

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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GREECE: AMNESTY INTERNATIONAL'S SUBMISSION ON THE PROPOSED CHANGES TO THE LAW ON THE RETURN OF THIRD COUNTRY NATIONALS AND OTHER PROVISIONS

INTRODUCTION

On 17 July 2025, the Greek Minister of Migration and Asylum Thanos Plevris submitted a legislative proposal titled "Reform of the framework and procedures for the return of third-country nationals - Other regulations of the Ministry of Migration and Asylum" (hereinafter, the Greek proposal) for public consultation.¹ Amnesty International is concerned that proposed changes in the law relating to return of third country nationals introduce elements which negatively impact people's rights in the context of return procedures, at points in open violation of existing EU law and standards, and impart a markedly punitive direction to the country's migration policy. In May 2025, statements by then Minister of Migration and Asylum, Makis Voridis, had announced Greece's intention to reform its legislative framework on returns in a more coercive and punitive direction. In July, Plevris revived his predecessor's plan, with the tagline that irregular migrants in Greece would face "prison or return".²

This submission outlines Amnesty International's position regarding the proposed measures and amendments presented in the Greek proposal. It does not represent a comprehensive exposition of the organization's concerns but captures our views on the proposals that we consider likely to produce the most significant implications for human rights.

It is essential to consider that Greece's proposal follows, and is heavily inspired by, the European Commission's (EC) proposal for a New Common European System for Returns (Return Regulation), published in March 2025. The EC's proposal offers a new legislative framework for the detention and return of migrants, in the form of a Regulation replacing the current EU Directive 2008/115/EC (the "Return Directive").³ The Regulation seeks to expand and extend the detention of people subject to return decisions. It also provides for new sanctions for people who fail to 'cooperate' sufficiently with return procedures, an increased use of entry bans, limited options for voluntary departure, and expansive derogations for people deemed a security risk – circumventing criminal justice proceedings and fair trial safeguards.⁴ The Greek proposal purports to reform the way the Return Directive is currently implemented into Greek law, in accordance with international law, but also in line with the guidelines of the EC proposal (Article 2 of the Greek proposal). Yet, this proposal has no binding force on member states, as it is yet to undergo negotiations between the Council and the European Parliament as part of the EU legislative process, before being adopted into legislation.

Amnesty International is deeply concerned that the Greek proposal seems to prematurely frontload the most punitive elements of the Commission's proposal and jeopardizes human rights.

1. ARTICLE 7 - RETURN DECISION

The proposed Article 7 introduces a new scenario where an **entry ban** would be mandatorily issued with the return decision, in cases where "the presence of the third country national in Greece poses a risk to public order and security, national security or public health" (Article 12.1 lett. c, unofficial translation). Under the Return Directive, Member States have the option to accompany a return decision by an entry ban, but are only required to do so in cases where "no period for voluntary departure has been granted" or where "the obligation to return has not been complied with" (Article 11). In this case too, the Greek proposal appears to frontload the European Commission's 2025 proposed Return Regulation, which provides for the mandatory issuance of an entry ban where "the third-country national poses a security risk" (Article

¹ Proposal [in Greek] at: <https://www.opengov.gr/immigration/?p=1873>

² Euronews, Thanos Plevris: "Either prison or return for irregular immigrants"[unofficial translation from Greek], 22 July 2025, <https://gr.euronews.com/2025/07/22/european-home-affairs-o-thanos-plevris-sto-atipo-simboulio-stin-kobenhavn>

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

⁴ Amnesty International, EU: Return proposals a "new low" for Europe's treatment of migrants, 11 March 2025, www.amnesty.org/en/latest/news/2025/03/eu-return-proposals-a-new-low-for-europes-treatment-of-migrants/

10). Once more, this proposal has no binding force to date. The same considerations apply to the fact that the Greek proposal extends the possible duration of the entry ban from the general rule of 5 years under the current law (Article 26.2 of Law 3907/2011) to 10 years, (Article 12.2 of the Greek proposal), as also introduced in the Commission's proposal (Article 10.6 and 7). This provision is unnecessarily punitive, and inconsistent with the rules currently in force under the Directive, which currently provides for a maximum length of five years, except for cases where the individual "represents a serious threat to public policy, public security or national security" (Article 11.2 of the Directive).⁵

Amnesty International recommends rejecting the amendments expanding the application of entry bans, as they unnecessarily increase the penalties imposed on people subjected to return decisions. Amnesty International notes that "entry bans" raise issues in terms of access to asylum, as future changes in a country of origin, and thus an individual's need for international protection cannot be predicted.⁶ Entry bans can effectively deprive people of their right to seek asylum and therefore any rules relating to entry bans including the circumstances in which entry bans are withdrawn or suspended, must be clear, specific and cannot hamper access to asylum..

