

HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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**Information relevant to the implementation of the
Convention against Torture**

**Submission to the UN Committee against Torture in response to the
List of Issues with regard to the Report of Greece**

June 2019

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 in accordance with the UN Paris Principles. Forty-one (41) institutions-members whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, workers' and disabled persons' confederations, NGOs, political parties and ministries).

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Glossary

AIDA	Asylum Information Database
AVRR	Assisted Voluntary Return and Reintegration
CAT	Convention against
CC	Criminal Code
CCP	Code of Criminal Procedure
CDDH	Steering Committee for Human Rights (Council of Europe)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COBs	Concluding Observations
Committee	Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
CRC	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EKKA	National Centre for Social Solidarity
EMIDIPA	National Mechanism for the Investigation of Arbitrary Incidents
ESC	European Social Charter
GCR	Greek Council for Refugees
GNCHR	Greek National Commission for Human Rights
HRC	Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organisation for Migration
LOI	List of Issues
MSF	Médecins sans Frontières
NCCBCIA	National Coordination Center for Border Control, Immigration and Asylum

NHRI	National Human Rights Institution
NR	National Rapporteur for Combating Human Trafficking
NPM	National Preventive Mechanism
NRM	National Referral Mechanism for Victims and Potential Victims of Trafficking in Human Beings
OPCAT	Optional Protocol to the Convention Against Torture
PACE	Parliamentary Assembly of the Council of Europe
RAO	Regional Asylum Office
RIC	Reception and Identification Centre
RIS	Reception and Identification Service (formerly First Reception Service)
RVRN	Racist Violence Recording Network
SEPE	Hellenic Labour Inspectorate
SYD	Greek Transgendered Support Association
UNHCR	Office of the United Nations High Commissioner for Refugees

Information relevant to the implementation of the Convention against Torture. Submission to the UN Committee against Torture in response to the List of Issues with regard to the Report of Greece*

Introduction

The present submission constitutes the response of the Greek National Commission for Human Rights (GNCHR) to the issues raised by the Committee against Torture (the Committee) in its list of issues prior to submission of the seventh periodic report of Greece due in 2016 (LOI)¹. The GNCHR appreciates the opportunity to submit a National Human Rights Institution (NHRI) report to the Committee, providing information which is relevant to Greece's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The GNCHR recalls that Greece was among the first countries to sign CAT in February 4, 1985 and ratify it in 1988². Subsequently, Greece signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2011 and ratified it in 2014³.

Research methodology

The present submission contains 13 chapters, focusing on separate issues and settings where torture, cruel, inhuman and degrading treatment may occur. At the start of each chapter the GNCHR sets out the relevant CAT Articles, the Committee's concluding observations (COBs) and the relevant paragraphs in the Committee's LOI, following essentially the way of presentation of the situation in Greece of the Committee. This combined reference to both the Committee's COBs (2012) and LOI (2016) is intended to highlight, despite the significant efforts made by the State to implement the Committee's recommendations, the lack of improvement which is observed from 2012 to 2016. The GNCHR is therefore concerned that some of the Committee's recommendations contained in the 2012 COBs have not been fully addressed by the competent State authorities.

In order to address the thematic issues raised by the Committee, the GNCHR considered appropriate to use a mixed research approach combining quantitative (eg. recording of legislation and policy on issues pertaining to the implementation of CAT, reports and

* The present submission was adopted by the GNCHR. Rapporteurs: Prof. Maria Gavouneli, GNCHR President, Dr Roxani Fragkou, GNCHR Senior Human Rights Officer/Coordinator. The GNCHR extends its gratitude to Prof. Sophia Vidali, GNCHR Member, Prof. Nikolaos Koulouris, Assistant Professor at the Department of Social Administration and Political Science, Democritus University of Thrace and Alexandros Konstantinou, GNCHR Member and Member of the Greek Council for Refugees (GCR) Legal Unit for their valuable contribution to the formulation of the questionnaire.

¹ UNCAT, [List of issues prior to submission of the seventh periodic report of Greece due in 2016](#), CAT/C/GRC/QPR/7, 2016.

² Law 1782/1988 (OJ 116/A/3.6.1988). For more information on the Human Rights instruments Greece has signed and ratified, on international, regional and European level, GNCHR, [List of International and European Conventions on Human Rights](#) [in Greek], April 2019.

³ Law 4228/2014 (OJ 7/A/10.1.2014).

recommendations of international, regional and national human rights monitoring bodies and NGOs, State report and responses etc.) and qualitative methods (eg. bibliographic review, data collection and analysis). Further, the GNCHR confirmed its findings and recommendations by utilising the written contributions both of its own members (41 members-institutions⁴), but also of the 46 members of the Racist Violence Recording Network (RVRV)⁵, which was co-founded by the GNCHR and the UN High Commissioner for Refugees (UNHCR) Office in Greece. In addition, the GNCHR received written contribution by the Médecins sans Frontières (MSF), a civil society organisation with which the GNCHR works closely.

The GNCHR research, however, was not limited to these data, but it was enriched by a written questionnaire, addressed to identify the actual effects of law implementation the services' needs and gaps in application of laws by which human rights legislation is introduced in the Greek legal system. In particular the questionnaire of 30 questions was designed to capture the conditions under which law on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is applied in practice, which are its effects within the administration of criminal justice system (police, penal justice, prisons). The questionnaire was structured in 5 thematic parts (I. Detention, II. Interrogation-investigations, III. Internal complaints – sworn administrative inquiries (EDE), IV. Services' inspection – Execution of service, V. Personnel's support). It was addressed to the three competent ministries: Ministry of Justice, Transparency and Human Rights for Penitentiary establishments, Ministry of Citizen protection for detention in police stations, police headquarters and pre-removal centres and Ministry of Immigration Policy for Reception and Identification Centres, RICs. The GNCHR expresses its deep disappointment with regard to the failure of the competent State authorities to respond to the NHRI's inquiries, noting that the questionnaire was only filled in and sent back to the GNCHR by one recipient, the Hellenic Police (ELAS) on behalf of the Ministry of Citizen Protection. The GNCHR welcomes the Ministry's contribution and appreciates its willingness to cooperate with the Country's NHRI for the more effective implementation of CAT.

This being said, the GNCHR takes the opportunity to observe that most of the questions contained in the questionnaire are not properly answered by ELAS, since instead of assessing the implementation of relevant legislation in practice, it limits itself in quoting the necessary legislative provisions. In this regard, slightly paraphrasing the High Commissioner's for Human Rights recommendation to States parties to establish or reinforce a standing national reporting and coordination mechanism in order to facilitate both timely reporting and improved coordination in follow-up to treaty bodies' recommendations and decisions⁶, the GNCHR recommends to the competent State authorities the establishment – or enhancement (where these exist) – of specialised departments in each Ministry for the monitoring of the State's compliance with the Human Rights Instruments, at international, regional and national level.

⁴ GNCHR, [Current members](#).

⁵ RVRN, [Members](#) [in Greek].

⁶ UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies pursuant to Assembly resolution 66/254, A/66/860, 26.6.2012, par. 4.5.4 , p. 86.

Role and remit of the GNCHR

The GNCHR is Greece's NHRI, established and operating in full compliance with the Paris Principles. The GNCHR was first granted *A status* by the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC) of NHRIs, in 2001 and has since consistently maintained its *A status*, which was confirmed in March 2017.

The GNCHR has a broad mandate, in accordance with the Paris Principles, to promote and protect human rights. This mandate covers the whole range of human rights, including social, economic and cultural rights, as they are enshrined in the Constitution, in international and European treaties and other normative texts as well as in soft law instruments such as declarations and guidelines.

It should be particularly noted that the GNCHR is a crucial actor in combating racist hate and violence with racist motives, among others, for two important reasons: first of all, because according to Article 1(6)(k) of the GNCHR's founding law, the GNCHR shall "monitor and address recommendations to the State for [...] the operation of a reliable and effective system for recording incidents of discrimination, racism and intolerance". Additionally, because the GNCHR has established, since 2011, the Racist Violence Recording Network (RVRN), in collaboration with the UNHCR Office in Greece and with the participation of 46 NGOs and other bodies, which provide legal, medical, social and other supporting services and which come in contact with victims of racist violence. Through the RVRN, the GNCHR works closely and constantly with the UNHCR in Greece and all 46 civil society organisations-RVRN members.

In terms of the financing of its operation (with reference to par. 108, p. 23 of the State Report, where it is mentioned that "recent legislative amendments have further strengthened the Commission in the discharge of its mandate, including with regard to state financing of its operation") *"the operating costs of the GNCHR are borne by the State budget. The necessary funds are inscribed each year in a specific budget line in the budget of the Ministry of Finance. The allocation of funds is made by decision of the Minister of Finance and the execution of the corresponding expenditures is made by the General Secretary of the Government, who is the Chief Authorising Officer. For this purpose, the General Secretariat of the Government provides the Commission with the necessary accounting support"*. The GNCHR's budget for 2017 was 150.720 euros and for 2018 157.000 euros. For 2019, unfortunately, the GNCHR's budget was reduced to 146.000 euros. The GNCHR specifically highlights this to the Committee in order to contextualise the magnitude of the NHRI's mandate in comparison to its limited financial and human resources and recommends to the competent State authorities to allocate appropriate financial resources to enable the SAHRC to fully execute its mandate effectively.

I. Incorporation of CAT into domestic law – Definition of torture

Relates to CAT Arts 1 and 4, COBs par. 9 and LOI par. 1

In its 2016 LOI, the Committee, taking into account that the current definition of torture as incorporated in criminal law (Arts. 137A and 137B) does not comply with the one provided in CAT, requested information on any steps taken by the State party to adopt a definition of torture which covers all elements contained in CAT Article 1.

The Greek Constitution prohibits the use of torture and other ill-treatment in Article 7(2). Torture and other ill-treatment are also explicitly proscribed in the Greek Criminal Code in Articles 137A-137D, which define torture as the "planned" (*μεθοδευμένη*) infliction by a state official on a person of severe physical, and other similar forms, of pain (Article 137A(2)). Such a definition, which conditions torture upon the existence of a "planned" infliction of severe pain, provides for a scope of definition of torture considerably narrower than in the CAT⁷.

The non-compliance of the definition of torture in the Greek criminal law with the international human rights law standards and, in particular, with Article 1(1) CAT⁸ is an issue which has been raised by a number of international human rights bodies⁹ and other actors¹⁰.

Recent developments and concerns

In its Replies to the LOI prepared by the Committee constituting Greece's 7th periodic report, the Greek State notes that there is an on-going law-drafting process for the reform of the Criminal Code and that the competent law drafting Committee has been requested by the Secretary General for Transparency and Human Rights of the Ministry of Justice, Transparency and Human Rights to examine the compatibility of the current definition of torture (Art. 137A) with the definition of torture provided for in CAT.

⁷ See also the need to distinguish in law between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official and any other person acting in an official capacity, and acts of violence committed by non-State actors, as highlighted by the UN Committee against torture (Committee): "The State party should incorporate in its criminal law a definition of torture that is in strict conformity with and covers all the elements contained in Article 1 of the Convention. Such a definition would meet the need for clarity and predictability in criminal law, as well as the need under the Convention to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official and any other person acting in an official capacity, and acts of violence committed by non-State actors". (CAT, *COBs on the combined fifth and sixth periodic reports of Greece*, CAT/C/GRC/CO/5-6, 27.6.2012, par. 9).

⁸ According to Article 1(1) CAT, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

⁹ CAT, *COBs on the combined fifth and sixth periodic reports of Greece*, *op.cit.*, par. 9, ECtHR, *Zontul v. Greece* [appl. no 12294/07], 17.1.2012, CPT, *GREECE REPORT 2015 to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, p. 6, *Letter of CoE Commissioner for Human Rights*, 18.4.2017 and *Response of Greek government*, 28.4.2017.

¹⁰ Amnesty International, *Greece: Briefing to Committee Against Torture*, October 2011, N. Sitaropoulos, *The incompatibility of the definition of torture in Greece with International Law*, Verfblog, 19.01.2017, N. Sitaropoulos, *Ill-treatment of migrants in Greek Law Enforcement – Are the Strasbourg Court Judgements the Tip of the Iceberg?*, 1.3.2017.

However, the GNCHR notes with disappointment that, in the reformed Criminal Code, as it was finally voted by the Greek parliament in June 6, 2019, the definition of torture remains intact. In fact, Articles 137A-137D were merged into one article (Article 137A), remaining under the initial Chapter of the Criminal Code, entitled "Violations of the democratic system". At the same time, in the explanatory report to the draft Criminal Code, there's absolutely no reference to the reasons that lead the competent law drafting Committee to maintain this narrower view of the definition of torture¹¹.

Recommendations

In light of the above-mentioned observations and taking into account that the definition of torture provided for in Article 137A(5) of the Criminal Code is identical to the one contained in the previous version of Article 137A(2) and, as such, does not cover all elements required by Article 1(1) CAT, the competent State authorities should take the necessary steps to ensure that the definition of torture, as presented under Article 137A(5) of the Criminal Code, is fully aligned with the standards contained CAT.

¹¹ [Explanatory report to the draft Criminal Code](#) [in Greek], reprint: 7.6.2019.

II. Fundamental legal safeguards for all detained persons in practice, including irregular migrants and refugees

II. Fundamental legal safeguards for all detained persons in practice, including irregular migrants and refugees

Relates to CAT Art. 2 and LOI par. 2

In its 2016 LOI, the Committee, taking into account the recommendations made by Special Rapporteur on torture following his mission to Greece (A/HRC/16/52/Add.4, par. 88), requested updated information on steps taken to ensure that all detained persons, including irregular migrants and refugees, are afforded, in practice, fundamental legal safeguards from the very outset of detention.

The GNCHR applauds the significant efforts made by the competent state authorities with regard to the implementation of specific legal safeguards for detained persons, such as the right to legal counseling and "The Alphabet of prisoners". Nonetheless, the GNCHR acknowledges that not all questions raised by the Committee have been addressed by the State.

Safeguards against ill-treatment in police custody

In particular, it is crucial to address a series of questions raised by the Committee on the rights persons in police custody must enjoy, such as the rights to a medical doctor of their own choice, the right to be informed of their rights and be promptly presented to a judge, the right to be registered from the very outset of detention or the right to inform their relatives. Moreover, taking into account a previous CPT Report following their country visit, published in 2016¹², the GNCHR has serious reason to consider that most of the issues with regard to the safeguards against ill-treatment in police custody have not been addressed by the competent state authorities.

Rights such as the right to be notified of custody, the right to notify a close relative or third party of their choice of their situation, the right of access to a lawyer when in police custody, including the right to meet him/her in private and out of the sight and hearing of police officers do not always seem to be respected¹³, remaining "theoretical and illusory" for those who do not have the financial means to pay for the services of a lawyer¹⁴.

In the same direction and bearing in mind that "providing legal aid to particularly vulnerable persons in order to ensure their legal protection, and more specifically the effective protection of their rights in the framework of a modern Rule of Law, has been established in Europe as fundamental human right", the GNCHR has repeatedly – in its Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on "Providing Legal Assistance to Individuals", dated July 2016¹⁵, as well as in previous observations¹⁶ – expressed its concern regarding the inadequacy of legal aid as it was structured and applied in Greece. To that end, the GNCHR stressed that legal aid should be available to every person who is in need of it, in all

¹² CPT, [Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) from 14 to 23 April 2015, CPT/Inf (2016) 4, 1 March 2016, par. 45. See also CPT, [Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) from 4 to 16 April 2013, CPT/Inf (2014) 26, 16 October 2014, par. 27-32.

¹³ CPT/Inf (2014) 26, par. 46-48.

¹⁴ *Idem*, par. 47.

¹⁵ GNCHR, [Observations](#) on the Draft Law of the Ministry of Justice, Transparency and Human Rights on "Providing Legal Assistance to Individuals" [in Greek] (2016).

¹⁶ GNCHR, [Recommendations](#) for a comprehensive legal aid system [in Greek] (2001).

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jurisdictions and all procedural stages, including applicants for international protection¹⁷, as well as the Roma, since according to the GNCHR findings access to free legal assistance for the Roma community is often impossible due to the lack of valid records of Roma settlements in Greece and absence of accurate estimates of their population size.

According to the CPT's findings¹⁸, the right of access to a doctor remains ineffective in practice for most persons deprived of their liberty by the police, the principle of medical confidentiality for persons detained by the police is not always respected¹⁹, while a system of regular visits by doctors and/or nurses reporting to a doctor in police stations does not seem to have been established in order to ensure that detained persons are allowed to access promptly a health-care professional²⁰. This is a finding also highlighted by the National Preventive Mechanism (NPM) under OPCAT, the Greek Ombudsman, who confirms that shortages in permanent specialised medical and nursing personnel, Social Service staff and psychologists, remain critical issues in most Detention Facilities²¹. Indeed, the Greek Ombudsman has often observed and recorded in its reports the inadequacy of health care provided to prisoners, as well as the total lack of doctor or psychiatrist in some Detention Facilities. Last but not least, as for information on rights, according to the CPT's findings, there are allegations from detainees that they had not been informed of their rights or that they were unable to understand the information provided, while several foreign nationals claimed that they had signed documents in the Greek language without knowing their content²².

Safeguards against ill-treatment in psychiatric establishments

The GNCHR notes with great concern that very often, according to the CPT's findings following its 2018 country visit in Greece, involuntary placement procedures do not offer guarantees of independence and impartiality as well as of objective medical expertise. In particular, there are allegations that the psychiatric opinions provided do not include reasoned diagnostic information (description of state of mind, appearance, attitude, behaviour etc.), while in some cases both psychiatrists who provided their opinion for the placement of a person in a psychiatric hospital were from the same institution in which placement was sought and they conducted their assessment jointly, producing one opinion, not two as prescribed by law²³. Furthermore, it seems that the placement of long-term patients has not always been the subject of systematic, periodic reviews beyond the first 6-month review²⁴, while patients' right to be heard in person by the Court during placement or appeal procedures is rarely enjoyed in practice²⁵.

¹⁷ See *infra*, under "Safeguards against ill-treatment of foreign nationals held under aliens legislation", p. 14 et seq.

¹⁸ CPT/Inf (2016) 4, par. 49.

¹⁹ *Idem*, par. 50.

²⁰ *Idem*, par. 51.

²¹ Greek Ombudsman, National Preventive Mechanism Against Torture And Ill-Treatment, *Annual Special Report 2017*, p. 16.

²² CPT/Inf (2016) 4, par. 52.

²³ CPT, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018*, 19 February 2019, CPT/Inf (2019) 4, par. 43.

²⁴ *Idem*, par. 44.

²⁵ Indeed, according to the CPT's findings, out of 2853 cases considered by the Athens Court of 1st instance in 2017, only very few patients were personally heard by the judge. Moreover, at the Psychiatric Unit at Sotiria Hospital, it was acknowledged that staff usually did not inform the patient about the hearing because this information would be "stressful" for the patient, and, in any case, the Hospital was not in a position to arrange transportation to the hearing. See CPT/Inf (2019) 4, par. 45.

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In that context, the Ministry's of Health Response to the CPT is rather encouraging, since the drafting of the new law on involuntary psychiatric placement is under way²⁶. In fact the draft law on involuntary psychiatric placement was posted for deliberation in www.opengov.gr between 8 to 22 May and according to the competent State authorities it has already integrated the CPT's recommendations regarding the guarantees of independence, impartiality and objective medical expertise by requiring *inter alia* two separate psychiatric opinions, including reasoned diagnostic information (Article 3), by ensuring patients' benefit in practice from the right to be heard in person by the court during placement or appeal procedures, by holding hearings in psychiatric institutions or by providing patients in an appropriate way with full, clear and accurate information including their rights, information on legal assistance etc., as well as a copy of any court decision on their involuntary placement or other information on their legal status (Article 8). The draft law also stipulates free of charge legal assistance for patients who need it (Article 13), as well as time limitations applied to provisional placement measures (Article 4)²⁷.

The GNCHR also highlights that the right to be informed on their rights also concerns persons involuntarily placed in psychiatric establishments and notes with great disappointment that persons admitted to psychiatric establishments are not always provided with full, clear and accurate information, in an appropriate range of languages, setting out the facility's daily routine and patients' rights, including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures²⁸. Moreover, patients do not receive a copy of any court decision on involuntary placement in a psychiatric hospital, nor are they otherwise informed, orally or in writing, about the reasons for the decision and the avenues/deadlines for lodging an appeal and they do not effectively enjoy in practice their right to legal assistance in placement proceedings²⁹.

In the same context, it is deeply worrying that:

- the statutory time limitations of the provisional placement are not respected³⁰,
- there is no distinction in Greek law between the procedure for involuntary placement in a psychiatric institution and the procedure for involuntary psychiatric treatment³¹,
- voluntary patients are not required to sign a form, on admission, attesting to their voluntary status and expressly stating that they are free to leave the establishment and to refuse treatment they do not wish to take³²,
- there isn't a complaint procedure in every psychiatric establishment³³,
- there is a significant monitoring gap with regard to the psychiatric establishments, which needs to be remedied urgently³⁴,

²⁶ Response of the Greek Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 10 to 19 April 2018, CPT/Inf (2019) 5, 19.2.2019, p. 3.

²⁷ Ministry of Health, [Draft law on Involuntary psychiatric placement](#), 8-22.5.2019.

²⁸ CPT/Inf (2019) 4, par. 46.

²⁹ *Idem*, par. 46-47.

³⁰ *Idem*, par. 48.

³¹ *Idem*, par. 49.

³² *Idem*, par. 50.

³³ *Idem*, par. 51.

³⁴ *Idem*, par. 52.

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- the time involuntary patients benefit from facilitated contact with the outside world is quite limited³⁵ and
- compulsory placements of criminally irresponsible patients have not been subject to systematic court review, resulting to little progress towards release³⁶.

Safeguards against ill-treatment of foreign nationals deprived of their liberty under aliens legislation

Recognising the State's significant efforts to ensure that all third country nationals enjoy fundamental legal safeguards from the outset of their detention and despite the undeniable fact that all detained persons, regardless of their nationality or status, should enjoy the same basic rights that are fundamental safeguards against ill-treatment, namely the rights of notification of custody, access to a lawyer and access to a doctor³⁷, the GNCHR cannot but admit that in practice things are quite different. In particular, the GNCHR shares the concerns of the CPT's delegation, from its most recent visit to Greece, according to which no noticeable developments have occurred since its previous visits to Greece, as far as the implementation in practice of these three basic rights³⁸.

Though the Greek law (Art. 46(7) of Law 4375/2016) provides for access to free legal assistance for the review of detention, in practice no free legal aid system has been set up in order for asylum seekers to challenge their detention. Free legal assistance for detained asylum seekers provided by NGOs cannot sufficiently address the needs and in any event cannot exempt the Greek authorities from their obligation to provide free legal assistance and representation to asylum seekers in detention³⁹, as foreseen by the recast Reception Conditions Directive⁴⁰. As observed by the United Nations Special Rapporteur on the human rights of migrants, "legal aid in immigration detention facilities provided by non-governmental organizations (NGOs) is scarce due to funding shortages"⁴¹. This, according to the AIDA Country report on Greece, continued to be the case in 2018, where only two to three NGOs were providing free legal assistance to detainees with limited resources and less than 10 lawyers in total focusing on detention countrywide⁴².

³⁵ *Idem*, par. 53.

³⁶ *Idem*, par. 54.

