Submission of the Greek Council for Refugees

to the Committee of Ministers of the Council of Europe
in the case of *M.S.S v. Belgium and Greece* **(Application no. 30696/09)**

March 2013

Greek Council for Refugees is pleased to present to the Committee of Ministers of the Council of Europe this submission under Rule 9.2 of the Rules of Procedure of the Committee of Ministers, under its supervisory role on execution of judgments of the European Court of Human Rights and, in particular, the implementation of the general obligations arising from the judgment M.S.S. v. Belgium and Greece. The present submission will focus on the respect of these obligations by Greece. The Greek Council for Refugees provides an assessment of the general situation in Greece on all aspects of the M.S.S. judgment and in particular the use of detention as well as the detention conditions in Greece. The Greek Council for Refugees further suggests to the Committee of Ministers of the Council of Europe a series of recommendations that should be made to Greece concerning several issues.

1. Detention and detention conditions

There are two main frameworks concerning detention of third country nationals in Greece. Detention for the purpose of removal (deportation/return), regulated by two laws 3386/ 2005 and 3907/2011 which implement the EU Return Directive to the domestic legal system, and detention of asylum seekers regulated by PD 114/2010 as amended. Although detention is provided as exceptional measure, in practice detention is applied as a rule for third – country nationals apprehended without legal documents and for asylum seekers who apply for asylum while being in detention. Both categories maybe subjected to prolonged detention up to 18 months.

Since May 2012 the Greek authorities have taken no steps with respect to systematic detention and to detention conditions. Detention of asylum seekers is still used systematically and routinely with deterrent purposes and it can last for as long as the asylum application is being processed. No changes have been made as well as no Guidelines from the Ministry of

Citizens Protection towards this direction have been issued. The practice of the Greek authorities is to keep in detention persons even in cases where it is clear that the purpose of detention cannot be achieved (deportation, completion of the asylum procedure), they exhaust the maximum detention periods -especially for asylum seekers – and it seems that they use detention, either in the framework of removal or within the asylum procedure, as a sanction per se. As concerns alternative measures they are never examined by the police authorities even in case of a person whose residence is known.

Concerning the length of detention, Article 13.4 of the Presidential Decree 114/2010 has been recently amended by Presidential Decree 116/2012 in order to extend the maximum period of detention for asylum seekers. According to the new Presidential Decree, asylum seekers awaiting a decision on their application in Greece might be detained up to 18 months. The provisions governing the maximum length of detention extension of asylum seekers in Greece have recently been changed. According to the article 13 PD 114/2010 the maximum duration of the asylum seekers' detention is up to 90 days and according to the same article:" If the applicant has been detained earlier in view of an administrative deportation order, the total detention time can not exceed 180 days". According to the new amendment, detention can be further prolonged up to 12 months, by a Police administrative decision. This change was brought about in the new Presidential Decree 116/2012, published at the Greek Government Gazette on 19 October 2012. This Presidential Decree breaches International law and European Union law and is to be annulled before the Council of the State after an application for revocation was lodged by Greek Council for Refugees.

In addition to that, a new legislative provision introduced the health status as ground for detention of migrants and asylum seekers. Specifically a decision was issued by the Ministry of Health (G.Y. 39a/02-04-2012) which, inter allia : a) includes provisions, applicable also to asylum seekers, requiring by them to live, on their own means, in a residence that contributes to safeguarding the tenants' security, including their bodily and mental health, while the Greek State does not provide them reception conditions, although the State is obliged to do so by P.D. 220/2007 "Adapting the Reception Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (EEL 31/6.2.2003)" and b) includes obligatory control of migrants and asylum seekers for a number of diseases i.e. HIV, etc. and is used as a de facto ground for detention by the Greek authorities. This decision breaches International and European Union Law and is to be annulled before the Council of the State after an application for revocation was lodged by Greek Council for Refugees and the Greek Department of ACT-UP (AIDS Coalition to Unleash Power).

