

RETURN OF THIRD COUNTRY NATIONALS

SPECIAL REPORT 2019



EUROPEAN UNION
Asylum, Migration and
Integration Fund



NATIONAL PROGRAMME
ASYLUM, MIGRATION AND INTEGRATION FUND 2014-2020
Equality, Solidarity, Protection
Co-funded by Greece and the European Union



HELLENIC PARLIAMENT
EUROPEAN PROGRAMS
IMPLEMENTATION SERVICE
(EPIS)

RETURN OF THIRD COUNTRY NATIONALS

SPECIAL REPORT 2019

THE GREEK OMBUDSMAN

Contributors

This Special Report is the product of processing of material which resulted from the work - investigation of reports, interventions, on-site inspections, monitoring of return procedures - of the Independent Authority's Monitoring Returns Team under the supervision of the Greek Ombudsman, Andreas Pottakis, and the Deputy Greek Ombudsman, Georgios Nikolopoulos.

Monitoring Returns Team: Chrysi Hatzi (coordinator), Ioannis Boutselis (deputy coordinator), Konstantinos Antoniadis, Vasiliki Vasilantonopoulou, Nikolaos Vittis, Maria Voutsinou, Eleni Diafa, Vera Theofylaktou, Zoe Karamitrou, Maria Ketsitzidou, Athina Koutroumani, Olga Lysandropoulou, Maria Mavrogeni, Dimitra Mytilineou, Alexandra Moschopoulou, Ioannis Moschos, Charalampos Papadopoulos, Andriani Papadopoulos, Stergios Preventis, Angelina Sora, Michalis Tsapogas, Ekaterini Fliatoura, Sapfo Hatziralli and Dimitrios Hormovitis (senior investigators at the Ombudsman's Office)

The Team's administrative support: Georgios Kostogiannis, Alexandra Politostathi

It was published in Athens in August 2019 in the context of the Action project: "Forced Return Monitoring and Control System", which is co-funded by the National Programme of the EU Asylum, Migration and Integration Fund 2014-2020

Editing of the material: Angelina Sora - Chrysi Hatzi

Cover and artistic design: Kambili Adv

Translation: ELIT languages services

© Greek Ombudsman

17 Halkokondyli Street, 104 32 Athens

www.synigoros.gr

Contents

Introduction.....	5
1. The Competence of the Ombudsman and the European external monitoring framework on forced returns.....	11
2. Information on the scope of external monitoring	13
- external monitoring of returns in 2019 at a glance.....	
- Figures related to returns and detainees at Pre-removal Centres.....	
3. External monitoring of third-country national return/readmission operations	16
- Return operations by land.....	
- National and European return operations by air	
- Readmission operations to Turkey	
4. Forced Return Monitoring III Project (FREM III).....	26
5. The Ombudsman’s human rights initiative regarding European return operations of third-country nationals	27
6. The New European Border and Coast Guard Regulation	28
7. Law 4636/2019 on “International Protection and other provisions”	33
8. Developments in the European Commission’s proposal for a recast of the Return Directive - Formation of partial negotiating position	33
Conclusion	37

Introduction

At a national level, the Ombudsman constitutes the national mechanism for the external monitoring of third-country nationals' forced return procedures back to the countries of their origin, based on Directive 2008/115/EC (Returns Directive) and Law 3907/2011, which transposed Directive 2008/115/EC into Greek law.

In 2019, the Authority's officers participated in **33 forced return operations of third-country nationals**, namely forced-return operations to Albania carried out by land; national and joint European return operations to Georgia and Pakistan carried out by air; readmission operations from Lesvos to Turkey carried out by sea and air. We also visited **22 Pre-removal centres and police station detention cells** where third-country nationals are administratively detained before being returned.

The systematic exercise of the special external monitoring of returns and the wide range of sample checks since 2014 have allowed the Ombudsman to form a well-rounded picture of the systemic problems that forced returns present.

EU statistical data

The objective of bolstering of return of irregular immigrants to their countries of origin does not seem to be verified by the data that is available to date.

Indicative of the reduced effectiveness of the policies and procedures followed is that the largest group of nationals that are removed, both in absolute numbers and as an overall percentage, concerns nationals from the Ukraine or Albania and not from countries of origin that are associated with the 2015 outbreak of mixed migratory flows¹. The same appears to be true for Greece, where, through 2019, more than 80% of returns of third-country nationals were to Albania up to 2019².

In the 2nd quarter of 2019, Greece held 4th place for absolute numbers of asylum applicants and 3rd place in proportion to its population³.

The challenges that are faced by Greece can be viewed only as a subset of the European-wide picture of the situation. In a European landscape where the substantial disputes around the proper treatment of both asylum applicants and migrants are heating up, returns of irregular migrants are only a small piece of the European puzzle. Therefore, it is not a coincidence that an attempt was made to handle the 2015 refugee crisis using the controversial - in terms of fundamental rights - Joint EU-Turkey Statement, which does

-
1. In 2018, 28,300 Ukrainians were returned at EU level, while Albanians held 2nd place with 14,100 returns (Albanian nationals held first place until 2017). https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Enforcement_of_immigration_legislation_statistics#Returns_of_non-EU_citizens.
 2. In 2019, forced removals, returns and expulsions amounted to 82%, namely 3,999 of the overall 4,868; while this figure was only slightly higher in 2018 (83.6%) (p.14 of the 2018 returns report).
 3. https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report#Where_do_asylum_applicants_go_to.3F

not constitute EU law, but an emergency regulation, an extra-institutional migration policy that is based on political understanding between the countries and can be overturned upon lack of understanding. This statement amended the EU's provisional emergency measure on the relocation of asylum applicants to de facto rather than de jure, thereby excluding those arriving to Greek islands after 20.3.2016 from being accepted by other EU member states. The relocation programme ended in September 2017 (26.9.2017) and, following the Visegrad Group's opposition to the revision of the Dublin III Regulation, it is up to the European Commission to explore the potential for consensus on similar, more permanent measures to be taken in the future, based on the principle of solidarity between the member-states – a principle that tends to be underestimated – even though it is established as a principle of fair sharing of responsibility between the member states in the field of border checks, asylum and immigration in Article 80 of the Treaty on the Functioning of the European Union. The issue of managing irregular migrants remains first and foremost a political issue, for Europe as well as for Greece.

By exercising the external monitoring of readmissions to Turkey, the Ombudsman has ascertained that the dysfunctions of the asylum procedures and the lack of asylum data interconnectivity with police directorates, who are responsible for these operations, regularly lead to a lack of legal certainty. In Greece, a major problem continues to be the extended stays by asylum applicants, who are geographical limited to Reception and Identification Centres, in numbers that are vastly higher than the rate of readmissions to Turkey that the EU-Turkey Joint Statement of 18.03.2016 aspired to achieve.

The Ombudsman's steadfast position is that **the view that undermines the rights and guarantees in order to increase the effectiveness of returns, underestimates the dysfunctions in the returns system**, such as the expense and the time-consuming nature of the return procedures, the degree of co-operation of the countries of origin or readmission, the dysfunction of the administrative mechanism on issues of co-ordination, and capacity of the competent agencies from the point of view of staffing and a clear regulatory framework of operation, and so forth. **As confirmed by the experience of the Ombudsman – the national mechanism for external monitoring – resolution of administrative dysfunctions can play a catalytic role in the effectiveness of returns**, in contrast to the increase in administrative detention, for example, regarding which the Ombudsman has already posed the question, since 2017, as to whether weaknesses of the administrative mechanism are covered.

The **increase in the number of administrative detainees does not bring about a similar increase in returns**. The overall numbers in detention centres and police stations exceeded 4,000 in 2019; however, the 4,868 forced returns⁴, marked a significant 37% drop compared to the previous year (7,776). The general rule of detention with a view to return governs the recent Greek law as a ratio, despite the fact that the Returns Directive considers it an exceptional measure that is imposed if alternative detention measures cannot be implemented, and its implementation is subject to the principle of proportionality, which imposes *"a gradation of the measures to be taken in order to enforce the return decision"* (CJEU

4. Including deportations and removals on the basis of bilateral agreements with neighbouring countries, such as Albania.

Judgement El Dridi, C-61/11 PPU, 28.4.2011). The Ombudsman also submitted this critical observation to the competent Ministry with respect to the recent asylum legislation⁵, noting that this legislative initiative intensified and extended the measure of administrative detention and asylum applicants⁶. The Greek Ombudsman reiterated that if detention becomes the rule rather than an exception, the legal basis of proportionality of the deprivation of liberties will be tested. It is all too clear that, with respect to the return-readmission system, what is at stake is the endurance of both the EU borders and the rule of law, as one of the core and founding values of the EU.

Both the Ombudsman, as the national mechanism for the protection of rights, **and the EU Audit Committee in its recent report on asylum, relocation and returns⁷ ascertain a number of administrative dysfunctions that impede the effectiveness of returns** (*“No data is collected on the swiftness of return procedures. Moreover, there are no indicators measuring the sustainability of returns, such as the number of returned migrants who attempt to come back to the EU or the success of the AVRR reintegration⁸.... Since Frontex’s mandate was extended in 2016, there have been two EU instruments for forced return activities (AMIF NPs and Frontex return support). The two EU funding structures have existed in parallel to finance the same type of forced return activities (joint operations, national operations and scheduled commercial flights). In the context of low returns, this leads to Frontex’s potential to offer return support being unharnessed...Actual passenger numbers are often lower than planned (67 % in 2018) due to the lack of necessary travel documents, last-minute renewed asylum claims, absconders, etc. ... Many staff members must accompany returnees (escorts, monitors, observers, medical personnel, etc.). ...Return operations are also hampered by difficult cooperation with the third countries, and so forth.”*)

The effectiveness of returns has its limits as an isolated objective. Returns are an EU policy that operates under the umbrella of a coherent framework (which should exist) for the integration of legal migrants and refugees. As a separate procedure, returns are governed by a framework of rules and principles of law and guarantees of rights and procedure. It is for this reason that the addition of assessing the principle of non-refoulement - particularly for those who forfeit legality - in the final draft of the recent Greek legislation for asylum constitutes a sine qua non condition of the legislation’s compatibility with the imperatives of EU and international law.

