

RETURN OF THIRD COUNTRY NATIONALS



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RETURN OF THIRD COUNTRY NATIONALS

Special report 2018

THE GREEK OMBUDSMAN

Contributors

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Editing of material: Vicky Vasilantonopoulou – Chrysi Hatzí

Editing in English: Aeverie Jenne Polintan

Cover and artistic design: Kambili Adv

Translation: Elit language services

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17 Halkokondyli Street, 104 32 Athens

www.synigoros.gr

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Introduction

The Greek Ombudsman has been proclaimed as the national monitoring mechanism for the return of third country nationals on the basis of Directive 2008/115/EC (“Return Directive”) and Law 3907/2011 which transposed it into Greek law. In the context of this special competence, the Independent Authority carries out random checks at all phases of the process that follow the issuing of a return decision for a third-country national, namely their potential administrative detention to ensure removal and the execution of the police operation of the removal by land, sea, or air. The findings of these external individual inspections are sent to the Administration, along with observations and recommendations, and are published in an annual report which is submitted to the Hellenic Parliament.

After entry into force of EU Regulation 2016/1624 for the conversion of FRONTEX into the European Border and Coast Guard Agency and the bolstering of its competences in the management of external borders, the Greek Ombudsman was called upon, as a national mechanism for the protection of rights, to work with the newly founded European reporting mechanism of FRONTEX, as well as to appoint investigators for the establishment of an EU pool of monitors, to be called upon by the European agency to participate in European return operations.

In previous years’ reports¹, the Independent Authority has referred in detail to this collaboration, laying out its serious reservations, especially as regards the lack of transparency and accountability: the scheme provided for in the Regulation of the European Border and Coast Guard Agency for monitoring European return operations, essentially transforms external monitoring that offers guarantees of transparency and independence, into internal monitoring, since the monitors of the EU pool are answerable to FRONTEX. This shift of monitoring of forced returns from national, independent and external monitoring mechanisms to FRONTEX, as a single, both executional and monitoring, body for European returns is even more crucial, in light also of the European Commission’s proposal of 12/09/2018 calling for a new Regulation for further

1. See particularly special 2016 & 2017 Return Reports, page 15 et seq. and 22 et seq. respectively.

strengthening of the activities of FRONTEX. For this reason, the Ombudsman undertook, in October 2018, the initiative of carrying out talks with its counterpart institutions with similar competences in other member states, and with the Council of Europe, in order to look into the possibility of strengthening the independence of the EU pool of monitors for external monitoring of returns, through the establishment of a mechanism that is independent of FRONTEX, under the supervision of the counterpart Independent Authorities from various European countries.

The issue of managing irregular migrants remains above all a political issue, for Europe as well as for Greece. In 2018, the limitations of the current European and national policies for the management of mixed, migrant and refugee, flows became even more felt. The European Union, having already sealed the case of relocation of asylum seekers from Greece and Italy, as a temporary measure that expired on 26/9/2017, has not to date garnered the necessary consensus to reform the common European asylum system.

At the same time, the goal for increasing effective returns of irregular migrants to their countries of origin does not seem to be confirmed by the available data. According to Eurostat² 188,905 third-country nationals were returned in 2017, out of 618,780 residing in the EU illegally, in other words slightly less than 1/3 of those recorded. It is indeed characteristic of the reduced effectiveness of the policies and procedures followed, that the largest group of citizens who are removed, in absolute numbers and as a percentage of the whole, pertains to citizens from Albania and not from countries of origin which are related to the surge of mixed flows in 2015³. The same seems to apply to our country, at a percentage higher than 80%, including up to the present day.

In Greece, a major problem continues to be the long stays by asylum seekers, with geographical limitation, at Reception and Identification Centres, in numbers that are vastly higher than the rate of readmissions to the neighbouring country that the EU-Turkey Joint Statement of 18/03/2016 aspired to. Despite the optimistic, according to all evidence, European predictions, and the significant and systematic strengthening in financial and human resources, with the assistance of the European Asylum Support Office (EASO), the successive legislative reforms and the periodic decongestion measures, approxi-

2. https://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation#Non-EU_citizens_found_to_be_illegally_present

3. In 2017, Albanians (31 180) topped the list of non-EU citizens returned to a non-EU country, maintaining their top position from 2016, see note. 1.

mately 15,000 foreigners continue to remain on the islands under extremely problematic conditions as regards human dignity. In 2018, Greece was the only European Union country making it to the top 5 list of countries to receive the most asylum seekers, both in absolute numbers as well as proportionately to its population⁴.

