

GREECE

**Migrants, refugees and
asylum-seekers; conscientious
objectors and excessive use of
force by law enforcement
officials**

*Amnesty International
Submission to the UN Universal
Periodic Review, May 2011*

**AMNESTY
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INTRODUCTION

In this submission, prepared for the Universal Periodic Review of Greece in May 2011, Amnesty International raises concerns about changes to the asylum determination procedure and to legislation on conscientious objection. Amnesty International is also concerned about torture and ill-treatment by law enforcement officials and the routine detention of asylum seekers and irregular migrants and their limited access to legal counsel and medical care.

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

NATIONAL LEGISLATION ON REFUGEES AND ASYLUM-SEEKERS

In June 2009, Presidential Decree No. 81/2009 introduced detrimental changes to the asylum determination procedure, including by abolishing the Appeals Board and thus depriving asylum-seekers of an effective right of appeal against decisions at first instance.¹ During the same month, Law No. 3772/2009 increased the maximum period that an alien may be held in temporary detention pending deportation, from three to six months, despite international concerns over conditions in the various immigration detention centres and border guard stations. The maximum period can be extended by a further 12 months under certain circumstances, making it a possible maximum of 18 months.² The maximum period introduced by the above amendment also reflects the detention period stipulated in the EU Returns Directive (which has not yet been transposed into Greek legislation). Amnesty International considers this length excessive and is concerned that the Directive is promoting prolonged detention practices in EU Member States.

There are also concerns about the incompatibility of amended Article 76(1) of Law No. 3386/2005 with international human rights and refugee law and with the Greek Constitution, since it allows for the deportation of aliens solely on the grounds that they have been charged with a crime punishable by as little as three months imprisonment. Recognized refugees and asylum-seekers are not excluded from the scope of the provision. The amended provision is contrary to Article 33(2) of the Refugee Convention and the principle of the “presumption of innocence” in Article 6(2) of the European Convention on Human Rights.³

NATIONAL LEGISLATION ON THE RIGHT TO CONSCIENTIOUS OBJECTION

In September 2010, the Greek state enacted new legislation regarding the right to conscientious objection, by which the length of the alternative service has been slightly decreased (Article 78 of Law No. 3883/2010).⁴ The new legislation also abolishes reserve obligations for conscientious objectors.

Amnesty International is concerned, however, that despite these positive steps Greece still fails to comply with international standards.⁵ Despite the small reduction, the maximum length of the alternative service remains effectively

punitive in nature as at twice the length of normal military service its length is excessive and longer than can be justified on the basis of reasonable and objective criteria. In addition, even if the Minister for National Defence decides to exercise the discretion conferred to him by the law to reduce the length of alternative service, the length of such service is still likely to be punitive in nature for the vast majority of conscripts (14 months alternative service compared to nine months service for those serving in the land armed forces). At the time of this submission, the actual period of alternative service is twice the length of normal military service because the Minister has yet to exercise the discretion conferred to him by law to reduce it.⁶

Amnesty International is also concerned that decisions on applications for alternative service continue to be made by the Minister of National Defence, based on an opinion by a five-member advisory committee which includes two members of the military, appointed by the Ministry of Defence. This breaches the principle that states should establish independent and impartial decision-making bodies to consider applications for alternative service based on conscientious objection.⁷ Moreover, the new legislation still does not include the right to conscientious objection for professional soldiers (Article 78). The right to freedom of religion or belief includes the right to change one's religion or belief.⁸ Accordingly, individuals serving in the armed forces may over time develop conscientious objection to armed military service.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

VIOLATIONS BY LAW ENFORCEMENT OFFICIALS DURING POLICING OF DEMONSTRATIONS

On 6 December 2008, 15-year old Alexis Gregoropoulos was killed by a police officer serving as a "special guard" in central Athens.⁹ The shooting sparked widespread anti-government protests throughout the country that lasted until the beginning of January 2009. There were mounting allegations of excessive use of force and ill-treatment by police of peaceful demonstrators contrary to the principles of minimum use of force set out in international law enforcement standards, and attested to by images aired in international and national media.¹⁰ Reports were also received from Athens and other parts of Greece of arbitrary arrests, ill-treatment of those detained, and the denial of prompt access to legal assistance.

