



10 January 2011
AI Index: EUR 25/002/2011

GREECE: BRIEFING ON THE DRAFT LAW ON ASYLUM, MIGRATION-RELATED DETENTION AND RETURNS OF THIRD COUNTRY NATIONALS

On 14 December 2010, draft legislation was submitted to the Greek Parliament by the government, which – if enacted – would establish a new Asylum Authority and a First Reception Authority responsible for the management of mixed migration flows entering the country irregularly.¹ The draft legislation also aims 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.

There is no doubt that there is an urgent need for reforms of the current system for the reception and identification of third country nationals in Greece, in particular individuals belonging to vulnerable groups and those eligible for international protection. The organization has repeatedly highlighted concerns with regard to the lack of adequate reception facilities for people in need of immediate assistance and the routine detention of irregular migrants and asylum-seekers, including unaccompanied children.²

Amnesty International believes that any reform adopted by the Greek Parliament must comply with international refugee and human rights law and standards, including the right to liberty. Amnesty International reiterates its call on the Greek authorities to adopt reforms which uphold human rights and adequately respond to people’s urgent humanitarian assistance needs.

Amnesty International wishes to make the following observations regarding the draft law voted in parliament today. At the same time, the organization believes that further reforms are required in order to achieve a fair and effective asylum system such as access to free, independent and competent legal assistance being made available at all stages of the asylum process and removals being automatically suspended during all stages of appeal.³

1. The Asylum Authority:

Amnesty International welcomes Article 1 of the Draft Law stipulating the establishment of a new asylum determination authority staffed entirely with civilian personnel. Among other things, the new authority would receive and examine international protection claims, including asylum applications, and issue initial decisions.

In view of its long-standing call on Greece to establish an asylum determination procedure that is independent of the police, Amnesty International calls for the timely adoption and adequate implementation of the relevant provisions of the Draft Law.⁴ The organization urges the Greek government to ensure that the Asylum Authority is provided with the necessary resources, including fully

¹ Draft Law on the creation of an Asylum Authority and a First Reception Authority and the harmonization of the Greek legislation with the provisions the EU Directive 2008/115/EC *on common standards and procedures in EU Member States for returning “illegally staying” third country nationals* and other provisions,

² *Irregular Migrants and Asylum-Seekers Routinely Detained in Substandard Conditions*, AI Index: EUR 25/002/2010, July 2010 and available at <http://www.amnesty.org/en/library/asset/EUR25/002/2010/en/07291fb2-dcb8-4393-9f13-2d2487368310/eur250022010en.pdf>.

³ *Greece: Preliminary Comments on the Asylum Determination Procedure Reforms*, AI Index: EUR 25/009/2010 and available at <http://www.amnesty.org/en/library/asset/EUR25/009/2010/en/82150ee5-98c9-4b67-a8fa-e660717eb7bb/eur250092010en.pdf>.

⁴ Articles 1 and 2 of the Draft Law.

qualified personnel and that adequate interpretation services are made available to applicants throughout the asylum procedure.

2. Concern over the independence of the proposed Refugee Authority:

Amnesty International notes that, if adopted, Article 3 of the Draft Law would provide for the establishment of a Refugee Authority tasked with examining appeals against initial decisions rejecting international protection claims by the above-mentioned asylum determination authority.

The Draft Law also provides for the establishment of one or more Refugee Committees within the Refugee Authority. Each committee would have an individual of “recognized standing” with expertise in refugee and/or human rights law as its president; s/he would hear appeals against initial refusals of international protection claims together with a representative of the United Nations High Commissioner for Refugees (UNHCR) or an individual recommended by UNCHR, and a legal, political or social scientist with expertise in refugee and human rights law. The committees would comprise no civil servants.

However, the Minister of Citizens’ Protection, who is responsible for the authority deciding on initial asylum applications (Asylum Authority), would also be responsible for the authority deciding on appeals (Refugee Authority). Amnesty International believes that this undermines the independence of the appeal system and recommends that the appeal authority is made independent of the Minister of Citizens’ Protection.

3. Concerns regarding proposed first reception centres:

The draft law provides that third country nationals⁵ arrested for “irregular entry” into Greece would be transferred to first reception centres where they must reside with the stated aim of undergoing identification and other reception procedures for up to 15 days.⁶ In “exceptional circumstances” this period can be extended by up to 10 more days. Those subjected to these procedures would only be able to leave the centres following a special written permission by the centre’s director. Further, the draft envisages that the police will prevent unauthorized exits from the centres and suggests that private security companies may also be hired to perform this task following ministerial authorization.

