



# RETURN OF THIRD-COUNTRY NATIONALS

SPECIAL REPORT 2014



THE GREEK  
OMBUDSMAN  
INDEPENDENT AUTHORITY



RETURN OF  
THIRD-COUNTRY  
NATIONALS

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**Special Report 2014**

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Greek Ombudsman

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The Ombudsman is called upon to contribute to the necessary accountability and transparency of third-country nationals return procedures<sup>1</sup> to the countries of origin from the Greek state. The reliability and improvement of the return system effectiveness with respect for legality and human rights is a joint objective with the Greek administration and the proposals set out in this report, focused on the detention of foreign nationals in view of removal, intend to ensure a common basis of understanding with the competent return bodies.

### The legal framework of the external monitoring of return of foreigners to their countries of origin

By law 3907/2011 (art 23(6))<sup>2</sup> an external monitoring system was introduced in the procedures for removal of third-country nationals, to be operated by the Ombudsman in association with international organizations and non-governmental organizations (NGOs). The law also provides that by a joint decision of the Ministers of Interior and Public Order, issued on the Ombudsman's proposal, the organization and functioning of this monitoring system is set in detail. This arrangement is consistent to the relevant provisions of Directive 2008/115/EC (Article 8(6)) which, by establishing common standards and procedures in the Member States for the «return» of illegally staying foreigners to their countries of origin («Return Directive»), provides, inter alia, an effective external monitoring system<sup>3</sup>, aiming at making the foreigner removal procedures fair and transparent (para. 6 of the preamble to the Directive).

Given that there seems to be no common rules and external monitoring criteria in the removal operations in the EU Member States, the experience of the Ombudsman from its long involvement with issues of law on foreign nationals is crucial, particularly with issues of legal stay, deportation procedures, administrative detention of aliens as well as issues of police conduct and proportionality in the imposition of administrative measures.

#### In the preparatory phase of the implementation of this new competence, the Ombudsman:

- Held a workshop in December 2012 with the assistance of the Office for the Management of European Development Projects of the Ministry of Public Order (see Annual Report 2012, pp. 35 & 147) with participants from other European countries that had already installed an operational return monitoring system.
- Has participated since 2013 in a European Commission's program for forced returns (FReM) implemented by the International Centre for Migration Policy Development. The program aims at elaborating common standards for external monitors of removal operations and a manual with specific guidelines for external return monitoring.

- Completed in October 2013 a draft set of provisions with the details of the external monitoring system and submitted the relevant proposal to the competent ministries for the adoption of the aforementioned Joint Ministerial Decision (JMD).
- Met with the FRONTEX official responsible for fundamental rights in March 2014 in Athens for information on the Code of Conduct in joint return operations (JRO).

Full activation of this additional competence of the Ombudsman, which complements its general mandate by Law (Law 3094/2003), was reached much later, with the adoption of the JMD in October 2014 (Official Gazette B:2870/24.10.2014). According to the European Union's Fundamental Right Agency (FRA)<sup>4</sup>, "an effective external monitoring system" for returns provided for in the relevant Directive requires all stages of return process to be monitored by an independent body and in a systematic manner. The JMD meets those criteria, since the Ombudsman, a constitutionally established independent authority, is now responsible for the regular external monitoring of the whole process, as from the issue of an alien's return decision until the implementation of removal by land, sea or air transport to the country of origin.

The JMD provides for a constant flow of data from all services responsible for return, which includes all actions of the competent authorities, which are intended to achieve by coercive means the return of a foreigner to the country of origin, including the deportation decision and the readmission procedures. The Ombudsman shall review the legality of actions, omissions and material acts of the competent state departments at all levels of the process provided for by law, using all the institutional tools provided for in the Ombudsman's statutory provisions (Law 3094/2003, as applicable). It is noted that the Ombudsman has unimpeded access to all places of detention, awaiting or transit across the territory, and he may participate as an observer in removal operations. The Ombudsman shall send individual reports and recommendations to improve return procedures to the Administration, the latter being required to give a reasoned response. Also, it shall submit to the Greek