A detention decision can be contested before the president of an Administrative Court of first instance. The procedure is called "objection against detention" and it has been repetitively judged by the ECtHR that does not constitute an effective legal remedy due to the fact that the control of the lawfulness of detention is excluded - (detention conditions, proportionality etc.).

Inspite of a law amendment concerning this issue (the administrative judge was explicitly entitled to judge also the "lawfulness of detention") in practice the administrative judges in Greece still apply a limited judicial control concerning detention, examining only the risk of absconding and the risk of national security. The law does not provide explicitly the judicial control of the detention conditions. Consequently the administrative judges deny examining allegations concerning inhuman and degrading conditions of detention. It should be noted that the Criminal Court of First Instance of Igoumenitsa in northwestern Greece has returned a decision (Nr 682/2012) in a prosecution brought against a number of immigrants awaiting expulsion who escaped a local detention centre. The judge found such conditions to be in clear violation of Article 3 of the ECHR (prohibition of torture or inhuman or degrading treatment or punishment), while he also went on to state that both the conditions and the duration of detention of the accused, who were awaiting expulsion but had not been charged with any crime, was such as to also violate Articles 3, 8 (right to respect for private and family life), and 13 ECHR (right to an effective remedy). This, the judge said, constituted a state of necessity which precluded the accused's liability for the crime of escape. The conditions in which they were held put their life and health in extreme danger through no fault of their own; the only way for them to escape that danger was to escape from detention, an act for which they could not be held criminally liable.

Moreover, the ex officio examination of the prolongation of detention, by a judge, has proved to be a typical procedure, within which the judge ratifies the detention decision and its prolongation issued by the police. This is a systematic practice for hundreds of cases dealt since May 2012 by the Greek Council for Refugees. The decision of the Administrative Court of Piraeus (Presidential Procedure, Decision No. 448/9-6-2011), providing for judicial review of detention every 3 months has not been followed by other Courts, and as long as there is no appeal procedure provided by law, the above mentioned decision was not appealed. There is no relevant national jurisprudence on detention since May 2012.

The deliberate ill-treatment of detainees is also evident. Public statements have been made on the issue by the Greek Ombudsman, Amnesty International and Greek Council for Refugees. No measures have been adopted to prevent ill-treatment of asylum seekers and migrants in detention and in particularly, there is no independent complaints mechanism in place for such allegations. As mentioned in the report of Amnesty International "Police Violence in Greece: Not just 'isolated incidents'" of July 2012, " *[...] many of the allegations received in recent years concerned torture and other forms of ill treatment of migrants and asylum-seekers, and in particular those held for immigration purposes" migrants and asylum-seekers reported that their ill-treatment took place after they requested access to a doctor or access to a phone or protested about their length of detention and/or detention conditions. Allegations have also been received concerning cases of ill-treatment by coastguards against migrants and asylum-seekers apprehended and transported on coastguard boats, or migrants and asylum-seekers attempting to board irregularly a boat from Greece to Italy in the ports of Patras and Igoumenitsa.* […]". Yet, riots have taken place in detention centres in Komotini,

Korintho as well as Orestiada for the detention conditions and the treatment of the detainees (as mentioned in questions raised by a political party in the Greek Parliament, see, <http://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=6dd63c78-c572-45c7-b1df-d4bc31b01b43>, http://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=8c6c30f7-3d82-440c-a9b1-abcff8fc6708>, <http://www.syn.gr/gr/keimeno.php?id=28905>)

There is evidence that still detention conditions in Greece may amount to inhuman and degrading treatment. The inhuman and degrading treatment concerns not only the lack of space and the conditions concerning the facilities of the detention centres (hygiene, malnutrition etc) but also how the authorities treat the detainees (lack of information, unwilling to accept asylum applications, violence). Since May 2012 there has been no improvement of the detention centres for both aspects. Overcrowding still constitutes a major problem in this respect (GCR reports – field missions). Despite the thirty new detention centres that were announced by the Greek government only five (5) of them have been opened (GCR's last reports –field missions). Asylum seekers are still detained in the premises of Athens Airport Centre and the detention conditions have not been improved since May 2012: they are severely overcrowded, the detained persons are not offered any outdoor exercise and complain that they are not let out of the cells upon when they request to clean themselves or go to the toilet. As far as Greek Council for Refugees knows, there is no training of detention staff carried out by the Greek government or other parties.

