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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Report of the Working Group on Arbitrary Detention

Addendum

Mission to Greece: comments by the State on the report of the Working
Group on Arbitrary Detention*

* Reproduced as received.

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Comments of the Government of Greece on the report of the Working Group on Arbitrary Detention following its visit to Greece (21 to 31 January 2013)

I. Introduction

1. The Greek Government thanks the Working Group on Arbitrary Detention for their visit to Greece and for the constructive discussions held with the competent Greek authorities during that visit.
2. The protection and promotion of democracy, human rights and fundamental freedoms are among the defining principles of the Greek Constitution and, therefore, form an integral part of the country's national legislation. Being party to almost all major relevant international instruments, Greece considers active involvement in the various international organizations and fora as a vital element for the effective protection of all human rights, through transparency and openness to international scrutiny.
3. Greece is fully aware of the need for constant efforts in the area of protection of human rights of all persons detained within its territory, while paying particular attention to irregular migrants. The latter form a significant part of the total number of detainees, as the country faces a particularly strong mixed migratory pressure and carries a disproportionate burden, due to its geographic position at the external border of the EU, its extensive land and sea borders and its proximity with main countries of origin / transit of irregular migrants and asylum seekers.
4. The Greek government implements its obligations under international law and, despite the unprecedented difficult economic circumstances, the authorities make a consistent effort to promote the protection of human rights of every person detained in the country.
5. The Government of Greece would like to take this opportunity to submit certain comments on the draft report of the Group, regarding Greece's position on a number of issues raised therein.

Contributions by:

- Ministry of Public Order & Citizens' Protection;
- Ministry of Justice, Transparency & Human Rights;
- Ministry of Labour, Social Security and Welfare;
- Ministry of National Defense;
- Ministry of Health;
- Ministry of Foreign Affairs (Legal Department);
- National Commission for Human Rights;
- Greek Ombudsman.

Executive Summary

6. In the 9th paragraph, the word "they" should be replaced by the word "many" and the phrase "estimated one million" should be omitted, to streamline this paragraph with paragraph 47 below, so that the whole paragraph should read "Concerning the immigrants

in Greece, the report notes that many are in a semi-legal status, holding expired residency permits while going through the process of renewal”.

Paragraph 4

7. The term “Legal Services” should be replaced by the term “Legal Department”.

Paragraph 5

8. The term “National Ombudsman” should be replaced by the term “Greek Ombudsman”.

Paragraph 12

9. The first sentence of the paragraph inaccurately states that “There is a military jurisdiction solely for military offences”. The Greek military judicial system (Military Prosecutors, Military Courts of 1st and 2nd Instance or Level), has jurisdiction on almost any penal offence (be it an offence of the Penal Code or the Military Penal Code or any special penal piece of legislation) of all members of the Armed Forces (Army, Navy, Air Force), including the Coast Guard. Only a very limited number of penal offences of the members of the military and the coast guard are excluded, by a special provision of article 193 of the Military Penal Code of 1995. Therefore, we would ask that the first sentence of the paragraph be amended to read as follows: “There is a military jurisdiction, not only for military offences, but for any offence of either the Penal Code, the Military Penal Code, or any special penal piece of legislation, if committed by a member of the Armed Forces (Army, Navy, Air Force), including the Coast Guard”.

Paragraph 13

10. The phrase “and of the protection of migrants” should be omitted; the protection of migrants falls under the jurisdiction of the Ministry of Public Order and Citizens’ Protection and not of the Ministry of Justice, Transparency and Human Rights.

Paragraph 15

11. The phrase “for citizens’ rights” should be replaced by the phrase “for State-citizen relations”.

Paragraph 16

12. We suggest rephrasing the first sentence, which should read as follows: “The Greek National Commission for Human Rights, created in 1998, is an independent advisory body, directly subject to the Prime Minister, operating in accordance with the ‘Paris Principles’ and with ‘status A’ accreditation by the International Coordinating Committee of National Human Rights Institutions”.