<sup>1</sup> According to EU law terminology, see Directive 2008/115/EC

<sup>2</sup> «The removal procedures are subject to an external monitoring system, operating under the Independent Authority «The Greek Ombudsman», which shall cooperate to this purpose with international organizations and non-governmental organizations»

<sup>3</sup> Based on available information, 10 member states have chosen to delegate the responsibility for the external monitoring directly to organizations of civil society, of which 6 non-governmental organizations, compared to 8 countries that have reserved this task to the respective Ombudsman (see comparative survey of the European Commission of 10.11.2011 [http://ec.europa.eu/home-affairs/doc\\_centre/immigration/docs/studies/Forced%20Return%20Monitoring%20Study%20Final%20Report.pdf](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Forced%20Return%20Monitoring%20Study%20Final%20Report.pdf) p. 24 and the annual report for 2011 of FRA <http://fra.europa.eu/en/publication/2012/fundamental-rights-challenges-and-achievements-2011> p. 52)

<sup>4</sup> [http://fra.europa.eu/sites/default/files/fra-2014-annual-report-2013-0\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-annual-report-2013-0_en.pdf) p. 45

Parliament and shall publish its annual Special Report on the overall picture of the findings and recommendations thereof. Moreover, for this purpose, the Ombudsman shall cooperate with international organizations, as well as with NGOs and migrant communities, at a level of regular dialogue ensured by the creation of a relevant network and the option to assign individual tasks to NGOs.

## Data on the scope of the law

The Ombudsman immediately after the adoption of the above JMD started to cooperate with the Alien and Border Protection Branch of the Greek Police for the transmission of specific data on returns with quantitative and qualitative parameters to draw reliable statistics and to immediately inform the Ombudsman of the planning and performing of removal operations.

The overall picture of the scope of L. 3907/2011 is as follows. According to published Police statistics<sup>5</sup>, the number of arrests of foreigners for illegal entry and stay in the country has risen markedly in 2014, namely 25,7% for the first half of 2014 compared with the same period in 2013. The number of arrests for these six months amounts to 24.344 people and is characteristic of the increased migratory pressures on Greece compared with other European countries. However, to the number of arrests by the Greek Police should also be counted the number of arrests by the Coast Guard. Thus, according to the Greek Police information, for the first 10 months of 2014 the number of arrests was 35.246 and this of the Coast Guard 29.750, thus the total number of arrests for illegal entry and stay amounting to about 65.000 (64.996).

In this context, the difficult task of compliance with the provisions of Directive 2008/115/EC in relation to the large number of foreigners to be returned to their countries of origin should also be considered. The first half of 2014, 11.531 returns of illegally staying immigrants were implemented against 13.065 in the respective period of the previous year. Of these, 7778 returns were made through the forced-return procedures and 3753 through voluntary return programmes<sup>6</sup>. According to information of the Ombudsman received from the Greek Police, in the first 10 months of 2014, 10.234 forced returns were made, as well as 6.168 readmissions on the basis of bilateral agreements with neighbouring countries (see Chart 1).

As far as the places of detention are concerned, the Greek Police informed the Ombudsman that on 10.11.2014 a total of 6.283 people were being detained by the Greek Police for illegal entry and stay. However, it should be noted that 2.160 of them were detained in police department/station cells (see Chart 2). The Ombudsman has repeatedly pointed out the problematic fact of the many month detention of

aliens in police detention facilities across the country, designed for short stay of detainees on trial and totally unsuitable in terms of space and living conditions for the administrative detention of aliens in view of return that can legally take up to 18 months. The proposals made by the Ombudsman in its Annual Report for 2013 (p. 137) remain relevant, however, the Ombudsman considers as a very positive step the commitment of the Greek Police in November 2014 that the foreigners will be gradually transferred from those detention facilities to pre-removal centres.

## The exercise of the Ombudsman's competence in practice

An «effective forced-return monitoring system» (art. 8 (6) of the Directive) must be operational in practice. The Ombudsman created, pending publication of the JMD, a twelve member group of experts in June 2014 in order to respond effectively to the new obligations. It also proceeded with planning actions, ensuring the funding thereof by submitting a proposal, in association with the European Programs Implementation Service of the Parliament, to the European Return Fund, now Asylum and Migration Fund.