Amnesty International expresses concern about the inclusion in the Greek proposal of a provision mimicking Article 7.4 of the European Commission proposal.⁷ Article 7.1. of the Greek proposal states that "If, at the time the return decision is issued by the competent authorities, the country of return cannot be determined with certainty, then the decision may designate more than one country, based on the information available to the authorities."

Once more, the proposal would unduly expand the scope of the Return Directive, which provides a clear definition, under Article 3.3, of when a country can be considered as a country of return for the purposes of the Directive and does not envisage the possibility of designating multiple countries of return. This possibility would come to the detriment of returnees' procedural rights, as they would see the burden of proof against them increase when filing objections to the return decision, as they may be required to present objections in relation to multiple countries of returns. In this sense, expressing its opposition to the relevant provision in the EU Commission's proposal, ECRE has observed that "without a specific country of return in the decision, it is more difficult for the person to appeal. The provision is all the more concerning given the proposal above to significantly expand the countries to which a [third country national] may be transferred".⁸ **Based on the above, Amnesty International recommends that the proposed provision under Article 7.1 is rejected.**

2. ARTICLE 8 – VOLUNTARY DEPARTURE AND SURVEILLANCE MEASURES AGAINST THE RISK OF ABSCONDING

2.1. UNDUE LIMITATIONS TO VOLUNTARY DEPARTURE

Under the current Greek legislation, the authorities are not bound to grant a period of voluntary departure,⁹ contrary to the EU Return Directive which requires Member States to provide the option of voluntary departure as part of the return decision.¹⁰ Article 8 of the Greek proposal maintains this approach and proposes to shorten the maximum length of the period granted for voluntary departure, which is reduced to 14 days, in contrast to the EU Directive standard of 30 days (Article 7). Hence, the Greek proposal significantly reduces the safeguards granted to returnees, fails to uphold the mandatory provision of a period for of voluntary departure, as required by Return Directive, and reduces the duration of the period for voluntary departure, further restricting its accessibility.

These changes risk placing the returnee in a hastier decision-making situation, which may affect their ability to exercise a free and informed decision to return voluntarily. We also note that the Greek proposal implements the Directive in the strictest sense possible, making it mandatory for the authorities not to grant a period for voluntary departure in cases

⁵ Rule also implemented under Article 26.2 of Law 3907/2011.

⁶ Amnesty International EU Office, Returning "irregular" migrants: the human rights perspective, Amnesty International's comments on the draft directive on common standards and procedures in Member States for returning illegally staying third country nationals COM (2005) 391 final, May 2006 <https://briguglio.asgi.it/immigrazione-e-asilo/2006/giugno/oss-amnesty-dir-rimpatri.pdf>

⁷ Whereby: "When a country of return cannot be determined on the basis of the information available to the competent authorities at the time of issuing the return decision, a return decision may indicate provisionally one or more countries of return."

⁸ ECRE comments on the proposal for a Regulation of the European parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council directive 2001/40/EC and Council decision 2004/191/EC, https://ecre.org/wp-content/uploads/2025/06/ECRE_Comments_Proposal_Return-Regulation.pdf

⁹ Article 8 reads: "The return decision of the third-country national may provide for a period for his voluntary departure. See: ECRE, Greece country report, 2023 update, https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-GR_2023-Update.pdf, p. 122

¹⁰ The return directive allows, at most, Member States to make such option conditional on the returnee applying for this measure, in which case the Member State remains bound to inform the returnee of this possibility.

where there is a risk of absconding, “or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security” (Article 8.4).

Given the very expansive definition of situations where, according to the Greek proposal, a risk of absconding is considered to exist, the option of voluntary departure is effectively close to being annihilated under the Greek proposal. In fact, while the Return Directive does not provide a definition of when a risk of absconding materializes, the Greek proposal includes an open list of cases where the risk is considered to exist, including scenarios which do not entail an elements of culpability on the side of the returnee, and may be the result of circumstance, a lack of means or simple forgetfulness on their part. This includes elements such as a lacking or unknown residence, or the “abandonment or change of residence or known residence without prior notification to the competent authorities”, and even more concerningly, “the lack of travel or other identity documents”, which can be common for international protection applicants who engage in often dangerous travel to seek safety. Included in the list is also “the possession of false documents, in particular travel or other identity documents”.