Amnesty International believes that this regime, in fact, amounts to detention.

Under international law, for immigration detention to be lawful, and therefore not amount to a violation of the right to liberty, it needs to, among others, comply with the principles of necessity and proportionality. This means, for example, that in each individual case detention will only be justified if less restrictive measures have been considered and found to be insufficient with respect to the legitimate objective/s that the states seeks to pursue.

Furthermore, Amnesty International is alarmed at the absence of any provisions providing for a remedy to challenge before a court the lawfulness of this detention regime.

Article 13 (3) (a) of the Draft Law stipulates that the centres’ authorities endeavour to provide third country nationals subjected to the first reception procedures with their basic needs “to the extent possible”.⁷ The organization is concerned at such qualification.

Amnesty International is also concerned that the Draft Law does not explicitly ensure the right of third country nationals undergoing first identification procedures to be informed about their legal status, rights, obligations and decisions relating to issues such as the identification of their age or nationality in a language they understand. The organization calls for the explicit inclusion in the law of a provision that such information be provided to the persons concerned.⁸

⁵ A third country national is an individual who is not a citizen of the European Union and does not enjoy the

⁶ Articles 11 (5) and 13 (1) and (2) of the Draft Law.

⁷ Approximate translation

⁸ Article 13 (3) (e) of the Draft Law provides that the centre’s authorities see to it that third country nationals subjected to first reception procedures are informed adequately for their rights and obligations.

The organization is also concerned that the Draft Law does not guarantee explicitly a right to legal assistance, but only provides that the centre's authorities endeavour to provide third country nationals with access to guidance and legal advice regarding their status. The organization recommends an explicit inclusion of the right to legal assistance.

Amnesty International also recommends the explicit inclusion in the Draft Law of the right of third country nationals subjected to first reception procedures to communicate with members of their families, friends, their legal representatives, religious representatives, members of civil society, consular authorities where requested and UNHCR. The Draft Law provides that the centre's authorities see to it that third country nationals maintain contact with social actors and organizations.⁹

4. Transposition of the provisions of the Returns Directive in the Greek legislation:

4.1. Decision to detain third country nationals for the purpose of deportation

If adopted as it stands, the Draft Law would allow for the detention of third country nationals subject to return procedures.¹⁰ According to the Draft Law, detention would be resorted to unless in the specific case less coercive measures seem to be sufficient. Detention is envisaged if the individual concerned presents a risk of absconding; or because s/he is attempting to frustrate the removal process; or for "national security" reasons.

Amnesty International is concerned that the Draft Law does not adequately reflect the principle that detention for the purpose of removal should only be resorted to in exceptional circumstances, in compliance with the principles of necessity and proportionality. Everyone, including irregular migrants and rejected asylum-seekers, has the rights to liberty and to freedom of movement, including protection from arbitrary arrest and detention. There should be a presumption against detention established by law. Alternative non-custodial measures should always be considered first and given preference before resorting to detention. Detention of irregular migrants and asylum-seekers will only be lawful when the authorities can demonstrate in each individual case that alternatives will not be effective and that it is necessary and proportionate to achieve a legitimate objective. To safeguard against arbitrary application, any decision to detain should be automatically and regularly reviewed as to its lawfulness, necessity and appropriateness by means of a prompt, oral hearing by a court or similar competent independent and impartial body, accompanied by the appropriate provision of legal assistance.

4.2. Detention of unaccompanied migrant children and families with children

Article 32 (1) of the Draft Law stipulates that the detention of unaccompanied children and families with children issued with a return order constitutes a measure of last resort and will only be applied if less coercive measures can not be implemented for the same purpose and for the minimum period required.

Amnesty International recommends that the Greek parliament prohibit in law the detention of children for the purposes of immigration control, including when they are unaccompanied.

4.3 Limited personal scope of the provisions transposing the EU Directive 2008/115/EC

Amnesty International is disappointed that the Draft Law, which seeks to transpose the EU Returns Directive, would not be applicable to third country nationals who have been arrested for irregular entry into the country and have not subsequently obtained an authorisation or a right to stay.¹¹ The scope of the relevant provisions of the Draft Law covers third country nationals who are found to reside irregularly in the country, such as asylum-seekers whose asylum claims have been rejected, or third country nationals who have not been able to renew their residence permits.

As a result, if the Draft Law is adopted as it stands, third country nationals apprehended for irregular entry will be subjected to a different legal regime in relation to their detention for the purpose of removal. The law applicable to this group will be Law 3386/2005 on "the entry, residence and social

⁹ Article 13 (3) (g) of the Draft Law.

