

CYPRUS

Immigration and detention: The rights of asylum seekers and irregular migrants

*Amnesty International
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CONTENTS

Introduction.....	3
Follow up to the previous review.....	3
Normative and institutional framework in Cyprus	3
International human rights standards	3
Criminalisation of irregular entry	4
Detention of irregular migrants	4
Unaccompanied child migrants.....	5
Promotion and protection of human rights on the ground	5
Detention of asylum seekers	5
Detention of irregular migrants.....	6
Safeguards against detention.....	7
Detention conditions	7
Recommendations for action by the State under review	8
Endnotes.....	10
Annex	11

INTRODUCTION

In this submission, prepared for the Universal Periodic Review (UPR) of Cyprus in January - February 2014, Amnesty International evaluates the implementation of a number of recommendations that Cyprus accepted during its previous review, including in relation to migrants, refugees and asylum-seekers, and detention conditions.

Amnesty International also raises a number of concerns related to the rights of asylum-seekers, refugees and migrants, including that irregular entry into Cyprus remains a criminal offence despite recently introduced legislation (Law 153(I) 2011), that alternatives are not considered before resorting to detention of asylum-seekers and irregular migrants, and that they face difficulties in challenging their detention.

The organization also makes a number of recommendations to Cyprus to address the concerns raised in this submission.

FOLLOW UP TO THE PREVIOUS REVIEW

At the time of its first UPR in January 2010, Cyprus accepted a number of recommendations made by other states to improve the human rights situation in the country, including in relation to migrants, refugees and asylum-seekers; however, regrettably many of these have yet to be implemented.

Cyprus accepted a recommendation to examine alternative measures before resorting to detention of irregular migrants.¹ However, despite the introduction of legislation providing for prior consideration of less coercive measures before resorting to detention, no such measures are specified in the law and there is no evidence that such measures are considered in practice.

Cyprus also accepted a recommendation to improve detention conditions.² However, in the course of its research in 2011 and 2012, Amnesty International found that asylum-seekers and irregular migrants were held in conditions falling short of international standards and in non-purpose-built facilities. Despite the operation of a purpose-built facility since January 2013, the Limassol police station and the Nicosia Central Prison reportedly continue to be used to detain individuals for immigration purposes.

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN CYPRUS

INTERNATIONAL HUMAN RIGHTS STANDARDS

Amnesty International is concerned that Cyprus has yet to sign the Convention on the Protection of the Rights of Migrant Workers and Members of their Families and the Convention for the Reduction of Statelessness, and has yet to ratify the Convention for the Protection of All Persons from Enforced Disappearance.

CRIMINALISATION OF IRREGULAR ENTRY

Irregular entry and/or stay in Cyprus remain a criminal offence. In November 2011, Law 153(I)/2011³ removed the punishment of imprisonment for the irregular entry into and staying in the Republic of Cyprus,⁴ but retained the criminal nature of these offences and their punishment with a fine.⁵ The amendments introduced by Law 153(I)/2011 were aimed at transposing the European Union (EU) Returns Directive.

Amnesty International is concerned that Law 153(I)/2011 will have only limited impact on reducing the number of persons imprisoned in connection with irregular entry and/or stay, as most irregular migrants will be unable to pay the fine and therefore liable to imprisonment.

Amnesty International believes that the mere fact of irregularly entering the Republic of Cyprus or of remaining in the country should not attract criminal sanctions, but be treated purely as an administrative offence.

DETENTION OF IRREGULAR MIGRANTS

Amnesty International is concerned that despite Law 153(I)/2011 providing for prior examination of less coercive measures before resorting to detention, no such measures are specified in the law.

Law 153(I)/2011 sets the maximum length of detention pending deportation at six months, with the possibility of extending it for a further 12 months in certain circumstances.⁶ It also provides that detention shall be as short as possible and only maintained while removal arrangements are in progress and be carried out with due diligence.⁷ Amnesty International cautions that, although permissible under EU legislation, detaining someone solely for immigration purposes for up to 18 months is incompatible with the right to liberty as recognized in the European Convention on Human Rights and in other international human rights instruments to which Cyprus is a party.

Amnesty International is also concerned by the failure of Law 153(I)/2011 to provide an automatic judicial review of the administrative orders to detain, especially in cases of prolonged detention, and considers that the procedural safeguards in Law 153(I)/2011 fall short of international and regional standard, including the EU Returns Directive.

