

UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece

20 October 2010

ATHENS - The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, issued the following statement:

“I would like to thank the Government of Greece for inviting me to conduct a fact-finding mission from 10 to 20 October 2010, and for the full cooperation of senior public officials during the visit. I am grateful to all my interlocutors, including State officials, representatives of civil society, detainees, irregular migrants and victims of ill-treatment for their willingness to share their experiences with me. A list of places visited is annexed to this statement.

I also would like to acknowledge the frankness of the discussions the representatives of the Government had with me during our preliminary meetings. Thanks to the cooperation of senior public officials from the Hellenic Police and the Judicial Services, and their compliance with my terms of reference, I was in a position to carry out unannounced visits to various places of detention of my choice and to conduct confidential interviews with selected detainees.

I am aware of the particularly overwhelming situation faced by law enforcement officials in Greece. The prisons are severely overcrowded, some of them having to host up to three times more prisoners than their capacity. The pre-trial rate is also very high. Pre-trial detainees are not separated from those convicted.

Furthermore, the country is confronted with a major increase of irregular migrants coming, in particular, from the Turkish border in the north. Hundreds of migrants enter the country irregularly every day, an unprecedented number that puts the border guard stations and migration detention centres in a situation of crisis. This is further worsened by the difficulties linked to the current economic crisis the country is facing.

Although I am encouraged by the legislative developments the Government will start implementing in the coming months, Greece should not carry the burden of receiving the vast majority of all irregular migrants entering the European Union in 2010. This is a truly European problem which needs a joint European solution, and not only a reinforcement of the European borders with FRONTEX. The European Union should fundamentally rethink its asylum and migration policy and replace the Dublin II Regulation by a fairer system of burden sharing which also takes into account legitimate concerns of asylum seekers and irregular migrants.

Torture and ill-treatment

Police Stations

I received numerous consistent allegations of beatings by police officers, and many of the detainees said they have been physically abused by police either upon arrest or later in the police station. However, there is only little forensic evidence and I only came across a few cases of ill-treatment amounting to torture in the sense of the definition of the Convention Against Torture

(CAT). This lack of evidence may be explained by the non-functioning system of police investigation and complaint mechanism. Another element seems to be the high degree of fear of reprisals I witnessed from detainees in the hands of the police, which, combined with the dysfunctional judicial system, may perpetuate a system of impunity for police violence.

The lack of an effective complaints mechanism, independent investigation and monitoring create an environment of powerlessness for victims of physical abuse. As per the statistics sent by Greece to the UN Committee on the Elimination of Racial Discrimination in 2008, in the period from 2003 to 2007, only one officer was dismissed out of 238 investigations of police officers for alleged ill-treatment. A totally independent police complaint body with full investigative power is therefore needed, as it has already been highlighted by the Greek National Commission for Human Rights. I welcome the announcement at the end of 2009 of the creation of a Bureau to examine police misconduct, but I express again the importance for this mechanism to work completely independently from the police, and be under a different Ministry than the Ministry of Citizens Protection.

Judicial Prisons

I did not find complaints by prisoners of beatings by the officers. Despite the difficult working conditions of guards in Greek prisons, most have a professional attitude towards detainees.

Conditions of detention

Police stations

The conditions in police custody throughout Greece vary but remain poor overall. During my visits, I witnessed that detainees were locked up in overcrowded, filthy cells, with very bad ventilation and lighting. Detainees were never allowed to open air space despite the fact that the police may hold foreigners in administrative detention for up to 6 months. Access to medical care was also very limited.

At the Criminal Investigation Departments (CID) of Omonia, Agiou Panteleimonos and Akropolis police station in Athens, I found more than 40 foreigners held in irregular and apparently unofficial detention areas. Although I was told that there is a strict distinction between the detainees held in CID or in police custody, in practice it seems not to be properly defined. Most of the detainees I interviewed were actually kept under both authorities consecutively. In principle, police detention facilities appear to operate as migration detention facilities, used for administrative detention, for a period of up to six months, which is not in line with their normal function.

In CID custody, the conditions were particularly appalling. Detainees were dependent on police officers to allow them out to use the toilet and were unable to shower. They were often forced to sleep for up to two weeks on benches or on the floor. In Agiou Panteleimonos, the cell was dark and suffocating.

Such conditions of detention clearly amount to inhuman and degrading treatment, in violation of Articles 7 and 10 of the International Covenant on Civil and Political Rights.

