COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the Greek Council for Refugees (GCR) & the European Council on Refugees and Exiles (ECRE)

GROUP OF CASES OF MD V. GREECE
Application No. 60622/11

Introduction

1. The Greek Council for Refugees (GCR) is a Non-Governmental Organisation, founded in 1989, that specializes in the provision of legal aid and social support to persons in need of international protection in Greece. GCR *inter alia* participates in the Greek National Commission for Human Rights (GNCHR) since 1999, has a Consultative Status in the UN Economic and Social Council (ECOSOC) since 2001 and it is a member of the Racist Violence Recording Network (RVRN)[1] and the recently established Recording Mechanism of Informal Forced Returns under the auspice of the GNCHR.[2] The European Council on Refugees and Exiles (ECRE) is an international alliance of 127 NGOs across Europe working together to protect and advance the rights of refugees, asylum seekers and displaced persons. ECRE engages in legal research and training on the application and interpretation of EU asylum law and relevant international human rights instruments, including the 1951 Refugee Convention and the European Convention on Human Rights. ECRE was a third-party intervener in over thirty cases before the European Court of Human Rights (ECtHR or the Court) and has made a number of submissions to the Committee of Ministers of the Council of Europe on the implementation of the ECtHR judgments, including jointly with the AIRE Centre and DRC in the case *Khlaifia and others v Italy* and *Ilias and Ahmed v. Hungary*, with the Right to Protection and The Tenth of April in *Kebe and others v. Ukraine*, and with the Greek Council for Refugees in *Safi and others v. Greece*.

2. The undersigned organisations wish to address the Committee of Ministers in relation to the supervision of *M.D. v. Greece* group of cases, Application No. 60622/11, which concern violations of the right to liberty under Article 5 of the European Convention on Human Rights (ECHR). Following the Decision of the Committee of September 2016 with regards the supervision of the *S.D.* group of cases, (Application no. 5354/07),[3] the outstanding issue of the accessibility and effectiveness of the remedy under Article 5 (4) continues to be examined in the context of the new *MD v. Greece* group of cases.[4]

3. With the present Communication, GCR and ECRE aim to provide the Committee of Ministers with updated information regarding the accessibility and the effectiveness of Greece's remedy against immigration detention, namely the 'Objections against Detention'. The communication also seeks to provide information on the context of the application of the national provisions relating to the remedy, including through a detailed overview of the applicable legal framework and statistical data of immigration detention in Greece.

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1 Racist Violence Recording Network, https://www.nchr.gr/en/racist-violence-recording-network.html
2 Recording Mechanism of Informal Forced Returns, https://nchr.gr/en/recording-mechanism.html
3 Committee of Minister, 1265 meeting (September 2016) - H46-13 S.D. group v. Greece (Application No. 53541/07).
4 Committee of Ministers, Resolution CM/ResDH(2020)315, Execution of the judgments of the European Court of Human Rights 20 cases against Greece, adopted by the Committee of Ministers on 8 December 2020 at the 1391st meeting of the Ministers' Deputies.

Executive summary

4. Detention of third country nationals in Greece takes place in pre-removal detention facilities and in police stations. **The number of third country nationals in detention continues to be high over the past two years**. In 2023, 19,003 persons were detained in pre-removal facilities and 2,325 individuals remained in detention as of 31 December 2023, including 1,003 asylum applicants**.** In the first semester of 2024, 12,772 detention orders were issued; the total number of detained individuals on 30 June 2024 was 2,323.

5. In addition to the high number of detainees, the undersigned organisations note additional issues that pose limitations to Greece's remedy against unlawful immigration detention ("objections against detention") and particularly relevant for the examination of the present group of cases in respect of compliance with Article 5 (4). **Lack of adequate legal information and interpretation** is well-documented across the country, including by the Council of Europe Committee for the Prevention of Torture (CPT), and undermines access for detained third country nationals. **The absence of a legal aid system** for third country nationals who are in immigration detention confirm that the remedy is inaccessible Official data demonstrate that a very short number of those in detention in practice have access to the remedy (20.7% in 2023, 17.6% in the first half of 2024).

6. Lastly, the remedy in question is also marred by **issues of effectiveness**. Without underestimating the progress made after the amendment of the national legislation and the fact that in a number of cases domestic courts apply a broad examination of the detention orders, as is apparent in the decisions of the administrative courts mentioned in the Action Report submitted by the Greek Government, the effectiveness of the examination of the lawfulness of the detention under the "objections against detention" remedy remains a matter of concern. This is due to lack of predictability, inadequate reasoning, lack of thorough examination and misapplication of legal provisions, as it is shown by the case law of domestic Courts mentioned below. It is also mentioned that in the recent ECtHR judgment of 15 October 2024 in *H.T. v Germany and Greece*, the Court found again a violation of Article 5(4) ECHR due to the lack of effective examination of the detention by the domestic court following the "objections against detention" submitted by the applicant.[5]

7. **The undersigned organisations note that several limitations to the accessibility and effectiveness of "objections against detention" require the continuation of supervision in the present group of cases and the provision of specific information on measures taken to address each issue.**

The legal framework of immigration detention in Greece

8. Greek legislation provides three different legal frameworks allowing the detention of third country nationals (administrative detention). Law 3907/2011, transposing the EU Return Directive (2008/115/EC), provides for the detention of third country nationals up to 18 months in order for their return to be implemented. Law 3907/2011 applies to all third country nationals "*residing irregularly on the territory*" for whom a return decision has been issued, with the exception of those apprehended at the external borders, for example at the Greek-Turkish land and sea borders. In these cases, the applicable framework is that of Law 3386/2005 which foresees the issuance of a deportation decision and provides a possibility for detention in order to secure the implementation of the deportation decision; the detention measure may be extended for a period of up to 18 months. Law 4939/2022 transposes Directive 2013/33/EU (Reception Conditions Directive) and Directive 2013/33/EU (Asylum Procedures Directive) and includes provisions regulating the detention of asylum seekers, which is allowed for a period up to 18 months.