The deficiencies of the asylum procedures and linking of asylum information with police services that are responsible for the forced removal operations of irregular migrants often lead to a lack of legal certainty, something that is attributed to the unique system that governs readmissions to Turkey, in the implementation of procedures of uncertain legal but great political value and gravity, such as the EU-Turkey Joint Statement. In this report the issue of failure to promptly settle subsequent asylum requests is set out as an indicative example in order for vulnerable individuals to be protected who have substantive new grounds for international protection; a problem which the implementation of recent Law 4540/2018 did not resolve, as the Ombudsman observed in the exercise of the related competence of external monitoring of forced returns/readmissions.

In this report, the findings of the Independent Authority for 2018 are analysed, as they arise from monitoring of 41 forced removal operations of foreigners as well as 18 in-depth inspections at Pre-removal Centres and police station cells where foreigners are in administrative detention awaiting to be forcibly returned. This pertains to return operations by land on the Albanian border, national and joint European operations for return by air to Georgia and Pakistan, and operations by sea and air for readmission to Turkey from Lesbos. This wide-ranging sample check by the Greek Ombudsman, by its investigators that participate as monitors in operations, is essential material for forming a complete picture of the problems that systematically arise with regard to forced returns. At the same time, the Ombudsman had to intervene, following specific complaints, so that various legality issues could be clarified in forced return procedures, and so that the Authority could cross-reference information - both on-site during the operation as well as during the pre-departure inspection - of the official dossiers of the foreigners being removed. As detailed in this report, the unsuitability of the vehicles for return operations by land and of the detention areas as points of departure, the fact that those to be returned are not provided with relevant information in good time, the finding that the

4. https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report#Main_trends_in_the_numbers_of_asylum_applicants

use of handcuffing is still not applied upon a necessary individualised assessment, and the lack of certification of medical fitness to travel for all returning individuals constitute long-standing problems related to forced return operations. It should be noted that ELAS [Hellenic Police] has shown a willingness to cooperate, as well as acceptance of the proposals and recommendations of the Ombudsman, leading to partial improvement in the procedures as well as refraining from the forced removal of foreigners when a request for a temporary order is pending at the Court of Appeal.

The Ombudsman notes that, from the information provided by ELAS, there is a 42% reduction in forced returns in 2018, while the total of foreigners in administrative detention exceeds 3,000 for the second year in a row, something that logically raises questions as regards administrative detention functioning as a sign of failure of other procedures. The expansion of police detention on the grounds of public order or national security which are not clarified, as is evidenced by reports which have been submitted to the Independent Authority in 2018 is also a sign of detention becoming the general rule, instead of an exceptional administrative measure to ensure return, as stipulated by the Return Directive and Law 3907/11. This reversal of the rule represents a deeply troubling phenomenon for a rule of law system which is based, according to the Constitution and the ECHR, on the guarantees of penal law and court judgement on the deprivation of personal freedom versus simple administrative feasibility.

Nonetheless, the trend of expanding administrative detention is a development that leads to reasonable concerns on a European level as well. In the last chapter of this report, the basic points of the proposal of 12/09/2018 by the European Commission for recasting the Return Directive are analysed, which includes reducing guarantees on the conditions of administrative detention, on the right to an effective appeal, and on a number of other rights of irregular migrants, with a questionable aim of improving the efficiency of forced returns as critically observed by the EU Parliament Research Service, among other bodies, and the related recommendation to the competent Committee of the European Parliament.

In a European landscape where the substantive arguments increase in relation to the proper handling of irregular migrants, both among member-states and on a level of EU institutions and regulatory reforms, the competent Independent Authorities, such as the Greek Ombudsman, play a critical role. In light of recasting of the Return Directive and the amendment of the Regulation on the European Border and Coast Guard Agency towards strengthening of the Eu-

ropean Union's executive arm, the independent national external monitoring mechanisms for forced returns constitute the key institutional guarantee for basic rights and the rule of law principle in the area of third country national return operations. The Greek Ombudsman will continue to work with every national, European, and international organisation, fully sensing the responsibility of the Authority's mission, the upholding of legality and the protection of fundamental rights.

Athens, February 2019

Andreas I. Pottakis
The Greek Ombudsman

1. THE COMPETENCE OF THE OMBUDSMAN AND THE EUROPEAN FRAMEWORK ON MONITORING FORCED RETURNS

Returns of third-country nationals to their country of origin constitutes an EU policy of great symbolic importance, that of preventing entry of irregular migrants into Europe. The efficiency of the return system continues to be among the primary goals of the European Commission's immigration policy⁵.