Judicial Prisons

In all prisons visited I witnessed a situation of severe overcrowding. At the moment there are around 12,100 prisoners for a maximum capacity of 9,100 detainees in Greek prisons. Of the total number detained 6,899 (57%) of all prisoners are foreigners. Moreover, there is no separation between pre-trial and convicted detainees. However, in Komotini and Kos Prison, the willingness and the commitment of their directors to raise funds, create partnerships with private firms, and utilize the technical skills of the prisoners to make the best of the situation was impressive.

The situation in Korydallos Prison in Athens is however much worse. The prisoners were extremely agitated and showed a very high level of frustration, both in the male and the female facilities. The blocks were overcrowded, and the sanitary conditions were bad with some mattresses hiding hundreds of cockroaches and bugs. I am concerned that detainees have to buy almost everything and are not provided with enough food and sanitary products. I met detainees who had been in pre-trial detention for up to 18 months and they, as well as many others, expressed a strong feeling of arbitrariness. The pre-trial rate is very high, with a national average of 41%. There was also a lack of meaningful opportunities for education, work and recreation. In the lesbian, gay and transgender section, detainees have not been allowed access to the outside yard for two years now, and are thus kept inside filthy cells and a corridor at all times in unacceptable conditions.

Psychiatric and medical institutions

The situation in terms of health care provided to detainees raises substantial concerns. Generally, an appropriate health care system for detainees is lacking, and the quality of the health care provided is not in conformity with European and international standards. In the majority of situations, I observed shortages of health care staff (in quantitative and qualitative terms), of modern medical diagnostic tools and equipment, of adequate health care facilities and of therapeutic drugs adapted to the variety of health problems usually seen in the detainees population. I must, however, stress the positive impression I received from psychiatric departments, in particular the fact that involuntary patients were not kept apart in isolation areas.

Migrants

Detention of migrants

In 2008, some 50 % of all arrests of irregular migrants in the EU took place in Greece. This number has increased to 75 % in 2009 and almost 90 % in 2010 leading to a national crisis within the Greek detention system (migration detention facilities, police and border guard stations, prisons). Migrants may be detained for entering the country illegally as well as for suspicion of committing a criminal offence. In many cases, the prosecutors stop the criminal proceedings or the courts pronounce a suspended sentence. However, the responsible police authorities systematically keep migrants in administrative detention awaiting deportation. In absence of a regular or automatic judicial review it is in practice extremely difficult for migrants to challenge their detention. A migrant may be 'temporarily detained' awaiting deportation for up to six months, and under specific circumstances even 18 months. Irregular migrants who

cannot be deported (e.g. from Afghanistan, Somalia, Pakistan) are usually released within several days with an order to leave the country within 30 days. Irregular migrants that in principle can be deported to their country of origin often have to wait up to several months in police custody. I have been confronted with a great feeling of injustice among the detainees regarding the length of their detention according to their national origin. Most migrants have not understood this differentiation and experienced it as discrimination.

Asylum seekers also appear to be generally detained until their asylum procedure has been concluded which constitutes a violation of Article 5 of the European Convention on Human Rights. Although most migrants and refugees wish to travel on to other EU States, most of them are stuck (for legal or factual reasons) after their release in Greece. The absence of any meaningful social care leads to the marginalization of aliens and to incidents of racism or xenophobia.

I have experienced that administratively detained migrants in Greece are often not informed on the grounds and length of their detention. This creates a feeling of insecurity and helplessness aggravating their anxiety of being detained in a foreign surrounding. Migrant detainees often face difficulties in accessing a lawyer and/or an interpreter. Those administratively detained have no access to free legal aid at all.

The detention of irregular migrants may take place in border guard stations at the points of entry to the country as well as in police stations. Despite their clear unsuitability for long-term detention, migrants are often detained in such facilities for up to six months. Due to the vast number of detainees there are several specially designated migration detention centers in Greece. The centers in the Evros region, in particular Fylakio, were overcrowded and thus incapable of receiving additional transferees. Furthermore, the centres currently operate outside the legal framework since the joint decision of the four Ministers concerned has not yet been issued. The responsibility for their operation is divided among the prefecture and the police. While the latter are only supposed to take care of the arrest, processing and guarding of detainees, the centers in Fylakio and Venna as well as the border guard stations in Soufli and Feres were in fact entirely run by police authorities. A contrary example was the detention center in Mersinidi (Chios) that is run by the prefecture, which provided detainees with more adequate conditions of living.

