

ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΕΘΝΙΚΗ ΕΠΙΤΡΟΠΗ ΓΙΑ ΤΑ ΔΙΚΑΙΩΜΑΤΑ ΤΟΥ ΑΝΘΡΩΠΟΥ

Νεοφύτου Βάρβα 6 (3^{ος} όρ.), 106 74 Αθήνα
Τηλ: 210-7233221, 210-7233216, fax:210-7233217, e-mail: info@nchr.gr

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| Detention Conditions in Police Stations and Detention Facilities for Aliens* |
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I. Introduction

The National Commission for Human Rights (hereinafter NCHR) addressed for the first time the question of detention conditions in 2001¹ based on the Report of the CPT after its *ad hoc* visit in Greece in 1999.

In 2002, it addressed new recommendations to the competent Ministries on the basis of the CPT Report after its visit in 2001, the observations of CAT, the observations of the CoE Commissioner for Human Rights after its visit in Greece in 2002 and the responses of the competent Greek authorities.²

In 2004, the NCHR recommended the ratification of the Optional Protocol to the Convention against Torture.³

In 2008, the NCHR issued an extensive report titled “Rights of Detainees and Detention Conditions in Greek Prisons”,⁴ whereas in February 2010 it commented the Draft 5th and 6th Periodic Report of Greece regarding the implementation of the Convention against Torture.⁵

The NCHR, based on secondary sources –reports of international and national monitoring bodies, reports of international and national NGOs- decided to focus on:
a) detention conditions in police stations, b) conditions in detention facilities for

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¹ NCHR, “Recommendations regarding Conditions of Detention in Greece”, *Annual Report 2001*, pp. 143 seq. [in Greek].

² NCHR, “Detention Conditions in 2002”, *Annual Report 2002*, pp. 249 seq. [in Greek].

³ NCHR, “Decision regarding the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment via OPCAT”, *Annual Report 2003*, pp. 245 seq. [in Greek].

⁴ NCHR, *Annual Report 2007*, pp. 71 seq.

⁵ NCHR, *Annual Report 2009*, pp. 106 seq. [in Greek].

aliens (border guard stations, ⁶ “Special Detention Facilities for Aliens”), and c) ill-treatment during detention.

II. Conditions in police stations

A) European Committee for the Prevention of Torture

The CPT in 2007⁷ visited several police stations in Attica and Evros and took the view that the conditions were appropriate only in three police stations and only for short-term detention. The other were problematic in terms of adequate natural and technical lighting, ventilation, levels of hygiene, overcrowding and outdoor exercise area.

In 2008,⁸ the CPT visited again several police stations. The CPT following its observations after the 2007 visit, noted that despite the declared intentions of the Greek Government to renovate the spaces that it had visited, there has been no significant improvement. As a conclusive remark it noted that the detention conditions remain sinister and that overpopulation is still the rule, aggravating the already bad infrastructure and the hygiene conditions (par. 24-25). The issues noted by the CPT in many detention facilities apart from that of overpopulation are⁹: limited or no access to natural light, inadequate ventilation, deficient cleanness especially in the hygiene spaces, lack of sanitary ware, lack of beds and blankets, lack of a foreyard or/and limited usage of the above.

The Greek Government in its response regarding the 2007 Report, acknowledged the existing problems, such as the inadequacy of the existing facilities, the unsuitability of many buildings and the lack of natural light, ventilation and heating and it proceeded to a detailed enumeration of the measures

⁶ Detention facilities in Border Guard Stations are not exclusively for aliens. However, due to their location at the entry points of Greece, the vast majority of the detainees are aliens.

⁷ *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007*, Strasbourg, 8 February 2008, CPT/Inf (2008) 3.

⁸ *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) from 23 to 29 September 2008*, Strasbourg, 30 June 2009, CPT/Inf (2009) 20.

⁹ The problem of overpopulation has been underlined also by the UN Committee against Torture in its latest conclusions and recommendations to Greece in 2004.

taken for the improvement of the detention conditions in the facilities the CPT visited. (e.g. installation of new insulation in the Piraeus Alien Department, installation of artificial light to the Acropolis Police Department etc).¹⁰ In its response regarding the 2008 Report it followed the same approach.¹¹ Nevertheless, we should note that some of its responses to the CPT observations are either not persuasive or do not constitute a convincing excuse.

