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Meeting: 1390th meeting (December 2020) (DH)

Communication from an NGO (Refugee Support Aegen and Stiftung Pro Asyl) (20/10/2020) and reply from the authorities (23/10/2020) concerning the group of cases S.D. v. Greece (Application No. 53541/07).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1390^e réunion (décembre 2020) (DH)

Communication d'une ONG (Refugee Support Aegen and Stiftung Pro Asyl) (20/10/2020) et réponse des autorités (23/10/2020) concernant le groupe d'affaires S.D. c. Grèce (Requête n° 53541/07)
[anglais uniquement]

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

20 OCT. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

RSA & Stiftung PRO ASYL

Submission to the Committee of Ministers of the Council of Europe

in the case of *S.D. v. Greece*

October 2020

Introduction

1. Further to the Action Report presented to the Committee of Ministers of the Council of Europe by the Greek government on 2 October 2020 concerning the implementation of the judgments of the European Court of Human Rights (ECtHR) in the *S.D. v. Greece* group of cases,¹ noting that “the general measures taken remedy the violation found by the Court” and calling for supervision of the *S.D.* group to be concluded, Refugee Support Aegean (RSA) & Stiftung PRO ASYL wish to submit, pursuant to Rule 9.2. of the Rules of the Committee of Ministers of the Council of Europe, relevant, up-to-date information pointing to the need for continuation of supervision of the Greek State's compliance with the aforementioned group of cases.
2. RSA is a non-profit organisation focusing on: strategic litigation in support of refugees; monitoring human rights violations; and the provision of legal, social and humanitarian support in individual cases. RSA is an implementing partner of the PRO ASYL litigation project “Refugee Support Program Aegean” (RSPA). This submission draws upon information obtained *inter alia* through cases represented by RSA before administrative authorities and courts at domestic and European level, as well as research in Reception and Identification Centres (RIC) and asylum procedures at borders, islands and on mainland Greece.

Arbitrary detention of asylum seekers

3. RSA & Stiftung PRO ASYL submit that **a significant change in circumstances has occurred since the decision of the Committee to close the supervision of compliance with Article 5(1) of the Convention**, due to recent legislative reforms broadening the scope of asylum and pre-removal detention, and to the increasingly systematic use of pre-removal detention against asylum seekers in practice since the last examination of the *S.D.* group of cases by the Committee.²

Wider scope for immigration detention in legislative reforms

4. RSA & Stiftung PRO ASYL recall the Court's finding in *S.D.* and related cases that Greece has enacted legislation, not least in transposition of European Union (EU) law in force,³ to establish the right of asylum seekers to remain on its national territory pending the outcome of the asylum procedure⁴ and the permissible grounds for their detention.⁵ Standards set by domestic legislation are relevant to the assessment of compliance with Article 5(1) of the Convention.⁶
5. **However, legislative reforms taking place in November 2019 and May 2020 have had substantial adverse effects on compliance with the requirements of Article 5(1) of the Convention**, insofar as they have significantly increased the scope for detention as regards both asylum seekers and persons facing deportation.

¹ ECtHR, *S.D. v. Greece*, App No 53541/07, 11 June 2009.

² Council of Europe Committee of Ministers, 1265th meeting (20-21 September 2016) – Decisions, point 2, <https://bit.ly/3jM0fwr>.

³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96.

⁴ Article 68(1) L 4636/2019 (hereafter “International Protection Act, IPA”), formerly Article 37(1) L 4375/2016.

⁵ Article 46(2)-(3) IPA, formerly Article 46(2) L 4375/2016.

⁶ ECtHR, *S.D. v. Greece*, para 65; *Ahmade v. Greece*, App No 50520/09, 25 September 2012, paras 142-144; *R.U. v. Greece*, App No 2237/08, 7 June 2011, paras 88-96. See also *Suso Musa v. Malta*, App No 42337/12, 23 July 2013, para 97.