The recent amendment to the European Regulation for the European Border Guard-Coast Guard (EU Regulation 2019/1896)⁹ reinforces the operational arm of the European Union at the borders with additional competence and staff. However, the national mechanisms

-
5. See Chapter 7. Law 4636/2019 on “International Protection and other provisions”
 6. With three main regulations: a) the provision of detention for all rather than the ability to continue detention for detainees that have lodged an asylum application; b) the provision for Closed Reception Centres; c) disconnection of the applicant’s administrative detention time from the administrative detention for return, so that the applicant is not bound by the 18-month deadline of the Returns Directive (2008/115/EU).
 7. European Court of Auditors Special Report 2019 No.24 “Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results”, see particularly, p. 47 et seq. <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=51988>
 8. IOM Assisted Voluntary Return and Reintegration Project
 9. See relevant Chapter 6. The New European Border and Coast Guard Regulation

for external monitoring of forced returns in the new Regulation continue to constitute a key source of outsourcing to external monitoring officers and Frontex's European operations. Under the previous EU Regulation 2016/1624, with respect to Frontex's conversion to the European Border Guard and Coast Guard and the reinforcement of its competence in the management of external borders, the Greek Ombudsman, as the national mechanism for the protection of rights, was called upon to collaborate with Frontex's newly-established European complaints mechanism, but also to appoint officers for an EU pool of monitors, who are called on by the European agency to participate in European return operations.

In its reports, dating back to 2016, the independent Authority has stated its serious reservations, especially with regard to the deficits in transparency and accountability of the so-called European pool of monitors – the monitoring system for European return operations, according to the European Border and Coast Guard Regulation – which in essence converts external monitoring with guarantees of transparency and independence into internal monitoring, since the European pool of monitors reports to FRONTEX. This shift in control of forced returns from national, independent and external monitoring mechanisms to FRONTEX, as the single operational and monitoring body for European returns, is even more critical in light of the implementation of the new Regulation, which aims at significantly increasing Frontex's operational scope.

That said, in October 2018, **the Ombudsman took the initiative** to hold talks with his counterparts from other member-states with similar mandates and with the Council of Europe in order to examine the possibility of reinforcing the independence of the EU pool of monitors for the external monitoring of returns by creating a mechanism, independent of Frontex, under the supervision of the Independent Authorities from various European countries. Through the **Nafplion initiative**¹⁰, which was named after the city in which we held our first meeting with Ombudsmen from other member states, as well as with National Preventive Mechanisms (NPMs) against torture and other cruel, inhuman or degrading treatment in custody, by virtue of the respective protocol of the UN Convention (OPCAT), we (Italy, Slovenia, Czech Republic, Greece and Cyprus) have joined forces with another 8 monitoring organisations from other countries to date to form a cooperation network that is supported by the Council of Europe. This collaboration aims to achieve greater transparency and independence with respect to the operation of the European pool of monitors for the external monitoring of returns, given that at present our monitors' reports end up with Frontex's operational director, without these ever being communicated to national mechanisms or their findings ever being published. The European pool uses monitors not only from national independent mechanisms, but also from NGOs and/or internal administrative bodies in member states – pursuant to the new Regulation – and Frontex employees.

The initiative of independent national authorities, given their mission and experience in defending fundamental rights, aims at forming joint findings and recommendations to be forwarded to EU bodies involved, so that there is **publicity, accountability as well as uniform and higher standards in the treatment of people during returns, as well as respect of any pending court judgement regarding provisional protection.**

10. See relevant Chapter 5. The Ombudsman's human rights initiative regarding European returns operations of third-country nationals

It is indicative with respect to the right to effective remedy concerning readmissions to Turkey (which are organised and carried out with the participation of FRONTEX officers) that, towards the end of 2019, the Hellenic Police, which retracted its standard practice and commitment to the Greek Ombudsman, started including individuals that had requested provisional court protection in the readmissions to Turkey and, in fact, they were expelled in the 5-day period during which the Administration was required to provide the file to the judge for his ruling. The Ombudsman is awaiting the Administration's written response regarding this issue, which infringes the right to judicial protection, pointing out that, in parallel with the report to the Ombudsman, a report has also been submitted to the Frontex complaints mechanism on violation of Article 47 of the EU Charter of Fundamental Rights regarding effective remedy.

What do we have before us?

- The implementation of Frontex's increased competence at the borders (with or without the request of member states, in case of disproportionate migratory pressures for returns {Article 53, para. 2 of the new Regulation})¹¹.
- The operation of the newly appointed European Commission, with responsibility for promoting the European way of life¹² being included in the migration portfolio.
- The implementation of the new Greek legislation at the borders¹³, aimed at increasing closed facilities and limiting appeal deadlines and other right-related procedures in order to increase the number of returns.
- An attempt to find consensus at the European level regarding the sharing of responsibility between member states and the finalisation of a new joint European asylum system.
- Also pending is the European Commission's proposal, dated 12.09.2018, for the recasting of the Returns Directive¹⁴. With respect to this issue, the recommendation that was made to the European Parliament's LIBE committee¹⁵ is for the rephrasing of the Returns Directive to include the guarantee for independent external monitors, who shall have the appropriate training on fundamental rights, to be present at every forced return operation. It is the first time that the monitors' independence is posed as an external-monitoring of forced-return-operations guarantee, and following-up of this proposal, which was made to the European Parliament, is expected.

Fully sensing the responsibility of the Independent Authority's constitutional mission, the Ombudsman will continue to contribute with his proposals and his network of independent counterparts in the broader scope of European developments in order to strengthen the guarantees of independence in the external monitoring system of national and European

11. Chapter 6. The New European Border and Coast Guard Regulation

12. Promoting our European way of life https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-of-life_en

13. Chapter 7 Law 4636/2019 on "International Protection and other provisions". Also, Law 4686/2020 (A 96)

14. Chapter 8. Developments on the European Commission's proposal for a recast of the Return Directive - Formation of partial negotiating position

15. Responsible for Civil Liberties, Justice and Home Affairs.

returns, and to consolidate the view of independence as an essential institutional guarantee of accountability for the substantial protection of fundamental rights and the transparency of administrative action at the borders.

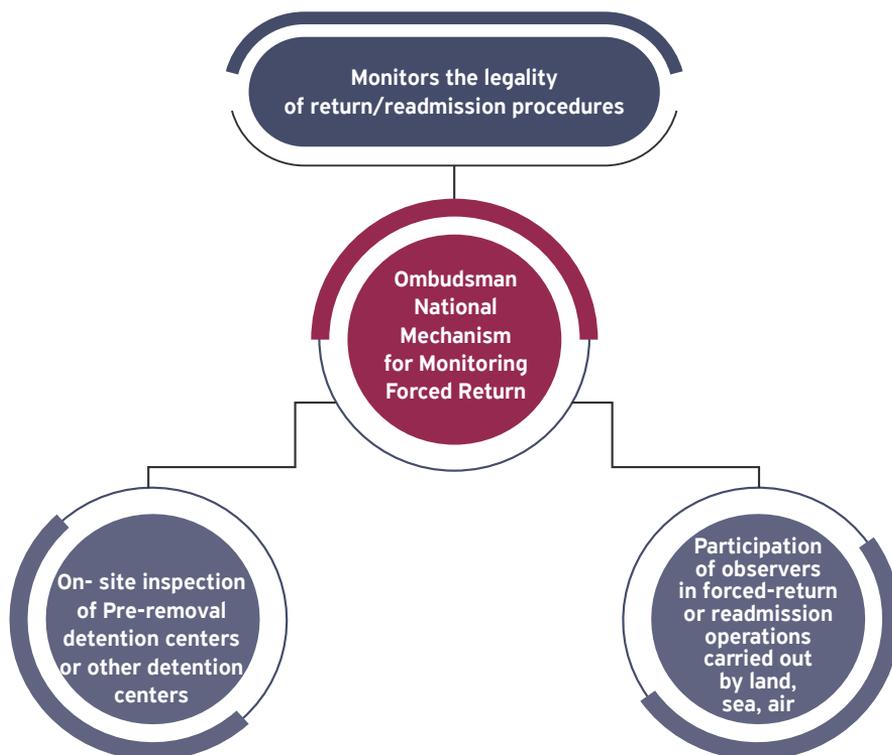
Athens, May 2020

Andreas Pottakis
The Greek Ombudsman

1. The Competence of the Ombudsman and the European external monitoring framework on forced returns

NATIONAL MECHANISM FOR MONITORING THE RETURN OF THIRD-COUNTRY NATIONALS

THE GREEK OMBUDSMAN, as a national mechanism, exercises external monitoring of the forced return operations of third-country nationals back to the countries of their origin and of readmission operations to neighbouring countries.



The Greek Ombudsman:

- Monitors the **legality** of return/readmission procedures
- Closely **monitors** the planning and execution of every phase of the operations:
 - Through on-site inspection of Pre-removal detention centres or other detention centres
 - Through reviews of official dossiers during the preparation of a Police operation
 - Through the participation of monitors in forced-return or readmission operations carried out by land, sea or air
- - Has **unlimited access** to every detention, waiting and transit space, and to documents, personal files, data

- Is **free to communicate at all times** with detainees and service personnel
- Carries out **random inspections**, the findings of which are reported **to the Administration**, which in turn is required to provide a reasoned response
- Publishes the findings of the inspections in a special report, which it submits to the Hellenic Parliament each year.
- Collaborates with the **FRONTEX** Complaints Mechanism to examine complaints/reports **-right of direct appeal-** regarding actions carried out by FRONTEX officials and officials of the member-states involved
- Does **not substitute** the judicial review carried out by the competent bodies.
- **Does not represent** the third-country national before the court or administrative authorities

GOAL OF EXTERNAL MONITORING

- Legality and transparency in return/readmission procedures
- Protection of fundamental rights of returnees

ASPECTS OF THE RETURN PROCEDURES MONITORED BY THE OMBUDSMAN

- Respect for the **person and dignity of the returnees** in terms of conditions and treatment
- **Protection of all fundamental rights, and especially the right to access to international protection** (political asylum, subsidiary protection)
- **The identification of vulnerable persons who come under special provisions for protection from removal** (unaccompanied minors, pregnant women and mothers of newborns, the elderly, victims of family violence, victims or material witnesses of criminal acts, parents of Greek minors, persons of Greek origin, asylum applicants, recognised refugees, and so forth) **or persons whose return is suspended** (based on their physical or mental state)
- The **proper and timely notification** of detainees as to the return procedure
- Provision of the necessary **medical checks, medical care or psychosocial support**
- Provision of a ‘fit to travel’ **medical certificate**
- **Completeness of the official dossier:** notification, via information bulletin, of detainees regarding their rights and available legal remedies, issuing of a return decision, issuing of a rejection of application for international protection, rejection of any legal remedies (such as, indicatively: exercise of appeal, objections, application for annulment, application for temporary injunction), detainee health card, etc.
- Respect for applications for an injunction; that is, temporary judicial protection
- Availability of **interpreting** services
- **Detention** conditions (yard time, adequate space of at least 4 m² per detainee, hygiene and sanitary conditions, natural light and fresh air, proper beds and bedding, availability of adequate and appropriate food, etc.)
- Exercising of the **right to communicate with family members and lawyers**
- Respect for the **principle of proportionality** (necessity and appropriateness) during use of **restraints (handcuffs, etc.)**

■ Appropriateness of **means of transport**

The Greek Ombudsman has special competency for carrying out the monitoring provided for by European Law in the procedures for forced return of third-country nationals to their countries of origin.

