

# **GREECE:**

**IRREGULAR MIGRANTS  
AND ASYLUM-SEEKERS  
ROUTINELY DETAINED IN  
SUBSTANDARD  
CONDITIONS**

**AMNESTY  
INTERNATIONAL**



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# GLOSSARY

CERD	UN Committee on the Elimination of Racial Discrimination
CPT	Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	UN Committee on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRE	European Council on Refugees and Exiles
ECRI	European Commission against Racism and Intolerance
ECRP	Ecumenical Refugee Programme
ECtHR	European Court of Human Rights
EU	European Union
ERF	European Refugee Fund
GCR	Greek Council for Refugees
HLHR	Hellenic League for Human Rights
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
MSF	Médecins Sans Frontières
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
OJ	Official Journal
PACE	Council of Europe Parliamentary Assembly
PD	Presidential Decree
Refugee Convention	1951 Convention relating to the Status of Refugees
SCEP Statement of Good Practice	Separated Children in Europe Program
UNHCR	United Nations High Commissioner for Refugees ( UN Refugee Agency)

# 1. INTRODUCTION

The Greek authorities should undertake a comprehensive overhaul of the legislative framework, policies and practices regarding the detention of irregular migrants and asylum-seekers, including in particular the treatment of unaccompanied children.

These are the key conclusions from Amnesty International's latest research into this issue which shows that currently, immigration related detention in Greece is used without regard to its necessity or proportionality, and not as a measure of last resort. Asylum-seekers and irregular migrants, including unaccompanied children, are routinely detained at the country's points of entry and, within three days, are issued with an administrative deportation order.<sup>1</sup> Usually, the deportation order is accompanied by an order for the continuation of detention. No alternatives to detention are examined.

In addition, Greek law makes irregular entry into and exit out of the country a criminal offence. Moreover, as of June 2009, the maximum period of detention for the purposes of administrative deportation has increased from three to six months.

In addition, the legislative framework for immigration detention, along with a poor system of guardianship and limited special reception facilities to which unaccompanied children could be transferred, also results in cases where such children are being detained for long periods in inadequate or poor conditions. Vulnerable groups such as victims of torture or trafficking, and pregnant women, are also detained.

Amnesty International has also identified impediments to detainees' access to legal counsel and to contact with the outside world, as well as limited or lack of access to interpreters, medical assistance and social care in the detention areas where irregular migrants and asylum-seekers are held.

This lack of qualified personnel such as interpreters, lawyers and social workers can lead to a failure in identifying many individuals who are in need of international protection, and to members of vulnerable groups not receiving appropriate care and support. The failure to identify individuals in need of international protection means that their cases are not considered and they may be at risk of *refoulement*.

Asylum-seekers and irregular migrants have complained about a lack of information about the grounds for and/or length of their detention, as well as on asylum determination and deportation procedures, reasons for transfer to other immigration detention centres and a failure to explain or translate documents issued in Greek which they are expected to sign.

There are also concerns about the identification process of the nationalities of irregular migrants and asylum-seekers and allegations that unaccompanied children have been registered as adults, despite their declarations to the contrary.

Furthermore, prolonged detention and poor detention conditions act as a deterrent for

individuals who intend to apply for asylum or asylum-seekers who have already lodged an asylum application. In 2009, refugee recognition rates in Greece at first instance remained close to zero per cent.<sup>2</sup>

In the vast majority of detention areas visited by Amnesty International delegates, conditions ranged from inadequate to very poor. Among the deficiencies identified were: prolonged detention in facilities designed only for short stays; unaccompanied minors being detained among adults; limited access to medical assistance; overcrowding; lack of hygiene; a lack of products for personal hygiene; lack of exercise; and restricted access to clean water. Amnesty International has continued to receive allegations of ill-treatment by coastguards and police, as well as allegations of inhuman treatment during transfer from one immigration detention centre to another.

Concerns about the failure of the Greek authorities to respect international standards with regard to the detention of irregular migrants and asylum-seekers, including unaccompanied children, have been raised by Amnesty International for several years. Such concerns include the grounds and length of detention of irregular migrants and asylum-seekers held at immigration detention centres and borderguard stations, poor detention conditions, and the detainees' lack of access to assistance, including legal, social and medical support.<sup>3</sup>

Over the past few years, a number of inter-governmental organizations such as the Council of Europe's Committee for the Prevention of Torture (CPT) and its Commissioner for Human Rights, as well as the UN High Commissioner for Refugees (UNHCR) and various international and national non-governmental organizations (NGOs) have also raised these and other issues regarding the detention of irregular migrants and asylum-seekers with the Greek authorities.<sup>4</sup>

Amnesty International welcomes the fact that the current Greek government has acknowledged a number of problems in immigration detention facilities, announcing that changes were needed and that it was taking forward a number of proposals to address these issues. However, the organization believes these are not sufficient to address the longstanding and deep rooted failures by Greece to respect its international obligations in this regard, and concludes this report by setting out a number of detailed recommendations which it believes, if implemented, would significantly advance the respect of the human rights of migrants and asylum-seekers in the country.<sup>5</sup>

## 1.1. CONTEXT

Amnesty International recognizes the challenges posed to many countries of the European Union (EU), particularly those on its southern border, which are presented by large and mixed flows of irregular migrants and asylum-seekers. The signature response of European states to the challenges, however, remains repressive, showing a consistent pattern of human rights violations linked to the interception, detention, and expulsion by states of foreign nationals, including those seeking international protection. In the case of Greece, as outlined above, particular concerns have focused around the practice of the detention of people in such migration flows, as well as the conditions in which they have been held.

For example, in June 2009, following the judgment of the European Court of Human Rights (ECtHR) in *S.D. v Greece*, Amnesty International reiterated its serious concerns about

conditions in which asylum-seekers were being detained in Greece. The ECtHR had concluded that the conditions in which the applicant was detained, including lack of medical assistance, ability to exercise, and communication with the outside world, combined with the excessive time spent in detention, amounted to degrading treatment, in violation of Article 3 of the European Convention on Human Rights (ECHR).<sup>6</sup> The ECtHR also held that since the applicant could not have been deported pending the outcome of his asylum application, his detention, with the view to deporting him, had no legal basis in Greek law, at least after the date that his application was officially registered. As a result, the Court found Greece in violation of Article 5(1) of the ECHR (right to liberty).<sup>7</sup>

In addition, in June 2009, Amnesty International raised concerns over legislative amendments increasing the maximum period of administrative detention from three to six months, with the possibility of a further extension of up to 12 months, making it a possible total of 18 months.<sup>8</sup>

Also, in August 2009, Amnesty International wrote to the Greek authorities to express, amongst other issues, its serious concerns over reports regarding the conditions of detention of groups of asylum-seekers and irregular migrants who had been transferred from immigration detention centres on Greek islands to Athens, and then to the north-eastern region of Greece for the purpose of deportation, as well as their treatment during transfers.<sup>9</sup>

In its March 2010 report, *The Dublin II Trap: Transfers of asylum-seekers to Greece*, Amnesty International raised concerns about the automatic detention of people returned to Greece under the Dublin Regulation and the conditions in which they – particularly vulnerable individuals such as children – were being held at Athens airport.<sup>10</sup>

It is also worth noting that in November 2009 the ECtHR found a violation of Article 3 of the ECHR for the second time in the case of *Tabesh v Greece*.<sup>11</sup> In this case the applicant, an irregular migrant, was held pending deportation for seven days at the borderguard station of Kordelio, and for three months at the Thessaloniki Aliens' Police Directorate in 2007. The ECtHR concluded that his conditions in detention at the Police Directorate constituted degrading treatment.<sup>12</sup> The ECtHR also held that the period that the applicant was detained exceeded the time considered reasonable for the purpose of carrying out his deportation and found a violation of Article 5(1) of the ECHR. In reaching its conclusion, the ECtHR noted that the applicant was not released until the end of the maximum period provided for in the relevant national legislation and took into account that the Greek authorities did not undertake the necessary formalities with the applicant's country of origin in order to effect his deportation during the period that he was in detention.

The concerns of Amnesty International are echoed by other key actors in this field.

For example, the findings of the ECtHR in the case of *S.D. v Greece* pose serious questions over the compatibility between the current law which allows the continuation of the detention of asylum-seekers who have applied for asylum while in administrative detention and international human rights law.<sup>13</sup> In July 2009, the Greek Ombudsman called for the re-evaluation of relevant provisions in light of the above judgment.<sup>14</sup> The findings of the ECtHR in the case of *Tabesh v Greece* should also impel the Greek authorities to re-evaluate the practice of detaining irregular migrants whose deportation cannot be effected.<sup>15</sup>

Following his visit to Greece in February 2010, the Council of Europe Commissioner for Human Rights wrote to the Minister of Citizens' Protection on 10 March 2010, reiterating his position that the detention of migrants should in principle be avoided.<sup>16</sup> He drew the government's attention to the judgments outlined above, and called for the adoption of further measures to guarantee the full conformity of practices concerning the detention of migrants with Council of Europe standards and ECtHR case law.

At the end of 2009, the Greek government acknowledged a number of problems in the asylum system and in immigration detention facilities, and announced that changes were needed in both areas. As a result, it set up a Committee of Experts to draw up proposals for reform of the asylum system. The Committee completed its work in December 2009.<sup>17</sup> Its proposals included removing asylum decision-making powers from the remit of the police, and establishing an independent Asylum Service staffed with specialized personnel to examine asylum applications in the first instance together with an independent Commission of Appeals with decision-making authority to examine appeals against negative decisions at first instance.<sup>18</sup>

In December 2009, the Deputy Minister of Citizens' Protection established a Working Group to submit a proposal for the establishment and management of centres on the initial reception and identification ("screening centres") of migrants and asylum-seekers entering the country irregularly. The Working Group presented a summary of its proposals on 14 April 2010, and the Ministry of Citizens' Protection undertook to promptly turn the proposals into legislation.<sup>19</sup>

The proposed system is meant to act in tandem with reforms in the asylum determination procedure. According to the Working Group's proposals, screening centres should be established at the country's points of entry, including cities with an airport or seaport, where there are large concentrations of refugees and migrants. Anyone arriving irregularly into the country will be sent to one of these screening centres. According to the proposal, the centres will allow those in need of international protection, vulnerable groups, such as victims of torture and trafficking, and unaccompanied children, to be registered and identified, and given the opportunity to apply for asylum. Identification of nationality and determination of age will take place at the centres where these are uncertain, and medical and social protection services will be provided.

The proposals provide for six general and two special procedures to take place, and stipulate time limits for such procedures.<sup>20</sup> Following completion of these procedures, it is proposed that asylum-seekers, groups in need of special protection and unaccompanied children should be referred to reception facilities outside the screening centres, while irregular migrants whose deportation is feasible will be transferred to immigration detention centres in the interior of the country, and detained there pending their deportation. The screening centres will be guarded externally by police, and irregular migrants and asylum-seekers will be allowed to move freely inside the centre. The maximum time limit for detention at the screening centres will be 15 days, extended only in exceptional circumstances. There is also a recommendation to establish a committee to evaluate the operation of each screening centre consisting of representatives of local authorities, state local authorities, NGOs or groups of citizens active in the rights of migrants and refugees.

The Working Group emphasized that the success of the proposals depended on sufficient funding and the organization of an effective referral system for those leaving the screening centres. This would also require the creation of sufficient reception facilities for asylum-seekers, unaccompanied children and other vulnerable groups. In May 2010 the Ministry of Citizens' Protection and the Ministry of Interior and Decentralization agreed to the immediate creation of an informal legislative committee to draft the legislative framework for the proposed screening centres.<sup>21</sup> The draft law is anticipated at the end of July 2010. Amnesty International understands that there are plans for a pilot screening centre to start operating on the island of Samos, prior to the adoption of the relevant legislation, during the summer of 2010.<sup>22</sup>

While acknowledging that these proposals are a first step towards reforming the existing system, Amnesty International wishes to note that, under international law, the detention of asylum-seekers and irregular migrants should only ever be used as a last resort, when it is proven to be necessary and proportionate in each individual case, and where other less restrictive measures are proven insufficient.<sup>23</sup> Detention should always be for the shortest possible time and must not be prolonged or indefinite. Alternative non-custodial measures should always be considered before resorting to any restrictions on the right to liberty and security of the person.<sup>24</sup>

Furthermore, the protest by irregular migrants and asylum-seekers in Venna in February 2010 over the length and conditions of detention, the hunger strike by irregular migrants held on Samos in April 2010 in protest at the length of their detention, the lack of transparency for procedures determining their ethnicity and lack of guarantees during deportation, and the poor conditions repeatedly identified at the Athens' airport detention area illustrate the need for immediate changes in the law and practice of immigration-related detention, as well as actual improvements of conditions in places of detention.

## 2. RESEARCH METHODOLOGY

This report is based on a combination of field visits as well as detailed desk research.

Amnesty International delegates visited the immigration detention centre on the island of Samos in June 2009 and the Mersinidiou detention centre on the island of Chios in September and December 2009. Delegates also visited the police station on the island of Patmos and the borderguard stations of Isaaki, Soufli, Ferres, Tycherio, Metaxades and Neo Himonio in Evros in June 2009. Amnesty International also visited the detention area of Athens airport police station in October 2009 and May 2010.<sup>25</sup>

During those visits, Amnesty International conducted interviews with irregular migrants and asylum-seekers detained there. The organization also interviewed irregular migrants and asylum-seekers who were, or had been, detained at the Attika Aliens' Police Directorate and Thessaloniki Aliens' Police Directorate holding facilities for irregular migrants, at various police stations in Athens and at Venna and Fylakio immigration detention centres. In addition, its delegates conducted interviews with officials of the Prefecture and local authorities, prosecutors, coastguard and police authorities, and staff of the detention areas visited. Amnesty International has also received reports and conducted personal and phone interviews with lawyers and groups for the protection of migrants and refugees, the UNHCR Office in Greece, the GCR, the Ecumenical Refugee Programme (ECRP) and the Hellenic Action for Human Rights. Statistics and information were also requested and received from the Ministry of Citizens' Protection.

## 3. DETENTION PRACTICES

### 3.1. DETENTION OF IRREGULAR MIGRANTS

International and regional human rights standards, such as Article 6 of the EU Charter of Fundamental Rights and Article 5 of the ECHR, guarantee the right to liberty and security of person. Article 5(1) ECHR stipulates that “no one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by law”. One of the reasons justifying detention, cited in Article 5(1)(f) of the ECHR, is to prevent an individual effecting an unauthorized entry into the country or a person against whom action is being taken in view of deportation. In addition, Article 15(2) of the EU Returns Directive stipulates that detention ordered for the purpose of removal “shall be ordered in writing with reasons being given in fact and in law”.<sup>26</sup> Article 15(4) of the Directive provides that “... when it appears that a reasonable process of removal no longer exists for legal or other considerations ... detention ceases to be justified and the person concerned shall be released immediately”.

In Greece, the legal basis for immigration-related detention can be found in Law 3386/2005 on “the entry, residence and social integration of third-country nationals on Greek territory”. This law allows the competent police authorities to order the detention of foreign nationals for the purposes of carrying out an administrative deportation order.

Article 76(3) of this law stipulates that: “if an alien is considered, on the basis of general circumstances, at risk of absconding or dangerous for the public order or avoids or obstructs the preparation of his departure or the procedure of his deportation” his temporary detention is ordered by the competent Police Director, until the issuance within three days of the administrative deportation order. Once the deportation order has been issued, detention may still continue but cannot exceed a period of six months”.<sup>27</sup>

In June 2009, Law 3772/2009 increased the maximum period that an alien may be held in temporary detention pending deportation, from three to six months, despite international concerns over conditions in the various immigration detention centres and borderguard stations.<sup>28</sup> Furthermore, the amendments stipulate that the period of detention may be extended for a further period in certain circumstances. The extension of this period may not exceed 12 months, thus detention may last a possible maximum of 18 months.<sup>29</sup> The maximum period introduced by the above amendment reflects the detention period stipulated in the Returns Directive. The Returns Directive has not yet been transposed into Greek legislation. Amnesty International has already expressed its concern that the Directive risks promoting prolonged detention practices in EU Member States.<sup>30</sup>

Upon arrest at the country’s points of entry, irregular migrants are routinely given a temporary detention order pending an administrative deportation order being issued. The detention order is issued by an administrative authority (local Police Director), it is not approved by a judge and the judicial review of each case is not automatic and regular (see section 3.5. below).<sup>31</sup> For the vast majority of those arrested at the Greek-Turkish land and sea points of entry, the deportation order is accompanied by an order for the continuation of detention.<sup>32</sup>

If a deportation order is not issued within the required three-day period following the

temporary detention order, further detention is considered to be arbitrary.<sup>33</sup> Most detention orders state briefly that the individual concerned is at risk of absconding or a danger to public order with no further evidence or detailed information.