9. The period that an asylum seeker is detained pursuant to L. 4939/2022 is not taken into consideration when maximum detention period in view of removal (pursuant to L. 3907/2011 or 3386/2005) is assessed and thus, in accordance with national legislation, a third country national may be detained for a period of up to 36 months (18 months pre-removal detention + 18 months detention of asylum seekers). Moreover, a 2020 amendment of L. 3907/20211 with regard to the

[5] ECtHR, *H.T. v Germany and Greece*, application no. 13337/19, 15 October 2024, paras. 104-109.

return of third country nationals residing irregularly on the territory reversed the rule that detention in view of removal should only be applied as a "last resort" by removing the obligation to first examine alternatives to detention, thus making detention the default option.

10. In all cases examined under the group of cases of *MD v. Greece*, the applicants have been detained under a decision issued on the basis of the above-mentioned legislation.

11. In addition to the provisions allowing the detention of third country nationals in return, deportation or asylum procedures, Article 40 L. 4939/2022 provides that all third country nationals who are subject to reception and identification procedures in a Reception and Identification Centres (RIC) or in a Closed Controlled Access Center (CCAC) are under a "*restriction of their personal liberty within the premises of the center*" for a period up to 25 days. This applies to all newly arrived individuals on the Aegean islands and Evros, who are directly transferred to a CCAC on the islands or to Evros (Filakio) RIC, and to all third country nationals on the mainland willing to apply for asylum, as an asylum application on the mainland can only be registered at the RIC of Malakasa (South Greece) and RIC Diavata (North Greece). This restriction of liberty in practice amounts to a *de facto* detention measure which is applied *en masse*, without any prior individual assessment. The compatibility of this measure with the requirements of Article 5 ECHR has not been examined by the Court.[6] However an infringement letter by the EU Commission has been sent to the Greek Authorities on the ground that this provision leads to blanket and *de facto* detention of asylum seekers contrary to the provisions of the Reception Conditions Directive.[7]

The number of detained third-country nationals in 2023 and 2024 (first semester)

12. Detention of third country nationals under these legal frameworks (L. 3907/2011, L. 3386/2005 and L. 4939/2022) is taking place in Pre-removal Detention Facilities (hereinafter PRDFs) and police stations. Currently there are 7 PRDFs operating across the country, in Amigdaleza (Athens), Tavros (Athens), Korinthos, Paranesti (Drama), Xanthi, Fylakio (Evros) and Kos island.

13. The number of third country nationals in administrative detention remains high. According to the official statistics, in 2023, 19,003 persons were detained in PRDFs across the country. As of 31 December 2023, 2,325 third-country nationals remained in administrative detention; out of those, 2,064 individuals were detained in PRDFs, including 1,003 asylum applicants (48.59%), and 261 individuals were detained in police stations or other police facilities countrywide. Moreover, as of 31 December 2023, 33% of persons detained in PRDFs, had been in detention for a period exceeding six (6) months.[8]

14. Statistical data regarding the first 6 months of 2024 confirms a similar pattern. A total number of 12,772 detention orders were issued by 30 June 2024 (3,864 in return procedures, 6,815 in deportation procedures and 2,093 regarding asylum seekers). The total number of third country nationals in detention (on the basis of a decision issued pursuant to L. 3907/2011, L. 3386/2005 and L. 4939/2022) on 30 June 2024 was 2,323, out of which 1,901 were detained in PRDFs and 422 were detained in Police Stations.[9]

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6 Relevant judgments of the Court refer to the living conditions in Reception and Identification Centers on the islands in which the Court has found a violation of Article 3 ECHR, *inter* alia ECtHR, *A.D. v. Greece*, Application no. 55363/19, 4 April 2023; ECtHR, *D.S. v. Greece*, Application no. 2080/19, 30 November 2023. Said Judgments are examined under the *M.S.S.* Group of cases.

7 European Commission, January Infringements package: key decisions, 26 January 2023, https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142

8 AIDA, Report on Greece, update 2023, June 2024, pp. 225-226 & Information provided by the Directorate of the Hellenic Police, 18 January 2024.

9 Data provided by the Ministry of Citizen Protection following Parliamentary Request no 324 (Request to Submit Documents) of 1-8-2024, https://www.hellenicparliament.gr/UserFiles/c0d5184d-7550-4265-8e0b-078e1bc7375a/12656408.pdf (in Greek) & Minister of Citizen Protection, National Situational Picture regarding the islands at eastern Aegean Sea, 30-6-2024, https://www.scribd.com/document/746966098/NSP-Eastern-Aegean-30-06.

Number of third country nationals in detention as of 30 June 2024								
PRDF Amigdaleza	PRDF Tavros	PRDF Korinthos	PRDF Paranesti (Drama)	PRDF Xanthi	PRDF Fylakio (Evros)	PRDF Kos	Police stations	**Total**
647	178	493	303	216	43	21	422	**2,323**

Source: Data provided by the Ministry of Citizen Protection following Parliamentary Request no 324 (Request to Submit Documents) of 1-8-2024 & Minister of Citizen Protection, National Situational Picture regarding the islands at Eastern Aegean Sea, 30-6-2024.