Under Article 31 of Law 3907/2011 on detention conditions, the right to communicate with families and legal representatives, the right to be systematically provided with information, and the right of NGOs to visit detention facilities are guaranteed. Since May 2012, this legislation has not been effectively put into practice. Yet, Law 3907/2011 provides for an automatic review of the detention order every three months by the institution that issued the detention order. However, it does not expressly provide for the review of conditions of detention. There is not any remedy in place to challenge conditions of detention independently and the Greek government has not taken any steps in this respect.

It is almost impossible to present an asylum application from detention as there is no provision for legal aid. Most of the times an application can be issued after the intervention of an NGO or a lawyer. The examination of the application of asylum is also problematic as there is no prior notification of the applicant. This constitutes a breach of his/her rights for a legal representation before the authorities. In some cases we have witnessed that examinations of applications (interviews) were held, lacking competent interpretation, by another detainee.

Concerning access to legal advice from detention, detainees do not have access to legal advice from detention. They can be informed on their right to contact a lawyer (freelancer or NGO) most of the times by social workers or doctors inside whose presence inside some

detention centres is not standard. In that case, in few detention centres, they have restricted access to a phone booth and there have also been allegations that police deny this access (one should take into account the fact that detainees do not have sufficient or no money at all). The practice of the competent authorities, concerning the different possibilities of the detainees, varies. The lack of relevant interpretation inside the detention centres creates even more obstacles to the communication of the detainees with the authorities. Overall, the lack of information by the authorities is evident in this case. Article 30.2 of Law 3907/2011 provides for challenge of the detention order, but not for a right to free legal aid (as opposed to the provision on remedies against deportation) and yet the Greek government has not taken any steps to ensure that those detainees without resources to pay for legal aid can challenge their detention orders.

Another major issue regarding this topic concerns vulnerable persons and unaccompanied minors who are subjected to the same detention practice and conditions. There is no standard identification mechanism for vulnerable groups and specifically minors. When inside the detention and as soon as the minors are identified – with the authorities' unsafe and not standard criteria- the lack of facilities for Unaccompanied Minors (UAM) where they can be hosted, as well as the lack of an effective guardianship system in Greece are two major gaps in the protection of this vulnerable group of migrants. Specifically, UAM who are apprehended without legal documents at border areas and/or within the country and are registered as minors are held in detention facilities under degrading conditions until a place at a reception centre for UAM is found. Due to the lack of sufficient specialized reception centres for minors, children may be detained for a period of up to three months in detention facilities, while the minors have no access to information, guidance and legal representation and, therefore, in most cases, no access to the asylum procedure. In the Detention Centre of minors in Amygdaleza they are held in detention even for a period of up to 2 or 3 months and after that period they are released without any referral, by the police authorities, to reception centres for UAM (GCR reports – field missions).

2. Access to a fair and effective asylum procedure

The Law 3907/2011 was adopted, in order to address international protection issues in compliance with international and EU standards. Almost two years after its adoption no progress has been made in practice: neither the new Asylum Service, consisting of civil personnel nor the new First Reception Service (the competent authority for screening centres), are not yet functional. (the operation of the New Asylum Service has been postponed, until March 2013 and it is rumored that it will be further postponed until summer 2013). Meanwhile, the so called "provisional" P.D. 114/2010 which was adopted in order to restore the administrative appeals' procedure, providing certain procedural safeguards, (participation of UNHCR in the process, participation of two non-public servants in the three-member Appeals' Boards), presents serious problems. The major gap is the fact that the competence to receive and examine applications at first instance remains within the police until today. Apart from the

systemic and institutional deficiencies (lack of expertise and specialization, lack of adequate training, lack of impartiality e.t.c.), arbitrary practices and policies characterizes the whole asylum process emanated by the police. Also the creation of both "Centres of First Reception" for asylum seekers (P.D. 220/2007) and screening centres has been substituted by the Migrant Detention Centres, in which asylum seekers and people in need of international protection are being deprived of basic human rights. This policy of arbitrary sweeping operations have been generalized, during the last months, by the new government and are cynically labeled as "operation Xenios Dias- Host Jupiter".