- paragraph 6, article 8 of the European Directive on Returns (2008/115/EC)
- paragraph 6, article 23 of Law 3907/2011
- Joint Ministerial Decision 4000/4/57-xi (Government Gazette B 2870/2014)

Every person that is affected by the return/readmission procedure may submit a complaint in writing **to the Greek Ombudsman**.

2. Information on the scope of external monitoring

External monitoring of returns in 2019 at a glance

The continued funding of the action “Monitoring and Control System of Forced Returns” by the EU Asylum, Migration and Integration Fund (AMIF) 2014-2020 until 29/02/2020 allowed the Independent Authority, in collaboration with the European Programmes Implementation Service of the Hellenic Parliament, to continue the implementation of its actions by conducting visits, controls and on-site inspections, with relevant publications and informative material as well as supportive actions.

In 2019, the Greek Ombudsman visited:

- **5 Pre-removal Detention Centres with third-country nationals** in the areas of Amygdaleza, Corinth, Kos, Moria and Xanthi. At the Pre-removal Detention Centre at Moria, 11 on-site inspections were conducted within the year.
- **the detention cells at the Aliens Directorate of Thessaloniki** (3 on-site inspections) and **3 Departments of Migration Management** (Thermi, Aghios Athanasios, Kordelio) as well as other police station detention cells where third-country nationals are held for return,

and participated, together with its officers, as monitors, in the following removal operations:

- **7 National Return Operations (NROs) (flights)** to Pakistan and to Georgia,
- **2 Joint European Return Operations (JROs) (flights)** to Pakistan and to Georgia, which were coordinated by FRONTEX,
- **16 readmissions (14 by sea and 2 by air)** to Turkey and
- **8 removal operations by land** from Thessaloniki to the Albanian borders.

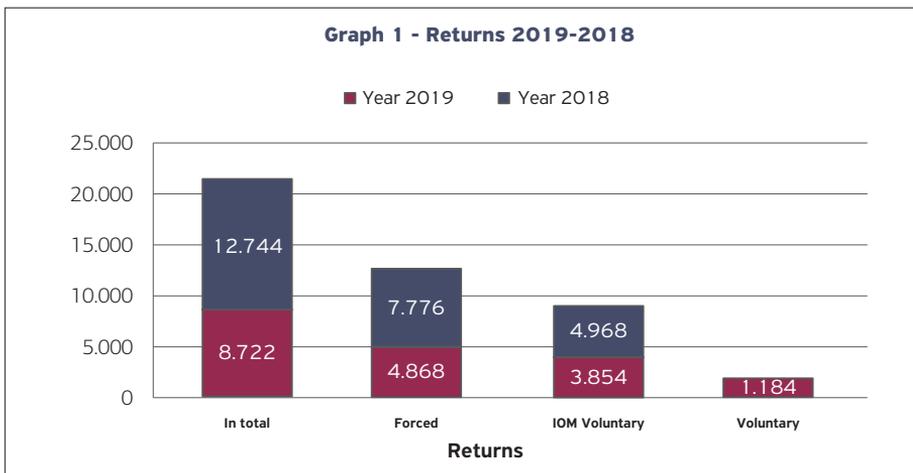
The members of the Returns Team, **16 monitors (senior investigators at the Greek Ombudsman’s Office) and 5 substitute members**, continued their work in 2019 on issues related to the return of third-country nationals, focusing on the implementation and observance of the Authority’s plan for implementing the external monitoring system on returns, any

improvements or revisions and the planning and implementation of individual actions which fall under this system, aimed at its effective organisation and implementation pursuant to the relevant rules and principles of international, EU and national law.

Priority was given to the operation of the external monitoring system on returns, particularly through the conduct of on-site inspections at pre-removal centres and other detention areas with third-country nationals, and with the participation of monitors in forced removal operations. The visits and working meetings with the competent administrative officers, the preparation of special, annual or other reports and findings in relation to the external monitoring system on returns, in collaboration with other national, EU and international bodies that were involved in the returns of third-country nationals to their countries of origin, as well as return, readmission and removal procedures, in general, constituted the team's methodological tools and means for carrying out its work.

Figures related to returns and detainees at Pre-removal Centres

The forced returns that were carried out in 2019 once again present **a significant drop compared to the previous year**. Data transmitted by the Hellenic Police show **4,868** forced returns, including returns and removals based on bilateral agreements with neighbouring countries (approximately 82% were Albanian), compared to 7,776 for the same time period in the previous year, i.e., a 37% decrease. Furthermore, with respect to voluntary departures (returns in the context of the Returns Directive based on Article 22 of Law 3907/2011, further to a return decision with a deadline for voluntary departure, holders of certificates of art.78a, withdrawal of the asylum application) **1,184** returns were carried out whereas in the context of the voluntary returns programme¹⁶, which is implemented by the International Organisation for Migration (IOM), **3,854** returns were carried out in the year,



16. International Organisation for Migration (IOM), Assisted Voluntary Return and Reintegration (AVRR) <https://www.iom.int/assisted-voluntary-return-and-reintegration>

The Greek Ombudsman has his reservations as to whether the above voluntary returns actually constitute the genuine and free will of the returnee, since in effect, the returnee is not in a position to refuse or withdraw his consent without this being to his own detriment. Pursuant to the judgement of the case of *N.A. v. Finland*, which was published on 14.11.2019¹⁷, the European Court of Human Rights (ECHR) found that the right to life and freedom from torture, inhumane and degrading treatment were violated due to non-granting of asylum to the Iraqi national and the issuing of a decision for his expulsion to Iraq, his country of origin. The expulsion decision by the Finnish authorities eventually forced the applicant to agree to return to Iraq, where he was shot and killed shortly after his return (violation of Articles 2 and 3 of the European Convention on Human Rights (ECHR)). According to the Court, the applicant had to choose either to remain in the country as a detainee until the procedure for his removal was finalised, or agree to depart from the country voluntarily and to run the risk of being subjected to torture upon his return. Under these circumstances, the Court considered that the applicant did not have a genuinely free choice between these options. Therefore, his return to Iraq must be considered a forced return under the responsibility of the EU member state (see *mutatis mutandis* M.S. v. Belgium).

With respect to the detention of third-country nationals for return, the Hellenic Police informed the Ombudsman that as of 1.11.2019 **3,048** third-country nationals were being detained at 8 Pre-removal Centres¹⁸ throughout the country, a number that has increased compared to the same time period in 2018 (2,598 third-country nationals). The Greek Ombudsman has on many occasions noted that the Pre-removal Centres fall short of European standards¹⁹, according to Article 16 of the Returns Directive, while any improvements are doubtful, depending on fluctuations in migrant flows.

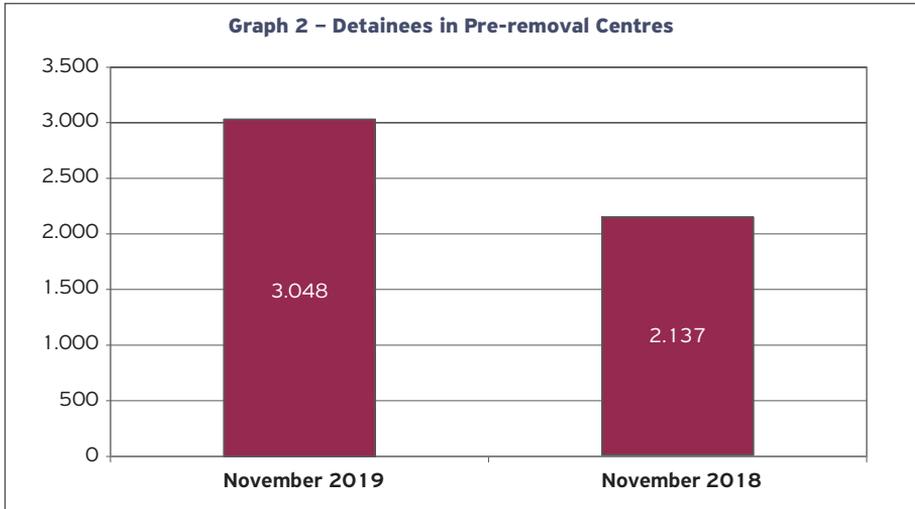
If the **1,337** detainees held at police stations on 1.11.2019 are taken into consideration, compared to 890 in 2018, we observe a significant increase in administrative detention, which for the first time in recent years exceeds 4,000 detainees in total (specifically 4,385 on 1.11.2019). The Ombudsman's steadfast position is the unsuitability of the police station holding cells for detention of a number of days, let alone many months, with respect to humane living conditions as well as the unlawful joint detention of administrative detainees and ordinary prisoners, which for practical reasons cannot be detained separately²⁰.

17. ECtHR: Judgement of the case of *N.A. v. Finland*, Expulsion of Iraqi national - Violation of Articles 2 and 3 of the Convention. Available at <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22%3A%22GRANDCHAMBER%22%2C%22CHAMBER%22%7D>

18. Pursuant to JMD No. 8038/23/22pz (Government Gazette 5906/B/31-12-2018) the operation of the Pre-removal Detention Centres for third-country nationals was extended until 31.12.2022 for those that had been established with JMD nos. 8038/23/22lc on 20.01.2015 (B 118) and 8038/23/22xe on 28.01.2017 (B 322).