After securing funding, the Ombudsman started regular visits from June 2014 in pre-removal centres and other places of detention of aliens to be returned, based on L. 3907/2011 and the on-site inspection powers assigned by its statutory provisions (L. 3094/2003). The visits of the Ombudsman's staff included on-site inspection of places of detention, communication with foreign detainees and discussions with competent departments on the detention conditions and duration, the flow of return procedures, the respect of the legislative guarantees in each stage (L. 3907/2011) and any problems arisen in practice.

Places of detention were selected in sites experiencing peak issues, at the country's land and sea border, namely:

- In Eastern Macedonia and Thrace (23-26.6.2014): pre-removal centres of Fylakio, Komotini, Xanthi Paranesti. Also the Border Guard Stations of Soufli, Feres, Iasmos. In October 2014, the operation of Komotini's pre-removal centre was suspended.
- In Chios (6-7.10.2014) and Mytilini Islands (16-17.10.2014): places of detention by the Coast Guard, also places of detention by the Greek Police in view of identifying the foreigners' nationality.

On-site inspections were also made in the pre-removal centre of Amygdaleza (21/08/2014), which due to its proximity to Athens gathers a large number of detainees for many months, as established in earlier visits of the independent authority<sup>7</sup>. The visit of the Ombudsman in Eastern Macedonia and

<sup>5</sup> Press release of 24.7.2014 at [www.astynomia.gr](http://www.astynomia.gr)

<sup>6</sup> See previous footnote

<sup>7</sup> See <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapou.118221>

Thrace was partly made with the support of the UN High Commissioner's for Refugees Office in Greece and the participation of its representative. Also, in view of visits to detention centres around the country, the Ombudsman has held meetings with various NGOs that helped to highlight the real problems and elaborate relevant reports.

### Findings from on-site inspections in pre-removal centres

- A characteristic of return procedures is that in all centres and even especially at border centres (Paranesti, Fylakio), foreigners were found to be detained who had lived for years in the country having a legal stay permit and forfeiting the legitimacy due to failure to renew the permit of stay or asylum seeker card. Detention takes place often on the basis of an abstract statement of public order grounds against persons for which removal is unattainable<sup>8</sup>.
- The most problematic practice found in all centres visited by the Ombudsman, was that of detention beyond the legal limit of 18 months, which is also an infringement of the EU law rules. In practice, detainees in Eastern Macedonia and Thrace, when completing the 18-month limit period, resorted to the asylum procedure to be released, which shows how the abnormal operation of the return process may bring knock-on effects to the burden of the new regional asylum services.
- There was a basic separation of women detainees, but in all pre-removal centres the Ombudsman met young detainees who claimed to be minors but had not gone through the first reception process to determine whether they were minors. The Amygdaleza case is characteristic, as shown by the on-site visit report and the conclusions of the Ombudsman<sup>9</sup>.

Moreover, the living conditions in the pre-removal centres vary depending on whether the centres are arranged in the form of mass detention dormitories (Fylakio, Corinth) or wings with installment of separate housing containers (Paranesti, Amygdaleza) allowing generally for more private space per prisoner. A real problem is however the lack of ongoing maintenance and operation of air conditioning devices, as found in Amygdaleza, and also the lack of personal hygiene articles, in the same centre. Important efforts are made to upgrade the buildings and logistics infrastructure in all centres of the Greek Police. The open-air spaces for exercise and alimentation provisions are considered adequate in most centres, as also the presence of religion duties exercise areas, while being problematic the lack of places of entertainment, in conjunction with the long detention period. There was also established an at least quarterly gap

during the 2014 summer as to the presence of psychologists, social workers and interpreters because of pendency of the new tender of the Ministry for the relevant contracts. The complete absence of doctors in some centres (Fylakio) or the insufficient medical staffing combined with the failure to provide for pharmaceutical expenditure coverage (Amygdaleza, Komotini) can be considered the most serious violation of detainees' rights. The Ombudsman found that indeed there was information on the rights of detainees and access to asylum (the UNHCR program), but lack of legal assistance to detainees is an important gap, given the uncertainty about the end of detention and the insecurity as to their fate. Lack of communication with NGOs, other than those contracted for translation or reception services, combined with contradictory practices in the use of mobile phones, in some places prohibited (Amygdaleza) and in some not (Fylakio, Komotini) increased the insecurity and intolerance of detainees.