13. Furthermore, the phrase “by representatives of six Ministries” should be the last phrase of the sentence (following the word “organizations”).

14. Finally, the phrase “inter alia” should be added after the word “requested”.

Paragraph 18

15. The following information should also be taken into consideration:

16. Overcrowding in Greek prisons has intensified and constitutes a permanent problem. According to the latest Council of Europe’s annual penal statistics, published in May and covering 2011, Greek prisons were at 151.7 % capacity on 1 September that year, with

12,479 inmates crammed into 8,224 available places. Among those, 4,254 were pre-trial detainees. The number of inmates has continuously increased. In January 2010, Greek prisons held 11,364 inmates, according to the website of the Ministry of Justice, Transparency and Human Rights. On 1 November, they reached 13,147.

Paragraph 21

17. It is to be noted that, in 2012, detentions of irregular migrants were 22.63% less than in 2011. Data analysis showed that the total number of detentions, in 2012, was 76,878, as compared to 99,368 in 2011. In a similar manner, mainly due to measures taken to tackle irregular migration, detentions of irregular migrants in 2013 again dropped by a further 44.06%, meaning that the total number of detentions, in 2013, was 43,002.

Paragraph 23

18. Regarding the case of Mr. Avraam Pouliasis, we would like to point out the following:

19. Mr. Avraam Pouliasis was convicted to six months' imprisonment by court judgment 252/2012 of 1 February 2012, for objecting to compulsory military service (art. 32 of the Hellenic Military Penal Code and Law 3421/2005). Mr. Pouliasis appeared personally before the Athens Military Court and heard the decision of the Court, but did not file an appeal so that to bring his case before the Military Court of Appeals (and after that possibly before the Hellenic Supreme Court or Areios Pagos). Please note that an appeal against a judgment of a Military Court of 1st Instance may be filed free of charge.

20. The Athens Military Court found him guilty for failing to serve compulsory military service at any time from 11 September 1998 until 1 January 2008, when he reached the 45th year of his age. At court it was proved that during the aforementioned period and, specifically from the year 1998 until 2008, Mr Pouliasis could have opted to serve alternative military service provided for by special legislation, but failed to do so. Mr Pouliasis made a statement before the Court as to that he just "neglected" to do so and that, generally speaking, he was not against the institution of alternative military service for conscientious objectors. (Please be advised that the institution of alternative military service for conscientious objectors was introduced in the Greek domestic legislation by a 1998 Law).

Paragraph 25, Recommendation "u" and Appendix II:

21. In paragraph 25, the phrase "but not yet" should be replaced by the word "and", as Greece ratified the OPCAT in December 2013 (Law 4228/2014). The OPCAT ratification instrument is currently under the procedure of deposit with the Secretary-General of the UN.

22. The same issue arises in Recommendation "u" and Appendix II; both should be amended accordingly. It is to be noted that the law ratifying the OPCAT also provides for the Ombudsman to be designated as the National Preventive Mechanism.

23. In light of the above, recommendation "u" could, alternatively, be amended to read as follows:

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

Paragraphs 34, 35, 36

24. It is to be noted that a specific and complete legislative framework is in force, according to which involuntary placements in psychiatric institutions take place (law 2071/1992, Government Gazette 123A/15-7-1992, articles 96, 97, 98, 99).

Paragraph 38

25. This paragraph should be modified so as to take into account the adoption of the EU “asylum legislative package”. More specifically, since the Working Group’s visit to Greece in January 2013, new EU rules have been agreed upon, setting out common high standards and stronger co-operation to ensure that asylum seekers are treated equally in an open and fair system, wherever they apply. The Dublin Regulation was revised and the new Regulation (EU) 604/2013 has entered into force and applies from 1 January 2014. The new Regulation “Dublin III”, nonetheless, maintains the principal criteria for defining the Member State responsible for examining an application for international protection and, in its current form, seems, according to the Special Rapporteur on the human rights of migrants, François Crépeau, to overburden the Greek asylum system.