19. National Preventive Mechanism Against Torture and Ill-treatment - OPCAT Annual Special Report 2018, p. 44 available at <https://www.synigoros.gr/?i=human-rights.el.files.614106>

20. Pursuant to Article 16, paragraph 1 of the Directive on Returns "*Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.*"



3. External monitoring of third-country national return/readmission operations

- Return operations by land
- National and European return operations by air
- Readmission operations to Turkey

External monitoring of third-country national return/readmission operations

Access to international protection and other fundamental rights of irregular migrants are ensured by the external monitoring in the presence of the Greek Ombudsman's officers at return operations of third-country nationals which are carried out by land, sea and air and at readmissions from Lesvos to Turkey. In their majority, the operations that were carried out in 2019 were carried out with **professionalism** on the part of the responsible parties, who complied with the procedures that are set out in the relevant legislation. Among the positive points recorded was the **limitation of restraints** during the operations and the implementation of case-by-case judgement on whether the restraints were necessary or not. A fixed and crucial deficiency is still the **lack of a medical examination, medical records and fit-to-travel certifications**²¹, which carries the risk of violating the returnees'

²¹ See relevant:

- Section 1.1.2 Medical condition and medical records in "Common Guidelines on security provisions for joint removals by air" (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004D0573>)
- Guideline 16, Fitness for travel and medical examination in **Twenty Guidelines of the Committee of Ministers of the Council of Europe on Forced Return** (<https://www.coe.int/t/dg3/>)

fundamental rights.

Summary of findings in 2019:

Main problems in

Pre-removal detention centres and police detention cells:

1. The absence or lack of medical and nursing staff, psychologists, social workers
2. The absence of interpreting services
3. The inability to occupy/entertain the detainees
4. The unsuitability of the living areas and the inadequate cleaning or waste collection
5. Lack of sanitary items and bed linen/clothing

Return operations by land:

1. The unsuitability of the holding areas (capacity, cleanliness, etc.)
2. The lack of case-by-case judgement regarding the use of restraints (use of Velcro-type handcuffs)
3. The unsuitability of the old transfer vehicles.

National (NRO) and European (JRO) return operations by air

1. The lack of timely notification (at least 24 hours prior)
2. The lack of an interpreter during the operation
3. The omission of providing all returnees with a fit-to-fly certificate and a medical examination
4. The omission, on many occasions, of offering the returnees a meal (or an appropriate meal) prior to the flight
5. The unsuitability of the transfer vehicles
6. Non-exclusion from the return procedure of third-country nationals for whom a ruling is pending or the appointment for applying for a residence permit for exceptional reasons is pending.
7. The non-provision of appropriate clothing/shoes

Readmission operations to Turkey

1. Incomplete service file

migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf),

- Section 7 of the **2017 Return Handbook** (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017H2338>)
- Article 8, Fitness to travel and medical examination **in the Code of Conduct for Return Operations and Return Interventions Coordinated or Organized by Frontex, 2018** (https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf)

2. The issue of vulnerability (which leads to exemption from the readmission operation)
3. The issue of a pending court ruling
4. The lack of timely notification (at least 24 hours prior)
5. The lack of an interpreter before and during the operation
6. Lack of medical records and omission of a fit-to-travel certificate
7. The lack of case-by-case judgement regarding the use of restraints (use of Velcro-type handcuffs) until boarding
8. The non-provision of breakfast or a meal
9. The non-provision of female escorts
10. The administration of sedatives
11. The non-provision of special needs support (e.g. wheel chair)

Summary of findings:

Pre-removal detention centres and police detention cells:

Visits to Pre-removal Centres

In addition to the external monitoring of readmissions, the Ombudsman's senior investigators, members of the Monitoring Returns Team, conducted on-site inspections at the Moria Pre-removal Centre almost on a monthly basis in 2019. Generally speaking, the detention conditions were found to be adequate with respect to the space, with recent improvements, possibly due to the decreased number of detainees, but they still presented problems with access to medical services and occupying of the detainees.

The Moria Pre-removal Detention Centre is divided into two wings. Third-country nationals who are to be returned, characterised as "low-profile refugees" are detained in wing A, whereas third-country nationals wishing to return to their country of origin via the IOM Assisted Voluntary Return and Reintegration programme²² are detained in wing B. Still problematic, in the view of the Greek Ombudsman, is detention under the category of "low-profile refugees" (i.e., detainees originating from countries for which only 25% or fewer applicants are granted asylum), which appears to refer to general nationality criteria and is denied a case-by-case judgement.

Indicatively for 2019, in January there was a small number of administrative detainees for return, all of whom were adult males (22 detainees in 3 rooms in wing A); 105 detainees were recorded in July and 50 in September, whereas during the on-site inspections, wing B remained closed or accommodated very few people for return via IOM. The average detention time was 90 days; however, during the on-site inspection on 31/01/2019, a detainee was found to be in his 7th month of detention; on 25/04/2019 a detainee was found to have been detained for 113 days, and on 17/07/2019 a detainee was found to have been detained for 176 days.

Overall, the operation of the Pre-removal Detention Centre is deemed to be satisfactory,

22 International Organisation for Migration (IOM), Assisted Voluntary Return and Reintegration (AVRR) <https://www.iom.int/assisted-voluntary-return-and-reintegration>

given that the spaces are kept clean (a facility is now available for washing bed linen) and the meals were satisfactory. The most significant problems that remain include **understaffing** (1 administrative employee) and the absence of interpreting services and medical and nursing staff. For instance, during the on-site inspection on 18/07/2019, there was 1 psychologist who was provided by AEMY SA, while general medical services were provided by a paediatrician in the morning and a urologist in the afternoon. The only route available for meeting the Pre-removal Detention Centre detainees' medical needs is their referral to the General Hospital of Mytilene, where daily visits are scheduled, albeit with organisational and administrative problems.

The lack of **interpreting services** is also a key problem because it makes communication between the police officers at the Pre-removal Detention Centre and the detainees difficult regarding health issues and the serving of decisions, as well as effective updating of detainees. The lack of an emergency exit at the Pre-removal Detention Centre is also a problem. The only access is via the Moria Reception and Identification Center (RIC). Communication with the outside world takes place mainly on the weekend, when the police give the detainees their mobile phones. Visiting hours are between 6 and 8 in the evening. There is no recreation, given that the Container that is intended as a common recreational area is empty, without any furniture, dirty with visible damage, while the courtyard is also empty.

Similar living conditions and administrative practices were also observed at the remaining Pre-removal Detention Centres where on-site inspections were conducted. Both the employees and the detainees face problems of inadequate services on a daily basis due to the understaffing and the difficult living conditions.

Indicatively, during the on-site inspection on 18/07/2019 at the **Amygdaleza Pre-removal Detention Centre** there were 526 detainees, mainly from Pakistan and Bangladesh, and 47 minors were found. The Authority has repeatedly pointed out that the protective detention of a minor in police detention cells and Pre-removal Detention Centres infringes the rights of the child. The average detention time was stated to be 1-2 months; however, 5 people were found to have been detained for more than 6 months. Observed at the Amygdaleza facilities were problems with repairs, maintenance of containers and cleanliness, with the main and immediate problem being the non-collection of waste and failure to disinfect spaces, with the risk of infectious diseases spreading among the detainees and the employees. The staffing of the Agency via AEMY SA was deemed adequate, with the provision of interpreting services, medical and nursing staff and psychosocial support.

During the on-site inspection at the **Xanthi Pre-removal Detention Centre** on 30/07/2019, a total of 141 third-country nationals of various nationalities were being detained, with an average detention period of 52 days. Medical services were provided with the collaboration of AEMY SA. (1 doctor, 5 nurses, 1 psychologist, 1 social worker and 1 translator for Arabic only). A significant problem that was found was the lack of an interpreter, which makes communication with patients particularly difficult. Most problems concerned the building facilities and the detention conditions in those spaces. The building was in a state of complete disrepair: Unpainted walls with cracks, plumbing damage, intense and constant leaking of water from the ceiling, destroyed furniture (beds, cabinets, etc.). The lack of cleanliness was obvious, given that it appears that the space has not been cleaned in a very long time. There was a strong odour. In particular, with reference to the deficient cleanliness and the delay in concluding the relevant contract, the Greek Ombudsman's team was informed that the problems that have

arisen due to the delay of the relevant tender/call for concluding a cleaning contract affect the operation of that centre and the living conditions of both the detainees and the employees.

At the **Corinth Pre-removal Detention Centre**, the increase of detainees to 1,000 in recent months (1,092 during the on-site inspection, 19.12.2019) brought about delays in the recording of asylum applications by the Asylum Unit, rendering it imperative for AEMY SA to recruit more doctors and extend the contracts of existing staff (1 doctor, 4 nurses, 2 social workers, 2 psychologists, 2 interpreters and 1 administrative employee) beyond the two-month period from the end of the year. There is also a gap in the renewal of the 2 cleaning staff, which obviously does not suffice for the needs of the Centre. Other than the obvious problem with the cleaning of the rooms, detainees need to be provided with blankets and items of personal hygiene, beyond the donations made to the Centre by individuals.

With respect to the on-site inspections at the **holding cells of the Aliens Directorate of Menemeni**, the Greek Ombudsman once again points out the problem of the facility's unsuitability for long-term detention, since detention in these holding cells ranged from 20 days to 3 months for administrative detainees as well as minors (in separate cells). The problem that needs to be addressed first and foremost concerns the cleanliness of the spaces and personal hygiene, as well as the damage to the building facilities, the beds and telephones. Shortages of bed linen, clothing and footwear are constantly recorded. There are no provisions for yard time, activities or recreation. In short, it is a completely unsuitable building facility with a problematic operating framework that does not allow for or monitor the adequate provision of basic needs (doctor, nurse, psychologist, interpreter and so forth).

Similar conditions can be found at the **Departments of Migration Management at Aghios Athanasios, Thermi and Kordelio**, with problems including long-term detention, cleanliness and capacity issues, and the lack of yard time. During our on-site inspection at Thermi, for instance, we found that two cells that had a capacity of 5 and 7 persons, not only had full capacity, but were also divided due to communicable diseases (tuberculosis). As a result, those who were suffering were cramped in one cell and the rest slept on mattresses on the ground. The facilities are in good condition; there is a card-operated payphone, hot water with a boiler and air-conditioning; however, the area is cleaned by the detainees themselves. At Aghios Athanasios, it was ascertained that, on the day of our on-site inspection, the office of the deputy director's office was being used to temporarily accommodate mothers and children. As a rule, the stay at Kordelio is only for a few hours and the space is used as a transit area before detainees are transferred to other detention facilities.

Overall, during its systematic visits and on-site inspections to the Pre-removal Detention Centres, the Greek Ombudsman **re-identified the main deficiencies in material-technical infrastructure and staffing**. The absence of medical and nursing staff, which makes even the receipt of necessary medication difficult, and the absence of interpreters and administrative employees for carrying out administrative procedures remain fixed shortcomings. With respect to infrastructure, the problems concerning the rooms' equipment (air conditioning, mattresses, bed linen, water supply, sanitary facilities) as well as the absence of recreational areas and card-operated payphones continue to exist.