In addition, there is still evidence of hindrances and obstructive attitudes on the part of Greek authorities towards asylum seekers who tried to file an application. Police stations where applications can be lodged are only open for a few hours on Saturdays and receive only 20 applications per day. Yet, not all police stations accept applications. In Attica region only the Police Directorate (Petrou Ralli) receives still 20 applications per Saturday early morning (5.00 a.m.). One should note that since May 2012, no improvement has been made and there were also reports of police offices discouraging potential applicants even with violent means. There is no prioritisation of certain groups of applicants with special needs. Only when an NGO interferes by sending a fax, and even then sometimes there is lack of understanding by the authorities when the applicant with the special needs cannot prove the fact that he/she belongs to a vulnerable group.

Greek Council for Refugees, together with other national NGOs, carried out a monitoring during the first months of 2012, outside the Police Directorate in Attica region (Petrou Ralli). The findings of this asylum campaign were published in July 2012 and still remain valid. As in the report of the asylum campaign is stressed *"[…] On 18 February three unaccompanied minors of Afghan origin waiting in the queue were identified by the participants in the campaign. The minors were indicated by the participants in the campaign to the officer in charge as UAM entitled to immediate measures of protection and care. As the officer took the children with him, we assumed that he intended to follow the process set by law and to take the necessary measures to ensure their access to the asylum procedure and their protection. However, the participants of the campaign followed-up the case and were informed by the minors that they were dismissed by the police officer, without having their applications registered, without any further guidance and/or measure taken to ensure their protection (i.e. inform the Prosecutor for minors, refer to appropriate accommodation facility for minors etc)* [...] ".

The requirement of an official address results in a hindrance as many asylum seekers are homeless. The authorities try to reach the asylum seekers by phone (when examined at second instance – appeal committees) or they are informed when they renew their card. There have been allegations that no proper interpretation has been used in both cases of notification.

Immense delays in the renewals of the asylum seekers document (pink card), which

should be done every six (6) or three (3) months by the police authorities, constitute one of the major issues concerning the lack of access in the asylum procedure. A non renewal of the asylum seekers' pink cards results to the issuance of a decision of interruption of the application. The remedy against the above mentioned decision is systematically rejected by the competent police authorities. The exact same problem emerges if an asylum seeker needs to change his declared address or to correct his/her personal data, sometimes resulting the inability to do so because of the almost impossible access to the competent police authorities.

The Greek police are still involved in the initial administrative authority functions as the Law 3907/2011 has not yet been implemented. There has been an immense delay concerning the examinations of the applications by the Greek police (at first instance). By trying to carry out the backlog on one hand they examine the nationalities that they think as accelerated procedure and on the other hand they delay the examination of other nationalities that fall into the normal procedure. All these happen by no clear justification of their qualification or disqualification criteria dividing the asylum seekers to accelerated or normal procedure.

Asylum seekers and potential asylum seekers are not provided with sufficient information on procedures and their rights. The information leaflet is neither properly distributed nor updated. Most of the times, there is not sufficient interpretation possibilities available throughout the procedure.

There are no special measures in place for those who request asylum in detention. The detainees are not informed by the authorities on their right to apply for asylum. Yet if an application is lodged, there is no prior notification of the detainees concerning the date of their examination of their application. It has been reported to *Greek Council for Refugees* that sometimes the authorities ask the detainees to undersign a document declaring that they do not wish to apply for asylum, without clarifying the content of the above mentioned document. This happens even in cases when the detainees have previously declared to *Greek Council for Refugee*s that they wish to lodge an application.