Currently national legislation provides two avenues for challenging the lawfulness of a detention solely for immigration purposes before the Supreme Court. Law 153(I)/2011 provides for a challenge under Article 146 of the Constitution that if successful results in the annulment of the detention order. It also provides for a habeas corpus application under Article 155.4 of the Constitution challenging the lawfulness of detention on length grounds.⁸

In addition, according to national legislation the Minister of Interior reviews immigration detention orders either on his/her own initiative every two months, or at a reasonable time following an application by the detainee requesting a review.⁹ The Minister is also solely responsible for any decision to prolong detention for an additional maximum period of 12 months.

Amnesty International is also concerned that immigration detainees have only limited access to free legal assistance. The Legal Aid Law 165(I) of 2002 does not

provide for free legal assistance to challenge an administration detention order. Moreover, only very few lawyers provide free services to asylum-seekers and irregular migrants wishing to challenge their detention.

UNACCOMPANIED CHILD MIGRANTS

During missions to Cyprus in November 2011 and June 2012, Amnesty International delegates did not come across children detained for immigration detention purposes. The organization is concerned, however, that Law 153(I)/2011, reflecting the provisions of the EU Returns Directive, fails to abolish the detention of unaccompanied migrant children. It allows for unaccompanied migrant children and migrant families with children to be detained as a last resort and for the shortest possible period. It also specifies that unaccompanied migrant children, to the extent possible, will be accommodated in institutions where personnel and facilities are appropriate to the needs of minors and that the best interests of the child will be the primary consideration.¹⁰

Amnesty International believes that there should be a prohibition in law on detention of unaccompanied children solely for immigration purposes. Children and in particular unaccompanied or separated children should never be detained solely for immigration purposes given that immigration detention cannot ever be said to be in their best interests.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

DETENTION OF ASYLUM SEEKERS

Amnesty International is concerned over the practice of the authorities to detain certain categories of asylum-seekers. Evidence collected by Amnesty International during visits in Cyprus in November 2011 and June 2012, as well as further research, shows that the main categories of asylum-seekers that are being detained are:

- Asylum-seekers who do not file an asylum application before being arrested and detained for irregular entry or stay. The majority of them appear to be routinely detained regardless of whether they were intending to apply for asylum.
- Asylum-seekers who were not detained when they filed their asylum application, but who were subsequently imprisoned for minor offences and not released after serving their sentence. Instead they were transferred to facilities used for immigration purposes under administrative detention and deportation orders. Such asylum-seekers have their deportation order suspended, but remain in administrative detention during the examination of their claim, at the initial stage and on appeal.
- Asylum-seekers whose claims were rejected at the initial stage and at appeal level, and who have subsequently been apprehended and held in detention pending deportation even though they were awaiting a decision by the Supreme Court on their challenge against the rejection of their asylum claim. This is because an application to the Supreme Court does not automatically suspend the deportation process. Amnesty International is

seriously concerned at the lack of automatic suspensive effect of the aforementioned recourses before the Supreme Court because an asylum-seeker may be forcibly returned to a place where they are at risk of human rights violations before their claims is finally determined (breach of the principle of *non-refoulement*).

Furthermore, in recent years the Cypriot authorities appear to have resorted to detaining asylum-seekers not under the provisions of the Refugee Law, but instead under the Aliens and Immigration Law.¹ In particular, certain categories of asylum-seekers are deemed by the authorities, and by the Supreme Court case law, to be “prohibited migrants” liable to detention pending deportation. In the case of Asad Mohammed Rahal (Judgment 30 December 2004), the Supreme Court held that detention is lawful when asylum-seekers breach the provisions of the Aliens and Immigration Law (i.e. irregular entry or stay or conviction for criminal charges).

Amnesty International considers the above ruling to be inconsistent with Article 31 of the 1951 Refugee Convention which prohibits the detention of asylum-seekers based solely on their entry into or presence in the host country without authorization. Asylum-seekers, who are detained because of their irregular status, are usually not deported until the determination of their claim at the initial stage and on appeal, which would indicate that the authorities regard them as asylum-seekers whose removal should not be effected until they are found to be illegible for international protection. For that reason, Amnesty International considers their detention to be unnecessary and unlawful.