Paragraph 41

26. Irregular immigration issues are regulated by national legislation which is fully aligned with EU laws and Directives. More specifically, the relevant laws are 3386/2005 and 3907/2011.

27. The former regulates issues of incoming irregular migrants; the latter was created to simplify the repatriation procedures of those already in Greek territory.

Paragraphs 43, 120

28. The new Asylum Service, the Appeals Authority and the First Reception Service are fully operational; hence, in paragraph 43, the first sentence should be omitted and, in paragraph 120, the phrase “although not yet operational”, should also be omitted.

29. Furthermore, the following relevant information may be useful:

30. Since the Working Group’s visit to Greece, last January, the Greek asylum system has undergone many changes, towards a more fair and effective asylum-determination procedure system. A new Asylum Service was established under Law no. 3907/2011. It is the first autonomous structure in Greece that is in charge of the examination of international protection claims, falls under the jurisdiction of the Ministry of Public Order and Citizens’ Protection and commenced its activities on 7 June 2013.

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

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

Paragraphs 46, 65, 77, 78

33. In these paragraphs, police operations “ASPIDA” and “XENIOS ZEUS” are mentioned. We would like to point out that the purposes of those operations, which commenced in August 2012, were: a) the arrest and adduction of immigrants who had either committed various criminal offenses or had been subjected to administrative expulsion, and b) the sealing of the Greek - Turkish borders, also being the external borders of the EU and the point from where Greece receives the greatest immigration pressure.

34. The above mentioned police operations had, in the opinion of the Greek side, a positive impact on the protection of the human rights of those irregularly entering and residing in our country, since they enabled the Greek Police and the competent services and bodies to more effectively evaluate and handle the needs of irregular immigrants, to offer them shelter in places with decent conditions and respect for their human rights, while better examining their cases.

35. With particular regard to paragraph 77, in the sentence starting “Between” and ending “detained”, the phrase “diplomats and” should be omitted. The Greek side cannot accept the allegation that persons who enjoy the privileges and immunities foreseen in the 1961 and 1963 Vienna Conventions on Diplomatic and Consular Relations respectively, are arrested and detained, even temporarily.

Paragraph 47

36. It is to be noted that the exact number of those who illegally reside in Greece cannot be estimated and, consequently, any attempt to refer to it with certainty, is not safe. Furthermore, irregular migrants who have been ordered to exit the country, are given special “Service Notes”, informing them of their rights and obligations. Nevertheless, they do not leave but, instead, they continue residing in Greece, seeking means and ways to eventually enter other European countries, through the country’s land and sea borders. Dublin system, as the Working Group’s draft report recognizes, prohibited any improvement for balancing asylum seekers protection and member states’ burden. While Dublin III has created a pivotal moment by establishing the Common European Asylum System (CEAS), it remains to be seen how responsibility for refugee protection is shifted from Europe’s southern and eastern regions to other member states.

Paragraph 48

37. Further to those described therein, special mention should be made to the more recent legislative efforts which have been made to improve the asylum seekers’ and refugees’ protection system. For this purpose, special mention should be made of Presidential Decree 141/2013 (Government Gazette A’ 226/21.10.2013) for the Adaptation of the Greek legislation to the provisions of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, as well as Presidential Decree 113/2013 (Government Gazette A’ 146/14.6.2013) on the establishment of a single procedure for granting the status of refugee or of subsidiary protection beneficiary to aliens or to stateless individuals in conformity with Council Directive 2005/85/EC “on minimum standards on procedures in Member States for granting and withdrawing refugee status” (L 326/13.12.2005) and other provisions.

Paragraph 49

38. This paragraph should be amended so as to note the correct year of the creation of the First Reception Service, which was the year 2011, not 2002 (specifically, it was established by Law no. 3907/2011).