Return operations by land:

With respect to the return operations by land that were conducted in 2019 from Thessaloniki,

the external monitoring included the pre-removal monitoring stage, with audit of the returnees' files and an on-site inspection of the detention areas where the returnees are detained, and the monitoring stage of the removal operation from Greece (Thessaloniki) to Albania (Krystallopigi). The issues that arise in operations by land concern the preparation and conduct of these operations. Generally speaking, the operations are carried out without problems and are completed smoothly. Among the positive aspects of the preparation stage is that there are now provisions for **subsistence costs** (daily compensation) to be paid by the detention supervisors prior to the detainees' departure and the provision of breakfast. It was observed in all the operations that the head of operations demonstrated **professionalism** and effectively organised the boarding, alighting and delivery of the third-country nationals, with respect for human dignity. However, it is observed that the return is carried out under "handover" conditions, since the returnees are restrained, without case-by-case discretion as to whether restraints are necessary.

Previous reports by the Ombudsman have pointed out the unsuitability of the **transfer vehicles**, given that they are the same old vehicles without air-conditioning, a toilet or adequate room for the returnees. Further to the Ombudsman's interventions, the Hellenic Police has scheduled the procedure for replacing the vehicles; however, until recently this procedure had not been finalised, jeopardising the returnees' safe return and the escorts/police officers' safe transfer. A mini-van was used in some cases, given the small number of returnees.

The on-site inspections at the detention centres (Aliens Directorate of Menemeni, Departments of Migration Management at Aghios Athanasios, Krystallopigi, Departments of Migration Management at Kordelio, see above), as departure points for the returns operations, revealed the **unsuitability of the spaces**, with basic deficiencies in space and yard access and the main problem of cleanliness, which is a permanent issue given the failure to renew contacts in a timely manner, which is ascertained at all detention centres.

National (NRO) and European (JRO) return operations by air

The monitors participated in 7 National Return Operations to Georgia and Pakistan and 2 Joint Return Operations to Pakistan under Frontex's coordination. The members of the Returns Team have received the necessary training for stages of the operations, i.e., **the pre-departure phase, the in-flight phase, the arrival phase and the return flight phase & debriefing**, so that they have the necessary tools and professionalism that is required for such operations.

During the first phase of the operations, i.e. the pre-departure check, the Team members arrived at the competent Hellenic Police station in order to conduct an audit of the returnees' files and their completeness. During this audit, they ascertained **shortfalls in the administrative procedure**, such the serving of the return decision without the provision of an interpreter, or the non-timely dispatch of the necessary travel document from the Embassy or failure to provide a rights information bulletin to the detainees. At the same time, added to the shortfalls of the agency files are the issues of pending rulings and respect for the right of judicial protection (see below, Readmission operations).

One of the most important findings which the Ombudsman has highlighted in its previous reports and observations is the inclusion of third-country nationals, who have an **appointment to lodge supporting documentation in order to receive a residence permit for exceptional reasons** from the competent Directorate of Aliens and Immigration of the

Decentralised Administration in the place of residence and, although they hold the necessary documentary evidence, they are not protected from the removal procedure. This relates to third-country nationals who wish to lodge a request for a residence permit provided they have written proof that they have lived in the country for at least seven (7) consecutive years or are parents of a minor born in the country, pursuant to the provisions of Article 19 of Law 4251/2014, as replaced by para. 4 of Article 31 of Law 4540/2018. In these cases, during the application for setting an appointment, a pre-audit is performed by the competent Agency and the necessary document is then issued, which, due to the work load, usually sets an appointment for a year later. Then, if the statutory requirements are met, the applicants are issued with an application receipt which states that the issuance of a return decision is impeded pursuant to Article 21 of Law 3907/2011 for the time that is required for the application to be examined.

Therefore, the Ombudsman observes that the provision for regulation and administrative procedure through which the purpose of establishing the above provision would be served is pending, and this is none other than the legalisation on the third-country national's residency or their return to legality, provided they have strong ties with the country (employment, previous residence permits, family and living ties). **The inclusion of these third-country nationals in the return operations carries the risk of violating the provisions of the Immigration Code and the Returns Directive, pursuant to which the family life of the returnee is taken into account for its implementation.** For example, during the National Returns Operation on 02/04/2019, 4 individuals who were to be returned were found to have an appointment to lodge supporting documents for a residence permit for exceptional reasons within the coming months of the current year; however, they had not been excluded from the operation.

During the following phases of the operations, the monitors confirmed **the good collaboration between the Hellenic Police officers and the members of the Monitoring Returns Team, mainly the escort leader and the backup team leader**, which facilitated the smooth conduct of the operations. In all the operations, the accompanying police officers showed professionalism (with the exception of a few cases of inappropriate behaviour and non-compliance with the rules), by accompanying the third-country nationals and showing them respect and trying, on most occasions, to respond to arising needs. With respect to the altercations that broke out, the accompanying police officers managed to defuse them with professionalism. These incidents occurred mainly because the returnees had not been notified in a timely manner.

The Greek Ombudsman has on many occasions noted the need for timely notification, at least 24 hours prior, pursuant to the common standards followed by monitoring mechanisms, in order for returnees to communicate with family or a lawyer and to raise any objections in the event that their asylum application is pending. The altercations and resistance that occur are due not only to the lack of timely notification, **but also to the communication difficulties resulting from the absence of an interpreter and the failure to provide interpreting services in a language that is understood by the returnees.**

The arrival and assembly of the returnees and the responsible parties who participated in the return operations was followed by a **briefing** by the escort leader, who provided all the participants with information and instructions about the procedure (identification check, recording of valuables, baggage check, pat-down) and the assignment of an escort for each

returnee. On many occasions, the Ombudsman observed that provision had been made for female escorts, whereas on other occasions, the fact that some escorts failed to show resulted in a ratio of 1 returnee to 1 escort. On many occasions, the bodily search was done in full view, thereby insulting the dignity of the returnees. However, it was significant to see the **absence of restraints (throughout the entire operation)**, a fact that the Ombudsman has noted as a positive response to its previous comments on **the need to abide by the principle of proportionality regarding restraints**, following a case-by-case decision on their necessity. However, in some cases of transfer from the Police Stations to the Attica Returns Department, the third-country nationals were restrained and transferred their belongings with restrained hands or, in another case (operation on 09/01/2019), restraints were used throughout the entire duration of the transfer of a returnee who was ultimately excluded from the operation due to serious health problems (psychiatric patient).

In most cases, the **transfer** to the airport was carried out smoothly, sometimes with new transfer vehicles or passenger buses, which fully corresponded to dignified transfer conditions. Isolated cases of inappropriate behaviour were noted on the part of the escorts. It was particularly noted **that a meal was not provided to** the returnees, especially when transfers were made from police stations to the Department at Petrou Ralli Ave. or from the Amygdaleza Pre-removal Detention Centre. Up until the time of the flight, a meal must be provided for as part of the procedure for all the returnees, regardless of their detention site prior to the operation.

Pursuant to the stipulated return operation procedures, a doctor should be present throughout the entire duration, the returnees must undergo a medical examination in order for the state of their health to be determined or for medications to be administered, and all returnees must hold a fit-to-fly certificate. In fact, the presence of a doctor was observed in all the operations; however, a thorough medical examination and a medical record check prior to departure had not been scheduled. This practice led to the exception of a returnee, a Pakistani national, who declared that he had tuberculosis during the operation that was carried out on 09/01/2019. The doctor decided that, since a medical examination had not been conducted in order to verify the third-country national's condition, he was not fit for removal and was excluded from the mission. Similarly, **the completion of the fit-to-fly certificate only for returnees that have a medical problem, and after the operation has started**, resulted in a returnee from Georgia being taken to the airport in restraints during the National Return Operation (NRO) that was carried out on 10/12/2019 and deemed unfit to travel at the last minute before boarding (after having gone through the body scanner), because he was examined by a doctor at that time and it was ascertained that he suffered from serious psychiatric problems.

During the **in-flight phase** and the **arrival phase**, the Authority's monitors did not identify significant organisational issues. In the majority of operations, the escorts showed professionalism and the escort and guarding protocol was observed. The meals provided during the operations (usually 2, due to the long trip) were of satisfactory quantity and quality, although they were deemed unsatisfactory on some flights (return operations on 13/03/2019 and 17/09/2019). During the return flight phase & debriefing, organisation problems were not noted following the disembarkation of the returnees; however, for the completeness of the operation, debriefing must always be carried out (it was noted that this was not possible in some operations) in the presence of all responsible parties (head, escort leaders, doctor,

escorts, the Ombudsman's monitors) in order to assess the operation and to pinpoint any problems.

Readmission operations to Turkey

Under the EU-Turkey Statement of 18.03.2016, pre-removal and external monitoring of returns by sea and air are conducted for the readmission operations to Turkey. The operations were characterised by the professionalism and good collaboration of the bodies (FRONTEX & the Hellenic Police) with the Independent Authority; however, shortfalls which have been highlighted in previous reports were observed, with the main issues being: **i) deficiencies in the completeness of the agency file; ii) the questionable issue of vulnerability (which leads to exclusion from the readmission operation); and iii) the issue of a pending court ruling.**

With respect to the completeness of the agency file, it was found that the registry system (IT-system of the Hellenic Police for the registration process of TCNs), which needs improvement, presents deficiencies resulting in the documents not being uploaded and/or non-access to these on behalf of the Hellenic Police creates doubts as to the completion of the asylum procedure and the potential to return the applicant. In many instances, returnees were excluded from the operation at the last minute due to new or subsequent asylum applications, annulment applications, non-serving of return decision, etc., resulting in the complete cancellation of the operation. This was the case in the readmission operation that was to be carried out by sea on 03/07/2019, when authorities ascertained that there was only one returnee.

Another administrative procedure failure, which violates the returnees' rights, arose from a report that was submitted by the Ombudsman and concerns the **arrest and detention of third-country nationals by the Aliens Directorate, where they had gone in order to collect a document for their voluntary repatriation via the International Organisation for Migration (IOM)**. Despite the fact that they had voluntarily decided to return to their country of origin, their residential address was known, they had already picked up their ticket, and one of them had a serious health problem, they were detained at the Pre-removal Detention Centre due to the fact that a previous readmission decision was held in the computer system and there was no notification of the fact that they had been included in the IOM programme.