Usually, no alternative measures to detention are considered, and irregular migrants may be detained for periods ranging from a few days to a few months, with practices varying even within the same location. Police authorities in different areas visited by Amnesty International cited changes in policy and a desire to avoid overcrowding as grounds for shorter periods of detention. Following changes to the law which extended the maximum period of temporary detention from three to six months in June 2009, Amnesty International has been informed of cases of irregular migrants detained for lengthy periods under poor conditions.

In January 2010, Amnesty International delegates visited two irregular migrants who had been detained in a cell at a police station in Athens since October 2009.<sup>34</sup> One of them had gone on hunger strike to protest about his prolonged detention. Both reported problems with their health, lack of exercise, limited access to the toilet and insufficient light in their cells. On 21 January 2010, Amnesty International wrote to the authorities requesting clarification of the grounds and length of detention of the two individuals. In their reply, the authorities provided this information for only one of the two detainees.<sup>35</sup> Amongst other issues, they noted that "...efforts continue with regard to determining his nationality and for his deportation". The authorities referred to their attempts to determine the nationality of the individual concerned by transferring him to consular authorities of other countries in order to work out whether he was their national. However, the reply received shows a three-month gap between the first and the second attempt of the authorities to determine the nationality of the individual concerned.

In February 2010, the detainees told Amnesty International that they had expressed their wish to apply for asylum to the police officers in the police station concerned, but were given documents in Greek to sign. On 3 February 2010 Amnesty International requested clarification from the authorities about the content of these documents, and drew attention again to the length and conditions of detention of the individuals concerned. A few days later, Amnesty International was informed that the two had filed asylum applications and been released, after four months in detention.

One issue of concern is the practice by police authorities in some areas of Greece of detaining irregular migrants who cannot be removed, whether due to practical or other obstacles not under their control.<sup>36</sup> Such obstacles include the refusal of the consular representation of the migrant's country of origin to cooperate, no means of transportation back to the home country, or the refusal of a third country to allow entry to the migrant. For example, prior to the June 2009 amendments Amnesty International was informed that irregular migrants were detained until the completion of the three-month period despite the fact that their deportation could not be effected. Police authorities in Evros told the organization that groups of Afghan irregular migrants transferred from Patras during the spring and summer of 2009 were detained for the maximum three months and then released because their deportation could not be effected since the Readmission Protocol between Greece and Turkey was not being wholly implemented.<sup>37</sup>

Upon release from detention, irregular migrants are issued with a police notice to leave the country within 30 days, also known as a "white card". Those migrants whose removal cannot be effected are at risk of further detention when they fail to leave the territory.<sup>38</sup> In interviews

with several irregular migrants released from detention, the majority of the “white cards” seen by Amnesty International were in Greek and in some cases in English. Some of the irregular migrants believed that the document was an identity card. Irregular migrants released from Pagani on 26 August 2009 told the organization that they had not had any explanation in a language they understood of the content of the document given to them following their release.

In addition, during 2009 and 2010, Amnesty International has received several reports that groups of irregular migrants and asylum-seekers transferred from immigration detention centres on islands, such as Samos and Chios, to immigration centres in other areas of Greece were given no information about either the grounds for or destination of their transfer.<sup>39</sup>

Amnesty International is opposed to the use of detention for the purposes of migration control. The authorities should demonstrate in each individual case that such detention is necessary and proportionate to the objective to be achieved, and that alternatives will not be effective. Alternative, non-custodial, measures should always be considered before resorting to detention, and detention should always be for the shortest possible time and must not be prolonged or indefinite. In addition, there should be a maximum, and reasonable, duration for detention provided by law. Once this period has expired, the individual concerned should automatically be released.

Amnesty International considers that detention for the purpose of removal is permissible only where action is being taken with due diligence towards removal.<sup>40</sup> In cases where removal cannot be effected, deportation should be cancelled or suspended, and those detained for the purpose of removal should be released.

### 3.2. DETENTION OF ASYLUM-SEEKERS

Article 31(1) of the Refugee Convention requires States Parties “...not to impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”. Article 18(1) of the EU Asylum Procedures Directive provides that “Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum”.<sup>41</sup>

Article 13(1) of Presidential Decree (PD) 90/2008 transposing the Asylum Procedures Directive into Greek legislation, stipulates that: “a national of a third country or a stateless person who is applying for refugee status cannot be detained for the sole reason of his illegal entry and stay in the country”. However, it also states that asylum-seekers, who have submitted their asylum application while in administrative detention, remain in detention while their claim is being assessed. A second ground for the detention of asylum-seekers is stipulated in Article 13(2) which provides that the police authorities can take a decision in cooperation with the competent service from the Ministry of Health and Solidarity, “...to restrict applicants for asylum to appropriate locations when, and for as long as necessary, this is needed in order to ascertain the method of entry, the identity and country of origin of mass irregular entries of applicants, when this is required on grounds of public interest or public order, or when this is considered necessary for the speedy and effective completion of the above mentioned procedure”. On the above basis, an asylum-seeker can be restricted up

to a period of 60 days. Article 13(4) also requires that the relevant authorities inform the detained asylum-seekers of the reasons for and expected duration of their detention.

In addition, under amendments introduced by Law 3772/2009 a foreign national can be deported if he or she has been prosecuted for a crime punishable by a minimum of three months' imprisonment. Refugees, asylum-seekers and migrants legally residing in the country are not excluded from the scope of the amendment and thus can be issued with an administrative deportation order and subsequently detained on such ground.

Asylum-seekers arrested at the country's points of entry are treated in a similar fashion to irregular migrants. After being held for three days in detention, they are issued with an administrative deportation order. For the vast majority, the deportation order is accompanied by an order for the continuation of detention (see section 3.1 above). It appears that very few of the asylum-seekers arrested at the country's points of entry apply for asylum there.<sup>42</sup> The GCR has noted of certain cases in which asylum-seekers had first been held on the basis of administrative detention for the maximum detention period until July 2009 (three months) and then for 60 days on the basis of 13 (2) of PD 90/2008 and observed that this practice misinterpreted the ratio of the latter provision.<sup>43</sup>

In some instances, the nationality of asylum-seekers, and whether or not their country of origin was considered safe were among the determining criteria influencing the decision of the authorities to detain them during the determination of their asylum claim.<sup>44</sup> Police authorities in Samos told Amnesty International in June 2009 that if the asylum-seeker's country of origin was one where returns can take place, such as Iraq, the deportation order was accompanied with an order to continue the detention of the individual concerned.

Even after they have registered their asylum claim with the competent authorities, asylum-seekers can remain in detention, unless they are able to successfully challenge their detention before the competent administrative tribunal.<sup>45</sup> Following the extension of the maximum period of detention to six months, detained asylum-seekers may continue to remain in detention following the rejection of their asylum application at first instance.

In effect, asylum-seekers can be detained for lengthy periods in poor conditions, in facilities not designed for long-term detention. Delays in the formation of Advisory Refugee Committees to examine asylum applications at first instance, as provided for in June 2009, also contributed to the prolonged detention of many asylum-seekers.

In January 2010, Amnesty International was informed about three Turkish asylum-seekers of Kurdish origin who had been arrested in early September 2009, and were still detained in the holding facility of the Aliens' Police Directorate in Thessaloniki. According to their lawyer, the three had asked for asylum immediately after being arrested and their application was forwarded to the Asylum Department in Thessaloniki within a few days of their detention. Their claim was examined over four months later, at the end of January 2010. The three asylum-seekers were released in the first week of February 2010, a few days after the decision on their asylum application had been issued. The decision granted the three asylum-seekers humanitarian protection status for a period of two years.

The case below concerns six Iranian asylum-seekers who were transferred along with 10 Afghan irregular migrants from the island of Samos to Athens on 14 January 2010 with a

view to their deportation.<sup>46</sup>

The six Iranian asylum-seekers had arrived irregularly on the island of Samos some time in November 2009. They were apprehended by local police, who then accused them of using false documents to enter the country, and subsequently issued deportation orders against them. They were initially detained at Vathi police station and after that at Samos immigration detention centre until their transfer to Athens. Their asylum applications, lodged on 26 November 2009 with the assistance of a lawyer employed by the local Prefecture, were rejected on 9 January 2010. The rejection decisions were reportedly handed to them a day prior to their transfer to Athens, and were in Greek and were not explained to them. Amnesty International interviewed two of the six asylum-seekers. They spoke about the inadequate interpretation during their asylum interviews, their conditions in detention, and the lack of clear and sufficient information regarding the purpose of their transfer to Athens and of their right to appeal against the first instance decision.

One of them told Amnesty International: "...The day that we were transferred to Athens, a policewoman told us in English in the morning and in the evening another officer (he did not wear a uniform) told us in Farsi that we were being transferred to Athens in order to be released and we would have a two-month deadline in Athens to appeal against the decision rejecting our asylum application (they didn't mention anything about deportation). At 6pm, before serving dinner, they took us to a police station for the transfer. We signed papers written only in Greek that we could not understand."

Following their transfer to Athens, the six Iranian asylum-seekers were detained at Elliniko detention centre for irregular migrants pending deportation. The two asylum-seekers told Amnesty International that their blankets and mattresses were dirty, hot water was very limited and, because of overcrowding, there were not enough beds for everyone and they slept on the floor. The asylum-seekers managed to see a volunteer lawyer while they were detained there. Their case received wide publicity. They were released from detention on 21 January 2010. The deportation orders issued against them were suspended for a period of 30 days. The police notice, or "white card", -- issued to them upon their release -- was in Greek, a language that none of the asylum-seekers could understand.<sup>47</sup>

Amnesty International's research between September 2008 and February 2009 indicated that the vast majority of Dublin II returnees interviewed were usually detained for a few days on arrival at Athens airport.<sup>48</sup> In May 2010, the police authorities said that Dublin II returnees were detained at the airport for between one and two days.

Dublin II returnees who are failed asylum-seekers, and for whom a negative decision has become final, are detained for longer for the purposes of deportation.

During the May 2010 visit to the Athens airport detention area, Amnesty International delegates met with X, an Iraqi national. X. was the only Dublin II returnee held in the facility at the time of the visit. X. was not detained in the area used for Dublin II returnees and other asylum-seekers but with irregular migrants convicted for attempting to leave the country with false documents. He had already been detained at the facility for two days at the time of the organization's visit. According to the authorities, the decision rejecting his asylum application at first instance had become final and following his return to Greece he was detained for the purpose of deportation.<sup>49</sup> X. did not understand why he had been detained and was unable to contact his relatives. The police authorities informed Amnesty International that X. was released few days after the organization's visit and that he did not submit a new asylum application during his detention.

Interviews with people who have been detained, and reports from other NGOs, indicate that many individuals in need of international protection are discouraged from applying for asylum out of fear of being detained for longer. In other cases individuals withdraw their asylum applications having suffered prolonged detention in poor conditions.<sup>50</sup>

Lawyers working at the country's points of entry also told Amnesty International that the lack of reception centres in these areas further discouraged people from applying for asylum in that location, and many preferred to lodge an application in Athens where other members of their communities lived. Other asylum-seekers said they preferred not to apply for asylum in Greece, and decided to move on following their release, in order to apply for asylum in another European country.

In his 2009 Annual Report, the Greek Ombudsman concluded on the basis of on-site investigations that almost no foreign national applied for asylum at the country's points of entry without being already in detention.<sup>51</sup> Furthermore, the Ombudsman noted that in cases where deportation could not be effected, it was observed that asylum-seekers were being detained for a longer time (up to the maximum permitted time). On the other hand, individuals who did not apply for asylum were released in a short period of time.

Asylum-seekers in Mersinidiou detention centre on the island of Chios told Amnesty International delegates during their visit in September 2009 of their despair at the prolonged time they had spent in detention. They believed that their asylum applications had increased the length of their detention. Individuals, who had not applied for asylum, told the delegates that one of their reasons for not filing an application was that they did not wish to stay for a longer period in detention at the centre. Detained asylum-seekers said that the detention period varied from two to three months.<sup>52</sup>

Amnesty International also received reports from the Ecumenical Refugee Programme (ECRP), a local NGO, that, between August and the end of September 2009, 19 asylum-seekers who were detained in Pagani detention facility on the island of Lesbos decided to withdraw their asylum applications, having been discouraged by the severe overcrowding, poor detention conditions and the possibility of lengthy detention at the centre.<sup>53</sup> The detention of asylum-seekers in the centre during that period was reported to have been prolonged as a result of the changes in the asylum determination procedure introduced in June 2009. The consideration of claims was delayed pending the establishment of the new Advisory Refugee Committees to examine their applications. Other factors prolonging detention periods were the extension of the maximum period of administrative detention and the reported lack of interpreters for the interviews before the Advisory Refugee Committee.<sup>54</sup>

One of the few asylum-seekers who decided not to withdraw his application was reportedly detained for more than three months in the centre as well as a further nine days following his interview with the competent Advisory Refugee Committee.

The ECRP also informed Amnesty International of the case of K., an asylum-seeker from Côte d'Ivoire, who was reportedly arrested on 19 June 2009 and lodged his asylum application a few days later. K. was released two days after the three-month period required by the previous legal regime, despite the fact that the authorities had not issued a detention order to justify his detention for the three months.<sup>55</sup>

Amnesty International is opposed to the detention of refugees and asylum-seekers and has regularly reiterated its position that the Greek authorities should only ever detain asylum-

seekers as a measure of last resort, after justifying in each individual case that it is a necessary and proportionate measure that conforms with international law.

Amnesty International is also concerned about the incompatibility of amended Article 76(1) of Law 3386/2005 with international human rights and refugee law and with the Greek Constitution, since it allows for the deportation of recognized refugees and asylum-seekers and irregular migrants solely on the grounds that they have been prosecuted for a crime punishable by as little as three months imprisonment. Amnesty International believes that the amended provision is contrary to Article 33(2) of the Refugee Convention which makes an exception to the *non-refoulement* prohibition only in circumstances in which “there are reasonable grounds for regarding the refugee as a danger to the security of the country in which he is, or who having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country”. A crime which attracts a three-month imprisonment cannot be considered a particularly serious crime. Furthermore, deportation on the basis that someone has been prosecuted but not yet convicted for a crime is contrary to the principle of the “presumption of innocence”, which is enshrined in the Greek Constitution and international human rights treaties, such as Article 6(2) of the ECHR, which guarantees the right to fair trial.<sup>56</sup>

### 3.3. CRIMINALIZATION OF IRREGULAR MIGRATION

Various UN bodies, including the Office of the High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the human rights of migrants, have opposed the treatment of irregular migration, including entry, exit or stay, as a criminal offence.<sup>57</sup> In its recent report, the Working Group on Arbitrary Detention has noted that “migrants in an irregular situation have not committed any crime. The criminalization of irregular migration exceeds the legitimate interests of States in protecting its territories and regulating irregular migration flows”.<sup>58</sup>

UN human rights experts have repeatedly stressed that states must not criminalize irregular entry. They have criticized the use and introduction of criminal penalties, including associated detention, for failure to comply with immigration regulations, the use of immigration status as a basis for a criminal conviction or as an exacerbating circumstance for any offence, resulting in discriminatory penalties. Criminalization of irregular migration is seen as inconsistent with human rights protection. Such measures promote xenophobic attitudes, and undermine access to asylum.

Legislation in Greece allows for criminal sanctions, including imprisonment, for irregular entry into and exit out of the country. Article 83 of Law 3386/2005 stipulates that third-country nationals can be sentenced with imprisonment for at least three months and a substantial fine (of at least €1,500) for irregular entry or exit.<sup>59</sup> According to Article 83(2), the Public Prosecutor of the Magistrates Court, with approval from the Public Prosecutor for the Court of Appeal, may refrain from initiating criminal proceedings for such acts, in which case he or she shall immediately notify the police or port authority of this decision, so the latter may immediately and forcibly remove the third-country national to the country of origin or descent. If they cannot be removed immediately, the relevant authority shall refer them to the competent administrative authority for deportation on the basis of Article 76 of the same Law.<sup>60</sup>

The practice of prosecutorial authorities charging irregular migrants and asylum-seekers with irregular entry is not consistent. On Samos, authorities are reported to refrain, in most cases, from bringing criminal charges for irregular entry into the country, except when the individual is accused of trafficking. Prosecutorial authorities in Alexandroupoli (Evros) told Amnesty International that they also refrain from initiating criminal charges against migrants arrested for irregular entry, except when the individuals arrested are suspected traffickers or in possession of false documents.<sup>61</sup> In addition, public prosecutors in Alexandroupoli spoke of difficulties in securing a qualified interpreter at the time that irregular migrants and asylum-seekers are brought before them. On the other hand, the prosecutorial authorities in Orestiada (Evros) told Amnesty International that they made such decisions on a case by case basis.<sup>62</sup> If charges are not brought, foreign nationals apprehended for irregular entry are issued with an administrative deportation order usually accompanied by an order for the continuation of detention.

