Administrative detention in Greece:
Findings from the field (2018)

Executive Summary

The implementation of measures of administrative detention in Greece constitutes a widespread practice within the framework of asylum and immigration management, which affects a significant number of third-country nationals, including those seeking international protection. The number of persons on whom such measures are imposed is one of the highest among all EU Member States. Especially following the implementation of the EU-Turkey Statement and due to the continuous pressure to increase the detention capacity and the number of returns, the use of deprivation of liberty measures has increased significantly. At the end of 2017, the number of persons in administrative detention in Greece was increased by 60% compared to 2016. This trend was also confirmed in 2018 (32,718 detention decisions compared to 25,810 in 2017).

In 2018, the Greek Council for Refugees (GCR), provided legal aid services to more than 1,200 third-country nationals who remained in administrative detention in the 8 pre-removal detention centres (PRDC/PROKEKA) across the country, as well as in police stations. Legal assistance to third country nationals in administrative detention has been provided within the context of the implementation of programmes supported by the UNHCR, as well as the Dutch Council for Refugees, Médecins Sans Frontières, Oxfam, UK Mercy Mission and the International Committee of the Red Cross (ICRC).

The Report "Administrative detention in Greece. Findings from the field (2018)" details the basic findings of GCR concerning the practice of administrative detention in Greece in the year 2018, as those arise from the experience of GCR and presents indicative cases supported in 2018. Such findings include structural and longstanding problems related to the imposition of detention measures in Greece, as well as new practices which raise issues as to their legality. Inter alia, GCR findings include:

1. Lack of unhindered access to the asylum procedure; as a result, third-country nationals who do not manage to apply for international protection remain exposed to the risk of arrest and detention. As it was also the case during previous years, in 2018 GCR met with third-country nationals who, following repeated unsuccessful attempts to make an appointment (via Skype) with the Asylum Service, in order to apply for international protection, were eventually arrested because of the lack of legal documentation and were detained for implementing the return procedure, although they previously did not have the opportunity in practice to apply for international protection.

2. Delays in the full registration of asylum applications lodged by detainees, resulting in the deprivation of basic procedural guarantees and in delays as regards the asylum procedure in detention. GCR has observed delays in the full registration of applications for international protection for a period ranging from one to four months, during which the detainees are deprived of the procedural guarantees provided to asylum applicants. Furthermore, since the time between the expression of intention of the detainee to apply for asylum and the full registration of the application is not counted in the duration of detention of an asylum seeker, applicants for international protection may be detained for a period exceeding the maximum time limits of 3 months. Delays are also observed with regards to the conduct of the asylum procedure *per se* in detention. This is for example, the case of a detainee in the Corinth PRDC whose personal interview has been scheduled after the expiry of the initial 45-day detention period. Following a relevant GCR intervention, the Greek Ombudsman underlined that "where the observed delays in the asylum procedure cannot be attributed to the applicant, they do not justify the extension of detention beyond the initially determined 45-day period". Respectively, in another case where the examination of the detainee's appeal was scheduled on a date after the maximum detention period, the competent Court ruled that "detention is not necessary, as it does not serve any of the purposes as restrictively indicated in the law", Judgment No 407/2018 of the First Instance Administrative Court of Kavala. Solely on a prior prosecution for a minor offence, even if no conviction has ensued, or in cases where the person has been released by the competent Criminal Court after the suspension of custodial sentences. The Ombudsman has once again criticised this practice.

3. Detention of third-country nationals on public order grounds, which are not duly justified as required by law. The invoked public order grounds are often based solely on minor offences and apply even where the competent Criminal Courts have imposed small or very small (few-day) sentences with suspension, which demonstrates that the competent Criminal Courts have already ruled that no public order grounds apply. For example, a woman, of Iranian nationality, was detained on public order grounds on the basis of a conviction imposing 40-day sentence with a three-years suspension by the Single-Member Misdemeanors Court of Athens, for the offences of illegal exit from the

country and use of false travel documents. According to the Greek Ombudsman, such practices create "issues of misuse of power, undermining of the law and infringement of the principle of separation of powers".