6. On the one hand, the International Protection Act (IPA) enacted in November 2019 has brought about a multidimensional expansion of detention of asylum seekers in four main respects:⁷
 - a. Whereas detention of asylum seekers was previously permissible only in cases where persons sought asylum while in pre-removal detention,⁸ **Article 46(2) IPA now also permits detention of persons who have applied for asylum at liberty.**
 - b. The IPA has inserted **more grounds for detention** of asylum seekers by permitting detention for the purposes of deciding in a border procedure on an asylum seeker's right to enter the territory.⁹
 - c. Asylum detention orders are **no longer preceded by a recommendation (εισήγηση) of the Asylum Service** to the competent police authorities. Under Article 46(4) IPA, the Police should only have received prior information (προηγούμενη ενημέρωση) from the Asylum Service when issuing a detention order. The repeal of the requirement of a recommendation exacerbates risks of arbitrariness, since it strips the Asylum Service of a crucial role in the determination of whether detention is necessary for effectively carrying out the asylum procedure. In fact, the Asylum Service has often advised against the use of detention, with 13,587 out of 21,492 recommendations issued in 2018 (63%) and 10,972 out of 17,630 recommendations issued in 2019 (62%) calling for release of the applicants concerned.¹⁰
 - d. Article 46(5)(b) IPA has **extended the general duration of asylum detention orders from 45 days to 50**, subject to the possibility of prolongation by a further 50 days. The law currently in force has also extended the **maximum period for which an asylum seeker may be detained from 3 months to 18**. Previous periods of time spent in pre-removal detention are not counted in the calculation of said time limit. Accordingly, the design of domestic law could lead to situations where the **combined effect of asylum and return regimes would expose individuals to deprivation of liberty for up to 3 years**. This creates risks of disproportionately lengthy administrative detention contrary to constitutional guarantees, bearing in mind that pre-trial detention may never exceed 18 months under the Greek Constitution.¹¹
7. On the other hand, following a legislative reform affecting pre-removal detention in May 2020, **domestic law provides that “third-country nationals subject to return proceedings shall be detained for the preparation of return and the carrying out of the removal procedure”, as a general rule.**¹² Accordingly, Greek legislation is incompatible with the obligations assumed by Greece under the EU Return Directive,¹³ since it no longer formulates pre-removal detention as a measure of last resort, to be ordered only when necessary and proportionate. As of May 2020, the law also construes **pre-removal detention as the default step following the rejection of an asylum application at second instance.**¹⁴

⁷ See also RSA, *Comments on the International Protection Bill*, October 2019, <https://bit.ly/36PEE2f>.

⁸ Article 46(2) L 4375/2016.

⁹ Article 46(2)(e) IPA.

¹⁰ Asylum Information Database, *Country Report Greece*, 2018 Update, March 2019, 151, <https://bit.ly/2r8ZabB>; 2019 Update, June 2020, 182, <https://bit.ly/3luLtuP>.

¹¹ Article 6(4) Greek Constitution.

¹² Article 30(1) L 3907/2011, as amended by Article 51 L 4686/2020.

¹³ Article 15 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 [2008] OJ L348/98.

¹⁴ Article 92(4) IPA, inserted by Article 20(2) L 4686/2020.