The accessibility and effectiveness of Greece's remedy against immigration detention

15. National legislation provides that immigration detention, i.e., detention imposed under the aforementioned legislation, can be challenged through a domestic remedy ("objections against detention").[10] The challenge is not examined by a court composition but solely by the President of the Administrative Court, whose decision is non-appealable. Despite the improvements that the Court and the Committee of Ministers have identified regarding the scope of review of this remedy, significant obstacles persist regarding its accessibility and effectiveness. **GCR and ECRE note that the lack of information regarding detention measures and the lack of a legal aid system hinder the effective access of third-country nationals, including asylum applicants, to this remedy**.

16. From the outset, the undersigned organisations would like to draw the Committee's attention to the Court's jurisprudence which has established that the remedy of Article 5 (4) must be "*sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required*."[11] Any examination of the accessibility of a domestic remedy against unlawful detention under Article 5 (4) should include both the characteristics of the remedy and the context of its application. In *Soldatenko v. Ukraine*, the Court stated that "*the accessibility of a remedy implies, inter alia, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the* remedy."[12] Moreover, the Court has clarified that when the remedy is indeed available, its accessibility "*should not depend on the good will of the detaining authority*."[13] The authorities need to provide the remedy *and* ensure that the detained individuals are not prevented from accessing it or using it due to other factors. In this line, GCR and ECRE respectfully invite the Committee to examine the remedy's compliance with Article 5 (4), in line with the Court's judgments under supervision, and by considering the overall context of application of the pertinent legislation, the practical obstacles and the statistical information provided below.

Accessibility of the remedy: Lack of adequate information and free legal aid

Lack of adequate information

17. As a rule, persons in administrative detention are not informed on the grounds of their detention and of the possibility to lodge "objections" against them. Detention orders and other relevant documents are issued in Greek and no translation is provided. Moreover, no interpretation services are provided in PRDFs and Police Stations and all documents communicated in Greek are not explained in a language that the detainees can understand. Even in cases where the detainees are

10 Article 76(3) L 3386/2005; Article 30(2) L 3907/2011; Article 50 Asylum Code, L 4939/2022.
11 ECtHR, *G.B. and Others v. Turkey*, application no. 4633/15, 17 October 2019, para. 163.
12 ECtHR, *Soldatenko v. Ukraine*, application no. 2440/07, 23 October 2008, para. 125.
13 ECtHR, *Rakevich v. Russia*, application no. 58973/00, 28 October 2003, para 44.

provided with an "information brochure" in their language, that "information brochure" is the same document which the Court has already found as not capable of informing the detainee in a simple and accessible language in line with the requirements of Article 5 (2).[14] Therefore, it cannot be reasonably expected that detained third country nationals are informed of the factual and legal grounds of their detention and are able to use the legal remedy provided by Greek law.

18. The recent findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) corroborate that the lack of information remains a structural and longstanding issue that has not been remedied by Greece's amendments of immigration legislation over the past decade neither addressed through any change in practice. In its 2024 report, following the visit of the delegation in November 2023, the Committee noted the long-term nature of the issues related to information provision in the context of immigration detention:

"*As was the case in 2018 and 2020, the Committee must once again conclude that there remains an acute lack of interpretation services in all the establishments visited during the 2023 visit. Further, access to information in a language and form that detained foreign nationals understand also remains insufficient […] most detained foreign nationals stated once again that they had signed documents in the Greek language without knowing their content and without having benefitted from the assistance of a qualified interpreter. Indeed, nearly all official documents, including detention and deportation orders, were only available in the Greek language and were usually not translated for the persons concerned* […] *most detained foreign nationals complained that they were not sufficiently informed of their rights and their situation in a language they could understand. Many persons indicated that they had not received a copy of the information leaflet in a language that they could understand*".[15]

During that visit, the CPT visited 6 out of 7 PRDFs operating in Greece and several police and border guard stations in different regions across the country.

19. **Therefore, the undersigned organisations submit that despite its existence in national law, Greece's remedy against unlawful detention does not satisfy the guarantees of Article 5 (4) due to the absence of tailored legal information and suitable interpretation. The effect of such absence on the accessibility of the remedy is confirmed by the Court's established jurisprudence which has consistently found that the lack of accessible legal information, interpretation and legal advice during detention can lead to a violation of Article 5 (4).[16] The undersigned organisations consider that the supervision of this issue should continue and that the Greek Government should provide more detailed information on measures it has taken to specifically address information-related deficiencies.**

Lack of legal aid

20. **Secondly**, the Greek Authorities have not yet set up a free legal assistance and representation[17] scheme in order for third country nationals to have effective access to justice and to challenge detention orders before the competent administrative courts. Statistical data mentioned below corroborate that the findings of the Court on the non-accessibility of the remedy[18] remain valid up to this day.

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14 ECtHR, *J.R. and other v. Greece*, application no 22696/16, 25 January 2018, paras. 123-124; ECtHR, *O.S.A and other v. Greece,* application no 39065/16, 21 March 2019, para. 54 and ECtHR, *Kaak and other v. Greece*, 34215/16, 3 October 2019, para. 123.

15 Committee for the Prevention of Torture, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 November to 1 December 2023, CPT/Inf (2024) 21, 12 July 2024, paras. 32-33 and 36.