Regarding the inclusion of the lack of documents and false documents as a criterion to determine a risk of absconding, it must be noted that UNHCR explicitly refers to this circumstance when discussing the non-penalization of asylum-seekers under Article 31 of the Geneva Convention, stating that “Article 31(1) acknowledges that in seeking asylum from persecution, refugees are often compelled to arrive, enter or stay in a territory without authorization or documents, or with documentation that is insufficient, false or obtained by fraudulent means, or by using clandestine modes of entry”.¹¹ UNHCR considers prohibited under this provision “penalties imposed for the use of false or fraudulent documents”.¹²

Considering the significant implications that the existence of a risk of absconding has under the proposal, the inclusion of all these scenarios is alarming, as it can result in a large percentage of returnees being considered at such risk and, in turn, being exposed to lesser safeguards in the return procedure, including [as discussed later in this document] not only the removal of a term of voluntary departure, but the possibility of being subjected to detention [Article 16].

Amnesty International believes that options for voluntary departure should be expanded, not limited. Facilitating voluntary departures would provide for a more dignified and sustainable, and altogether less costly, return policy. Amnesty International recommends that Greece amends its legislation to introduce the mandatory provision of a period for voluntary departure, in line with Article 7.1 of the Return Directive.

Amnesty International is concerned about the inclusion, under the Greek proposal, of elements which would establish a presumption of risk of absconding, which are difficult to rebut and increase the risk of an automatic detention regime. Amnesty International is particularly opposed to the use of broad, vague or inappropriate criteria determining a risk of absconding, such as the lack of residence or travel or identity documents or the use of false documents. Amendments should be made to ensure that the existence of these factors does not result in an automatic establishment of a risk of absconding, or in the automatic use of detention, but that each case is assessed on its merits, with due consideration for individual circumstances. The Greek proposal should also clarify that the risk of absconding must be assessed in relation to a return procedure that has been initiated, is in progress and has a reasonable prospect of being executed within a reasonable period of time.¹³

Amnesty International is also opposed to the proposed inclusion, as a factor indicating a risk of absconding, of the “the existence of convictions, pending criminal prosecutions or serious indications that a criminal offence has been committed or is imminent by the person concerned”. Issues related to criminal investigations or the existence of a criminal conviction, should be dealt with in the context of criminal justice proceedings, and not used to enable the imposition of penalties in the context of migration procedures.¹⁴

¹¹ UN High Commissioner for Refugees (UNHCR), Summary of the UNHCR Guidance on Article 31 of the 1951 Convention (GIP 14), 6 June 2025, <https://www.refworld.org/policy/legalguidance/unhcr/2025/en/150108>

¹² UNHCR, Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees, HCR/GIP/24/14, 23 September 2024, <https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632>

¹³ Amnesty International has expressed similar concerns in: Amnesty International European Institutions Office, Position paper, the European Commission Proposal Recasting the Return Directive, 31 October 2018, www.amnesty.eu/wp-content/uploads/2018/11/AI_comments_recast_return_directive.pdf

¹⁴ Ibid.

2.2. NON-CUSTODIAL MEASURES:

The Greek proposal introduces the option of **electronic surveillance** (Article 8.3) as a measure to prevent the risk of absconding. This measure is not explicitly provided for by the Return Directive and is only foreseen by the Commission's proposal as an alternative measure to detention, rather than as a measure to prevent absconding (Article 31).

Amnesty International notes that while less-invasive than detention, non-custodial measures can nevertheless restrict rights, such as the rights to freedom of movement or to privacy. In assessing whether a particular non-custodial measure is justified, Amnesty International requires states to assess whether the measure, under the circumstances, is necessary, proportionate to a legitimate aim and non-discriminatory. Furthermore, any non-custodial measures ordered must accommodate the specific needs of the migrant, refugee or asylum-seeker and provide access to necessary care and support. Where ankle monitors are used as part of the return procedure, Amnesty International submits that the use of these devices raise risks for human rights, including the rights to dignity and respect, privacy and bodily autonomy.¹⁵

The United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, also noted the risks of the use of certain alternative measures to detention which, while less invasive than detention itself, retain elements of punitiveness, observing: "many of the alternative measures employed by States appear to emulate measures from the field of criminal justice, such as bail, home-based detention or other restrictions on movement, such as electronic surveillance or periodic reporting to the authorities. Those measures are often excessively restrictive and are not appropriate in the context of migration. In some cases, they can exacerbate the stigmatization of migrants, unnecessarily interfere with their personal freedom and generate excessively onerous requirements, and may even amount to de facto detention".¹⁶ UNHCR has similarly noted that alternatives to detention (ATDs) "may be inappropriately reminiscent of the criminal justice system" and "ATDs in the form of electronic tagging are punitive in nature and are unlikely to comply with the principles of necessity and proportionality, including application of the least restrictive measure appropriate for the individual case."¹⁷ Human Rights Watch has expressed concerns regarding the use of ankle monitoring.¹⁸

Amnesty International recommends rejecting the proposed introduction of electronic surveillance as a measure to prevent the risk of absconding, or as an alternative measure to detention, and to prioritize less-invasive alternatives.

