

# GREECE

## Sweep Operation:

### the alleged ill-treatment and torture of 16-year-old Refat Tafili, an Albanian citizen<sup>1</sup>

Amnesty International continues to receive complaints that Greek police officers have beaten and otherwise ill-treated Albanian unauthorized migrant workers while arresting and/or forcibly returning them to Albania in periodic round-ups often referred to as "sweep operations". One such case is that of 16-year-old Refat Tafili. Amnesty International is concerned that investigations into his allegations of ill-treatment have been neither prompt nor thorough. The organization calls for any police officers identified as responsible for his ill-treatment and injuries to be brought to justice and for Refat Tafili to be granted compensation.

Refat Tafili, aged 16, an unauthorized migrant from Gegë village, Kuçova district, Albania, came to Greece in December 2000. With the help of a relative, who had been legally working in Greece since 1997, he found work at a printworks in the town of Krioneri in Attica. According to his account, at 9.30pm on the evening of 8 February 2001 three plainclothes police officers carried out a raid at a house in the Aghios Stephanos quarter of Athens where he and some other Albanians were staying. He describes his experiences as follows:

*"[w]hen I came back from work, I ate and was preparing to go to sleep, when the police came. They opened the door and came in. They caught hold of me and took me outside. They pushed me to the ground and began to kick my stomach and legs. They dazzled my eyes with an electric torch and spoke to me in Greek, but I didn't understand. [Then][t]hey brought me back inside and began to search all the belongings that were there. After that they took me away in a jeep. They drove off, and some 100 metres on, two other Albanians were walking by, one of them was A. and the other B<sup>2</sup>. The police stopped them and checked their documents; they let A. go, but they put B. [whose documents were reportedly in order] in the jeep. They took us to the police station at Aghios Stephanos. There they took us out of the jeep and put us in a cell. In the cell I felt faint and lost consciousness. B. called the police and told them I was ill. They told B. to take me to the bathroom and to throw water on my face. While B. was taking me to the bathroom I began to feel nauseous. One of the police officers took me and put me out of the police station; as I came out I vomited. Then they released me and said something to me in Greek, but I didn't understand. I had walked about 100 metres when B. caught up with me and took me by the arm. I told him to take me to the hotel where my cousin worked..."* The police reportedly failed to record the detention and release of the two men, and the names of the police officers concerned.

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<sup>1</sup>This report is based on press statements, a report by the non-governmental organization Greek Helsinki Monitor, a written statement by Refat Tafili and information provided by his lawyer.

<sup>2</sup>Their names are known to Amnesty International.

Early the next morning his relatives took Refat Tafili to the “G. Gennimatas” General State Hospital of Athens, where he was admitted to the intensive care unit. He was found to have suffered a double rupture of the spleen, and underwent an emergency operation for the removal of his spleen. The surgeon who carried out the operation was reportedly told by a relative that Refat Tafili had been beaten by police. He remained in hospital for just over a week and his relatives were informed that he would be discharged on 17 February. However, regulations were then in force which required hospitals to report and hand over unauthorized migrants to the police for expulsion<sup>3</sup>.

Accordingly, at 8.30 am on 17 February, while his relatives were waiting to collect him, seven armed police officers arrested Refat Tafili at the hospital and took him to Papagos police station, Athens. A relative who protested was also taken by the police to Papagos police station where he related the ill-treatment which Refat Tafili had suffered on 8 February. Throughout his description he was reportedly frequently interrupted by police who threatened to arrest him if he did not tell the truth. He and Refat Tafili were then sent to police headquarters in Athens, where they filed a complaint against the officers who had beaten Refat. The relative was then released and Refat Tafili was transferred to Aghia Paraskevi police station, where he identified one of the three officers who had beaten him on the night of 8 February 2001. Criminal proceedings were initiated *ex officio* by the police department against the officer and other unknown police officers. An internal administrative investigation (Enorki Diikitiki Exetasi or Sworn Administrative Investigation) was also opened.

Refat Tafili was still weak and in pain; his hospital medical notes had recommended that following his operation particular care be taken to prevent “*infections since without the spleen the body’s defences against certain germs are weakened*”. In this weakened state he was nonetheless held in a cell, in what are reported to have been extremely cramped and unhygienic conditions, together with five adult foreign nationals. It is alleged that for two days he was denied food, was not permitted visits from a relative, and was allowed to leave the cell to go to the toilet only twice a day, in the morning and evening. It was only on the insistence of a relative that after two days he was given the medication he had been prescribed, though not at the prescribed hour.