Amnesty International has been informed of cases where irregular migrants and asylum-seekers (including families with small children), convicted for use of false documents and/or irregular exit out of the country, remained in police stations and/or prison facilities for many months following the court order for deportation.

A family of Hazara asylum-seekers from Afghanistan (father, mother, three-year old daughter and the mother's brother) had been arrested for attempting to leave the country with false documents in December 2008. The criminal court gave the adults a suspended six-month sentence, a €3,000 fine, and ordered their judicial deportation. The family was reported to have been tried without the presence of a lawyer or an interpreter. They were detained together for four months in a borderguard station in the north of Greece under reportedly poor conditions, and were subsequently separated. The mother and her daughter were transferred to a women's prison facility in Thiva and the two men to Korydallos prison. The family did not manage to apply for asylum until their transfer from the borderguard station to the prison facilities. The mother is reported to have only learnt the grounds of her detention after her transfer.

In August 2009, the Thiva Misdemeanours Court rejected the mother's objections against the judicial deportation order, despite the fact that her deportation could not be effected because of her status as an asylum-seeker and of the fact that she did not have a passport.<sup>63</sup> The mother and daughter remained in detention for 15 months (they were released in March 2010) solely for the purpose of effecting the mother's judicial deportation.<sup>64</sup>

During Amnesty International's visit to Athens airport detention area in May 2010, the police authorities said that irregular migrants and asylum-seekers arrested at the airport for attempting to leave the country with false documents usually received a suspended sentence for use of false documents and were ordered to pay judicial expenses (€87). This was converted to an eight-day sentence, served in the airport detention facility, if they were unable to pay. The authorities said that, following completion of that period, the individuals concerned remain in detention until the Attika Aliens' Police Directorate had carried out the necessary steps for effecting administrative deportation procedures.

While the police authorities claimed that the time of imprisonment and subsequent administrative detention in these circumstances did not exceed two weeks, some detainees told Amnesty International that they had been detained for a month – and in one case 55 days.

Amnesty International opposes the treatment of irregular migration as a criminal offence, along with any associated detention. This includes the creation or imposition of criminal penalties for irregular entry or stay. Amnesty International believes that criminalizing irregular entry is a disproportionate control measure. Irregular migration, including entry and stay, should be treated as administrative offences. Detention of migrants on the grounds of their irregular status should always be a measure of last resort. Asylum-seekers must not be subject to criminal sanctions or otherwise penalized for the use of false documents or irregular entry.

### 3.4. EFFECTIVENESS OF REMEDIES CHALLENGING DETENTION

Despite the fact that the current legislative framework provides mechanisms for challenging administrative detention, Amnesty International is concerned about their effectiveness and accessibility.

Article 5(4) ECHR provides that “everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”. Article 18 (2) of the Asylum Procedures Directive states: “where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of a speedy judicial review”.<sup>65</sup> Article 15(2) of the Returns Directive stipulates that: “when detention has been ordered by administrative authorities, Member States shall: (a) either provide for a speedy judicial review of the lawfulness of detention to be decided as speedily as possible from the beginning of detention; (b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to speedy judicial review to be decided as speedily as possible...In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.” Furthermore Article 15(3) states that: “In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio.”

International human rights standards also guarantee the right to be informed of the reasons for detention.<sup>66</sup> Similarly, the Returns Directive provides that: “Detention shall be ordered in writing with reasons being given in fact and in law.”<sup>67</sup> Article 47 of the EU Charter of Fundamental Rights further stipulates that: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

National legislation provides that irregular migrants who are in administrative detention, or asylum-seekers who are in administrative detention or “confined in appropriate places”, have the right to challenge the decision ordering their detention by submitting objections against it to the First Instance Administrative Court in the region of their detention.<sup>68</sup>

Article 76(3) of Law 3386/2005 stipulates that a foreign national against whom an administrative deportation order is issued must be informed in a language they understand of

the grounds for their detention and that communication with their lawyer should be made easy. A Ministerial Decision of 27 July 2009 also stipulates that an information leaflet regarding deportation procedures and pertinent rights is provided to the foreign national against whom a deportation order has been issued.<sup>69</sup> The Ministerial Decision also stated that authorities should prepare a document to be signed by the foreign national as proof that they had received the information leaflet. Article 13(4)(f) of the Ministerial Decision stipulates that the national authorities responsible for receiving and examining asylum applications shall take steps to inform detained asylum-seekers of the grounds for and duration of their detention.

Although deportation procedures are suspended until completion of the administrative stage of the determination of an asylum application, a person who applies for asylum while in detention must challenge the detention before the competent administrative tribunal to be released, even though their deportation has been suspended.

In addition, irregular migrants who decide to appeal against the deportation order to the Minister of Public Order (currently the Minister of Citizens' Protection), or to the body authorized by the Minister as stipulated by Article 77 of Law 3396/2009, cannot challenge the detention order in the same appeal. Instead, they need to raise separate objections to their detention before an administrative tribunal.<sup>70</sup> However, if the appeal against the deportation order is accepted, detention is also lifted. If the appeal against the deportation decision is rejected, a detainee can file an application to annul the deportation order along with an application to suspend the deportation order. In *S.D. v. Greece*, the ECtHR has noted that the introduction of an application to annul along with an application to suspend the deportation order does not lift detention.<sup>71</sup>

Amnesty International notes that navigating the heavily bureaucratic and complicated legal system of administrative detention in Greece is not a realistic expectation for detained irregular migrants and asylum-seekers especially when there is no access to free legal assistance and lack of adequate interpretation during the court hearing. All the above are severe obstacles in accessing justice and being able to challenge detention effectively.

In *S.D. v. Greece*, the ECtHR concluded that Greek legislation did not permit a direct review of the lawfulness of the detention of a foreign national being held for the purpose of deportation.<sup>72</sup> The ECtHR held that the applicant had been unable to have the lawfulness of his detention reviewed by Greek courts and found a violation of Article 5 (4) ECHR.<sup>73</sup>

Lawyers representing asylum-seekers in applications against detention noted cases where courts had rejected objections despite the applicants having submitted documentation to show that they were not at risk of absconding. In a recent case, the administrative tribunal of Thessaloniki is reported to have rejected objections to the detention of three asylum-seekers, even though they had provided an affidavit from the director of the asylum-seekers reception centre in Lavrio confirming that accommodation would be provided to them upon their release.<sup>74</sup>

In addition, lawyers told Amnesty International that neither Law 3386/2005 nor any other piece of national legislation provides for a legal remedy to which a detained migrant or asylum-seeker can resort in order to complain about conditions of detention.<sup>75</sup> The

mechanism for objecting to a decision to detain before an administrative tribunal has only been considered as an indirect remedy against detention conditions, since the administrative tribunal cannot review detention conditions as a ground for release.<sup>76</sup>

Another cause for concern is the failure of police authorities to explain the grounds for and length of detention to those detained in a language they understand. Several detained irregular migrants and asylum-seekers told Amnesty International about the lack of this information and/or that the authorities gave them documents to sign in Greek which they did not understand.

In addition, the lodging of objections against administrative detention is not funded by a legal aid scheme, and thus inaccessible to those without financial means.<sup>77</sup> Amnesty International has also spoken to lawyers who were employed at the various immigration detention centres who told the organization that the legal assistance they were able to provide was limited to asylum applications.

Amnesty International believes that each decision to detain should be automatically and regularly reviewed as to its lawfulness, necessity and proportionality by a court or similar competent independent and impartial body, accompanied by the adequate provision of legal aid. The organization further believes that detainees should have the right to be informed of the reason for their detention in writing, in a language they understand, and that states should ensure that free legal assistance is available to enable individuals to challenge detention.

Amnesty International believes that the government must amend its legislation in order that it comply with the judgments of the European Court of Human Rights to ensure that the lawfulness of the decision to detain can be challenged in the courts. Amnesty International believes that the government must also introduce into Greek legislation an effective remedy challenging conditions of detention.

### 3.5. ACCESS TO LEGAL AND OTHER ASSISTANCE<sup>78</sup>

Amnesty International is concerned that there has been a lack of, or limited access to, legal assistance for irregular migrants and asylum-seekers in the detention areas visited. There was also severely limited or no interpretation services. In several of the detention areas visited, the organization found a lack of, or outdated, information materials about asylum determination and deportation procedures. Detained asylum-seekers and irregular migrants faced a series of impediments to access to and contact with lawyers and with their relatives. In addition, in some areas of Greece, local committees or groups providing assistance to irregular migrants and asylum-seekers were denied access to immigration detention centres.

#### 3.5.1. ACCESS TO COUNSEL AND RIGHT TO LEGAL ASSISTANCE AND INTERPRETATION

International human rights standards, such as the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988), guarantee the right of access to legal counsel and the right to legal assistance and interpretation for asylum-seekers and irregular migrants who have been detained.<sup>79</sup> The UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999) provide that detained asylum-seekers should be informed of the right to legal counsel and should receive free legal assistance if they lack sufficient resources.<sup>80</sup>

Article 8(1) of PD 90/2008 establishes the right of asylum-seekers to be informed, in a language they understand, about the procedure that is followed and of their rights and obligations; it also provides for the right to the services of a free interpreter, so they can present their case to the authorities that receive and examine asylum applications, and for the conduct of the asylum interview at all stages, if communication cannot be secured without an interpreter's presence. Article 13(4)(e) of PD 90/2008 requires the national authorities that receive and examine asylum applications to ensure that asylum-seekers who are in detention have the right to be represented by legal counsel.

National legislation provides for the granting of legal aid only with regard to an application to annul a negative decision to the Council of State.<sup>81</sup> Fees charged by private lawyers for legal assistance to asylum-seekers are high, making legal advice inaccessible for those without financial means. Neither does national legislation allow legal aid for challenges to administrative deportation and detention (see section 3.4).

Detained asylum-seekers who have no financial means rely on legal advice provided by a small number of NGOs or ad-hoc programmes, such as the one which operated in 2008-2009, at selected border locations, through EU funding (Aegeas). The Aegeas programme used to provide, via involved Prefectures, legal assistance to those wishing to seek asylum, as well as interpretation and social care to those detained in the immigration detention centres on the islands of Chios, Lesbos, Samos and the Evros region; it ceased its operation in some immigration detention centres (Fylakio) in the summer of 2009 and in others (Samos, Lesbos (Pagani) and Chios (Mersinidiou)) in the autumn of 2009.<sup>82</sup> During Amnesty International's visit to Mersinidiou in December 2009, access to free legal advice on asylum was only possible when a lawyer from the local Bar Association visited the centre once or twice a week.<sup>83</sup> Furthermore, since October 2009, there was also no interpreter employed at the centre. Until April 2010, a lawyer employed by the local Prefecture provided advice on asylum at the Samos immigration detention centre. However, his contract is reported to have finished at the end of April 2010. In addition, there have been reportedly no interpreters at the centre since August 2009.

Even when the programme was in operation in the various immigration detention centres, the ability of the lawyers employed by Aegeas or by the local prefecture to cover the needs of those seeking asylum was impeded by other difficulties such as a lack of a sufficient number of interpreters, or interpreters only being available in one language, together with the fact that only one lawyer was generally employed to cover the needs of a large number of detainees.

The programme run by the NGO AITIMA, which provided legal advice and social support to Dublin II returnees arriving at Athens airport from February 2010, finished in April 2010. During Amnesty International's second visit to Athens airport in May 2010, the police authorities told delegates that there was no interpreter at the detention facility. Furthermore, NGOs providing legal assistance to asylum-seekers, including those in detention, told Amnesty International of serious financial difficulties as a result of delays by the authorities in processing the allocation of funds under the European Refugee Fund (ERF). Consequently, there has been a significant loss of personnel such as lawyers and interpreters.<sup>84</sup>

Reports have also been received about the hurdles created by police authorities to lawyers

providing legal assistance to detainees. Those detained at the Ferres borderguard station told the organization that the police officers in charge ignored their pleas to be given access to a lawyer. Amnesty International delegates requested the list of local lawyers from the police officers in charge and showed it to the detainees.

In addition, lawyers offering pro bono assistance spoke of barriers to their access to asylum-seekers and irregular migrants who were detained in various borderguard stations in Evros, whom they were authorized to represent or tried to assist, even when they gave their client's name to the police officers in charge. Those barriers included refusal to allow access to the detainee unless permission was received from the central police directorate of the Prefecture, and the borderguards' refusal to confirm whether an individual was detained in the centre.<sup>85</sup> A representative of the local Bar Association in Chios, who visits the Mersinidiou centre, said she faced difficulties because the local police authorities only gave her permission to attend the centre during morning hours, which is when lawyers need to be in court.<sup>86</sup>

There are also concerns about the lack of, or outdated, information materials about asylum determination and deportation procedures in several of the detention areas visited. Police authorities in Patmos, who were interviewed by Amnesty International in June 2009, were not aware that an information leaflet on asylum determination procedures was available in five languages. Some of the detainees in Ferres said they had not seen the government's leaflets on asylum determination procedures and deportation procedures. At Mersinidiou the information leaflet was available only in the offices of the police but not in the dormitories and it did not include the legislative amendments of June 2009. Some of the detainees at the centre said that they had seen the leaflet, some that they had not. Furthermore, many of the detained asylum-seekers interviewed in September 2009 did not know about their right to appeal against a negative decision on their asylum application or what would happen to them if their asylum applications were rejected. During the May 2010 visit to Athens airport detention facility, the police authorities told the Amnesty International that there was only a leaflet on deportation procedures in five languages but no leaflet on asylum determination procedures in the facility.

### 3.5.2. COMMUNICATION WITH THE OUTSIDE WORLD

According to international human rights principles, irregular migrants and asylum-seekers who are detained should have the right to be visited by members of their family and for adequate opportunity to communicate with the outside world.<sup>87</sup> The UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers (1999) state that asylum-seekers in detention should be entitled, amongst other things, to contact with the local UNHCR Office and national refugee bodies and other agencies, and the opportunity to make regular contact with and receive visits from friends and relatives, religious, social and other counsel.<sup>88</sup> The EU Returns Directive requires Member States to allow third-country nationals in detention to contact legal representatives, family members and competent consular authorities.<sup>89</sup>

Article 81 (1) of PD 90/2008 guarantees asylum-seekers the right not to be hindered in their contact with UNHCR or any other organizations which cooperate with UNHCR. Article 67(4) of PD 141/1991 stipulates that "...the police must facilitate telephone contact between the detainees and their families in order to inform them, if they so wish, of the place and reasons of their detention."<sup>90</sup>

The chance for irregular migrants and asylum-seekers to contact their families and lawyers in order to receive appropriate assistance is hampered by the availability of card phones at detention areas and the locations where phones are situated. Even if public phones are accessible, irregular migrants and asylum-seekers with no financial means rely on the personnel of the detention centres to provide them with phonecards. According to testimonies received, there is no consistency in the authorities providing cards, and even when they do, the card has often been partially used. The ability of irregular migrants and asylum-seekers to contact the outside world is further restricted by the authorities' practice of removing their mobile phones when they arrive at the centres or borderguard stations.

In June 2009, in Samos immigration detention centre, there were two card phones inside the centre, situated in the main yard. However, the Amnesty International delegates received credible reports that the phones did not work and had not been repaired for at least a month. In the borderguard station of Ferres, the single card phone had not been working for several days when the organization visited in June 2009, and detainees had had their mobile phones removed. Furthermore, the card phone was situated in a small area outside the cells and was not accessible without asking permission from the officers in charge. In the borderguard station of Soufli, a landline phone was situated in a small space outside the area where the cells were situated.

At Athens airport, a card phone is situated outside the first and second sectors of the detention facility, and detainees held in these sectors only have access to it with permission from the police. During Amnesty International's May 2010 visit, detainees in the two sectors said that their mobiles had been confiscated by the police, and since they did not have money to buy telephone cards they were unable to contact their families. A card phone is situated in the corridor outside the cells of the third sector of the facility but detainees reported that they were rarely allowed outside the sector in order to use the card phones. As a result of the authorities confiscating the detainees' possessions, some reported that they were unable to contact their relatives because they could not remember their phone numbers and did not have access to their address books or to their mobile phones.