### Findings from on site visits in foreigner detention centres in islands

The sharp increase of incoming aliens through the country's sea borders in 2014<sup>10</sup> (see statistical representation of the Greek Police, inputs per border in the ten months of 2014) combined with the lack of political will to function pre-removal centres on the islands, lead to improvised solutions for the foreigner detention which are problematic both for the smooth management of the return process and for maintaining adequate standards of living conditions and safeguarding the rights of foreigners.

The broader problem consists in the detention of foreigners by the police in "identification/screening centres" pending the completion of nationality identification procedures and the issuance of return decisions for the foreigners, who in practice are led to the ship to continue their detention in other detention centres, usually those of the Aliens Directorate of Attica. The Syrian citizens, too, are led to the ship for Athens but then are released with a six-month deferral of removal because of the war situation in their country. Identification/screening centres are neither pre-removal centres nor first reception centres, as required by L. 3907/2011, with the result that first reception procedures shall not be implemented with proper assessment of the people vulnerability. In Chios, not even typically is there a first reception unit while in Mytilini there is a mobile unit which receives those transferred by the police, usually unaccompanied minors and not all incoming foreigners, in a closed area with a double wire in Moria, which was constructed as pre-removal centre but which ultimately did not work for this purpose. Therefore, in Mytilini, despite the presence of this mobile unit, the first reception procedures necessary

<sup>8</sup> See the Ombudsman's document 175063/38526/23.7.2014 to the Ministry of Public Order

<sup>9</sup> See [http://www.synigoros.gr/?i=childrens-rights.el.dioikitiki\\_kratisi.228658](http://www.synigoros.gr/?i=childrens-rights.el.dioikitiki_kratisi.228658)

<sup>10</sup> [http://www.astynomia.gr/images/stories//2014/statistics14/allod2014/statistics\\_all\\_2014\\_methorio.JPG](http://www.astynomia.gr/images/stories//2014/statistics14/allod2014/statistics_all_2014_methorio.JPG)

Chart 1

Forced returns  
(January-October 2014)

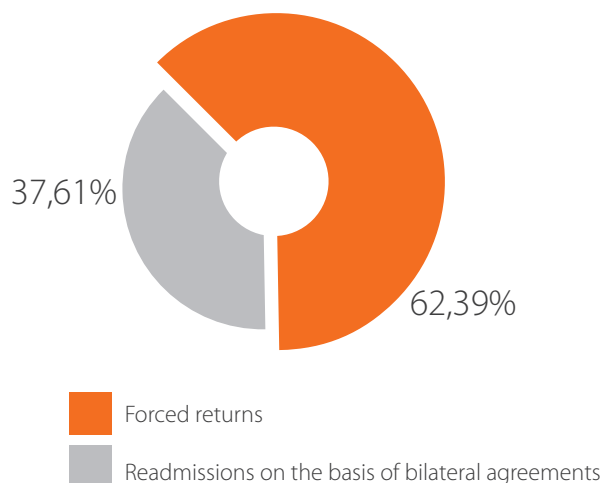
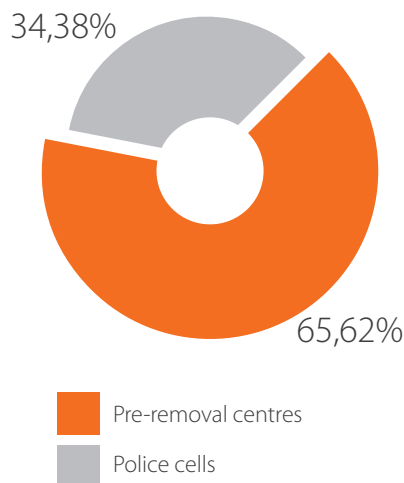


Chart 2

Detainees



for the diagnosis of psychosocial profile, the conduct of medical examinations and the provision of any necessary care and psychosocial support for the majority of incoming aliens, are not applied. In particular, failure to implement the legislation on carrying out medical examinations to all newcomers aliens is highlighted as a critical parameter in the inadequate management of incoming flows.