Increasing use of pre-removal detention against asylum seekers

8. The deterioration of legislative standards stemming from the aforementioned reforms should be read in the light of persisting deficiencies in Greek administrative practice. RSA & Stiftung PRO ASYL recall that **the issuance of deportation decisions, and corollary pre-removal detention, to persons seeking international protection remains a systematic practice, despite the express recognition in the law of asylum seekers' rights to remain on the territory pending the outcome of their asylum process.**¹⁵ Up until now, the overwhelming majority of persons arriving in Greece are immediately and automatically issued a standardised deportation order by the police upon entry, without any assessment of their individual needs. This practice is followed despite the fact that those persons express their intention to seek international protection and that such an intention has been registered.¹⁶ On the basis of a police circular,¹⁷ a deportation order is issued and is then suspended upon the registration of an asylum application, since it cannot be executed. The suspension of the execution of the deportation order is lifted by the police where the applicant does not comply with certain obligations e.g. violation of the geographical restriction on a particular island¹⁸ or use of false documents.¹⁹ In those cases, the applicant is still in an asylum procedure, meaning that their right to remain on Greek territory should be guaranteed.²⁰
9. Due to the ongoing policy described, **the number of asylum seekers**, i.e. persons with an ongoing asylum procedure and a right to remain on Greek territory, **detained in pre-removal detention centres** across the country – excluding other facilities e.g. police stations – **has risen exponentially since the last examination of the S.D. case by the Committee, from 4,072 in 2016, to 9,534 in 2017, to 18,204 in 2018 and to 23,348 in 2019.**²¹
10. The **percentage of asylum seekers among the overall population in pre-removal detention centres** equally reflects the increasingly systematic use of detention to persons seeking international protection since the last examination of S.D., as it has **increased from 27.4% in 2016, to 36.9% in 2017, to 58.5% in 2018, to 77.8% in 2019.**²² Accordingly, whereas roughly one out of four detained persons in Greece was an asylum seekers in 2016, more than three out of four were asylum seekers last year.
11. Moreover, on 2 March 2020, Greece issued an emergency decree (Πράξη Νομοθετικού Περιεχομένου) **suspending access to the asylum procedure for a one-month period.**²³ The suspension of access to the asylum procedure has been criticised *inter alia* by UNHCR, which has recalled that a state “cannot suspend the internationally recognized right to seek asylum and the principle of non-refoulement”.²⁴ During the period of effect of the decree, people entering the country and expressing the intention to seek international protection were subjected to **blanket detention and deportation orders to Turkey under L 3386/2005, without any individualised assessment of grounds for detention.**

¹⁵ See e.g. ECtHR, *S.D. v. Greece*, App No 53541/07, 11 June 2009, paras 78-80.

¹⁶ Vasileios Papadopoulos, 'Αντιρρήσεις κατά κράτησης αλλοδαπού' (2020) 32 Διοικητική Δίκη 337-345, 337.

¹⁷ Police Circular 1604/16/1195968, 18 June 2016.

¹⁸ See e.g. Administrative Court of Athens, 867/2020, 16 July 2020, para 5.

¹⁹ See e.g. Administrative Court of Piraeus, AP 414/2019, para 6.

²⁰ Vasileios Papadopoulos, 'Αντιρρήσεις κατά κράτησης αλλοδαπού' (2020) 32 Διοικητική Δίκη 337-345, 339.

²¹ Asylum Information Database, *Country Report Greece*, 2019 Update, June 2020, 177.

²² *Ibid.*

²³ Government Decree on “suspension of the submission of asylum applications”, Gov. Gazette A' 45/2.3.2020.

²⁴ UNHCR, 'UNHCR statement on the situation at the Turkey-EU border', 2 March 2020, <https://bit.ly/37aDNYh>.

12. In addition, detention for the purpose of deportation was automatically imposed by police authorities without **consideration of the realistic prospect of removal, in spite of clear obstacles to deporting individuals to Turkey**. Severe constraints have been posed on Greece's ability to carry out deportations to Turkey in 2020, namely due to the **suspension by Turkey of readmission procedures under the EU-Turkey Statement for an indefinite period of time, in conjunction with the ongoing suspension of the Greece-Turkey Bilateral Readmission Agreement and the ongoing non-application of the EU-Turkey Readmission Agreement with regard to non-nationals**.²⁵ The suspension of readmissions under the EU-Turkey Statement was communicated on 5 March 2020,²⁶ and remains in force at the time of writing, with the Turkish authorities not replying to requests submitted by their Greek counterparts in the course of the summer.²⁷
13. Detention and deportation orders issued during the period of the emergency decree by the Lesvos Police Directorate in cases represented by RSA were in clear dereliction of S.D. and related judgments, given that they made no reference to the IPA, to the fact that the intention to lodge an asylum claim had been expressed, and were notified to the persons concerned in Greek with no interpreter present.²⁸ **Administrative remedies against expulsion decisions in such cases were ineffective**, given that the second-instance decision-making authority, the Northern Aegean Regional Police Directorate, **rejected all appeals in identical decisions without conducting individualised assessments or examining risks of refoulement**.²⁹