B) The European Court of Human Rights (ECtHR)

Greece was convicted for the first time by the ECtHR for violating article 3 in the *Dougoz* case.¹² The Court held that the detention conditions in the Police Department of Alexandras Avenue and the detention facility in Drapetsona and in particular the great congestion and lack of sleeping conveniences combined with the excessive duration of Dougoz's detention under these conditions for ten and two months respectively constituted humiliating treatment. In December 2009, the Committee of Ministers of the Council of Europe closed this case considering that Greece had taken the appropriate general measures for its compliance with the Court's decision.¹³

Unfortunately, in the last years, Greece has been convicted 6 times for violating article 3 because of bad detention conditions. In the *Kaja* case¹⁴ the Court ruled that "the detention space of the Security Sub-Division of Larissa was not an appropriate space for such a long detention as the one that was imposed to the petitioner and lasted for three months. From its own nature it is a space that should be used for a short stay of the detainees. Because of its features, without a foreyard, without internal infrastructure for the preparation and the supply of foodstuffs, without radio or television in order for the detainee to be in contact with the outside

¹⁰ *Response of the Government of Greece 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 20 to 27 February 2007*, Strasbourg, 8 February 2008, CPT/Inf (2008) 4.

¹¹ *Response of the Government of Greece 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 23 to 29 September 2008*, Strasbourg, 30 June 2009, CPT/Inf (2009) 21.

¹² *Dougoz v. Greece*, Judgment of 6 March 2001.

¹³ Resolution CM/ResDH(2009)128.

¹⁴ *Kaja v. Greece*, Judgment of 27 July 2006.

world [...] it cannot satisfy the needs of an extensive detention”.¹⁵ In regard to this case, and within the framework of the general measures for the compliance of Greece with the Court’s decision, the Committee of Ministers has requested information from Greece as for the measures that it intends to take on the issue of the long stay of detainees in police stations, including aliens under deportation and it will examine the case in a subsequent session.

In the case of *Siasios and others*¹⁶ the complainants were held under custody for a time period of approximately 3 months in the Katerini Police Department until their transfer to the Prisons of Thessalonica. The ECtHR repeating its line of thinking from the *Kaja* case, it held that the detention of the complainants constituted humiliating treatment.¹⁷

In the case of *Vafiadis* the complainant –a drug addict- was held in the Thessalonica Police Department for approximately one hundred days due to no availability in the prisons. The ECtHR after repeating what it had already mentioned in the cases of *Kaja* and *Siasios* and underlining the fact that “the money of 5,87 euros per day that the petitioner was afforded for his food was minimal and it could not ensure adequate and appropriate daily food, since he had to order his food from restaurants at market’s prices”, it concluded that the long detention under these conditions constituted inhuman and degrading treatment.¹⁸

The Court in its most recent decision, in the case of *Tabesh*,¹⁹ held once again that the detention for approximately three months of the complainant who was under expulsion in the Alien Sub-Division of Thessalonica under the same conditions as in the previous cases constituted humiliating treatment in breach of article 3 of the ECHR.²⁰

¹⁵ *Ibid.*, par. 49.

¹⁶ *Siasios and Others v. Greece*, Judgment of 4 June 2009. The Committee of Ministers will examine this case on March of 2010.

¹⁷ *Ibid.*, par. 32-33.

¹⁸ *Vafiadis v. Greece*, Judgment of 2 July 2009, par. 35-38. The Committee of Ministers will examine this case on March of 2010.

¹⁹ *Tabesh v. Greece*, Judgment of 26 November 2009.

²⁰ We note that there is one more case pending: *Efraimidi v. Greece* (Application No 33225/2008) regarding detention conditions in police stations.

C) The Greek Ombudsman

In 2007 the Greek Ombudsman (hereafter GO) issued a report on the subject of the “Detention of ‘criminal’ offenders in police stations”.²¹

According to the Report, since 2005 onwards a high concentration of detainees has been observed in police stations in the wider area of Thessalonica. Apart from the significant number of aliens who remain detained waiting for their deportation, there is also a large number of detainees who are under transfer. Their detention in police stations extends from 10 days to three or more months. Their long stay in the detention facilities of the police stations is due to the refusal of the Judicial Prison of Thessalonica to receive them.