In December 2009, during protests on the first anniversary of the shooting of Alexis Gregoropoulos, there were reports of a large number of arbitrary transfers of protesters to police stations, of excessive use of force and ill-treatment by police against peaceful demonstrators and of police using motorbikes in a way that resulted in injury to some demonstrators.¹¹

TORTURE AND OTHER ILL-TREATMENT

There are reports of ill-treatment by law enforcement officials, especially against

members of marginalized groups such as migrants, asylum-seekers and Roma.¹² Migrants arriving on the island of Samos were reported to have been ill-treated by coastguard officers after their arrest on 7 July 2008. The migrants said that they were slapped, punched and kicked onboard the coastguards' boat. One of the guards allegedly poured sun-protecting lotion down one migrant's throat, while another migrant was grabbed by the hair and his head knocked against the side of the boat. A third migrant was reported to have suffered a ruptured eardrum after being slapped. Following an investigation into these allegations one of the coastguards was charged. His trial is scheduled for February 2011.

On 3 April 2009, Arivan Osman Aziz, a Kurdish Iraqi migrant, was reportedly severely beaten by a coastguard officer in the port of Igoumenitsa. He died as a result of his injuries four months later. An investigation into this incident was underway at the time of writing.

Concern has been raised by the non-governmental organization Greek Helsinki Monitor, over the lack of effective execution by the Greek authorities of the judgments by the European Court of Human Rights finding Greece in violation of the European Convention on Human Rights in relation to actions by police and of their failure to provide reparation in *Kalamiotis v. Greece*.¹³

In July 2010, the government reiterated that a draft law is under preparation which will establish an independent bureau under the direct authority of the Ministry of Citizens' Protection, tasked with dealing with incidents of arbitrary conduct by law enforcement officials. Amnesty International is concerned about the independence of the proposed bureau since it is envisaged as a body within the Ministry of Citizens' Protection, which is also responsible for the police, and whether the mandate and nature of powers of the proposed bureau will be broad enough to guarantee its effectiveness.¹⁴

ASYLUM-SEEKERS AND IRREGULAR MIGRANTS

In March 2010, Amnesty International documented the situation of asylum-seekers transferred to Greece under the Dublin II Regulation.¹⁵ Asylum-seekers in Greece are frequently denied access to asylum determination procedure, a fair hearing of their claim and, since July 2009, have also been denied the right to an effective appeal. There is little access to legal counselling, interpretation services and relevant information. In 2009 and 2010, refugee and other protection status recognition rates have continued to be very low.

Many asylum-seekers, including women and children, are forced to live on the streets without assistance due to the limited number of reception facilities for asylum-seekers. During the reporting period, several asylum-seekers were expelled without their claims being fully and fairly assessed, in violation of the principle of *non-refoulement*.

In July 2010, Amnesty International issued a report expressing concern about the routine detention of irregular migrants and asylum-seekers, including unaccompanied children, without proper consideration being given to alternatives to detention.¹⁶ The legislative framework for immigration detention, combined with a poor system of guardianship and limited reception facilities for unaccompanied children, result in such children languishing in detention for long periods of time.

Amnesty International has also identified impediments to detainees' access to legal counsel and to the outside world, as well as limited or no access to interpreters, medical assistance and social care. The detention conditions in the vast majority of places visited by Amnesty International ranged from inadequate to very poor, including overcrowding, lack of hygiene, and lack of opportunity for exercise.

In October 2010, the United Nations High Commissioner for Refugees (UNHCR) recommended urgent measures to address the serious humanitarian needs in the Evros region near the Turkish border, including the deployment of sufficient personnel to provide essential services to new arrivals and immediate measures to ensure that detention conditions respect basic standards of human dignity.¹⁷ Following his visit to Greece during the same month, the UN Special Rapporteur on Torture observed: "...the country is confronted with a major increase of irregular migrants coming, in particular, from the Turkish border in the north. Hundreds of migrants enter the country irregularly every day, an unprecedented number that puts the border guard stations and migration detention centres in a situation of crisis. This is further worsened by the difficulties linked to the current economic crisis the country is facing".¹⁸

Amnesty International is also concerned at the deployment by Frontex¹⁹ of a Rapid Border Intervention Team (RABIT) at the Greek-Turkish border on 2 November 2010. Regardless of increasing pressures at the border, the Greek authorities must guarantee that asylum-seekers are not *refouled* at the border, but provided with immediate assistance to tend to the most urgent humanitarian needs and allowed to apply for asylum. The same applies to RABIT operations at the Greek-Turkish land border in the Orestiada region and neighbouring areas. Given that the primary purpose of the provision of EU assistance to Greece, in the form of the RABIT deployment, is to deal with the ongoing influx of "migrants" at its external border, Amnesty International is concerned that such assistance should not result in preventing access to international protection or contribute to other human rights violations.