4. The imposition of the measure of detention against persons who belong to vulnerable groups, including families with minors and unaccompanied children, has not stop during 2018. Moreover, persons belonging to vulnerable groups were often detained in completely inappropriate conditions and were not provided with the appropriate medical care. The deprivation of freedom of vulnerable persons constitutes, by definition, an extremely burdensome and disproportionate measure, which does not comply with the guarantees prescribed by law. During the previous year, GCR handled cases of single-parent families, as well as cases of people, who, among others, were victims of tortured or had serious health, including mental health, problems. Due to the absence of sufficient places in accommodation facilities, unaccompanied children remain detained in completely inappropriate places for periods ranging from a few days to many months, depending on the circumstances, under the pretext of "protective custody", which is a de facto detention measure. In some cases, unaccompanied children remain under protective custody for prolonged periods during which they reach adulthood. Subsequently, instead of being transferred to an accommodation facility, they remain detained in the context of removal procedures. This is for example the case of a minor, citizen of Pakistan, who reached adulthood during his five-month stay under protective custody in the Reception and Identification Centre (RIC) of Evros and he was transferred to the PRDC of Paranesti, where he was placed in detention in order to be returned. Moreover, unaccompanied minors in detention are deprived of any procedurals guarantess with regards the age assessment procedure due to the lack of a legislative framework regulating the age assessment procedure for persons under the responsibility of the police. This is for example the case of an unaccompanied minor, citizen of Bangladesh, who was wrongfully registered as an adult and was placed in detention, together with adults, in the Tavros PRDC. Due to the lack of an age assessment procedure, and despite the fact that he had in his possession the original birth certificate, he was subjected to medical examinations, which have a significant margin of error by their nature. On the basis of these examinations he was considered as an adult. Following an intervention by GCR, the authenticity of the original document was confirmed, he was registered as a minor and the procedure for finding the appropriate accommodation facility began. In November 2018, the European Council on Refugees and Exiles (ECRE) and the International Commission of Jurists (ICJ), with the support of the Greek Council for Refugees, lodged a Collective Complaint before the European Committee of Social Rights of the Council of Europe. The complainant organisations requested *inter alia*, the practice of detention / "protective custody" of unaccompanied minors to be considered as a violation of the right to accommodation and of the right of children and young people to protection, as enshrined in the Revised European Social Charter.

5. In the context of the implementation of the EU-Turkey Statement, third-country nationals, arrested on the mainland, in breach of the imposed geographical limitation, are automatically detained in order to be returned to the Northeast Aegean islands, where in many cases they remain detained. The detention measure is imposed systematically and indiscriminately, without taking into account the legal status of **the** person **concerned** (e.g. the status of asylum applicant) or examining the reasons for which they left the island, the living conditions there or any possible vulnerabilities, which would in any case lead to the **lift** of the **geographical limitation**. **This is for** example **the case of** a Syrian citizen who left the island of Lesvos in mid-January 2018 because of the living conditions in the RIC of Moria. He was arrested on the mainland a few days later, and was placed automatically in detention in the pre-removal detention centre of Tavros in order to be returned to Lesvos. The First Instance Administrative Court of Piraeus upheld the Objections **against** detention lodged with the support of GCR, **and underlined** that "...The applicant was under a geographical limitation not to leave Lesvos island and to remain at the RIC of Moria. However, the violation of the geographical restriction was justified due to a threat against the physical integrity of the applicant given the conditions prevailing in the RIC of Moria on Lesvos. "Judgment No 94/2018 of the First Instance Administrative Court of Piraeus".