¹⁰ Article 30 (1) of the Draft Law transposing Article 15 (1) of the Returns Directive.

¹¹ Article 17 (2) of the Draft Law transposing Article 2 (2) of the Returns Directive.

integration of third country nationals on Greek territory” or relevant international treaties. Law 3386/2005 lacks the requirement of resorting to measures less coercive to detention in each individual case if they seem to be sufficient. Law 3386/2005 also does not stipulate that detention of unaccompanied children and families with children remains a measure of last resort and should be ordered only if other less coercive measures would not be effective.

Amnesty International considers that the same legal standards should apply to all categories of irregular migrants who are subject to return procedures, with specific safeguards being envisaged for unaccompanied children and families with children.

Serious questions also arise over the lawfulness of the return of asylum-seekers whose claims have been rejected in view of the well-documented deficiencies of the asylum determination procedures in Greece. In research published in 2010, Amnesty International concluded that asylum-seekers are frequently denied access to the asylum determination procedure and have little access to legal counseling, interpretation services and necessary information.¹² Several asylum-seekers have been expelled without their claims being fully and fairly assessed, in violation of the principle of *non-refoulement*.

According to the preamble of the EU Returns Directive, the lawfulness of the return is dependent on the existence of a fair and efficient asylum system which fully respects the principle of *non-refoulement*. Amnesty International remains concerned over the effectiveness and fairness of asylum determination procedures in Greece until the current reforms are implemented and careful monitoring proves the observance of human rights safeguards in practice.

4.4. Legal safeguards

Article 30 (2) of the Draft Law incorporating Article 15 (3) of the EU Returns Directive provides that third country nationals subjected to return procedures can challenge the decision to detain them or the decision to prolong their detention before the administrative court of the region where they are being detained. Third country nationals would have to be notified of their right to challenge their detention and other rights referred to in Article 30 (2) immediately. They would have to be released immediately if it is concluded that their detention is unlawful.

Amnesty International is concerned that Article 30 (2) of the Draft Law does not provide for free legal assistance to irregular migrants who wish to challenge their detention. Detention orders are related to return decisions and should qualify for legal assistance and representation during judicial review of detention.

Article 30 (3) of the Draft Law, incorporating Article 15 (3) of the EU Returns Directive concerning the review of detention orders for the purpose of removal, provides that the detention grounds are reviewed *ex officio* every three months by the authority that issued the detention order (i.e. the competent police director). In case the competent authority approves the extension of detention, the Draft Law provides that this decision is submitted for review to the president or assigned judge of the competent administrative court.

The organization is concerned that under the Draft Law, the review of the decision to detain cannot be initiated at the request of the individual detained. In addition, Amnesty International considers that the right to liberty requires detention to be reviewed earlier than only after three months.

4.5. On the length of detention

According to Article 30 (5) of the Draft Law, detention continues for the time period that the requirements of paragraph (1) are fulfilled and while it is necessary to secure removal. The maximum period of detention cannot exceed six months.

However, pursuant to Article 30 (6) the maximum period of paragraph (5) can be extended for a limited period that cannot exceed twelve months, in cases where despite reasonable attempts of the competent

¹² *The Dublin II Trap – Transfers of Asylum-seekers to Greece*, March 2010, AI Index: EUR 25/001/2010 and available at <http://www.amnesty.org/en/library/asset/EUR25/001/2010/en/e64fa2b5-684f-4f38-a1bf-8fe1b54d83b5/eur250012010en.pdf>.

authorities the removal procedure is likely to last longer because (a) the third country national refuses to cooperate or (b) there is a delay in the receipt of necessary documents from third countries.

Amnesty International has serious concerns about the prolonged period of detention pending deportation envisaged by the Draft Law and calls for a significant reduction of this length. In addition, draft Article 30 (6) allowing for a further 12-month extension in specific circumstances should be deleted.

5. Provision of information in a comprehensible language:

Amnesty International is concerned that the articles concerning the provision of information to a detained third country national do not include an explicit stipulation that such information should be provided in a language they understand (Article 30 (2) and Article 31 (5) of Draft Law). This is relevant with regard to their right to challenge their detention as well as information explaining regulations of the detention facility and information on the rights and obligations of persons detained.

The organization is also concerned that the provisions on detention of third country nationals subject to return do not include an explicit stipulation that detainees should be informed in a language they understand about the reasons for the deprivation of their liberty and its length.

END/