16 ECtHR, Kaak v. Greece, *op.cit.*, paras. 119-125; ECtHR, *M.S. v. Slovakia and Ukraine*, application no. 17189/11, 11 June 2020, paras. 141-144.

17 The authors of this communication use the terms "legal assistance and representation" and "legal aid" interchangeably.

18 As already found by the European Court of Human Rights in *J.R. and Others v. Greece*, *op.cit*. *O.S.A. v. Greece, op.cit.* and *Kaak v. Greece*, *op. cit.*

21. In the Action Report submitted to the Committee of Ministers on 23-9-2024 concerning the present group of cases (hereinafter, the Action Report), the Greek Government refers to Article 276A of the Code of Procedure before Administrative Courts[19] and Article of 50(7) L. 4939/2022 and contends that these two provisions secure access to legal aid for third country nationals and remedy the shortcomings identified by the Court (see para. 22 of the Action Report). In this respect, GCR and ECRE would like to clarify issues related to the nature of these provisions and their conditions of applicability.

22. First, Article 276A of the Code of Procedure before Administrative Courts is the general provision that regulates access to free legal aid for persons deprived of financial means in *any* procedure before administrative courts. In order for free legal aid to be granted, this provision requires the drafting of an application/request in Greek and its submission before the competent Court. A precondition for the granting of free legal aid is that the remedy is not considered as manifestly inadmissible or unfounded.[20] Thus, the procedure provided by Article 276A of the Code of Procedure before Administrative Courts is neither tailored nor suitable for the provision of free legal aid to third country nationals in administrative detention. To the best of the undersigned organisations' knoweldge, this procedure has never been used by any person in immigration detention and nor has any third country national in administrative detention been granted free legal aid under Article 276A.

23. Second, regarding Article 50(7) L. 4939/2022, GCR and ECRE note that this is indeed the provision of national legislation which foresees that asylum seekers in detention are entitled to free legal aid to challenge the detention order. However, due to the lack of a state-run and free legal aid scheme the provision remains in practice inapplicable.

24. In this respect, it should be mentioned that the information provided in the Action Report and the assumption that "*the shortcoming"* regarding access to a remedy/free legal aid *"is fully addressed*" (para. 22) contradict the information provided in the Action Plan of 20-8-2024 submitted by the Greek Government to the Committee of Ministers within the framework of the execution of the *MSS* Group of cases.[21] In the latter, the Greek authorities "*plan to propose the inclusion and funding"* of the free legal and linguistic assistance program for third country nationals in administrative detention under the EU Asylum, Migration and Integration Fund.[22] It is evident from this statement that the free legal aid program is not in any way operational and in practice no free legal aid scheme is available for persons in immigration detention. This is also the finding of the Directorate General for Migration and Internal Affairs of the EU Commission, which noted that "*although this service* [free legal aid] *is provided by law and there is a project for free legal aid services under the AMIF National Programme, its implementation is still pending*" [emphasis added].[23] As also noted by the CPT in the 2024 Report, the inadequate provision of legal aid for issues related to detention in all places of detention visited, including in the PRDFs "*was also acknowledged by the Greek authorities during the end-of-visit talks held on 1 December 2023 in Athens*".[24]

25. Moreover, it is only in August 2024 that an enabling provision ('*εξουσιοδοτική διάταξη*') has been adopted making possible the issuance of a Joint Ministerial Decision (JMD) that will regulate the procedure and determine the conditions for free legal aid for third country nationals in detention.[25] The issuance of this JMD is still pending.

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19 Added with Article 31 of L. 4274/2014.

20 Article 276(5) of the Code of Procedure before Administrative Courts to which Article 276A refers.

21 DH-DD(2024)934, Communication from Greece/Updated Action Plan MSS (application number 30696/09) group of cases v. Greece, 20-8-2024, https://rm.coe.int/0900001680b151db, para. 50.

22 *Ibid.*

23 European Commission, Note for the attention of Minister Papastavrou: Enhancing collaboration for strengthening Returns, Ares (2024)990858, 9 February 2024, p. 6, granted upon access to documents request EASE 2024/1757.

24 Committee for the Prevention of Torture, CPT/Inf (2024) 21, *op. cit.*, para. 41.

25 Article 39(2) L. 3907/2011 as added by Article 46 L. 5130/2024, Gov Gazetta A 127/1-8-2024), "*Με απόφαση του Υπουργού Προστασίας του Πολίτη και των κατά περίπτωση συναρμόδιων Υπουργών ρυθμίζονται θέματα που αφορούν στη διαδικασία και τις προϋποθέσεις παροχής νομικής συνδρομής και γενικά κάθε ειδικότερο θέμα που αναφέρεται στην εφαρμογή της παρ. 3 του άρθρου 28*»

26. Official statistical data corroborate that the vast majority of detainees do not have access to a remedy against detention.[26]

Year	Total number of detention orders issued (return/deportation and asylum procedure)	Total number of Objection against detention submitted before Administrative Courts	%
2023	24,174	5,001	20.7%
2024 (first semester)	12,774	2,256	17.6%

27. The CPT has highlighted concerns regarding access to legal aid in 2020 and again in 2024, including the "*often theoretical and illusory*" access to a lawyer and the inadequate provision of legal advice which reduced the detainee's ability to use "objections against detention".[27]

28. Finally, the fact that national legislation foresees the *ex officio* examination of the detention orders prolonging the detention[28] does not counter-balance the lack of effective access to courts to challenge detention. In practice this *ex officio* review remains highly ineffective and the scrutiny applied within the ex officio examination theoretical and illusory, as corroborated by official data. In 2023, out of the total number of 6,369 detention orders referred for review only a percentage of 0.5% (25 prolongation orders) were rejected by domestic courts.[29] During the first semester of 2024, out of the total number of 3,017 decisions of the administrative courts issued within the framework of the *ex officio* judicial review, only a percentage of 0.43% (13 decisions) rejected the prolongation of detention.[30]

29. In line with the information provided above, **GCR and ECRE submit that legal aid is not available to third country nationals that are subject to immigration detention, a lack that seriously undermineσ the accessibility and usability of "objections against detention". The notable contrast between the number of detention orders issued in 2023 and in the first semester of 2024 and the number of objections submitted before administrative courts underscores that this legal remedy is not accessible in practice for the vast majority of detained third country nationals**.