Ineffective judicial review of detention orders

14. In relation to compliance of the Greek State with Article 5(4) of the Convention, serious concerns persist as to the effectiveness of *ex officio* review and of the remedy of appeal ("objections") against detention (*αντιρρήσεις κατά κράτησης*).³⁰ Pursuant to the Committee's request to the Greek authorities to provide information on domestic case law on the lawfulness of asylum and pre-removal detention,³¹ RSA & Stiftung PRO ASYL wish to draw the attention of the Committee to obstacles arising from current practice and up-to-date case law of the Administrative Courts (*Διοικητικά Πρωτοδικεία*).
15. RSA & Stiftung PRO ASYL recall that the set-up of objections against detention as a **single-instance remedy** before the President of the Administrative Court, without the possibility of onward legal challenge, continues to lead to **a lack of thorough examination of the legality of detention** across the country as regards the interpretation of the right to liberty in the asylum and migration context. It also means that **higher courts cannot correct lower-court judgments and issue guidance through leading jurisprudence**.³²

²⁵ European Commission, *Turkey Report 2020*, SWD(2020) 355, 6 October 2020, 48-49, <https://bit.ly/2SF6pCq>.

²⁶ Information provided by the Directorate of Migration Management, Hellenic Police, 30 March 2020, cited in RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 4, <https://bit.ly/37bDRa8>; European Parliament, *The situation at the Greek/Turkish border and respect for fundamental rights*, 6 July 2020, <https://bit.ly/371jZsv>.

²⁷ European Commission, *Turkey Report 2020*, SWD(2020) 355, 6 October 2020, 48.

²⁸ RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 4.

²⁹ *Ibid*, 6.

³⁰ Article 76(3) L 3386/2005, as amended; Article 30(2) L 3907/2011; Article 46(6) IPA.

³¹ Council of Europe Committee of Ministers, 1265th meeting (20-21 September 2016) – *Decisions*, point 4.

³² See also Asylum Information Database, *Country Report Greece*, 2019 Update, June 2020, 202.

Ex officio judicial review ineffective and restricted

16. Following the entry into force of the IPA, the procedure of **ex officio judicial review** of asylum detention orders by the President of the Administrative Court is **only made available in case of prolongation** of detention.³³ The review was carried out upon issuance of the initial asylum detention order under the previous legal framework,³⁴
17. More generally, the ex officio judicial review of detention orders has proven to be an ineffective safeguard against arbitrary detention in practice. The overwhelming majority of ex officio decisions by Administrative Courts have rubberstamped detention orders in the context of both asylum and pre-removal detention. Decision-making at the Administrative Court of Athens, the court dealing with the majority of detention review cases, is particularly instructive: **only 4 out of 1,192** asylum detention orders reviewed in 2018 and **3 out of 599** asylum detention orders reviewed in 2019 were quashed. **None of the 167** pre-removal detention orders reviewed in 2018 and **84** pre-removal orders reviewed in 2019 were quashed.³⁵

Inaccessibility of “objections” remedy and legal aid

18. Serious gaps in the accessibility and effectiveness of the “objections against detention” (αντιρρήσεις κατά κράτησης) remedy available to detained persons before the Administrative Court.³⁶ Individuals are **not informed of the reasons for their deportation and detention in a language they understand** so as to be able to access the objections procedure. The detention order issued by the police authorities is only written in Greek and interpretation of the decision together with information on the right to challenge such decision is often not provided to detained asylum seekers upon its notification.
19. Furthermore, albeit provided in national legislation,³⁷ **legal aid to challenge a detention order is not guaranteed in practice**, as access to legal aid is not ensured and in the absence of arrangements to refer individuals to legal representatives. This results in detained asylum seekers in need of legal assistance not being able to challenge their detention in practice.³⁸ Legal assistance is offered to a small number of detainees by civil society organisations operating in the country, which currently face an increasingly hostile environment affecting their work.³⁹

Ineffectiveness of “objections” remedy vis-à-vis detention ordered in contravention of the law

20. The failure of Administrative Courts to overturn detention orders taken in express contravention of Greek legislation on return and asylum is a particular indicator of ineffectiveness of judicial review. Judicial decisions in cases represented by RSA have upheld detention orders which exceeded the exhaustive detention grounds under domestic law, in particular in the cases of persons arbitrarily detained with a view to

³³ Article 46(5)(b) IPA.