On 22 February 2001, and while still detained, Refat Tafili was ordered by the Ministry of Public Order to leave the country within 15 days, although his medical notes recommended that he remain under the medical supervision for at least two months<sup>4</sup>. However, shortly before his release that day his health seriously deteriorated; he was taken, in handcuffs, from the police station to the Sismanoglio hospital (where he remained until 5 March 2001) with a high fever and internal bleeding. It was during his stay in this hospital that his case came to the notice of the press and was publicized.<sup>5</sup>

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<sup>3</sup> In July 2001 the National Data Protection Committee, whose decisions are binding, formally requested the Greek authorities to repeal this law on the grounds that it is unconstitutional.

<sup>4</sup> In its report, dated 12 March 2001, the Ombudsperson specifically recommended that Refat Tafili should remain in Greece on humanitarian grounds as he needed immediate post-operation medical supervision from the Gennimatas hospital which, should he be expelled from the country, would not be available to him and would consequently put his health in serious danger.

<sup>5</sup> The newspaper *Eleftherotypia* of 28 February 2001.

On 26 February 2001 Refat Tafili's lawyer filed an appeal against his expulsion; on 8 March the Greek Ombudsperson recommended he be granted leave to stay in Greece (in the public interest and on humanitarian grounds) and he was subsequently granted leave, on exceptional grounds, to remain in the country for a further six months (until 8 September 2001). This leave has since been extended to 8 March 2002.

According to Refat Tafili's lawyer, attempts to identify the other police officers who allegedly ill-treated him have been hindered because the police officer in charge of the investigation refused to allow Refat Tafili to be accompanied by his lawyer and an interpreter at an identity parade at Aghios Stephanos Police Station. This was despite the fact that, as his lawyer pointed out, he was under age, had no parents in Greece, did not speak Greek and was traumatized. Refat Tafili was frightened to attend the identity parade alone, and so it did not take place.

The outcome of the administrative investigation, which ended in September 2001, was that the only police officer identified as having ill-treated Refat Tafili was the officer Refat Tafili had himself originally identified<sup>6</sup>. Refat Tafili's lawyer has observed that the Aghios Stephanos Police Station has a small staff of only a few police officers, and that it should not be difficult to identify who was on duty on the day in question, and which officers accompanied the officer identified by Refat Tafili.

Refat Tafili's complaint is also under judicial investigation by the Public Prosecutor's Office of Athens (Case file: B 2001/631), and criminal proceedings have been started against the officer identified by Refat Tafili. On 27 July the public prosecutor in charge of the case ordered a supplementary investigation, which ended on 7 September. This investigation also failed to identify the two other police officers alleged to be involved in the ill-treatment of Refat Tafili. The case has been returned to the public prosecutor.

Amnesty International is concerned that the investigation of Refat Tafili's complaint appears to have been neither prompt nor thorough. Each of the following rights recognized under national and international law and standards were violated in this case:

### **The Greek Constitution and national law**

#### ***A) Both specifically prohibit the use of ill-treatment or torture.***

Article 7, paragraph 2, of the Greek Constitution states that: "[T]orture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offence against human dignity, are prohibited and punished as provided by law".

Under national legislation, Article 137A-D of the Penal Code, dealing with "*Torture and other attacks on human dignity*" defines torture as:

*"... any systematic infliction of acute physical pain, or of physical exhaustion endangering*

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<sup>6</sup> His name is known to Amnesty International.

*the health of a person, or of mental suffering capable of leading to severe psychological damage, as well as any illegal use of chemicals, drugs or other natural or artificial means with the aim of bending the victim's will" (Art. 137A paragraph 2) - when perpetrated by a "an official or military whose duties include the prosecution, interrogation or investigation of criminal offences or breaches of discipline or the execution of punishments or the guarding or the custody of detainees...[on] a person who is in his power with the aim of a) extorting from this person or a third person a confession, testimony, information or statement, repudiation or acceptance of a political or other ideology; b) punishing c) intimidating the person or a third person" (Art.137A paragraph 1).*

The prescribed penalty, in principle, for someone found guilty of torture is from three years' to life imprisonment. The penalty is of at least 10 years in the most serious cases (such as for example the use of the *falanga*<sup>7</sup> or electric-shock equipment - Art. 137B paragraph 1a), and is life imprisonment if the victim dies (Art. 137B paragraph 3).

Less serious cases involving "*Physical injury, injury to the health, the use of illegal physical or psychological force and any other serious attack on human dignity, which is committed by persons under the conditions and for the purposes defined in paragraph 1*", are punished by three to five years' imprisonment (Art.137A paragraph 3). Additionally, persons convicted of torture are automatically deprived of their political rights and dismissed from their jobs (Art. 137C).