6. **Arbitrary detention in cases of alleged push-backs.** Repeated testimonies indicate that newly arrived persons at the Evros region are arrested, arbitrarily detained in appalling conditions and summarily returned to Turkey without being given the opportunity to apply for international protection in Greece. As recorded in a relevant testimony, "[w]e were in a totally unsuitable space for about 24 hours, we couldn't breathe [...] The police officers had their faces covered to obscure their identity, they held clubs, and they spoke in loud and threatening voices for most of our stay there [...] we boarded a military vehicle where we could hardly breathe; [...] there were also families brought from another detention facility [...] some of them told us in English that this was the third time that they failed to enter the country and they were being returned to Turkey, while for one of them it was the seventh attempt". Up to now, such practices have not been promptly and effectively investigated by the Greek authorities, despite the recommendations of international and national institutions for the protection of human rights.

7. **(Pre-RIC) detention of newly arrived third-country nationals from Evros, in order for them to be subjected to the procedures of reception and identification in the RIC of Fylakio** (Evros), despite the lack of a relevant a legal basis in Greek legislation. This is for example the case of a citizen of Iraq who entered Greece from Evros. He was arrested and detained at the PRDC of Xanthi, waiting to be transferred to the RIC of Fylakio (Evros) and to be subjected to reception and identification procedures, for a period longer than one month. The competent Court, *inter alia noted* that "any delays as of the conduct

of the administrative procedures which cannot be attributed to the detainee, do not constitute legal grounds for the continuation of their detention for a period exceeding the reasonable time limits, [even] by taking into consideration the significant difficulties in handling the increased number of people entering the country irregularly" and ordered the person either to be transferred immediately to the RIC of Fylakio or released, Judgment 240/2018 of the First Instance Administrative Court of Komotini.

8. Extremely problematic practices are applied in the Northeastern Aegean islands as regards the obligation to impose a detention measure following an individual assessment, the right of access to judicial protection and the obligation to respect the principle of non-discrimination, due to the pressure to implement the EU-Turkey Statement and to increase the number of readmissions. Therefore, a so-called "pilot project" to manage newly arrived third-country nationals implemented already since 2017 and continued throughout 2018, in Lesvos and Kos and to a certain extent in Leros. Pursuant to the project, single men who are third-country nationals and belong to a low recognition rate nationality as regards international protection, are automatically placed in detention upon their arrival, in order for the entire asylum procedure to take place in detention, and to be returned to Turkey in case of rejection of the asylum application / non-exercise or rejection of legal remedies. This is for example the case of a Cameroon citizen who was placed in detention immediately after his arrival in Lesvos, lodged an asylum application from detention and remained detained for the maximum three-month period. After his release, he was finally recognised as a refugee.

9. Furthermore and according to the practice, asylum applicants who remain on the Northeastern Aegean islands, are arrested and automatically placed in detention, following the service of the second-instance rejection decision, in order to be readmitted to Turkey, with no individual assessment or examination of the necessity of the imposed measure. This is for example the case of a Syrian citizen who was arrested in Chios immediately after the service of the second-instance rejection decision on his application for international protection. The competent Court noted *inter alia* that "it was not found that the objecting person violated the restrictive conditions imposed on him while the examination of his asylum application was pending" and ordered his release, Judgment No 333/2018 of the First Instance Administrative Court of Mytilene.

10. Detention conditions continue to violate fundamental rights and in many cases amount to inhuman and degrading treatment.Police cells in police stations and police headquarters, which are by their nature inappropriate for prolonged detention were still used throughout 2018. According to GCR findings, these detention places have no access to a yard, and detainees never have the opportunity of outdoor exercise or access to an