39. Furthermore, the First Reception Service was not established “at” the Ministry of Public Order and Citizen Protection, as mentioned in the first sentence; it is an autonomous body reporting to the Ministry of Public Order and Citizen Protection.

Paragraph 56

40. The opening phrase “Article 64” should be amended to read “Article 6, paragraph 4”. Furthermore, this article also provides that “the excess of the maximum duration of detention pending trial, by successively applying this measure for separate acts referring to the same case, is prohibited”.

Paragraph 61

41. We suggest rephrasing the text to read as follows, thus becoming more accurate: “The law recognizes Sharia (Islamic Law) as the law regulating, as a matter of choice, family and inheritance law issues of members of the Muslim minority in Thrace”.

Paragraphs 64, 72, 102

42. The presence of a lawyer is legislated in every stage of both penal and administrative procedures, according to the provisions of the country’s National Legislation. Furthermore, the presence of an interpreter is also legislated and efforts are being made towards covering the needs of interpretation in every Service involved, by interpreters appointed either by the Greek State or by non-governmental organizations. In the annual programs of 2009-2010-2011-2012 of the European Return Fund, actions for the employment of interpreters who inform the detainees in a language they understand, have been, are being and will continue to be implemented. At the same time, scientific personnel (psychologists, social workers) have been employed by the Hellenic Police, in order to cover the needs that arise daily.

43. Moreover, representatives of the UNHCR and non-governmental organizations, dealing with the migration issue, are daily granted access to detention facilities, freely interact with the irregular migrants and provide them with legal assistance, in order to ensure their unhindered access to the asylum procedure and their legal representation throughout the procedure.

44. All the above mentioned actions are being implemented according to the international obligations of Greece and the best practices that are applied in other countries, to serve the purpose of the protection of the human rights of the detainees.

Paragraphs 68, 69

45. Concerning the issue of the briefing of inmates with regard to their right to have free legal assistance, we would like to inform you that the Directorates and the Social Services of the Greek Prison Establishments strictly implement the provisions of the Article 33 of the Ministerial Decree No 58819/7.4.2003 (Government Gazette 463/2003/Vol. B’), which stipulates the procedures followed whenever a detainee cannot afford to exercise his/her rights of defense. Hence, in paragraph 68, the passage starting with “Nonetheless” and ending with “assistance” should be omitted.

46. Also, in paragraph 69, the last sentence, starting with “They” and ending with “assistance”, should be omitted as well.

Paragraph 74

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

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

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

Paragraph 76

50. Detention of migrants suffering from chronic infectious diseases (tuberculosis, syphilis, skin diseases, etc.) aims at providing them with the necessary medical care, while serious cases are addressed for treatment to hospitals or other appropriate medical institutions, in order to prevent public health risks. Furthermore, regarding cases of migrants suffering from such diseases, the government regularly cooperates with NGOs which offer their assistance in this field.

Paragraph 82

51. This paragraph should be complemented in order to specify the nature of the “change, in October 2012, of the provisions governing the maximum length of detention for asylum seekers” (first sentence). In fact, it is article 1 of Presidential Decree 116/2012, issued on October 19, 2012, which modified Presidential Decree 114/2010 on the Establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L326/13.12.2005). In particular, article 1 of P.D. 116/2012 extends the duration of the detention time.

Paragraphs 83, 63

52. Regarding problems with the processes of judicial deportations, which, until recently, often resulted in long-term detention for those foreigners that could not be deported, we

would like the last sentence, starting with “The Working Group” and ending with “migrants” to be replaced by the following text: “Significant improvements have been made by amendment of Articles 74 and 99 of the Criminal Code, through the provisions of Law 4055/2012 ‘Fair Trial and reasonable length thereof (Government Gazette 51/12-3-2012). These articles introduce specific time limits (18 months) concerning the duration of detention for the cases of the detainees that cannot be deported. The compliance with the previous stated provisions is monitored by a judicial body”.