*Under Article 137D paragraph 4 "the victim of the offences [defined] in articles 137A and 137B has a right to demand from the individual and the state which are entirely responsible compensation for damages done to him/her and pecuniary satisfaction for psychological and moral damage".*

#### **B) The obligation to inform the detainee about his or her rights and charges against him or her**

The right of a person arrested or detained to be assisted by a lawyer, to consult and communicate with him, is guaranteed under Articles 96 -108 of the Code of Penal Procedure. Moreover, Article 44 (3) of Law 2910/2001 (adopted by the Greek Parliament on 2 May 2001)<sup>8</sup> clearly states that a foreigner should be informed about the reasons of his detention in a language he or she understands.

The right of access to a lawyer is safeguarded by Presidential Decree 141/1991 (Section 60, para xiii) and Order No 4803/22/14-a. According to the Ministry of Public Order [in response to the European Committee for the Prevention of Torture (CPT) President's letter of 14 May 1997], detainees' communication with a lawyer of their choice:

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<sup>7</sup> Beatings on the soles of the feet.

<sup>8</sup> Law 2910/2001 legislates about the entrance into and sojourn of foreigners on the Greek territory, and the acquisition of the Greek citizenship through naturalization and other dispositions.

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*"is exercised immediately after their being brought before the relevant police authority. This means that as soon as the detainees or aliens arrested with a view to expulsion are brought to the police station (i.e. a few minutes after their arrest) they are given the opportunity to exercise the right described above."*

In November 1995 the Ministry of Public Order issued a circular (Order no.4803/22/14-a of 3 November 1995) providing for the publication of two information sheets setting out the rights of detainees, and for the translation of such material at present reportedly carried out into 13 foreign languages<sup>9</sup>. The first information sheet deals with the rights of all detainees; the second is designed for foreign nationals detained pending deportation, and has been expanded to include an explanation of the deportation procedure. Non-governmental organizations working with foreigners detained pending deportation report that with very few exceptions detainees are not given these information sheets, although these are reportedly posted up in a few police stations or holding centres for aliens, nor were the detainees informed orally of their rights<sup>10</sup>. According to information provided to the CPT by the Ministry of Public Order (response of 18 October 1998), paragraph 12 of this Order states:

*"all persons arrested by police should be given these information sheets immediately after they are brought to a police station. Police are also required to explain orally their rights to detainees and to draw up a report recording that the information sheet and the oral explanation have been duly provided. Where necessary, the services of an interpreter or consular authority should be used to explain the detainee's rights to him or her".*

The same circular explicitly mentions that:

*"[s]pecial sensitivity and care must be shown in case of the detention of minors or persons with special needs under legal restriction or assistance. In each case, the persons responsible for them or their relatives should be informed".*

Amnesty International is concerned that the police officers at Aghios Stephanos Police Station denied Refat Tafili the assistance of a lawyer and an interpreter despite the fact that he was under age and could not speak Greek when he was requested to attend the identity parade at the police station. The organization is also concerned that he was allegedly denied visits from a relative for two days while in detention in Aghia Paraskevi police station.

### ***C) Conditions of detention***

Amnesty International is concerned that Refat Tafili, a minor, was kept in detention with adult prisoners although according to Greece's Initial Report to the United Nations Committee for the Rights of the Child (CRC/C/28/Add.17, published on 25 June 2001), minor offenders are "*detained in a separate part of the police premises, and then, if detention on remand is required, they are detained in*

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<sup>9</sup> See appendix.

<sup>10</sup> Greek Helsinki Monitor (GHM), "*Greece: Unfair Treatment of Migrants and Minorities*", Statement to the 2001 OSCE Implementation Meeting, Warsaw, 18 September 2001.

*Juvenile Institutions of Correction*".

Moreover, in its report<sup>11</sup>, the CPT "feels compelled to point out that at the police establishments visited, a large number of foreign nationals were subjected for prolonged periods of time to a combination of negative factors - overcrowding, appalling material conditions and levels of hygiene, lack of outdoor exercise, absence of any activities - which could easily be described as inhuman and degrading treatment". The circular Order no. 4803/22/a referred to above from the Ministry of Public Order also specifically requires the police to provide for a doctor if the detainee is ill, and to transfer the detainee to hospital immediately if he or she requires medical care of a kind which is not available at the police station or place of detention.