³⁷ It is however necessary, at this point, to highlight the difficulty of the competent State authorities to address the above issues, to the extent that the GNCHR observes that the Hellenic Police has particular difficulty answering directly the questions addressed to it by the GNCHR in the relevant questionnaire set up for the purposes of the present submission. Indeed, as regards the questions referring to the specific legal safeguards against ill-treatment, namely, among others, the rights of access to a lawyer, access to a doctor and medical healthcare, access to appropriate services of interpretation, access to educational or other recreational activities, the GNCHR notes with regret that the relevant questions contained in the questionnaire are not properly answered by the Hellenic Police, since instead of assessing the implementation of relevant legislation in practice, it limits itself in quoting the necessary legislative provisions. Therefore, it fails to provide the GNCHR with the necessary tools to assess the human rights situation with regard to the specific area. See Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 4-7.

³⁸ GNCHR, Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on "Providing Legal Assistance to Individuals", *op.cit.* and CPT/Inf (2019) 4, par. 77.

³⁹ ECRE, *AIDA Country Report Greece 2018*, March 2019, p. 173.

⁴⁰ Article 9(6) recast Reception Conditions Directive.

⁴¹ HRC, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, par. 49.

⁴² ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 173. Further, it is to be noted that CPT findings from 2018 confirm that "the information provided was insufficient – particularly concerning their (legal) situation [...] there

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The insufficiency of legal aid providers is highly alarming according to the GCR, especially since the Appeals Committees have recently sped up the examination of appeals on the islands and take decisions within a couple of days or two weeks, notwithstanding the inability of the State to appoint a legal representative to applicants. According to the GCR, asylum seekers confined to the Eastern Aegean islands in Greece have had no effective access to legal representation for months, due to persisting severe shortages in the state-funded legal aid scheme for asylum appeals. The legal aid scheme, implemented on the basis of a list managed by the Asylum Service, started operating in September 2017 with 21 registered lawyers, four of whom were based on the islands (Lesvos, Rhodes, Chios and Kos). One year later, the number of registered lawyers across Greece has increased to no more than 32. At the same time, the number of asylum seekers arriving in 2018 has risen to 54.698 as of the end of October, with 14.691 arriving on Lesvos, 5.276 on Samos and 3.549 on Chios. 13.000 appeals have been filed before the Appeals Authority since the beginning of the year⁴³.

The GNCHR finds extremely worrying the fact that, during its 2018 country visit in Greece, the CPT's delegation found that, as in 2016, there was an almost total lack of available interpretation services in all the establishments visited⁴⁴.

Moreover, custody records are not always properly maintained (with numerous errors or omissions, such as missing entries for arrival times or dates and times of transfer or release etc.) and as far as certain police establishments are concerned they are not yet electronic⁴⁵. Further, there isn't always an effective and accessible complaints procedure in place, nor information provided to detained persons on how they could access these, be it within the police or outside mechanisms, such as the Ombudsman's or Prosecutor's Offices⁴⁶. Last but not least, there are allegations that, in some cases, foreign nationals, who according to the police authorities had signed up for voluntary return from Greece to their country of origin, in the context of the Assisted Voluntary Return and Reintegration (AVRR) programme of the International Organisation for Migration (IOM), never consented to their voluntary return home⁴⁷.

As far as the procedural safeguards against ill-treatment of detained asylum seekers, the procedure of automatic judicial review of the decisions ordering or prolonging the detention of

was an almost total lack of available interpretation services in all the establishments visited [...] access to a lawyer often remained theoretical and illusory for those who did not have the financial means to pay for the services of a lawyer [...]. As a result, detainees' ability to raise objections against their detention or deportation decisions or to lodge an appeal against their deportation was conditional on them being able to access a lawyer". See CPT/Inf (2019) 4, par. 78-80.

⁴³ ECRE, AIDA: *Greece: asylum seekers left without legal aid on the islands*, 4.12.2018. For more information see GCR, *Without legal aid, at second instance, refugees confined to the Greek islands*, 30.11.2018.

⁴⁴ Only at Amygdaleza Pre-removal Centre and Fylakio RIC, the Asylum Service and the health-care staff had a permanent interpreter at their disposal. This was not the case for the other centres visited. As a result, it is almost every day practice that foreign nationals either receive official documents, including detention and deportation orders, which are only available in the Greek language and are not translated, or sign documents in the Greek language without knowing their content and without having benefited from the assistance of a qualified interpreter. On the other hand, police officers and other staff, in order to communicate with foreign detainees, had to rely on fellow detainees who spoke English or Greek – a practice which, according to the CPT, must be avoided. See CPT/Inf (2019) 4, par. 80.

⁴⁵ *Idem*, par. 81.

⁴⁶ *Idem*, par. 82.

⁴⁷ *Idem*, par. 83.

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an asylum seeker as prescribed by Law 4375/2016 is highly problematic and illustrate the rudimentary and ineffective way in which this judicial review takes place⁴⁸.

On the other hand, the procedure of "objections against detention" presented before the Administrative Court, which is the only legal remedy provided by national legislation to challenge detention seems to be problematic as well. In practice, the ability of detained persons to challenge their detention is severely restricted by the fact that "migrants in pre-removal detention centres are often unaware of their legal status and do not know about the possibility of challenging their detention"⁴⁹, by the lack of interpreters and translation of the administrative decisions in a language they understand, as well as by the lack of free legal assistance for review of detention.

The ECtHR has found that the objections remedy is not accessible in practice. In 2017, the ECtHR rejected the preliminary objection of the Government regarding the non-exhaustion of domestic remedies and ruled that the applicant did not have access to a legal remedy. The Court took into consideration *inter alia* the fact that detention orders were written in Greek even though the applicants were Farsi speakers, that the information brochure provided to them did not mention which was the competent court to which the remedy should be submitted, that the competent court was located on another island (Lesvos) and that there was no legal assistance⁵⁰. Moreover, the ECtHR has found on various occasions the objections procedure to be an ineffective remedy, contrary to Article 5(4) ECHR, as the lawfulness *per se* of the detention, including detention conditions⁵¹, was not examined in that framework⁵².

In order to bring national law in line with ECHR standards, legislation was amended in 2010. However, the ECtHR has found in a number of cases that, despite the amendment of the Greek law, the lawfulness of applicants' detention had not been examined in a manner equivalent to the standards required by Article 5(4) ECHR⁵³ and "the applicant did not have the benefit of an examination of the lawfulness of his detention to an extent sufficient to reflect the possibilities offered by the amended version" of the law⁵⁴.

Finally, as regards "protective custody" of unaccompanied children, the ECtHR found in February 2019 that the objections procedure was inaccessible since the applicants were not officially classified as detainees, and since they would not be able to seize the Administrative

⁴⁸ HRC, Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece, 18 April 2013, A/HRC/23/46/Add.4, par. 57. According to the available data regarding detention orders for asylum seekers examined by the Administrative Court of Athens, there have been just four cases where the *ex officio* review did not approve the detention measure imposed. ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 171.

⁴⁹ HRC, Report of the Special Rapporteur on the human rights of migrants, *op.cit.*, par. 49. See also GCR, [Administrative detention in Greece: Findings from the field](#) (2018).

⁵⁰ ECtHR, *J.R. and Others v. Greece* [appl. no 22696/16], 25.1.2018, par. 99-102; *O.S.A. v. Greece* [appl. no 39065/16], 21.3.2019.

⁵¹ As far as the judicial review of detention conditions is concerned, based on the cases supported by GCR, it seems that courts tend either not to take complaints into consideration or to reject them as unfounded, even against the backdrop of numerous reports on substandard conditions of detention in Greece, brought to their attention. See Administrative Court of Rhodes, Decision 170/2018.

⁵² ECtHR, *Rahimi v. Greece* [appl. no 8687/08], 5.4.2011; *R.U. v. Greece* [appl. no 2237/08], 7.6.2011; *C.D. v. Greece* [appl. no 33468/10], 19.3.2014.

⁵³ ECtHR, *R.T. v. Greece* [appl. no 5124/11], 11.2.2016; *Mahammad and others v. Greece* [appl. no 48352/12], 15.1.2015; *MD v. Greece* [appl. no 60622/11], 13.11.2014; *Housein v. Greece* [appl. no 71825/11], 24.10.2013. In the case *F.H. v. Greece* [appl. no 78456/11], 31.7.2014, the Court found a violation of Article 3 combined with Article 13, due to lack of an effective remedy in the Greek context in order to control detention conditions.

⁵⁴ ECtHR, *S.Z. v. Greece* [appl. no 66702/13], 21.6.2018, par. 72.

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Court without a legal representative, even though Greek law does not guarantee access to legal representation for unaccompanied asylum-seeking children⁵⁵.

Recommendations

With regard to the application of safeguards against ill-treatment in police custody, the competent State authorities should take the necessary steps to ensure that:

- All persons detained by the police - for whatever reason - are systematically and without delay fully informed of their rights as from the very outset of deprivation of liberty. They should always be given a copy of the information leaflet. Foreign nationals who do not understand this information must be promptly provided with the services of an interpreter and should under no circumstances be requested to sign any statements or other documents without such assistance.
- The right of access to a lawyer becomes effective in practice for any detained person as from the very outset of deprivation of liberty by the police. This might require extending the existing legal aid system to the police investigation stage or when the suspect is questioned by the police, irrespective of whether the person concerned has formally been declared "accused", as well as reminding the *ex officio* lawyers, through the Bar Associations, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police. Further, persons detained by the police must be able to talk to a lawyer in private.
- Access to a doctor for persons held in police and border guard stations are met in practice. In particular, special care must be taken for the prisoners' mental health, by ensuring either a permanent psychiatrist position or regular psychiatrist visits in every facility. Alternatively, it would be useful to ensure that there is a number of appointments reserved for prisoners at public hospitals monthly, at least in certain "popular" medical specialties. Moreover, the provision of health-care in police and border guard stations must be reviewed accordingly and a system of regular visits by doctors and/or nurses reporting to a doctor should be established. Further, it is crucial that the principle of medical confidentiality is strictly respected.
- Every detained person is granted the right to notify a close relative or third party of their choice of their situation and placed in a position to effectively exercise this right as from the very outset of their deprivation of liberty.

With regard to the application of safeguards against ill-treatment in Psychiatric establishments, the competent State authorities should take the necessary steps to ensure that:

- Persons admitted to psychiatric establishments are provided with full, clear and accurate information, in an appropriate range of languages, setting out the facility's daily routine and patients' rights including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures. Patients unable to understand this information should receive appropriate assistance.
- Involuntary placement procedures offer guarantees of independence and impartiality, as well as of objective medical expertise.
- The law is amended so that the periodic review of the placement of long-term patients is explicitly required and that such a review is undertaken in practice.

⁵⁵ ECtHR, *H.A. v. Greece* [appl. no 19951/16], 28.2.2019, par. 212.

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- Patients benefit, in practice, from the right to be heard in person by the court during placement or appeal procedures. Further, it must be ensured that patients enjoy effective and free of charge – for indigent patients – access to legal representation.
- The practice applied to involuntary placements is reviewed and that the statutory time limitations are respected.
- The Greek law is amended in order to ensure that placement and treatment (where involuntary) are two separate decisions and that each is surrounded by appropriate safeguards.
- Procedures of internal and external complaints, including complaints boxes, are introduced at all psychiatric establishments,.
- The significant monitoring gap concerning the private sector institutions is remedied urgently and that appropriate external supervisory bodies are provided with the necessary resources to make frequent and unannounced visits to all places – including private clinics – where involuntary patients are hospitalised.
- All involuntary patients benefit from facilitated contact with the outside world.

With regard to the application of safeguards against ill-treatment of foreign nationals deprived of their liberty under aliens legislation, the competent State authorities should take the necessary steps to ensure that:

- All foreign nationals who are deprived of their liberty by the police under aliens' legislation are granted the rights of notification of custody, access to a lawyer and access to a doctor and are placed in a position to effectively exercise these rights as from the very outset of their deprivation of liberty. As regards the right of access to a lawyer, this should include the right to have access to legal advice as well as, when foreign nationals are not in a position to pay for a lawyer themselves, the right to benefit from access to free legal aid.
- All detained foreign nationals are systematically and fully informed of their rights, their legal situation (including the grounds for their detention) and the procedure applicable to them as from the very outset of their deprivation of liberty, if necessary, with the assistance of a qualified interpreter. Further, all detained persons should be systematically provided with a copy of the leaflet setting out this information in a language they can understand. Furthermore, when necessary, interpretation services must be made available to detained foreign nationals in all pre-removal centres, RICs and police and border guard stations in Greece. Detained persons should not be required to sign official documents in a language they do not understand. To this end, a copy of these documents should systematically be provided to detainees in a language they can understand or the content be translated.
- Custody records are properly maintained and accurately record the dates and times of actual apprehension, admission, placement in a cell, release or transfer, and reflect all other aspects of custody. Further, the introduction of electronic registers in all police establishments throughout Greece is expected to play a significant role in the application of legal safeguards against ill-treatment.
- A central incidents register and effective complaints procedures are introduced.
- With regard to the IOM's AVRR programme, all foreign nationals who declare their intention to sign up to their return from Greece to their country of origin should be fully informed of the consequences of their decision (including their detention) before signing, so that they can give an informed consent.

III. Detention

A. Prolonged period of pre-trial detention, juveniles

Relates to CAT Article 2, COBs par. 15 and LOI paragraph 3

In its 2016 LOI, the Committee, taking into account the long periods of pre-trial detention, including in the case of juveniles and the fact that separation between pre-trial and convicted detainees as well as juveniles and adults is not always guaranteed, requested information on steps taken (a) for the reduction of the length of pre-trial detention, especially for minors in juvenile detention and (b) for the strict separation between pre-trial and convicted detainees, between juveniles and adults, as well as between women and men in all detention facilities.

In its Replies to the LOI prepared by the Committee constituting Greece's 7th periodic report, the Greek State notes that there is an on-ongoing law-drafting process for the reform of the Criminal Code (CC) and Code of Criminal Procedure (CCP) and that the need for reduction in the use of pre-trial detention has been forwarded to and is currently examined by both the Committees preparing the drafts of the above-mentioned Codes.

Nonetheless, the GNCHR observes with concern that in the reformed Code of Criminal Procedure (CCP), as it was finally voted by the Greek parliament in June 6, 2019, the provisions of Article 282(4) of the current CCP in force are maintained intact in the new Article 286 of the newly adopted CCP.

Recommendations

Taking into account the Committee's concerns about long periods of pre-trial detention, including in the case of juveniles and bearing in mind that "excessively long periods of pre-trial detention are detrimental for the individual, can prejudice judicial cooperation between the Member States and do not represent the values for which the European Union stands"⁵⁶, the GNCHR reiterates its Recommendations⁵⁷ to the competent State authorities, according to which pre-trial detention must be reserved to exceptional cases and should be combined with the reduced imposition of penalties involving deprivation of liberty. Existing legislation on alternative measures and penalties aims indeed to achieve a rationalisation of criminal justice administration and a decongestion of detention centres, as long as there are no procedural obstacles. The ECtHR in its case-law found Greece in violation of Article 5(4) of ECHR, for failing to meet the speediness requirement when deciding on the applicant's request to replace the measure of temporary detention (the period of three (3) months and eight (8) days does not fulfil the requirement of the "reasonable time", as mentioned in Article 5(4) ECHR)⁵⁸. The above shows the ineffectiveness of a person's right to liberty.

In light of the above, the competent State authorities should take the necessary steps to ensure that pre-trial detention is only used in practice as an exceptional measure, as necessary and proportionate and in compliance with the presumption of innocence and the right to liberty. Its use should only be acceptable as a measure of last resort, in very limited circumstances.

⁵⁶ Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, 2009/C 295/01, p. 3.

⁵⁷ GNCHR, [Observations](#) on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR) (2013), p. 19.

⁵⁸ ECtHR, *Shyti v. Greece*, 17.10.2013, par. 36-42.

B. Administrative detention of asylum seekers and migrants

Relates to CAT Article 2, COBs par. 20 and LOI paragraph 5

In its 2016 LOI, the Committee, taking into account that asylum seekers and migrants in an irregular situation are subjected to long periods of administrative detention, requested updated information on efforts made to ensure (a) that administrative detention on the grounds of irregular entry is not applied to asylum seekers and (b) that the detention of asylum seekers is used only in exceptional circumstances or as a measure of last resort, on grounds specifically prescribed by law and only for the shortest possible time.

Immigration detention remains a systematic and often arbitrary practice in Greece, according to the *GCR 2018 Report on Administrative detention in Greece: findings from the field*⁵⁹. The report illustrates that grounds for detention of asylum seekers are widely read and applied without a thorough individualised assessment. Some groups of asylum seekers are automatically detained either upon arrival on the Eastern Aegean islands under a "pilot project" implemented on Lesbos, Kos and Leros, or following a second-instance rejection of their asylum applications. The effectiveness of judicial review of detention through the "objections" procedure remains limited since Administrative Courts do not hold hearings and do not scrutinise detention conditions, while their decisions cannot be appealed to a higher court. Automatic (*ex officio*) review of detention is also ineffective, with the Administrative Court of Athens ordering release from detention only in 4 out of 1,359 cases examined in 2018.

Other forms of detention in Greece lack legal basis altogether. These include: detention in the context of push-backs at the Greek-Turkish land border, detention prior to the referral of persons to the Reception and Identification Centre of Fylakio, Evros and detention of asylum seekers who have violated their geographical restriction on the Eastern Aegean islands.

The number of persons detained in pre-removal detention centres (overall and not at the same time) rose from 14.864 in 2016 to 25.810 in 2017 and 31.126 in 2018⁶⁰. Specifically, the number of asylum seekers detained in pre-removal centres increased from 4.072 in 2016 to 9.534 in 2017 and almost doubled to 18.204 in 2018⁶¹.

As it concerns the official data on the operational capacity in daily basis, despite the fact that the total capacity of the five hotspot facilities operating in the Eastern Aegean Islands was initially planned to be 7.450 places⁶², according to the National Coordination Center's for Border Control, Immigration and Asylum (NCCBCIA), their capacity has been reduced to 6.438 places. And this, notwithstanding the fact the occupancy level of the five RICs today, is more than double the capacity level (13.253 compared to 64.253), according to official data. In particular, the state of play of Eastern Aegean Islands (Lesbos, Chios, Samos, Leros, Kos), indicatively, in June 18, 2019 is the following:

⁵⁹ GCR, [Administrative detention in Greece: Findings from the field](#) (2018) [in Greek] ([Executive summary](#) in English).

⁶⁰ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 19, 145-146.

⁶¹ See also ECRE Weekly bulletin: [Greece: Detention Remains a Systemic and Arbitrary Practice](#), 3.5.2019.

⁶² European Commission, Third Report on the Progress made in the implementation of the EU-Turkey Statement, COM(2016) 634, 28.9.2016.

Hotspots	Start of operation	Capacity	Occupancy
Lesvos	October 2015	3.100	5.226
Chios	February 2016	1.014	1.763
Samos	March 2016	648	3.617
Leros	March 2016	860	1.040
Kos	June 2016	816	1.607
Total		6.438	13.253

Source: Ministry of Citizen Protection, National Coordination Center for Border Control, Immigration and Asylum (NCCBCIA), [National Situational Picture Regarding the Islands at Eastern Aegean Sea](#) (18.6.2019)

In addition, according to the Greek Ombudsman's general annual (2017) findings operating as NPM under OPCAT, it was observed that criminal inmates were detained in the same space (cell) as administrative detainees. It was found, however, that administrative detainees remain under custody for a long time, while criminal detainees remain for shorter periods, as transferees for a court hearing or for court appearance in the procedure for offenders caught in the act⁶³. Administrative detention conditions at pre-removal centres demonstrate the State's inability to adequately address the specified procedural and substantive guarantees, resulting in violation of the detainees' fundamental rights. The Greek Ombudsman recognises that the Hellenic Police has failed to meet its commitment for stopping the use of common detention cells, despite the fact that detention conditions in them objectively constitute inhuman or degrading treatment under Article 3 ECHR⁶⁴.

In its Special Report "Migration flows and refugee protection – administrative challenges and human rights", published in April 2017, the Greek Ombudsman noted that there is none more cynical admission to the disregard of fundamental rights than the belief that the "construction of detention facilities will serve as a deterrent to the creation of new migrant flows"⁶⁵. Thus, "the deprivation of personal liberty is no longer an exceptional and necessary measure to achieve the purpose of forced removal, as imposed by domestic law and the Returns Directive, but a policy instrument, part of which appears to be the artificial maintaining of poor conditions, as a tool for deterring the flow of new refugees". However, as the Greek Ombudsman constantly reminds, "the policy of the extended administrative detention has reached its limits and already constitutes part of the problem and not the solution, given that there is no infrastructure and expertise to ensure adequate guarantees for the deprivation of personal liberty in mass spaces"⁶⁶.

The 2017 finding of the Greek Ombudsman, according to which "administrative detention is not imposed as an exceptional measure, but as the norm, without examining alternative, less onerous, measures [...]. It is in fact imposed as a general measure, without always being preceded by

⁶³ Greek Ombudsman, *Annual Special Report 2017, op.cit.*, p. 32.

⁶⁴ *Idem*, p. 50.

⁶⁵ Greek Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, p. 88.

⁶⁶ Greek Ombudsman, *Annual Special Report 2017, op.cit.*, p. 50-51.

individual assessment"⁶⁷ remains valid. In particular the Greek Ombudsman had declared that. This is of particular concern with regard to the proper application of the lawful detention grounds provided by national legislation, as the particular circumstances of each case are not duly taken into consideration. Furthermore, the terms, the conditions and the legal grounds for the lawful imposition of a detention measure seem to be misinterpreted in some cases.

In addition, detention on national security or public order grounds has been also ordered for reasons of irregular entry into the territory, contrary to Article 31 of the Refugee Convention and the prohibition on detaining asylum seekers on account of their irregular entry or presence under Article 46(1) L 4375/2016⁶⁸.

GCR's serious concerns regarding the unlawfulness of administrative detention of asylum seekers are reiterated in its Submission to the Committee of Ministers of the Council of Europe in the case of *MSS v. Belgium and Greece*, where according to the GCR out of the total 2.933 persons detained by the end of 2018, 1.815 were asylum seekers⁶⁹. Further, no individual assessment procedure prior to the imposition of detention is in place and detention continues to apply indiscriminately, including against vulnerable applicants – families with children, persons suffering from mental health problems, victims of torture etc.-, while no alternatives to detention are examined or applied in practice.

To conclude, the GNCHR has expressed several times very serious reservations about the content of the EU-Turkey Statement, which represents an outright reversal of values at the European level in the field of human rights. Evoking for the umpteenth time fundamental international and European human rights instruments, in particular the EU Charter of Fundamental Rights and most notably Article 18 thereof, the 1951 Geneva Convention, the Protocol Relating to the Status of Refugees of 31 January 1967, Resolution 1821 (2011) of the Parliamentary Assembly of the Council of Europe on the interception and rescue at sea of asylum seekers, refugees and irregular migrants, the GNCHR recalls that the right of access to asylum and the prohibition of refoulement constitute fundamental pillars of the Refugee Law and the Universal Principles of human rights' protection upon which the international and European communities have been built⁷⁰.

Recommendations

In light of the above, the competent State authorities should take all necessary steps to ensure that:

⁶⁷ Greek Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, *op.cit.*, p. 57.