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26 Data provided by the Ministry of Citizen Protection following Parliamentary Request no 324 (Request to Submit Documents) of 1-8-2024, https://www.hellenicparliament.gr/UserFiles/c0d5184d-7550-4265-8e0b-078e1bc7375a/12656408.pdf (in Greek), AIDA, Report on Greece, update 2023, June 2024, p. 241 & RSA, Immigration detention in Greece in 2023, May 2024. In practice an even lower number of detainees had access to justice as a person in detention may submit Objections against detentions against any Detention Order which is issued every 3 months (in removal procedure) or 50 days (in asylum procedure). Thus the total number of Objections against detention submitted per year may refer to a lower number of detainees.

27 Committee for the Prevention of Torture, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, CPT/Inf (2020) 35, 19 November 2020, para. 22; Committee for the Prevention of Torture, CPT/Inf (2024) 21, *op.cit.*, para. 41.

28 Article 30(3) L. 3907/2011 and Article 50(5) L. 4939/2022; for reasons of clarity it is mentioned that both provisions provide the obligation of the examination of detention Decision prolonging the detention and not the ex officio examination of the initial decision imposing the detention.

29 AIDA, Report on Greece, update 2023, June 2024, p. 239

30 Parliamentary Request no 324 (Request to Submit Documents) of 1-8-2024, https://www.hellenicparliament.gr/UserFiles/c0d5184d-7550-4265-8e0b-078e1bc7375a/12656408.pdf (in Greek)

30. In this respect, the undersigned organisations add that the Court has previously found that "*the apparent lack of a proper system enabling immigration detainees to have access to effective legal aid*" may raise an issue of accessibility of the remedy;[31] in this respect, the high number of detainees unable to access the remedy has been considered by the Court as highlighting the system's inadequacy. Similarly, lack of access to legal assistance during the detention has also contributed to the finding of violation of Article 5 (4), as the Court considered that this lack rendered the remedy devoid of effective substance.[32]

31. **Following the above information, the undersigned organisations consider that the supervision of this issue should continue and that the Greek Government should provide more detailed information on measures it has taken to address the lack of legal aid provision for persons subject to immigration detention, including updated information on any action taken with a view to develop a legal aid system following the adoption of the aforementioned enabling provision in August 2024.**

Effectiveness of objections against detention

32. In 2010, following the *S.D. v. Greece* judgment, national legislation regulating "objections against detention" has been amended to extend the scope of judicial scrutiny of detention and to include the review of the lawfulness of the detention orders.[33] The Court has found that these amendments seek to reinforce the guarantees which detainees should benefit from and in principle are in line with the requirements of Article 5(4) ECHR.[34] However, even after the entry into force of the amended legislation the Court found a violation of Article 5(4) ECHR in a number of cases.[35] For example, in *S.Z. v. Greece*, the Court found that "*the applicant did not ha[d] the benefit of an examination of the lawfulness of his detention to an extent sufficient to reflect the possibilities offered by the amended version of Article 76 § 5* [L. 3386/2005]".[36] That was also the case in the recent ECtHR judgment of 15 October 2024 in *H.T. v Germany and Greece*, where the Court found a violation of Article 5(4) ECHR due to the lack of effective examination of the detention by the domestic court following the "objections against detention" submitted by the applicant.[37] The facts of the case refer to 2018. Thus, as corroborated by these judgments of the Court,[38] the effective application of the amended national legal framework by domestic Courts remains a matter of concern.

33. Without underestimating the progress made after the amendment of the national legislation and the fact that in a number of cases domestic courts apply a broad examination of the detention orders, as is apparent in the decisions of the administrative courts mentioned in the Action Report submitted by the Greek Government and the fact that "*the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant*",[39] the effectiveness of the examination of the

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31 ECtHR, *Suso Musa v. Malta*, application no. 42337/12, 23 July 2013, para. 61.
32 ECtHR, *Abdolkhani and Karimnia v. Turkey*, application no. 30471/08, 22 September 2009, para. 141.
33 Article 76(3) L. 3386/2005 as amended by L. 3900/2010 (in force since 1 January 2011)
34 See for example ECtHR, *M.D v. Greece*, application no 60622/11, 13 February 2015, para. 65
35 These are ECtHR, *Housein v. Greece*, application no. 71825/11, 24 October 2013; *MD v. Greece*, op.cit.; *R.T. v. Greece*, application no. 5124/11, 11 February 2016; *Mahammad et al. v. Greece*, application no 48352/12, 15 January 2015; *S.Z. v. Greece*, application no. 66702/13, 21 June 2018; *E.K. v. Greece*, application no 73700/13, 14 January 2021 and *H.T. v Germany and Greece, op.cit.* In addition in *F.H. v. Greece*, application No. 78456/11, 31 July 2014, the Court found a violation of Article 3 in conjunction with Article 13 ECHR for lack of an effective judicial remedy to review detention conditions.
36 ECtHR, *S.Z. v. Greece*, *op.cit.*, § 40.
37 ECtHR, *H.T. v Germany and Greece*, *op.cit.*, paras. 104-109.
38 For the time being there are also two pending case before the Court where an issue under the Article 5(4) ECHR has been raised, see ECtHR, *M.S.J.J. v. Greece*, application no. 51975/17, communicated on 5 February 2024; *K.A. and others v. Greece*, App. no. 43784/20, communicated on 27 November 2023.
39 *Inter alia*, *M.S.S. v. Belgium and Greece,* application no. 30696/09, para. 288-289.