Amnesty International also believes that asylum-seekers – who are presumed to be eligible for international protection unless and until proven otherwise, following a full, fair and effective asylum determination procedure – should not be detained, either administratively or under any immigration powers, because of their inherent vulnerability.

DETENTION OF IRREGULAR MIGRANTS

Amnesty International found evidence that irregular migrants were being routinely detained pending deportation.¹¹ Testimonies collected from detainees, lawyers, the office of the Commissioner for Administration, and NGOs appear to confirm that the Cypriot authorities do not consider less restrictive measures before resorting to detention. Rather, detention orders are routinely issued alongside deportation orders. As a result, individuals are transferred to detention facilities without any prior examination of less restrictive measures.

Amnesty International considers that there is no lawful justification for the routine detention of irregular migrants solely for immigration purposes. Such practice also breaches national law (Law 153(I)/2011) and the EU Returns Directive which the Cypriot authorities sought to transpose by that law. According to the EU Returns Directive, “the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regards to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures is not sufficient”.

In addition, many of the detained irregular migrants interviewed by Amnesty International during their visits to Cyprus in November 2011 and June 2012 could not be deported because of a lack of travel documents or because their deportation

was suspended due to conflict in their countries (e.g. Syrian nationals). As a result, their detention appeared arbitrary and unnecessary – and therefore unlawful under both international and Cypriot law.¹²

In addition, during their visit, Amnesty International delegates met a number of people who had been detained for several months, some for over a year. Many of those held for immigration reasons are caught in a vicious circle. With no reasonable prospect of the authorities enforcing their removal, irregular migrants often spend several months in detention after their initial arrest for irregular entry or stay, they are then released and then detained again a few months or years later for immigration reasons as they have no means of regularizing their status.

Amnesty International's delegates saw the devastating effect that prolonged and unlawful detention can have on the mental and physical health of the detainees. Detainees had difficulty focusing and remembering key dates and demonstrated signs of anxiety and stress, including scars caused by self-harming. The delegates were told that in the months before their visit, some of the detainees had attempted suicide and one had died as a result.

SAFEGUARDS AGAINST DETENTION

Amnesty International has documented several cases demonstrating the failure by the police to explain to immigration detainees the reasons for their detention, the likely length and their rights while in immigration detention. Detainees and their lawyers told Amnesty International that often they are not provided with the reasons for or justification of their detention. Usually, detainees are given a short letter merely referring to the legislative provisions under which their detention has been ordered and that they are being detained pending deportation. In some cases, deportation and detention orders were handed to the individuals concerned after several months in detention.

Amnesty International is particularly alarmed by cases in which successful challenges against immigration detention, mounted by way of habeas corpus applications, have not led to the release of the detainees, as ordered by the Supreme Court, or release has happened only after a considerable delay.¹³

In these cases, the Supreme Court had found that the continuation of detention beyond six months was unlawful and ordered the immediate release of the individuals. However, the applicants were instead rearrested before leaving the Supreme Court building or immediately afterwards on the basis of a new detention order issued on the same grounds.¹⁴ In at least one such case, the new detention order pre-dated the Supreme Court's decision by a day. National legislation provides for immediate release of any third-country national if their application under Article 154.4 of the Constitution is successful.¹⁵

Amnesty International is concerned that the remedy that the irregular migrant had available to challenge their detention was not effective because the Supreme Court's judgments were not observed by the authorities.

DETENTION CONDITIONS

Amnesty International's delegates visited Blocks 9 and 10 of Nicosia Central Prison, and Lakatamia and Limassol police stations in November 2011 and June 2012. These facilities are used to detain asylum-seekers and migrants pending deportation.

Amnesty International is deeply concerned about the poor conditions which it considers fall short of international standards.¹⁶ Moreover, the facilities are not purpose-built to house irregular migrants and asylum-seekers, but police stations and two wings of the Nicosia Central Prison (Blocks 9 and 10).

The authorities told Amnesty International that over the past few years, new police detention facilities had been built, in accordance with international standards, and that improvements had been made to existing facilities to meet those standards.¹⁷ Members of staff also told Amnesty International that the detainees were provided with adequate medical care, including the necessary medication, and allowed to practise their religion.