⁶⁸ Administrative Court of Athens, Decision 71/2018. In the same vein, in a case supported by the GCR, the Administrative Court of Corinth accepted objections against the detention of an Iranian citizen who was administratively detained on public order grounds after his 7-month conviction with a suspension of 3 years ordered by the competent Criminal Court, for his attempt to exit Greece illegally by making use of forged passport. The Administrative Court of Corinth ordered release and ruled that "the public order grounds of his administrative detention are not considered imperative, given the nature and the gravity of the offences in respect of which the above conviction was issued". See Administrative Court of Corinth, Decision II2265/2018. See also ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 152.

⁶⁹ GCR, [Submission](#) to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* [appl. no 30696/09] and related cases (2019), p. 8.

⁷⁰ GNCHR, [Report](#) on the EU-Turkey Agreement of the 18th of March 2016 regarding the refugee/migration issue in Europe in light of Greek Law 4375/2016 (2016), p. 11-12.

- Administrative detention on the grounds of irregular entry is not applied to asylum seekers. If, on the contrary, it is applied, it should be used only in exceptional circumstances or as a measure of last resort, on grounds specifically prescribed by law and its duration should be as short as possible.
- Alternatives to detention should be duly examined and exhausted, especially with regard to vulnerable groups.

Last but not least, as regards the EU-Turkey Statement of the 18th of March 2016, the GNCHR calls upon the Greek State, the UN, the EU institutions, all EU Member States and all the international organisations involved, in a spirit of responsibility, solidarity and sincere cooperation, to take all appropriate measures with a view to ensuring the full implementation in Greece of the EU legislation on alternate to detention measures. The GNCHR urges the EU, which is after all the party to the Statement with Turkey, not to pass the legal and moral responsibility of the refugee and migration crisis on to Greece. The EU must assume its own share of liability and responsibility and take all necessary measures so that the Statement will not be to the detriment of the rights of refugees and migrants. Finally, the GNCHR recommends to the Greek authorities to be particularly attentive to the implementation of the Statement, in order to make sure that the latter will not infringe fundamental rights of refugees, migrants and asylum seekers –as these are guaranteed under European and international law and interpreted by the international and European judicial bodies⁷¹.

C. Conditions of detention

Relates to CAT Article 11, COBs par. 14 and LOI par. 18-19.

In its 2016 LOI, the Committee, taking into account the alarming level of prison overcrowding, as well as the deplorable material and sanitary conditions in many police stations and prisons and the insufficient staff levels, including medical professionals, and lack of basic supplies, requested updated information on measures taken to improve conditions in all detention facilities, including places of detention for asylum-seekers and migrants and psychiatric institutions.

In order to deal with the broader issue of "conditions of detention" in the most efficient manner, the GNCHR will address separately the issues of "conditions of detention in police custody and penitentiary facilities", "living conditions in psychiatric establishments" and "conditions of detention of foreign nationals deprived of their liberty under aliens' legislation".

Conditions of detention in police custody and penitentiary facilities

The Greek prison system suffers for long from structural deficiencies. Overcrowding is the most important of them. The GNCHR recognises the significant efforts made by the State, over the past years, to address the overcrowding in prisons with the adoption of Law 4322/2015 and the reforms leading to the earlier release of prisoners after completing part of their imprisonment. Indeed, the situation has improved since the total number of inmates has dropped by 20%. However, according to the most recent Council of Europe Annual Penal Statistics, it is still more than ten thousand, a critical threshold affecting the whole prison system in Greece⁷². With regard to living conditions and health care services, the situation has improved compared to the pre-

⁷¹ *Idem*, p. 13-14.

⁷² Council of Europe, Annual Penal Statistics SPACE I – Prison Populations Survey 2015, updated on 25th April 2017, PC-CP (2016)6, 14.3.2017, p. 34.

2015 situation, but not to the point of removing structural problems. Serious infrastructure and staffing problems have not been sufficiently dealt with. The GNCHR has addressed this issue in its Observations on the "Strategic plan for the prison system 2018-2020"⁷³, in which it proposes the basic principles that must guide the solutions attempting to deal with the deficiencies in detention conditions and the overcrowding of prisons.

The GNCHR's observations are confirmed by the Greek Ombudsman's findings, operating as NPM. According to the Ombudsman's general annual findings, based on all NPM inspections of Penitentiary Facilities (Diavata, Corinth, Chios, Ioannina, Corfu, Nigrita, Kassandra, Komotini), no overcrowding is observed in 2017, which has significantly improved detention conditions. However, the Ombudsman repeats its earlier recommendation for a holistic approach to the improvement of incarceration conditions.⁷⁴

In addition, the CPT's delegation found that the living conditions in the prisons visited were generally very poor. In particular, Diavata Judicial Prison in Thessaloniki and Korydallos Men's Prison in Athens remained essentially the same as that observed at the time of the 2013 visit, overcrowded and accommodating more inmates than their capacity⁷⁵. Further, the CPT's delegation had specific observations for two more penitentiary establishments visited (Alikarnassos Prison and Nafplio Prison), expressing its concerns with regard to the occupancy levels in each cell, the in-cell sanitary facilities, as well as the personal living space of each inmate⁷⁶. According to the Response of the Ministry of Justice, Transparency and Human Rights to the CPT's finding, the online system for the interoperability of detention establishments should lead to more effective management of prisoners population and the rationalization of its distribution, as it will be a key tool for faster and more efficient management of the necessary transfers⁷⁷.

Apart from the material conditions of penitentiary facilities in Greece, the GNCHR reiterates that gender identity, as a specific characteristic of particular vulnerability, is often not respected by the competent authorities during detention⁷⁸. Indeed, according to the recordings of the Greek Transgendered Support Association (SYD), trans persons in detention or prison are often held with other persons based on their sex or in some cases they are even held in disciplinary isolation. This, inevitably, results to their additional stigmatisation, but mainly to sexual harassments, attacks and/or risk of rape⁷⁹.

Living conditions in psychiatric establishments

The GNCHR notes positively that, according to the CPT's latest findings, patients' living conditions in psychiatric establishments are in most of the establishments visited rather satisfying. Nonetheless, there is still a lot of work to be done. In particular, overcrowding at all

⁷³ GNCHR, [Observations](#) [in Greek] on the Strategic Plan (Strategic Planning 2018-2020) for the Prison System of the Ministry of Justice, Transparency and Human Rights - General Secretariat for Transparency and Human Rights (2017).

⁷⁴ "Occasional measures to address prison congestion are but one aspect of the care that the State should take regarding criminal detention". See Greek Ombudsman, *Annual Special Report 2017, op.cit.*, p. 16.

⁷⁵ CPT/Inf (2016) 4, par. 71-72.

⁷⁶ *Idem*, par. 73-76.

⁷⁷ Response of the Greek Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 14 to 23 April 2015, CPT/Inf (2016) 5, 1.3.2016, p. 9.

⁷⁸ GNCHR, [Recommendations](#) on transgender persons and legal gender recognition (2015), p. 8.

⁷⁹ SYD, *Contribution to the GNCHR's Submission*, received: 27.6.2019.

three psychiatric units of general hospitals visited is reportedly a regular occurrence throughout the Greek mental health care system⁸⁰. In fact, in some cases (eg. Athina Clinic) the multiple-occupancy rooms are accommodating up to 7 patients each resulting to lack of privacy for patients⁸¹, while in others no outdoor exercise facility is available⁸². Further, resources available for activities are in some establishments scarce, while in others (eg. Unit at Evangelismos Hospital), patients within the more restricted confines had little to occupy themselves with other than a TV room, a smoking area, and a small collection of books⁸³.

Towards discharging psychiatric establishments, the Ministry's of Health Response to the CPT is rather encouraging, since the Ministry's new Circular (November 2018) regarding the referral and transition of mental health patients to community-based Psychosocial Rehabilitation Units (boarding houses, hostels and sheltered apartments) aims to facilitate the distribution of mental health patients in appropriate community-based Units⁸⁴. It is worth mentioning that according to the Circular, the upcoming development of a considerable number of new community-based Units (11 boarding houses for long-term patients of psychiatric hospitals, 4 boarding houses for patients suffering from autism and 2 more specialised boarding houses) with funds from the National Strategic Reference Framework 2017-2020 will further assist addressing the problem of overcrowded Psychiatric Units of hospitals⁸⁵.

Conditions of detention of foreign nationals deprived of their liberty under aliens' legislation

Despite the fact that, according to the Hellenic Police, the main concern of the Greek Police Services and their staff is the constant improvement of the conditions of detention of foreigners and taking into account that they are constantly aiming at not keeping third-country nationals subject to a return procedure in police detention facilities⁸⁶, the GNCHR notes with disappointment that detention conditions for third-country nationals, including asylum seekers, do not meet the basic standards in Greece. Despite commitments from the Greek authorities to phase out such practices, third-country nationals, including asylum seekers and unaccompanied children, are also detained – apart from pre-removal facilities – in police stations and special holding facilities. As confirmed by the Directorate of the Hellenic Police, there were 835 persons in administrative detention in at the end of 2018 in facilities other than pre-removal centres, of whom 196 were asylum seekers⁸⁷. According to the GCR, detention is also *de facto* applied in the RIC of Fylakio⁸⁸.

The GNCHR notes with great concern that the CPT's previous reports on the critical conditions of detention in police and border guard stations, highlighting the totally unsuitable character of these facilities for holding detained persons for periods exceeding 24 hours, remain largely the same. In particular, material conditions at specific police and border guard stations are grossly sub-standard (such as extremely filthy, unhygienic and full of waste cells and sanitary annexes,

⁸⁰ CPT/Inf (2019) 4, par. 26.

⁸¹ *Idem*, par. 25.

⁸² *Idem*, par. 27.

⁸³ *Idem*, par. 30.

⁸⁴ CPT/Inf (2019) 5, p. 5.

⁸⁵ *Ibidem*.

⁸⁶ Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 2-3.

⁸⁷ Information provided by the Directorate of the Hellenic Police, 23 January 2019. See this way ECRE, *AIDA Country Report Greece 2018, op.cit.*, p. 165.

⁸⁸ *Ibidem*.

less than 2 m² of living space per person, dirty beds, sponge mattresses and blankets, insufficient natural light, sanitary facilities were also in a poor state of repair, lack of measures to prevent infectious diseases and no access to outdoor exercise etc.)⁸⁹.

The ECtHR has consistently held that prolonged detention in police stations *per se* is not in line with guarantees provided under Article 3 ECHR⁹⁰. In June 2018, it found a violation of Article 3 ECHR in *S.Z. v. Greece* concerning a Syrian applicant detained for 52 days in a police station in Athens⁹¹. In February 2019, it found a violation of Article 3 ECHR due to the conditions of "protective custody" of unaccompanied children in different police stations in Northern Greece such as Axioupoli and Polykastro⁹².

Moreover, the CPT's delegation noted with particular concern that, despite a 2016 order issued by the Hellenic Police Headquarters instructing police officers to separate women and children from unrelated men in closed facilities, families with children and women were being held together with unrelated men in cells in the police and border guard stations, with whom they had to share toilets and sanitary facilities. Further, they did not receive appropriate care for their specific needs⁹³.

Further, with regard to the need to protect detained persons in situations of particular vulnerability due to specific characteristics, such as their age or their gender, gender identity is one of them, though unfortunately not respected. Indeed, the GNCHR deplors that, despite the very important step forward made by the Greek Government of the passing of Law 4491/2017 on legal gender recognition, according to the Greek Transgendered Support Association (SYD), transgender refugees, and in particular transsexual women, have been detained together with men, risking this way sexual harassment or even sexual assault or rape⁹⁴.

As regards the pre-removal centres (Amygdaleza, Fylakio and Moria and Pyli), the CPT reiterated that the facilities have not changed since the CPT's previous visit⁹⁵ and that they continue to be severely overcrowded and appalling and totally unsuitable for long-term detention material conditions (little living space per person, sanitary equipment and air-conditioning units in need of repair, poor quality and quantity of food, no access to hot water, insufficient hygiene products, no clothing or shoes were provided, dirty blankets and bed sheets etc.)⁹⁶. The CPT stressed that "this state of affairs is wholly unacceptable [...] holding persons for several weeks or months in such appalling conditions can easily be considered as amounting to inhuman and degrading treatment. These conditions are particularly unsuitable for families with children, single/pregnant women and unaccompanied children, due to their vulnerability"⁹⁷.

In Fylakio and Lesvos (Moria) and to a lesser extent also at the centres in Amygdaleza and Kos (Pyli), the CPT gained the impression that the design of the establishments was far too carceral. In Lesvos and Kos, rolls of razor blade wire were omnipresent, as were high wire-mesh fences

⁸⁹ CPT/Inf (2019) 4, par. 87-88.

⁹⁰ ECtHR, *Ahmade v. Greece* [appl. no 50520/09], 25.9.2012, par. 101.

⁹¹ ECtHR, *S.Z. v. Greece* [appl. no 66702/13], 21.6.2018, par. 40.

⁹² ECtHR, *H.A. and others v. Greece* [appl. no 19951/16], 28.2.2019, par. 167-170.

⁹³ CPT/Inf (2019) 4, par. 89.

⁹⁴ SYD, *Contribution to the GNCHR's Submission*, received: 27.6.2019. In this regard, see also GNCHR, [Recommendations](#) on transgender persons and legal gender recognition (2015).

⁹⁵ With the exception of Pyli pre-removal centre (Kos), which the CPT's delegation visited for the first time in 2018.

⁹⁶ CPT/Inf (2019) 4, par. 100-105.

⁹⁷ *Idem*, par. 105.

which sometimes ran in several lines. Further, the cells in the centre in Fylakio gave a prison-like atmosphere⁹⁸.

Further, the capacity of the only RIC in the region of Evros (Fylakio RIC) is grossly insufficient to adequately respond to the significant increase in arrivals, while due to the lack of sufficient open reception facilities in mainland Greece, several foreign nationals, and particularly unaccompanied children, are required to stay in the RIC for prolonged periods⁹⁹. As a result of this overcrowding, apprehended irregular migrants are initially placed in custody in one of the police and border guard stations in the Evros region, before being transferred to Fylakio Pre-removal Centre (or another detention centre in Northern Greece), by way of derogation from the existing legislation, where they were warehoused in detention until a place in the RIC became available. This deprivation of liberty can last between several days and several weeks, but as much as several months in some cases, until their transfer to Fylakio RIC. According to the information gathered by the CPT's delegation, all foreign nationals, including vulnerable persons, are subjected without distinction to this practice¹⁰⁰. Moreover, new arrivals are mainly placed according to nationalities and available space, which results in some families with children, and particularly girls, women, and unaccompanied children being held together in a section with unrelated boys or men, with whom they had to share toilets and sanitary facilities¹⁰¹.

Problems related to lack of detention areas in the premises of the Hellenic Police is an issue of high priority for the competent State authorities. Indeed, the GNCHR considers extremely positive the Ministry's of Citizen Protection Response to the CPT, according to which "in line with the continuous effort to ensure the human rights, to improve the structural infrastructures and to assure the good health stay and protection of the detainees, a Technical Description of the detention areas has been prepared, based on which the detention areas of the police services are constructed-restructured, taking into account, among others, of the instructions of the CPT Committee. In this context, projects are implemented, either through the Public Investments Programme (PDE) or through the Public-Private Sector Joint Ventures (SDIT) regarding the erection of new modern buildings that will have the proper spaces to fully cover both the working needs of the staff and the needs of the incoming citizens, and to provide the detainees in those services with human detention conditions"¹⁰².

Further, according to the same document, within the Asylum, Migration and Integration Fund (AMIF), the competent State authorities are in consultation with the proper Directions of the Hellenic Police Headquarters and the other Services of Ministry of Citizen Protection, to implement the 'renovation-reconstruction and maintenance of the Pre-departure Detention Centres for Aliens (ProKeKA)',¹⁰³.

Regarding the provision of health care in pre-removal centres, according to the CPT 2018 findings, "the available resources are totally inadequate compared to the needs observed. The number of health-care staff in each of the centres is insufficient. In some centres, there is no doctor and even the most basic medical equipment is lacking. There is also a total lack of effective routine medical screening of new arrivals, including screening for contagious diseases

⁹⁸ *Idem*, par. 108.

⁹⁹ *Idem*, par. 96.

¹⁰⁰ *Ibidem*.

¹⁰¹ *Idem*, par. 98.

¹⁰² CPT/Inf (2019) 5, p. 25.

¹⁰³ *Idem*, p. 29.

or vulnerabilities. In short, even the most basic health-care needs of detained persons are not being met¹⁰⁴. Statistics demonstrate that the situation has not evolved in the course of 2018 and that pre-removal centres continue to face substantial medical staff shortage. According to the GCR, at the end of 2018, out of the total 20 advertised positions for doctors in pre-removal centres, only 9 were actually present. There was no doctor present in Paranesti, Lesvos and Kos and no psychiatrist in any of the pre-removal detention centres at the end of 2018. Psychologists were not present in Paranesti and Xanthi¹⁰⁵.

In this regard, it is a rather positive development that "within the application of the National Programme of the Domestic Affairs sector 2014-2020 (Multiannual Fund AMIF) [...] the Ministry of Health/Health Unit Societe Anonyme (AEMV S.A) was assigned with the projects of pharmaceutical care, mental and social support and interpreting in the ProKeKA, of 7.009.974,01 euros total budget. The implementation of the related Programme has started in the mid-January 2018 by placing in the ProKeKA: medical doctors, psychiatrists, nurses, administrative employees, health visitors, psychologists, social workers and interpreters"¹⁰⁶.

Last but not least, the GNCHR is very concerned by reports from asylum seekers of sexual harassment and violence in sub-standard reception centres on the Greek islands, despite welcomed Government measures to address overcrowding and dire living conditions. According to the UNHCR, "the situation is particularly worrying in the RICs of Moria (Lesvos) and Vathy (Samos), where thousands of refugees continue to stay in unsuitable shelter with inadequate security [...] Reports of sexual harassment in Moria are particularly high"¹⁰⁷.

In the same vein, according to MSF's contribution to the GNCHR's submission, dated 18.6.2019, "during 2018, MSF responded to 28 cases of sexual violence (rape, non-penetrative sexual assault, sexual threats +/- physical assault) that took place on Lesvos (in and around Moria camp) amongst the migrant population. Of the cases of rape and non-penetrative sexual assault, 18 of these were adults, and 10 were children / minors (under 18 years old)"¹⁰⁸.

Recommendations

With regard to the conditions of detention in police custody and penitentiary facilities, the competent State authorities should take the necessary steps to ensure that:

- The approach to the improvement of incarceration conditions is holistic. In particular, as recommended by the Greek Ombudsman operating as NPM, "legislation should be centrally oriented towards the rationalisation of prison terms imposed, the protection of human dignity and the reduction of incarceration time through the implementation of alternative detention measures. However, the penitentiary issue cannot be addressed solely on a legislative basis, without the necessary funds and qualified staff. The quality of infrastructure and the adequacy of human resources are essential in guaranteeing safety and respect of human dignity during detention"¹⁰⁹.

¹⁰⁴ CPT, *Preliminary observations made by the CPT which visited Greece from 10 to 19 April 2018*, CPT/Inf (2018) 20, 1.6.2018, par. 21.

¹⁰⁵ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 168.

¹⁰⁶ CPT/Inf (2019) 5, p. 30.

¹⁰⁷ UNCHR, [Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands](#), 9.2.2018.

¹⁰⁸ On the hotspot of the island of Lesvos, MSF has a clinic outside of Moria RIC, where they treat urgent cases of sexual violence which have happened in the last 5 days. See MSF, *Contribution to the GNCHR's Submission*, received: 18.6.2019.

¹⁰⁹ Greek Ombudsman, *Annual Special Report 2017*, *op.cit.*, p. 16.

- Minimum standards for personal living space in prison establishments are aligned with the CPT's standards¹¹⁰.
- The occupancy levels of cells is reduced, initially ensuring that no more than two persons are placed in a single cell and thereafter that each cell revert to single-occupancy only. The in-cell sanitary facilities should be fully partitioned.
- Minimum standards in respect to material conditions in penitentiary establishments are guaranteed. In particular, it must be ensured that:
 - all persons detained have ready access to a proper toilet facility at all times, including at night,
 - each detained person is provided with a clean mattress, clean blanket, clean bedding and a means of rest, such as a plinth or a bed,
 - all detained persons are provided with adequate and appropriate food, which includes at least one hot meal a day,
 - all detained persons staying longer than 24 hours are provided with a basic sanitary kit, free of charge,
 - all detained persons are provided with sufficient quantities of detergent to keep their cells clean,
 - detention areas (including sanitary facilities) are maintained in an adequate state of repair and cleanliness,
 - all detained persons have adequate lighting,
 - all detained persons staying longer than 24 hours are provided with access to hot water for the purpose of washing,
 - all persons detained longer than 24 hours are offered access to outdoor exercise every day.
- The overcrowding of the penitentiary facilities where the problem persists is progressively reduced (mostly Diavata Judicial Prison and Korydallos Men's Prison).
- The healthcare provision is improved. In this direction, efforts should be intensified towards hiring permanent medical and nursing staff in every detention facility, ensuring 24 hour availability.
- Gender identity and gender diversity in general of detained person are respected.
- The effect of the operation of large detention facilities on the good administration of the prison, as well as on the living conditions of prisoners and personnel is examined and the gradual prevalence of the operation of small detention facilities is considered.
- The number of work opportunities in prisons is increased, preferably work with a vocational value.
- Police stations are only used for holding criminal suspects for short periods and that they pursue their policy to prevent overcrowding and to avoid, as far as possible, holding irregular migrants in police stations.
- Minimum standards in respect to material conditions in police stations are guaranteed.

¹¹⁰ Council of Europe, European Committee on crime problems (CDPC), *White paper on prison overcrowding*, PC-CP (2015) 6 rev 7, 30.6.2016.

With regard to the living conditions in psychiatric establishments, the competent State authorities should take the necessary steps to ensure that:

- A strategy is adopted to end systemic overcrowding in psychiatric units in Greece. In particular, persons who do not require in-patient psychiatric care should not be placed in such care institutions.
- Patients in any psychiatric establishment enjoy sufficient privacy, in particular in terms of the number of patients accommodated in each room.
- All psychiatric patients, including long-term and forensic patients, are offered a range of recreational activities, including outdoor exercise, suited to their needs. In the interest of including immobile or less mobile patients, at least some of these activities should be offered within wards accommodating them.

With regard to the conditions of detention of foreign nationals deprived of their liberty under aliens' legislation, the competent State authorities should take the necessary steps to ensure that:

- Drastically reduce the occupancy levels of all facilities, so that all detained persons are held in decent and clean conditions without exceeding the establishment's capacity (calculated on the basis of 4 m² of living space per person).
- Cells, including sanitary facilities, must be maintained in an adequate state of repair and offer both sufficient access to natural light and adequate artificial lighting.
- Women and children are never detained in the same cell as unrelated men.
- All detained persons are provided with:
 - a mattress, a blanket, and bedding – all clean – and a means of rest and
 - adequate and appropriate food free of charge, which includes at least one hot meal a day.
- All detained persons staying longer than 24 hours are provided with:
 - a basic sanitary kit, free of charge,
 - access to hot water for the purpose of washing and
 - access to outdoor exercise every day.
- Alternative measures to detention for new arrivals, and particularly for asylum seekers and vulnerable persons are introduced.
- Vulnerable persons (e.g. families with children, pregnant women, etc.) are immediately transferred to open reception facilities where they can receive appropriate care and support for their specific needs, which also implies that the number of places in these facilities should be increased.