³⁴ Article 46(5) L 4375/2016.

³⁵ Asylum Information Database, *Country Report Greece*, 2018 Update, March 2019, 171; 2019 Update, June 2020, 201.

³⁶ For a recent commentary, see Vasileios Papadopoulos, ‘Αντιρρήσεις κατά κράτησης αλλοδαπού’ (2020) 32 Διοικητική Δίκη 337-345.

³⁷ Article 46(7) IPA.

³⁸ This is contrary to Article 13(4) of the Return Directive and raises questions of compliance with Articles 3 and 13 ECHR.

³⁹ Expert Council on NGO Law, *Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)4, 2 July 2020, <https://bit.ly/332YIBV>; RSA, *Risk of repression: New rules on civil society supporting refugees and migrants in Greece*, May 2020, <https://bit.ly/2EovGgu>; RSA, *Repression continued: Greece further restricts civil society supporting refugees and migrants*, September 2020, <https://bit.ly/3lteWVn>.

removal, despite their asylum seeker status and corollary right to remain on Greek territory, as discussed above.⁴⁰ Administrative Courts have **upheld pre-removal detention orders imposed on asylum seekers for reasons such as the violation of a geographical restriction or the use of false documents**, despite there being no such grounds for depriving asylum seekers of their liberty in domestic legislation.⁴¹

21. In a similar vein, in the context of review of detention during the period of effect of the March 2020 suspension of access to the asylum procedure, **domestic case law has made a highly objectionable interpretation of the legal status of the decree and its effect on Greece's obligations to guarantee access to asylum under EU and international law**.⁴² In cases represented by RSA, the Administrative Court of Athens did not examine whether the deprivation of liberty of the applicants satisfied the criteria and conditions set by the IPA. It erroneously failed to engage with the applicants' status as "asylum seekers" and thereby examined the lawfulness of the detention orders solely through the prism of return legislation, despite acknowledging that they had expressed the intention to seek international protection; an act triggering the applicability of their right to remain and related entitlements.⁴³
22. Moreover, in the aforementioned cases, the Administrative Court of Athens entirely **disregarded certain applicants' acute vulnerability** due to conditions such as 8.5 months' pregnancy, **in dereliction of express prohibitions on expelling pregnant women under domestic law**.⁴⁴ Crucially, in doing so the Court ran counter to the reasoning of the Council of State, which granted an interim order (προσωρινή διαταγή) to suspend deportation in the case of two mothers facing removal pursuant to the Decree, on the basis of their vulnerability.⁴⁵
23. With regard to cases of asylum detention pursuant to the IPA, Administrative Courts fail to conduct an appropriate assessment of grounds for maintaining individuals in detention, and the necessity and proportionality thereof. In the majority of cases, courts solely refer to the "risk of absconding", which they deem to be established where applicants fail to provide evidence of a stable residence address,⁴⁶ despite the fact it is incumbent on the state to provide them with material reception conditions and accommodation.⁴⁷ Even for applicants whose transfer to another EU Member State is pending pursuant to the family unity provisions of the Dublin III Regulation,⁴⁸ courts have upheld the prolongation of detention due to a risk of absconding, including for an 8-month pregnant woman in one case.⁴⁹ In addition, Administrative Courts have disregarded Asylum Service information – pursuant to Article 46(4) IPA, as discussed above – advising against the use of detention for the purposes of examination of the asylum claim.⁵⁰

⁴⁰ Contrast Administrative Court of Mytilene, Decision AP25/2020, 31 January 2020; Decision AP44/2020, 20 February 2020; Decision AP116/2010, 5 June 2020, where objections against detention were accepted due to the individuals' asylum seeker status.

⁴¹ Administrative Court of Athens, Decision AP867/2020, 16 July 2020; Administrative Court of Piraeus, Decision AP414/2019.

⁴² RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 6. See Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020.

⁴³ Administrative Court of Athens, Decisions 356/2020 and 357/2020, 3 April 2020.

⁴⁴ Article 79(1)(e) L 3386/2005; Article 41 L 3907/2011s.

⁴⁵ RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 7.

⁴⁶ See e.g. Administrative Court of Rhodes, Decision AP464/2020, 17 July 2020, para 4(b).