At the same time, the Ombudsman has pointed out that the inclusion in readmission operations of third-country nationals who present new substantial reasons to qualify for international protection and/or to be excluded from the border procedure **due to vulnerability** creates doubts regarding legal certainty and the completion of the operations themselves. In fact, in many cases (operations on 06/03/2019, 02/04/2019 and 02/05/2019), the doctor's last-minute doubts about the returnees' vulnerability led to their exclusion from the readmission operation.

Regarding **respect for ongoing judicial procedures and for the constitutional right to judicial protection**, further to urgent complaints by the attorneys-at-law of third-country nationals who were included in the readmission operation by sea from Lesbos to Turkey on 15.11.2019 although they had requested judicial protection, the Greek Ombudsman pointed out that this is a problematic practice that overturns the commitment of the Hellenic Police, which until then had abstained from removal measures in similar situations, in order for the

judge's pending ruling for provisional protection not be without subject-matter²³.

In his letter, the Ombudsman requested that the Hellenic Police re-examine the removal of persons with pending requests for provisional judicial protection with respect to a pending court ruling, the constitutional right of judicial protection (Article 20 of the Constitution) and the right to an effective remedy of Article 47 of the EU Charter of Fundamental Rights. The Hellenic Police changed its practice at the beginning of 2020 and now excludes anyone who has lodged a request for annulment and suspension and a request for a provisional order with the competent Court (Administrative Court of First Instance).

With respect to the **organisational issues**, deficiencies were observed in the provision of meals and clothing/footwear prior to the operation and the non-provision of both female and male escorts, resulting in an incident where a female returnee expressed a strong objection and this was not handled by a female escort.

The non-notification of returnees regarding the readmission operation (24 hours prior) together with the lack of an interpreter on many occasions results in tensions during the operation and difficulties in its completion (inability to communicate with family, reactions and other incidents, etc.) For example, in the case of the readmission operation to Turkey on 22/08/2019 by sea, although there were 3 interpreters (for French, Arabic and Farsi), during the pat-down and the operation during a meeting with a third-country national detainee who was scheduled for readmission and who belonged to a vulnerable group (mental illness), it was ascertained that he had not been informed of his return in a language that he understood, resulting in his being shaken up due to having filed remedial measures before the competent administrative courts (note: he was ultimately excluded from the readmission operation the next day, following the filing of an annulment application and suspension application with the competent administrative court).

The use of restraints (Velcro) falls under the discretion of the escorts and, as the Greek Ombudsman has repeatedly pointed out, it is necessary for the use of restraints to be decided on a case-by-case basis. In some operations, restraints were not used at all, whereas in others, restraints were used until boarding and during the trip; however, without being considered on a case-by-case basis. The Ombudsman notes that the readmission operation should be carried out based on the returns standards and procedures, and not under "detainee transfer" conditions (as in land operations).

Nevertheless, in one case **the use of an injectable sedative** was used as a restraint by an escort doctor, without the consent of the returnee. This practice not only infringes the right to the integrity of the person, as provided by the EU Charter of Fundamental Rights, but is also contrary to the legal requirements for administering sedatives to returnees.

Following the above incident, which took place during the readmission from Lesbos to Turkey on 24.1.2019 by air, the Ombudsman pointed out that the involuntary administration of medication is contrary to medical ethics, to the rule of the patient's consent, to the Council of Europe's guidelines on handling returnees, and to the relevant decision by the Council of the European Union (2004/573/EC). The agency's opinion that the administration of sedatives is at the doctor's discretion does not stand, given that the responsibility of every return operation lies in the hands of the police escort leader, and any inappropriate use of restraints is

23. See Return of Third-Country Nationals, Special Report 2017, p. 20

prohibited. In this case, the returnee, who had previously objected to the operation, no longer objected. The Ombudsman believes that it is imperative that the relevant legal framework of the European Union, which prohibits the forced administration of sedatives **unless it is deemed necessary for the safety of the flight or the protection of the life of the returnee**, be followed to the letter.

Lastly, **the omission of a fit-to-travel certificate** or medical history of the returnees gives rise to deficiencies in the medical examination when this is performed by the doctor at hand, as well as to doubts, in some cases, about the possible presence of vulnerabilities. For instance, the monitoring identified individuals with walking difficulties for whom a wheelchair had not been provided.

4. Forced Return Monitoring III Project (FREM III)

The Greek Ombudsman, as an active member of the network and Forced Return Monitoring III Project (FREM III), participated in the steering group meeting of project partners, who are responsible for the external monitoring in other EU member states, under the organisation of the International Centre for Migration Policy Development (ICMPD), which is responsible for the implementation of the European Commission-funded project.

The scope of the meetings was to discuss specific return issues, such as the operational management of the EU pool of monitors (monthly challenges, choice of monitors, participation of monitors in operations, creation of the monitors' communication and update platform), problems in the monitors' report submission procedures and tools, assessment of the operation of the EU pool of monitors, good practices and problems in the use of restraints. The objective was to collect proposals, experiences, and good practices in order to improve the mechanism for external monitoring of returns and the EU pool of monitors, and to plan actions to support national mechanisms of forced return monitoring.

The purpose of the project is to contribute in the creation of a functional EU Returns System, pursuant to the Returns Directive (2008/115/EC), which protects the human rights of returnees, based on a common European approach and on harmonised procedures. The project supports the European Border and Coast Guard Agency (FRONTEX) in the smooth operation of the forced-returns pool of monitors, pursuant to the European Border and Coast Guard Regulation²⁴, which provides for an effective forced-returns monitoring system.

In the context of this project, **five investigators of the Greek Ombudsman were trained as returns monitors and two investigators of the Greek Ombudsman as trainers** throughout 2019. Trained experts of the Greek Ombudsman participated in the training seminars as trainers of monitors and operation leaders, with presentations and interventions, covering the theoretical part (fundamental rights that are in jeopardy during forced-return operations), as well as the practical parts of the forced-return operation for the monitor.

24. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

The Greek Ombudsman's participation in the FReM III project confirms and reinforces the close collaboration between the Ombudsman and its EU counterparts, at the same time highlighting the importance of monitors from independent institutions, the Ombudsman's counterparts, during forced-return operations.

5. The Ombudsman's human rights initiative regarding European return operations of third-country nationals

With respect to its action as an external monitoring mechanism and with the experience of its experts' participation in joint European operations in which Greece did not participate, **the Ombudsman recorded serious weaknesses in the external auditing system at the European level, especially with regard to ensuring the auditor's transparency, accountability and essential independence from the auditee.** In particular, the Ombudsman considers that FRONTEX's operation of **an EU pool of monitors**, pursuant to the previous and newer version of the European Border and Coast Guard Regulation (**EU Regulation 2019/1896**), essentially converts the external monitoring into an internal monitoring. The reason for this is that although the members of the EU pool of monitors are proposed by the respective national mechanisms, they still report to FRONTEX.

Considering that the absence of essential external control constitutes a serious institutional deficit at the European level, the Ombudsman took the initiative to create an independent mechanism that will undertake this function in joint European forced-return operations in a uniform and effective manner. This initiative was given the name **"Nafplion Initiative,"** after the city in which the initial preparatory meetings were held between the EU member-state counterparts, with the support of the Council of Europe. These meetings resulted in the creation, at a special meeting in Rome, of a mechanism for the external monitoring of European return operations of third-country nationals.

The objective of the new independent mechanism is to protect fundamental rights and to ensure the transparency and legality of specific operations and the accountability of involved parties.

The Ombudsman will wait for the implementation of Regulation 2019/1896 before drawing conclusions; however, in its assessment, at least at institutional level, the new arrangements "internalise" the auditing mechanism even more, thereby complicating the participation in operations by representative authorities, like the Greek Ombudsman, which ought to ensure their independence from the auditee at every stage of the monitoring process.

The working group meeting that was held in Rome between 7-9.10.2019 with counterpart national external monitoring mechanisms for returns from EU member states decided to establish a European external monitoring mechanism and agreed on the elaboration and wording of uniform standards and procedures, with emphasis on transparency and accountability. It was also extremely important for the exchange of know-how between the Greek Ombudsman and its counterparts in other member states that have assumed responsibility for the external monitoring of returns at a national level.

In summary, **transparency, accountability and uniform, highest possible standards for**

the treatment of individuals during returns are the three priorities of the Nafplion Initiative. Pursuant to the experience acquired by the Greek Ombudsman's monitors, who participate in the EU pool of monitors, the interventions and recommendations of the Nafplion team concern issues such as proportionality in restraint with handcuffs, a medical examination for everyone, for the purpose of receiving a fit-to-travel certificate, protection of minors and family cohesion, substantial training of police escorts, access to the agency file with the necessary data on the returnee's administrative background (serving of decisions, prior notification, finalisation of asylum and residence application procedures, medical history, etc.) and respect for any pending court judgement on interim protection.

6. The New European Border and Coast Guard Regulation

On 13 November 2019, the Council approved the new European Border and Coast Guard Regulation²⁵, which constitutes an important element of the EU's overall approach to migration management and border protection. The European Border and Coast Guard Agency (FRONTEX) is reinforced with regard to its staff and technical equipment. Moreover, its mandate is extended to support the activities of member states, especially with regard to border control, returns and collaboration with third countries. The new regulation integrates the European Border Surveillance system (EUROSUR) into the framework of the European Border and Coast Guard with the aim of improving its operation.

Specifically, **the new EU Regulation 2019/1896** provides for the creation of a permanent body of border guards, coast guards and experts on returns, which will be gradually developed with a view to 10,000 staff by 2027. With respect to returns, it will permit FRONTEX to provide member states with technical and operational support for return operations. The agency shall provide support at the request of the interested Member State or on its own initiative and with the agreement of the Member State concerned. The support shall include all the aspects of return, from the preparation to the return activities and the activities after the return and after arrival, while particular emphasis will be placed on reinforcing the collaboration with third countries by providing the agency with a wide range of tasks and by allowing the conduct of joint operations with non-neighbouring countries.

Pursuant to Article 51 of the new Regulation, the Agency shall form a pool of forced-return monitors from competent bodies of the Member States who carry out forced-return monitoring activities; however, Member States shall be responsible for contributing to the pool by nominating forced-return monitors corresponding to the defined profile. At the same time, the Agency shall contribute fundamental rights monitors²⁶, who shall be appointed by the fundamental rights officer as forced-return monitors to be made available to that pool²⁷.

25. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

26. See relevant Article 110 of EU Regulation 2019/1896

27. It is anticipated that by 5 December 2020 at least 40 fundamental rights monitors will be recruited by the Agency

Under the previous EU Regulation 2016/1624, the Greek Ombudsman was invited, as the national rights protection mechanism, to collaborate with the FRONTEX Reporting and Complaints Mechanism, which remains in place in the recent amendment of the European Border and Coast Guard Regulation²⁸. The Regulation provides for an independent Complaints Mechanism, which shall operate under the supervision of the FRONTEX fundamental rights officer, and the Ombudsman maintains its reservations regarding the Mechanism's lack of independence, given that the complaint results are evaluated by FRONTEX itself. This Mechanism can be accessed by any person who is directly affected by the actions of FRONTEX bodies during its operations or by involved Member-State bodies, which are requested to investigate the complaints and report the relevant results to the European body within six months, while the complaint is also communicated to the local national rights protection mechanism, the Greek Ombudsman in this case²⁹.

With respect to this increased collaboration and further to the communication of complaints³⁰ in previous years, in 2019, FRONTEX communicated a complaint to the Ombudsman regarding a national from the Democratic Republic of the Congo during a readmission operation from Lesbos to Turkey in November 2019, which was carried out by sea. The Ombudsman had already addressed a letter to the Hellenic Police regarding this case and concerning respect of a pending court ruling in view of the constitutional right to judicial protection and the right to an effective remedy of Article 47 of the EU Charter of Fundamental Rights.

28. See relevant paragraph 4 Article 111 of EU Regulation 2019/1896

29. The development of the three complaints that FRONTEX communicated to the Ombudsman in 2017 in the context of the European Regulation is analysed in its previous reports, see. <https://www.synigoros.gr/?i=human-rights.el.files.525805> returns report 2017 p.21 et seq., and 2018 p.10 <https://www.synigoros.gr/?i=human-rights.el.files.584638>

30. See relevant The Greek Ombudsman, Returns Report 2018, p. 10

7. Return procedures and the new legislative framework (Law 4636/2019 on “International Protection and other provisions”)

As noted in the Ombudsman’s previous reports, the exceedance of the time of administrative detention and the extended use of questionable administrative practices (e.g., administrative detention for public order or security or extension of detention) are developing into a basic rule of the returns procedures.

Moreover, the general rule of detention with a view to return governs the recent Greek law as a ratio (Law 4636/2019 on International Protection and other provisions³¹), despite the fact that the Returns Directive considers it an exceptional measure that is imposed if alternative detention measures cannot be implemented, and its implementation is subject to the principle of proportionality. Specifically, in the comments that it sent regarding the Ministry of Civil Protection’s draft law on International Protection³², the Greek Ombudsman pointed out **that Article 46**, which incorporates Articles 8 and 9 of Directive 2013/33/EU, **intensifies and extends the measure of administrative detention of asylum applicants**, with three main regulations:

- a) **the provision of detention for all rather than the continuation of detention for detainees who have lodged an asylum application;**
- b) **the provision for Closed Reception Centres;**
- c) **the disassociation of the applicant’s administrative detention time from the administrative detention for return, so that the applicant is not bound by the 18-month limit of the Returns Directive (2008/115/EU).**

With respect to the extension of detention (Article 46), it must be said that, firstly, Directive 2013/33/EU permits the detention not as a rule, but as an exception, of those who were not already detainees when they lodged an asylum application. The basic principle of the Directive, in Article 8, is that **a person is not held in detention for the sole reason that he or she is an applicant for international protection, and is held in detention when it proves necessary and on the basis of an individual assessment of each case, if other, less coercive alternative measures cannot be applied effectively**. The provisions of Article 46 establish the potential for detention of applicants for international protection in the abovementioned exceptional circumstances, which was not possible in the previous legal framework³³, while at the same time, those who have lodged an application while being held in detention can continue to be detained. Detention continuation, while the third-country national

31 Law No. 4636, Issue A 169/O1.11.2019

32 Comments on the Ministry of Civil Protection’s draft law on International Protection <https://www.synigoros.gr/resources/30102019-paratiriseis.pdf>

33 Article 46 of Law 4375/2016 “A third-country national or stateless person who lodges an application for international protection while held in detention based on the relevant provisions of Laws 3386/2005 (A 212) and 3907/2011 (A 7), as in force, remains in detention under exceptional circumstances, provided this is necessary, further to an individual assessment of each case, if other less coercive alternative measures cannot be applied, as those states in Article 22, para. 3 of Law 3907/2011,

is already detained, is also provided for in the framework of the **return procedure, case c, para. 3, Article 46** “when it can be substantiated on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision, provided that it is likely that the execution of this decision can be implemented³⁴”.

The Greek Ombudsman points out that, during implementation of these provisions and the return procedures, the spirit of the Directive, which provides for **detention under exceptional circumstances**, provided this is **necessary**, further to an **individual assessment** of each case, if other less coercive **alternative measures** cannot be applied, must be fully complied with and that this implementation will take place only if one of the restrictive reasons applies. The general rule of detention in light of the return procedures could be explored together with the implementation of alternative detention measures, as provided for in Article 8 of the Directive (para. 4) “Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.” Besides, as proposed by the European Commission and the Council of Europe³⁵, effective alternatives to detention have manifold benefits compared to the use of detention. These can include: respect for human rights; individual compliance with procedures; reduced costs as compared to detention; decreased pressures on national detention systems; greater engagement and cooperation in resolving migration status; and increased well-being of the persons concerned.

The setting up of closed reception centres gives rise to a new procedure that concerns returns issues. Specifically, pursuant to the provisions of Article 36, para. 7, case b., during “stage five of the ‘further referral and transfer’ procedure” other than the referral to competent agencies (namely the Hellenic Police) for the return, readmission and expulsion of third-country nationals without legal residence, the Director of the Reception Centre also refers those whose asylum application was rejected at first instance, while they were at the Reception and Identification Centre, to the same procedures. Contrary to the pre-existing law that referred those who were rejected at second degree to return, readmission and expulsion procedures³⁶, detention by the Hellenic Police with a view to return is introduced for those who have filed an appeal against an asylum application that was rejected at first instance.

With respect to the **extended detention time**, which is provided for in para. 5 of Article 46, it must be emphasised that detention, imposed under exceptional circumstances as an onerous measure, is subject to the principle of proportionality, i.e., necessity and duration. The conversion of the detention time limits from (up to) 45 days (and additionally 45 days or 3 months depending on the reasons for the detention³⁷) to initially 50 days, with potential

34 This provision was provided in the submitted draft law and for those who were not already held in detention; however, it was omitted following the comments that were sent by the Greek Ombudsman.

35 See relevant report on the International Conference “Effective Alternatives to the Detention of Migrants” organised jointly by the Council of Europe, the European Commission and the European Migration Network, 04/04/2019, Strasbourg
<https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/detention>

36 Article 14 of Law 4375/2016

37 See para. 4 Article 46 of Law 4375/2016 “b. The detention of an international protection applicant for reasons that fall under cases a, b, and c is initially imposed for a period of up to 45 days and is

for renewal, pursuant to the new provisions and to the fact that the times based on detention decision with a view to expulsion or return are not taken into account, the possibility of an **18-month detention** (as the maximum detention limit as provided for in Article 30 of Law 3907/2011) **plus an additional 18 months of detention, i.e. 36 months in total**, remains on the table, which is unacceptable for the rule of law (see also the provisional detention (court) limits of the Constitution)³⁸.

The Greek Ombudsman reiterated that **if detention becomes the rule rather than an exception, the legal basis of proportionality of the deprivation of liberties will be tested** (article 5 of the Constitution, Article 5 of the ECHR). It is all too clear that, with respect to the return - readmission system, not only is the tolerance of the EU borders at stake, but so is **the tolerance of rule of law, as one of the core and founding values of the EU**.

A significant change in the new legislative framework for the return procedures is that **the issuance of the return decision is being transferred from the Hellenic Police to the Asylum Service**³⁹. With the provisions of para. 8, Article 82, it is now laid down that the decision which rejects the international protection application can order the applicant's return, whereas if another return decision is already in effect, it is considered that this decision is incorporated under the rejection decision that orders the return, and the Hellenic Police is still responsible for imposing either the detention or the alternative detention measures, pursuant to the provisions of Articles 30 and 22 of Law 3907/2011⁴⁰.

Lastly, **in spite of the Ombudsman's continuous recommendations for removals to be placed on hold when rulings by secondary courts are pending, the new legislative framework does not provide for the suspension of the removal measures on a case-by-case basis**. In particular, during the consultation on the new law, the Authority proposed that a clarification be made in Article 115, para. 6 that the procedure that is pending before a judge result in the suspension of removal measures which fall in line with respecting the pending court judgement and the constitutional right of judicial protection, as emphasised in previous reports⁴¹.

extended for another 45 days if the recommendation of paragraph 3.c is not revoked. The detention of an international protection applicant for reasons that fall under cases d and e of paragraph 2 shall not exceed three (3) months".

38 The Explanatory Report clarifies that this will aid in bringing delayed asylum applications to an end and invokes the CJEU Katzoev judgment. However, it is made clear in this decision that under no circumstances is the circumvention of the 18-month limit of Directive 2008/115/EC (article 15, para. 5, 6, CJEU Katzoev C-457/09, Bashir Mohammed Ali Mahdi C-146/14) lawful. Explanatory Report of the Draft Law on International Protection and other provisions, p. 19 of <https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/p-diethnProstasias.pdf>

39 And the Appeals Authority pursuant to para. 10 of Article 95

40 See also the recent amendment to Art. 30 Law 3907/11 with Art. 51 Law 4686/2020, under which detention becomes a rule, an amendment regarding which the Ombudsman, in its recent comments, expressed its opinion that it loses sight of the Returns Directive. See <https://www.synigoros.gr/?i=kdet.el.news.655261>

41 Return of Third-Country Nationals, Special Report 2018, p. 7, 26 and 2017, p. 20

8. Developments in the European Commission's proposal for a recast of the Return Directive⁴²- Formation of partial negotiating position for the return directive by the Justice and Home Affairs (JHA) Council aimed at speeding up return procedures, preventing absconding and secondary movements, and increasing the rate of returns.