Last but not least, the GNCHR recalls the European Parliament's Report on the situation of women refugees and asylum seekers in the EU, where it is underlined that "even in countries deemed safe, women may suffer gender-based persecution, while LGBTI people may also be subjected to abuse, and thus have a legitimate request for protection"¹¹¹. In this end, the GNCHR,

¹¹¹ European Parliament, Committee on Women's Rights and Gender Equality, [Report on the situation of women refugees and asylum seekers in the EU](#), 2015/2325 (INI), 10.2.2016, par. 12.

sharing the European Parliament's recommendations in this regard, calls on the Greek competent State authorities to:

- Adopt asylum procedures and endeavour to develop training programmes which are sensitive to the needs of women with multiple marginalised identities, including LGBTI women,
- Ensure the operation of LGBTI-sensitive reception facilities,
- Combat harmful stereotypes about the behaviour and characteristics of LGBTI women and
- Fully apply the EU Charter of Fundamental Rights in respect of their asylum claims.

D. Systematic monitoring of detention facilities, national preventive mechanism

Relates to CAT Article 11, COBs par. 17 and LOI par. 17.

In its 2016 LOI, the Committee, taking into account the importance of the systematic monitoring of all places of detention, including facilities for migrants and asylum seekers, requested updated information on steps taken to establish an NPM, to ensure its mandate and to allocate adequate resources for its effective functioning. The Committee would also like to know if non-governmental organisations have access to places of detention.

The GNCHR notes with satisfaction, as the Deputy Ombudsman for Human Rights himself recognises, that "the National Preventive Mechanism has gradually consolidated its mandate as an external monitoring body of detention conditions nationally and has at the same time been established as a valid counterpart of the administration concerning prevention of breaches to prisoners' rights"¹¹². However, the GNCHR cannot but highlight the Deputy Ombudsman's observation that the allocation of state funds occurred for the first time at the second half of 2017, during the fourth mandate of the Greek Ombudsman operating as NPM under OPCAT. It goes without saying that regular and stable state funding is absolutely necessary to overcome functional obstacles and limitations in mission-related actions and to ensure the effective functioning of the NPM.

Recommendations

The competent State authorities should take all the necessary steps to ensure that the allocation of funds for the Greek Ombudsman operating as NPM under OPCAT is assured by the State in a stable, regular and sufficient manner, in order to ensure that the NPM's mandate to monitor all detention facilities is carried out independently and effectively throughout the Country.

¹¹² Greek Ombudsman, *Annual Special Report 2017, op.cit.*, p. 10.

IV. Torture or ill-treatment and excessive use of force by the police

A. Torture or ill-treatment and excessive use of force by the police

Relates to CAT Article 2, COBs par. 10-11 and LOI par. 4.

In its 2016 LOI, the Committee, taking into account the persistent allegations of torture and ill-treatment by law enforcement officials in immigration detention facilities and police stations, in particular in premises of Criminal Investigation Departments (CID), as well as the allegations of excessive use of force, including the use of chemicals, by police during the demonstrations, in combination with the limited number of prosecutions in such cases, requested updated information on measures taken to ensure that (a) chemicals are used for crowd control in enclosed areas only in extreme life threatening situations, (b) cases of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished and (c) an adequate system for monitoring police abuses is established.

It is a fact that, as regards persisting ill-treatment and excessive use of force by law enforcement officials, the Greek authorities are facing significant on-going challenges, especially with the high number of foreign nationals arriving in the Country. Nonetheless, it is important to explore whether these challenges concern only third country nationals held under aliens' legislation or other "detained persons" as well. In order to deal with the broader issue of "torture or ill-treatment" in the most efficient manner, the GNCHR will address separately the issues of "ill-treatment in police custody and prison establishments", "ill-treatment in psychiatric establishments" and "ill-treatment of foreign nationals deprived of their liberty under aliens legislation".

Ill-treatment in police custody and prison establishments

The GNCHR notes with great concern that allegations of ill-treatment and excessive use of force by law enforcement officials persist. Indeed, in the course of the 2015 visit, the CPT's delegation again received a significant number of credible allegations of physical ill-treatment of criminal suspects (including of juveniles) detained by the Hellenic Police. The allegations particularly related to excessive use of force by the police at the time of apprehension, after the person had been brought under control, as well as to the period of questioning by officers of the Security Departments. Alleged ill-treatment generally consisted of slaps, punches, kicks and truncheon blows (but also other objects) to the body and to the head. In a number of cases, the medical evidence – based on a physical examination of the persons concerned and/or consultation of medical files – revealed injuries that were consistent with the allegations of ill-treatment¹¹³.

As regards allegations for ill-treatment in penitentiary facilities, the problem, according to findings of the CPT's delegation during her previous visit, is not necessarily ill-treatment of inmates by staff, but inter-prisoner violence and intimidation, leading even to hospitalisation of inmates due to severe injuries inflicted by other inmates¹¹⁴. A phenomenon which is "directly linked to shortages of staff, resulting in control being ceded to groups of particular prisoners, often formed along ethnic lines, within the accommodation wings. These groups intimidate,

¹¹³ CPT/Inf (2016) 4, par. 15.

¹¹⁴ *Idem*, par. 65-66.

IV. Torture or ill-treatment and excessive use of force by the police

bully and physically abuse other prisoners"¹¹⁵. The GNCHR shares the CPT's serious concerns that despite the gravity of the situation little or no action appears to have been taken to investigate the underlying causes of the violence or to put in place a strategy to prevent similar episodes of violence breaking out.

The GNCHR highlights with satisfaction the Ministry's of Citizen Protection Response to the CPT, according to which "within the expressed will of the Political and Natural Leadership for zero tolerance to matters of human rights violation, orders have been issued and transmitted to all the Services involved in such cases, whereby the Hellenic Police staff is reminded of the main provisions from which the requirement of life protection, respect of human dignity, prevention of discrimination or torture or other inhuman or degrading treatment and punishment derives in relation to the matter of citizen rights safeguarding and the general behaviour of police officers towards the citizens, pointing out to them that these fundamental principles are a matter of primary significance to the Hellenic Police Headquarters. At the same time, it is especially noted that if any breaching of these principles and values is found via an administrative investigation, strict disciplinary sanctions will be imposed as provided for in the effective disciplinary law. It has also been noted that in case of any information containing serious indications of possible mistreatment of a person, the administration should take effective action, according to the provisions of the PD 120/2008 on the 'Disciplinary Law on the Police Staff', to investigate and to attribute the respective disciplinary sanctions, depending on the importance of the act, against the liable persons, to avoid any sense of impunity"¹¹⁶.

However, according to the Hellenic Police's Replies to the GNCHR Questionnaire, during the past 12 months, no disciplinary penalties have been imposed on police officers and special guards for torture or other inhuman and degrading treatment¹¹⁷. Further, it is also quite interesting to note that since June 2012 up to today, according to the Hellenic Police's Replies, 57 disciplinary prosecutions have been exercised, following the conduct of sworn administrative inquiries (EDE), under Article 26(1) PD 120/2008, for the offending behaviour of torture or other inhuman and degrading treatment¹¹⁸. Out of these fifty seven (57) prosecutions, the majority of cases (48 cases) were closed¹¹⁹.

It is extremely interesting as well that, pursuant to the same document, that "within the Asylum, Migration and Integration Fund (AMIF), [the competent State authorities...] are in consultations to implement the action 'free provision of legal support' for the aliens that are held in the ProKeKAs. In particular, the provision of legal support/protection will concern the administrative differences resulting from or regarding the filing of objections against the administrative detention or lodging of appeal against the administrative decision of return and the lodging of appeal against the rejecting decision or filing of petition for suspension-cancellation of an administrative decision of return"¹²⁰.

¹¹⁵ *Idem*, par. 66.

¹¹⁶ CPT/Inf (2019) 5, p. 16. See also Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 15.

¹¹⁷ Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 14.

¹¹⁸ *Ibidem*.

¹¹⁹ *Ibidem*.

¹²⁰ CPT/Inf (2019) 5, p. 17.

Ill-treatment in psychiatric establishments

As regards ill-treatment in psychiatric establishments, the findings of the CPT's delegation during its most recent visit in 2018 are rather encouraging. Indeed, the CPT's delegation received hardly any allegations of ill-treatment by staff. On the contrary, it notes positively that, in most of the establishments visited by its delegation, patients spoke well of staff¹²¹. At the same time, also encouraging is the small number of allegations of violence among patients received by the CPT's delegation¹²². Nevertheless, there are still some isolated allegations of ill-treatment by staff at specific clinics (eg. punches on the back, restraint straps being applied too tightly, verbal abuse etc.), as well as a small number of allegations of violence among patients which need to be addressed¹²³.

In that context, according to the Ministry's of Health Response to the CPT, the Ministry addressed, in November 2018, a Circular to all psychiatric establishments, regarding injuries suffered by patients. The Circular stipulated among others that all injuries suffered by patients must be diligently recorded, both in a specific and in each patient's personal medical record, that the patients concerned must be examined by a doctor who should describe the injury in a detailed medical report, specifically mentioning if the injury is, in the doctor's view, indicative of possible ill-treatment or inter-patient violence and that the Director of the Hospital, or the Scientific Manager of the Psychosocial Rehabilitation Unit, must bring to the attention of the relevant prosecutor all aforementioned medical reports in which possible ill-treatment or inter-patient violence is mentioned, even in the absence of an allegation to this effect¹²⁴.

Ill-treatment of foreign nationals deprived of their liberty under aliens legislation

The GNCHR notes with disappointment and great concern that the CPT's delegation acknowledged, during its last visit in 2018, significant on-going challenges that the Greek authorities are facing with the high number of foreign nationals arriving in the Country. In particular, the delegation received credible allegations of physical ill-treatment by the police, including slaps, punches, kicks and baton blows. The allegations related primarily to detention places in the Evros region (the Fylakio Pre-removal Centre, Fylakio Reception and Identification Centre (RIC) and Tycherio Police and Border Guard Station¹²⁵) and on Lesbos (Moria Pre-removal Centre). The delegation also heard several allegations of verbal abuse, including racist language, and disrespectful behaviour by police officers towards detained persons¹²⁶.

The CPT's findings are confirmed by the Report of Amnesty International of the state of the World's human rights, pursuant to which the majority of victims of reported incidents of ill-treatment and excessive use of force by law enforcement officials are refugees and migrants trapped on the Aegean islands as a result of the EU-Turkey deal¹²⁷.

¹²¹ CPT/Inf (2019) 4, par. 23.

¹²² *Idem*, par. 24.

¹²³ *Idem*, par. 23-24. For further detail with regard to the use of means of restraint as well as the obligation to submit regular quantitative reports to the Health Ministry, see Special Committee for the Protection of the Rights of Persons with Mental Health Disorders, *Guidelines on the Use of Restraints*, 30 January 2008, as well as Ministry of Health, [Special Committee for the Protection of the Rights of Persons with Mental Health Disorders](#).

¹²⁴ CPT/Inf (2019) 5, p. 4.

¹²⁵ It is to be noted at this point that, according to the Ministry's of Citizen Protection Response to the CPT,

¹²⁶ CPT/Inf (2019) 4, par. 74-75.

¹²⁷ *Amnesty International Report 2017/2018. The state of the World's human rights, op.cit.*, p. 179

IV. Torture or ill-treatment and excessive use of force by the police

Another issue the GNCHR would also like to stress is the special care that our society needs to provide to torture survivors. Currently, there are no public health structures specialised in identifying or assisting torture survivors in their rehabilitation process. As a result, it is for the NGOs running relative specialised programmes to handle the identification and rehabilitation of victims of torture. This is rather problematic for reasons related to the sustainability of the system, given the fact that NGOs' relevant funding is often interrupted. In particular, in Athens, torture survivors may be referred for identification purposes to Metadrasi, whose service had stopped for a substantial period of time due to lack of funding before restarting. However, the duration of the project is uncertain and dependent on funding. Rehabilitation of victims of torture is also provided by GCR and Day Centre Babel ("Prometheus" project – Rehabilitation Unit for Victims of Torture) in cooperation with MSF. Funding of the Rehabilitation Unit also depends on availability of funds by other organisations and is scarce¹²⁸. In fact, according to MSF, "many torture survivors, some having been identified as vulnerable and others not, are still stuck on the islands, far from the adequate medical care they need to receive in Athens. Other torture survivors who have moved to the mainland without permission have also found themselves in limbo, unable to proceed with their asylum claim. The opaque asylum system and the many barriers in accessing basic services in Athens and across the country have only increased their hardship"¹²⁹.

The identification of migrants, refugees and asylum seekers with disabilities is *per se* considered to be a major problem. The Greek general legal framework on Asylum Service and the First Reception Service includes provisions for the protection of migrants, refugees and asylum seekers with disabilities but its implementation is rather inefficient. The GNCHR considers that such a protective legislative framework is of importance but the protection of refugees with disabilities in practice remains a big challenge. This is mainly due to the fact that crucial structures such as the First Reception Service and the Asylum System are of great need of human, economic and material resources. Such deficiencies are further exacerbated in multiple crisis conditions and the onslaught of mass migration¹³⁰. According to Human Rights Watch, "refugees, asylum seekers and other migrants with disabilities are not properly identified and do not enjoy equal access to services in reception centres in Greece. Together with thousands of other migrants and asylum seekers, they remain unprotected [...and] are being overlooked in getting basic services, even though they are among the refugees and migrants most at-risk"¹³¹.

The existence of the above adverse conditions is due, in particular, to the lack of accessible infrastructure and the lack of international sign language interpreters and interpreters of spoken languages by refugees, resulting in a lack of understanding of their situation. Furthermore, failing to accommodate refugees with disabilities in specialised structures which can meet their needs and to provide them with effective access to health-care services contributes to the creation of an extremely unfavourable environment for refugees with disabilities.

¹²⁸ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 91.

¹²⁹ MSF, [June 26: International Day in Support of Victims of Torture](#), 26.6.2017.

¹³⁰ HRC 31, Written submission by the Greek National Commission for Human Rights Article 11 of the Convention on the Rights of Persons with Disabilities on situations of risk and humanitarian emergencies, A/HRC/31/NI/9, 24.2.2016, par. 10-11.

¹³¹ HRW, [Greece: Refugees with Disabilities Overlooked, Underserved. Identify People with Disabilities; Ensure Access to Services](#), 18.1.2017.

Recommendations

With regard to Ill-treatment in police custody and prison establishments, the competent State authorities should take the necessary steps to ensure that:

- A clear and firm message of zero tolerance of ill-treatment of persons deprived of their liberty is actively promoted.
- The basic principles with regard to the apprehension of a criminal suspect are reiterated on a regular basis to police officers so that no more force than what is strictly necessary is used. Law enforcement officials should be continuously reminded, including from the highest political level and through appropriate training, that any form of ill-treatment of detained persons – including verbal abuse, racist behaviour, threats, and psychological ill-treatment – constitutes a criminal offence and will be prosecuted accordingly.
- A culture change within the ranks of the Hellenic Police is actively promoted and "whistle-blower" protective measures are adopted. Moreover, in order to back up any message of zero-tolerance, effective investigations into allegations of ill-treatment must be undertaken to demonstrate that criminal acts by the police will be punished and to counter the current culture of impunity that pervades parts of the police force.
- An effective national strategy concerning the prevention of inter-prisoner violence and intimidation is devised, in the light of the above comments. This will without doubt require additional prison officers. Further, every incident of inter-prisoner violence should be diligently recorded in the relevant registers and must be immediately brought to the attention of the competent prosecutor and properly investigated.

With regard to Ill-treatment in psychiatric establishments, the competent State authorities should take the necessary steps to ensure that:

- A clear message is communicated to staff of psychiatric establishments that any behaviour of ill-treatment is unacceptable. Further, management should ensure that all staff members working in contact with patients are properly trained in verbal de-escalation skills and authorised control and restraint techniques.
- The staff of psychiatric establishments is vigilant as to signs or risks of inter-patient violence and be prepared to intervene rapidly.
- All injuries suffered by patients are diligently recorded and the patients concerned are examined by a doctor. Whenever such injuries are indicative of possible ill-treatment or inter-patient violence, even in the absence of an allegation to this effect, the record should be systematically brought to the attention of the relevant prosecutor.

With regard to Ill-treatment of foreign nationals deprived of their liberty under aliens legislation, the competent State authorities should take the necessary steps to ensure that:

- Ill-treatment of foreign nationals deprived of their liberty under aliens' legislation is stamped out.
- Effective investigations into all instances of alleged ill-treatment are carried out and the officers concerned are held responsible. Further, police officers should regularly be reminded that foreign nationals should be treated with respect and any form of ill-treatment of detained persons – including verbal abuse, racist behaviour and threats of ill-treatment – is unacceptable

and will be punished accordingly. Senior officers should be held accountable for their line-management responsibilities.

- Migrants, refugees and asylum seekers with disabilities are identified, so that they are adequately protected as required by the CRPD.

B. Interrogation rules and practices

Relates to CAT Article 11, COBs par. 10 and LOI par. 16.

In its 2016 LOI, the Committee, taking into account the importance of prevention of any cases of torture or ill-treatment, requested updated information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment and the frequency with which they are reviewed.

The GNCHR notes with concern that, despite the competent State authorities' efforts to promote a culture of respect for the fundamental rights of the detained persons¹³², infliction of ill-treatment particularly against foreign nationals, including for the purpose of obtaining confessions, continues to be a frequent practice. "This indicates the need", according to the CPT's delegation, "for increased efforts and determined action by the Greek authorities to tackle the widespread and deep-rooted problem of ill-treatment by the police"¹³³.

In particular, the CPT's delegation received several consistent allegations of physical ill-treatment for the purpose of obtaining confession at the Security Departments of Agios Panteleimonas Police Station in Athens and of Demokratias Police Station in Thessaloniki. According to one of these allegations, at Demokratias Police Station in Thessaloniki, a remand prisoner from Bulgaria, interviewed by the CPT's delegation in Diavata Prison, claimed that he had been ill-treated by a Security Police officer in a room on the fourth floor of the police station, following his arrest. He alleged that he had been verbally abused and forced to turn to the wall and to raise his hands above his head – slightly bent, stretched and pressed against the wall. He then described that he had received several blows with a wooden stick on the lateral aspects of his torso, mainly to the right side. He claimed that, during that time, he was repeatedly pressed to confess to a certain crime that he said he did not commit. He also alleged that he was not medically examined before his transfer to Diavata Prison, from where he was referred to a hospital for examination, two days after his admission. The relevant entry in the trauma register of the prison mentions that he complained of having been beaten by a police officer some two weeks before and about pain on the right side of his chest¹³⁴.

¹³² It is however necessary, at this point, to reiterate the difficulty of the competent State authorities to address the above issues, to the extent that the GNCHR observes that the Hellenic Police fails once again to answer directly the questions addressed to it by the GNCHR in the relevant questionnaire set up for the purposes of the present submission. Indeed, as regards the questions related to the existence of a Code of Conduct for the interrogation or the possibility to film or record the interrogation and the assessment of the implementation of the rules concerning the conduct of the interrogation, the GNCHR notes with disappointment that the relevant questions are not properly answered by the Hellenic Police, since instead of assessing the implementation of relevant legislation in practice, it limits itself in quoting the necessary legislative provisions. See Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 11-12.

¹³³ CPT/Inf (2016) 4, par. 22.

¹³⁴ *Idem*, par. 19.

Recommendation

The GNCHR cannot but share the CPT's concerns with regard to the "necessity for the competent authorities to promote a fundamentally different approach towards methods of police investigation. It is self-evident that a criminal justice system which places a premium on confession evidence creates incentives for officials involved in the investigation of crime to use physical or psychological coercion. First and foremost, the precise aim of such questioning must be made crystal clear: that aim should be to obtain accurate and reliable information in order to discover the truth about the matter under investigation, not to obtain a confession from somebody already presumed, in the eyes of the interviewing officers, to be guilty"¹³⁵.

The GNCHR recommends to the Greek competent Authorities to take the necessary steps to ensure that:

- Police operational officers and investigators carry out their duties in accordance with the relevant provisions of the Code of Criminal Procedure. To this end, the Greek authorities should regularly provide professional training for these officials, which should cover appropriate interview and investigation techniques, as well as the prevention of ill-treatment¹³⁶. Such an approach must involve more rigorous recruitment procedures.
- A system of ongoing monitoring of police interviewing standards and procedures is implemented, in order to facilitate the investigation of any allegations of ill-treatment.
- An accurate recording of police interviews which should be conducted with electronic (i.e. audio and/or preferably video) recording equipment is introduced. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detained person during an interview, and of the persons present during each interview.

¹³⁵ *Idem*, par. 22.

¹³⁶ Pursuant to the CPT's delegation, "the training should place particular emphasis on an intelligence-led and physical evidence-based approach, thereby reducing reliance on information and confessions obtained during questioning for the purpose of securing convictions". *Ibidem*.

V. Unaccompanied minors and unaccompanied migrant minors

Relates to CAT Article 6, COBs par. 22 and LOI par. 28.

In its 2016 LOI, the Committee, taking into account the absence of proper registration of unaccompanied or separated asylum seeking minors and their systematic detention, often in mixed immigration facilities with adults, requested information on measures taken to ensure (a) that unaccompanied asylum seeking minors are provided with adequate protection and proper care and (b) that detention for unaccompanied minors should be a last-resort measure.

The GNCHR expresses its serious concerns regarding the extremely important human rights issues affecting unaccompanied minors and unaccompanied migrant minors. In order to deal with the broader issue of "unaccompanied minors and unaccompanied migrant minors" in the most efficient manner, the GNCHR will address separately the issues of "reception of unaccompanied minors", "age assessment of minors", "detention of unaccompanied minors" and "legal representation of unaccompanied minors".

Reception of unaccompanied minors

Acknowledging the fact that the issue of handling unaccompanied children is cautiously followed up by the Police Services and bearing in mind the Police's efforts to separate the unaccompanied children from the other illegal immigrants in the detention areas of the illegally entered aliens (in the authority of the Hellenic Police)¹³⁷, the GNCHR is deeply concerned by the limited reception capacity of unaccompanied minors in Greece. These concerns are confirmed by the National Centre's for Social Solidarity (EKKA) statistics on Unaccompanied Children (UAC) in Greece. In particular, as of 31 January 2019, there are 3.718 unaccompanied and separated children in Greece but only 1.035 places in long-term dedicated accommodation facilities, and 890 places in temporary accommodation¹³⁸. As a result, 1.983 children stay out of long term or temporary accommodation, out of which: 711 in RICs, 86 in Protective custody 115 pending transfer to long term or temporary accommodation. According to data provided by EKKA, the total number of referrals of unaccompanied children received by EKKA in 2018 was 6.972 (6.605 boys and 367 girls), while the average waiting period for placement in an accommodation place in 2018 was 65.17 days¹³⁹. In cases of unaccompanied children under protective custody in pre-removal facilities and police stations, the average waiting period was 14,52 days. In cases of unaccompanied children remaining in RIC facilities, the general average waiting period was 57,42 days and 55,92 days specifically for RIC located on the Eastern Aegean islands¹⁴⁰.

The lack of appropriate care, including accommodation for unaccompanied children, in Greece has been repeatedly criticised by human rights bodies. Among others in 2018, the Council of Europe Commissioner for Human Rights expressed her deep concern regarding the situation of

¹³⁷ Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 17. See also CPT/Inf (2019) 5, p. 33.

¹³⁸ EKKA, [Situation Update: Unaccompanied Children \(UAC\) in Greece](#), 31 January 2019.

¹³⁹ *Ibidem*.