3. DETENTION TO CARRY OUT THE REMOVAL

3.1. EXTENSION OF THE MAXIMUM LENGTH OF DETENTION PERMISSIBLE

The Greek proposal (Article 16) significantly extends the maximum length of detention allowed under EU law to carry out a removal, providing for a maximum duration of one year, which can be extended "for only a limited period not exceeding one year" under certain circumstances. This conflicts with the provisions of the Return Directive whereby the maximum length of detention is six months, which can be extended by a further 12 months. In this area too, the Greek proposal seems to align with the European Commission's proposal, which (Article 32) provides for a maximum initial term of detention of 12 months, that can be extended by a further 12 months. Once more, the Commission's proposal has not yet been negotiated or adopted and thus holds no legal significance or validity, and the Return Directive remains the legislative framework binding on Member States. As such, the length of detention provided for the Greek proposal is inconsistent with EU law, in a manner that negatively affects returnees' rights.

Amnesty International urges the Greek authorities to reject the proposed extension of the maximum length of detention.

3.2. EXPANDED USE OF DETENTION

3.2.1. DETENTION OF PEOPLE WHO DO NOT RETURN VOLUNTARILY OR BREACH THE MEASURES IMPOSED ON THEM TO PREVENT ABSCONDING (ARTICLE 22.2 AND 23, AND ARTICLE 8.3)

¹⁵ Amnesty International, Primer: Defending the rights of refugees and migrants in the digital age, February 2024, <https://www.amnestyusa.org/wp-content/uploads/2024/02/Defending-the-Rights-of-Refugees-and-Migrants-in-the-Digital-Age.pdf>

¹⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 5 (2021) on migrants' rights to liberty and freedom from arbitrary detention and their connection with other human rights, 21 July 2022, CMW/C/GC/5, para 48, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=hTFCxkEMVYCdCS1USwdJdPxi3YcSIGxQiHusq5kLBhObkflJ0Hi%2Bm0zZssfBRli40nC%2FIdPQXGlcqrzptkzWA%3D%3D>. Also cited by: Human Rights Watch, Dismantling Detention, International Alternatives to Detaining Immigrants, 3 November 2021, <https://www.hrw.org/report/2021/11/03/dismantling-detention/international-alternatives-detaining-immigrants>

¹⁷ UNHCR, Unlocking rights: towards ending immigration detention for asylum-seekers and refugees, September 2024, <https://www.refworld.org/policy/polrec/unhcr/2024/en/148655>

¹⁸ Human Rights Watch, Dismantling Detention, International Alternatives to Detaining Immigrants, cited above.

In addition to the considerations made in relation to Article 16, above, we note with concern that the Greek proposal (Article 8.3 and Article 22) also introduces new scenarios where detention can be used, beyond the conditions explicitly provided for the Return Directive - namely, in cases where the returnee either fails to return within the timeframe granted for voluntary return, or breaches the conditions imposed on them to avoid a risk of absconding.

Under Article 8.3, the proposal provides that where obligations imposed on the returnee to avoid a risk of absconding are breached, “the third-country national **shall be detained** and the removal procedure shall be initiated immediately in accordance with Article 23”. This provision unduly expands the scenarios expressly foreseen under EU law (Article 15 of the Return Directive) for the use of pre-return detention – as discussed above - and omits the obligation to consider less coercive alternatives before resorting to detention. In fact, the obligations referred to under Article 8.3 do not constitute alternatives to detention per se, but safeguards against the risk of absconding during the period of voluntary departure (under the Greek proposal these include, but are not limited to “electronic surveillance, regular appearance before authorities, the filing of an appropriate financial guarantee, the filing of documents or the obligation to stay at a certain place”). As such, the event of a breach of these conditions could at most lead the authorities to withdraw the period of voluntary departure and does not relieve the authorities from the obligation to first consider alternatives to detention (as per Article 15.1 of the Return Directive).