53. It is to be noted that, when it appears that there is obviously no prospect of removal, due to legal or other reasons, or when other conditions (risk of escape, etc.) cease to apply, the detention measure is lifted and the detainee, after being provided with a removal postponement certificate, is immediately released.

Paragraphs 85, 101

54. It is inaccurate that there is no possibility of judicial review of detention and deportation decisions. Under current legislation, all migrants, after the decision for their detention is issued, have the right to raise objections before the President of the Administrative Court, while they are also entitled to appeal against the expulsion decision before the competent police officer, within five days. Furthermore, this decision can be challenged before the administrative courts. The above mentioned procedure is foreseen in law 3907/2011.

Paragraph 88

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

Paragraph 91

56. One of the key principles of the policies of the Ministry of Public Order and Citizens’ Protection and of the Hellenic Police is the establishment of new standards, as to the conditions of detention centres, capable of addressing the needs of reception and decent living of irregular immigrants, while fully respecting their human rights. Long term detentions under reference, are mainly a result of the delays which occur due to the lack of cooperation of the embassies of the home countries of detainees.

Paragraph 94

57. It should be noted that, despite the obvious and serious financial difficulties which Greece is facing, it makes significant efforts to ameliorate the conditions of detention and to fully protect the human rights of detainees. More specifically, the government strives to:

- increase the capacity of detention centres;
- achieve uniform and smooth operation of the centres, with respect for human rights of detainees;
- provide proper facilities (toilets, showers, etc.) that meet standards for lengthy detention;
- provide detainees with the opportunity of recreational and other activities;

- ensure the regular presence of medical doctors and other professional medical staff, either from the government or from non-governmental organizations, in order to provide detainees with proper health care and psycho-social support;

58. Additionally, following a decision of the Chief of the Hellenic Police, an “Internal Regulation of Operation of Security Services of Immigration Detention Facilities” was introduced, with the aim to achieve a uniform and smooth operation of the centres and better regulate the needs arising from the detention of migrants.

Paragraph 110

59. Treatment of vulnerable groups (women, single-parent families, minors, etc.) is a subject of particular concern for the competent Greek Services and, in the context of their social role and mission, is carried out with care and sensitivity.

60. Furthermore, Police officers are regularly educated and trained, regarding matters like deportations of migrants, handling of vulnerable groups and protection of human rights.

Paragraph 111

61. The second sentence of the paragraph should be amended to read as follows: “In this respect, the Working Group welcomes the signature and ratification by Greece of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”. See also our comments on Paragraph 25, Recommendation “u” and Appendix II, above.

Paragraphs 113, 114, 115, 116

62. With regard to unaccompanied minors, law 220/2007 applies, incorporating also EU directive 9/2003/EC, and stipulates that a prosecutor is notified of the case, whether the minor has submitted an asylum application or not. The prosecutor is defined as the temporary guardian and, at a later stage, in cooperation with social services and non-governmental organizations, another person, usually a social worker, is defined as the permanent guardian. If the defined guardian fails to perform his/her duties properly, he/she is replaced upon suggestion of the advocate.

63. Particularly concerning paragraph 114, it is noted that the responsibility for providing accommodation services to asylum seekers is now under the Ministry of Labour, Social Security and Welfare, as the General Directorate of Welfare has been transferred from the Ministry of Health (Law 4052/2012); hence, the last sentence of this paragraph should be amended to read as follows: “In practice, after some weeks in detention centers, they are put under the responsibility of the Ministry of Labour, Social Security and Welfare and transferred to guest houses for minors”.

Appendix II

64. It is inaccurately stated that Greece is a party of the “1961 Convention on the Reduction of Statelessness”, so the relevant entry should be omitted.

65. Moreover, it is inaccurately stated that Greece has not ratified the “Additional Protocol III” to the Geneva Conventions of 1949; hence, the phrase “except Additional Protocol III” should be omitted.