The GO noted, as the ECtHR has done before, that the infrastructure of the detention facilities in police stations aims at accommodating the detention of persons for very short time periods either before the trial or in case of transfer. Furthermore, as the GO notes, according to article 66, par. 6 of PD 141/1991 “in the detention facilities of the police departments, the detention of persons whose trial is pending or of convicts that are supposed to enter a Penitentiary Facility, is prohibited with the exemption of the time that is absolutely necessary before the transfer and only if the direct transfer and delivery in the appropriate facility is not possible”.

Furthermore, the GO on 27.08.2009 visited the detention facilities of the Alien Division of Attica. The visit of the GO unit focused on the usage of the foreyard for detention purposes of detainees under transfer. According to its estimations, the fact that these aliens were spending the night in the open space of the foreyard having only a blanket, even if this is considered as an exceptional measure as the Administration alleged, is degrading to their dignity.²²

²¹ The Greek Ombudsman, http://www.synigoros.gr/pdfs/30_10_porisma_paramoni_poinikwn_kratoumenwn.pdf. [in Greek].

²² The Greek Ombudsman, «Report on the visit in the detention facilities of the Attica Administration of Aliens», http://www.synigoros.gr/allodapoi/pdfs_01/8528_2_AutopsiaAxiologisi%281%29.pdf. [in Greek].

III. Conditions in Detention Facilities for Aliens

A) European Committee for the Prevention of Torture

The CPT visited in 2007 many detention facilities for aliens. In regard to Border Guard Stations, it considered the conditions generally unacceptable even for short-term detention and it emphasised the problems of inadequate natural light, ventilation and cleanness, overpopulation and lack of foreyards. The CPT expressed its satisfaction for the closing down of the “Special Detention Facility for Aliens” (hereafter SDFA) located in Peplo. However, it affirmed that the new installation does not meet the requirements that it had recommended (par. 27). The observations of the CPT for the other facilities that it visited may be summarized as follows: lack of foreyard, beds, cleanness, activity spaces, access to hygiene spaces, inadequate space per detainee, inadequate personnel, briefing of the detainees for their rights.

The CPT visited again in 2008 many detention facilities for aliens. We are briefly noting again the problems that were spotted by the CPT apart from overpopulation: problematic access to the toilets, lack of foreyard space or/and limited use of it, lack of beds, lack of sanitary ware, lack of activities, lack of adequate personnel, inadequate food, detention of women and men in the same facilities.

The CPT also visited the Mitilini SDFA in Pagani and described the conditions there as “repulsive”. We need to note that this facility closed down in the autumn of 2009 by a decision of the Ministry of the Citizen Protection. The conditions in SDFA in Filakio that started functioning in spring 2007 were certified by the CPT as satisfactory and it emphasized that this is the result of the good cooperation between the Police and the Prefecture (par. 41).

The responses of the Greek Government to the CPT’s Reports of 2007 and 2008 do acknowledge some of the problems –although they tend to minimize them– and they mention the measures (e.g. reconstructions, repairs) that the competent Ministry has already taken or intends to take, such as the closing down of the SDFA of Peplos and Vrysikas. However, certain responses were not persuasive,

such as that the overpopulation that had been observed in Border Guard Stations in Alexandroupoli is due to the fact that the SDFA of Peplos was shut down, given that even if it were operational, it still wouldn't be able to accommodate the needs of the area.

B) European Court of Human Rights²³

In the case of *S.D.* the complainant was detained under deportation for two months in the detention facility of the Border Guard Station in Soufli. The Court held that the fact that “he remained detained for two months in a unsuitable facility without being able to go outside or to make phone calls and without blankets, clean sheets and adequate sanitary products” constituted degrading treatment.²⁴

C) Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights of the Council of Europe visited Greece on December 8-10, 2008 focusing on the rights of asylum seekers.²⁵ With regard to the Border Guard Station in Fera, he noted that there was no telephone, no beds, and no cleanness in the hygiene spaces, while the detainees complained that they were allowed to get fresh air outside quasi never. We further note that the Commissioner visited Greece once again in February 2010 and met with the chair of the NCHR. During his visit, he focused *inter alia* on the issue in question, for which a relevant report has not been published yet.

²³ The following cases, regarding conditions in detention facilities for aliens, are pending: *Zontul v. Greece*, (Application No. 12294/07), *A.A. v. Greece*, (Application No. 12186/08), *Mathloom v. Greece*, (Application No. 48883/07), *R.U. v. Greece*, (Application No. 2237/08).

²⁴ *S.D. v. Greece*, Judgment of 11 June 2009, par. 51-52.