Under Article 22, the proposal provides that “[t]he third-country national **must leave the country by the specified date, otherwise he/she is detained for carrying out the removal procedure**”. This article proposes that the failure to return voluntarily within the timeframe granted for such return leads to automatic detention, irrespective of the rules on the mandatory consideration of “less-burdensome” alternatives to detention and international standards on the need to carry out an individualized assessment of the necessity and proportionality of detention in the individual case. Similarly to the observations made above on Article 8.3 of the proposal, while the failure to comply with a voluntary return could be considered as a factor in the assessment of whether an individual is at risk of absconding, the existence of such risk does not justify a standard recourse to detention, which must always be subjected to individualized assessment and to the principle whereby detention can only be considered if “other sufficient but less coercive measures” cannot be applied (Article 15 Return Directive). The obligation to detain people who do not comply with the voluntary return period, also conflicts with the more protective rules on the detention of unaccompanied children and families with children, as per Article 17 of the Return Directive.

Amnesty International urges the Greek authorities to reject the above discussed provisions (Articles 8.3 and 22) and regulate situations where voluntary return is not complied with or where measures to address a risk of absconding are breached through the powers already available under EU law in such situations - including through the use of non-coercive alternatives to detention. The Greek authorities must ensure that detention is used as a last resort, for removal procedure that is initiated, and subject to an individualized assessment of necessity and proportionality. Amnesty International also submits that the detention of children, families, pregnant people, people with disabilities and survivors of trafficking should always be avoided, regardless of their conduct towards an order to return.

Under Article 23 (Settlement of removal issues), the proposal also provides that that if a situation under Article 8.4 presents itself during the period of voluntary departure, (i.e. a situation where the individual is considered at a risk of absconding, or to pose “a risk to public security, public order or national security [...] or if the application for legal stay has been rejected as manifestly unfounded or abusive”) or “if the third-country national violates the obligations imposed on him during the period of voluntary departure or its extension, pursuant to paragraph 3 of Article 8”, then, “**the third-country national shall be detained** for the preparation of return and the carrying out of the removal procedure [...] and the period of voluntary departure granted or the extension of this period shall be considered automatically revoked”. This constitutes a departure from Article 37.4 of Law 3907/2011, which only provided that in case of a breach of the conditions imposed to avoid a risk of absconding “the return decision shall be enforced immediately and the provision of time period for voluntary departure or its prolongation shall be ex officio considered as revoked,” providing for a non-mandatory recourse to detention in cases of “recidivism”.

The purpose of Article 8.4 of the Greek proposal is declaredly to allow the authorities to waive the granting of a period of voluntary departure under certain circumstances (consistently with Article 7.4 of the Return Directive), meanwhile Article 8.3 regulates the issuance of measures to avoid a risk of absconding. In neither of these scenarios does EU law grant an automatic recourse to detention. Article 23 raises an internal inconsistency with the Greek proposal’s own provisions under Article 16, unduly expanding the grounds of detention, and once again creating situations under which the rule

whereby detention can be used “only if in the specific case other adequate and less burdensome measures...cannot be applied effectively” can be circumvented.

Amnesty International recommends that the above discussed elements of Article 23.1 of the proposal are rejected.

3.2.2. INCREASED USE OF DETENTION AS A RESULT OF THE EXPANSIVE DEFINITION OF THE RISK OF ABSCONDING

The scenarios where Greece would be allowed to use detention in the context of return is also expanded by virtue of the **expansive definition given to the concept of “risk of absconding”**, discussed above, which would allow for detention to be used even in the possibly common situation where the returnee lacks an address of residence or travel or identity documents.

The expanded use of pre-return detention under the Greek proposal goes against recognized international standards,¹⁹ whereby “freedom must be the default position and detention the exception.”²⁰ In order not to be arbitrary, migration-related detention must adhere to the requirements of legality, reasonableness, necessity, proportionality and non-discrimination.²¹ Under international law, migration-related detention may only be ordered if it is necessary and proportionate to a legitimate aim.²² Detention can be considered “necessary” only when it is “absolutely indispensable for achieving the intended purpose and that no other measure less onerous exists in the individual circumstances of the person”.²³ Detention is only proportionate when it strikes a balance “between the gravity of the measure taken, which is the deprivation of liberty...including the effect of the detention on the physical and mental health of the individual, and the situation concerned.”²⁴

Amnesty International believes that the risk of absconding must be assessed in relation to a transfer/removal/deportation/expulsion procedure that has *been initiated*, is *in progress* and has a reasonable prospect of being executed within a reasonable timeframe.

Amnesty International urges the Greek authorities to only resort to migration detention as a last resort, based on an individualized assessment and subject to the requirements set by the international human rights law, discussed above.

¹⁹ ICCPR, Art. 9(1); UDHR; HRC General Comment 35; GA Body of Principles, Principle 2; ECHR, Art. 5(1); Refugee Convention, Art. 31; Migrant Worker Convention, Art. 16(1); Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, (A/RES/40/144), Art. 5(1)(a); African (Banjul) Charter on Human and Peoples’ Rights (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58), Art. 6; American Convention on Human Rights, Art. 7(1); American Declaration on the Rights and Duties of Man, Art. 1; Arab Charter on Human Rights, Art. 14; UNHCR Detention Guidelines, Introduction.