The EU area is governed by the principles of freedom, security, and justice, principles that also govern Return Directive 2008/115/EC, which invokes a number of fundamental rights for forced returns, which include: Non-refoulement based on international law, the right to appeal, judicial protection against forced removal, humane treatment during all stages of the process, the exceptional deprivation of freedom of parties being returned when less drastic alternative measures cannot be implemented, as well as the institutional guarantee of an external monitoring body for forced returns of third country nationals to their countries of origin (Return Directive article 8 paragraph 6.) During harmonisation of Greek law with this Directive, the legislature of Law 3907/2011 article 23 paragraph 6) appointed the Greek Ombudsman as the external monitoring mechanism for forced returns, and the Independent Authority carries out random checks at all levels of the process that follow the issuing of a decision for the return of a third-country national; in other words, the Authority checks their potential administrative detention in view of removal and execution of the police operation of removal by land, sea, or air.

The competence of the Ombudsman was fully activated with the issue, at its recommendation, of the JMD provided for (Government Gazette B´ 2870/24.10.2014) whereby the arrangements are specified for external monitoring of returns. The JMD provides for a stable flow of data from all competent services for forced returns and readmissions and, from mid-2015, the Independent Authority receives continuous updates from Hellenic Police on future operations in order to be in a

5. http://europa.eu/rapid/press-release_IP-18-4106_en.htm

position to carry out the monitoring of its legality. For monitoring the acts, omissions and material actions of the competent services, the Ombudsman may utilise all institutional tools provided for in its statutory provisions, carries out on-site reports having unlimited access to all detention, waiting, and transit areas throughout Greece and participates, through its officials, in police forced removal operations as monitors. The Ombudsman issues reports and makes recommendations to the Administration for improvement of the return procedures; the Administration is required to provide a reasoned response. It publishes its conclusions in a special report which it submits annually to the Hellenic Parliament.

Following the entry into force of European Regulation 2016/1624 for conversion of FRONTEX into the European Border and Coast Guard Agency, and the strengthening of the competences of FRONTEX with regard to the management of the European Union's external borders, there has been increased cooperation on the part of the Ombudsman with this European body. The Regulation provides for an autonomous Reporting Mechanism which operates under the Officer for fundamental rights of FRONTEX (article 72). In the Reporting Mechanism, affected parties have the right of direct appeal for action by both the bodies of FRONTEX during its operations as well as the involved bodies of the member-states, which are called to investigate the allegations and to report the related findings, within a deadline of six months, to the European agency. At the same time, the report is also communicated to the relevant national mechanism for the protection of rights, in this case the Ombudsman (article 72 par 4). The evolution of the three reports that FRONTEX notified to the Ombudsman in 2017, within the framework of the European Regulation, is detailed in its previous report; the outcome of the police investigation for one of these reports is still pending. Specifically, the investigation into violation of the right to international protection of a family of Syrian nationals during readmission dated 20/10/2016 remained pending (case CMP 001/2017), for which one and a half years later, audit report no 2/2018 of the General Inspector of Public Administration did not reach a conclusion with regard to possible actions or oversights by the HELLENIC POLICE, citing a lack of competence. The Ombudsman requested that the HELLENIC POLICE proceed with an emergent internal administrative investigation so that no impression of non-transparency and the Head of the Aliens and Border Protection Branch of HELLENIC POLICE responded in November 2018, notifying that an investigation was being carried out.

The same European Regulation stipulates that FRONTEX establishes a European pool of monitors, of recognised expertise, who shall also be appointed by the member-states and called upon by the European agency to participate in European return operations (article 29). In this context, the Ombudsman, as a national

mechanism, appointed 8 of its officials to participate in the European pool of monitors as soon as this was created, in January 2017.

Nonetheless, two years following establishment of Regulation 2016/1624, the Ombudsman maintains its reservations with regard to its make-up, not only due to the lack of clear-cut rules of operation and funding of the European pool of monitors, but mainly due to issues of accountability, given that the guarantee of external monitoring of returns (article 8 paragraph 6 of the Return Directive) is internalised since the European pool of monitors are answerable to FRONTEX. The same internalisation also occurs also with assessment of the results of the complaint against the European Reporting Mechanism by FRONTEX itself. This shift of the monitoring of forced returns by national bodies, though independent and external monitoring mechanisms, to FRONTEX, as a single executorial and monitoring body, for European returns, is even more crucial due to the European Commission's proposal of 12/09/2018 for a new Regulation for further strengthening of the activity of FRONTEX at the Union's external borders.