Also found:

- Absence of suitable space in the Chios and Mytilini port authorities' premises for up to 24 hours stay, the foreigners being detained in the port under conditions violating human dignity.
- Confusion of competences as to the entity responsible for the operation of temporary premises at informal concession by the municipal authorities (a place near the Chios City Hall, PIKPA camps in Mytilini) where foreigners were detained after delivery by the Port Authority to the Police. It should be clear that within administrative detention framework, police responsibility consists not only to feeding but to all legal requirements on living conditions (L. 3907/11). It is characteristic that on the on-site visit day the Ombudsman was informed that 160 foreigners were being detained in the temporary area of 190 square meters near the Chios Town Hall, men and families together. Beyond the absence of due segregation of detainees, it is clear that even for a night, the place did not fulfill the elementary minimum of 4 square meters per detainee<sup>11</sup>.
- Concrete problems of feeding and cleanliness in police detention facilities on the islands (such as 2 meals instead of 3 in Chios because restaurateurs provided extra drinking water, inadequate indoor cleanliness in Mersinidi Chios because of the contract with the Ministry).

### Common findings regarding minors in detention

With the introductory remark that in all detention facilities, except those where a First Reception Centre operates, problems arising in connection with the minor population of incoming aliens are common, the most important problems regarding their treatment are given below:

- Absence of age-verification system: Registering the age of aliens lacking documents is made by the police based on their own statement of age and according to the judgment of the recording police officer. This results in minors being recorded by the police as adults, practice that often is due amongst other to failure of communication of the authorities with the foreigners, in the absence of appropriate interpretation. In many cases, interpretation is carried out by another detainee, not always compatriot but from the broader part of the country and not being quite proficient to the language of an unaccompanied minor. In most cases the apprehended alien is treated by the police as an adult, not as a minor even when documented evidence of his claim is produced, on the ground that there is no official validation. Also treated as an adult is an alien for whom medical opinion expresses doubts as to the exact age. The absence, however, of a reliable age verification system implies the lack of identification of some unaccompanied minors with adverse effects on the need for protection and care of children in accordance with the International Convention on the Rights of the Child (hereinafter ICRC, L. 2101/1992, art. 3(2)).
- The issue of detention of unaccompanied minors: The common treatment of registered unaccompanied minors with adult detainees (e.g. as to the conditions of detention) and

<sup>11</sup> The Committee for the Prevention of Torture (CPT) of the Council of Europe recommends at least 4 s.m. per prisoner in mass detention facilities

particularly in the worst version, the one of extended detention, when no reception hostel is found, constitutes de facto deterioration of their position. As known, the measure of administrative detention and generally deprivation of liberty to minors can only be «... a measure of last resort and for the shortest possible period of time» (ICRC, art. 37 (b)). Especially for minors who are asylum seekers, avoiding detention is already provided for in the Directive 9/2003 of the Council of the European Communities (Article 19 (2)). However, unlike the above, it was found that detention of minors not only is not applied as a measure of last resort but it is the rule, and the administration's practice to impose the measure without distinction or exception to all unaccompanied minors ignores the fact that unaccompanied minors are above all children and therefore their treatment can only conform to international standards for children protection and care (ICRC, art. 3(2)).

- The detention conditions: The general conditions of detention in all these centres do not correspond in terms of infrastructure to the comprehensive provision required for the care of minors. The problematic or non-existent sanitation, especially in temporary premises, the poor or non-existent medical care and the inappropriate for minors alimentation is not consistent with the requirement for a humane and dignified treatment of Article 3 of ECHR.

### Recommendations on detention in view of return

The problem of managing mixed flows, migration and asylum, in the southeastern border of the EU, is what underlies and dominates over the issue of detention. However, the Ombudsman<sup>12</sup> reiterates that administrative detention contributes to the problem rather than to the solution, given the large number of detainees held for many months, combined with the insecurity of foreigners for their future. The Greek Police lacks the structures and expertise to ensure adequate standards for deprivation of liberty in mass areas, despite its constant efforts to improve conditions in pre-removal centres. The list of recommendations set below is intended to help creating objective conditions and adequate planning so that detention in view of deportation/removal, this extreme restriction of personal freedom, be limited to the absolutely necessary duration, while ensuring the respect for the fundamental rights of detainees.