²⁰ UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility (Special Rapporteur on Migrants, 2017), (UN Doc A/HRC/35/25), 28 April 2017, paras 58 and 62; also: HRC General Comment 35, paras 18, 19, 21, and 62; International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention (revised edition)*, 2015, <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>; Report of the Working Group on Arbitrary Detention – Mission to Angola, 29 February 2008, (A/HRC/7/4/Add.4), para. 97: “It has to be recalled that detention of illegal immigrants must be the exception, not the rule”; Report of the Working Group on Arbitrary Detention, Addendum: Report on the Visit of the Working Group to the United Kingdom on the issue of immigrants and asylum-seekers, (E/CN.4/1999/63/Add.3) para. 26.

²¹ HRC General Comment 35, para. 12; Report of the Working Group on Arbitrary Detention, (A/HRC/22/44), para. 80; UN Human Rights Committee, *A v. Australia*, Communication No. 560/1993, 3 April 1997, para. 9.2; UN Human Rights Committee, *Van Alphen v. The Netherlands*, Communication No. 305/1988, 23 July 1990, para. 5.8; UN Human Rights Committee, *Albert Womah Mukong v. Cameroon*, Communication No. 458/1991, 21 July 1994, para. 9.8; Inter-American Court of Human Rights, *Case of Chaparro Alvarez and Lapo Iñiguez v. Ecuador*, Judgment of November 21, 2007 (Preliminary Objections, Merits, Reparations, and Costs); ICCPR, Art. 4; UN Committee against Torture, Concluding Observations on the fourth report of Cyprus, 16 June 2014, (CAT/C/CYP/CO/4), (CAT Cyprus 2014), para. 17; UN Human Rights Committee, Concluding Observations on the third periodic report of the Czech Republic, 22 August 2013, (CCPR/C/CZE/CO/3), para. 17; UN Human Rights Committee, Concluding observations on the sixth periodic report of Finland, 22 August 2013, (CCPR/C/FIN/CO/6), para. 10; UN Human Rights Committee, *Concluding Observations on the sixth periodic report of Costa Rica* (21 April 2016) CCPR/C/CRI/CO/6 at para. 30; UN Human Rights Committee, Concluding Observations on the sixth periodic report of Denmark, 15 August 2016, (CCPR/C/DNK/CO/6), para. 32; UN Human Rights Committee, Concluding observations on the fourth periodic report of Israel, 21 November 2014, (CCPR/C/ISR/CO/4); UN Human Rights Committee, Concluding observations on the second periodic report of Malta, 21 November 2014, (CCPR/C/MLT/CO/2), (HRC Malta 2014), para. 16; UN Human Rights Committee, Concluding observations on the sixth periodic report of Spain, 14 August 2015, (CCPR/C/ESP/CO/6), para. 15; UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 17 August 2015, (CCPR/C/GBR/CO/7), para. 21; UN Committee against Torture, Concluding observations on the combined fourth and fifth periodic reports of Australia, 23 December 2014, (CAT/C/AUS/CO/4-5), (CAT Australia 2014), para. 16; UN Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, (CAT/C/ISR/CO/5), para. 45; UN Committee against Torture, Concluding observations on the seventh periodic report of Switzerland, 7 September 2015, (CAT/C/CHE/CO/7), para. 17.

²² Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, (Siracusa Principles), I(A)(10); Refugee Convention, Art. 31(2); Special Rapporteur on Migrants 2017, para. 58.

²³ WGAD 2018, para. 23.

²⁴ WGAD 2018, para. 24.

3.3. CONCERNS ABOUT THE USE OF MIGRATION DETENTION IN CASES RAISING SECURITY ISSUES.

It must also be recalled that, both the current Greek legislation²⁵ and the new proposal, provide for detention to be used in situations raising **national security considerations**.²⁶ This is in line with the Commission's proposal (Article 29.3 lett c), which explicitly mentions security considerations as a ground for the use of detention.

Amnesty International opposes the administrative detention of migrants, refugees and asylum-seekers on security grounds. Any deprivation of liberty for security reasons should occur in the context of the criminal justice system, employing the procedures, rules of evidence and burden and standard of proof in criminal law.