NATIONAL ACTION PLAN ON ASYLUM REFORM AND MIGRATION MANAGEMENT

In August 2010, the government adopted a National Action Plan on Asylum Reform and Migration Management and submitted it to the European Commission. However, there have been delays in the adoption of the draft transitional Presidential Decree reintroducing the first instance appeal and dealing with the backlog of asylum applications and in the adoption of the draft law establishing an Independent Asylum Service.

In August 2010, the government also announced that it was taking temporary measures to ameliorate the situation of detained asylum-seekers and irregular migrants. The National Action Plan on Asylum Reform and Migration Management includes plans to establish screening centres at the country's points of entry and to build new detention centres to house individuals awaiting removal. While some of these measures are steps forward, Amnesty International considers that they are not sufficient and that further measures are needed to ensure the protection of the rights of irregular migrants and asylum-seekers, in particular their right to liberty. While Greece needs to establish and urgently implement a comprehensive asylum system, to adopt additional measures to protect the right to liberty of asylum-

seekers and irregular migrants and to address the crisis in Evros, measures are also required by other EU Member States including to halt Dublin II transfers to Greece.²⁰

CONSCIENTIOUS OBJECTORS

Amnesty International is concerned at continuous and repeated persecution of conscientious objectors. In March 2009, conscientious objector Lazaros Petromelides appeared for the 15th time before a navy tribunal on charges of desertion. In February 2010, the Military Appeal Court of Athens upheld the conviction of professional soldier Giorgos Monastiriotis for desertion by the Naval Court of Pireus and sentenced him to five months' imprisonment which was suspended. Giorgos Monastiriotis has been tried three times for the same offence.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Greece:

On violations by law enforcement officials

- To establish an independent and effective police complaints mechanism to investigate all allegations of human rights violations by the police, including excessive use of force, torture and other ill-treatment, and racially-motivated or other discriminatory misconduct, as well as all shootings and deaths in police custody;
- To effectively execute the pertinent judgments of the European Court of Human Rights and the views of the Human Rights Committee in cases concerning police-related actions.

On asylum-seekers and irregular migrants

- To establish and implement without delay a comprehensive and adequately resourced asylum system consistent with international and regional standards, including EU standards, to receive and protect asylum-seekers and irregular migrants;
- To ensure that no individual is directly or indirectly *refouled* to their country of origin, or to any other country in respect to which they claim persecution, in line with Greece's obligations under international and regional law;
- To halt the administrative detention of asylum-seekers and irregular migrants for immigration purposes other than in the most exceptional circumstances, as set out in relevant international refugee and human rights law and standards;
- To immediately end the practice of detaining unaccompanied children, and to prohibit in law the detention of unaccompanied asylum-seeker and migrant children;
- To ensure that detention conditions for migrants and asylum-seekers held in immigration detention are in conformity with international and regional human rights standards;

- To repeal Article 76(1) of Law 3386/2005.

On conscientious objectors

- To end the prosecution of conscientious objectors;
- To amend the legislation that enforces punitive and discriminatory length of alternative service to bring it in line with the international standards.

ENDNOTES

¹ See *Greece*, Amnesty International Report 2010, AI Index: POL 10/001/2010, p.152.

² See Amnesty International report *Greece: Irregular Migrants and Asylum-Seekers routinely detained in Substandard Conditions*, AI Index: EUR 25/002/2010, July 2010 p. 12.

³ *Ibid*, p.19.

⁴ *New law on Conscientious Objection-another opportunity lost*, 13 September 2010.

⁵ See Amnesty International public statements, *Greece: Government planned reforms should ensure full respect for the right to conscientious objection*, AI Index: EUR 25/004/2010; and *New law on Conscientious Objection-another opportunity lost*, *ibid*.

⁶ On 11 January 2011, the Minister for National Defence issued a Ministerial Decision which reduced alternative military service to 15 months for all those serving full length military armed service. However, the length of such service is punitive in nature for the vast majority of conscripts (15 months alternative service compared to nine month military service for those serving in the land armed forces).

⁷ See UN Commission on Human Rights, Resolution 1998/77, para 3.

⁸ See Human Rights Committee, General Comment 22, para 5.

⁹ Special guards are special recruits in the police force that have limited policing duties. For further information see Amnesty International report, *Greece: Alleged Abuses in the Policing of Demonstrations*, EUR 25/002/2009, March 2009, note 4.

¹⁰ *Ibid*.

¹¹ See *Greece*, Amnesty International Report 2010, p.153.

¹² See *Greece*, Amnesty International Report 2008, pp.140-141; *Greece*, Amnesty International Report 2009, p.157; *Greece*, Amnesty International Report 2010, p.153.

¹³ See Greek Helsinki Monitor: Press Release, 10 October 2010; http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=GRC; <http://daccess-ods.un.org/TMP/3730667.htm>.