For this reason, the Ombudsman undertook, in October 2018, the initiative of carrying out talks with its counterpart institutions in other member-states, and with the Council of Europe, in order to look into the possibility of strengthening the independence of the EU pool of monitors for external monitoring of returns, through the establishment of a Secretariat that is independent of FRONTEX, under the supervision of either Ombudsman or National Preventive Mechanisms from various European countries. Additional talks followed in February 2019, in Athens, between the counterpart Ombudsmen, international and European agencies. Talks are expected to continue in 2019 for joint networking and for undertaking action especially in light of the amendment of the European Regulation on the European Border and Coast Guard Agency.

At the same time, in 2018, the European programme of Forced Return Monitoring (FREM)-II was completed, of which the Ombudsman played an active role as a founding member. Within the framework of this programme, training was carried out for officials of the Greek Ombudsman as monitors throughout the course of 2018. In addition, another two officials of the Ombudsman were trained as monitor trainers, raising the total number of officials of the Greek Ombudsman who are certified trainers for the FRONTEX European pool of monitors to 4.

2. INFORMATION ON THE SCOPE OF EXTERNAL MONITORING

External monitoring of returns in 2018 at a glance

The Ombudsman, as a national internal monitoring mechanism for returns, visited:

- 5 Pre-removal Centres for the Detention of Foreigners in 9 on-site visits
- the detention centres of the Aliens Directorate of Thessaloniki and Migration Management Departments of the same Directorate (9 additional on-site reports),
- the Police Station of Mytilene and other police station detention cells where foreigners are held for return.

The Ombudsman participated, through its officials as monitors, in the following removal operations in 2018:

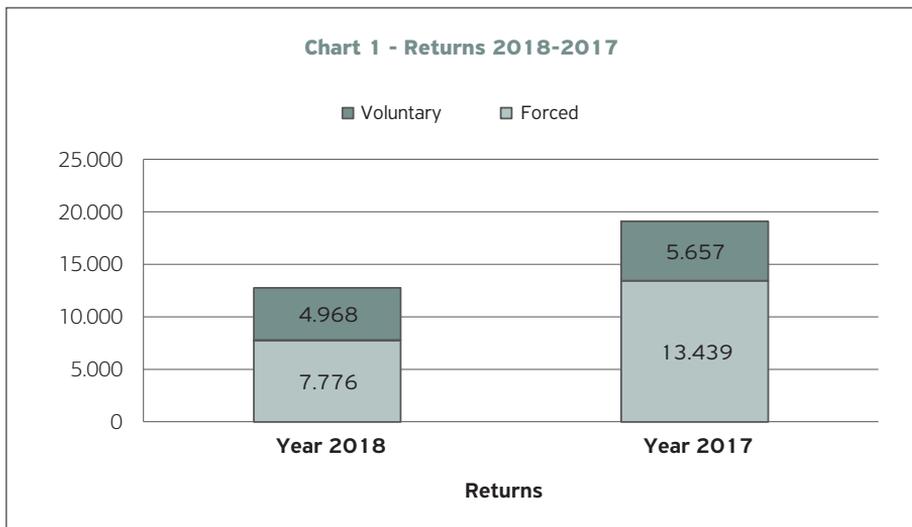
- 6 National Return Operations (flights) to Pakistan and Georgia
- 5 Joint European Operations (flights) coordinated by FRONTEX to Pakistan and Georgia
- 22 readmission by sea or by air, to Turkey, and
- 8 removal operations by land from Thessaloniki to the Albanian border.

Funding of the operation by the Asylum Migration and Integration Fund (AMIF) up to the end of 2018, allowed the Independent Authority to continue the external monitoring at an increased pace this year. It also enabled the training of new officials as monitors in a training seminar which was organised on 13/06/2018. The funding programme is subject to renewal within the framework of AMIF (2014-2020 period).

The new element in the field of returns in 2018 was the commencement of the National Return Operations by the Hellenic Police from *El. Venizelos* airport, in other words without the participation of other member-states or FRONTEX officials. The Ombudsman placed priority on monitoring those operations by participating, on the basis of random sampling, in 6 of the 7 National operations that were carried out to Pakistan and Georgia.