²⁵ Commissioner for Human Rights of the Council of Europe, *Report Following his Visit to Greece on 8-10 December 2008, Issue Reviewed: Human Rights of Asylum Seekers*, Strasbourg, 4 February 2009, CommDH(2009)6.

D) The Greek Ombudsman

During the summer of 2007 a unit of the GO carried out visits in detention facilities for aliens in Samos,²⁶ Mytilini,²⁷ Evros²⁸ and in Rodopi.²⁹ The problems found may be summarized as follows: inadequate administration of personal sanitary ware, issues of cleanness, inadequate number of telephone devices that operate with telephone cards, limited access to a foreyard, inadequate heating, and inadequacy of interpreters. We need to note that when the GO visited the alien detention facility in Pagani, it had considered the center's facilities as good and satisfying the basic conditions for a decent stay. However, after two years the situation had deteriorated to such an extent that the Administration decided to close down the center. Moreover, the GO was very judgmental regarding the conditions, at that time, in the alien detention facility in Samos (an old tobacco factory), which closed down after a few months.

E) Human Rights Watch

Human Rights Watch in the summer of 2008 carried out a field research mission.³⁰ It interviewed 173 aliens and it visited many detention facilities for aliens. Its findings can be summarized as follows: inadequate food, limited access to a foreyard, overpopulation, lack of cleanness, inadequate sanitary ware. We note that it considered as satisfactory the conditions in the new detention facility for aliens in Samos.

²⁶ http://www.synigoros.gr/allodapoi/pdfs/autopsia_samo_29_01.pdf [in Greek].

²⁷ http://www.synigoros.gr/allodapoi/pdfs/autopsia_lesvos_29_01.pdf [in Greek].

²⁸ http://www.synigoros.gr/allodapoi/pdfs/autopsia_evros_29_01.pdf [in Greek].

²⁹ http://www.synigoros.gr/allodapoi/pdfs/autopsia_thraki_29_01.pdf [in Greek].

³⁰ Human Rights Watch, *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, November 2008.

F) Hellenic League for Human Rights

A unit of the Hellenic League for Human Rights visited the Prefectures of Evros and Rodopi from 25-29.11.2009, in the framework of its investigation on the detention conditions of undocumented migrants.³¹ It visited the detention facilities on the Border Guard Stations Iasmo, Ferres, Kipi, Tichero, Soufli, Issakio, the SFSA of Venna and Fylakio and it issued a Report.

According to its findings: a) the conditions do not comply with the specifications of detention facilities. Especially the SFSA of Venna and the Department of the Guard of the Borders in Tichero are in such condition that offend the human dignity and cannot be improved; b) the detention facilities have no distinctive signs or marks that indicate the presence of a public service and particularly the police; c) in many cases there is no adequate light, ventilation and heating of the facility, with the exception of Kyprino; d) frequently men, women and children are detained in the same premises; e) access to a foreyard is practically non-existent. Even in the detention facilities where there is a proper foreyard, the detainees have access to the foreyard only for very short time periods and not on a daily basis due to the increased number of detainees and the lack of guard personnel; f) in many cases food is inadequate, while the quantity and the quality varies; g) the hygiene conditions and the distribution of sanitary ware are either inadequate or non-existent; h) there is limited medical and nursing personnel and only occasionally; i) the detainees are not properly informed regarding their rights, the time of their detention, asylum procedures, while there are no interpreters and j) overpopulation exacerbates the existing problems of inadequate infrastructure, especially regarding hygiene.

³¹ Hellenic League for Human Rights, *Report on the detention of immigrants without legal documents in Rodopi and Evros*, Thessalonica, 03.01.2010.

IV. Ill-treatment in places of detention

A) European Committee for the Prevention of Torture

The CPT in its 2007 Report stressed that there has been no improvement as regards the manner in which persons detained by law enforcement agencies are treated. Once again it heard a considerable number of allegations of ill-treatment of detained persons by law enforcement officials. Most of the allegations consisted of slaps, punches, kicks and blows with batons, inflicted upon arrest or during questioning by police officers (par. 11). In several cases, the delegation's doctors found that the allegations were consistent with injuries displayed by the detained persons concerned (par. 13).