The European Commission proposal for a recasting of the 2008 Return Directive⁴³ includes the following key provisions: a) the risk of absconding, as grounds for detention, for which a list of criteria is introduced; b) the obligation to cooperate, as an express requirement; c) the mandatory issuance of a return decision in connection with the termination of legal stay; d) the introduction of a shorter deadline for voluntary return; e) entry bans issued during border checks at the exit; f) return management, via the exchange of information and being linked to a central system established by FRONTEX; g) remedies and appeals: introduction of a 5-day time-limit for lodging appeals against return decisions issued in cases where the return decision is the consequence of a decision rejecting an application for asylum that became final and the rule of judicial appeal only at level 1; h) administrative detention: introduction of a minimum detention period of 3 months for third-country nationals who pose a threat to public order or national security; i) border procedure: introduction of specific, simplified procedures with significant exceptions with respect to the detention deadlines, etc⁴⁴.

Overall, the Commission proposal shows that the **returns system is becoming stricter, but without maintaining a balance with respect to the safeguarding of fundamental rights** (decrease of time limits, shorter suspensive effect for refugees, etc.) and the exceptional procedures at borders appear to formalise the “emergency situation”, four years after the 2015 refugee crisis, by generalising the potential for a 3-month detention, with the exception becoming the rule. The Commission’s Directive proposal encountered the criticism of the EU Organisation for Fundamental Rights⁴⁵, the ECRE and other bodies, but also that the European Parliamentary Research Service, which prepared a detailed impact study, and the relevant recommendation to the competent LIBE Committee of the European Parliament.

The proposal is subject to the ordinary legislative procedure (co-decision) of the European Parliament and the Council of the European Union and is currently at the first stage of the First

42. The Greek Ombudsman, *Special report 2018 Return Of Third-Country Nationals*, p. 27-33

43. 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 <https://eur-lex.europa.eu/legal-content/EL/TXT/?uri=CELEX%3A32008L0115>

44. See As it specified by the Greek Ombudsman in its 2018 Special Report on the Return of Third-Country Nationals https://www.synigoros.gr/resources/docs/greek_final.pdf

45. Opinion of the European Union Agency for Fundamental Rights (FRA), The recast Return Directive and its fundamental rights implications https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-recast-return-directive-01-2019_en.pdf

Reading⁴⁶. The opinion of the **European Economic and Social Committee**⁴⁷, which was adopted on 23/01/2019, has been issued, pursuant to which, inter alia, it states the following: *“The proposal should also be evaluated in terms of the viability of its objectives, especially if it is to remain compatible with human rights. Seeking the blanket removal of all illegally staying third-country nationals on EU territory, as the sole means of restoring them to a state of legality, is simply impossible to implement, in the light of experience over recent years and on account of the disproportionate human, economic and other costs that it would produce.”*

And elsewhere

“The proclaimed intention of the recast – to make return procedures more efficient, speed up processing and link this directly to the decision to refuse asylum and the decision to terminate a legal stay – is, of course, welcome; Member States have the right to return irregular migrants, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement. However, regarding the stated aims of the proposed changes, the EESC is concerned by what the effect of these will be. The EESC wonders about the efficiency of these changes and is fearful that the only result of the changes could be to make the situation tougher and more punitive. The basic principle underlying the priority of voluntary returns, enshrined back in the original Directive 2008/115/EC, should not be discarded and replaced only with repressive policies.”

whereas particular reference is made to alternative proposals and best practices:

“The EESC would like to mention the best practices applied in some EU countries to prevent irregular migrants from falling into a chronically irregular situation. Such best practices include the arraigo and Duldung arrangements in Spain and Germany respectively, which allow some foreign nationals who have been living on their territory under irregular conditions to obtain – on extraordinary grounds – regular status provided they meet certain requirements; this is granted on an individual and selective basis.”

At the same time, the European Parliament’s **LIBE Committee** asked the European Parliamentary Research Service (EPRS) to provide a targeted substitute impact assessment of the proposed recast Return Directive.

The assessment⁴⁸ considers the main expected impacts of the key provisions of the Commission proposal, **focusing on the social, human rights and financial impacts**, as compared to the current situation (status quo).

The assessment concludes, inter alia, that:

1. there is no clear evidence supporting the Commission’s claim that its proposal would lead to more effective returns of irregular migrants;
2. the Commission’s proposal complies with the principle of subsidiarity, but some provisions raise proportionality concerns;

46. To date, the Council has conducted 7 discussions <https://eur-lex.europa.eu/legal-content/EL/HIS/?uri=COM%3A2018%3A634%3AFIN>

47. <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/common-standards-and-procedures-member-states-returning-illegally-staying-third-country-nationals-recast>

48. The proposed Return Directive (recast) Substitute impact assessment, February 2019, [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU\(2019\)631727_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU(2019)631727_EN.pdf)

3. the Commission's proposal would have an impact on several social and human rights of irregular migrants, including likely breaches of fundamental rights;
4. the Commission's proposal would generate substantial costs for Member States and the EU; and
5. the Commission's proposal raises questions of coherence with other EU legislation, especially legislation that is pending.

The proposal of the LIBE rapporteur was not adopted by the Parliament prior to the 2019 elections, whereas to date, following the appointment of a new rapporteur, the Committee's report has not been completed. It is worth noting that the proposal⁴⁹ of the rapporteur⁵⁰ to the European Parliament's LIBE Committee should **guarantee the presence, at every forced return operation, of independent external monitors** who have the appropriate fundamental rights training.

On 23/05/2019, the Presidency of the Council of the European Union forwarded a memo to the Council on the subject "*Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) - Partial general approach*"⁵¹, as the Presidency's final compromise proposal bringing about the changes made to the Commission proposal.

During its meeting on 6-7 June 2019⁵² the Council formed a partial negotiating position on the Directive. This position covers all aspects of the proposed revision apart from the provisions on the border procedure for returns. This is because the scope of this procedure is defined by the Asylum Procedure Regulation, which is currently under discussion⁵³. The aim of the proposed new rules is to speed up return procedures, prevent absconding and secondary movements, and increase the rate of returns. To achieve this, the partial negotiating position includes:

- clearer and faster procedures for issuing return decisions and for lodging appeals, including an obligation to issue a return decision at the same time or shortly after a decision ending a legal stay
- an obligation for persons subject to a return procedure to cooperate and the possibility of taking action in case of non-cooperation
- more efficient rules on voluntary returns, including an obligation to set up dedicated programmes in member states a common, non-exhaustive, list of objective criteria to determine the risk of absconding
- a common, non-exhaustive, list of objective criteria to determine the risk of absconding
- the possibility of detaining a third country national if they pose a risk to public order, public security or national security

49. http://www.europarl.europa.eu/doceo/document/LIBE-PR-632950_EN.pdf?redirect

50. Following the 2019 European Parliament elections, the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament appointed Ms Tineke Strik as the new rapporteur.

51. <https://data.consilium.europa.eu/doc/document/ST-9620-2019-INIT/el/pdf>

52. <https://www.consilium.europa.eu/el/press/press-releases/2019/06/07/migration-policy-council-agrees-partial-negotiating-position-on-return-directive/>

53. [http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-reform-of-the-common-european-asylum-system-\(ceas\)/07-2019](http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-reform-of-the-common-european-asylum-system-(ceas)/07-2019)

- as a last resort, and when a series of guarantees are provided, the possibility of returning a third country national to any safe third country

The Council⁵⁴ agreed on the necessity to define the objective criteria to determine the existence of a risk of absconding for the purpose of detaining returnees, on imposing an obligation to cooperate on third country nationals subject to return procedures, on leaving freedom to Member States to shorten the period for voluntary departure and on extending the maximum period of detention of returnees.

However, the **Council** proposed to **delete some of the criteria** to define the risk of absconding suggested by the Commission (lack of documentation, residence or financial resources and ongoing criminal investigations and proceedings) and to modify the definition of the remaining criteria. It also proposed to **impose further obligations** on returnees, including an obligation to provide a reliable address, to appear in person before the competent authorities if required and to provide biometric data to verify identity. It proposed **specific safeguards for children and families**, allowing Member States to provide for shorter periods of detention for children and to grant children and families a period of voluntary departure even when there is a risk of absconding or when they pose a risk to public order, public security or national security.

Finally, the Council proposed to **extend the maximum duration of entry-bans** from five to ten years; to widen the possible countries of destination of returnees; several measures aiming to strengthen the coordination between Member States for the purpose of issuing and implementing return decisions; and various amendments providing for judicial (and not just administrative) review of return decisions.

The Greek Ombudsman continues to monitor the developments in this issue and express its views and observations, as it has done in previous Returns Reports. The overall picture that emerges from the above proposals and developments, particularly after the formation of the partial negotiating position, forms a stricter returns system framework, placing the safeguarding of fundamental rights, such as the rights of substantive appeal, protection of health, childhood, family cohesion, etc., at stake. With respect to this revised framework, in combination with the revised Common European Asylum System, now more than ever, the guarantee of the presence of independent external monitors at forced return operations is deemed imperative in order to ensure respect for fundamental rights.

⁵⁴ See relevant Proposal for a Recast of the Directive on common standards and procedures in Member States for returning illegally staying third-country nationals. <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-recast-of-the-return-directive/07-2019>

Conclusion

The Greek Ombudsman continued its active role as an external monitoring mechanism in the return/readmission procedures in 2019, by conducting spot checks at all the phases that follow the issuance of the return decision. The Authority's experts, through the on-site inspections and the investigations that they carried out at detention centres and as monitors during land, sea and air operations in cooperation with national, European and international bodies, highlighted the existing return procedure problems and identified the developments that have taken place in the field.

The reduced number of returnees, the increased number of administrative detainees, the lack of health and interpreting services, the unsuitable living conditions, the organisational - administrative dysfunctions, as well as the high-level professionalism and the better organisation of the operations are some of the key findings of the on-site inspections. In the framework of collaboration with the competent authorities, the Ombudsman had already recorded the Administration's positive response to its previous comments (e.g., compliance with the principle of proportionality in the restraining of returnees) and it **awaits the implementation of the remaining comments and proposals**, which concern the safeguarding of the returnees' fundamental rights and the smooth operation of the return system.

The European policies and the legislative developments with the new European Border and Coast Guard Regulation, the recasting of the Returns Directive and the discussions on the Common European Asylum System, and the corresponding national policies and legislative changes with the new law on international protection **comprise a new returns/readmissions operating framework, in which the Greek Ombudsman, as the institutional guarantor of fundamental rights, will continue to actively participate with the aim of ensuring the legality and transparency of the administrative action.** The presence of independent and experienced monitors at return operations reinforces and aids in the smooth conduct of these operations, thereby ensuring that fundamental rights, the principle of non-refoulement, the proportional use of restraints and the dignity of the returnee are safeguarded throughout the procedure through adherence to the general principles of EU, international and national law.