Local committees working for the rights of refugees on Chios, Samos and Crete, who can provide information and support to those detained, have been refused access to the detention centres and police stations in Chios and Crete, or have subsequently been provided with oral permission from the authorities to visit the local detention centre, which can be withdrawn at any time (Samos). The local committee working for the rights of refugees on Lesbos was refused access to the Pagani detention centre (which closed temporarily in November 2009).

In April 2010 Amnesty International was informed that the police had denied permission for the local refugee support group on Samos to visit the centre. Prior to that, the group had been allowed access to the centre for several years, and the group's volunteers had provided the detainees there with advice, social care and Greek lessons. In June 2010 Amnesty International was informed that the authorities had reinstated the group's access to the centre.

In February 2010, following the Greek government's announcement about the establishment of screening centres at the country's various points of entry, national refugee support groups and NGOs, including the Greek section of Amnesty International, signed a joint statement

calling for the authorities to take steps in order to allow from the beginning access to the planned screening centres for NGOs and groups assisting migrants and refugees.

Amnesty International believes that states should ensure that, if detention or any other limitation of freedom takes place, asylum-seekers and irregular migrants are granted access to legal counsel, free legal assistance, interpreters, refugee and migrant assisting organizations, members of their families, and religious and social assistance. Amnesty International believes that states should ensure that, while in detention, asylum-seekers and irregular migrants should be able to communicate freely and in full confidentiality with people who visit the places of detention and be given adequate opportunity to communicate with the outside world, subject to reasonable conditions to ensure security and good order in such places.

### 3.6. POLICE IRREGULARITIES

During its research, Amnesty International has identified police irregularities in the determination of the detainees' nationality and prior to transfers from one detention centre to another. Amnesty International has also identified irregularities in ordering release and in the handling of asylum applications of detained asylum-seekers.

#### 3.6.1. IRREGULARITIES DURING DETENTION

Concerns have been raised over reports of police authorities on the island of Samos recording arrested irregular migrants and possible asylum-seekers as having a different nationality from that declared by the migrants and asylum-seekers themselves, and not providing them with an effective opportunity to challenge these records. During a hunger strike that took place at the Samos immigration detention centre in April 2010, among other issues, the migrants raised concerns about the procedures that had been followed regarding the registration of their nationality.<sup>91</sup> The detainees also reported that they had been asked to sign papers in a language they did not understand. Amnesty International understands that the Greek police on the island of Samos are assisted in screening the nationality of apprehended irregular migrants and asylum-seekers by experts deployed by EU Member States in the framework of Frontex-coordinated joint operations.<sup>92</sup>

On the basis of interviews conducted with three individuals from a group of 10 Afghan irregular migrants and six Iranian asylum-seekers transferred from Samos to Athens on 14 January 2010, and from other reports received, Amnesty International is concerned that at least one of the 10 Afghans was registered as Iranian when his actual nationality was Afghan.<sup>93</sup>

A., an ethnic Hazara, arrived irregularly on the island of Samos on 10 December 2009. He presented himself voluntarily to the Vathi police station because he wished to seek protection and was automatically detained. During his detention, A. told Amnesty International that he was interviewed by an officer who spoke to him in Arabic and in English. On the basis of its own interview, Amnesty International concluded that A. spoke very little English. A. told the officer that he was from Afghanistan and was a minor. Nevertheless, A was registered as an Iranian and an adult.<sup>94</sup>

After a few days, A. was transferred to the Samos immigration detention centre. He told Amnesty International that, although he wanted to apply for asylum, no one informed him about asylum determination procedures, and neither did he see any information leaflet about this.

A. told Amnesty International that on 12 January 2010, police transferred him along with nine other Afghan individuals from Samos immigration detention centre to the police station in the town of Vathi. A. said that, after two days in detention at Vathi police station, an Afghan interpreter appeared and gave each of them a document in Greek to sign, which he said was required for them to be released. The interpreter also provided them with a second document in Greek, which they also signed without understanding its content.

On 14 January, the 10 irregular migrants along with six asylum-seekers were transferred by boat to Athens. Upon arrival there, the two groups were separated. The six asylum-seekers were detained at Elliniko holding facility for irregular migrants (Athens) while the 10 Afghan irregular migrants were detained at Omonoia police station (Athens). A. told Amnesty International that no police officer at the station informed them of the grounds for their detention, and that they had no phonecards or money to buy any, nor knowledge of who to call for assistance. A. said that the cells at the station were dirty, and that they felt cold because they were each given only one thin blanket.

A. told Amnesty International that, after four days at Omonoia police station, his group was transferred by bus to the holding facility of Thessaloniki Aliens' Police Directorate where they stayed for a night. The next day the group was transferred to the Venna immigration detention centre.

After a day at Venna, the police authorities allegedly transferred them to the Turkish border and handed A. and the other nine Afghan migrants to the Turkish authorities under the Readmission Protocol with Turkey. A. told Amnesty International that they were asked by the Turkish authorities at the border whether they were Afghans; when they said that they were Afghans, the authorities returned them to the Greek border the same day. The Greek border authorities again transferred them to Venna immigration detention for irregular migrants where, according to A. they remained for 21 more days. A. said that the group was released after one of them suffered a suspected heart attack. The official notice given to them, issued in Greek, requested that they leave the country within 30 days.

In addition, during 2009 and 2010, Amnesty International has received several reports that groups of irregular migrants and asylum-seekers transferred from immigration detention centres on the islands, such as Samos and Chios, to other areas of Greece were given no information about either the grounds for or destination of their transfer.<sup>95</sup>

### 3.6.2. IRREGULARITIES UPON RELEASE

A cause for concern is the practice of some police authorities at the country's points of entry to predate police notices given to irregular migrants released from administrative detention. As a result, those released have much less time to leave the country after their actual release than the 30-day period prescribed in the police notice.

For example, the police notices of some of the migrants released from the Pagani detention centre on 27 August 2009 were dated several days earlier than their actual release. One police notice was dated as early as 8 August 2009.<sup>96</sup>

### 3.6.3. IRREGULARITIES IN THE HANDLING OF ASYLUM-APPLICATIONS

Article 6(5) of the Asylum Procedures Directive provides that "Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such application and/or may require these authorities to forward the application to the competent authority".

Article 4(1) of PD 90/2008, stipulates that “every foreign national or stateless person has the right to submit an asylum application. The competent authorities to receive and examine an application shall ensure that each adult is able to exercise the right to request asylum on condition that he/she appears before the said authorities”. Article 4(5) stipulates that “the Central authority shall ensure that the authorities likely to be addressed by asylum applicants are to be informed regarding... the right of the applicant to ask these authorities to forward the application to the competent authority”.

Amnesty International has received reports of the police authorities in detention areas at the country’s points of entry delaying or refusing to receive asylum applications as well reports of police refusing to forward asylum applications to the competent authorities. In July 2009, 18 Kurdish asylum-seekers of Turkish nationality, including four unaccompanied minors, were forcibly returned to the Turkish authorities. Their deportation followed the refusal of police officers responsible for their detention in Chania, Crete, to accept the oral request of the four minors to file an asylum application and to forward the 14 adults’ asylum applications, which had been filed in the presence of lawyers, to the competent authorities.

Amnesty International has also been told by some asylum-seekers that when they expressed the wish to apply for asylum while in detention, the police authorities gave them documents in Greek to sign, which they did not understand. Amnesty International has also been informed by one of the lawyers who worked in one of the immigration detention centres, of impediments created by police authorities, such as not allowing detained asylum-seekers enough time to file their asylum applications prior to their transfer to Athens.

Amnesty International believes that access to a fair and effective refugee status determination procedure should be granted to all asylum-seekers and individuals seeking international protection under a member state’s jurisdiction. This applies to a state within its territory, at its borders and can also apply extra-territorially. This includes ensuring that immigration officials present all asylum applications to the competent central authority.

## 4. DETENTION OF UNACCOMPANIED CHILDREN

Unaccompanied asylum-seeking and migrant children in Greece face a series of obstacles to realizing and protecting their rights. Inadequate procedures for determining their age, detention alongside adults, lengthy detention in conditions which sometimes amount to inhuman or degrading treatment, insufficient places in special reception centres, deportation of unaccompanied migrant children and a problematic guardianship system are among the issues of concern that Amnesty International has raised on the basis of research conducted and reports received over the past year.

Amnesty International believes that there should be a prohibition on the detention of unaccompanied children provided by law. The Committee on the Rights of the Child (CRC), which is the body monitoring state compliance with obligations stemming from the UN Convention on the Rights of the Child, explicitly states that in the best interests of the child “unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof”. The CRC calls on States Parties to make all efforts, including acceleration of relevant processes, to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.<sup>97</sup>

The EU Reception Conditions Directive sets out special provisions for unaccompanied asylum-seeking minors. In particular, it requires Member States to ensure legal guardianship or representation by an appropriate organization. Furthermore, Article 20(1) of the Children’s Convention obliges Greece as a state party to provide “special protection and assistance” to children who are not in their family environment. In the case of a child who may be seeking asylum, Article 22 requires Greece to take “all appropriate measures to ensure that a child who is seeking refugee status ... whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights.”

Greek legislation regarding the administrative deportation of foreign nationals does not protect unaccompanied children from being detained pending deportation. Regarding asylum-seeking children, Article 13(4) of PD 90/2008 stipulates that the competent authorities should avoid the detention or “confinement” of children, especially those who are unaccompanied or have been separated from their families. In practice, this requirement is not followed.

In August 2009, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern about reported cases of ill-treatment of asylum-seekers and illegal immigrants, including unaccompanied children, and recommended that the Greek

authorities, *inter alia*, reduce as far as possible the period of detention of asylum-seekers, especially children.<sup>98</sup> The Working Group on screening centres has proposed that, immediately after the screening process, unaccompanied migrant and asylum-seeking children should be referred to special reception centres for unaccompanied children.<sup>99</sup>

#### 4.1. PROLONGED DETENTION

Unaccompanied asylum-seeking and migrant children who are apprehended at the country's points of entry are usually detained following their arrest for irregular entry. Where a deportation order is issued, detention continues until a legal guardian is appointed and a place found in a special reception centre for unaccompanied children.<sup>100</sup> Police authorities interviewed by Amnesty International shared a perception that placing unaccompanied children under administrative detention was the only way to keep them safe from trafficking and exploitation and fulfil the authorities' legal obligations until a place could be found in a special reception centre.

The limited number of centres for unaccompanied children, and of places available in these centres, is an important factor contributing to the prolonged periods of detention of unaccompanied children in borderguard stations and immigration detention centres.<sup>101</sup> Although the Greek authorities have made some effort to create more accommodation for unaccompanied children, the number of existing centres does not match current needs.

The lack of available places in Ayiaassos special reception centre for unaccompanied children on Lesbos and in other similar centres around Greece was reported to be one of the main grounds for the prolonged detention in poor conditions of a large number of unaccompanied children at the Pagani immigration detention centre in the summer of 2009. In August 2009, about 150 of the children went on hunger strike to protest about the length and poor conditions of detention. More than 850 people, including 200 unaccompanied children, 150 women and 50 small children, were kept in overcrowded and insanitary conditions. Following a visit from UNHCR and the Ombudsman for the Rights of the Child, the authorities are reported to have released 570 individuals, mainly families with children and unaccompanied children.<sup>102</sup>

The scope, detail and implementation of the relevant domestic legislation regarding the guardianship of migrant and asylum-seeking unaccompanied children has also contributed to delays in transferring unaccompanied children to special centres.<sup>103</sup>

The regulations on guardianship of unaccompanied children who are asylum-seekers are included in PD 220/2007 transposing the EU Reception Conditions Directive into national legislation.<sup>104</sup>

Article 19 (1) of the PD 220/2007 provides that "the competent authorities shall take the appropriate measures to ensure the minor's necessary representation. To this purpose, they shall inform the Public Prosecutor for Minors or in the absence of the latter, the territorially competent First Instance Public Prosecutor should inform the Prosecutor for Children or, in areas where such an authority does not exist, the Prosecutor of First Instance Courts, who shall act as a provisional guardian and shall take the necessary steps in view of the appointment of a guardian for the minor." While the above provision refers only to unaccompanied children who are asylum-seekers, a Ministry of Interior Circular of 23

February 2008 extended it to unaccompanied children who have not applied for asylum.

In addition, Article 19 (2) of PD 220/2007 stipulates that the authorities shall ensure immediately that the accommodation needs for unaccompanied asylum-seeking children are covered by placing them with a foster family, adult relatives or an accommodation centre that has special provision for minors.<sup>105</sup>

According to a 2008 study commissioned by UNHCR, some public prosecutors acting as temporary guardians have interpreted their role as limited solely to the appointment of permanent guardians, claiming that it was impossible to exercise their duties effectively because of their workload.<sup>106</sup> Such limited interpretation of the legal guardian's mandate can lead to unaccompanied minors being unable to exercise their legal rights such as challenging the deportation and detention orders issued against them.<sup>107</sup>

The following example illustrates how difficulties in appointing permanent guardians and a lack of available spaces in special reception centres contributes to the prolonged detention of unaccompanied children.

Amnesty International delegates who visited the immigration detention centre in Vathi on the island of Samos in June 2009 found that the unaccompanied children in the centre had been detained for between two to three months. According to reports many of the unaccompanied children were in poor psychological health as a result of their prolonged period of detention, and some had shown suicidal tendencies. The long time that these children were kept in the centre was a result of two factors. In the first place, before being released from detention, they had to wait for a place to be found at a special reception centre for unaccompanied children.<sup>108</sup> Secondly, it was difficult for the prosecutors to appoint a permanent guardian who would also be responsible for the transfer of the children to special reception centres.

A local social workers' representative informed Amnesty International that, since April 2009 social workers of the island had protested against their appointment as permanent legal guardians of the unaccompanied children on the grounds that this was not part of their job description. Their concerns were also increased by security risks posed by a lack of transport organized by the authorities during a previous transfer. Another concern was that responsibility for the unaccompanied children remains with the appointed permanent guardian, even after the children have been transferred to special accommodation.<sup>109</sup>

In an interview with the local prosecutor, the delegates were told that the local authorities were trying to find a way of allowing the children to be transferred to centres in other parts of Greece, such as by appointing as permanent guardians the directors of the special centres to which the young people would be sent.<sup>110</sup> However, until a solution was found the children could not leave the centre, since the prosecutor believed the immigration detention centre was the only place where the unaccompanied children could be kept safe until a way could be found to transfer them.

Both the local prosecutor and the social workers' representative pointed out that Article 49 of Law 2447/1996 providing for the establishment of a Judicial Social Service under the supervision of the Ministry of Justice has not been implemented. The establishment of such an authority, according to the local prosecutors, would solve the problem because specialist staff under the supervision of the service could be appointed as permanent guardians for unaccompanied children and allow them to be housed.<sup>111</sup>

In October 2009, Amnesty International was informed that at least 15-20 unaccompanied children were

detained for more than 15 days in the Samos centre, in overcrowded and unhygienic conditions, and nine were detained for at least 55 days in such conditions because no arrangements had been made for them to be transferred along with other unaccompanied children who had left the centre in the first week of September. In March 2010, unaccompanied children reportedly continued to be detained in the centre for as long as a month without permanent guardians being appointed.<sup>112</sup>

#### 4.2. UNACCOMPANIED CHILDREN DETAINED WITH ADULTS

There are many instances where unaccompanied children are detained among adults, either due to a lack of separate areas in the detention places where they are held, or because they have been registered as adults.