¹⁴ See Amnesty International public statement, *Greece: Amnesty International calls on the government to create a genuinely independent and effective police complaints mechanism*, Index: EUR 25/011/2009, 21 December 2009. On 26 November 2010, the Minister of Citizens' Protection presented a Draft Law providing for the establishment of a Bureau dealing with "incidents of arbitrariness by law enforcement officials" in the Ministry of

Citizens' Protection. According to the Draft Law, the Bureau is directly responsible to the Minister of Citizen Protection. Concerns remain over the independence and effectiveness of the proposed Bureau. Its competence, according to the Draft Law, is the collection, recording, evaluation and submission of cases to the competent authorities for investigation (Article 1 (1)). The Draft Law provides for the establishment of a three-member Committee in the Bureau, composed of a retired judge of the Supreme Court as its president and a retired prosecutor of the Supreme Court or Appeal Courts' as well as the State's Legal Advisor to the Ministry of Citizens' Protection. The three-member Committee would be tasked with the responsibility to evaluate the reliability of each complaint or reported incident, to assess whether they fall under the Bureau's competence and to issue a decision to either submit the case to the competent authorities for investigation or to reject the complaint as inadmissible (Article 1 (3)). The Draft Law also extends the Committee's tasks to the investigation of cases, for which there has been a judgment of the European Court of Human Rights finding Greece in violation of the European Convention on Human Rights in cases where the European Court has noted inefficiencies in disciplinary procedures or where the European Court established that new evidence has not been taken into consideration within the disciplinary investigation or prosecution of the case at national level (Article 1 (4) of the Draft Law).

¹⁵ See Amnesty International report, *Greece: The Dublin II Trap – Transfers of Asylum-Seekers to Greece*, Index: EUR 25/001/2010, March 2010. The Dublin II Regulation, previously the Dublin Convention, Council Regulation No. 343/2003 of 18 February 2003, determines which state is responsible for examining an asylum application in cases where the asylum-seeker has entered more than one Dublin II participating state.

¹⁶ See *Greece: Irregular Migrants and Asylum-Seekers routinely detained in Substandard Conditions*, Index: EUR 25/002/2010, July 2010.

¹⁷ UNHCR Press Release, No. 37/10, 15 October 2010, http://www.unhcr.gr/Press_Rel/2010/dt15-10-2010e.htm.

¹⁸ UN Special Rapporteur presents preliminary findings on his mission to Greece, 20 October (text in [Greek](#), unofficial translation), <http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm>).

¹⁹ Frontex is a European Union agency tasked with coordinating the operational cooperation between Member States in the field of border security.

²⁰ Greece: Statement delivered by Amnesty International at the Fifteenth Session of the Human Rights Council, 30 September 2010, EUR 25/007/2010. Since Amnesty International's submission in the beginning of November the following legislative developments have taken place. On 22 November, transitional Presidential Decree 114/2010 entered into force, reintroducing first instance appeals in asylum and other international protection cases. The decree also introduced transitional provisions for dealing with the heavy backlog of pending appeals against initial decisions rejecting protection claims. The decree retained the police as the competent authority for the initial examination of asylum claims. Amnesty International welcomed the fact that, notwithstanding regrettable delays, the transitional Decree came into force and noted the reintroduction of first instance appeals. However, Amnesty International expressed concern that the decree provided insufficient protection against *refoulement* because the filing of an appeal by the asylum-seeker to the Council of State continued not to have an automatic suspensive effect on removal of the applicant from the country. Amnesty International also remains profoundly concerned that access to free, independent and competent legal assistance will not be made available to asylum-seekers at all stages of the asylum process.

Furthermore, on 14 December 2010, the Greek government submitted draft legislation to the parliament, which would establish a new Asylum Authority and a First Reception Authority

responsible for the management of mixed migration flows entering the country irregularly. The draft legislation also seeks to harmonize the Greek legislative framework with the provisions of the EU Directive 2008/115/EC on common standards and procedures in EU Member States for returning “illegally” staying third country nationals. Amnesty International welcomed Article 1 of the Draft Law stipulating the establishment of a new asylum determination authority which is not staffed with police officers. The organization expressed its concern, amongst other issues, over the absence of any provision providing for a remedy to challenge before a court the lawfulness of detention to which third-country nationals are subject to during initial reception procedures. Amnesty International also expressed its serious concern about the prolonged period of detention pending deportation envisaged in the Draft Law (maximum of six months) and called for a significant reduction of its length. The organization also called for the draft provision allowing for a further 12-month extension in specific circumstances to be deleted. The Draft Law was adopted by the Greek Parliament on 12 January 2011 and will enter into force once published in the Government’s Official Gazette.