lawfulness of the detention under the "objections against detention" remedy remains a matter of concern. This is *inter alia* due to the fact that:

i. the procedure is marked by a lack of certainty and predictability as contradictory decisions on "objections against detention" are issued by administrative courts in cases with similar or identical factual and/or legal basis. This lack of consistency is compounded by the absence of an appeal stage to harmonise and/or correct decisions of first-instance administrative courts. For almost every decision referenced by the Greek authorities in paragraphs 26-27 of the Action Report, there exists a ruling from a domestic administrative court that has a different outcome and examination approach even if the facts are similar or identical; this contradiction reveals a level of fragmentation in domestic jurisprudence that eventually undermines the effectiveness of the remedy.
ii. The examination is affected by the erroneous application of national and EU law well as the case law of the ECtHR.
iii. The examination of detention conditions remains ineffective because in the vast majority of the cases the detainee's claims are rejected as non-proven. This was also the case in the recent *H.T. v Germany and Greece*,[40] where the applicant was detained for a period of 2 and a half months in a police station and his complaint regarding the detention conditions was rejected twice by the domestic courts as non-proven, contrary to the case-law of the ECtHR.

34. The undersigned organisations wish to provide the Committee with a list of examples of cases which demonstrate the inconsistent application in practice of the remedy in question and underline the need for continuous assessment of its effectiveness under Article 5 (4). A series of decisions following "objections against detention" presented below reveal the extent to which the concerns identified above continue to affect the effectiveness of the remedy. The examples provided are not exhaustive, with the number of cases included herein being limited for brevity and readability.

i) Rejection of remedy despite the absence of a "reasonable prospect of removal" and failure to properly examine the "due diligence" of the authorities.

Decision no 2808/2024 Administrative Court of Korinthos: The case concerned a Somali national, whose asylum application was rejected as inadmissible on the basis of the safe third country concept. Following the order for his readmission to Türkiye, he was detained for a period of about 5 months, at the time of the examination of the remedy, in order to implement the removal under L. 3907/2011. The domestic Court found that the allegation of the applicant that his readmission to Turkiye is non-feasible due to the suspension of readmissions since March 2020 "*does not affect the lawfulness of his detention*" and that "*it is not proven that the suspension [of the readmission] procedures will continue up to the time that the maximum detention time limit set by article 30 L. 3907/2011*".[41] The Court did not examine the allegation of the applicant that the procedure is not implemented with "*due diligence*" and that removal procedure was not "*in progress*", as required by the case law of the ECtHR.[42]

Decision 4252/2022 Administrative Court of Korinthos: The case concerned an Afghan national who had not been subject to any reception and identification procedures have not been applied but had received a removal decision immediately after his arrival and was detained in view of the removal. At the time of the examination of the remedy he had been detained for a period of three months. The domestic court found "*that it is not proven that "the suspension [of the readmission]*

40 ECtHR, *H.T. v Germany and Greece*, *op.cit.*.
41 *Inter alia* ECtHR, *Khlaifia and others v. Italy,* application no 16483/12, 15 December 2016, para. 89
42 *Ibid.*

procedures will continue up to the time that the maximum detention time limit set by article 30 L. 3907/2011".[43] The Court did not examine the allegation of the applicant that the procedure is not implemented with "*due diligence*" and that the removal procedure was not "*in progress*", as required by the case law of the ECtHR.

Decision 204/2023 Administrative Court of Komotini: The case concerned an Afghan national detained for a period of 3 months for the implementation of his removal. The Court found that "*the current suspension of readmission procedures to Türkiye or Afghanistan, it is not certain that it will have a permanent character*". The Court did not examine the allegation of the applicant that the procedure is not implemented with "due diligence" and that the removal procedure was not "*in progress*", as required by the case law of the ECtHR.

Decision 1645/2023 Administrative Court of Athens: The domestic Court rejected the allegation of the applicant that his removal to Afghanistan is not feasible due to the security situation and the fact that the Greek Authorities do not implement removals to Afghanistan anymore by ruling that "*there is no legally binding text prohibiting the return of Afghans citizens*". The Applicant had provided an official letter of the Directorate of the Hellenic Police in which it was stated that no removal to Afghanistan is implemented since 2021. Similar decision with identical wording: Decision no 583/2024 Administrative Court of Kavala, concerning an Afghan national who was detained for 3 months. The Court did not examine the "*due diligence*" requirement in both cases.