During Amnesty International's visit to the Ferres borderguard station in June 2009, the police officer in charge told delegates that there were no children among the adult male irregular migrants and asylum-seekers detained. However, during their visit to the cells, 10 of the individuals detained told delegates that they were minors. Furthermore, Amnesty International has also heard from lawyers who identified unaccompanied male children who were being held with adult males in some detention facilities at border stations, and who reported that their clients, who were unaccompanied children, were also being detained with adults.<sup>113</sup>

Police authorities in various areas of the country told Amnesty International that the determination of the age of an unaccompanied minor who does not carry identification papers is based on the minor's own declaration as to how old they are.<sup>114</sup> However, there are many examples of unaccompanied children being registered as adults and detained among adults despite their statements to the authorities that they were under the age of majority.<sup>115</sup> According to the CRC, identification measures of unaccompanied or separated children such as age assessment "...should not only take into account the physical appearance of the individuals but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such".<sup>116</sup>

The following case illustrates the deficiencies in the practices followed by the Greek authorities in accurately identifying unaccompanied children, and their resultant detention among adults:

S., a 16-year-old Afghan unaccompanied minor, arrived in Greece in November 2009. He was arrested by the police in Athens in mid-November and convicted for possession of a weapon after the police reported that they found him in possession of a small knife. He was sentenced to a month's imprisonment and a fine, and was detained in Korydallos prison for the duration of the sentence. Following that, an administrative deportation order was issued against him and he was detained in the cells of the Attika Aliens' Police Directorate (Petrou Ralli) until the beginning of January 2010, pending deportation. The police authorities had registered S. as an adult (aged 26) and so he was tried as an adult and detained with adults both in Korydallos and at the Attika Aliens' Police Directorate. Amnesty International delegates visited him at the Police Directorate at the beginning of December 2009. S. told Amnesty International that he had told the authorities his real age from the start. Relatives of S. living abroad, who had contacted the organization, also said that he was a minor. S.

also told them that he had not been provided with a lawyer during his trial, and was unable to contact his family from prison because he had no money to buy a phonecard.

The organization sent a letter to the Attika Aliens' Police Directorate on 17 December 2009 drawing attention to the apparent mistaken registration of both S.'s age and his country of origin, which was recorded in his file as Iran, rather than Afghanistan. In a reply sent to Amnesty International in January 2010, the authorities said that their practice is to accept the age given by aliens who were arrested with no papers.

S. was released at the end of December 2009 and issued with an official notice requesting him to leave the country within 30 days.

Amnesty International is also concerned that among the group of 10 irregular migrants transferred from Samos to Athens on 14 January 2010, and subsequently to Venna immigration detention centre in order to be deported, there may have been several unaccompanied minors who were allegedly registered by the authorities as adults (see section 3.1 above).

Amnesty International interviewed A., one of the 10 migrants, who told the organization that he was 16 years old. A. was registered as an adult by the authorities, despite his declaration to the contrary (see section 3.1 above). A. also told the organization that among the other nine individuals of his group six more unaccompanied children had been registered by the authorities as adults (as 18 and 19 years old). Two of the six asylum-seekers transferred with the 10 irregular migrants to Athens said that many of the irregular migrants transferred were minors.

## 5. DETENTION CONDITIONS

On the basis of Amnesty International's visits to various immigration detention centres and borderguard stations, the testimonies of detained irregular migrants and asylum-seekers, and reports from other NGOs and refugee support groups, the organization is concerned that conditions in many of the places where irregular migrants and asylum-seekers are detained remain poor and do not conform to international human rights standards.

Irregular migrants and asylum-seekers held for immigration related purposes may be detained for prolonged periods and under poor conditions in facilities such as borderguard stations and police stations, which are designed only for short term detention. Many detention facilities suffer from overcrowding, lack of beds and clean bedding, lack of hygiene products, unhygienic conditions, insufficient or no access to medical assistance, and insufficient food. Detainees may also be denied access to clean water and toilet facilities. Several of the irregular migrants and asylum-seekers spoke of incidents of inhuman and degrading treatment by police officers or coastguard officers while they were in detention, and inhumane conditions of transfer from one detention centre to another.

International human rights standards such as Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the ECHR prohibit torture, cruel, inhuman or degrading treatment. Article 10 (1) of the ICCPR stipulates that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".<sup>117</sup>

Article 16(1) of the Returns Directive states that detention shall take place as a rule in specialized facilities and if this cannot be provided and third-country nationals are detained in prisons, they should be kept separately from ordinary prisoners.<sup>118</sup> Article 16(3) of the Directive stipulates that "...particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness should be provided". Article 17 of the Directive stipulates that "...families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time" (para 1); and that "families detained pending removal shall be provided with separate accommodation guaranteeing privacy" (para 2).

In addition, UNHCR Guidelines set out agreed practices for detained asylum-seekers in the limited circumstances in which such detention is justified.<sup>119</sup> The recommendations include that conditions of detention for asylum-seekers should be humane and prescribed by law; for men to be segregated from women, and children from adults, except when they are part of a family group; and for asylum-seekers to have the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities, and to have access to basic necessities such as beds, showers, facilities and toiletries.

National legislation standards regarding the conditions under which irregular migrants and asylum-seekers should be held can be found in PD 90/2008 and the Joint Ministerial

Decision No. 4000/4/46–A determining the details for the execution of judicial and administrative deportation orders. Article 13(4) of PD 90/2008 states that women asylum-seekers should be detained separately from men, that the authorities should refrain from detaining children and pregnant women seeking asylum, and that adequate medical care should be provided to detained asylum-seekers.<sup>120</sup> Article 5(2) of the Joint Ministerial Decision stipulates that “... minors and women are detained in separate areas unless grounds for the protection of minors or for the continuation of family unity require different treatment”. Article 5(2) also allows for the temporary detention of aliens against whom a deportation order has been issued in police station cells if there is a lack of “special facilities for hosting foreigners”. Standards regarding detention conditions of irregular migrants and asylum-seekers can also be found in Protocol Regulation 4803/22/44 on the treatment and the rights of persons detained by police authorities of July 2003.<sup>121</sup> Standards also exist in the Greek Correctional Code (Law 2776/1999) which applies to individuals held in prison facilities.<sup>122</sup> However, the latter standards seem to apply only for irregular migrants and asylum-seekers issued with a judicial deportation order.<sup>123</sup>

### 5.1. IMMIGRATION DETENTION CENTRES AND OTHER HOLDING FACILITIES

Asylum-seekers and irregular migrants facing deportation can be held at immigration detention centres. The terms generally used by the Greek authorities to describe these centres are “special areas for hosting foreigners” or “special facilities for aliens” (Article 81(1) of Law 3386/2005). So-called “special facilities” exist at the country’s points of entry such as Evros (Fylakio), Rodopi (Venna), Attika (Amygdaleza) and the islands of Samos (Vathi) and Chios (Mersinidiou). Irregular migrants and asylum-seekers are also detained at holding facilities at Attika and Thessaloniki Aliens’ Police Directorates.<sup>124</sup>

Following a visit of the Deputy Minister of Citizens’ Protection in October 2009, Pagani immigration detention centre was temporarily closed on 6 November 2009.<sup>125</sup> The Deputy Minister himself deplored the conditions of detention.<sup>126</sup>

There is a lack of clarity surrounding the status of the existing immigration detention centres, since the majority, if not all of them, have been established and operate without the adoption of a Joint Ministerial Decision as required by Article 81 (1) of Law 3386/2005.<sup>127</sup> The existing centres are guarded by the police and funded by the Ministry of Interior through the Prefectures, but there is no public authority defined in law which is responsible for their management.<sup>128</sup> The absence of a Ministerial Decision has also resulted in the lack of standards and terms of operation for the existing immigration detention centres.<sup>129</sup> In its 2009 Report on Greece, the CPT underlined the urgent necessity “...to adopt such standards, guaranteeing a diversified regime, with activities and recreation, including the possibility of one hour of outside exercise”.<sup>130</sup>

The Working Group on screening centres has pointed out that the lack of a Ministerial Decision regarding the framework for management and operation of the current centres causes most of the problems that have arisen in them. Thus, the Working Group has proposed that the framework for the operation of the proposed centres and the authorities responsible for the management of immigration detention and planned screening centres be proscribed explicitly in law.

In the past year, Amnesty International has visited various immigration detention centres.

The organization has also interviewed lawyers and relatives of detained irregular migrants and asylum-seekers and individuals who were released following detention. The section below highlights some of the concerns that arose during those visits and interviews.

#### 5.1.1. MERSINIDIOU IMMIGRATION DETENTION CENTRE

During Amnesty International's visit in September 2009, several families with children (many of them quite young), four unaccompanied minors and a pregnant woman were held at the centre. Despite the assurances of the police authorities that there were no victims of torture at the centre, Amnesty International received credible reports that two victims of torture were detained there during that period.

Amnesty International delegates saw three families with young children (a total of 15 people), sleeping in a dormitory designed for eight, and also saw individuals sleeping on mattresses on the floor. Families with children told the delegates that they were rarely provided with milk for their children.

Personal hygiene products, such as shampoo and soap, were not provided by the authorities. The detainees had to place an order and pay for such products to be bought by the centre's personnel. The water cooler was placed next to a strongly smelling sewage drain, and many of the detainees expressed fears that drinking water from there would affect their health.<sup>131</sup>

In addition, Amnesty International delegates saw children wearing adult shoes. In an interview with the centre's social worker, delegates were told that the availability of children's shoes was dependent upon donations by charities such as the Greek Red Cross.<sup>132</sup>

During their second visit to the centre, in December 2009, some of the detainees asked the delegates for clothes and shoes. In addition, following the end of the Aegeas programme in mid-October 2009, the centre ceased to have a social worker.

In December 2009 many detainees told delegates that they had been beaten and subjected to inhuman or degrading treatment by the coastguard officers on the island of Lesbos while awaiting their transfer by boat to the Mersinidiou centre.<sup>133</sup> They reported that approximately 30 people had been kept handcuffed for a whole day in a small minibus. They also said that the port authorities only allowed them to leave the minibus to go to the toilet every 12 hours and that food was only served once. According to the testimonies, the port authorities were taking three individuals at a time out of the minibus, allowing them only three minutes to eat their food and then kicking them before allowing them back onto the vehicle.

#### 5.1.2. VENNA IMMIGRATION DETENTION CENTRE, RODOPI

Concerns also exist about detention conditions at the Venna immigration detention centre in north-east Greece.<sup>134</sup> Conditions at the facility led to a protest in February 2010 by 124 irregular migrants detained there.<sup>135</sup> The irregular migrants are reported to have protested over the length of their detention and poor conditions, including lack of heating.<sup>136</sup> As a result, the authorities are reported to have released 30 detainees. However, 42 of the migrants detained were tried by the Misdemeanours Court of Rodopi for contempt of authority and damage to property. They were convicted, and the court ordered their judicial deportation. Amnesty International received reports that the migrants were tried without the assistance of an interpreter and a lawyer.

In March 2010, Amnesty International interviewed A., an irregular migrant who was held in Venna during the time of the protest.<sup>137</sup> A. said that the food provided was not sufficient, that the dormitory his group stayed in was dirty, that there were not enough blankets for the detainees and that those provided were dirty. He also spoke of being cold and said that the heating was only turned on for approximately 15 minutes twice a day.

#### 5.1.3. HOLDING FACILITY FOR IRREGULAR MIGRANTS, ATTIKA ALIENS' POLICE DIRECTORATE

Amnesty International has received reports of overcrowding and poor detention conditions in the holding facility of Attika Aliens' Police Directorate (Petrou Ralli). Some 160 migrants, including a number of unaccompanied children, are reported to have been transferred from various immigration detention centres on the islands of Symi, Leros, Chios and Mytilini on 9 August 2009, arriving the following day at the Aliens' Directorate. According to these reports, approximately 60 of them slept in overcrowded conditions in the basement of the holding facility, while around 100 slept on the floor of the yard which is used for outside exercise.<sup>138</sup> Amnesty International expressed its concerns over the reported conditions in a letter sent to the Greek Government and copied to the competent police authorities on 27 August 2009. No reply has been received to date to the organization's enquiries.

An on-site investigation of the holding facility was conducted by the Greek Ombudsman on 27 August 2009. The Ombudsman concluded, among other things, that a number of the migrants appeared to have slept in the yard for at least one night, and noted problems regarding their access to shower and toilet facilities.<sup>139</sup>

In mid-January 2010, Amnesty International was informed of the case of A.K., an 18-year-old Afghan who was detained at the facility. One of A.K.'s relatives told the organization that A.K. was suffering from a serious health problem (hepatitis B) and that his medication had run out. A.K.'s repeated requests to be seen by a doctor were reportedly ignored by the officers in charge.

Police authorities in Petrou Ralli informed Amnesty International about the status and grounds of A.K.'s detention. However, they did not reply to questions raised about A.K.'s state of health and access to a doctor. Amnesty International was informed by A.K.'s relatives that he was released a week after the organization's contact with the authorities.

#### 5.1.4. HOLDING FACILITY FOR IRREGULAR MIGRANTS, THESSALONIKI

Overcrowding, lack of beds and no opportunity to exercise were among the problems reported in the holding facility of the Aliens' Sub-Directorate in Thessaloniki. In February 2010, Amnesty International was informed that three Turkish asylum-seekers, who had been held in the facility between September 2009 and January 2010, had not been provided with the opportunity to exercise during that period, and slept on mattresses on the floor of their cell.<sup>140</sup> Despite the limited space, around 25-30 people were reportedly detained in the cell.<sup>141</sup> Amnesty International also interviewed an irregular migrant detained for a short period in the holding facility prior to his transfer to another facility in north-east Greece, who spoke of insufficient food and dirty cells.

## 5.2. BORDERGUARD STATIONS AND POLICE STATIONS

Irregular migrants and asylum-seekers may be detained following their apprehension for immigration related purposes at borderguard stations, which are usually at the country's points of entry. They may also be detained at police stations in the area where they have

been apprehended.<sup>142</sup> Some police stations have cells designated specifically for irregular migrants, who may be held there pending deportation. However, irregular migrants and asylum-seekers may also be detained in cells designated for those arrested for criminal offences.<sup>143</sup>

Asylum-seekers returned to Greece under the Dublin Regulation are held in the detention area of Athens airport police station.<sup>144</sup> Irregular migrants and asylum-seekers apprehended in the airport trying to leave the country using false documents are also detained there.

Although borderguard and police station cells have been designed for short periods of detention, the lack of available space in immigration detention centres has led to irregular migrants and asylum-seekers being detained there for prolonged periods under poor conditions.

In September 2008, the Council of Europe Committee for the Prevention of Torture (CPT) concluded that “detention facilities in police and borderguard stations are designed to hold persons for short periods only and should never be used for prolonged detention. Even for periods of detention of a few days the material conditions, hygiene and access to medical care are unacceptable and call for radical improvement.”<sup>145</sup>

Over the past year, Amnesty International has visited various borderguard and police stations and has also spoken to irregular migrants and asylum-seekers detained there. The descriptions below illustrate some of the concerns these visits raised.

#### 5.2.1. SOUFLI BORDERGUARD STATION, EVROS

Amnesty International delegates visited the Soufli borderguard station in Evros, in June 2009. More than 40 men and women were kept separately in two cells, but each cell was very small. There was overcrowding and not enough mattresses for everyone.

During the organization’s visit, men and women shared one of the two toilets because the other one was broken. The detainees said that they had no opportunity for outside exercise. This was confirmed by the police officers in charge, who said that this was because the station did not have a surrounding fence and the migrants could attempt to escape. Some of the detainees also made allegations of ill-treatment by guards.

#### 5.2.2. FERRES BORDERGUARD STATION, EVROS

During their visit to the Ferres borderguard station in June 2009, delegates observed severe overcrowding and very dirty cells. Detainees reported that the overcrowding resulted in them having to sleep in a sitting position, or in the toilets. In addition, the number of mattresses was insufficient and they were in very poor condition. Natural light and ventilation were insufficient.

The delegates received allegations by detainees that there were scorpions, insects and snakes in the cells. Delegates saw signs of insect bites on the hands and legs of some of the individuals. There was a very small area for outside exercise.<sup>146</sup>

While the police officer in charge informed Amnesty International that a doctor was assigned

to the borderguard station, delegates were told by detainees that their requests to be seen by a doctor had been ignored by staff. One of the unaccompanied minors said that he had been detained for at least 25 days; he looked obviously ill and repeatedly asked delegates to help him with his request for a doctor.

### 5.2.3. ATHENS AIRPORT DETENTION AREA (ELEFThERIOS VENIZELOS)<sup>147</sup>

Amnesty International delegates visited the detention area of Athens airport police station in October 2009 and May 2010. The facility is divided into three sectors. The first consists of three cells, each approximately 7m<sup>2</sup>. There is one window in each cell, and the sector has two separate toilets and showers. The second consists of three large cells, each approximately 50m<sup>2</sup>. There are separate toilets in the corridor outside the cells. The third sector consists of nine very small cells, each approximately 10m<sup>2</sup>. The cells are arranged in a row, off a small corridor where a card phone is situated. On the opposite side of the corridor there are two toilets and two showers.