The Greek system of migration control relies on systematic detention for irregular migrants. Alternatives to detention are hardly considered. Thus, migrants end up in prolonged detention for no other reason than not possessing valid papers. This situation is even experienced as unfair by the responsible police authorities. The systematic detention of migrants leads to an extreme overcrowding of facilities unsuitable for such great numbers of detainees and their long-term detention. In all border guard stations, ordinary police stations and special migration detention centers I have visited with the exception of the one in Chios, I witnessed that migrants were locked up in completely overcrowded, filthy and humid cells, often without natural light, and with unhygienic and inadequate bathrooms with only cold water and were not or inadequately provided with sanitary products such as soap or toilet paper. In some cases detainees had even no direct access to toilets, or their access was restricted because of cell shifts (e.g. the border guard detention area in Venizelos, where there were two toilets outside of the cells for 88 detainees). As a result of the poor conditions many people had respiratory, skin as well as psychological problems. Furthermore, in the Evros region, where the temperature has already started to drop, detainees were often left without any blankets or warm clothes.

In general, detainees were hardly ever taken out of their cells to exercise and spend time in the fresh air, with the exception of Feres border guard station and Chios migration detention center. Overcrowding is one of the main problems leading to such poor conditions of detention, where any meaningful separation of men, women, and children, of migrants and smugglers, or of persons of different ethnic or religious background was impossible. Overcrowding was most severe in Feres, where on the day of my visit 123 detainees were held, far above the maximum capacity of 28.

Police officers are generally not trained to maintain adequate living conditions for migrants. The respective officers in charge in the facilities visited have repeatedly stated that they do not have the resources or the qualifications to adequately perform the assigned tasks and expressed the wish for civil authorities to take over the care for irregular migrants. The facilities were suffering from a clear shortage of staff performing interpretation, legal assistance, cleaning, and psychological support, as well as officers processing the new arrivals.

Due to the recent drop of arrests of irregular migrants on the islands the conditions of detention in Mersinidi (Chios) can, despite some shortcomings, be described as adequate. Otherwise none of the detention facilities for migrants I have visited can be regarded as complying with international minimum standards for the humane treatment of detainees.

The Greek Government openly acknowledges the severe problems facing its migration detention facilities. It has adopted a “Greek Action Plan on Asylum and Migration Management” and drafted new legislation in this respect. According to the information received, ‘screening centers’ for the identification and registration of migrants shall be established where they are to be held for no longer than 15 days. Afterwards, those who cannot be deported for factual or legal reasons shall be transferred to open reception facilities, whereas all others will be detained in special facilities. I greatly welcome the planned changes and urge the Government to pass the legislative changes as promptly as possible.

Access to refugee protection/ Non-refoulement

During my interviews with detainees I have witnessed that it is very difficult to access refugee protection in Greece. Many migrants are not informed of the procedures of seeking protection or have claimed that it is not possible for them to make their protection claim heard due to the lack of interpreters. In principle, all police authorities should accept asylum applications. However, I have been informed that the respective police authorities often reject the responsibility for accepting and forwarding asylum applications and refer the applicants to the main directorates responsible for the processing of asylum claims which often completely lack the capacity to accept everybody’s claim. For example, the main authority in Attica, Petrou Ralli, only accepts claims on one day of the week and is not able to register more than around 20 applications.

Greece suffers from a highly dysfunctional asylum system with protection rates at first instance of almost zero per cent. The first instance procedure is in the hands of police authorities who lack the necessary capacities and expertise in accepting the large number of applications. This has created a backlog of more than 52,000 cases to be examined as of August 2010. With the abolition of the independent Appeals Board there is now only a limited form of appeal available before the Council of State, which appears to be very difficult to access. Also in the second instance procedure the protection rates are very low (2,87 per cent in 2009). As a consequence

migrants seeking protection in Greece have no confidence in the asylum procedures and very often refrain from filing a claim despite a serious fear of returning to their country of origin.

Greek law allows for the expulsion of aliens dangerous for public order or security or prosecuted for a crime punished by a minimum imprisonment of three months. Additionally, the Readmission Protocol with Turkey facilitates the deportation of immigrants to its neighbouring countries bearing a great danger of refoulement, especially for Iranian refugees. The lack of any individual assessment by Greek police, prosecutors or judges whether citizens of the Islamic Republic of Iran, Iraq or the Syrian Arab Republic face a serious risk of being deported by Turkish authorities to their countries of origin, constitutes a violation of the principle of *non-refoulement* under Article 3 CAT.

In view of the serious flaws in accessing protection in Greece the foreseen legal amendments of the asylum procedure are to be welcomed. According to my information, the Greek Government is planning to hand over the asylum procedure to civil authorities and reinstate the independent Appeals Board as a second instance procedure.