For further information on Amnesty International’s positions on new legislation in the area of asylum and migration see *Greece: Preliminary Comments on the Asylum-Determination Procedure Reforms*, Index: EUR 25/009/2010, 10 December 2010; and *Greece: Briefing on the Draft Law on Asylum, Migration-Related Detention and Returns of Third-Country Nationals*”, Index: EUR 25/002/2011, 10 January 2011.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Reports:

Greece, Amnesty International Report 2010, AI Index: POL 10/001/2010

Greece, Amnesty International Report 2009, AI Index: POL 10/001/2009

Greece, Amnesty International Report 2008, AI Index: POL 10/001/2008

Greece: Irregular migrants and asylum seekers routinely detained in substandard conditions, 27 July 2010, AI Index: EUR 25/002/2010

The Dublin II Trap, Transfers of Asylum Seekers to Greece, 22 March 2010, AI Index: EUR 25/001/2010

Greece: Alleged abuses in the policing of demonstrations, 30 March 2009, AI Index: EUR 25/001/2009

Europe and Central Asia: Summary of Amnesty International's Concerns in the Region, July – December 2007 (Greece: XLIII, 2 September 2008), AI Index: EUR 01/001/2008

Greece: Health Professional Action: Trafficked women: Inadequate time for psychological recovery, 24 July 2007, AI Index: EUR 25/005/2007

Greece: Uphold the rights of women and girls trafficked for sexual exploitation, 12 June 2007, AI Index: EUR 25/002/2007

Greece: Investigation not extradition: Threatened return of human rights defender to Pakistan highlights failure in investigation of alleged abductions, 9 January 2007, AI Index: EUR 25/001/2007

Briefings:

Greece: Briefing on the Draft Law on Asylum, Migration-Related Detention and Returns of Third-Country Nationals, 10 January 2011, AI Index: EUR 25/002/2011

Greece: Preliminary Comments on the Asylum-Determination Procedure Reforms, 10 December 2010, AI Index: EUR 25/009/2010

¹ All of these documents are available on Amnesty International's website:

<http://www.amnesty.org/en/region/greece>

Press releases and public statements:

Romani children continue to be trapped in separate and unequal education despite judgements by the European Court of Human Rights, Public Statement, 15 November 2010, AI Index EUR 01/029/2010

Greece: Statement delivered by Amnesty International at the fifteenth session of the Human Rights Council under Agenda Item 8 – Follow-up and Implementation of the Vienna Declaration and Programme of Action, 30 September 2010, AI Index: EUR 25/007/2010

EU Court to consider whether returning asylum seekers from the UK and other EU member states to Greece is compatible with fundamental human rights, 20 August 2010, AI Index: EUR 45/014/2010

Greece: Amnesty International condemns bomb attack at the Ministry of Citizens' Protection, 25 June 2010, AI Index: EUR 25/005/2010

Greece: Government planned reforms should ensure full respect for the right to conscientious objection, 14 May 2010, AI Index: EUR 25/004/2010

Greece: Amnesty International calls on the government to create genuinely independent and effective police complaints mechanism, 21 December 2009, AI Index: EUR 25/011/2009

Greece: Further forced evictions leave large numbers homeless, 23 July 2009

Greece: Amnesty International condemns forced evictions in Patras, 16 July 2009, AI Index: EUR 25/007/2009

Greece: Amnesty International reiterates its serious concerns about detention conditions for asylum seekers following ruling of the European Court of Human Rights, 12 June 2009, AI Index: EUR 25/006/2009

Greece: Proposed changes to asylum procedures flagrantly violate international law, 15 May 2009, AI Index: EUR 25/005/2009

Greece: Policing demonstrations responsibly, 30 March 2009

Greece: Failing system of police accountability, 9 December 2008, AI Index: PRE01/313/2008

Greece: Lazaros Petromelidis repeatedly convicted for his beliefs, 20 June 2008, AI Index: EUR 25/003/2008

Greece: No place for an asylum seeker, 27 February 2008, AI Index: 25/002/2008

Greece: Alleged violations at sea must be investigated, 5 February 2008, AI Index: EUR 25/001/2008

Greece: Impunity for ill – treatment by police must stop now! 18 June 2007, AI

Index: EUR 25/007/2007

Greece: Bringing traffickers to justice must not be at the expense of the rights of their victims, 12 June 2007, AI Index: EUR 25/006/2007

Other documents:

Stop forced evictions of Roma in Europe, 8 April 2010, AI Index: EUR 01/005/2010

Greece: 11 Roma families face forced eviction, 7 August 2009, AI Index: EUR 25/009/2009

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