During the October 2009 visit, Amnesty International delegates were able to view the first two sectors where Dublin II returnees and other asylum-seekers were being held. The delegates observed that detainees were held in conditions of severe overcrowding and that the physical conditions were inadequate. Many asylum-seekers reported that they had been verbally abused by police officers.<sup>148</sup>

During the organization's visit in May 2010, Amnesty International representatives were allowed to visit all three sectors. The police authorities told delegates that the first sector was used for the detention of Dublin II returnees and other asylum-seekers, the second for the detention of female irregular migrants convicted for attempting to leave Greece with false documents and the third for the detention of male irregular migrants convicted for attempting to leave Greece with false documents.

During the May 2010 visit, there were seven asylum-seekers held in the first sector (six male and one female) but no Dublin II returnees. In the second sector, 15 females were held in one cell, three of them pregnant. One of the pregnant women complained several times that she could not breathe, and was asking when she could go outside her cell. In another cell there was a man with an injured leg. Those held in the first and second sector told Amnesty International delegates that the police rarely unlocked the doors of their sectors. As a result, they did not have access to the water cooler situated outside, and were forced to drink water from the toilets.

At the time of the visit approximately 145 detainees were held in the third sector in conditions of severe overcrowding. Among them, delegates found a Dublin II returnee. There were nine cells in total. The delegates were able to view two of the cells, each of which contained only one bed (a concrete base with a mattress on top) and held between 14 and 17 individuals. There were not enough mattresses, and detainees slept on the floor. As a result of the overcrowding and mattresses on the floor, there was no space to move around. The detainees told Amnesty International that, because of the lack of space, they could not all lie down and sleep at the same time. While the cells viewed had windows, the overcrowding meant that the ventilation was not sufficient. The heat in the cells was unbearable.

Detainees held in the third sector told Amnesty International that the police officers did not allow them to walk in the corridor outside their cells, and that there were severe difficulties in gaining access to the toilets. At the time of the organization's visit, detainees were knocking on the cell doors and desperately asking the police to let them go to the toilet. Amnesty International delegates observed that some people who were allowed to go to the toilet were holding a plastic water bottle half or almost completely full of urine. The police authorities admitted that in every cell detainees used plastic bottles for their toilet needs which they emptied when they were allowed to go to the toilet. The delegates also observed that the toilet facilities were dirty and the two showers had neither door nor curtain, and thus lacked any privacy.

The Athens airport police authorities told Amnesty International that the imposition of prison sentences on irregular migrants or asylum-seekers arrested at the airport for using false documents, who were unable to pay trial expenses, contributed to the overcrowding of the detention area.

At the time of the visit, the organization observed a complete lack of hygiene products such as soap, shampoo and toilet paper in all sectors. In addition, many of those detained told the delegates they had no access to their luggage, so they did not have their personal belongings, including changes of clothes. Some said that, as a result, they had been wearing the same clothes for weeks. Furthermore, there was no opportunity for outside exercise at all.

Two individuals complained that they did not have access to their medication because it was in their luggage. Similar reports were received during the October 2009 visit. In addition, concerns regarding access to medical assistance remained unchanged since October 2009. The airport authorities told Amnesty International that there was no regular doctor in the facility and medical care was provided only when requested by a detainee by calling the airport's first aid doctors.

### 5.3. INHUMAN TREATMENT DURING TRANSFER

Migrants and asylum-seekers complained that they were treated inhumanely before and during their transfer by boat from various islands to mainland Greece or to other islands, and by bus to the Evros region.

Article 144 of PD 141/1991 stipulates that "particular measures to prevent escapes must be undertaken during detainees' transfers in such a way so as to ensure their normal movement without offending their dignity".

According to the testimonies of some of the 53 irregular migrants and asylum-seekers, including five unaccompanied children, transferred from Chios by boat to Thessaloniki on 26 July 2009 and then to the borderguard stations of Tycheron and Venna, they were kept handcuffed together in pairs for the duration of the 20-hour boat trip.

Three individuals from a group of 10 irregular migrants and six asylum-seekers, possibly including several unaccompanied minors, who were transferred by boat from Samos to Athens on 14 January 2010, have spoken to Amnesty International about the poor conditions during their transfer. One asylum-seeker gave the following account:

At 6pm, before dinner was served [at the immigration detention centre], they took us to be transferred. The police put us in a cell together with 10 Afghan unaccompanied children. Then they put all 16 persons on a boat to Athens. They didn't return our personal belongings (when they arrested us they took our money and our expensive mobile phones). During the journey the police officers in charge did not give us anything to eat or even to drink. When we asked them to give us some water and food, they replied that no one gave them money to buy water and food for us; they told us: "If you have money we will buy food for you". So, we ate nothing during the journey and we were forced to drink water from the toilet of the ship, which is not drinkable. We only ate again the following day at 10pm in Athens. In addition, during the whole journey we were handcuffed in pairs even when going to the toilet. They didn't allow us to smoke, but they were smoking in front of us, and when one of us asked to smoke too, they beat him.<sup>149</sup>

Asylum-seeker transferred from Samos to Athens on 14 January 2010

## 6. CONCLUSIONS

Asylum-seekers and irregular migrants are not criminals and should not be treated as if they are. Nevertheless, Amnesty International's research over the last year has led to the conclusion that asylum-seekers and irregular migrants in Greece are detained as a matter of course, rather than as a last resort.

The government is failing to abide by its international obligations to ensure that detention is a measure of last resort which should only be imposed if other alternative measures are not possible, and only when it can be justified in each individual case. It is also failing in its requirements to ensure that detainees are held in conditions that comply with international standards. Furthermore, the detainees are denied or have limited access to various forms of basic assistance, including legal assistance, interpreters and medical support. Lack of legal assistance denies detainees the opportunity to challenge their detention before a judicial authority and can result in prolonged detention in poor conditions. Such treatment of detained asylum-seekers and irregular migrants can discourage individuals who are in need of international protection from seeking that protection.

Amnesty International is also concerned that unaccompanied children continue to be detained, in some instances for long periods and in poor conditions, as a result of legislation that permits their detention. There are insufficient special reception centres for minors, as well as systemic failures concerning guardianship.

Amnesty International notes that detention conditions in the vast majority of immigration detention centres are inadequate or poor. Even in immigration detention centres where conditions and facilities were adequate (Samos) during the organization's visit, lack of capacity and overcrowding at certain times of the year lead to a reported deterioration in conditions. Poor conditions have also been identified or reported in borderguard stations and police stations used for immigration detention.

The government must also address existing deficiencies in the current legislation including the provisions criminalizing irregular entry and exit out of the country, the provision allowing for administrative deportation for being prosecuted for an offence punishable by a minimum of three months, and the lack of effective mechanisms to challenge a decision order and to complain about detention conditions.

Recent steps taken by the Greek Government, such as the release of a large number of irregular migrants detained in police cells for the purposes of deportation, along with plans to reform the reception system for migrants and asylum-seekers arriving in Greece in an irregular manner, by establishing screening centres at the country's points of entry, are important and necessary first steps to address the lack of appropriate facilities for arriving asylum-seekers and irregular migrants and the practice of systematic detention, but they will not be sufficient to meet Greece's international human rights obligations.

Irregular migrants and asylum-seekers will still be subject to a form of detention in such proposed centres, even if they are allowed free movement inside the centres. Amnesty

International believes that the Greek authorities should explore alternatives, such as open or semi-open centres staffed with qualified personnel where the screening of those who arrive irregularly can take place. Furthermore, the authorities need to ensure that irregular migrants and asylum-seekers arriving at those centres have access to free legal assistance and interpreters in languages they understand and medical assistance.

## 7. RECOMMENDATIONS

Amnesty International makes the following recommendations to the Greek authorities that, if implemented, would improve human rights protection for asylum-seekers and migrants in detention in Greece:

### **On immigration related detention in general**

- Ensure that detention of irregular migrants only occurs in exceptional circumstances, on grounds prescribed by international law and in compliance with the principles of necessity and proportionality.
- Ensure that a presumption against detention is provided by law.
- Ensure that other less restrictive alternatives to detention are always considered first and given preference before resorting to detention.
- In situations where detention is unavoidable, and has proven to be necessary on the basis of an individual assessment of each case, ensure that asylum-seekers and irregular migrants are held in adequate conditions and granted access to all procedural rights as defined under international law and standards.
- Ensure that a range of alternative, non-custodial measures are available and accessible in law and in practice, and fully considered before resorting to detention, only resorting to detention if it is established that no alternative will be effective in achieving the legitimate aim.
- Immediately release those who cannot be deported.
- Ensure compliance of detention practices regarding irregular migrants by implementing the ruling of the ECtHR in the case of *Tabesh v. Greece*.

### **On detention of refugees and asylum-seekers**

- End the detention of asylum-seekers for immigration purposes in law and in practice, in line with international human rights standards which require that such detention is only used in the most exceptional circumstances.
- Ensure asylum seekers and refugees are not penalized for irregular entry or stay, including by imposing penalties or detention.
- Ensure compliance of national legislation and practices on asylum-seekers' detention with the ruling of the ECtHR in the case of *S.D. v. Greece*.

**On vulnerable groups**

- Introduce a prohibition in law on the detention of vulnerable people including torture survivors, pregnant women, those with serious medical and psychological conditions and the elderly.

**On unaccompanied children**

- Immediately end the practice of detaining unaccompanied children, and prohibit in law the detention of unaccompanied asylum-seeking and migrant children.
- Ensure that the best interests of the child is a primary consideration in all decisions concerning asylum-seeking and migrant children during every phase of their presence in Greece, regardless of their immigration status or that of their parents or guardians.
- Take measures to ensure that unaccompanied children are immediately identified on arrival, through procedures directed towards the protection of their fundamental rights and centred on correct information concerning their rights, so as to avoid their detention, deportation, mistreatment or exploitation.
- Adopt formal age assessment procedures.
- Ensure that the benefit of the doubt is given to young people whose age is subject to assessment, including where no documents are available. This would include taking into account not only the physical appearance of the child but also his/her psychological maturity/immaturity. Decision-makers should avoid making decisions regarding the assessment of the age of young people on the basis of forensic medicine alone.
- Ensure that unaccompanied children have immediate access to suitable alternative reception structures.
- Ensure that children are separated from adults, except for the members of their own family unit, and that the facilities in which they are lodged and the spaces in which they move are clearly distinct.
- Establish more special reception centres for unaccompanied asylum-seeking and migrant children.
- Create an effective guardianship system that can protect the rights and interests of unaccompanied migrant and asylum-seeking children by ensuring that there is a sufficient number of guardians with the necessary expertise to safeguard the best interests of the child. More specifically, appointed guardians should ensure that the child's legal, social, health, psychological, material and educational needs are adequately provided for.
- Ensure that in addition to the appointment of a guardian, unaccompanied children involved in asylum procedures or administrative or judicial proceedings are provided with free legal representation.

### **On criminalization of irregular entry into or exit out of the country**

- Repeal legislation imposing criminal sanctions for irregular entry or stay, which should remain administrative offences.
- Repeal any criminal penalties for so-called irregular exits.
- Ensure that asylum-seekers are not subject to criminal sanctions or otherwise penalized for the use of false documents or irregular entry.

### **On the decision to detain and length of detention**

- Ensure that if detention takes place, the decision to detain is based on an individualized assessment including the personal history, and the risk of absconding, of the individual. Detention will only be lawful when the authorities can demonstrate in each individual case that alternatives will not be effective and that it is necessary and proportionate to achieve a legitimate objective.
- Ensure that the decision to detain should be automatically reviewed periodically on the basis of clear legislative criteria, including when someone lodges a claim for asylum.
- Ensure that migrants and asylum-seekers deprived of their liberty are informed in a language they understand, if possible in writing, of the reasons for the deprivation of liberty, of the available appeal mechanisms and of the regulations of the facility. Detained migrants shall also be accurately informed of the status of their case and of their right to contact a consular or embassy representative and members of their families.
- Ensure that all migrants and asylum-seekers deprived of their liberty are able to bring proceedings before a court to effectively challenge the lawfulness of their detention, including through the assistance, free of charge, of an interpreter and by legal counsel during the proceedings; for that purpose the government must amend its legislation in order that it comply with the ruling of the ECtHR in the case of *S.D. v. Greece*, to ensure that the lawfulness of the decision to detain can be challenged in the courts.
- Ensure that migrants and asylum seekers are granted effective access to remedies against administrative detention and deportation orders, including through the assistance of free legal aid and adequate interpretation where necessary.
- Facilitate migrants' and asylum-seekers' exercise of their rights, including by providing them with lists of lawyers offering pro bono services, telephone numbers of consulates and organizations providing assistance to detainees and taking measures to ensure that they are adequately informed of the status of their case.
- Introduce into Greek legislation an effective mechanism by which asylum-seekers and irregular migrants can bring complaints about detention conditions before an independent and impartial body.
- Ensure that detention is always for the shortest possible time.

- Ensure that the maximum duration for detention provided in law is reasonable in length.

#### **On access to information**

- Ensure prompt and effective access to qualified interpreters in immigration detention centres, border and police stations and at the planned screening centres.
- Ensure that up-to-date information leaflets on deportation, detention and asylum determination procedures are available and accessible in various languages to detained asylum-seekers and irregular migrants.
- Ensure that irregular migrants and asylum-seekers who are transferred from one centre to another are informed of the purpose of their transfer and their destination in writing and in a language they can understand.

#### **On contact with the outside world**

- Ensure that, while in detention, asylum-seekers and irregular migrants are able to communicate freely and in full confidentiality with people who visit the places of detention, and have adequate opportunity to communicate with the outside world, subject to reasonable conditions to ensure security and good order.
- Ensure that detained asylum-seekers and irregular migrants are able to exercise their right to access to legal counsel, interpreters, doctors, refugee and migrant assisting organizations, members of their families, friends, religious and social assistance and the UNHCR, and that this right is not impeded in practice.

#### **On transparency and the prevention of human rights violations**

- Ensure that, in conformity with international standards, an independent monitoring and inspection body carries out regular, unlimited and unannounced visits in every facility where irregular migrants and asylum-seekers are held, and includes specific responsibility of the rights of migrant and asylum seeking children.
- Ensure that information relating to detention practices including the detention of asylum-seeking and migrant children is made publicly available through the publication of complete and detailed data concerning:
  - The admission and presence of accompanied and unaccompanied asylum-seeking and migrant children.
  - Gender-disaggregated statistics.

#### **On the status of immigration detention centres and screening centres**

- Ensure that all immigration detention centres and planned screening centres operate on the basis of a legislative framework and internal regulations that provide adequate safeguards

to detainees including reasonable standards of security and hygiene.

#### **On detention conditions**

- Ensure that detention conditions for migrants and asylum-seekers held in immigration detention are in conformity with international and regional human rights standards such as the UN Body of Principles for the protection of all persons under any form of detention and the UN Standard Minimum Rules for the Treatment of Prisoners and in particular:
- Ensure that irregular migrants and asylum-seekers held for immigration related purposes are detained in purpose built facilities, which are under no circumstances of a punitive nature.
- Ensure the provision of a proper medical examination as promptly as possible and of medical treatment and care whenever necessary and free of charge.
- Ensure that detainees have access to appropriate educational, cultural and informational material.
- Ensure access to adequate medical care and psychological assistance for detainees, including psychological counselling where appropriate.
- Ensure that detained migrants and asylum-seekers have access to interpreters in their contacts with doctors or when requesting medical attention.
- Ensure that immigration detainees are separated from criminal detainees and women are separated from men, unless these are close family relatives.
- Ensure the detainees' right to communicate with members of their families, friends, their legal representatives, religious representatives, members of the civil society, consular authorities where requested and the UNHCR.
- Ensure that a separate bed with clean bedding and personal hygiene products are provided for each detainee and at least one hour of outdoor exercise daily.
- Ensure that transfers to and from places of detention of irregular migrants and asylum-seekers are not unnecessary or gratuitous and are carried out in conditions that respect the human rights of those being transferred.
- Provide training to immigration enforcement authorities not only on domestic immigration laws and regulations, but also on relevant international standards. Staff of detention centres should be given adequate training on the psychological aspects relating to detention, cultural sensitivity and human rights procedures. All staff dealing with migrants and asylum seekers should be given specific gender training on top of general sensitization for staff dealing with migration issues generally.
- Ensure that the training of law enforcement officials addresses racism and discrimination, and includes training on the use of force.

### **On allegations of ill-treatment**

- Conduct prompt, impartial and comprehensive investigations into all allegations of ill-treatment and torture of refugees and asylum-seekers and irregular migrants by law enforcement officials.
- Ensure the existence of confidential mechanisms allowing detained migrants to make a request or complaint regarding their treatment, in particular in case of physical and psychological abuse, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to judicial authorities;

### **On nationality determination procedures**

- Ensure clarity in the legal framework of cooperation between Greek authorities and Frontex so that administrative decisions that are taken within this framework can be subject to review.