¹⁴⁰ It should be noted, however, that the abovementioned time periods refer to an average waiting period. There have been many documented cases where delays were much longer. In 2018, for example, GCR and other civil society organisations documented unaccompanied children remain in police stations, pre-removal detention facilities or the RIC of Evros, for periods between 1 to 3 months before being transferred to shelters. See ECRE, *AIDA Country Report Greece 2018, op.cit.*, p. 139.

the majority of unaccompanied migrant children in Greece and noted that "much more needs to be done to cover the integration needs of most migrants, which are reportedly not met, especially those of the many unaccompanied minor migrants kept in protective custody, living in hotels or reported homeless"¹⁴¹.

The CPT's delegation, in its recent country visit, emphasised that "regrettably, and despite the commitment voiced at ministerial level to engage significant efforts in increasing shelter capacities so as to reduce the recourse to deprivation of liberty, no action has been taken to fundamentally change this situation"¹⁴², stressing that, "as a matter of principle, any form of deprivation of liberty may have a detrimental effect on the physical and/or mental well-being of unaccompanied children, given their particular vulnerability"¹⁴³.

Recently, the European Committee of Social Rights (ECSR), during its 306th session (20-24 May 2019), by its decision on admissibility and on immediate measures in the case *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, dated May 23, 2019¹⁴⁴, decided to indicate to the Government immediate measures to be adopted. In fact, ECRE and ICJ, with the support of GCR lodged a collective complaint before the ECSR with regard to the situation of *inter alia* unaccompanied children in Greece, alleging serious systemic flaws in Greek law, policy and practice, which deprive unaccompanied children in Greece (both on the mainland and islands) and accompanied migrant children on the Greek islands of rights to housing, health, social and medical assistance, education and social, legal and economic protection, are contrary to the obligations of Greece under the European Social Charter (ESC).

Age assessment of minors

The age assessment of unaccompanied children by the Reception and Identification Service (RIS) is an extremely challenging process in practice and the procedure prescribed in the Ministerial Decision 92490/2013 of the Minister of Health is not followed in a significant number of cases *inter alia* due to the lack of qualified staff¹⁴⁵. Indeed, for instance, in Lesbos, as reported by the GCR, until mid-2018, due to a lack of qualified staff, the age assessment procedure as a rule took place on the basis of a dental examination, thus bypassing the procedure prescribed by law, while in Kos, no paediatrician is present on the island. As a rule, persons who claim to be minors are subject to X-ray examinations at the local hospital. Only if they are considered as minors on the basis of the X-ray findings are they referred to a paediatrician located in the public hospital of the island of Kalymnos¹⁴⁶.

As a result, "the laws' prescriptions are not fully implemented in practice" in this context, as emphasised by the Council of Europe Commissioner for Human Rights, following her recent visit to Greece¹⁴⁷. The first obstacle in this respect, according to the Commissioner's findings, is

¹⁴¹ CoE, *Report by Commissioner for Human Rights Dunja Mijatovic following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, par. 60 and 78.

¹⁴² CPT/Inf (2019) 4, par. 122.

¹⁴³ *Idem*, par. 121.

¹⁴⁴ ECSR, Decision on admissibility and on immediate measures in the case *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, 23.5.2019.

¹⁴⁵ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 92.

¹⁴⁶ *Ibidem*.

¹⁴⁷ CoE, *Report by Commissioner for Human Rights Dunja Mijatovic following her visit to Greece from 25 to 29 June 2018*, *op.cit.*, par. 30.

the registration of children as adults, which according to some of the NGOs the Commissioner met is a routine practice in the Reception and Identification Centres (RICs). Pursuant to the principles set out in PACE Resolution 1810 (2011), age assessment should be carried out only if there are reasonable doubts about whether a person is a minor¹⁴⁸, while as also stated by the UN Committee on the Rights of the Child in General Comment No 6¹⁴⁹, such assessments should be based on a presumption that the person is a minor, and not based solely on a medical opinion. Furthermore, if a person's minor status is still uncertain, he or she should be given the benefit of the doubt.

In addition, the CPT's delegation, during its recent country visit, noted that there is still no reliable system of age assessment in place for persons held by the police. The delegation met a number of foreign nationals in the pre-removal centres at Moria and Pyli who claimed that they were unaccompanied minors but that they had been registered as adults. Two of them were able to show a copy of their birth certificates, which clearly proved that they were younger than 18 years. Despite these documents in their possession, they remained detained together with adults at Moria¹⁵⁰.

FRA also noted that issues "still remain with age assessment in Greece. Limited resources [...] may lead to protracted age assessment procedures. In addition, difficulties emerge when the age of a child needs to be rectified in a database. As these procedures might also determine the outcome of an asylum claim or a family reunification procedure, assistance by guardians or persons assigned with guardianship tasks should be provided to children upon arrival"¹⁵¹. The report further documents the significant and persistent lack of paediatricians on the islands¹⁵².

The situation is not different with regard to the age assessment in the asylum procedure, as prescribed in Law 4375/2016 which refers explicitly to the Joint Ministerial Decision 1982/2016. According to the GCR, "in practice, the lack of qualified staff within the reception and identification procedure and shortcomings in the age assessment procedure in the RIC undoubtedly have spill-over effect on the asylum procedure, as the issuance of an age determination act by the RIS precedes the registration of the asylum application with the Asylum Service. [...] The number of age assessments conducted within the framework of the asylum procedure in 2018 is not known"¹⁵³. In that regard, the Ombudsman expressed serious doubts as to the proper and systematic implementation of the age assessment procedures provided by both ministerial decisions and the implementation of a reliable system¹⁵⁴.

Therefore, the GNCHR fully agrees with the GCR's observation, according to which "in light of the persisting gaps on the child protection in Greece, including the lack of effective guardianship, lack of qualified staff for age assessment procedures, inconsistencies in the procedure followed and the lack of any legal framework governing the age assessments conducted by the Police, the 2017 findings of the Ombudsman are still valid. 'The verification of

¹⁴⁸ PACE, Unaccompanied children in Europe: issues of arrival, stay and return, Resolution 1810 (2011), adopted on 15 April 2011.

¹⁴⁹ CRC, General Comment no 6, Treatment of unaccompanied and separated children outside their country of origin (2005), 39th session 17 May-3 June 2005, par. 31A.

¹⁵⁰ CPT/Inf (2019) 4, par. 129.

¹⁵¹ FRA, *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*, 4.3.2019, p. 40.

¹⁵² *Idem*, p. 31, 44.

¹⁵³ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 95.

¹⁵⁴ Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, p. 25.

age appears to still be based mainly on the medical assessment carried out at the hospitals, according to a standard method that includes x-ray and dental examination, while the clinical assessment of the anthropometric figures and the psychosocial assessment is either absent or limited. This makes more difficult the further verification of the scientific correctness of the assessment"¹⁵⁵.

The Ombudsman's findings are also corroborated by those of the Organisation Human Rights 360, according to which "during 2018 in the land border of Evros, age assessment process continued to be challenging since almost all cases were referred for x-ray without any contact with the child/person in question. Most of the times the only criteria used by the RIC in order to refer a minor to the age assessment procedure was the personal and totally arbitrary decision of its employees, who deem a person's age either by face contact or by looking at the person's registration picture. As there was always a large margin of doubt and the x-ray should be faced only as the last resort, most of the times (+50% cases), the result is not minority. Moreover, delays in the process, and the possible adverse impacts (i.e. referral to the Pre-Removal Centre of those deemed as adults by virtue of the first decision, detention with adults, loss of timeframes, i.e. for Dublin III procedures). The referral to the age assessment procedure occurred even in cases where a person held a copy or carried a picture of an original document on his phone that proved him being underage. This 'practice' rises serious problems, especially when the RIC holds an age assessment decision that recognises a person as an adult and at the same time the RAO issues a decision of recognizing the person as a minor, by accepting the original birth certificate during the registration procedure"¹⁵⁶.

Detention of unaccompanied minors

The GNCHR deplors that, despite the fact that unaccompanied children should not be detained and that according to Greek law their detention is permitted "only in very exceptional cases [...] as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors"¹⁵⁷, detention of unaccompanied children is actually applied in practice rather frequently. Further, as highlighted by the GCR "as no best interests determination procedure is provided by Greek law, no assessment of the best interests of the child takes place before or during detention, in contravention of the Convention on the Rights of the Child"¹⁵⁸.

Further, due to the lack of accommodation facilities or transit facilities for children, detention of unaccompanied children is systematically imposed and may be prolonged for periods ranging from a few days to more than two months, pending their transfer to an accommodation facility¹⁵⁹. Unaccompanied children are detained in police stations and pre-removal facilities on the mainland ("protective custody") or in Reception and Identification Centres on the islands in unacceptable conditions.

Indeed, according to Human Rights 360, "during 2018, in Evros region, detention of unaccompanied and separated children was systematically imposed and was prolonged for

¹⁵⁵ ECRE, *AIDA Country Report Greece 2018, op.cit.*, p. 95. See also Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, p. 24-25, 75.

¹⁵⁶ Human Rights 360, *Contribution to the GNCHR's Submission*, received: 3.6.2019.

¹⁵⁷ Article 46(10A) of Law 4375/2016, inserted by Article 10 of Law 4540/2018.

¹⁵⁸ ECRE, *AIDA Country Report Greece 2018, op.cit.*, p. 159.

¹⁵⁹ *Ibidem*.

periods ranging from a few days to more than two months, pending their transfer to an accommodation facility. They were detained in police stations and RIC of Fylakio¹⁶⁰ in unacceptable detention conditions. The latter, in conjunction with the particularity that minors remain under detention ("protective custody"), the RIC is a close centre, the referrals to shelters are in huge delay, and the procedures concerning the guardianship had paused, has created an unbearable situation for these vulnerable groups. In a number of cases, including unaccompanied and separated children and vulnerable persons, there are allegations of informal forcible removals (push-backs) of foreign nationals from Greece to Turkey at the Evros river border"¹⁶¹.

According to EKKA's statistics on Unaccompanied Children (UAC) in Greece, as of 31 January 2019, 86 unaccompanied children are held in detention ("protective custody"), while 711 are in Reception and Identification Centres on the islands¹⁶².

The huge existing gaps in the protection of unaccompanied minors in Greece, due to which unaccompanied minors, boys and girls, remain exposed to grave dangers, are also stressed by a recent ECtHR judgement in the case *H.A. and others v. Greece*¹⁶³. In particular, in February 2019, the ECtHR found that the automatic placement of unaccompanied asylum-seeking girls under protective custody in police facilities (pre-moval centre of Tavros), without taking into consideration the best interests of the child, violated Article 5(1) ECHR. The ECtHR, applying Rule 39 of the Rules of the Court, granted interim measures in favour of the two unaccompanied girls and indicated to the Greek authorities to transfer the minors immediately to a shelter for unaccompanied minors and to ensure that the reception conditions provided to them would be in accordance with Article 3 ECHR¹⁶⁴.

The GNCHR notes, however, that the competent State authorities are making all efforts so that the total number of the unaccompanied alien children that are under the Police's protective guard are accommodated in proper areas in Amygdaleza Attica and in the Direction for Aliens in Thessaloniki¹⁶⁵. It is also noted that, according to the Ministry's of Citizen protection Response to the CPT, special guidelines have been given to the local Police Directions of the East Aegean to constantly work with the Chiefs of RICs for the above purpose¹⁶⁶.

Recently, in a Chamber judgment in the case of *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* concerning the living conditions in Greece of five unaccompanied migrant minors from Afghanistan, the ECtHR, unanimously held that there had been violation both of Articles 3 ECHR (prohibition of inhuman or degrading treatment) and 5(1) ECHR (right to liberty and security). With regard to Article 3 ECHR, firstly, the Court held that the conditions of detention of three of the applicants in various police stations amounted to

¹⁶⁰ Article 118 of PD 141/1991.

¹⁶¹ Human Rights 360, *Contribution to the GNCHR's Submission, op.cit.*

¹⁶² EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 31 January 2019.

¹⁶³ ECtHR, *H.A. and others v. Greece* [appl. no 19951/16], 28.2.2019.

¹⁶⁴ See also GCR, *The European Court of Human Rights grants interim measures in favour of two detained unaccompanied girls*, 28.3.2019.

¹⁶⁵ In particular, according to the Ministry's of Citizen protection Response to the CPT, "as regards the information on the re-opening of the former Special Unaccompanied Children Stay Area (EXPAA) of Amygdaleza, its operation had stopped since the beginning of 2017 and it re-opened for a short period of time, between 22.5.2018 and 9.7.2018, due to emergency cases and pressing needs and in particular, to receive eighty five (85) minors, which were transferred from the ProKeKA of Korinthos, following an operation of broad evacuation scale of the two unofficial accommodations of Patras (AVEX-LADOPOULOU) that resulted into the successful removal of six hundred eleven (611) of alien immigrants and refugees, among whom the above unaccompanied children, whose transfer was effected with special care into said space". See CPT/Inf (2019) 5, p. 34.

¹⁶⁶ *Ibidem*.

degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Secondly, the Court held that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age. As far as Article 5(1) ECHR is concerned, the Court held that it was violated with regard to three applicants. According to the Court, the placement of these three applicants in the police stations amounted to a deprivation of liberty as the Greek Government had not explained why the authorities had first placed the applicants in police stations – and in degrading conditions of detention – rather than in alternative temporary accommodation. The detention of those applicants had therefore not been lawful¹⁶⁷.

Legal representation of unaccompanied minors

The GNCHR notes with disappointment that, in practice, the system of guardianship, as prescribed by Law 4554/2018, is still not operating. Secondary legislation such as Ministerial Decisions and standard operating procedures required by law in order to further regulate *inter alia* the functioning of the Registry of Guardians and the best interests of the child determination procedure, has not been issued as of June 2019¹⁶⁸. This is an issue raised by the GNCHR even before the adoption of Law 4554/2018, when the GNCHR was called to give its opinion of the relevant draft law¹⁶⁹.

NGOs active in the field also highlight the gap and possible halt of the services that were up until now provided by NGOs until the state system becomes fully operational and the severe shortage of accommodation places that continue to force hundreds of unaccompanied children to homelessness or protective custody several months after the entry into force of the new guardianship system. Furthermore, concerns have been expressed regarding the increase of powers on the understaffed and inadequately trained prosecutor offices, the lack of strict time frame in almost all stages of the procedure and the lack of specific provisions regarding unaccompanied minors that will still be homeless or in unsafe housing despite the operation of the new guardianship system¹⁷⁰.

Recommendations

With regard to the special reception needs of unaccompanied minors, the competent State authorities should take the necessary steps to ensure that:

- All possible measures are taken with a view to avoiding serious, irreparable injury to the integrity of migrant minors at immediate risk of life, physical and moral integrity, in particular to ensure the use of alternatives to detention of migrant children.

¹⁶⁷ ECtHR, *Sh. D and others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* [appl. no. 14165/16], 13.6.2019, par. 62, 69.

¹⁶⁸ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 100.

¹⁶⁹ GNCHR, [Observations on the draft law on the special guardianship of unaccompanied minors](#) [in Greek language] (2017).

¹⁷⁰ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 100.

- Unaccompanied children in police stations, pre-removal centres and Reception and Identification Centres are provided with immediate access to age-appropriate shelters. For that purpose, the GNCHR calls on the competent State authorities to urgently increase the capacities of dedicated reception facilities, including shelters and especially supported independent living solutions.
- Unaccompanied children are provided with access to food, water, education, and appropriate shelter.
- Unaccompanied children are provided with access to health care and medical assistance, in particular by ensuring the presence of an adequate number of medical professionals to meet the needs of the children whose rights are the subject of this complaint.

With regard to the age assessment process of unaccompanied minors and minors in general, the competent State authorities should take the necessary steps to ensure that:

- All detained persons who claim to be juveniles have access to a proper age assessment procedure and are treated as such until proven otherwise, unless their claim is manifestly unfounded.
- Practical solutions should be found to assist them in proving their age and reduce bureaucratic obstacles.

With regard to the detention of unaccompanied minors, the competent State authorities should take the necessary steps to ensure that:

- National legislation explicitly prohibits detention of unaccompanied minors, so that an end is put to migrant children's deprivation of liberty under the regime of "protective custody". For that purpose, the GNCHR urges the competent State authorities to draw upon the report adopted in January 2018 by the Council of Europe Steering Committee on Human Rights on this issue focusing on alternatives to detention¹⁷¹.
- The policy regarding the detention of unaccompanied children both for reception and identification purposes and under "protective custody" in places of deprivation of liberty – be it in RICs, pre-removal centres, special holding facilities for irregular migrants or police and border guard stations – is fundamentally revised in line with the principle of the best interests of the child.

With regard to the legal representation of unaccompanied minor, the competent State authorities should take the necessary steps to ensure that:

- The proper implementation of the guardianship system prescribed by Law 4554/2018 is further monitored. For that purpose, the GNCHR calls upon the competent State authorities to ensure the appointment of a guardian at the time that a separated or unaccompanied child in need of international protection is identified as well as the effective functioning of the guardianship system.

¹⁷¹ CDDH, Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration, CDDH(2017)R88add2, 26.1.2018.

VI. Prompt, impartial and effective investigations

A. Data collection

Relates to CAT Articles 12-13, COBs par. 28 and LOI par. 21.

In its 2016 LOI, the Committee, taking into account the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, including police and prison officials and border guards, as well as on trafficking and domestic and sexual violence, requested detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, prosecutions, convictions and on the penal or disciplinary sanctions applied.

The GNCHR shares the concerns of the Committee with regard to the data collection and recognises that another factor which significantly hampers the process of investigation of cases of torture and ill-treatment by law enforcement officials, including prison officials and border guards, consists in the difficulties observed in the collection of comprehensive and disaggregated data and statistics regarding these cases. Taking into account that the Committee requested "detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, prosecutions, convictions and on the penal or disciplinary sanctions applied", the GNCHR remains skeptical about whether the information provided by the competent State authorities, in its Replies to the LOI constituting Greece's 7th periodic report, complies with the Committee's request. In particular, disaggregation of statistical data seems rather incomplete and therefore problematic, to the extent that the requested by the Committee disaggregation categories (eg. crime committed, ethnicity, age and sex) do not appear among the data provided for by the competent State authorities.

Recommendations

In light of the fact that the absence of disaggregated and comprehensive data regarding human rights in general constitutes a permanent recommendation of all UN treaty bodies and other human rights monitoring bodies when it comes to our Country and bearing in mind that disaggregated data will provide a good basis in order to understand progress towards specific critical goals, such as investigating relevant cases of torture and ill-treatment and prosecuting and convicting perpetrators, the GNCHR recommends to the competent State authorities that they increase their focus on statistical capacity building, by breaking their data down by gender, age and ethnicity, as well as by crime committed, in order to address the gaps in collection of disaggregated data as soon as possible.

B. Office for Incidents of Arbitrary Conduct by Law Enforcement Officials

Relates to CAT Articles 12-13, COBs par. 10-13 and LOI par. 22.

In its 2016 LOI, the Committee, taking into account the need for an reliable, independent and accessible complaints system to undertake prompt, impartial and effective investigations into all allegations of torture, ill-treatment or excessive use of force, requested updated information on any measures taken by the Office for Incidents of Arbitrary Conduct by Law Enforcement Officials to prevent and investigate acts of torture and ill-treatment by law enforcement officials.

The Committee also asked for information on measures taken (a) to strengthen the mandate of the Office, (b) to ensure that members of the law enforcement or security services who are accused of having committed acts of torture are immediately suspended from duty for the duration of the investigation and (c) to ensure that, in practice, complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

The GNCHR, sharing its concerns with the Committee and other human rights monitoring bodies¹⁷², has repeatedly addressed to the competent state authorities recommendations regarding the establishment of an independent and effective mechanism for investigating complaints for police violence. In this context, the GNCHR issued in July 2016 Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on the "Establishment of a National Mechanism for investigating incidents of arbitrariness in security forces and in detention facilities"¹⁷³, which *inter alia* aimed at replacing the Office for the Investigation of Incidents of Arbitrariness, set up by Article 1 of Law 3938/2011.

In particular, the GNCHR, recognising thus the State's efforts to strengthen the mandate of the Greek Ombudsman operating as National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA), notes with disappointment that most of its above-mentioned recommendations (such as, for instance, the binding character of the National Mechanism's findings/concluding observations, the financial support of the complainants, the broader protection – in practice – of the complainants etc.) have not been taken into account by the State, despite the fact that they concerned issues of fundamental importance for the institutional mission of an independent and effective mechanism for investigating incidents of police arbitrariness.

In every case, the GNCHR reiterates that it would have been interesting to find in the State's Replies to the LOI constituting Greece's 7th periodic report reference to the findings resulting

¹⁷² See, for instance, CAT, *UN Committee against Torture: Conclusions and Recommendations, Greece*, 10 December 2004, CAT/C/CR/33/2 and UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture*, 27 June 2012, CAT/C/GRC/CO/5-6, par. 13 or, under Article 2 ECHR, ECtHR, *Makaratzis v. Greece* [appl. no 50385/99], 20.12.2004, *Karagiannopoulos v. Greece* [appl. no 27850/03], 21.6.2007, *Celiknku v. Greece*, 5.07.2007, *Leonidis v. Greece* [appl. no 43326/05], 8.1.2009 and, under Article 3 ECHR, in particular, as regards ill-treatment of the applicants by police officers see ECtHR, *Bekos and Koutropoulos v. Greece* [appl. no 15250/02], 13.12.2005, *Zelilof v. Greece* [appl. no 17060/03], 24.5.2007, *Galotskin v. Greece* [appl. no 2945/07], 14.1.2010, *Stefanou v. Greece* [appl. no 2954/07], 22.4.2010. See also CPT/Inf (2002) 31 (20.11.2002), par. 11-22, CPT/Inf (2006) 41 (20.12.2006), par.12-21, CPT/Inf (2009) 20 (30.6.2009), par. 10-18, CPT/Inf (2010)33 (17.11.2010), par. 16, CPT/Inf (2016) 4 (1.4.2016), par. 30 and ECRI, *ECRI Report on Greece*, CRI(2009)31 (15.9.2009), par. 175-179.

¹⁷³ GNCHR, *Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on the "Establishment of a National Mechanism for investigating incidents of arbitrariness in security forces and in detention facilities"* [in Greek] (2016), as well as GNCHR, *Statement on the Draft Law of Ministry of Justice, Transparency and Human Rights, submitted to the Parliament on 9.11.2016 and entitled "Incorporation of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, of the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and of the Directive 2014/54/EC, on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workersII)adoption of measures in order to comply with Articles 22, 23, 30, 31(1), 32 and 34 of the Regulation No 596/2014 on market abuse and repealing the Directive 2003/6/EC of the European Parliament and the Council and the Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/ECand transposition of the Directive 2014/57/EU on criminal sanctions for market abuse and its implementing Directive 2015/2392, III) transposition of Directive 2014/62 on the protection of the euro and other currencies from counterfeiting through criminal law, and the replacement of the Framework-Decision 2000/383/JHA and, IV) Establishment National mechanism for investigating incidents of arbitrariness in security forces and in detention facilities"* [in Greek] (2016).

from the first months of operation of the Greek Ombudsman acting as the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA).

Another issue which needs to be addressed with attention is the disciplinary framework for staff in detention facilities. The GNCHR considers that it is necessary to amend the internal regulations of the penitentiary facilities in order to: a) clarify and regulate the rules, circumstances and conditions for the fulfillment of the duties and obligations of the personnel, b) develop a system of accountability for the personnel and the administration and (c) ensure the effective protection and security of both the personnel and prisoners. In particular, according to the GNCHR's Recommendations, with regard to the provisions on the employment status of the staff, it is necessary to review the disciplinary law affecting the staff of the penitentiary facilities, so that the penalties imposed to the staff have a meaningful and practical effect without compromising its evolution, for minor offenses. There is also a need for a comprehensive institutional regulation of the operation of penitentiary facilities and, therefore, for the incorporation into the basic legislation for detention centres, (eg. the Correctional Code), of issues concerning the staff of penitentiary facilities and general rules of prison management. Such an approach would make clearer for the staff its social function, providing a coherent framework for its training¹⁷⁴.