On 24 May 2012 a new draft presidential Decree on "Establishment of a unified procedure of recognition of refugee status or benefit of subsidiary protection to aliens and stateless persons in line with Directive 2005/85/EC if the Council" was presented. By that time it was in consultation with civil society and still it has not been adopted not implemented as it is to be sent to the Council of State. The most important issues concerning the new Presidential Decree are: first of all the abrogation of the humanitarian clause (art.28 P.D. 114/2010) because humanitarian protection status covers a large number of asylum seekers who have lived for many years in Greece and have built strong bonds with the Greek society (private and social life art. 8 ECHR), leaving all these people unprotected after the Presidential Decree comes into force. Secondly, the abolition of the personal interview during the second instance examinations presupposes well substantiated appeal of the asylum seeker. This appeal cannot

be properly conducted without legal aid which is not provided pro bono according to the last draft of the Presidential Decree.

3. Effective remedies

The asylum seekers have the right to appeal against the negative decisions issued by the police authorities at first instance, in order for their application to be re-examined by the Appeals Committees. The deadline to appeal for the normal procedure is thirty (30) days and for the accelerated procedure is fifteen (15) days and at the borders ten (10) days. In general a hearing takes place in two specific former police stations. No free legal aid is provided.

Furthermore, there can be a further appeal against the negative decisions issued by the Appeals Committees, before the Administrative Court, but these appeals do not have a suspensive effect, there is no provision for free legal aid and the Court's fees are very high. However, there is a provision of a remedy before the same Courts in order to suspend the deportation order. But this does not constitute an effective remedy and there have been reported cases where the appellant has been deported while the remedy still pending.

The above mentioned appeals (before the Administrative Court) do not constitute an effective remedy, as the ECtHR has adjudged in many cases.

Access to free legal assistance for applications of annulment is in practice very limited. In particular, for the administrative courts to accept an application for legal assistance, they have to determine whether the application for annulment is manifestly ill-founded or not acceptable. It is also required that the application for annulment is prepared by a lawyer only and each lawyer can undertake only one case. If a decision to grant the aid is positive, the payment does not necessarily go to the lawyer who drafted and signed the application but to one chosen from a general list. In addition, only a tiny percentage of applications for legal aid (c. 5 %) was reportedly accepted in 2012.

The only way to receive free legal assistance at the initial stage of asylum determination procedures for appeals before the Appeals Committees and for challenging a detention order is through NGOs. However, the number of lawyers who provide their services to registered asylum-seekers free-of-charge is extremely limited, (included lawyers working for refugee NGOs such as the Greek Council of Refugees, AITIMA, and the KSPM-Ecumenical Refugee Programme).

The funding NGOs receive to provide legal assistance is disproportionate relating to existing needs. In addition, the capacity of these organisations is always dependent on continuity and timely distribution of funding by the European Refugee Fund by the competent Ministry or other funding sources (UNHCR, private donors, etc). Finally, their capacity to provide assistance to detained asylum-seekers who wish to challenge their detention is further challenged as a result of the large reported increase in the number of detained asylum-seekers following the increase in the maximum length detention and the sweep operations conducted since August 2012.

Furthermore PD 114/2010 does not provide free legal assistance to asylum-seekers who

wish to challenge their detention. (as concerns the procedure "objection against detention" before the president of an Administrative Court, see above under par. 1).

Law 3907/2011 provides for a quasi-judicial appeal carried out by administrative bodies against deportation orders issued by police authorities. However, suspension of the deportation order is not automatic: it can be granted by these appeal bodies at their discretion. Those administrative bodies are the Police Authorities that issue the deportation decisions. There is no relevant provision to ask for a suspension of the detention order before the quasi-judicial bodies (police authorities).

4. Reception conditions

The first screening centres (First Reception Centres) were estimated to be ready by the end of 2012 but are not yet in operation.