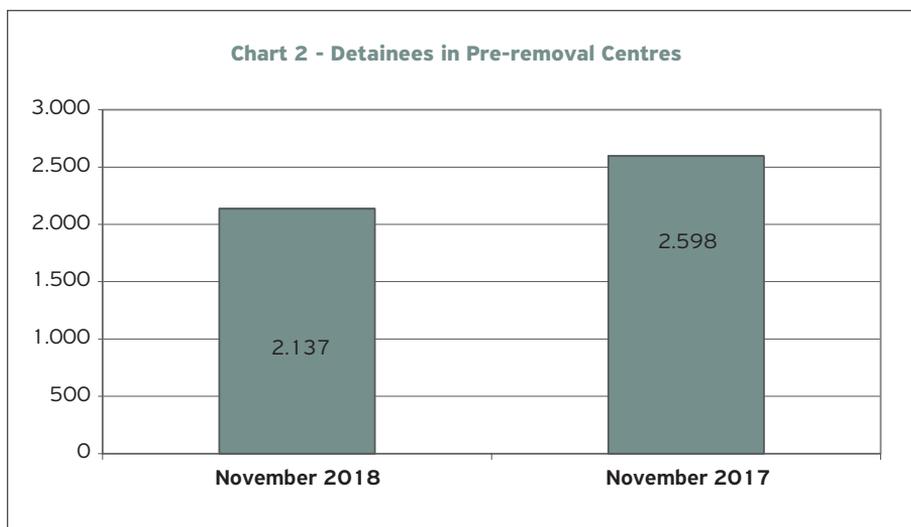
Figures related to returns and detainees at Pre-removal Centres

There was a great decrease in the number of forced returns carried out in 2018 compared to the previous year. The information transmitted by Hellenic Police (see *Graph 1*) shows 7,776 forced returns, including deportations and refoulement on the basis of bilateral agreements with neighbouring countries (of which approximately 83.6% were Albanian citizens) compared to 13,439 during the previous year for the corresponding period, in other words a reduction in the range of 42%. Volunteer returns carried out by the IOM amounted to 4,968 in 2018, exhibiting a slight reduction compared to 2017 (5,657).



With regard to the detention areas, the Hellenic Police informed the Ombudsman that on 1/11/2018, a total of 2,137 foreigners were being detained in Pre-removal Centres, a number that is slightly lower than the corresponding number of 2,598 detainees in 2017 (see *Graph 2*). The number of foreigners to be returned who are held at police detention cells ranges approximately within the same levels (890 on 1/11/2018, 974 on the same date in 2017). We observe that the total number of foreigners in administrative detention exceeds 3,000 for the second year in a row. The systematic detention of foreigners at police station detention cells across the country, instead of at Pre-removal Centres, is especially troubling given that, by definition, the police station cells are spaces that are not designed for detention lasting many days, much more for months (see on the detention

conditions the special report by the Ombudsman in the capacity of the National Mechanism for the Prevention of Torture - OPCAT)⁶.



6 <https://www.synigoros.gr/?i=human-rights.el.files.538206>

3. VISITS TO PRE-REMOVAL CENTRES - ADMINISTRATIVE DETENTION PROBLEMS

Administrative detention problems due to the return process

The excessive use of the measure of administrative detention for foreigners who enter the country irregularly and the inadequacy of the reason provided for the detention especially when it is on the grounds of public order are almost permanent observations made by the Greek Ombudsman, and which has been repeatedly recorded in its annual and special reports. During 2018, in addition to this observation, the extended use of questionable administrative practices is noted, giving rise to new issues of legality with regard to the return process. One of these is related to administrative detention which is ordered on the grounds of public order or security, the danger for which is based on imposing a sentence that is suspended, pursuant to a preceding conviction by a criminal court.

In these cases, the sentences that are imposed usually pertain to possession of forged travel documents in conjunction with unlawful entry, exit, or stay in the country. These sentences have a suspensive effect which indicates the lack of risk posed by the perpetrator (article 99 Greek Penal Code). Despite this, the administrative detention that follows is ordered precisely due to the risk posed by the convicted foreigner with regard to public order or security, which it bases on the existence of the preceding conviction against them. Beyond the cyclical argument that is created, administrative detention in this case raises issues of overstepping authority and circumventing the principle of the separation of powers.