Recommendations

In light of the above observations, the competent State authorities should take the necessary steps to ensure that:

- The Greek Ombudsman's mandate operating as National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA) is further strengthened by introducing *inter alia* the binding character of its concluding observations or by establishing the financial support of the complainants and increasing their protection, in practice. For this purpose, the findings resulting from the first months of operation of the Greek Ombudsman acting as EMIDIPA would have been very useful.
- The internal regulations of the penitentiary facilities are amended in order to a) clarify and regulate the rules, circumstances and conditions for the fulfillment of the duties and obligations of the personnel, b) develop a system of accountability for the personnel and the administration and (c) ensure the effective protection and security of both the personnel and prisoners.

¹⁷⁴ GNCHR, [Observations](#) [in Greek] on the Strategic Plan (Strategic Planning 2018 - 2020) for the Prison System of the Ministry of Justice, Transparency and Human Rights - General Secretariat for Transparency and Human Rights (2017).

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Relates to CAT Articles 2-3, COBs par. 18 and LOI par. 6 and 13.

In its 2016 LOI, the Committee, taking into account the serious obstacles in accessing a fair, impartial and timely asylum procedure, requested updated information on steps taken to guarantee access to a fair and impartial individual asylum procedure in all parts of the Country, speedy operationalisation of the new Asylum Service and Appeals Authority, as well as proper, timely treatment of all asylum claims. The Committee also requested the State to respond to concerns raised by UNHCR that the Greek asylum system, including the assessment of asylum claims was characterised by poor procedures and that legal aid was generally absent and language interpretation resources were severely inadequate.

The GNCHR acknowledges particular importance to the international protection regime and has issued a series of relevant Decisions and Recommendations, while it continues to closely monitor the issues pertaining to the provision of international protection in Greece¹⁷⁵. In that context, the GNCHR welcomes the State's efforts towards a fair and impartial asylum system and is very satisfied with all the relevant legislative developments over the past years. It cannot, nonetheless, but express its concerns regarding the problems observed in the asylum procedure in the Country, as applied in practice. In order to address the issue in the most efficient manner, the GNCHR will address separately the topics of "'access' to the asylum procedure", "the 'timely' character of the asylum procedure" and "the 'fairness' of the asylum procedure".

"Access" to the asylum procedure

The GNCHR acknowledges with great concern that access to the asylum procedure has been highly problematic since the start of the operation of the Asylum Service in 2013 and remains a structural and endemic problem in Greece today as well, even after the introduction of the system for granting appointments for registration of asylum applications through Skype, in 2014. A system described as "a technical solution that has become part of the problem of access to asylum" by the Greek Ombudsman, who has constantly highlighted that accessing the asylum procedure through Skype is a "restrictive system" which "appears to be in contrast with the principle of universal, continuous and unhindered access to the asylum procedure"¹⁷⁶. The GNCHR has stressed that access to electronic registration of international protection applications in the mainland through Skype is extremely difficult, especially in Athens and Thessaloniki, a fact which impedes international protection applications' registration. As a result, asylum seekers are exposed to the risk of arrest on the grounds of illegal residence and are denied access to the rights of applicants for international protection¹⁷⁷. The problem was even confirmed by the Director of the Asylum Service who in June 2018 stated that access to the asylum procedure

¹⁷⁵ See GNCHR, [Refugees – migrants](#).

¹⁷⁶ Greek Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, *op.cit.*, p. 32.

¹⁷⁷ GNCHR, [Observations](#) on the draft law of the Ministry for Migration Policy "Transposition into Greek legislation of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast, L180/96/29.6.2013) and other provisions, Amendment of Law 4251/2014 (A' 80) regarding the transposition into Greek legislation of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Amendment of asylum procedures and other provisions (2018).

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through Skype remains the "achilles' heel" of the procedure¹⁷⁸. Moreover, he added that technical solutions are under examination. However, these have not been put in place as of June 2019, as confirmed by the GCR as well¹⁷⁹.

The problematic access to the asylum procedure in the Country has also been acknowledged by the ECtHR, which, confirming that "the possibility of making an asylum application in practice is a *conditio sine qua non* for the effective protection of aliens in need of international protection", found a violation of Articles 3 and 13 ECHR on the part of Greece due to the obstacles in accessing the asylum procedure¹⁸⁰.

As far as access to the asylum procedure from administrative detention is concerned, it is also highly problematic. According to the GCR, "the application of a detained person having expressed his or her will to apply for asylum is registered only after a certain period of time. During the time lapse between the expression of the intention to seek asylum and the registration of the application, the asylum seeker remains detained by virtue of a removal order and is deprived of any procedural guarantees provided to asylum seekers, despite the fact that according to Greek law, 'the person who expresses his/her intention to submit an application for international protection is an asylum seeker'. Among others, since the waiting period between expression of intention and registration is not counted in the Duration of Detention, asylum seekers may be detained for a total period exceeding the maximum 3-month detention time limit"¹⁸¹. The time period between the expression of the intention to apply for asylum and the registration of the claim varies depending the circumstances of each case, and in particular the capacity of the competent authority, the availability of interpretation, and the number of people willing to apply for asylum from detention¹⁸².

In addition, according to MSF, access to a fair and impartial individual asylum determination procedure is highly problematic for victims of torture as well because of the inadequate identification. Indeed, "in 2018 people, including victims of torture, were waiting for up to 6 months for a screening. This is largely due to the insufficient number of doctors, psychologists and cultural mediators in the Greek reception centres and the lack of staff training in the identification of victims of torture"¹⁸³. Further, MSF mentions that "in 2018, 358 migrants were registered as victims of torture, violence, rape or other forms of exploitation by the Greek Asylum service. However, based on the number of patients MSF treats in Athens and Lesbos, it is likely that many more torture victims remained unidentified. Between January and March 2019, 54% of new MSF patients on Lesbos identified by MSF doctors as having severe mental health conditions and/or are victims of torture were not identified as vulnerable in their screening by the National Organisation for Public Health (EODY). Thus, many people remain in the

¹⁷⁸ Efsyn, [The logic of closed borders and exclusions is extremely problematic](#), 26.6.2018.

¹⁷⁹ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 40.

¹⁸⁰ ECtHR, *A.E.A. v. Greece* [appl. no 39034/12], 15.3.2018, par. 85.

¹⁸¹ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 41. See also UNHCR, *Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, p. 10-11.

¹⁸² For example, according to GCR's experience, an average period of one to one and a half months was needed for the registration of applications by persons detained in Amygdaleza and Corinth. This period can be longer for applicants belonging to certain nationalities and/or detained in other facilities. For example, the delay reached 2 months for the full registration of an application by an Afghan national (Pashtu speaker) in Paranesti in February 2018, and 3 months for Pakistani detained in the same facility in November 2018. ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 41.

¹⁸³ MSF, *Contribution to the GNCHR's Submission*, received: 18.6.2019.

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overcrowded and unsafe living conditions that can lead to the further deterioration of victims' of torture medical and mental health"¹⁸⁴.

Access to a "timely" asylum procedure

Another important issue affecting the asylum procedure is the time needed to process an asylum application, due to the significant increase of asylum applications lodged in 2016 and 2017. Indeed, according to the statistics provided by the Asylum Service, "out of a total of 58.793 applications pending at the end of the year, 45.6% were pending for more than six months from the day of full registration"¹⁸⁵. In practice, according to the GCR, the average processing time is even longer when the period between pre-registration and registration of the application is taken into consideration. Thus, the average time between the applicant's expression of intention to apply for asylum and the interview in 2018 was 8.5 months, due to the average 42-day delay between pre-registration and registration of the application, and the average delay of 212 days between registration and personal interview¹⁸⁶.

Indeed, these statistics are confirmed by the competent State authorities, in the Communication from Greece concerning the M.S.S. and RAHIMI groups of cases v. Greece (Applications No. 30696/09, 8687/08), according to which "the average time between the preregistration (filing) and the full registration (lodging) on the application for international protection, was in the year 2017, 122.46 (calendar) days and in the year 2018, 59.72 (calendar) days. The respective times for the applications which were filed and reviewed under the special border procedure in application of Article 60(4) of Law 4375/2016 (residents in RIC's) were 23,91 and 27,66 days, respectively. The average time for the delivery of the 1st instance decision in the year 2017 was 153,27 days and in the year 2018, 235,41 days"¹⁸⁷.

Further, the GNCHR shares the GCR's serious concerns, stressing that "taking into consideration the number of applications pending for more than 6 months and the number of applications pending without an interview having been conducted (80.5%) the backlog of cases pending for prolonged periods is likely to increase in the future"¹⁸⁸.

Access to a "fair" asylum procedure

Judicial review of the decisions of asylum proceedings

The GNCHR notes that, despite the fact that the Greek law provides applicants for international protection with the possibility to challenge the decisions taken in asylum proceedings before the Administrative Court of Appeals, along with the possibility to request the suspension of the legal effects of the decision and file a request for interim order, the effectiveness of these legal remedies is severely hindered by a number of practical and legal obstacles. Indeed, according to the GCR, the above-mentioned applications before the Court can only be filled by a lawyer, while at the same time legal aid may only be requested under the general provisions of Greek law, which are in any event not tailored to asylum seekers and cannot be accessed by them in

¹⁸⁴ *Ibidem*.

¹⁸⁵ As presented in AIDA Country Report by the GCR, *op.cit.*, p. 43.

¹⁸⁶ *Ibidem*.

¹⁸⁷ Communication from Greece concerning the M.S.S. and RAHIMI groups of cases v. Greece (Applications No. 30696/09, 8687/08), DH-DD(2019)372, 5.4.2019, p. 45.

¹⁸⁸ *Idem*, p. 43.

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practice due to a number of obstacles¹⁸⁹. Moreover, they do not have an automatic suspensive effect, which means that between the application of suspension and the decision of the Court, which has to be stressed that only examine the legality of the decision and not the merits of the case, there is no guarantee that the applicant will not be removed from the territory. Last but not least, the judicial procedure is lengthy¹⁹⁰.

Fast track border procedure

In the same direction, the GNCHR expresses its concerns regarding the special border procedure, prescribed by Article 60(4) L 4375/2016, known as a "fast-track" border procedure. This procedure, which was established a few days after the launch of the EU Turkey Statement as a derogation from the standard asylum procedure and is apparently connected to the implementation of the Statement¹⁹¹, raises "serious concerns over due process guarantees", according to the UN Special Rapporteur on the human rights of migrants¹⁹², as it puts "insufferable pressure" to the Asylum Service in Greece to reduce its standards and minimise the guarantees of the asylum process¹⁹³. In fact, the procedure is admittedly problematic to the extent that the applicants' claims are examined under the admissibility procedure, with a very short deadline to prepare, challenging this way the "effective" and "fair" character of the legal remedy¹⁹⁴.

Second instance

Last but not least, the GNCHR has welcomed the operation of 20 Independent Appeals Committees as of August 2018, as a decisive step for enhancing the asylum procedure in Greece. Nonetheless, as regards the second instance procedure of examination of the applications for international protection, the GNCHR deplores the long delays in delivering decisions, as well as the existence of quality issues of the decisions¹⁹⁵. There are no documents on vulnerability, nor documents regarding unaccompanied minors in the administrative files of the applicants to support their claims. Hearings of the applicants are rarely being held¹⁹⁶.

¹⁸⁹ For instance, free legal aid is granted only if the legal remedy for which the legal assistance is requested is not considered "manifestly inadmissible" or "manifestly unfounded". See ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 54-55.

¹⁹⁰ According to the GCR, there are cases pending for a period between two to three years for the issuance of a decision of the Administrative Court of Appeals following an application for annulment. ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 55.

¹⁹¹ As acknowledged by the GCR. See ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 73-74.

¹⁹² HRC, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, par. 78.

¹⁹³ As confirmed by the former Director of the Asylum Service herself. See IRIN, [Greek asylum system reaches breaking point](#), 31.3.2016.

¹⁹⁴ HRC, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, *op.cit.*, par. 82.

¹⁹⁵ GNCHR, [Observations](#) on the draft law of the Ministry for Migration Policy regarding the transposition into Greek legislation of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast, L180/96/29.6.2013) and other provisions, Amendment of Law 4251/2014 (A' 80) regarding the transposition into Greek legislation of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Amendment of asylum procedures and other provisions (2018).

¹⁹⁶ *Ibidem*.

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The workload is extremely heavy and there is a lot of pressure for delivering decisions. It is also observed that the decisions of age determination of the applicants for international protection issued by the Reception and Identification Service in the Eastern Aegean islands are not served to the applicants, leading to the deprivation of their statutory right to submit an administrative appeal. Besides, although there are decisions of the Committees ordering, within the Committees' competence, either the police force or the Reception and Identification Service to proceed to official acts, those acts are delayed or never implemented, increasing, thus, the delay in delivering decisions¹⁹⁷.

According to the GCR, a total of 15.355 appeals were lodged to the Independent Appeals Committees in 2018, while a total of 13.755 appeals were pending at the end of the year, of which 10.061 appeals had not been examined and another 3.694 had been examined but the issuance of the decision was pending¹⁹⁸.

The GNCHR must also highlight the fact that the asylum procedure remains non-transparent with regard to both refugees with disabilities and refugee families with a member with disabilities.

Recommendations

In light of the above observations, the competent State authorities should take the necessary steps to ensure that:

- Access to a timely and fair asylum procedure is guaranteed *inter alia* by:
 - finding alternative solutions to the electronic registration of international protection applications through Skype,
 - reducing the waiting time between the expression of the will of a detained person to apply for asylum and the application's registration,
 - reducing the time needed to process an asylum application,
 - minimizing the practical and legal obstacles to the effectiveness of the legal remedies for the judicial review of the decisions of asylum proceedings (eg. length of the proceedings, lack of automatic suspensive effect of decisions, limited legal aid etc.).
 - ensuring the implementation of the due process guarantees of the asylum process in the special border procedure, as well as at the second instance procedure, before the Appeals Authority.
 - ensuring the transparent character of the asylum procedure both for refugees with disabilities and refugee families with a member with disabilities. At this point, it is worth pointing out that it is vital in the case of refugees with disabilities and chronic diseases to speed up the reunification of their family members

Last but not least, as regards the EU-Turkey Statement of the 18th of March 2016, the GNCHR calls upon the Greek State, the UN, the EU institutions, all EU Member States and all the international organisations involved, in a spirit of responsibility, solidarity and sincere

¹⁹⁷ *Ibidem*.

¹⁹⁸ Information provided by the Appeals Authority, 6 March 2019. See ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 49.

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cooperation, to take all appropriate measures with a view to ensuring the unhindered, timely and effective access of asylum seekers to the international protection processes.

VIII. Violence against women

Relates to CAT Article 2, COBs par. 23 and LOI par. 7.

In its 2016 LOI, the Committee, taking into account the persistence of violence against women, including domestic and sexual violence and the limited number of prosecutions and convictions of the perpetrators, requested updated information on steps taken to (a) to amend Article 137A of the Criminal Code in order to explicitly include rape and other forms of sexual violence as specific crimes, (b) to provide adequate assistance and protection to women victims of violence and (c) to undertake broad awareness-raising campaigns. The Committee also asked for statistical data on the prevalence of violence against women, including data on complaints relating to violence against women and children, and on the related investigations, prosecutions, and penal sanctions as well as on any compensation provided to victims.

Addressing the topic of violence against women and especially domestic violence has been a top priority issue for the GNCHR over the past years. Following since the beginning the process of ratification by the Greek Government of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the GNCHR welcomed the initiative of the competent State authorities, stressing nonetheless that there is still a lot of work to be done for the prevention of violence against women. Further, the GNCHR insists on the need to amend Article 137A of the Criminal Code so that the definition of torture is fully aligned with the standards contained CAT.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

The GNCHR expresses its satisfaction for the ratification of the Istanbul Convention. Indeed, in June 2018, Greece ratified the formally known as Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, taking a decisive step towards combating domestic violence. The Convention entered into force in Greece, in October 2018.

The GNCHR had stressed the importance of the ratification of the Convention, the first legally binding instrument used to enforce violence prevention, victim protection and prosecution for perpetrators of violence against women (and other domestic violence), which had already been signed since May 2011¹⁹⁹. The GNCHR had long pointed out that "violence against women, including domestic violence, constitutes a brutal violation of fundamental human rights"²⁰⁰. Legislative measures for the effective prevention of domestic violence, combined with measures to support victims, especially women and children, respond to an urgent social need and to imperatives stemming from a grid of human rights standards, signed and ratified by Greece, such as *inter alia* the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR).

In addition, the GNCHR closely follows the recent recommendations and the ongoing process of international human rights bodies on issues related to gender violence, harassment and exploitation, such as the latest recommendations to Greece of the Committee of the Parties to the

¹⁹⁹ GNCHR, [Recommendations](#) on transgender persons and legal gender recognition (2015), p. 19 et seq. See as well GNCHR, [Observations](#) on draft law on the "Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the adaption of the Greek legislation" [in Greek] (2018).

²⁰⁰ GNCHR, Observations-Decision on the draft law on "Combating domestic violence" (2005).

Council of Europe on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings²⁰¹, as well as the particularly important effort to adopt an international regulatory instrument on violence at work in the context of the debate on "Ending Violence and harassment against women and men in the world of work" at the 107th Session of the International Labor Conference²⁰². In particular, bearing in mind that gendered violence is also found in other areas in which the State must take both preventive and suppressive measures, the GNCHR considers that it is very important for the Greek Government to address this gender dimension as well, by substantially supporting the course of the relevant negotiations towards the adoption of an International Labor Convention²⁰³.

Further, the GNCHR is convinced that the ratification of the Istanbul Convention will contribute significantly to combating violence against women – and, therefore, against trans women – in all areas of private and public life²⁰⁴. This Convention is not limited to a mere reference to gender identity²⁰⁵. On the contrary, providing a broader definition of gender and defining it as the "socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men"²⁰⁶, the Istanbul Convention is taking important steps towards the legislative and institutional protection of transgender people²⁰⁷.

The GNCHR deplores that despite the States efforts to eliminate the phenomenon of violence against women, both at the level of legislation and at the level of social policy for victims' support, statistical data are discouraging, while at the same time the financial crisis the Country went through seems to have aggravated the situation.

Article 137A CC

As already mentioned²⁰⁸, the non-compliance of the definition of torture in the Greek criminal law with the international human rights law standards and, in particular, with Article 1(1) CAT is an issue which has been raised by a number of international human rights bodies²⁰⁹ and other

²⁰¹ Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, *Recommendation CP(2018)3 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, adopted at the 22nd meeting of the Committee of the Parties on 9 February 2018*.

²⁰² International Labour Conference (ILC), 107th Session, [Report V\(1\)](#) on Ending violence and harassment against women and men in the world of work.

²⁰³ GNCHR, [Observations](#) on draft law on the "Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the adaption of the Greek legislation" [in Greek] (2018), p. 7-8.

²⁰⁴ See Greek Transgendered Support Association, *Letter to the Minister of Interior regarding the Incorporation into domestic law of the Istanbul Convention combating violence against women*, 20 April 2005.

²⁰⁵ Under the provisions of Article 4(3), "[t]he implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status".

²⁰⁶ See Article 3(c).

²⁰⁷ GNCHR, [Recommendations](#) on transgender persons and legal gender recognition (2015), p. 19-20.

²⁰⁸ See *supra*, p. 9 et seq.

²⁰⁹ CAT, *COBs on the combined fifth and sixth periodic reports of Greece*, CAT/C/GRC/CO/5-6, 27.6.2012, par. 9, ECtHR, *Zontul v. Greece* [appl. no 12294/07], 17.1.2012, CPT, *GREECE REPORT 2015 to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, p. 6, [Letter of CoE Commissioner for Human Rights](#), 18.4.2017 and [Response of Greek government](#), 28.4.2017.

actors²¹⁰. In particular, at this point, it is necessary to stress the need to align the definition of torture contained in Greek law in order to explicitly include rape and other forms of sexual violence as specific crimes.

Indeed, according to Article 137A(1) of the Criminal Code (in its previous version, before the adoption of the new one, in June 6, 2019), torture is criminalised and punishable by incarceration up to 10 years, while less serious cases and other offences against human dignity are punishable by at least three years' imprisonment and a fine. More specifically, less serious cases involve "physical injury, health damage, execution of illegal violence, physical or psychological, or any other serious offence against human dignity [...]. As breaches of human dignity are mainly considered: a) the use of truth detector, b) prolonged isolation, c) a serious breach of sexual dignity".

This was highlighted by the ECtHR in 2012 in *Zontul v. Greece*, a case concerning a Turkish asylum seeker who in 2001, while in detention on Crete was raped with a truncheon by a coast guard officer²¹¹. The naval tribunals, both in first instance and on appeal, did not qualify the applicant's rape with a truncheon as torture but as an affront to the victim's sexual dignity, an offence which, under Article 137A(3) of the Criminal Code (in its previous version), is sanctioned with imprisonment of at least three years (while torture is a felony and punished with at least five years' imprisonment). In *Zontul* the actual penalties that were finally imposed on the main perpetrator and his accomplice were six and five months' imprisonment, which were suspended and commuted to fines. The ECtHR found a violation of Article 3 (prohibition of torture) ECHR noting *inter alia* that a detainee's rape by a State agent has been considered as torture in its own case law as well as by other international courts, such as the International Criminal Tribunal for the former Yugoslavia²¹².

Recent developments and concerns

In its Replies to the LOI prepared by the Committee constituting Greece's 7th periodic report, the Greek State notes that there is an on-going law-drafting process for the reform of the Criminal Code and that the competent law drafting Committee has been requested by the Secretary General for Transparency and Human Rights of the Ministry of Justice, Transparency and Human Rights to examine the need for an explicit inclusion of rape in Article 137A of the Criminal Code.

In the reformed Criminal Code, as it was voted by the Greek parliament in June 6, 2019 and will come into effect in July 1st, 2019, the definition of torture remains intact. Therefore, the phrase "a serious breach of sexual dignity" of the previous legislation was not replaced, as also requested by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment

²¹⁰ Amnesty International, *Greece: Briefing to Committee Against Torture*, October 2011, N. Sitaropoulos, *The incompatibility of the definition of torture in Greece with International Law*, Verfblog, 19.01.2017, N. Sitaropoulos, *Ill-treatment of migrants in Greek Law Enforcement – Are the Strasbourg Court Judgements the Tip of the Iceberg?*, 1.3.2017.

²¹¹ ECtHR, *Zontul v. Greece* [appl. no 12294/07], 17.4.2012.

²¹² *Idem*, par. 84-93. See also N. Sitaropoulos, "The Incompatibility of the Definition of Torture in Greece with International Law", *Verfblog*, 2017/1/19 and N. Sitaropoulos, "Migrant Ill – Treatment in Greek Law Enforcement – Are the Strasbourg Court Judgements the Tip of the Iceberg?" (2017).

or punishment²¹³, so as to explicitly include rape and other forms of sexual violence as a form of torture.