However, when visiting Block 10 of the Nicosia Central Prison, delegates came across poor detention conditions. The cells were often overcrowded, with limited natural light, poor ventilation and broken windows. The sanitary facilities were dirty and most toilets had no doors. Inmates said that they were only allowed to exercise outside for a very short period of time.

The detention facilities in the police stations in Lakatamia and Limassol were set up to hold people for only short periods; however, detainees are being kept there for months. Neither facility has an open space for exercise or access to fresh air. In Limassol, people charged with criminal offences were being detained in the same wing.

None of the facilities visited had a resident doctor and Amnesty International's delegates heard many complaints about inadequate medical care. Detainees said that guards decided whether or not they needed to see a doctor or required hospital treatment. Inmates also complained about the poor quality of food. None of the facilities had a space for religious worship or recreation areas.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Cyprus:

Criminalisation of irregular entry and stay

- To repeal Article 18(2) of Law 153(I) 2011 which criminalizes irregular entry or stay by irregular migrants.

Detention of asylum-seekers

- To end the routine detention of asylum-seekers for immigration purposes in law and practise, in line with international standards which require that such detention is used only in exceptional circumstances;
- To ensure that the recourse to the Supreme Court regarding a decision rejecting an asylum application, at the initial stage or at appeal level, automatically suspends the implementation of a deportation order.

Detention of irregular migrants

- To ensure that other less restrictive alternatives to detention are always considered first and given preference before resorting to detention;

- To immediately release irregular migrants for whom the sole basis of detention is their removal from Cyprus when this cannot be implemented within a reasonable time;
- To ensure that the decision to detain irregular migrants is automatically reviewed periodically by a judicial body on the basis of clear criteria set out in law.

Unaccompanied children migrants and families with children in irregular status

- To prohibit in law the detention of unaccompanied migrant children.

Detention conditions

- To ensure that conditions for irregular migrants and asylum-seekers held in immigration detention conform to international human right standards, including the UN Body of Principles for the Protection of All Persons under any Form of Detention;
- To ensure the prompt provision of proper medical examination and medical treatment, including psychological counselling where appropriate, whenever necessary and free of charge.

ENDNOTES

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Cyprus*, A/HRC/13/7, 10 January 2010, recommendation 87.62 (Brazil). See also the Addendum to this report, A/HRC/13/7/Add.1, 15 March 2010.

² A/HRC/13/7, recommendation 87.46 (Italy)

³ Law 153(I)/2011 amended Aliens and Immigration Law with the intent to transpose Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures for Member States returning illegally staying third-country nationals (EU Returns Directive)

⁴ Until November 2011, these offences were punishable by imprisonment or a fine or both (Aliens and Immigration Law, Cap.105, Article 19)

⁵ Law 153(I)/2011 Article 18 PC (2)

⁶ Law 153(I)/2011, Article 18 QF (8)

⁷ Law 153(I)/2011, Article 18 QF (1)

⁸ Law 153(I)/2011, Article 18 QF, 5(a) and 3 (a).

⁹ Law 153(I)/2011 Article 18 QF (4)

¹⁰ Law 153(I)/2011, Article 18 QH (1) (4)

¹¹ Among those subject to immigration detention who Amnesty International met were people who had applied for asylum and whose claims had been finally dismissed and who were being detained as irregular migrants because the authorities claimed that they did not have any authority to be in the country

¹² Article 18 QF (1) (C) of Law 153(I) 2011 and Article 15 (4) of the EU Returns Directive.

¹³ Amongst others, *Mohammad Khosh Soruor*, Application No.132/2011; *Mostafa Haghilo*, Application No. 133/2011; *Osman Kane*, Application No. 95/2011; *Shanmukan Hanmukan Uthajenthiran*, Application No.152/2010

¹⁴ See also KISA “Cyprus continues illegal detentions in contempt of national and international court decisions”, 21 January 2011

¹⁵ Law 153(I)/2011, Article18 QF (5)(c)

¹⁶ See amongst others UN Body of Principles for the Protection of All Persons under Any Form of Detention; Standard Minimum Rules for the Treatment of Prisoners; Guideline 10, UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999)

¹⁷ Letter to Amnesty International by the Police Headquarters of Cyprus, 28 May 2012

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE²

Cyprus: Punishment without a crime: Detention of migrants of and asylum seekers in Cyprus (Index: EUR 17/001/2012).

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