Amnesty International is concerned about allegations that not only was Refat Tafili put out onto the street without any assistance from the authorities after he was taken ill at Aghios Stephanos police station, but also that, when he was re-arrested at the hospital after his operation a few days later, he was held in cramped and unsanitary conditions, with restricted access to toilet facilities, and for two days allegedly denied food and prescribed medication.

## **International Standards**

### ***A) Prohibitions on torture and ill-treatment***

Greece ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988. In doing so, it expressly undertook to prevent torture taking place within its territory by, among other things, undertaking to educate and train law enforcement officers; to ensure that its competent authorities proceed to a prompt and impartial investigation of complaints of torture and of cases where there are reasonable grounds to believe that an act of torture has been committed even if no complaint has been made; to ensure that victims of torture have the right to compensation or, where a death had occurred as a result of an act of torture, that the victim's dependants are entitled to compensation; and that the penalties for those responsible for the torture are appropriate.

Article 2, Paragraph 1, of this Convention states that: "*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*".

Article 37, Paragraph a, of the United Nations Convention of the Rights of the Child (CRC), which Greece ratified in May 1993 and is therefore bound to observe, states that: "*[N]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (...)*".

Greece also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in November 1974. Article 3 of this Convention states that: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*". In 1991 Greece ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment

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<sup>11</sup> CPT/Inf (2001) 18 part 2, published on 13 September 2001.

or Punishment, which not only prohibits the practice of torture and other cruel, inhuman or degrading treatment or punishment, but also sets up a system of regular inspections of places of detention by the European Committee for the Prevention of Torture. Greece is legally bound to observe the provisions of this treaty.

**B) *The right of access to a lawyer*** is recognized by international law and standards and recommendations such as the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) and the United Nations Basic Principles on the Role of Lawyers. In the case of minors, Article 37 (d) of the CRC states that:

*"[E]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action".*

Internationally recognized standards also require that anyone who has been arrested should be informed at the time of the arrest of the reasons for his or her arrest and be promptly informed of any criminal charges against him or her in a language he or she can understand.

According to Article 40 (2 b ii) of the CRC:

*"[E]very child alleged as or accused of having infringed the penal law has at least the following guarantees (...): [t]o be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence".*

Paragraph 2 (vi) of the same article recognizes the right for the child *"[t]o have free assistance of an interpreter if the child cannot understand or speak the language used"*.

### **C) *Access to relatives***

International human rights standards require that immediate notice of detention be given and that prompt access to the detainee be granted to families of detainees. Rule 92 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) states:

*"An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution".*

Similarly, Principle 16 (1) of the Body of Principles provides that detainees are entitled to notify members of their families about their detention promptly after they are placed in custody.

### **D) *Treatment of prisoners and conditions of imprisonment***

Article 37 (c), of the CRC provides that:

*"[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".*

Rule 8 (d) of the Standard Minimum Rules clearly state that:

*"[t]he different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment (...). [In particular], [y]oung prisoners shall be kept separate from adults".*

Rules 10 to 26 of the same Standard Minimum Rules define and provide for good conditions of detention, including clothing, food and access to medical services. In particular,

*"[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation" (Rule 10).*

Moreover, access to facilities and toilets should never be denied nor restricted.

*"The sanitary installations shall be adequate to enable every prisoner to comply with the need of nature when necessary and in a clean and decent manner" (Rule 12).*

*"Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it" (Rule 20).*

*"Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers" (Rule 22 (2)).*

## **Recommendations**

### **Amnesty International is calling on the Greek authorities**

- to conduct a prompt, thorough, impartial and independent investigation into the alleged ill-treatment of Refat Tafili
- to bring to justice any police officers identified as responsible whether directly or on the basis



of superior responsibility

- to ensure that Refat Tafili receives fair and adequate compensation if the allegations are found proven

as required by international law and standards and recommendations.

Moreover, the organization urges the Greek authorities to:

- take immediate steps to ensure that police are not only informed of the dispositions contained in circular Order no.4803/22/14a (of 3 November 1995) providing for the publication of two information sheets setting out the rights of detainees and their translation, but are required to implement them.
- ensure that competent interpreters are on call to assist when foreigners are detained
- ensure that detainees are immediately seen by an [independent] doctor after arrest, that they get prompt and effective medical attention and that medical records are kept in accordance with good medical practices and made available to the detainees
- take all measures to ensure that detainees are allowed access to their families and visits from relatives
- ensure that all detainees are given prompt access to legal counsel and that counsel is able to be present at all stages of proceedings including identity parades and to communicate in confidence with detainees
- take all measures to ensure that minor detainees are not held with adult detainees
- take all steps to improve conditions of detention in Greece, in line with international law and standards and CPT recommendations.