Recommendations

In light of the above observations, the competent State authorities should take the necessary steps to ensure that:

- The phenomenon of violence against women, both at the level of legislation and at the level of social policy for victims' support, is eliminated. For this reason the GNCHR attaches the utmost importance to the prevention and the need to implement effectively Articles 12 to 17 of the Convention²¹⁴. In particular, the GNCHR points out the need to systematically invest resources to prevent all forms of violence, with particular emphasis on educating children and young people on the principles of gender equality, human rights and anti-discrimination, gender stereotypes as well as behaviours fostering acceptance and tolerance of violence against women. The fight against violence and the necessary elimination of gender stereotypes in all fields requires the participation of men on the basis of universal principles and values, the establishment of which requires time and systematic effort²¹⁵.
- The definition of torture, prescribed by Article 137A of the new Criminal Code is fully aligned with the standards contained CAT, covering all elements required by Article 1(1) CAT.
- Particular attention is brought to the awareness raising of professionals involved in the child protection field on gender issues, given the current lack of child-centred, medical and psychiatric approach, which often results to ignoring the needs of mothers, victims of domestic violence.

Further, bearing in mind the importance of statistical data collection and how challenging this is for Greece, the GNCHR urges the State authorities to provide a specific time frame within which it is estimated that the new judicial computerised system, which is expected to greatly improve the collection of data, will be completed and operational.

²¹³ HRC, Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/16/52/Add.4, 4.3.2011, par. 89(38).

²¹⁴ Article 12 – General obligations, Article 13 – Awareness-raising, Article 14 – Education, Article 15 – Training of professionals, Article 16 – Preventive intervention and treatment programmes, Article 17 – Participation of the private sector and the media.

²¹⁵ GNCHR, [Observations](#) on draft law on the "Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the adaption of the Greek legislation" [in Greek] (2018).

IX. Trafficking in human beings

Relates to CAT Article 2, COBs par. 24 and LOI par. 8.

In its 2016 LOI, the Committee, taking into account the persistent reports of trafficking in women and children for sexual and other exploitative purposes, the very few prosecutions and convictions of the offenders of such crimes, as well as the inadequate support services provided to victims of trafficking, requested updated information on the measures taken (a) to address the root causes of trafficking in persons, particularly sexual exploitation of women and children, (b) to provide victims of trafficking, with shelter and assistance and (c) increase efforts aimed at international, regional and bilateral cooperation with countries of origin, transit and destination. The Committee also asked for updated statistical data on the incidence of trafficking, on the number of complaints relating to human trafficking and on the related investigations, prosecutions, convictions and sanctions, as well as on compensation provided to victims.

The GNCHR has been involved in the past with the lack of effective implementation of the regulatory framework on fighting against trafficking in human beings (*Trafficking In Human Beings*) and the need for parallel and appropriate reinforcement of the institutional, as well as the substantial protection of the victims' rights in practice, by adopting specific positions and proposals to effectively combat the phenomenon of trafficking in human beings²¹⁶.

Crucial is the fact that the degrading of the trafficking victims, from persons to *res*, from subjects to objects, renders *trafficking* a modern form of slave trade in the 21st century and a "globalised" version of procuring. Taking into account the complexity of the phenomenon, which is, by its own nature, inextricably linked to various individual sectors, such as immigration policy, organised crime, prostitution, forced labour, violence against women and children, pedophilia circuits, and the social pathology reflected in these phenomena²¹⁷, the GNCHR has already addressed recommendations to all competent bodies of the Greek State and will continue to

²¹⁶ GNCHR, Comments on the draft law for "combatting human trafficking, crimes against sexual freedom, child pornography and generally economic exploitation of sexual life and assistance to the victims thereof" (2002), International Conventions for the protection of migrant workers and Greece's position (2002), Decision to submit a proposal to the competent State Authorities for the ratification of: a. the Council of Europe Convention on Action against Trafficking on Human Beings and b. Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography (2006), Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece (2007), Right to health of undocumented migrants, 8.11.2007, Observations on the Draft of the 20th and the 21st Periodic Report of the Hellenic Republic for the implementation of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (2015), Written Information in relation to the implementation of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in Greece (2016), Statement on the Draft Law of Ministry of Justice, Transparency and Human Rights, submitted to the Parliament on 9.11.2016 and entitled «Incorporation of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, of the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and of the Directive 2014/54/EC, on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers II) adoption of measures in order to comply with Articles 22, 23, 30, 31(1), 32 and 34 of the Regulation No 596/2014 on market abuse and repealing the Directive 2003/6/EC of the European Parliament and the Council and the Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and transposition of the Directive 2014/57/EU on criminal sanctions for market abuse and its implementing Directive 2015/2392, III) transposition of Directive 2014/62 on the protection of the euro and other currencies from counterfeiting through criminal law, and the replacement of the Framework-Decision 2000/383/JHA and, IV) Establishment National mechanism for investigating incidents of arbitrariness in security forces and in detention facilities (2016).

²¹⁷ GNCHR, Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece (2007), p. 1.

cooperate with them, as well as with the civil society, in order to contribute towards the most effective way in dealing with this complex challenge.

The GNCHR has stressed, in its Recommendations for the full compliance of the Greek State with the ECtHR judgement, *Chowdury and Others v. Greece*²¹⁸, that the implementation of the case-law on Article 4 ECHR, the provisions of which prohibit three severe forms of personal freedom violations: servitude, slavery and forced labour, has been infrequent, mainly because of the looming extinction of such phenomena in modern European States of rule of law. Unfortunately, the emergence of new forms of slavery has led the ECtHR to a new approach of the normative content of Article 4 ECHR²¹⁹. Indicative is the upward trend presented by the judgements of the ECtHR, which has found that the provisions of Article 4 have been violated, while in the 2005 judgement on *Siliadin v. France*²²⁰, and more recently, in the judgement *L.E. v. Greece*²²¹, the ECtHR confirmed the application of Article 4 in cases of trafficking in human beings.

In addressing and combating this "modern form of slavery"²²² and in view of the increasing refugee and migratory flows, the judgement of the ECtHR, *Chowdury and Others v. Greece*²²³, widely known as the "Manolada judgement", is considered to be crucial for the protection of victims of trafficking and forced labour. The ECtHR itself has ranked it among its most important judgements; it is designated as a judgement to be used for case reports (*Importance Level: Case Reports*) of the Court. This is, indeed, the first judgement of the ECtHR, in which the situation of trafficking for labour exploitation purposes in the agricultural sector is thoroughly examined. More specifically, for the first time, the ECtHR links human trafficking to the exploitation of migrant work, recognising that the very exploitation of migrant workers is a form of forced labour and trafficking in human beings, and recognises that victims have been subjected to forced labour²²⁴.

The ECtHR specific judgement is particularly important not only for the Greek State, to the extent that it condemns phenomena which are unacceptable in a modern rule of law and affect the core of human rights, including respect of human life and dignity, but also in general for the protection of the rights of migrant workers, for many reasons. At first, because, in its decision on the 30th March 2017, the ECtHR notes that trafficking in human beings falls within the scope of Article 4 ECHR and that, in accordance with Article 4A of the Convention of the Council of Europe on action against trafficking in human beings, labour exploitation constitutes a form of trafficking²²⁵. Secondly, because the Court condemns the Greek State for violating Article 4(2) ECHR, acknowledging that labour exploitation is one of the ways in which human trafficking is expressed²²⁶, while at the same time – and here the Court's greatest contribution to human rights

²¹⁸ GNCHR, ECtHR, *Chowdury and Others v. Greece*. [Recommendations](#) for the full compliance of the Greek State (2018).

²¹⁹ M. Karavias, "Article 4. Prohibition of slavery and forced labour", in *European Convention on Human Rights. Commentary by article*, L. A. Sicilianos (Ed.), Nomiki Bibliothiki, 2017, p. 152 et seq. (in particular 153, 163).

²²⁰ ECtHR, *Siliadin v. France* [application no 73316/01], 26.7.2005.

²²¹ ECtHR, *L.E. v. Greece* [application no 71545/12], 21.1.2016.

²²² GNCHR, Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece (2007), p. 1.

²²³ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017.

²²⁴ In its previous judgements (see eg. *Siliadin v. France* or *Rantsev v. Cyprus and Russia*), the cases of forced labour and trafficking in human beings concerned either children or women who provided domestic services.

²²⁵ ECtHR *Chowdury and Others v. Greece* [application no 21884/2015], 30.3.2017, par. 86, 92 and 93.

²²⁶ *Idem*, par. 93.

law is being identified too – rushes to identify, ignoring any typical obstacles, the content of positive measures, which State parties in the ECHR are called upon to take, to prevent new forms of slavery and to effectively protect victims of trafficking and forced labour²²⁷. It is worth noting the fact that the ECtHR refers to the Council of Europe Convention on Action against Trafficking in Human Beings as a source of shaping the positive obligations of Greece, despite the fact that at the time of the facts of the case the particular Convention had not yet entered into force in Greece.

Acknowledging the significant efforts put into fighting human trafficking by the National Rapporteur for Combating Human Trafficking (NR) and taking into account specific initiatives of his Office, such as the explicit inclusion in the law (Article 323A of the newly voted Criminal Code) of "servitude" among the forms of exploitation resulting from human trafficking or the non-punishment of victims of human trafficking for their involvement in unlawful activities, as well as the official launching of the National Referral Mechanism for Victims and Potential Victims of Trafficking in Human Beings (NRM) as of January 1st, 2019, the coordination of the development by the Institute of Child Health - Department of Mental Health and Social Welfare of a tool (SESN) to assist professionals to identify minors victims of human trafficking and the trainings provided to the personnel of RICs for the identification and protection of human trafficking victims in mixed migratory flows²²⁸, the GNCHR remains deeply concerned about the progress made in combating trafficking of human beings in Greece.

Six years after the tragic incident in the Manolada strawberry fields which shocked the public opinion, the lack of commitment and the complacency of the competent State authorities on the harsh human rights violations of hundreds of people who are severely exploited, do not seem to have been eliminated. Unfortunately, incidents like the serious accident at the onion fields in Thiva, on the 16th June 2016, the fire, on the 7th June 2018, in an improvised camp made of canes and plastic in the area of N. Manolada or the fire which broke out on the 16th June 2019 at a strawberry field in Lappa (a neighboring area of Manolada), which of pure luck did not result in any fatalities, have led to the realisation of the extent of such problems that accompany employment in the agricultural sector of our Country for years and proved that the working conditions of Manolada did not constitute an occasional phenomenon, but they still apply throughout the country, highlighting tragically the perpetual state and employer tolerance to incidents of severe labour exploitation. In light of the above observations and looking into the data from the field provided by reliable sources of information, such as for instance the Manolada Watch²²⁹, the GNCHR remains deeply concerned about the non conformity both in law and in practice, with the ECtHR, *Chowdury and others v. Greece* judgement, with regard to the particularly abusive living and working conditions of illegal migrants especially in the agricultural sector.

²²⁷ *Idem*, par. 103 et seq. See also I. Kouvaras, "Comment on the ECtHR judgement, *Chowdury and others v. Greece* (Manolada case): The condemnation of an entire system of forced labour and exploitation", *Human Rights*, 76 (2018), Ed. Sakkoulas.

²²⁸ NR, *Contribution to the GNCHR's Submission*, received: 27.6.2019

²²⁹ Generation 2.0 for Rights, Equality and Diversity, [Manolada Watch](#). Manolada Watch is an initiative of Generation 2.0 for Rights, Equality and Diversity for the monitoring of working and living conditions of the migrant agricultural workers at Manolada in Ilia, Greece.

Recommendations

In light of the above, and in view of the necessity to duly tackle both the phenomenon of human trafficking for the purposes of labour exploitation and the severe labour exploitation in general, the GNCHR elaborated for the competent State Authorities a framework of comprehensive recommendations, following the same thematic axes adopted for the assessment of the implementation of the regulatory and institutional framework governing these issues, and in particular, three of the State's positive obligations as derived from the Council of Europe Convention on Action against Trafficking in Human Beings: prevention of trafficking in human beings and/or forced labour (A), promotion and protection of the rights of victims of trafficking in human beings and/or forced labour (B) and effective investigation and prosecution of crimes of trafficking in human beings and/or forced labour (C)²³⁰.

Out of its ten-page recommendations, the GNCHR would like to focus on the following recommendations:

With regard to the prevention of trafficking in human beings for the purpose of labour exploitation and/or forced labour, the competent State authorities should take the necessary steps to ensure that:

- The existing regulatory framework is strengthened and the gaps where these are found to exist are filled. More specifically, the GNCHR recommends:
 - the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
 - the ratification of the Protocol of 2014 to the Forced Labour Convention No. 29 of the ILO (P029) and
 - the ratification of the International Labour Convention No. 129 concerning Labour Inspection in Agriculture, combined with the adoption of the appropriate implementing measures and the adoption of the necessary legal and regulatory acts.
- The system of inspections of working conditions is operational, integrated and effective and that due attention is given to the factors which increase the risk of exploitation. To this end, it is necessary to ensure, among others, adequate staffing of the Hellenic Labour Inspectorate (SEPE) with staff trained to conduct targeted and effective inspections and capable of understanding and assessing the factors which increase the risk of severe labour exploitation in practice, coordination between SEPE and the Police, the precise delimitation of the SEPE competences.
- A single coherent system for collecting statistics and related data on the phenomenon of human trafficking and forced labour in Greece is maintained, in which will be included reliable and comprehensive statistics on measures to protect and promote the rights of victims of trafficking and/or forced labour, on the investigation and prosecution of relevant cases concerning both trends in trafficking and forced labour, as well as on the performance of the main stakeholders involved in the fight against the two phenomena.

²³⁰ GNCHR, ECtHR, Chowdury and Others v. Greece. [Recommendations](#) for the full compliance of the Greek State (2018), p. 44-54.

▪ Targeted awareness-raising and training initiatives for organisations and services who deal with cases of labour exploitation are undertaken, as well as awareness-raising initiatives with regard to the issue of severe labour exploitation of migrant workers, in order to create a climate of zero tolerance of labour exploitation (eg. discouraging demand for the services of victims of human trafficking for the purpose of labour exploitation and/or forced labour, encouraging businesses to eliminate human trafficking and forced labour from their supply chains etc.).

With regard to the promotion and protection of the rights of victims of trafficking in human beings for the purpose of labour exploitation or/and forced labour, the competent State authorities should take the necessary steps to ensure that:

- Initiatives to improve the system for the identification of victims of human trafficking and/or forced labour are taken,
- Suitable accommodation is provided for male victims of trafficking and that they can fully benefit from the assistance measures provided for in law,
- All possible foreign victims of human trafficking and/or forced labour, including EU citizens, are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period,
- All victims of human trafficking and/or forced labour can effectively benefit in practice from the right provided under Greek law to obtain a renewable residence permit,
- Access to compensation for victims of trafficking and/or forced labour is facilitated and guaranteed,
- Instruments and mechanisms established to address trafficking – such as referral mechanisms or temporary residence permits – are reviewed with a view to broadening their scope of application to cases of severe labour exploitation that do not involve trafficking.

With regard to the effective investigation and prosecution of human trafficking crimes for the purpose of labour exploitation or/and forced labour, the competent State authorities should take the necessary steps to ensure that:

- Initiatives to ensure compliance with the principle of non-punishment of victims of human trafficking and/or forced labour for their involvement in unlawful activities are taken.
- Identification of gaps in the investigation procedure and the prosecution of human trafficking and/or forced labour cases is prioritised,
- The effectiveness of police investigations is improved, by exploring the possibility of setting up specialist police units and establishing close links of cooperation between the Hellenic Police and monitoring authorities, such as the SEPE or the police units for the prosecution of financial crime,
- Prosecutors and judges are further specialised, in order to be able to identify and deal with human trafficking cases in a timely and effective manner,
- Actions to protect victims of human trafficking and/or forced labour are intensified, preventing them from being intimidated, both during and after their identification process as victims²³¹.

²³¹ For the full text of recommendations see GNCHR, ECtHR, Chowdury and Others v. Greece. [Recommendations for the full compliance of the Greek State \(2018\)](#), p. 44-54.

X. Non-refoulement

Relates to CAT Article 3, COBs par. 19 and LOI par. 10-12.

In its 2016 LOI, the Committee, taking into account the inadequate protection in relation to expulsion, return or deportation to another country and the State party's implementation of its forced return procedures, requested updated information on the measures taken to ensure full protection from refoulement in line with Article 3 of the Convention and, in particular, steps taken by the State party (a) to establish the necessary safeguards in forced return procedures, (b) to review the content of its readmission agreement with Turkey in order to bring it in line with ensure that it complies with the international standards and (c) to ensure that appeals against return or expulsion orders have an automatic and immediate suspensive effect. The Committee also asked for disaggregated data with regard to the number of asylum applications registered, of applicants in detention, of applicants whose application for asylum was accepted, of applicants whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin and of cases of refoulement or expulsion.

The GNCHR acknowledges particular importance to the international protection regime and it has issued a series of relevant Decisions and Recommendations, while it continues to closely monitor the issues pertaining to the provision of international protection in Greece²³². In particular, the GNCHR recalls that the principle of non-refoulement enshrined in Article 33 of the Convention relating to the Status of Refugees²³³ constitutes the very essence of the protection of refugees.

Given that the recognition of the refugee status has a declaratory and not a constitutive character, the principle of non-refoulement applies both to refugees who seek to enter a country and to those who have already entered. The right of non-refoulement is triggered from the moment the refugees leave their country of origin. The prohibition of refoulement to a danger of persecution is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer and non-admission at the border. The principle of non-refoulement is not subject to territorial restrictions. It applies wherever the State exercises its jurisdiction, even *de facto*, irrespective of the place and the way in which the state organs act in their official capacity. Although the principle of non-refoulement is not identical to the right of entry to a State, the

²³² GNCHR, [Statement](#) regarding the serious dimensions that the refugee/migration problem has taken in Greece (2016), GNCHR, [Report](#) on the EU-Turkey Agreement of the 18th of March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016 (2016), GNCHR, [Public Statement](#) on the amendment modifying the composition of the independent Appeals Committees (2016), GNCHR, [Statement](#) on the occasion of the examination of the applications for international protection of the eight Turkish military (2016), GNCHR, [Report](#) on living conditions in hotspots and accommodation sites for migrants and refugees (2016), GNCHR, [Statement](#) in response to the recommendation of the European Commission to reactivate the refugee return mechanism under Dublin system (2016), GNCHR, [Statement](#) in response to the judgement of the Supreme Court of Cassation (Areios Pagos) concerning the eight Turkish military (2017), GNCHR, [Report](#) on the condition of reception and asylum system in Greece (2017), GNCHR, [Statement](#) regarding the situation in the Reception Centres of the Eastern Aegean islands and, especially, of Moria in Lesbos (2018), GNCHR, [Statement](#) on complaints regarding informal push-backs at the region of Evros (2018).

²³³ According to Article 33 of the Convention relating to the Status of Refugees, "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". See Legislative Decree No 3989/1959 "Regarding the ratification of the multilateral Convention relating to the Status of Refugees" (OJ 201/19-26.09.1959, vol. A), as supplemented by Emergency Law No 389/1968 "Regarding the ratification of the New York Protocol of 31.1.1967 relating to the Status of Refugees" (OJ 125/26.4/4.6.1968, vol. A).

principle of non-rejection at the border – which is regarded as part of the principle of non-refoulement – entails at least entry on a temporary basis in order to determine the status of the person²³⁴.

The GNCHR follows closely and with particular concern the accumulation of severe complaints regarding the recurrent, informal push-backs of persons who may need international protection at the region of Evros²³⁵. The GNCHR has repeatedly stressed the need for expeditious investigation of the relevant complaints²³⁶. Nevertheless, severe allegations of informal forcible push-backs of foreign nationals to Turkey by "masked Greek police and border guards or (para-) military commandos" at the region of Evros were still being reported in 2018, according to the CPT²³⁷.

Indeed, according to the CPT's delegation, "in the course of the April 2018 visit, several foreign nationals alleged the occurrence of push-back operations from Greece to Turkey via boat across the Evros River border. These consistent and credible allegations were received by the delegation through individual interviews with 15 foreign nationals carried out in private at three different places of detention. They mainly referred to incidents that had taken place between January and early March 2018, whereas some dated back to 2017. The persons who alleged that they had been pushed back from Greece to Turkey had subsequently re-entered Greek territory and had been apprehended and detained by the Greek police"²³⁸.

The GNCHR notes with great concern that, according to the CPT's delegation, "these allegations also correspond to allegations that the CPT had previously received, including through interviews with foreign nationals who had alleged push-backs during its 2015 visit to Turkey"²³⁹.

Respectively, in a report following her visit to Greece in June 2018, the Council of Europe Commissioner for Human Rights expressed her "deep concern about persistent and documented allegations of summary returns to Turkey, often accompanied by the use of violence", urging the Greek authorities to put an end to push-backs and to investigate any allegations of ill-treatment perpetrated by members of Greek security forces in the context of such operations²⁴⁰.

In the same direction, in a report published in August 2018, the UNHCR mentioned that it continued to receive "numerous credible reports of alleged push-backs" by Greek authorities at the land border between Greece and Turkey. Such returns pose several physical and other protection risks to persons affected, who often include children and vulnerable individuals²⁴¹. In January 2019, the UNHCR Representation in Greece commented that both UNHCR Offices in Greece and Turkey continue to receive credible allegations of push-backs in Evros and noted that

²³⁴ GNCHR, [Statement](#) on complaints regarding informal push-backs at the region of Evros (2018).

²³⁵ [Press Releases](#) of the Hellenic League for Human Rights, dated 29.5.2017 and 6.6.2017, Complaint of the Social Assistance Network for Refugees and Immigrants regarding the illegal push-back of Syrian refugees at the region of Evros on 26.5.2017, notified to the GNCHR on 23.6.2017 and [Complaints and reports of systematic push-backs in Evros of beneficiaries of the Greek Council for Refugees](#), 20.2.2018

²³⁶ GNCHR, [Statement](#) in reference to the complaints of illegal returns in Evros (2017) and GNCHR, [Statement](#) on complaints regarding informal push-backs at the region of Evros (2018).

²³⁷ CPT/Inf (2019) 4, par. 139.

²³⁸ *Idem*, par. 138.

²³⁹ *Idem*, par. 141.

²⁴⁰ CoE, Commissioner for Human Rights, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6.11.2018, par. 64.

²⁴¹ UNHCR, [Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders](#), January-August 2018, p. 17-18; [Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders](#), January-December 2018, p. 21-22.

UNHCR is not satisfied by the procedure followed by the Greek authorities in order to investigate those allegations²⁴².

These findings concur with the findings of NGOs involved in the protection of human rights of migrants and refugees and asylum seekers in the field, such as the GCR or Human Rights 360. In particular, in February 2018, a report issued by the GCR documented a number of complaints of push-backs in Evros region²⁴³. The GCR mentioned that allegations of push-backs have been consistent and increasing in numbers, referring *inter alia* to large families, pregnant women, victims of torture and children²⁴⁴. Further, according to the contribution of Human Rights 360, "during 2018, in a number of cases including unaccompanied asylum seeker children and vulnerable persons, there were allegations of informal forcible removals (push-backs) of foreign nationals from Greece to Turkey at the Evros river border. The persons, who alleged that they had been pushed back from Greece to Turkey had again entered Greek territory and had subsequently been apprehended by the Greek police creating a new normality in Evros region [...]. Testimonies included at this report substantiate a continuous and uninterrupted use of the illegal practice of push-backs"²⁴⁵. Further, the organisation observed that "the practice of push-backs constitutes a particularly wide-spread practice, often employing violence in the process, leaving the State exposed and posing a threat for the rule of law in the country. Following the report on push-backs the Public Prosecutor of Orestiada has begun a preliminary investigation into the allegations concerning the push-backs, while the Greek Ombudsman closed the open investigation that had opened in 2017"²⁴⁶.