Decision 2794/2022 Administrative Court of Korinthos: the case concerned an Afghan national who was detained for a total period of 11 months. Initially, he had been detained for the implementation of his readmission to Türkiye but, as he applied for asylum while in detention, the measure was prolonged pursuant to the provision allowing the detention of asylum seekers (L. 4636/2019 succeeded by L. 4939/2022). The Court recognized that "*the detention of a third country national who applied for asylum in detention, may be prolonged in view of the practical effectiveness ('effet utile') of the removal procedure in case his asylum application is rejected*" by referring to CJEU, C-601/15 PPU case. However, the Court rejected the allegation of the Applicant regarding the non-feasibility of his removal to Turkiye on the ground that he is detained on the basis of a decision issued pursuant to the provision allowing the detention of an asylum seeker and not pursuant to return/removal. Similarly: Decision 902/2022 Administrative Court of Athens; Decision 3577/2022 Administrative Court of Korinthos; Decision 304/2023 Administrative Court of Kavala.

Decision 202/2023 Administrative Court of Komotini: the domestic court rejected the allegation of a Turkish national detained for 9 months that his removal to Türkiye is non-feasible even if the Court of Appeal (Council of Court of Appeal Judges - '*Συμβούλιο Εφετών*') had previously (immediately before the imposition of the immigration detention measure) rejected the extradition request submitted by the Turkish Authorities. According to the Decision of the Court of Appeals, the extradition request had to be rejected due to the risk of persecution that the applicant will face if removed to Türkiye. He had also submitted an asylum application while in detention, however he did not receive a first instance decision for more that 8 months and his detention was continuously prolonged. However, the Court rejected the remedy by stating that the findings of the Court of Appeals on the extradition request "*concern the different issue of his extradition and it is not sufficient to affect the lawfulness of his detention*". Moreover, in respect of the delay in the asylum procedure in detention, the Court found that the timeframe provided by law for conducting the asylum procedure in detention is "*indicative*" and the maximum time limits have not been reached. The Court did not examine the "*due diligence*" requirement.

See *a contrario.* for example, Decision 831/2022 Administrative Court of Athens, Decision 78/2022 Administrative Court of Rhodes, Decision 4118/2022 Administrative Court Korinthos, mentioned in the Action Report of the Greek Authorities.[44]

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43 At that time no readmissions to Türkiye have been implemented for a period over 2 years (since March 2020 onwards).

44 "[…] *readmission procedure of third country nationals to Türkiye has already been suspended since 16-3-2020, on the basis of public health grounds, as commonly known, due to the covid-19 pandemic, and there*

ii) Lack of thorough examination of the applicant's allegations regarding the detention conditions.

Decision 831/2020, Administrative Court of Athens, involving the detention of a Syrian single woman for approximately 3 months in a police station; allegations were considered unproven.

Decision 476/2020, Administrative Court of Athens: involving the detention of a Syrian national for 4 months in Tavros PRDF; allegations were considered unproven.

Decision 416/2021, Administrative Court of Piraeus: involving the detention of a citizen of Pakistan third country national over 2 months in a police station; allegations were considered unproven.

Decision 521/2022, Administrative Court of Athens: involving the detention of an Afghan national for a period over 5 months in Amigdaleza PRDF, allegations were considered unproven.

Decision no 2435/2024 Administrative Court of Korinthos: the objections were rejected without any reference to the complaint of the applicant regarding the detention conditions. The applicant (Syrian asylum seeker) complained of his detention conditions in Korinthos PRDF by providing a detailed description of the detention conditions and invoking the recent 2024 CPT report which includes a precise reference to this facility. The allegations were considered unproven.

Decision no 19/2024 Administrative Court of Chania: The applicant (Turkish national) was detained for 17 days in a Police Station at the time of the issuance of the decision of the court on the objections against detention. The Court referred to the case law of the ECtHR regarding immigration detention in police stations, in which the ECtHR underlined that police stations are "*places designed to accommodate people for a short time only*" and that "*detention for between one and three months was thus considered contrary to Article 3*" and ordered the applicant to be transferred in another facility. However, the Court provided a period of 20 days to the Police to implement this decision, i.e., allowing for the detention of the applicant in a Police Station for a period exceeding the month (37 days).

Finally, it should be recalled that in the recent Judgment of the Court in the case *H.T. v Germany and Greece*, 15 October 2024, supported by GCR, the Court found a violation of Article 5(4) ECHR due the lack of effective examination of the allegations of the Applicants on detention conditions.[45]

iii) Incorrect application of national and EU law

In the following examples, the Court has erroneously, and contrary to the case law of CJEU,[46] applied the provision of national law which defines a person who has expressed the will to apply for asylum as an asylum seeker[47] and requires that this person cannot be detained on the basis of

is no evidence that this suspension will be lifted immediately, otherwise, in a period not exceeding the maximum permissible limits of the detention of the opponent, as provided for in paras. 5 and 6 of the aforementioned Article 30 of Law No. 3907/2011. Apart from that, the police Authority does not invoke that any action for the readmission of the applicant has been taken […]", for example Decision 831/2022 Administrative Court of Athens.

45 ECtHR, *H.T. v Germany and Greece, op.cit.*.

46 CJEU, Judgment of 25 June 2020, C-36/20 PPU, Ministerio Fiscal, ECLI:EU:C:2020:495, para. 92 seq; CJEU, Judgment of 30 June 2022, C-72/22 PPU, M.A., ECLI:EU:C:2022:505, para. 80; CJEU, Judgment of17 December 2020, C-808/18, Commission v Hungary (Accueil des demandeurs de protection internationale), ECLI:EU:C:2020:1029, para. 97.