In the 2009 Report, it is stated that the CPT received a considerable number of allegations of ill-treatment of persons held by law-enforcement officials under suspicion of having committed a criminal offence. The alleged ill-treatment consisted mostly of kicks, punches and blows with batons, often inflicted during questioning. In addition, a few persons claimed that they had been threatened with various objects (par. 10). By contrast, the CPT received few allegations of ill-treatment of irregular migrants. The allegations that were received consisted mainly of slaps, kicks and verbal insults. These allegations often appeared to relate to situations where the migrant had not understood a staff instruction due to language barriers (par. 11). However, the CPT reached the conclusion that the information gathered during the 2008 visit indicates that apprehended persons continue to run a considerable risk of being ill-treated by law enforcement officials (par. 13). Furthermore, the CPT stressed that the rights of detainees, such as the right to inform a close relative of their situation, to have access to a lawyer or a doctor, to be informed of their rights on a language they could understand are not always respected in practice. (par. 19-20).

The Greek Government in its response to the CPT does not accept the allegations concerning incidents of ill-treatment to the extent they are not corroborated by specific evidence. It refers to the orders and material concerning human rights which has been distributed, and the relevant syllabus in Police

Academies. At the same time it is not in favour of the establishment of a new independent service for the investigation of ill-treatment complaints considering the existing framework sufficient and effective.

B) European Court of Human Rights

*Bekos and Koutropoulos*³² case concerned the beating of the two complainants by police officers during arrest and questioning. ECtHR took the view that that acts of the police constituted inhumane and degrading treatment in violation of article 3 ECHR. Furthermore, regarding the procedural aspect of article 3, the ECtHR held that: “on several occasions, during both the administrative inquiry that was conducted into the incident and the ensuing judicial proceedings, it has been acknowledged that the applicants were ill-treated while in custody. However, no police officer was ever punished, either within the criminal proceedings or the internal police disciplinary procedure for ill-treating the applicants. [...] It is further noted that the involved officers were not at any time suspended from service, despite the recommendation of the report on the findings of the administrative inquiry. In the end, the domestic court was satisfied that the applicants’ light clothing was the reason why the latter got injured during their arrest. Thus, the investigation does not appear to have produced any tangible results and the applicants received no redress for their complaints.”³³ Thus, the ECtHR held that there article 3 was violated due to lack of effective investigation.

The *Alsayed Allaham*³⁴ case concerned the beating of the complainant by police officers when he went to a police station to report a robbery. After the disciplinary proceedings were concluded the involved police officers were fined, whereas the one who was criminally prosecuted was acquitted. The ECtHR recalled that: “where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment. It is incumbent on the State to provide a plausible

³² *Bekos and Koutropoulos v. Greece*, Judgment of 13 December 2005.

³³ *Ibid.*, par. 54.

³⁴ *Alsayed Allaham v. Greece*, Judgment of 18 January 2007.

explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention. It is not sufficient for the State to refer merely to the acquittal of the accused police officers in the course of a criminal prosecution, and consequently, the acquittal of officers on a charge of having assaulted an individual will not discharge the burden of proof on the State under Article 3 of the Convention to show that the injuries suffered by that individual whilst under police control were not caused by the police officers.”³⁵ The Court found that neither the authorities at the domestic level, nor the Government in the proceedings before the Strasbourg Court have advanced any convincing explanation as to the origin of the applicant's injuries. Therefore, the Court considered that the physical harm suffered by the applicant at the hands of the police must have caused the applicant suffering of sufficient severity for the acts of the police to be categorised as inhuman and degrading treatment within the meaning of article 3.

Cases *Zelilov*³⁶ and *Galotskin*³⁷ concerned the same incident of beating in a police station, but they were tried separately. The involved police officers were acquitted in the disciplinary proceedings, whereas the criminal procedure did not end up in a hearing of the case. The ECtHR held that article 3 had been violated because there had been excessive use of force. Furthermore, it held that the procedural aspect of article 3 had also been violated because the investigations of the incident were sufficiently effective and in particular: the disciplinary investigation was not thorough as required, it evaluated selectively and inconsistently the evidence, it did not take into consideration the forensic report, the criminal investigation was not initiated ex officio and it was basically based on the disciplinary investigation without examining as witness the complainant. With the same reasoning the ECtHR held in *Galotskin* case that both substantive and procedural aspect of article 3 had been violated.³⁸

The *Stefanou* case concerned the beating of an under-age Roma in a police station. The ECtHR considered that the Government had not established beyond

³⁵ *Ibid.*, par. 27.