The concomitant registration of the foreigners in question, as a threat to public security or order, in the National Index of Undesirable Aliens and, under certain conditions, also in the Schengen Information System (SIS II), further constitutes the legitimising basis of future administrative decisions for return with concomitant prohibition of future entry into the country. Another issue that also arises with this registration is related to its improper application of the criterion of being a threat to national security, public security, or public order. This criterion as provided for in article 1 paragraph 1 subparagraph b' of Ministerial Decision 4000/32-λα´/2012 (Government Gazette B 2805/2012) is not related to the common con-

ception of public order but with the provisions of penal law on the seriousness of the crime committed. In addition, as it is expressly laid down in Article 96 of Law 2514/1997, it is repeated in Regulation 2006 (EC) 1987/2006 and it is specified in the Hellenic Police Circular - Mandate 1619/17/1818543/13.09.2017, the criteria and the procedure for registration - removal of foreigners from the National Index of Undesirable Aliens and the Schengen Information System states that “a threat to public order or security or to national security includes cases where the foreigner: a) has been convicted in a member-state for a punishable crime resulting in the deprivation of freedom for at least one year.” At this point, it should be stressed that the sentences that are imposed to foreigners convicted for unlawful entry, exit, or stay in the country because they do not possess the required travel documents, usually does not exceed six (6) or seven (7) months of imprisonment.

Consolidation of such a practice through frequent invocation of the penal term of risk as a justification for issuing administrative acts, gives rise to additional issues of instrumentalisation of the penal law. This results in the onerous measure of administrative detention not to function as a last means of administration, with an explicit obligation for its actual and legal justification, as dictated by the legal framework presently in effect (article 30 par. 1 & 2 of Law 3907/2011) but rather it tends to evolve into the basic rule.

The prospect of the exercise of judicial proceedings against the conviction of first instance and consequently *lis pendens* before courts of second instance does not function suspensively with regard to execution of the police operations for removal. This is in violation of the principle of the presumption of innocence and the related right to the proper administration of justice in accordance with article 6 of the European Convention on Human Rights. In the event that a request for asylum is submitted, return is indeed suspended but administrative detention on the grounds of public order continues. Thus, overturning its special and personalised nature, which is dictated by Article 46 paragraph 2 of Law 4375/2016 is in violation of article 31 paragraph 1 of the Geneva Convention, which provides that contracting states commit to not impose criminal penalties on refugees due to unlawful entry or stay on their soil.

The justification for such a provision is that the status of refugee and more generally those entitled to international protection are granted subsequent to irregular or unlawful entry to a third safe country. As such, unlawful entry or stay of foreign-asylum seekers is by definition required in order for them to exercise their rights. In such a framework, administrative detention on the grounds of public order is to the detriment of foreign-asylum seekers who enter or stay irregularly as

it essentially functions as a quasi-penal sanction undermining the principle of *ne in idem* and is in contrast to everything stipulated by national and international requirements.

In penal law, the imposition of penalties adheres to basic legal principles, such as the principle of legality and the principle of fair procedure which ensure a series of safeguards, among which the timely and full knowledge of the charge of which they are accused of. In contrast, in the event of administrative detention on the grounds of public order or security, there are times when a detained immigrant is not aware of the exact reasons for their detention, in violation of Article 5 paragraph 2 of the European Convention on Human Rights. The failure or refusal of the Administration to provide precise information with regard to their detention in conjunction with its concomitant prolongation undermines the right to access to the information that pertains to them, and the right to objection, as it is dictated by Greek and European legislation. (Article 41 Regulation 1987/2006 of the European Parliament and of the Council).

Additional questions are raised when, in such a case of administrative detention, the return of the foreigner subsequently proved to be impossible. The continuation of the administrative detention in this case is in violation of the explicit provision of Article 30 paragraph 4 of Law 3907/2011. This is because the grounds of public order, which is often unspecified, is an insufficient basis for prosecution and issuing a restrictive order. In this case administrative detention falls short of every legal basis.

Visits to Pre-removal Centres

The situation is made even worse if the on-site reports that the Greek Ombudsman carried out in 2018 at administrative detention areas for foreigners is taken into account. From visits by the Ombudsman in 2018 to Pre-removal Centres of Taurus (27/9), Corinth (12/11), Amygdaleza (7/3, 14/6), Moria, Lesbos (30/3, 25/7, 23/8, 21/11), Kos (5/6) as well as detention centres of the Thessaloniki Aliens Division (23/6, 2/9, 18/10), the Migration Management Departments of the same Division (MMD Agios Athanasios 25/6, 30/8, 9/11, MMD Mygdonia 5/7, MMD Thermi 5/7, 19/10), the Police Station of Mytilene (22/8) as well as at other police station cells throughout the country where foreigners are held for return, some of the problems were confirmed that had been underscored in its previous annual report (page 212), with regard to the Return Directive. The inability of the administration to meet its legislative obligations continues to be of major importance. This includes the obligation of ensuring decent living conditions for foreigners under administrative detention as well as the availability of appropriate

detention areas (Article 30 paragraph 1 of Law 3907/2011). At the same time, it is important to note that the administration has violated a series of fundamental rights. These violations are more prevalent among citizens of countries with low levels of recognition in the international protection system (low profile project).