Even though asylum seekers have the right to access the labour market, while their applications are being assessed according the Presidential Decree (P.D.) 220/2007, in practice and in the aftermath of the amendment of the relevant Greek law, it is extremely difficult for asylum seekers to obtain a work permit. Specifically, from now on, the right to obtain a work permit remains. On the other hand the ability to exercise this right is restricted since it will only be possible for an asylum seeker to obtain a work permit if there is no unemployed Greek citizen or recognised refugee or a person of Greek descent that seeks for the same job in the same area with him/her. In times of strong economic crisis, when the unemployment rate is the highest among EC member states (26.8%), it is apparent that the possibility for an asylum seeker to obtain a work permit and subsequently hold a legal work position, are being restricted. Additionally, they have been observed administrative obstacles to the issuance and renewal of work permits and the issuance of tax identification numbers. Moreover, asylum seekers have alleged problems of discrimination, inequality and circumvention of their labor rights by employers (insurance, pay for overtime, extra pay for night work and work on Sundays, compensation for accidents at work, dismissal, etc.). Finally, due to the overall economical situation of Greece and the shrinking of social rights and the absence of social benefits for asylum seekers (despite the clear obligation of the Greek authorities under P.D. 220/2007), the majority of asylum seekers is obliged to work either on temporary and low paid jobs or at jobs with no labour rights ("black market").

NGOs utilize any available mean, and also rely on the European Refugee Fund for offering services and for trying to meet the basic social needs of asylum seekers. However, the ERF budget is not sufficient to cover the actual needs of this population. In the absence of housing arrangements in the frame of the reception conditions directive, a monetary supplement is envisaged but it is not apparently handed out. There are some funds available through the emergency measures programme, for rent subsidies and for accommodating people at hotels, which provide relief to vulnerable cases, yet these programmes are based only on emergency, cover short periods of time and can not cover the housing needs of all those entitled to such assistance. Additionally, the delays in funding these programmes by the government

create an unsafe and insecure environment that puts at stake the continuation of the provision of these services. Considering the fact that there is no other public social service for asylum seekers to seek support from, it is crucial to protect the uninhibited operation of these NGOs.

The State (Ministry of Public Order), has recently recruited social workers, psychologists and translators to work at detention centres in the frame of European funds other than ERF. Yet, this has not been an uninterrupted service . Moreover it seems that its scope is rather limited as services are provided to people in detention without the ability of a follow up. Also it has been reported that translators do not speak fluent Greek nor do they speak all the basic languages of the detainees. Moreover, the role of the professionals in the detention centres is dictated by the police authority that is also responsible for their task allocation and supervision.

Greek Council for Refugees considers that Greece should take further steps to implement reforms of the asylum system necessary to comply with obligations under the European Convention on Human Rights, specifically Article 3 (Prohibition of Torture) and Article 13 (Right to an effective remedy). Greece should take prompt measures to ensure :

- effective access to the asylum procedure,
- an accessible and fair asylum process,
- free legal aid to asylum seekers,
- that interpretation and information to asylum seekers is being provided in languages they understand,
- that appeals against deportation orders have automatic suspensive effect,
- full compliance with the law in practice, in full respect of international human rights and refugee law,
- abolition of all the legislative clauses that breach EU law and International law (i.e. P.D 116/2012 and G.Y. 39a/02-04-2012 Decision of the Ministry of Health).

Athens, 25-2-2013
Greek Council for Refugees

APPENDIX

Please consult the following links which concern GCR reports field missions and also report of Asylum Campaign consigned by GCR and 12 other NGOs and entities that are active in the field of asylum and human rights:

- **Reports GCR – field missions:**

GCR Mission Komotini-Ksanthi 2012
GCR Mission Leros-Agathonissi-Kos September 2012
GCR Lesvos November 2012
GCR Simi September 2012
GCR Thrace October 2012
(http://www.gcr.gr/node/706)

- **Walls of Shame** (http://www.gcr.gr/en/node/670)
- **Asylum Campaign** (http://www.gcr.gr/en/node/727)
- **We are not animals** (http://www.gcr.gr/en/node/722)
- **Unaccompanied Minors Evros** (http://www.gcr.gr/en/node/689)