³⁶ *Zelilov v. Greece*, Judgment of 24 May 2007.

³⁷ *Galotskin v. Greece*, Judgment of 14 January 2010.

³⁸ Pending cases regarding police ill-treatment: *Zontul v. Greece*, (Application No. 12294/07), *A.A. v. Greece*, (Application No. 12186/08).

reasonable doubt that the bruises on the applicant's head pre-dated his questioning at the police station, and found a violation of article 3.³⁹

C) The Greek Ombudsman

The Greek Ombudsman issued in 2004 a special report titled "Disciplinary-Administrative Investigation of Complaints against Police Officers". Out of 176 complaints received by the Greek Ombudsman concerning the behavior of police officers, 26 concerned brutality and/or ill-treatment. The outcomes of the Greek Ombudsman's survey in relation to all filed complaints were the following: a) crucial factors for the reliability of the conducted investigations are the strict implementation of the disciplinary procedure and the sufficiently reasoned decision in writing, b) whereas the legal framework aims at providing the investigation of the most serious offences with increased guarantees, in practice there is extensive use of the informal procedure, c) there is lack of initiating Sworn Administrative Inquiries in cases where there were evidence to justify disciplinary proceedings, even in cases where the alleged treatment would fall under article 3 of the ECHR, d) in cases where the investigation was conducted by the Commanding Officer of the involved police station there were indications of less scrutinized investigation than the one required on the basis of the available evidence. For that reason the assignment of the investigation to an Officer of another Directorate should be expanded in all internal police investigations. e) the Greek Police could enhance the transparency and reliability of its internal investigations by consistently suspending the officer against whom a Sworn Administrative Inquiry has been initiated for a serious disciplinary offence. f) a number of violations of the principle of full and reasoned evaluation of evidence has been substantiated. g) there are serious and fundamental violations of the rules regarding the evidentiary procedure, h) there are shortcomings with regard to substantive and efficient reasoning of decisions, i) there is an abusive expansive interpretation of the provisions regarding the discretionary powers for conducting a disciplinary

³⁹ *Stefanou v. Greece*, Judgment of 22 April 2010, par. 49-52.

investigation. j) sanctions are imposed only in the cases of particularly serious offences, possibly due to publicity. k) the sanctions provided by the legal framework do not always correspond to the severity of the offences. Thus, the commanding officers are led to the mitigation of their findings.

D) Other Monitoring Bodies and Institutions

The question of police ill-treatment and efficient investigation of relevant complaints has been addressed also by both the Committee against Torture and the European Commission against Racism and Intolerance. Both bodies acknowledge the fact that the situation is problematic without referring to specific incidents.

Furthermore, the Human Rights Committee in the case *Kalamiotis*,⁴⁰ which concerned ill-treatment during arrest, took the view that there had been a violation of article 2 par. 3 ICCPR in conjunction with article 7 because of the inefficient and prejudicial investigation of the complaint. The disciplinary procedure was limited to an informal investigation, the complainant and the witnesses were not questioned and the judicial council closed the case on the basis of the police investigation.

Moreover, Human Rights Watch in its Report refers to incidents of ill-treatment of aliens detainees by police officers.

V. Observations

The aforementioned reports of both international and national monitoring bodies and NGOs depict a problematic situation regarding detention conditions in non-correctional facilities which is need of urgent both short-term and long-term interventions. The NCHR would like to underline that in order for the problems to be addressed effectively a holistic approach is required concerning detention conditions in all facilities as well as the issue of undocumented migrants. Given that these issues are interlinked, fragmentary measures will not produce viable solutions.

⁴⁰ *Kalamiotis v. Greece*, Communication No 1486/2006, CCPR/C/93/D/1486/2006 (5 August 2008).

A) Detention Conditions

The fact, for example, that remand detainees are detained for long periods of time in police stations because of non-available places in correctional facilities renders necessary addressing the problem of overpopulation in prisons via policies which are not limited to the construction of new prisons.

Furthermore, the fact that many aliens under deportation are detained in police stations due to lack of special facilities for aliens detention requires measures for curtailing undocumented migration which will not be limited to the construction of new detention facilities.

Thus, addressing the problematic detention conditions in police stations, apart from improving the existing facilities, lies on taking measures for the two aforementioned issues. As far as correctional facilities are concerned the NCHR reiterates its previous recommendations.

