pursuant to the applicable law. If detained according to the relevant provisions of Law no 3386/2005 and Law no 3907/2011 as in force, exceptionally and if it is judged that alternative measures may not apply, as the ones mentioned in article 22 par. 3 of Law no 3907/2011, shall remain in detention for one of the following reasons: a. For the determination of the actual data of his/her identity or origin, or b. If he/she constitutes a danger for national security or public order, according to the reasoned judgment of the police authority, or c. If detention is deemed necessary for the prompt and effective completion of the examination of his/her application, including applications submitted within Regional First Reception Services. In this case, the examination authorities shall take the necessary measures for the prompt completion of the procedure*”.

Furthermore, in cases of detention of international protection applicants who happen to be minors at the time of the examination of their application, the competent authorities “shall avoid the detention of minors. Minors who have been separated from their families and unaccompanied minors shall be detained only for the necessary time until their safe referral to appropriate accommodation facilities for minors” (article 12, par. 8 (b), PD 113/2013).

### ▪ Par. 82:

Paragraph 82 should be complemented in order to specify the nature of the “change in October 2012 of the provisions governing the maximum length of detention for asylum seekers”. In fact, it is article 1 of Presidential Decree 116/2012, issued on October 19, 2012, which modified Presidential Decree 114/2010 on the *Establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005)*. In particular, article 1 of PD 116/2012 extends the duration of the detention time.

### ▪ Par. 88:

Paragraph 88 concerning the National Action Plan should be revised and completed so as to make specific mention of the revised Action Plan, which was elaborated in December 2012, with the objective to establish an effective response to the migration challenges Greece faces and focuses on a new autonomous Asylum Service, reporting directly to the Minister of Public Order and Citizen Protection.

## **D. Detention conditions**

- **Par. 92:**

Paragraph 92 should also be completed in order to give specific information on this exceptional and unprecedented decision delivered by the Greek judge. More specifically, the single-judge formation of the Criminal Court of First Instance of Igoumenitsa in north-western Greece (Μονομελές Πλημμελειοδικείο Ηγουμενίτσας) issued, on October 2, 2012, a decision (Nr 682/2012) in a prosecution brought against a number of immigrants awaiting expulsion who escaped a local detention centre. The judge found that the accused had indeed perpetrated the crime of escape. However, he found that the conditions of their detention were in clear violation of the European Convention on Human Rights, and in particular of articles 3 (prohibition of torture or inhuman or degrading treatment or punishment), 8 (right to respect for private and family life) and 13 (right to an effective remedy). This violation, according to the judge, constituted a state of necessity which precluded the accused's liability for the crime of escape.

## **E. Procedural safeguards**

- **Par. 111:**

Accordingly par. 111 should be modified as follows:

"111. Regular independent monitoring of all detention facilities is crucial in order to oversee the implementation of these standards. In this respect, the Working Group welcomes the signature and ratification by Greece of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Law No 4228/2014 (art. 2) provides for the Ombudsman to be designated as the National Preventive Mechanism. The Working Group urges Greece to ensure the necessary resources to the Ombudsman' office so that it could conduct regular unannounced visits to the detention facilities all over the Greek territory, including all places where migrants are deprived of their liberty [...]"

## **H. Conclusions**

- **Par. 117:**

Conclusion under paragraph 117 should be revised so as to take into account the following observation:

The NCHR, within the framework of its institutional capacity as an advisory body to the Greek State for the protection of Human Rights, observes with great concern the impact of the austerity measures on fundamental Human Rights, irrespective of whether they are linked to financial benefits provided by the State. The NCHR draws attention to the findings of international monitoring bodies, regarding breaches of international human rights protection standards, as well as to the international concerns reflected in the decisions and recommendations of such bodies.