4. PROPOSED REPLACEMENT OF ARTICLE 83 OF LAW 3386/2005 “ON CRIMINAL SANCTIONS FOR ILLEGAL ENTRY AND EXIT FROM THE COUNTRY, WITH THE PROVISION, FOR THE FIRST TIME, OF ILLEGAL STAY IN THE COUNTRY AS A CRIMINAL OFFENSE, AS WELL AS THE TIGHTENING OF THE CURRENTLY PRESCRIBED PENALTIES FOR THE OFFENSES OF ILLEGAL ENTRY AND EXIT”.

Under Article 27, the proposal seeks to criminalize **irregular stay** in Greece and expands the penalties associated with irregular entry and exit, already criminalized under Article 83 of law 3368/2005, and their effectiveness in practice.²⁷ Under the latter, third country nationals “who exit or attempt to exit Greece or enter or attempt to enter Greece without legal formalities” are punished “by imprisonment of at least three months and a fine of at least [...] (€1,500)”. The new proposal seeks to increase the prison sentence to at least two years, and the fine to at least €5,000, and, importantly, to apply such penalties also in the case of irregular stay.

Both the current legislation and the new proposal provide for the possibility for the prosecutor to refrain from criminal action. In the past Greece's practice on this has not been consistent.²⁸ Even former Minister Voridis' declarations suggest that the implementation of the criminalization of irregular migrants in Greece has to date not been effective, as sentences imposed on people were suspended. Reports of a television interview given by Voridis in May 2025 state: “the Minister emphasized that until now, the criminal treatment of illegal immigrants was essentially inactive, as a six-month suspended sentence was imposed, with no effect”.²⁹

The proposal seeks to enforce the criminalization of irregular migrants by introducing the possibility to refrain from criminal prosecution where the individual concerned **accepts to return voluntarily immediately, and by removing the possibility to suspend or convert the sentence unless the person agreed to return voluntarily** (Article 27.4). If such return is not carried out within 30 days (or if a forced return is not carried out within three months), the prosecutor revokes the decision to abstain from prosecution (Article 27.2). While the decision to proceed with prosecution was conditional to the prosecutor's discretion under Article 83 of law 3368/2005, in cases where return was not carried out in three months (“the public prosecutor for the magistrate court *may* revoke his decision on refraining from criminal proceedings”), the new proposal makes it binding.

This provision may have the result of exercising undue pressure on the returnee to accept voluntary return, as they are confronted with a significant term of imprisonment and a hefty fine. Amnesty International is concerned that these proposals may interfere with the fundamental principles whereby voluntary return should be based on the returnee's genuine consent and not be unduly affected by the threat of punishment.³⁰

²⁵ Under Article 30, the law currently in force, no. 3907/2011, also provides for the possibility of using detention in presence of “grounds of national security.”

²⁶ This is allowed under current EU legislation, which provides for a non-exhaustive list of grounds on which detention can be used. See: Court of Justice of the EU, *J. L. v Politsei- ja Piirivalveamet*, Case C-241/21, 6 October 2022, Para-36-55

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=266823&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=39207>

²⁷ See: https://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-annex_en.pdf

²⁸ Amnesty International, Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions, July 2010, p. 18-19, <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur250022010en.pdf>. In 2020, Amnesty International also noted that while courts tended to refrain from prosecution when cases involved asylum-seekers, in the aftermath of the increased arrivals at the border with Türkiye in 2020 and with the temporary suspension of asylum, NGOs started assisting people charged with this offence: Amnesty International, Europe: Caught in a political game: Asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe's failures, 3 April 2020, www.amnesty.org/en/documents/eur01/2077/2020/en/

²⁹ Greek Ministry of Migration and Asylum, M. Voridis on ANT1: Illegal immigrants will either return or go to prison – End of legalization windows, 30 May 2025, <https://migration.gov.gr/m-voridis-ston-ant1-oi-paranomoi-metanastes-eite-tha-epistrefoy-n-eite-tha-mpainoy-n-fylaki-telos-sta-parathyra-nomimopoiisis/>

³⁰ United Nations Network on Migration, Ensuring Safe and Dignified Return and Sustainable Reintegration. March 2021, para. 5, https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/position_paper_-_ensuring_safe_and_dignified_return_and_sustainable_reintegration.pdf; International Organization for Migration (IOM), IOM'S policy on the full spectrum of return, readmission and reintegration, 23 April 2021, <https://www.iom.int/sites/g/files/tmzbdl486/files/documents/ioms-policy-full-spectrum-of-return-readmission-and-reintegration.pdf>;

The Greek authorities' intentions with this provision can be sensed in the declarations of former Minister Vioridis, who commented on the proposal to make the suspension of a criminal sentence for irregular entry or stay conditional to voluntary return by stating: "The problem is that these people are not returning. Why? Because until now, the criminal treatment was six months of suspended imprisonment, a sentence without any substantial effect, since the next day they were free. What changes now? The sentence increases to two to five years in prison, without commutation, without suspension. *Thus, the illegal immigrant is forced to reveal his real identity and return to his homeland to avoid prison. The execution of the sentence will be suspended if he accepts to take the ticket to leave the country (emphasis added)*".³¹ These declarations stigmatize migrants who find themselves in the country irregularly, suggesting – without providing any evidence in this sense – that there are concealing their true intentions and hence attributing to them malicious features. These declarations contribute to foster a hostile public perception of migrants and asylum-seekers.