Regarding detention of aliens under deportation, the NCHR would like to stress that the prolongation of the maximum time of detention from three to six or up to 18 months (according to article 48 of Law 3772/2009 which amended article 76 of Law 3386/2005) will surely not contribute to the improvement of detention conditions for aliens. The NCHR notes that the said amendment took place while: a) it is a well known fact that the existing detention facilities for aliens are insufficient, and many of them inappropriate, and b) the maximum time of three months for administration detention was promulgated by Law N. 2910/2001 (article 44, par. 3) as one of the general measures that Greece took in order to comply with the ECHR *Dougoz* judgment.

It needs to be noted that the said amendment incorporates selectively a similar provision of the so called Return Directive (Directive 2008/115/EC) which allows Member States to prolong the maximum time of detention “*without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies*” (article 4, par. 3). The amendment exhausts the maximum permissible time provided for by the Directive. However,

article 15, par. 1 of the Directive provides that a person may be detained “*unless other sufficient but less coercive measures can be applied effectively in a specific case*”.

Furthermore, whereas the prolongation of the maximum time of detention is in line with the provision of the Directive (article 15), the amendment does not incorporate those guarantees which render the detention compatible with article 5 of the ECHR and the Constitution, in particular the constant review of its legality by judicial authorities. Among the guarantees that the amendment did not incorporate, generating serious doubts as to its compatibility with the letter of the Directive, are indicatively free legal aid (article 13, par. 3 and 4) and the periodic review of the detention decision (article 15, par. 3).

Therefore, it is necessary for the Administration to provide for the required guarantees⁴¹ concerning administrative detention of aliens and to consider reinstating three months as the maximum.

In relation to the administrative detention of aliens who have requested asylum, the NCHR needs to note the following: article 13 of Presidential Decree 90/2008 sets the conditions under which an asylum seeker may be detained. However, the way this provision is applied in practice is problematic. Firstly, according to par. 1 a person who has filed an application for asylum while he/she is detained and a deportation order is pending against him/her remains in detention and his/her application is examined by priority. However, the ECtHR held in *S.D.* that the detention of an asylum seeker which is based on a deportation decisions violates article 5, par. 1 since “an asylum seeker may not be deported before a decision re the asylum application is issued” (par. 62). Therefore, the detention does not serve the aim for which it was imposed and its legal basis needs to be modified. Secondly, article 13, par. 2 of Presidential Decree 90/2008 enumerates the reasons for which police authorities may order the confinement of asylum seekers in an appropriate place, inter alia, public interest or public order. Apart from the fact that the provision speaks of confinement and not detention, in practice the detention of asylum seekers is ordered for reasons of public interest or public order without

⁴¹ See also article 5, par. 3 and 4.

these to be specified in the relevant decision. The ECtHR in *S.D.* noted that the authorities are required to specify the reasons after they examine and evaluate each individual case (par. 66). On the basis of the above it is evident that the detention of asylum seekers is problematic in more than one aspects.

Detention of asylum seekers deteriorates the already deplorable detention in police stations or detention facilities for aliens since they are added to the population detained. The solution of this problem lies in the establishment of a fair, effective and prompt asylum procedure and not in the abusive or incorrect implementation of the existing legal framework. The NCHR welcomes the announcement of the Ministry of Citizen Protection regarding the establishment of an autonomous Asylum Department and a new procedure underlining the need to be staffed with appropriate –both in numbers and qualifications- personnel.

Regarding the so called “Special Detention Facilities for Aliens”, the NCHR notes that their legal framework is almost inexistent. According to article 81, par. 1 of Law 3386/2005 an alien under deportation “until his/her deportation is completed remains in special facilities which are established by a joint decision of Ministers of Interior, Economics, Health and Public Order. The same decision determines the requirements and the functioning of those facilities”. According to par. 2 “Greek Police is responsible for guarding those facilities”. Furthermore, according to Circular No. 38 of 23.12.2005 of the Ministry of Interior (OG 212 A/23.08.05) “illegal migrants are guarded according to “Posidonio” and “Balkanio” Plans in centres of temporary stay of illegal migrants the functioning of which lies with the Prefectures”.

It is to be noted that the required Ministerial Decision has never been issued. The only legal framework that exists is the aforementioned circular. The fact that there is no decision establishing those facilities nor any rules governing their functioning, has been repeatedly underlined also by the CPT. Furthermore, the fragmentation of the various competences regarding their functioning between the Police and the Prefecture generates serious problems. For example, the Prefecture is responsible for the food, clothing and medical care of the detainees, for the payroll

of the employees, whereas many times the directors of the centres are Police Officers (as was the case with Pagani Centre in Mytilini).