### **On deportation**

- Repeal Article 76(1)(c) of Law 3386/2005 which provides for the administrative deportation of foreign nationals solely on the grounds that they have been prosecuted for an offence punishable by a minimum term of imprisonment of three months.
- Ensure that irregular migrants facing deportation are informed in a language that they understand of the content of the police notices requesting them to leave the country within 30 days the minute the notices are given.
- Ensure that deportation procedures contain adequate procedural safeguards, including the ability to challenge individually the decision to deport, access to competent interpretation services and legal counsel, and access to a review, ideally a judicial review, of a negative decision.
- Immediately stop and investigate the practice whereby irregular migrants are given predated release forms, with an earlier date of release

## ENDNOTES

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1 The number of foreign nationals arrested by the Greek police and coastguard authorities for irregular entry and stay in the country increased from 95,239 in 2006 to 126,145 in 2009 (see Aliens' Directorate Statistics for 2006-2009, at <http://www.yptp.gr>). The vast majority of asylum-seekers arrive at the Greek-Turkish land and sea borders. According to official government statistics, in 2009 a total of 78,329 foreign nationals were arrested at the country's points of entry for irregular entry and stay. Among them 8,787 were arrested at the Greek-Turkish land borders, 9,572 on the Dodecanese islands, 8,467 on Samos, 8,422 on Lesvos and 1,212 on Chios. In the first five months of 2010, a total of 28,079 foreign nationals were arrested for irregular entry and stay at the country's points of entry (among them 9,392 were arrested at the Greek-Turkish land borders, 1,075 on the Dodecanese islands, 1,116 on Samos, 1,003 on Lesvos and 102 on Chios). The main nationalities arrested on the Greek-Turkish land and sea borders are Afghan, Somali, Palestinian, Iraqi, Eritrean, Pakistani and Burmese. No separate statistics are kept for the number of unaccompanied minors arrested for irregular entry, or the number of unaccompanied minors who are issued with administrative deportation orders (based on reply of 7 June 2010 by Aliens' Police Directorate, Department for Migration and Administrative Measures to Amnesty International's request for information on 30 April 2010; based on reply of 24 June 2010 by Aliens' Police Directorate, Department for Migration and Administrative Measures to Amnesty International's request for information on 7 June 2010). Official statistics for the first four months of 2010 show a significant reduction of irregular arrivals on the Greek-Turkish sea borders but a significant increase on the Greek-Turkish land borders in comparison with the same period in 2009 (at [http://www.astynomia.gr/images/stories/2010/09.06.2010\\_gadp\\_lathrometanaston\\_me\\_yen\\_4mino\\_2010.xls](http://www.astynomia.gr/images/stories/2010/09.06.2010_gadp_lathrometanaston_me_yen_4mino_2010.xls)).

2 In 2009, 30,371 asylum applications were examined (29,501 at the first instance and 870 at the second instance). Only, 36 asylum-seekers were granted refugee status protection. Over the same period, 128 asylum-seekers were granted subsidiary protection and humanitarian status, including those whose status was renewed. The refugee, humanitarian status and subsidiary protection recognition rates at the first instance were respectively 0.04 per cent, 0.09 per cent and 0.31 per cent (see [http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=81&Itemid=73&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=81&Itemid=73&lang=)).

3 See Amnesty International, *Greece: Out of the spotlight – The rights of migrants and minorities are still a grey area*, October 2005 (AI Index: EUR 25/016/2005).

4 See, among others, Council of Europe, Commissioner for Human Rights, CommDH (2010) 13, Strasbourg, 8 March 2010; UNHCR, Observations on Greece as a country of asylum, December 2009; Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Government of Greece, June 2009 CPT/Inf (2009) 20; Human Rights Watch, *Unsafe and Unwelcoming Shores*, 12 October 2009, at <http://www.hrw.org/en/node/86025>; Report of the Hellenic League of Human Rights (HLHR) *on the detention of immigrants without legal documents in Rodopi and Evros*, Thessaloniki, 3 January 2010; Report by lawyers Marianna Tzeferakou and Natasha Strahini following their visit to detention areas for irregular migrants and asylum-seekers in the Evros region, September 2009 (unpublished); National Commission for Human Rights, Detention Conditions in Police Stations and Detention Areas of Aliens, April 2009, at <http://www.nchr.gr>; Médecins Sans Frontières, *Migrants in Detention – Lives on hold, Greece*, June 2010, at <http://www.msf.gr>; Jesuit Refugee Service – Europe, *Becoming Vulnerable in Detention, Civil Society Report on the Detention of Vulnerable Asylum-Seekers and Irregular Migrants in the European Union* (The Devas Project), June 2008; National Report: Greece, Greek Council for Refugees (GCR), pp 209-221.

5 See also, *Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees*, 1 November 2007 (AI Index: POL 33/005/2007); *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Related Detention* (AI Index: POL 33/001/2009).

6 "Greece: Amnesty International reiterates its serious concerns about detention conditions for asylum-seekers following ruling of the European Court of Human Rights", 12 June 2009 (AI Index: EUR

25/006/2009).

7 *S.D. v Greece*, Judgment of 11 June 2009 (Application No. 53541/2007). The ECtHR also found a violation of Article 5 (4) ECHR (see section 3.4 below).

8 Amnesty International, “The new legislative amendment on migrants is an unpleasant surprise: It constitutes a gross violation of human rights”, public statement, 23 June 2009 (in Greek). The relevant provision is Article 76(3) of Law 3386/2005 on “the entry, residence and social integration of third-country nationals on Greek territory”.

9 No response to this letter has been received to date from the Greek authorities.

10 *Greece: The Dublin II Trap: Transfers of asylum-seekers to Greece*, 22 March 2010 (AI Index: EUR 25/001/2010), pp 11-15.

11 *Tabesh v Greece*, Judgment of 26 November 2009 (Application No. 8256/07), paras 20–44. The applicant applied for asylum a few weeks after his release. The ECtHR also found a violation of Article 5(4) ECHR (see section 3.4. below).

12 The ECtHR concluded that, in view of its findings of a violation of Article 3 of the ECHR regarding conditions of detention at the Thessaloniki Aliens’ Police Directorate, it was not necessary to examine the detention conditions at the borderguard station of Kordelio separately (*Tabesh v Greece*, Judgment of 26 November 2009 (Application No. 8256/07), paras 20–44).

13 In *S.D. v Greece*, the ECtHR noted that Presidential Decree 61/1999 (in force at the time when the material facts of the case took place) did not contain an explicit provision regarding the legality of detention of those who have applied for asylum. It went on to note that Greek law stipulated that detention for the purposes of administrative deportation could be justified only when the deportation can take place, and drew attention to the fact that an asylum-seeker could not be deported until a decision had been reached on the asylum claim (Judgment of 11 June 2009, para 62).

14 The relevant provision is Article 13(1) of the Presidential Decree 90/2008. See also, Greek Ombudsman, “The European Court of Human Rights convicts Greece for detention of asylum-seeker”, Press release, 7 July 2009.

15 *Tabesh v Greece*, Judgment of 26 November; see also recommendations in HLHR Report, op.cit., p 12.

16 CommDH (2010) 13, Strasbourg, 8 March 2010.

17 Press release, Deputy Minister of Citizens’ Protection, 16 December 2009, at <http://www.yptp.gr>.

18 The plans also include management by a special committee of the large number of asylum applications that have accumulated. Furthermore, a Special Standing Committee was established to draft a Presidential Decree with provisions for the interim period and a draft law on the new asylum determination procedures (see Reply of the Ministry of Citizens’ Protection regarding the remarks and recommendations of the Council of Europe Commissioner for Human Rights, 31 March 2010, Ref: F.092.22/2311); see also the recent proposals of UNHCR Office in Greece on the proposed reforms on asylum determination procedures in “Reception- Recognition- Integration,” press release, 16 June 2010, 2010, at <http://www.unhcr.gr/Press-Rel/2010/dt16-06-2010.htm>.

19 Summary of the Working Group’s proposals, 14 April 2010, at <http://www.yptp.gr>; Deputy Minister of Citizens’ Protection press release, 14 April 2010, at <http://www.yptp.gr>; statement by Head of the Greek Office UNHCR, 14 April 2010, at <http://www.unhcr.gr>.

20 The proposed general procedures are in the following order: provision of information to those newly arrived about the status of the centre, the grounds on which they are being held and their rights and obligations; initial registration of data; initial health check-up within two days of the first arrival; initial social evaluation, needs of international protection and completion of basic questionnaire; provision of complementary support services (special social, psychological, legal and medical assistance) in accordance with the evaluation of individual needs, and special services and care for unaccompanied children and victims of trafficking during the whole duration of their stay at the centre; creation of the profile of each individual and referral. The two special procedures are age and nationality identification.

21 Ministry of Citizens' Protection press release, 18 May 2010, at <http://www.yptp.gr>.

22 Phone Interview with Afroditi Al Salech, Special Advisor to the Deputy Minister of Citizens' Protection, 15 June 2010.

23 *Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees*, op.cit.

24 *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Related Detention*, op.cit.

25 Amnesty International was not allowed to view the detention areas of Patmos police station nor of the borderguard stations at Metaxades and did not view the detention areas in Neo Heimonio and Tychero because there were no migrants and asylum-seekers detained at the time of the organization's visit.

26 European Parliament and Council Directive 2008/115/EC, 24 December 2008, Official Journal of the European Union (OJ) L 348/98.

27 See Article 76(1) and (2) for the grounds for issuing administrative deportation orders and the time limits for raising objections against the issuing of deportation orders. The decision of the police to continue detention is usually not separate but is incorporated into the deportation order.

28 Article 76(3) of Law 3386/2005 as amended by Article 48(2) of Law 3772/2009.

29 The grounds for extension for a further period are: delays in effecting deportation due to the alien's refusal to cooperate or delays in the receipt of necessary documents from the alien's home country or country of origin (Article 76(3) of Law 3386/2005). The latter requirement places a burden on those detained, which many cannot fulfil if circumstances in the country of origin, such as armed conflict and lack of state structure, can delay or make impossible the acquisition of appropriate documentation (see UNHCR Office in Greece, Position on amendments relating to the detention of aliens pending deportation, 22 June 2010).

30 "EU Return Directive affects dignity and security of irregular migrants", AI press release, 4 July 2008.

31 See comments in Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 15 January 2010, para 61.

32 Phone Interview with Police Officer A, Mr Karaiskos, Attika Aliens' Police Directorate, 15 July 2010.

33 Interview with Leda Lakka, GCR lawyer, 12 April 2010; see *Mohd v Greece*, Judgment of 27 April 2006 (Application 11919/03). The applicant, a Bangladeshi national who had been sentenced to four months' imprisonment for selling fake DVDs, was held in detention without a deportation order being issued for a period of seven days. The ECtHR held that his detention was unlawful and a violation of Article 5§1(f)).

34 In some police stations, there are cells which are used solely for the detention of irregular migrants and asylum-seekers arrested for immigration-related reasons.

35 Reply of the Attika Aliens' Police Directorate (Department for Deportations) to the Greek Section of Amnesty International, 27 January 2010.

36 See *Tabesh v. Greece*, op.cit; see also concerns over the lawfulness of the practice in a fax sent to the Ministry of Citizens' Protection and the Greek Ombudsman by GCR on 8 June 2010, p 8 ("The poor practices in asylum determination procedures as described in a GCR fax to the competent Greek authorities", press release, 17 June 2010).

37 Interview with Police Director, 18 June 2009. The maximum period of administrative detention at that time was three months. The Readmission Protocol was signed on 8 November 2001 and was ratified by Law 3030/2002. Until recently, Turkey accepted requests for the return of Turkish nationals and some other nationalities such as Iranians, but not Afghan nationals. On 14 May 2010, Turkey agreed to take all necessary measures for effective implementation of the Readmission Protocol in a Joint Declaration signed between the Minister of Citizens' Protection and his Turkish counterpart, regarding the readmission of irregular migrants back to Turkey (see Press Release of Ministry of Citizens' Protection, 14 May 2010, at <http://www.yptp.gr>). Amnesty International has called on the EU Member

States to suspend returns of asylum-seekers and others in need of international protection who have transited through Turkey until such time as reception and protection standards meet international standards and offer adequate protection from *refoulement* and a real possibility for local integration (see Stranded: Refugees in Turkey denied protection, AI Index: EUR 44/001/2009).

38 See Ministerial Decision 4000/4/46-a/2009 determining the details for implementation of judicial and administrative deportation decisions of aliens (Government Official Gazette 1535/B/26.7.2009). In 2007, Greece was found to be in breach of Article 5(1) ECHR for the unlawful extension of the detention of a foreign national who was subjected to administrative deportation. The applicant, a Nigerian national, was held for the whole three-month period that Greek legislation required for detention of foreigners under deportation and was rearrested immediately after the expiry of that period (*John v Greece*, Judgment of 10 May 2007 (Application No. 199/2005)).

39 Amnesty International sent letters to the Greek authorities expressing its concerns over these reported practices on 27 August 2009 and 20 December 2009.

40 Common principles on removal of irregular migrants and rejected asylum-seekers, Joint Statement by Amnesty International, the European Council on Refugees and Exiles (ECRE) and other NGOs, August 2005. The Working Group on Arbitrary Detention has observed that "...there are situations in which a removal order cannot be executed because, for example, the consular representation of the country of origin of the migrant does not cooperate or there is simply no means of transportation available to the home country. An example of a legal limitation for removal is the principle of non-refoulement. In such cases, where the obstacle to the removal of the detained migrants does not lie within their sphere of responsibility, the detainee should be released to avoid potentially indefinite detention from occurring, which would be arbitrary" (see *Report of the Working Group on Arbitrary Detention*, A/HRC/13/30, 15 January 2010, para 63).

41 Council Directive 2005/8/EC of 1 December 2005.

42 According to UNHCR, the percentage of asylum applications who are submitted at the country's points of entry remains particularly low (only 8.8 per cent in 2009; see UNHCR Office in Greece, press release, 16 June 2010).

43 Jesuit Refugee Service – Europe, *Becoming Vulnerable in Detention, National Report: Greece*, op.cit., p 211

44 Interview with Mr Kordonouris, Police Director, Samos, 26 June 2009.

45 Police authorities at the Ferres borderguard station informed delegates that following the registration of their asylum application, asylum-seekers remained in detention while police authorities at the Soulfi borderguard station said that they release asylum-seekers once they lodged their application (Interviews, 13 June 2009).

46 On 19 January 2010, Amnesty International sent a letter to the Greek authorities expressing their concerns over the pending deportation of the six asylum-seekers and the lack of an effective right of appeal under the existing legal regime on asylum determination procedures.

47 Amnesty International understands that, with the assistance of two volunteer lawyers, two of the asylum-seekers subsequently filed applications for judicial review against the rejection of their asylum applications. The organization understands that no application requesting suspension of the deportation orders was lodged, and thus the deportation orders against them still stand.

48 According to the NGO AITIMA the detention of Dublin II returnees who apply for asylum in Greece for the first time until their fingerprints have been examined to establish that they do not already have a file, has no legal basis (see AITIMA, Programme for the provision of legal and social support to asylum-seekers transferred to Greece under the Dublin II Regulation, 22 February - 14 April 2010, First Conclusions and Recommendations, 12 May 2010, at <http://www.aitima.gr>).

49 Reply of Attika Aliens' Directorate of 7 July 2010 on letter sent to by Amnesty International on 16 June 2010.

50 The highly criticized current asylum determination procedure, introduced in June 2009, which

deprives asylum-seekers of an effective means of appeal also acts as a deterrent for those wishing to seek international protection.

51 Greek Ombudsman, Annual Report 2009, p 42.

52 Police authorities also told the delegates that a few days prior to their visit to Mersinidiou centre, some detainees were reported to have burnt their mattresses in protest against their lengthy detention (Interview with Mr Lagos, Police Director, Chios, and President of one of the Refugee Committees in Chios; Interview with D. Gatsios, Police Officer, Chios Police Station, 28 September 2009).

53 E-mail correspondence with the Ecumenical Refugee Programme, 2 October 2009 and 5 February 2010.

54 Ibid.

55 In their reply to the ECRP, which was also copied to Amnesty International on 1 February 2010, the Greek authorities noted that the asylum-seeker concerned was not detained at the centre but remained there as a guest following a request by the ECRP lawyer representing him because K. had nowhere else to stay. This version of events is contested by the asylum-seeker's lawyer.