47 See inter alia Article 69(8) L. 4939/2022 "*The person expressing a wish to lodge an application for international protection is an asylum seeker*" and Article 1(c) L. 4939/2022 "*'applicant of international*

the provision of L. 3907/2011/Return Directive and in view of the implementation of a return decision. Despite the lack of legal basis for detention, the domestic court rejected the objections against detention, *inter alia* Decision 1645/2023, Administrative Court of Athens; Decision 709/2023, Administrative Court of Athens; Decision 333/2023, Administrative Court of Komotini.

See *a contrario,* for example, Decision 721/2023 Administrative Court of Athens, Decision 164/2023, 292/2023, 179/2023 Administrative Court of Kavala, Decision 209/2023 Administrative Court Komotini, mentioned by the Action Report of the Greek Authorities.

iv) Incorrect application/erroneously justification of public order grounds

These examples concern cases where detention has been ordered on public order grounds on the sole fact that the person had been previously convicted by a Criminal Court for a minor offence and a suspension of the sentence had been granted. Without conducting a proper individual assessment of each case, public order grounds were based solely on the previous conviction, contrary to the case law of the CJEU and the Greek Council of State.[48] Domestic courts have failed to effectively examine this allegation. *Inter alia:*

Decision 2818/2023 Administrative Court of Athens: involving a Pakistani single woman convicted by a decision of the First Instance Criminal Court of Athens for illegal entry and use of false documents with a seven months' sentence, suspended for 3 years against which an appeal has been submitted. She has been continuously detained in view of removal on public order grounds based solely on the decision of the First Instance Criminal Court of Athens. She was recognized a refugee on a later stage.

Decision 355/2024 Administrative Court of Athens: involving a citizen of DR Congo convicted by a Decision of the First Instance Penal Court of Athens for illegal entry and use of false documents with a nine months' sentence, suspended for 3 years against which an appeal has been submitted. The individual was detained in view of removal on public order grounds based solely on the decision of the First Instance Criminal Court of Athens.

See *a contario,* for example, Decision 1518/2020, 2150/2021, 902/2022 Administrative Court of Athens, mentioned by the Action Report of the Greek Authorities.

v) Incorrect assessment of the facts and misapplication of detention grounds – known residency of asylum seekers.

These examples include cases where the persons, asylum applicants in detention, had been accepted to an official Reception Facility operating under the Ministry of Migration and Asylum but were not released following the submission of objections because the Court considered that this is not a "*known address/residency*", see, *inter alia* Decision 583/2024, Administrative Court of Kavala; Decision no 2435/2024 Administrative Court of Korinthos (mentioned above).

protection' or 'asylum seeker' or 'applicant' is a third country national or stateless person who expresses orally or in writing before any Greek authority, at the points of entry to or within the Greek territory, that he or she is seeking asylum".

48 CJEU, Judgment of 11 June 2015, C-554/13, ECLI:EU:C:2015:377, para. 50: "It follows that the fact that a third-country national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law cannot, in itself, justify a finding that that national poses a risk to public policy"; CJEU, C-601/15 PPU, para. 67 "placing or keeping an applicant in detention […] is, in view of the requirement of necessity, justified on the ground of a threat to national security or public order only if the applicant's individual conduct represents a genuine, present and sufficiently serious threat, affecting a fundamental interest of society or the internal or external security of the Member State concerned"; Greek Council of State 427/2009; 1127/2009; 2414/2008.

See *a contario,* for example, Decision 421/2023 Administrative Court of Kavala, mentioned by the Action Report of the Greek Authorities.

vi) Incorrect application of alternatives to detention

These examples include cases where the domestic courts, despite finding that the ground for detention is not valid and accepted the remedy, imposed an alternative to detention. This decision stands in contrast with CJEU case-law that states that "*an alternative measure to detention can be envisaged only if the reason that justified the detention of the person concerned was and remains valid, but that detention does not seem or no longer seems necessary or proportionate in the light of that reason*",[49] see *inter alia* Decision 954/2023 Administrative Court of Kavala.

vii) No proper consideration of vulnerability in decisions rejecting the remedy

These examples include cases where the domestic court rejected the remedy without due regard to the need to ensure that the persons belonging to vulnerable groups are not detained and that, in any event, their detention is in line with the proportionality principle and secure access to medical and psychosocial services, *inter alia*:

Decision 1521/2022 Administrative Court of Athens: involving a victim of sexual violence who received physiological services by MSF prior to his detention; the court rejected the remedy by erroneously considering that he continues to receive psychosocial services in detention, which as described in the Objections submitted was not the case.

Decision 354/2024 Administrative Court of Athens: involving single woman detained for a period of about 6 months, suffering from diabetes, having committed a suicide attempt and having been hospitalized in a psychiatric hospital while in detention; the Court rejected the remedy by finding, inter alia, that the provision of health services is easier and more effective within the organized structure of the PRDF, despite the fact that the applicant has provided documents proving that health services inside the PRDF were understaffed (there was only a nurse and no doctor).

See *a contario,* for example, Decision 260/2021 Administrative Court of Piraeus, Decision 2103/2022 Administrative Court of Athens, mentioned by the Action Report of the Greek Authorities.

35. As shown by the sample of cases presented above, which is indicative and non-exhaustive, the undersigned organisations, while recognising progress made due to the amendment of national legislation on "objections against detention", **call on the Committee to continue the assessment of the implementation of said legislation in the context of the supervision of execution of the *MD v Greece* group of cases and to require the Greek Government to take more measures to address the issues identified above**.

Athens/Brussels 4 November 2024

Greek Council for Refugees
European Council on Refugees and Exiles

[49] CJEU, Judgment of 14 May 2020, Joined Cases C-924/19 PPU and C-925/19 PPU, FMS and Others, para. 293.