The trend that is recorded throughout the course of the year is not particularly optimistic, as the conditions of detention do not appear to be improving, and much less so to be normalizing. The restriction of funds and poor coordination by the Administration are recorded as the main reasons for such findings. Nonetheless, neither do these reasons suffice for the frequency with which the measure of administrative detention is enforced to function as a deterrent, in contrast to the extraordinary and individualised nature lent to it by law. In the case of the aforementioned citizens, who come from countries with low levels of recognition in the international protection system, the criteria for the enforcement of administrative detention become even more ambiguous, as they tend to adhere to statistical terms rather than those of lawfulness.

Beyond the inappropriate living conditions, at many police station cells, one additionally finds a lack of separation of administrative detainees from criminal detainees, as well as a lack of separation of minors from adult administrative detainees. As a more general issue, the failure to record and identify foreigners is stressed, which results in vulnerable individuals which often include asylum seekers, continuing to be administrative detainees and, in every case, they do not receive the special care provided for by law (Article 31 paragraph 3 and Article 32 of Law 3907/2011 and Article 14 paragraph 8 of Law 4375/2016). Indeed, it should also be stressed that, in practice, the detention of foreigners is ordered without a preceding medical examination at the Reception and Identification Centre. The unofficial vulnerability cases detected in both the on-site visits as well as in the complaints handled by the Greek Ombudsman for the year 2018 pertain for the most part to individuals with serious health problems, minors, and victims of torture.

4. EXTERNAL MONITORING OF THIRD COUNTRY NATIONALS RETURN/ READMISSION OPERATIONS

Access to international protection and other fundamental rights of irregular migrants is ensured through external monitoring with the presence of officials of the Greek Ombudsman in foreigner return operations by land, sea, or air and readmissions to Turkey from Lesbos.

Return operations by land

As stated earlier, 83.6% of returns from the country pertain to Albanian nationals. The Ombudsman participated, through its officials as monitors, in 8 return operations by land from Thessaloniki to the Albanian border. A sample that is suitable in order to deduce certain common points and trends concerning the administrative practice.

Among the **positive** points of all the operations was the generally good organisation by the Thessaloniki Aliens Division. Care was taken in providing breakfast to detainees, in the packaging of their personal belongings, and in the provision of a first-aid kit in the transport vehicle. It is a very positive point that during these returns by land, no restraining measures are implemented. But there was one detainee who complained about being transported from Halkidiki with his arms tied behind his back, and a relevant intervention ensued by the Ombudsman to the police authority concerned.

Among the **negative** points is the fact that returns are carried out without a preceding medical examination, in accordance with the prevailing view at Hellenic Police that only if a problem arises will a medical examination ensue. The Ombudsman considers this reasoning *ex ante* and negative in ensuring the well-being of detainees being returned, as is also noted for the other removal operations that follow.

There are two specific problems with returns by land:

1- The unsuitability of transport vehicles.

The transport vehicles are old, with defective suspensions, and require frequent

inspection and maintenance for the safe transport of the detainees being returned as well as the policemen accompanying them. Despite the fact that the length of the operation has been greatly reduced with the opening of the Egnatia Roadway, the conditions are not good for a two-hour trip on high-speed roads due to the insufficient room in the cells, which are narrow and have metal seats. The problem is made worse due to the absence of air-conditioning/heating. Another major problem is the lack of a toilet in the vehicle, which results in the need to make stops. In one case, the detainee being returned was instructed by the policemen to use a plastic bottle, in front of the other detainee in the vehicle's cell, which the Ombudsman considers incompatible with human dignity. Nonetheless, this was an isolated occurrence.

The Ombudsman proposes the procurement of modern and appropriate transport vehicles for returns by land, which will have toilets, air-conditioning, heating, and sufficient room for detainees being returned. The Hellenic Police has responded to this proposal, announcing that it has provided for the procurement of modern transport vehicles, and we await to see this provision being actualised.