56 Amnesty International, "The new legislative amendment on migrants is an unpleasant surprise", op.cit.

57 See, *OHCHR Factsheet No. 26: The Working Group on Arbitrary Detention*, at <http://www.ohchr.org/Documents/Publications/FactSheet262n.pdf>; Report of the Special Rapporteur on the human rights of migrants, 25 February 2008, UN Doc. A/HRC/7/12, para 60; *Report of the Working Group on Arbitrary Detention*, 10 January 2008, UN Doc. A/HRC/7/4, para 53: "In the view of the Working Group, criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention"; see also, Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance (SR Racism): Mission to Italy, 15 February 2007, UN Doc. A/HRC/4/19/Add.4, para 74.

58 See A/HRC/13/30, op.cit., para 58.

59 The fine may be increased in cases of irregular exit to €3,000 in certain aggravating circumstances.

60 Article 83(2) also gives the Public Prosecutor of the Magistrates Court the discretion to revoke the decision to refrain from criminal proceedings if deportation is not effected within three months.

61 Interview with Mr M Stroubis, Deputy Public Prosecutor, Alexandroupoli, 12 June 2009.

62 Interview with Prosecutor, Mrs A Nikitopoulou, Orestiada, 12 June 2009.

63 There is no embassy of Afghanistan in Greece; the closest one is in Belgium.

64 Following an application by the prison authorities, the suspension of the father's sentence was reportedly revoked. He remained in prison until he served his prison sentence and time for the monetary fine. Amnesty International was informed by the lawyer of the family that he was released in January 2010 after arrangements were made for the payment of the remainder of the fine. The mother's brother was reportedly released in August 2009 on the basis of a legislative provision adopted in summer 2009 for the purpose of dealing with prison overcrowding (Electronic correspondence with Elektra Koutra, lawyer, Hellenic Action for Human Rights (HAHR), 21 and 24 June 2010).

65 See also Article 15(2) of the Returns Directive.

66 Article 9(2) ICCPR and Article 5(2) ECHR.

67 Article 15(2) Returns Directive.

68 Article 13(3) of PD 90/2008; Article 76(3) of Law 3386/2005 as replaced by Article 48(2) of Law 3772/2009. The detention order or the decision of the administrative court agreeing with the detention can be revoked at the request of the parties, if such request is based on new evidence such as the deterioration of the detainee's health (Symeonides, *Administrative Deportation*, op.cit., p.364; Article 76(5) of Law 3386/2005).

69 Article 1(2) of the Joint Ministerial Decision No. 4000/4/46 by the Ministers of Interior, Finance and Justice determining the details for the implementation of judicial and administrative decisions of deportation against foreign nationals.

70 Article 77 of Law 3386/2005 provides that the appeal should be lodged within five days of the deportation order being served. Once an appeal has been lodged, this suspends the enforcement of the deportation decision but not the decision to detain, if one has been issued.

71 *S.D. v. Greece*, op.cit., para. 74; *Tabesh v. Greece*, op.cit., para 62;

72 Law 3386/2005 does not explicitly stipulate that the administrative courts can examine the lawfulness of the decision to detain an irregular migrant or an asylum-seeker pending deportation. (See Symeonides, I., *Administrative Deportation*, Sakkoulas Publications Athens, p.361). In practice, the courts tend to examine only whether the individual detained in view of deportation is at risk of absconding or dangerous to public order.

73 *S.D. v Greece*, op.cit., paras 70-77; see also the case of *Tabesh v Greece*, where the ECtHR found a violation of Article 5 (4) ECHR. The ECtHR took into account the shortcomings in domestic law regarding the effectiveness of the judicial review of detention pending deportation. Among the shortcomings identified was that domestic law does not allow for the direct review of the lawfulness of a foreign national's detention pending deportation and the lack of the competent tribunal's reply to the applicant's argument that his deportation could not be effected because his country of origin did not confirm to the Greek state that he was a national (op.cit., paras 62 - 63).

74 Phone interview with Efi Teli, lawyer, 7 February 2010; see also case of *Tabesh v. Greece*, paras 11-13 and paras 61-63.

75 Interview with Marianna Tzeferakou, 12 April 2010; interview with Efthalia Pappa, ECRP, 12 April 2010.

76 See *Tabesh v Greece*, op.cit., para 29.

77 In practice, the cost of a private lawyer to write and file objections against detention starts from 200 Euros to 500 Euros or more.

78 See also *The Dublin II Trap*, pp 21-23 and 25-27.

79 See Principle 14.

80 See also Article 16(2) of the Returns Directive.

81 Article 11(1) of PD 90/2008; for further analysis see *The Dublin II Trap*, pp 25-27.

82 "In the framework of a UNHCR run project that will run from June 2010, six lawyers will represent UNHCR as consultants and provide UNHCR expertise to the state authorities at the country's points of entry on first reception, screening and refugee status determination procedures. One of the tasks of the lawyers will be to enhance capacity building at the local level in the provision of free legal aid to asylum-seekers, which is otherwise not state-provided." UNHCR Greece, 4 June 2010.

83 Interview with P. Stefanou, President of the Prefecture Council of Chios, 18 December 2009; interview with Natasha Strahini, lawyer, 18 December 2009.

84 Interview with Efthalia Pappa, ECRP, 13 July 2010.

85 Interview with lawyer Mariana Tzeferakou, September 2009; see also, Human Rights Watch, *Unsafe and Unwelcoming Shores*, op. cit.

86 Interview with Natasha Strahini, lawyer, 18 December 2009.

87 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988), Principles 16, 19 and 29 (2).

88 Guidelines 5 and 10.

89 Article 16(2).

90 See Protocol Regulation 4803/22/44, Treatment and rights of persons detained by police authorities, 4 July 2003, at <http://www.unhcr.org/refworld/pdfid/426f1f14.pdf>.

91 See Amnesty International, "Hunger strike of migrants on Samos brings to the surface long-term problems regarding the implementation of the rights of migrants", Press release, 22 April 2010 (in Greek).

92 Similar assistance is provided by experts (interviewers) to the Greek Police on the island of Chios. A second body of experts, deployed by the Member States in the framework of Frontex-coordinated joint operations on the islands of Samos and Chios, collects information in order to understand the modus operandi of the networks facilitating illegal border crossings (e-mail correspondence with M Parzyszek, Frontex Public Relations Officer, 5 May 2010). In June 2010, the UNHCR Office in Greece recommended the clarification and institutionalization of the competences and the legal framework of cooperation between the Greek authorities and Frontex in such a way that the administrative decisions that are taken within this framework and determine the further treatment of foreign nationals can be subject to review (Press Release, 16 June 2010, op.cit.).

93 Interview with A., Afghan irregular migrant, 9 March 2010 (personal details held on file); interview with N., asylum-seeker, 23 February 2010 (personal details held on file); interview with Z., asylum-seeker, 23 February 2010 (personal details held on file).

94 A copy of A.'s official notice handed to him by the Greek authorities following his release from detention, showing that he was registered as an Iranian, has been viewed by Amnesty International.

95 Amnesty International sent letters to the Greek authorities expressing its concerns over these reported practices on 27 August 2009 and 20 December 2009.

96 Copies of these notices have been viewed by Amnesty International.

97 The CRC also stated that "in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country." (UN Committee on the Rights of the Child, General Comment No. 6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005, UN Doc. CRC/GC/2005/, paras 61-62).

98 Concluding Observations of the Committee for the Elimination of Racial Discrimination, Greece, CERD/C/GRC/CO/19 August 2009. For reports on the situation of unaccompanied children in Greece, see Human Rights Watch, *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, 11 December 2008; Georgia Demetropoulou and Ioannis Papageorghiou, UNHCR Office in Greece commissioned report, *Unaccompanied asylum-seeking children in Greece*, April 2008.

99 Summary of the Working Group's proposals, 14 April 2010, at <http://www.ytpt.gr>.

100 See also UNHCR, *Observations on Greece as a country of asylum*, pp 11-12.

101 There are eight reception centres for unaccompanied children in Greece and 405 available places. Some unaccompanied children are offered accommodation in reception centres for adult asylum-seekers. The number of available places does not correspond to the number of arrivals each year. According to statistics provided to UNHCR by the Greek authorities, some 6,000 unaccompanied and separated children arrived in Greece in 2008 (UNHCR, *Observations on Greece as a country of asylum*, p 13).

102 UNHCR, "The UN Refugee Agency shocked at conditions at Greek detention facility", Press release, 28 August 2009.

103 Demetropoulou and Papageorghiou, pp 56-60.

104 Council Directive 2003/9/EC of 27 January 2003. On 6 May 2010, the European Commission adopted an Action Plan to increase the protection of unaccompanied minors entering the EU, encompassing common standards for guardianship and legal representation, IP 10/5/34.

105 There is no specific legislative provision or interpretative guidance stipulating that unaccompanied minors who have not applied for asylum will be entitled to accommodation in the special reception centres for children. The Greek authorities report that unaccompanied migrant children, whose

deportation cannot be effected, are accommodated in special reception centres (see UN Convention on the Rights of the Child, Second and Third Periodic Report by Greece, para 384). However, the reality for many unaccompanied migrant children is different. Only a few of the special reception centres have places available for non-asylum-seeking unaccompanied children and there are many instances where they are released from administrative detention without appropriate care arrangements being made for them. Ayiaassos special centre on the island of Lesbos is one of the few that accepts non-asylum-seeking unaccompanied children (see UNHCR, Observations on Greece as a country of asylum, December 2009, p 13). On the other hand, Arsis, the special reception centre in Thessaloniki, provides accommodation only for asylum-seeking unaccompanied children (interview with Arsis personnel, February 2010). According to an announcement issued by the staff of the Ayiaassos centre on 13 July 2010, the operation contract of the centre expired on 10 July 2010. The expiration of the contract led to the loss of all personnel providing specialized services to the children. The staff reported delays in the signature of new contract by the Ministry of Health and Social Solidarity as well as delays in the evaluation of an application for funds submitted by the management of the centre to the ERF and the Ministry (Announcement of 9 July 2010).

106 Demetropoulou and Papageorghiou, op.cit., pp 61-63.

107 European Migration Network, *Policies on reception, return, and integration arrangements for, and numbers of, unaccompanied minors – an EU comparative study*, Report on Greece, Athens, August 2009.

108 The unaccompanied children are usually transferred to the special reception centre for children in Ayiaassos on the island of Lesbos.

109 Interview with social worker, A. Theodoridou, Samos, 26 June 2009.

110 Interview with prosecutor, Mrs Katsi, Samos, 26 June 2009.

111 According to Article 27 (2) of the Children's Convention, "States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing".

112 Movement for the rights of migrants and refugees, Samos, interview, March 2010.

113 Report by Marianna Tzeferakou and Natasha Strahini, September 2009, op. cit.

114 Reply of the Attika Aliens' Police Directorate (Deportations Department) to the Greek Section of Amnesty International, 22 December 2009. Greek legislation provides competent authorities with the discretion to use medical tests in order to determine the age of unaccompanied children who apply for asylum but does not define the type of medical tests to be followed. Amnesty International understands that currently medical tests are not used in practice for the age assessment of unaccompanied minors (see Article 12 (4) of PD 90/2008; UNHCR, Observations on Greece as a country of asylum, December 2009, p. 11; European Migration Network, *Policies on reception, return and integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study*, May 2010, p. 79).

115 Amnesty International has seen several police notices provided to unaccompanied children and also those given to adult irregular migrants upon their release, where the date of birth registered appears consistently as 1 January.

116 CRC, General Comment No. 6 (2005), op.cit., para 31.

117 See also UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

118 Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals, OJ L 348/98, 24 December 2008.

119 Guideline 10, UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999).

120 See also Article 20 of PD 220/2007 stipulating that victims of torture or violence who have applied for asylum should be sent on immediately to a specialized unit in order to receive support and necessary

treatment.

121 *op.cit.*

122 Such standards include the provision of medical care similar to that provided to the rest of the population (Article 28), the obligation of the prison's management to ensure the hygiene of the facility and provide detainees with hygiene products (Article 25), the obligation of the authorities to provide detainees with food of appropriate standard (Article 32) and allowing detainees for at least an hour of outside exercise each day (Article 36).

123 Article 5 (1) of Joint Ministerial Decision No. 4000/4/46–A determining the details for the execution of judicial and administrative deportation orders.

124 In Attika, holding facilities exist in Petrou Ralli and Aspropyrgos. Reference is made to the Attika Prefecture because it encompasses detention facilities in Athens and areas close by.

125 In November 2009 Amnesty International received reports that the centre's dormitories were being used by the prefecture authorities for accommodating irregular migrants arriving on the island prior to their transfer to the immigration detention centre in Chios. In April 2010, Amnesty International received reports that conditions at the centre were inadequate, with women and men sleeping in the same dormitories and in unhygienic conditions. In June 2010, Amnesty International received reports that the police authorities resumed the external and internal guarding of the centre.

126 Press Release, Ministry of Citizens' Protection, 23 October 2009, at <http://www.yptp.gr>.

127 Article 81(1) of Law 3386/2005 stipulates that the special centres will be established by a Joint Decision of the Minister of Interior, Economy and Finance, the Minister of Health and Solidarity and the Minister of Public Order, which shall also determine the standards and terms of operations of the centres.

128 Summary of the Working Group's proposals on centres of first reception and identification, 14 April 2010, at <http://www.yptp.gr>.

129 Article 81 (1) of Law 3386/2005.

130 CPT/Inf/2009/20.

131 During Amnesty International's second visit in December 2009, the authorities informed the delegates that they had moved the water cooler away from the drain.

132 Interview with Eftyhia Sarri, social worker, 18 September 2009.

133 Amnesty International delegates visited the Mersinidiou facility on 18 December 2009, which at that time held approximately 30 irregular migrants and possibly asylum-seekers. The group had arrived on 17 December 2008 after being transferred by boat from the island of Lesbos.

134 The 2010 HLHR Report identified many shortcomings in the conditions at Venna immigration detention facility (Report regarding the places of detention for individuals without legal papers in Rodopi and Evros, *op.cit.*).

135 See "Third party intervention" by the Council of Europe Commissioner for Human Rights, under Article 36 (2) of the ECHR", CommDH(2010)9, Strasbourg, 10 March 2010, paras 44-46.

136 The Greek Ombudsman conducted an on-site investigation at Venna immigration detention centre on 23-24 March 2010 and its findings are expected to be published in the next few months.

137 A. was among the group of 10 irregular migrants including unaccompanied minors transferred from the island of Samos to Northeastern Greece for the purpose of deportation in January 2010. The group remained in Venna for more than 20 days (interview, 10 March 2010).

138 [http://www.synigoros.gr/allodapoi/pdfs\\_01/8528\\_1\\_EkthesiAutopsias.pdf](http://www.synigoros.gr/allodapoi/pdfs_01/8528_1_EkthesiAutopsias.pdf).

139 See Greek Ombudsman, *Report of on-site investigation in the holding facility of the Attika Aliens' Directorate (Petrou Ralli)*; also *Evaluation of the findings of Greek Ombudsman's on-site investigation in the holding facility of the Attika Aliens' Directorate*, 19 October 2009 at

<http://www.synigoros.gr/allodapoi>.

140 Interview with Efi Teli, lawyer, February 2010.

141 The detention conditions in the Aliens' Sub-Direction in Thessaloniki, where the applicant, an irregular migrant, was held for a period of three months in 2007 pending his expulsion, were the subject of examination by the ECtHR in the case of *Tabesh v. Greece*.

142 There are borderguard stations in the prefectures of Evros (such as Ferres, Soufli, Tichero), Rodopi (Iasmos), Kastoria, Xanthi, Thesprotia, and Thessaloniki, among others:  
[http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=56&Itemid=47&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=56&Itemid=47&lang=).

143 In October 2009, the Minister of Citizens' Protection expressed his concern over the detention of aliens pending their deportation in cells of police stations designated to hold people charged with criminal offences. The Minister went on to announce plans to release a large number of them on condition that they had not been charged with a criminal offence.

144 *The Dublin II Trap*, pp 11-15.

145 CPT/Inf (2009) 20; also Council of Europe European Commission against Racism and Intolerance (ECRI), *Report on Greece (fourth monitoring circle)*, adopted on 2 April 2009, published on 15 September 2009, paras 129 - 135.

146 There was no outside space for exercise at the borderguard stations of Metaxades, Issaki and Neo Heimonio.

147 See also, MSF, "Detention conditions of migrants at the cells of "Eleftherios Venizelos" are exceptionally adverse", Press release, 11 May 2010, <http://www.msf.gr>.

148 *The Dublin II Trap*, p 13.

149 Interview on 23 February 2010

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