European asylum system

It has to be recognized that Greece, due to its geography, bears a particularly high migration burden. While many migrants seek to travel onwards to other EU States, Greece has to deal with an immense direct immigration influx. The migration burden on Greece is aggravated by the Dublin II Regulation allocating the responsibility for asylum claims to the country of first entry. Thus, every asylum-seeker having entered through Greek territory is to be returned to Greece for filing an application, creating a totally unequal burden for the protection of refugees in the EU. I fully support the recommendation of UNHCR and human rights institutions to halt all returns under the Dublin II Regulation due to the inadequate protection against refoulement and the inhuman detention conditions for migrants in Greece. Furthermore, the EU should immediately renegotiate Dublin II and find a fair way of burden sharing for refugee protection in the European Union.

Preliminary Recommendations

Based on these findings, I wish to make the following preliminary recommendations:

To the Government of Greece:

- To combat the severe overcrowding in detention facilities by reforming the criminal and criminal procedure law aimed at decriminalizing certain offences (above all in relation to drug offences) and reducing prison sentences and applying non-custodial measures;
- To reform the judicial system to guarantee that pre-trial detainees receive a fair and speedy trial;
- To ensure the separation of pre-trial detainees from those convicted in all prisons in line with Article 10 ICCPR;
- To install an effective and independent mechanism for the investigation of allegations of torture and other forms of ill-treatment by police officers, under a different authority than the Ministry of Citizens Protection;

- To subject police detention to rigid time limits and judicial review
- To ratify and implement OPCAT and establish an independent and effective national preventive mechanism mandated to carry out unannounced visits to all places of detention;
- To transfer the responsibility for health care in prisons and police detention facilities to the Ministry of Health;
- To promptly proceed with the reform of the system of detention of migrants, resorting to the detention of migrants only as a last resort and if absolutely necessary and proportionate in the individual case. Asylum seekers and unaccompanied minors should in principle not be detained;
- To promptly proceed with the reform of the dysfunctional asylum system bringing the responsibility for asylum applications under civil authority and reinstalling an effective second instance for appeals;
- To guarantee that migrants and asylum seekers are offered adequate screening and reception centres, in humane conditions, operated by civil authorities who are provided with the necessary human and financial resources;
- To ensure that detained migrants are informed about the reasons of their detention and all proceedings concerning their detention are explained in a language they can understand;
- To make sure that all refugees can access protection in Greece and file their asylum claims without any major obstacles;
- To bring all current legislation in line with the absolute prohibition of refoulement and make sure that the police authorities, prosecutors and judges carry out individual risk assessments in expulsion cases.

To the European Union and other member states:

- To provide Greece with substantial support in handling the immense influx of irregular migrants in order to guarantee their reception under adequate and human conditions;
- To immediately suspend and examine all cases of Dublin II returns to Greece;
- To renegotiate the Dublin II Regulation in view of finding an adequate system of burden sharing for refugee protection in the European Union.

I will submit a comprehensive written report detailing my findings and recommendations on the mission to the Government of Greece and thereafter to the United Nations Human Rights Council. A preliminary oral discussion will take place next week at the General Assembly in New York”

Information Note

Manfred Nowak, appointed Special Rapporteur on 1 December 2004 by the former UN Commission on Human Rights, is independent from any government and serves in his individual capacity. He has previously served as member of the Working Group on Enforced and Involuntary Disappearances, the UN expert on missing persons in the former Yugoslavia, the UN expert on legal questions on enforced disappearances, and as a judge at the Human Rights Chamber for Bosnia and Herzegovina. Nowak is

Professor of Constitutional Law and International Human Rights at the University of Vienna (Austria), and Director of the Ludwig Boltzmann Institute of Human Rights.

Learn more about the mandate and work of the Special Rapporteur:

<http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm>

For more information and media requests, please contact Ms. Sonia Cronin (Tel: +41 79 444 3993) or write to sr-torture@ohchr.org.

Appendix: Locations Visited

Prisons

Chios Prison

Komotini Prison

Korydallos Men's Prison, Athens

Korydallos Women's Prison, Athens

Kos Prison

Police Stations

Agiou Panteleimonos Police Station, Athens

Akropolis Police Station, Athens

Echsarkia Police Station, Athens

Chios Police Station

Kos Police Station

Omonia Police Station, Athens

Orestiada Police Station

Rodopi Police Station, Komotini

Venizelos Airport Police Station, Athens (twice)

Border Guard Stations

Feres Border Guard Station

Soufli Border Guard Station

Migrant Detention Centres

Fylakio Migrant Detention Centre

Mersinidi Migrant Detention Centre, Chios

Venna Migrant Detention Centre

Hospitals

Agios Paulos Prisoners Hospital, Athens

Alexandroupoli Hospital Psychiatric Clinic

Korydallos Psychiatric Prison Hospital, Athens