The Ombudsman notes that it considers crucial the following:

- Immediate transferring of returnees from the police detention cells to premises that meet the necessary requirements of L. 3907/2011 for the administrative detention of aliens, given that their detention is usually extended for several months. It welcomes the relevant commitment of the Greek Police and expects its implementation.
- Limiting the detention in general to the time strictly nec-

essary for removal, with the prerequisite of individualized and reasoned judgment on the necessity to continue the detention of each foreigner depending on the feasibility or not of deportation.

- Implementing alternative measures to detention in accordance with Art. 22(3) of L. 3907/2011, in order for the detention to be an exception as required by law (Article 30(1) of L. 3907/11) and not, as is the practice, the general rule.
- Respecting the maximum time limit of 18 months for detention in view of return that is required by law (Art. 30 par. 5 and 6 of L. 3907/2011); bending this time limit of Directive 2008/115/EC (art. 15 par. 5-6, CJEU Katzoev C-457/09, Bashir Mohammed Ali Mahdi C-146/14) is under no circumstances lawful. The relevant internal instructions of the Ministry of Public Order should be amended and acceptance of the opinion no. 44/2014 of the Legal Council of State should be revoked.
- That First Reception Centres in the islands of Chios and Mytilini and other places with increased input flows of migrants and refugees should be fully operational; that the Ministry of Public Order find suitable premises for first reception needs in association with the municipal and regional authorities, to ensure humane and dignified living conditions; that the persons arrested-rescued by the Coast Guard be led to a wing of the same First Reception premises given that there is no reason to find two separate premises because the foreigner's screening moves forward to another administrative authority; that the first reception should not be under high security standards of detention and that in general the requirements of L.3907/2011 be fully met and the reception centres should ensure contact with the local community and civil society.
- Strengthening the First Reception Mobile Units, where they operate, in staff and technical infrastructure.
- Conducting medical examinations on all newcomers aliens in the first reception centres according to the law, with a view to provide medical support to those who need it at all entry points in order to protect themselves and not to create any risk for transmission of diseases such as tuberculosis or leave room for incitement of fear by the media to the public opinion.
- Providing full medical and pharmaceutical coverage to detainees in all detention centres as imposed by the similar application of the relevant provisions of the Correctional Code (in this case Article 27 of the Penitentiary Code, which provides for the medical and pharmaceutical care of detainees at a similar level as the rest of the population).
- Providing legal assistance in cooperation with Law-bar associations in the country and based on specific require-

<sup>12</sup> See <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>



ments which safeguard detainees from any exploitation phenomena.

- The Ombudsman considers very important the commitment of the Greek Police (November 2014) for free use of mobile phones in Amygdaleza and believes that communication should be allowed consistently in all detention centres.
- That the cleaning contracts for local police detention centres or other detention facilities include the indoor living spaces and the contractor be declared forfeited by the ministry in case of reports for poor compliance with the contract.
- That the alimentation services procurements include the term of providing for breakfast too, and not only for two meals and also that they refer to additional milk supply for toddlers.

Especially for unaccompanied minors the Ombudsman further proposes:

- Their staying for a few days in separate guarded places and not in detention centres, pending the completion of procedures for transferring to reception hostels. Those places shall be provided with all necessary services for their benefit and will mainly be protected against possible abuse in conditions that, as today are reflected in this report, constitute inhuman treatment.
- Providing individual means of sanitation (soap, blankets), performing preventive medical examinations and vaccination of children. At this stage the necessary psychosocial assistance should be provided, applying proportionally the scope of the ministerial decision for first reception centres.
- Full information by means of information material in a language they understand about the option to submit an asylum application and the right to communicate with relatives and lawyers.
- Reopening of the unaccompanied minor hosting centre of Agiasos as its proximity to the entrance gates of foreigners makes it an ideal venue for hosting minors up to their transferring to other hosting structures or their family reunion.
- Adopting alternative measures to detention, since the disproportionately high number of minors in relation to the existing accommodation structures results in extending their detention and cancelling any protection de facto.