⁴⁷ Article 56(1) IPA.

⁴⁸ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast) [2013] OJ L180/31.

⁴⁹ Administrative Court of Rhodes, Decision AP464/2020, 17 July 2020.

⁵⁰ Administrative Court of Athens, Decision AP867/2020, 16 July 2020, despite Autonomous Asylum Unit of Amygdaleza, Information 19852, 4 June 2020.

Failure to assess the prospect of removal in “objections”

24. Administrative Courts **fail to conduct a thorough and individual examination of the realistic prospect of deportation** when reviewing pre-removal detention orders, contrary to Article 5(1) of the Convention⁵¹ and domestic law.⁵² Despite constraints to carrying out readmissions to Turkey – discussed above – being known to the Greek authorities at the time, the April 2020 rulings of the Administrative Court of Athens concerning pre-removal detention during the period of effect of the suspension of the asylum procedure made no assessment of clear obstacles to a reasonable prospect of the individuals’ removal to Turkey.⁵³ Failure of Administrative Courts to engage with the reasonable prospect test is reflected in subsequent case law dismissing objections against detention,⁵⁴ even in decisions accepting objections.⁵⁵ In an example of cases where courts have engaged with the reasonable prospect of removal, on the basis of explicit evidence of the suspension of readmissions to Turkey, the Administrative Court of Mytilene nevertheless upheld detention on 5 June 2020 on the ground that “despite the suspension of readmissions by the Turkish authorities, such a temporary suspension may be lifted at any time in the near future”.⁵⁶

Failure to assess detention conditions in “objections”

25. As regards the effectiveness of judicial review of detention conditions, RSA & Stiftung PRO ASYL corroborate concerns as to the failure of Administrative Courts to take into consideration grossly substandard conditions in detention facilities.⁵⁷ In some cases, **courts dismiss the relevant submissions of appellants without providing reasoning or justification,⁵⁸ or fully disregard them.**
26. In addition, the case law of Administrative Courts in 2020 has failed to take into account potent risks to the well-being of individuals on account of the COVID-19 pandemic. Courts have **dismissed alleged risks of exposure to inappropriate detention conditions and of contracting COVID-19 in detention as unsubstantiated,⁵⁹ without any assessment whatsoever of the conditions prevailing in pre-removal centres** and their preparedness to prevent the spread of the COVID-19 pandemic. In other cases, courts have **entirely disregarded the appellant’s submissions relating to COVID-19 risks** in detention.⁶⁰

⁵¹ ECtHR, *Mikolenko v. Estonia*, App No 10664/05, 8 October 2009; *Louled Massoud v. Malta*, App No 24340/08, 27 October 2020, paras 48-74.

⁵² Article 30(4) L 3907/2011.

⁵³ Administrative Court of Athens, Decisions 356/2020 and 357/2020, 3 April 2020; Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020.

⁵⁴ Administrative Court of Athens, Decision 867/2020, 16 July 2020.

⁵⁵ Administrative Court of Mytilene, Decision AP73/2020, 20 March 2020.

⁵⁶ Administrative Court of Mytilene, Decision AP117/2020, 5 June 2020, para 4.

⁵⁷ See e.g. Administrative Court of Piraeus, Decision 56/2019, cited in Asylum Information Database, *Country Report Greece*, 2019 Update, June 2020, 202.

⁵⁸ See e.g. Administrative Court of Rhodes, Decision AP464/2020, 17 July 2020, para 4(c).

⁵⁹ Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020, para 4; Decision 867/2020, 16 July 2020, para 5; Administrative Court of Rhodes, Decision AP464/2020, 17 July 2020, para 4(c).

⁶⁰ Administrative Court of Mytilene, Decision AP117/2020, 5 June 2020, para 4.