What is more, the proposal also criminalizes (Article 27.3) the situation of people who violate the restrictions imposed on them during the postponement of their removal which is punished by a prison sentence of at least two years and a fine of at least ten thousand euros. EU law does not provide for a returnee's failure to comply with conditions imposed on them as part of the return procedure to be treated as a criminal offence.

Amnesty International expresses serious concerns about these provisions, as they run counter to international and EU human rights standards opposing the treatment of irregular migration, including entry, exit or stay, as a criminal offence.³²

Insofar as the Greek proposal attempts to criminalize irregular stay, it must be recalled that the Court of Justice of the EU has expressed clearly that the Return Directive, and particularly the provision regarding detention, precludes Member States' legislation "which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period".³³ As such, the Greek proposal is openly inconsistent with EU law.

The Working Group on Arbitrary Detention has noted that "migrants in an irregular situation have not committed any crime. The criminalization of irregular migration exceeds the legitimate interests of States in protecting its territories and regulating irregular migration flows".³⁴ UN human rights experts have repeatedly stressed that states must not criminalize irregular entry. They have criticized the use and introduction of criminal penalties, including associated detention, for failure to comply with immigration regulations and the use of immigration status as a basis for a criminal conviction or as an exacerbating circumstance for any offence, resulting in discriminatory penalties. Criminalization of irregular migration is seen as inconsistent with human rights protection. Such measures promote xenophobic attitudes, and undermine access to asylum.³⁵ In 2016, the United Nations General Assembly adopted, through a resolution, the "New York Declaration for Refugees and Migrants", where it committed to "consider reviewing policies that criminalize cross border movements".³⁶

Amnesty International opposes the treatment of irregular migration as a criminal offence, along with any associated detention, including the creation or imposition of criminal penalties for irregular entry or stay. Amnesty International believes that criminalizing irregular entry is a disproportionate control measure. Irregular migration, including entry and stay, should be treated as administrative offences. Detention of migrants on the grounds of their irregular status should always be a measure of last resort. Asylum-seekers must not be subject to criminal sanctions or otherwise penalized for the use of false documents or irregular entry.³⁷

Based on the above reasons, Amnesty International calls on Greece to recall the proposed amendment, to refrain from imposing criminal penalties on the action of irregular stay, and to decriminalize the action of irregular entry or exit (under

³¹ Greek Ministry of Migration and Asylum, M. Vioridis on ANT1: Illegal immigrants will either return or go to prison – End of legalization windows, <https://migration.gov.gr/m-voridis-ston-ant1-oi-paranomoi-metanastes-eite-tha-epistrefoy-n-eite-tha-mpainoy-n-fylaki-telos-sta-parathyra-nomimopoiisis/>

³² See Amnesty International, Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions, p. 18, citing: OHCHR Factsheet No. 26: The Working Group on Arbitrary Detention, at <http://www.ohchr.org/Documents/Publications/FactSheet262n.pdf>; Report of the Special Rapporteur on the human rights of migrants, 25 February 2008, UN Doc. A/HRC/7/12, para 60; Report of the Working Group on Arbitrary Detention, 10 January 2008, UN Doc. A/HRC/7/4, para 53: "In the view of the Working Group, criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention"; see also, Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance (SR Racism): Mission to Italy, 15 February 2007, UN Doc. A/HRC/4/19/Add.4, para 74.

³³ Court of Justice of the EU, *Hassen El Dridi*, C-61/11 PPU, para. 62, at: <https://www.asylumlawdatabase.eu/en/content/cjeu-c-6111-ppu-el-dridi>

³⁴ Amnesty International, Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions, p. 18, citing: A/HRC/13/30, op.cit., para 58.

³⁵ Amnesty International, Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions, p. 18

³⁶ United Nations General Assembly, Resolution adopted by the General Assembly on 19 September 2016, A/RES/71/1, 3 October 2016, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf

³⁷ Amnesty International, Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions, p. 20.

Article 83 of law 3368/2005) so that it is only treated as an administrative offence. For the same reason, Amnesty International urges Greece to reject the proposed criminalization of people who violate the restrictions imposed on them during the postponement of their return.