With regard to the investigation of the Greek Ombudsman in relation to the illegal refoulements of more than three hundred seventy-nine (379) alien citizens, mostly of Syria, Iraq and Sierra Leone, according to the Ministry's of Citizen Protection Response to the CPT, the Police Directions of Alexandroupoli and Orestiada ordered two (2) independent preliminary administrative examinations (DPE) respectively, during which no liability of any police officer was found. Therefore, as regards the disciplinary part, the police authorities decided to place the PDEs in the archive²⁴⁷.

Besides, this is the official State position. Indeed, according to the above-mentioned Ministry's of Citizen Protection Response to the CPT, "the reported behaviours and practices do not exist as an operational activity and practice of the staff of the Border Guard Services at all, which is mainly involved in actions to deal with the effect of illegal immigration in the greek-turkish borders"²⁴⁸. Further, it is underlined that "for the best operational response, the Hellenic Police Headquarters has issued standing orders, which are transmitted to the staff of the Border Guard Services in relation to the behaviour of the police staff towards the immigrants and refugees, for the full respect of the fundamental human rights", while at the same time it "will keep accomplishing its work with professionalism and respect to the human rights, whilst it will continue to look into ways of better handling of the borders and protection of migrating flows, fighting at the same time any arbitrariness case within it"²⁴⁹.

²⁴² T. Bozaninou, "The 2018 account by the UN High Commissioner for Refugees", *To Vima*, 31.1.2018 [in Greek].

²⁴³ GCR, *Reports of systematic push-backs in the Evros region*, 20.2.2018.

²⁴⁴ See as well ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 27-29.

²⁴⁵ Human Rights 360, *Contribution to the GNCHR's Submission*, received: 3.6.2019.

²⁴⁶ *Ibidem*.

²⁴⁷ CPT/Inf (2019) 5, p. 15.

²⁴⁸ *Idem*, p. 35.

²⁴⁹ *Idem*, p. 36.

Recommendations

In light of the above, the competent State authorities should take the necessary steps to ensure that:

- Any form of push-backs taking place across the Evros River border by law enforcement officials is prevented,
- All the measures required in order to fully guarantee the right of non-refoulement of the foreign nationals who irregularly enter Greece as well as their right to express their claims in an appropriate and sufficient manner are taken. In particular, nationals entering Greece irregularly should have effective access to an asylum procedure which involves an individual assessment of the risk of ill-treatment, on the basis of an objective and independent analysis of the human rights situation in the countries concerned. To this end, clear instructions should be given to Greek police and border guards to ensure that irregular migrants who have entered Greek territory must be individually identified and registered, and placed in a position to effectively make use of the legal remedies against their forced return.
- The above complaints are timely and thoroughly investigated by the competent authorities in order to bring those responsible for the abovementioned illegal actions to justice.

XI. Training

Relates to CAT Article 10, COBs par. 25 and LOI par. 15.

In its 2016 LOI, the Committee, taking into account the importance of training schemes for law enforcement personnel, border guard staff, penitentiary staff, staff of detention centres, as well as members of the judiciary and prosecutor, requested updated information on training programmes developed and implemented by the State party to ensure that the above-mentioned personnel is fully aware of the State party's obligations under the Convention. The Committee also asked for information on training for all medical personnel involved with detainees, in the detection of signs of torture and ill-treatment in accordance with international standards and on steps taken to develop and implement a methodology to evaluate the implementation of its training programmes, and its effectiveness and impact on the reduction of cases of torture and ill-treatment.

The training of all professionals involved in the human rights protection field, such as law enforcement personnel, border guard staff, penitentiary staff, staff of detention centres, as well as members of the judiciary and prosecutor, constitutes a topic on top of the GNCHR agenda.

The GNCHR notes with satisfaction that according to the Hellenic Police's replies to the GNCHR questionnaire, there is indeed additional staff training which takes into account the different cultural background of detained third country nationals. In particular, according to the information provided by the Hellenic Police, "at the Police Departments, under the territorial jurisdiction of which are the pre-removal centres, seminars are organised to inform police officers who are employed on a daily basis at detention centres, in cooperation with various NGOs, the UNHCR, the International Committee of the Red Cross (ICRC) and others"²⁵⁰. To this end, educational actions were carried out under the co-funded Migration Flows Projects 2007-2013, and similar periodic educational actions have been provided under the Asylum, Migration and Integration Fund (AMIF) 2014-2020. Pursuant to the replies to the GNCHR questionnaire, "it is emphasised that the Hellenic Police shows particular sensitivity to the issue of the police officers' excellent conduct towards citizens, nationals and aliens, and the faithful execution of their duties, notably in terms of absolute respect for fundamental rights, diversity and human dignity, as prescribed by the legislation in force"²⁵¹.

Notwithstanding the measures taken for the suppression of arbitrary cases involving the security forces, the GNCHR would like to highlight however that the effective response to the phenomenon of torture and ill-treatment by law enforcement personnel includes the correct - initial and periodic - education and training of security forces mainly on human rights, but also on inquiry methods, especially for the Police. The GNCHR has proposed to the Ministry of Internal Affairs, on its own initiative, to carry out and establish a programme for the education of police officers on human rights. At first this proposal was accepted and a working group convened a couple of times in 2009, mostly to discuss initial steps and then the development of the said programme. However, the implementation of the programme itself failed. Furthermore, following the change in Government, the Ministry of Citizen Protection disregarded the GNCHR proposal and dismantled the previous working group. What is more, a new working group was put together consisting only of department officials. The GNCHR made several attempts to communicate with the Ministry and highlighted the importance of its participation in the

²⁵⁰ Hellenic Police, *Replies to the GNCHR Questionnaire*, received 29.3.2019, p. 9-11.

²⁵¹ *Ibidem*.

programme. Nevertheless, these efforts proved fruitless and the Ministry failed to brief the Commission on the continuation or non continuation of the programme. Therefore, the GNCHR has reasonable doubts concerning the will to make substantive changes to the training of police officers regarding education on human rights²⁵². The GNCHR is willing to assist and cooperate with the Ministry in order to facilitate any educational initiative in this regard.

More recently, the GNCHR has pointed out that, with regard to the penitentiary establishments' staff it is crucial to improve the quality of the management staff, the guardian and other staff serving in the penitentiary facilities so that they can deal with the various problems and situations arising in daily basis in prisons²⁵³.

As far as detection of signs of torture and ill-treatment in accordance with international standards by medical personnel involved with detainees, the GNCHR expresses its regret that access to healthcare is in general very difficult for victims of torture and ill-treatment in Greece. Despite the Country's obligation under CAT to provide holistic and multidisciplinary services to victims of torture and ill-treatment, there are only a few such specialised programmes offering holistic, multidisciplinary care in Greece and these are run by NGOs. According to MSF, victims of torture patients treated by MSF in its centre in Athens face additional barriers in accessing healthcare²⁵⁴. These include:

- a general lack of awareness amongst migrants and public service workers on migrants' rights to access the public health service,
- lack of medical professionals and services addressing the multidimensional needs of victims of torture and ill-treatment, as well as the management of residuals and com-morbidities,
- lack of interpretation services in clinics and hospitals which reduces victims of torture and other migrants' capacity to communicate their medical condition and
- lack of mental health services specialised in assisting victims²⁵⁵.

Recommendations

In light of the above, the competent State authorities should take the necessary steps to ensure that:

- A permanent system of basic education and further training for staff is set up, depending on the job and the needs arising, harmonised with the new trends and guidelines of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which include a new understanding of the role of penitentiary establishments' staff. For this purpose, the GNCHR is willing to assist and cooperate with the competent State authorities in order to facilitate any educational initiative in this regard. Further, the assistance of international and European organisations specialised and experienced in the training of law enforcement/judicial bodies is considered to be extremely helpful.

²⁵² GNCHR, [Observations](#) on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR) (2013), p. 18.

²⁵³ GNCHR, [Observations](#) [in Greek] on the Strategic Plan (Strategic Planning 2018-2020) for the Prison System of the Ministry of Justice, Transparency and Human Rights - General Secretariat for Transparency and Human Rights (2017).

²⁵⁴ MSF, *Barriers to care for victims of torture in Greece* (2019).

²⁵⁵ *Ibidem*.

- Public sector staff, especially in asylum services and health facilities receives specialised training and sensitisations to better guarantee identification, certification and adequate provision of holistic healthcare services.

XII. Racial discrimination, xenophobia and related violence

Relates to CAT Article 16, COBs par. 12 and LOI par. 25.

In its 2016 LOI, the Committee, in light of the recommendations made by the Special Rapporteur on the human rights of migrants following his mission to Greece in December 2012 (A/HRC/23/46/Add.4, paras. 98–102) and taking into account the increase in manifestations of xenophobic and racist attacks against foreign nationals, irrespective of their status, requested updated information on any progress in the State party's efforts to combat increasing manifestations of racial discrimination, xenophobia and related violence, particularly violence against migrants, asylum seekers and Roma, including any law enforcement involvement in these crimes. The Committee also asked for information on steps taken (a) to ensure that irregular migrants who are subject to return procedures are not indiscriminately and systematically detained and are not held for prolonged periods in facilities designed for short term-stay and (b) to provide for judicial review of all deportation orders and to respect procedural guarantees.

The GNCHR welcomes the significant initiatives undertaken by the State authorities in order to combat and prohibit racial discrimination, xenophobia and related violence, emphasising that they constitute decisive steps towards the implementation of the ultimate objective: the elimination of racist violence. Among those positive legislative and institutional developments, the GNCHR expresses its satisfaction for the creation of 68 Offices against Racist Violence, the geographical extension of the appointment of Special Prosecutors for racist crime, the training of Prosecutors in racist crime by the OSCE, the classification of files for racist crime at the Athens Public Prosecutor's Office with the indication "RV" (for racist violence) and the management of the data on the case files and court judgements in order to make it easier to identify them. The GNCHR supports these initiatives while contributing actively to the work of the National Council against Racism and Intolerance and to the development of a National Action Plan Against Racism. The coordination of the involved stakeholders is enhanced by the signing, in 6 June 2018, in Athens, of an inter-agency protocol on addressing hate crime, facilitated by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and organised in co-operation with the Ministry of Justice, Transparency and Human Rights of Greece. However, the GNCHR feels the need to stress that there is still a lot of work to be done as regards combating discrimination and xenophobia more effectively.

In particular, the GNCHR shares with the Racist Violence Recording Network (RVRN) its deep concerns concerning the significant increase in attacks with the involvement of law enforcement officials and civil servants. Indeed, the RVRN records, in its Annual Report 2018, incidents where there is concrete evidence (verbal abuse, threats, circumstances, etc.) demonstrating racist motives by law enforcement officials. A significant increase is recorded in incidents where law enforcement officials are either the perpetrators or just involved. In 22 recorded incidents, the perpetrators were law enforcement officials, in comparison to the 10 incidents recorded in 2017. In 5 incidents, the victims report that they sustained unprovoked violence by law enforcement officials during the course of the events at Sappho square in Mytilene, in April. In these attacks the victims were mainly undocumented refugees and migrants (11 incidents), unaccompanied

minors (3 incidents), asylum-seekers (6 incidents), a refugee (1 incident), a Greek transgender woman (1 incident)²⁵⁶.

As far as attacks by civil servants are concerned, according to the RVRN's findings, in 7 incidents the perpetrators were either civil servants or employees at public transportation. The categorization of incidents based on the reason for becoming a target, shows that all targeted groups face problems when dealing with the public sector. Specifically, the RVRN recorded 4 incidents against asylum-seekers, 1 incident against a Greek woman because of her colour, 1 incident due to sexual orientation and 1 incident due to gender identity. Those incidents indicate the lack of tolerance for diversity, as well as the development of a culture of harassment for LGBTIQ+ people, even within working places²⁵⁷.

In addition, the GNCHR recalls that it welcomed the legal recognition of gender identity on the basis of Law 4491/2017. However, the process of legal recognition of gender identity entails risks, because the need of privacy and non-exposure to further targeting has not yet been acknowledged in practice. In an incident recorded by the RVRN, during a hearing to change the sex and first name in a birth certificate, the judge did not respect the specificity of the procedure, forcing the applicants to speak loudly in a public session, in violation of the provision of Article 4(2) of Law 4491/2017, according to which "the statement is made in a private office without publicity"²⁵⁸.

Further, the GNCHR shares the concerns of the GCR, according to which, "despite the solidarity with refugees generally exhibited by local communities, incidents of racist violence and tension have been recorded through 2018 both on the islands and the mainland"²⁵⁹.

Refugee Support Aegean, for the period April 2018 to October 2018, observed an increase of "xenophobic and racist reactions by parts of the local societies against the presence of refugees and the creation of new hotspots on the islands of Lesbos and Samos. These reactions ranged from extreme and violent language used by local politicians and police to self-patrol groups checking houses for the presence of refugees on Lesbos". The organisation reported 16 incidents for that period on the Eastern Aegean islands²⁶⁰.

It is important to note, nonetheless, that the GNCHR applauds as a positive development the issuance by the Public Prosecutor of the Supreme Court, in July 2018, of a circular, requesting that the term "illegal migrant" be avoided in judicial documents as this may be insulting and not in line with Greek legislation²⁶¹.

The CPT's delegation acknowledges that the infliction of ill-treatment by police officers at the Security Departments, particularly against foreign nationals which presupposes the existence of racist predisposition – continues to be a frequent practice, notably at Agios Panteleimonas Police Station in Athens and at Demokratias Police Station in Thessaloniki²⁶². In fact, the CPT refers to a "deep-rooted problem of police ill-treatment", urging the Greek authorities to fully

²⁵⁶ RVRN, *Annual Report 2018*, p. 20.

²⁵⁷ *Idem*, p. 21.

²⁵⁸ *Idem*, p. 21-22.

²⁵⁹ ECRE, *AIDA Country Report Greece 2018*, *op.cit.*, p. 132.

²⁶⁰ Refugee Support Aegean, "Rise of xenophobic and racist incidents in the past 6 months: A timeline", 31 October 2018.

²⁶¹ Supreme Court Prosecutor, *Document no 8191* [in Greek], 26 July 2018.

²⁶² CPT/Inf (2019) 4, p. 5 and par. 19, 21.

acknowledge the extent of the widespread and put in place a comprehensive strategy and determined action to combat this phenomenon.

The structural character of the problem of racist violence in Athens is explicitly recognised by the ECtHR in the case *Sakir v. Greece*²⁶³, where the Court found a violation of Article 3 ECHR on account of the defective investigation into a serious incident of racist violence that occurred in Athens in 2009. In addition, the detention conditions imposed upon the victim also violated Article 3 ECHR.

These findings coincide with the findings of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, who, in his Report following his mission to Greece a few years ago, before the abovementioned ECtHR judgement²⁶⁴, mentions that "at the CIDs of Omonia, Agiou Panteleimonos and Akropolis in Athens, the Special Rapporteur found more than 40 foreigners held in irregular and apparently unofficial detention areas. It appeared that these people were being excluded from the official statistics which were communicated to the Ministry of Citizen's Protection on a daily basis. The non-registration of detainees significantly increases the risk of being subjected to torture or ill-treatment"²⁶⁵.

Last but not least the GNCHR reiterates the non-compliance of the definition of torture in the Greek criminal law with the international human rights law standards and, in particular, with Article 1(1) CAT, in order to emphasise that as long as the definition of torture prescribed by the Greek law remains that narrow, it will be difficult to establish the racist motivation of crime.

Recommendations

In light of the above, the GNCHR refers to the RVRN's recommendations to the State in order to combat racist crimes²⁶⁶. In particular, the GNCHR would like to focus on the following RVRN recommendations, urging the competent State authorities should take the necessary steps to ensure that:

- A clear and firm message of zero tolerance of ill-treatment of persons deprived of their liberty is actively promoted. Law enforcement officials should be continuously reminded, including from the highest political level and through appropriate training, that any form of ill-treatment of detained persons – including verbal abuse, racist behaviour, threats, and psychological ill-treatment – constitutes a criminal offence and will be prosecuted accordingly.
- Police Departments Combating Racist Violence are reinforced and properly staffed.
- Guidance is provided to Police regarding their obligation to assist the victims, to intervene for their rescue and to make sure that they are informed and referred to appropriate services.
- Police departments nationwide, governmental or non-governmental bodies and immigrant communities work together to ensure that victims are offered medical, social and legal assistance and interpretation services to facilitate their access to the police.
- A special circular on the appropriate treatment of LGBTQI+ persons aiming at providing law enforcement officials with clear guidance and avoiding secondary victimisation is adopted.

²⁶³ ECtHR, *Sakir v. Greece* [appl. no 48475/09], 24.6.2016.

²⁶⁴ His report actually is quoted by the ECtHR judgement, *idem*, par. 29 and 55.

²⁶⁵ A/HRC/16/52/Add.4, 4.3.2011, *op.cit.*, par. 43.

²⁶⁶ RVRN, *Annual Report 2018*, p. 29-34.

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- Human rights defenders, namely all individuals and organisations promoting and protecting human rights, are protected.
- Additional initiatives and measures are taken, in order to contribute to reducing tensions among refugees, relieving pressure from local communities (especially on islands-entry points), and preventing or limiting social tensions, which in turn become a breeding ground for xenophobic reactions and racist behaviours. Such measures may include the following:
 - significantly improving reception conditions, especially for vulnerable persons, as well as creating the conditions for greater security in all reception sites, Reception and Identification Centres and reception facilities in the mainland.
 - ensuring faster registration and processing of asylum claims of all nationalities.
 - systematisation and speed up of registration and reception of unaccompanied minors, and appropriate care and referral procedures.
 - re-assessing the geographic restrictions imposed on asylum seekers on the islands.
 - holistic approach to immigration and refugee issues, with long-term planning across the country.
 - preventative measures to prevent the victimization of refugees leaving the apartments of the ESTIA programme.

XIII. Redress, including compensation and rehabilitation

Relates to CAT Article 14, COBs par. 26 and LOI par. 23.

In its 2016 LOI, the Committee, taking into account the insufficient information provided relating to redress, including fair and adequate compensation as well as rehabilitation, available to victims of torture or their dependants, requested updated information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, or their families since the consideration of the last periodic report. The Committee also asked for information on the progress made in (a) developing a specific programme of assistance in respect of victims of torture and ill-treatment, (b) establishing more efficient and accessible procedures to ensure victims' right to compensation in accordance with Law 3811/2009 and (c) offering prompt redress to victims of violence which has been determined by international supervisory organs and courts.

Victims of torture in Greece

The GNCHR expresses its great concerns as regards the ability of victims of torture to rehabilitate. In particular, according to the MSF's contribution to the GNCHR, "it is estimated that 5 to 35% of the global migrant population are victims of torture or ill-treatment. Despite the various laws seeking to protect victims of torture in Greece, they are not currently receiving the rehabilitative medical, mental health, legal or social support or care they need or are entitled to under national and international law"²⁶⁷. The GNCHR deplores that despite the fact that pursuant to Greek law people recognised as vulnerable should have their geographical restrictions lifted and be transferred to the mainland to receive adequate care, their vulnerability assessments conducted by the National Public Health Organisation (EODY) are often delayed or not effective and inaccurate. This, according to MSF, is largely due to the insufficient number of doctors, psychologists and cultural mediators in the Greek reception centres and the lack of staff training in the identification of victims of torture. In fact, MSF notes with concern that "in 2018, 358 migrants were registered as victims of torture, violence, rape or other forms of exploitation by the Greek Asylum service. However, based on the number of patients MSF treats in Athens and Lesvos, it is likely that many more torture victims remain unidentified"²⁶⁸.

Further, it is important to emphasise that living conditions have a significant and direct impact on a victim's of torture ability to rehabilitate. MSF highlights that "if the accommodation is inadequate, inappropriate and unsafe it becomes a daily environmental stressor that can seriously impede the provision of care and the recovery and rehabilitation of victims of torture"²⁶⁹. Due to a significant lack of accommodation on the mainland, many victims of torture s remain stuck on the islands, sometimes for more than a year. MSF's clinical team in Lesvos report that these delays, and the substandard conditions in Moria camp, are having a negative impact on the health and mental health of their patients. On the mainland, most MSF patients face several legal and financial barriers to accessing safe and dignified accommodation. "Out of a sample of 397 victims of torture assessed by the MSF social workers in Athens between October 2014 and October 2018, 105 (26%) were accommodated in official shelter, 32 (8%) were accommodated

²⁶⁷ MSF, *Barriers to care for victims of torture in Greece* (2019).

²⁶⁸ *Ibidem*.

²⁶⁹ *Ibidem*.

in camps, 111 (28%) were living in precarious forms of accommodation (eg. squats and informal renting) and 66 (16.2%) had experienced homelessness"²⁷⁰.

Recommendations

In light of the above, the competent State authorities should take the necessary steps to ensure that:

- The vulnerability assessments of people entering Greece are sped up and conducted in an effective and accurate manner. To this end it is necessary to increase the number of doctors, psychologists and cultural mediators in the Greek reception centres and ensure their appropriate training of the staff in the identification of victims of torture.
- Living conditions of victims of torture are improved, by providing *inter alia* for an adequate, appropriate and safe accommodation.

Intersex persons

With regard to persons with variations of sex development (intersex persons) and despite the fact that no relative query has been formulated by the Committee in the LOI, the GNCHR is concerned about reports of unnecessary and sometimes irreversible surgical procedures performed on intersex children. The GNCHR is also concerned that these procedures, which are purported to cause physical and psychological suffering, have not as yet been the object of any inquiry, sanction or reparation²⁷¹.

Further, the GNCHR, bearing in mind Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe on Promoting human rights of and eliminating discrimination against intersex people²⁷², which calls on Council of Europe member States *inter alia* to prohibit medically unnecessary sex "normalising" surgery, sterilisation and other treatments practiced on intersex children without their informed consent and to ensure that intersex people have effective access to health care throughout their lives, deplors that the Greek competent State authorities have not yet responded to all the above and mainly, there is no ban on genital surgery which falls within the category of genital mutilation, even regarding intersex infants. On the contrary, according to the Greek Transgendered Support Association's findings, several cases have been recorded where parents are consulted or urged to have an abortion based on the sole fact that, during prenatal examination, the baby was found to be intersex.

Recommendations

In light of the above, the competent State authorities should take the necessary steps to ensure that:

- Medically unnecessary sex "normalising" surgery, sterilisation and other treatments practiced on intersex children without their informed consent are prohibited.
- Any treatment seeking to alter the sex characteristics of the child, including their gonads, genitals or internal sex organs, is deferred until such time as the child is able to participate in the

²⁷⁰ MSF, *Contribution to the GNCHR's Submission*, received: 18.6.2019.

²⁷¹ SYD, *Contribution to the GNCHR's Submission*, received: 27.6.2019.

²⁷² PACE, *Promoting human rights of and eliminating discrimination against intersex people*, Resolution 2191 (2017), adopted on 12 October 2017.

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decision, based on the right to self determination and on the principle of free and informed consent – except in cases where the life of the child is at immediate risk.

- All intersex persons have effective access to health care offered by a specialised, multidisciplinary team taking a holistic and patient-centred approach throughout their lives.
- Comprehensive and up-to-date training on these matters is provided to all medical, psychological and other professionals concerned, including conveying a clear message that intersex bodies are the result of natural variations in sex development and do not as such need to be modified.