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**HELLENIC REPUBLIC
LEGAL COUNCIL OF THE STATE
PRESIDENT
AGENT OF THE GOVERNMENT
BEFORE THE ECHR**

Mrs Clare Ovey
Head of the Department
for the Execution of Judgments
of the European Court
of Human Rights
DGI, Council of Europe

Athens, 23 October 2020

Ref. no: 140612/526713

Subject: *The Communication under Rule 9.2 submitted on 20.10.2020 by RSA and Stiftung Pro Asyl concerning the execution of the S.D v. Greece (52541/07) group of cases judgments*

Dear Ms Ovey

Further to your letter transmitting a Rule 9.2 Communication submitted by RSA and Stiftung PRO ASYL in respect to the above group of cases I am transmitting the response of the Greek authorities thereto.

I kindly request that the attached document is published with the above Communication.

**Yours sincerely
On behalf of the Agent
of the Greek Government
before the ECHR**

**Dimitrios Kalogiros
Senior Legal Adviser
at the Legal Council of the State**

Enc : Document
C.c. : Permanent Representation of Greece
to the Council of Europe

23 OCT. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**The Greek authorities' observations on the rule 9.2
communication submitted on 20.10.2020 by RSA and Stiftung
Pro Asyl concerning the execution of the S.D v. Greece
(52541/07) group of cases**

On 20.10.2020 RSA and Stiftung Pro Asyl submitted to the Committee of Ministers a Rule 9.2 Communication concerning the adoption of general measures in the S.D v. Greece group of cases.

In the above Communication the following submissions were made:

- 1) As regards the violation of Article 5 § 1, RSA and Stiftung Pro Asyl stated that following the closure of the case by the Committee, in connection with this violation, new legislation was promulgated "*which have had adverse effects on compliance with the requirements of Article 5 § 1*"
- 2) With regard to the judicial review of detention orders the submissions made by the above NGOs concern: a) the effectiveness of the *ex officio* review of detention orders, b) the accessibility - in terms of provision of relevant information and provision of legal aid - of the domestic remedy ("objections") through which detention orders are challenged, c) the erroneous interpretation and implementation of the legislation regulating administrative detention for asylum seekers and irregular immigrants for whom expulsion orders are issued.

In respect of the first part of the communication, namely the lawfulness of detention of asylum seekers the Greek authorities note that the Committee at its 1265th meeting (September 2016) considered that the necessary measures in response to the violation of Article 5 § 1 had been taken and decided to close its supervision of this issue;

Furthermore, it is noted that the Court has never examined the compliance of the legislative amendments mentioned in the Communication with the Convention.

In respect of the second part of the Communication the following are noted:

- a) The issue of the “ex officio” judicial review of detention orders or orders extending detention has never been examined by the Court and, therefore, no relevant violation has been found.
- b) Regarding the issue of the accessibility of the “objections” remedy, which was raised recently (after 21.06.2019) in two cases, namely in O.S.A and Others (39065/16) and in KAAK and Others v. Greece (34215/16, it is noted that, the authorities will soon provide information to the Committee about the measures taken or envisaged to address the problem.
- c) Regarding the issue of the effectiveness of the “objections” it is reminded that the Court has repeatedly considered that “objections” is in principle an effective domestic remedy to challenge the lawfulness of administrative detention of asylum seekers [M.D v. Greece (60622/11), final on 13.02.2015 § 65, O.S.A and Others v. Greece (39065/16, final on 21.06.2019 § 50), S.Z (66702/13), final on 21.09.2018, § 72]. In one specific case, namely S.Z v. Greece the Court held that under the circumstances of this case there had been shortcomings in the judicial control of the lawfulness of detention of the applicant. Lastly, it is reminded that the Committee at its last examination (September 2016) of the status of execution of the judgments at issue considered that *“Bearing in mind that...the domestic remedy to review detention of asylum seekers and irregular migrants is moving in the direction of safeguarding the rights of the individuals involved, attention should be focused on the way judicial control is carried out”*.

It flows from the foregoing that the only identified problem in the framework of execution of said judgments is the adoption of measures ensuring a) the accessibility of the domestic remedy (“objections”) through which the lawfulness of detention orders is challenged and b) that the competent judicial authorities carry out in a Convention complying way the judicial control of the lawfulness of detention orders pursued through the judicial remedy of “objections” already found effective by the Court.

In conclusion the Greek authorities would like to assure the Committee of Ministers of the Council of Europe that they are dedicating due attention to the

execution of the judgments at issue as defined by the judgments of the Court
and the Committee itself.