outdoor area, third-country nationals (administrative) detainees are detained together with persons facing criminal proceedings, there is lack of sufficient natural light and ventilation, sanitation conditions are poor, the use of mobile phones is not allowed, there is no recreational activity whatsoever, no medical services are provided, and there is no appropriate space for visits or cooperation with a lawyer. At the end of 2018, almost 1/3 of the administrative detained third-country nationals in Greece remained detained in police stations (835 detainees out of a total of 2,933). Respectively, in many cases, detention conditions prevailing in pre-removal detention centres (PRDC) do not meet basic standards, despite the fact that these facilities were established specifically for the detention of third-country nationals.. This is for example the case of Tavros (Petrou Ralli) PRDC, which, according to the European Committee for the Prevention of Torture (CPT), due to its "carceral design [...] [is] totally inadequate for holding irregular immigrants for short periods of time, let alone weeks or months" and the PRDC of Fylakio where, during 2018, detainees remained in overcrowded dorms (of about 60-70 people) with extremely limited access to the outdoor area. Access to medical services is also extremely limited in pre-removal detention centres. At the end of December 2018, out of the total 20 advertised positions for doctors, only 9 were filled.

11. Effective judicial protection ofthird-country nationals under detention, including asylum seekers, is seriously undermined by systemic problems and practices, observed also in 2018, such as the lack of free legal aid scheme to challenge detention and the ineffectiveness of the legal remedy provided by national **law to challenge detention** (Objections against detention). Main issues related to the effectiveness of the legal remedy of objections against detention include inter alia:

- The absence, in practice, of a contradictory procedure within the context of the Objections, as the Administration as a rule does not appear before the Court.
- The lack of a second instance examination and the possibility to appeal against a first instance negative decision.
- The lack of thorough examination of the detention conditions. This is for example the case of a Syrian citizen, who was detained for a period of two months in a police station, which is per se not suitable for prolonged detention. The allegation regarding detention conditions was rejected on the ground that "his allegations that the conditions of detention at the police station were inappropriate [...] are not proven", Judgment 170/2018 of the First Instance Administrative Court of Rhodes.
- The prioritisation of the examination of the "risk of absconding" over other allegations related to the lawfulness of detention, which results in the non-examination of crucial allegations. This is for examplethe case of a vulnerable detainee who was hospitalised in the Psychiatric Hospital of Athens and submitted before the Court a medical opinion indicating that he showed self-destructive behaviour. The Objections against

detention were rejected on the grounds that there was a risk of absconding, without taking into account the vulnerability of the detainee and the effect of detention on his health, Judgment 1952/2018 of the First Instance Administrative Court of Piraeus.

» Systematic imposition of restrictive conditions/ alternative measures, where the Objections are upheld.

Finally, the control of detention within the context of ex officio judicial examination remains stereotypical and automated. In 2018, out of a total of 1,359 detention decisions (return and asylum) referred to the First Instance Administrative Court of Athens in order to be examined under the ex officio judicial examination procedure, it was only in 4 cases (0.2%) where the continuation of detention was not approved.

The increased number of detainees over the last years, as a consequence, inter alia, of the implementation of the EU-Turkey Statement, a trend which was also confirmed in 2018, constitutes an alarming phenomenon, connected tofundamental rights violations of the persons against whom this measure is imposed. In a number of cases, these are related to administrative shortcomings, such as the problematic access to the asylum and delays in the asylum procedure while in detention. In addition, the insistence on using the measure of detention, as also demonstrated in the findings of GCR for the year 2018, often in breach of the guarantees prescribed by law and the international framework, raises concerns regarding the respect of basic fair State guarantees in the imposition of the measure and, at the same time, indicates that the measure is used in a punitive manner, contrary to its administrative nature. *A fortiori,* the insistence on using substandard detention facilities, including the absolutely inappropriate police cells, exposes third-country nationals subjected to the measure to a real risk of inhuman and degrading treatment, in breach of the guarantees of Article 3 of the ECHR and, at the same time it exposes Greece to the risk of new convictions before international jurisdiction.

Greek Council for Refugees

February 2019

This publication was supported by the European Programme for Integration and Migration (EPIM)

The publication was funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations. The contents are the sole responsibility of the authors and do not necessarily reflect the views of NEF, EPIM or the foundations with which they cooperate.

June 2019