The NCHR welcomes the statement of the Ministry for Citizens Protection regarding the establishment of Screening Centers at the entry points of Greece. However, it needs to be noted that the *raison d'être* of the Screening Centres is different than the one of the Special Detention Facilities since the purpose of the latter is the detention of aliens under deportation. Given that the two types of centres fulfill different goals and their roles are distinct, the establishment of Screening Centres does not refute the necessity of Special Detention Facilities and therefore the regulation of their functioning is extremely urgent.

As far as detention of aliens is concerned, the NCHR would like to note that special care should be taken for minors. Given that minors constitute a special group and that their appropriate treatment is the result of many combined factors, the NCHR is planning to address this issue in detail in the future. For now it would like to reiterate its recommendations regarding unaccompanied minors such as: a) the abolition of detention of alien minors for illegal entry in the country and its replacement by alternative measures of hospitality and/or protective custody in suitable facilities; b) the enactment of measures of systematic registration, identification, information, legal representation and custody of alien minors; c) tracking down family members.⁴²

B) Ill-treatment

Regarding ill-treatment of detainees by police officers, the NCHR would like to stress that the effective curtailing of this phenomenon is linked with their appropriate education and training in human rights and interrogation techniques of police officers.

The NCHR would like to note the announcement of the Ministry for Citizens Protection regarding the reform of policemen's training. It wishes to express its

⁴² NCHR, "Recommendations regarding Unaccompanied Minors", *Annual Report 2006*, pp. 151 *seq.* [in Greek].

discontent for not being invited to participate in the working group given its previous initiatives and its cooperation with the Ministry in this field.

Furthermore, the NCHR notes that in order for the incidents of police ill-treatment to be reduced a clear message of zero tolerance on the part of the Ministry is necessary; a message which is materialized through the thorough and effective investigation of related complaints and respective sanctioning.

In September 2008, Presidential Decree 120/2008 “Disciplinary Law of Police Personnel” was adopted. Unfortunately, few of the Greek Ombudsman’s recommendations were adopted. The recommendation regarding the investigation of a disciplinary offence by a high ranking officer of another department was adopted only in relation with torture or other offences of human dignity in accordance with article 137^A PC.⁴³ However, the maximum possible impartiality needs to characterize disciplinary investigations of all complaints. Therefore, the disciplinary law needs to be modified furthermore on the basis of the Greek Ombudsman’s recommendations.

Moreover, the NCHR would like to note the initiative of the Ministry for Citizens’ Protection for the establishment of an Investigative Office of Abusive Incidents provided for in a bill under drafting. The establishment of an independent mechanism investigating complaints against police officers has been repeatedly requested by the CPT and other bodies.

VI. Recommendations

On the basis of the aforementioned, the NCHR recommends the following:

- 1) Compliance with all recommendations of the CPT and in particular those concerning the better coordination between police and border guard stations for curtailing overpopulation and the separation between men and women in detention facilities for aliens.
- 2) Adoption and implementation in practice of the NCHR’s recommendations regarding detention conditions in correctional facilities.

⁴³ Article 26, par. 4 PD 120/2008.

- 3) Ratification of the Optional Protocol to the UN Convention against Torture.
- 4) Immediate adoption of Ministerial Decision regarding the establishment and function of Special Detention Facilities for Aliens.
- 5) Construction of new Special detention Facilities for Aliens and staffing with appropriate personnel.
- 6) Enactment of the guarantees required by the Directive 2008/115/EC for the administrative detention of aliens and consideration of reinstating the maximum time of three months.
- 7) Strict implementation of the legal framework concerning the detention of asylum seekers.
- 8) Taking special measures for the detention of minors.
- 9) Reforming the training of police officers with emphasis on human rights and interrogation techniques.
- 10) Establishment of an Investigative Office of Complaints against police officers with the necessary guarantees of personal and functional independence, whose views will be binding for the Administration.
- 11) Adoption of the Greek Ombudsman's recommendations regarding the disciplinary law of police personnel which have not already been incorporated in PD 120/2008.
- 12) Establishment and functioning of the new Asylum Department.
- 13) Establishment and appropriate staffing of the new Screening Centers.

Athens, 29 April 2010