2- Unsuitability of cells at the point of departure

The phenomenon of systematic detention of a large number of foreigners to be returned in the cells of the Thessaloniki Aliens Division has also been stressed in the Ombudsman's previous report, which in reality function as a pre-removal centre. Nonetheless, the cells are housed in an unsuitable building, which despite the efforts of the Division, does not fulfil the conditions laid down in the Return Directive or those of Law 3907/11. The most problematic characteristic is the total absence of yard time and beds. Detainees sleep on the floor because the specifications for the cells is for built-in beds, something that the static design of the specific leased building does not seem to permit.

The Ombudsman proposes, on the one hand, a change in the specifications so that beds can be placed in the specific cells, which constitute a space for mass administrative detention and, on the other hand, rehousing in a building which will permit yard time as a sine qua non term for the humane treatment of administrative detainees awaiting removal for weeks or months.

National and European return operations by air

2018 is marked by the commencement, on the part of the Hellenic Police, of national return operations by air of citizens to their countries of origin, following years of effort to bring the related tender to fruition. As a result, the participation of the Ombudsman through its officers as monitors, in flights from the Athens

International Airport pertained not only to Joint European Operations by EU member-states coordinated by FRONTEX (5 operations this year) but also to National Return Operations to Pakistan and Georgia, specifically 6 of the 7 operations which were organised by the Hellenic Police.

Among the **positive** points of all the operations were the generally good behaviour and professionalism of the accompanying policemen, barring isolated cases of stereotypical comments. There was proper care for the baggage and the personal items of returning detainees, except for one case of sending personal items from a different police Precinct (from Kos). Generally, except for one last-minute change, the provision was respected for a female escort to be present when women were being returned.

In the preceding annual report, a positive response was noted to the observation by the Ombudsman for respecting the principle of proportionality in restraining returning parties, following individualised assessment of the need for this. In 2018, there was reasonable use of restraining means and in some cases, no restraining at all.

Nonetheless, one forced operation that the Ombudsman monitored at the airport coincided with an IOM voluntary return of a group of numerous women and children, who were led to a special area through the airport's common departure hall and in full view of travellers while all the adults were in handcuffs, something that is not in line with the necessary respect of their dignity. The Ombudsman **observes** that individualised assessment with regard to the need of restraining must govern, as a basic principle, every removal operation.

Organisational issues that can benefit from improvement include the following:

Though care was taken during the National Operations to provide food and water prior to the flight, on the contrary, in 3 of the 5 Joint European Operations, the returning parties remained without food for many hours before boarding the aeroplane. Consequently, food providing must be the rule.

In addition, there must be a uniform provision for transport to the airport in suitable vehicles. While tourist type buses were used in most cases, there were cases of transport - and a wait of multiple hours - at the airport with unsuitable vehicles with insufficient space for the returning parties.

The Ombudsman proposes that in every case, care should be taken to provide food and water prior to the flight, and for suitable vehicles, buses of the tourist type, to be used for transport to the airport.

During the pre-departure monitoring for operations by air, no substantial shortcomings were observed; nonetheless, there were some cases where there

was no interpreter. In two cases, the Ombudsman noted that the return procedure proceeded despite the concomitant existence of a scheduled meeting through the Decentralised Administration for the submission of an application for a “residence permit for extraordinary reasons.” The Ombudsman **observes** that the consequence of the inability of the Administration to examine, on the spot, the application documents related to a temporary resident permit must not be passed on to the applicant, so as to avoid the circumvention of the relevant provision of Article 19 of the Immigration Code which grants a temporary resident permit to the applicant .

The main problems of National and Joint European Operations by air from Athens International Airport were also highlighted in the corresponding report for the previous year and remain, for 2018 also, as follows:

1- The lack of timely updating, of at least 24 hours beforehand, presently constitutes a fixed operational practice of Hellenic Police, contrary to the common specifications of the external monitoring bodies. This practice leads to last minute tension, to justified reactions by the foreigners who wish to inform family members or lawyers, and often to changes on the list of returning parties immediately prior to departure.

2- The absence of interpreting services increases tension and makes the work of the police escorts even more difficult, as they have to communicate through other detainees. The absence of interpreting services is an additional reason for which, on a long-standing basis, the Ombudsman stresses that the poor living conditions and organisation at the Pre-removal Centre in Taurus render this space as an unsuitable point of departure for return.

3- Failure to provide all returning parties with a medical certificate of the ability to travel (fit to fly). Usually a formal examination by the physician of the detention centre takes places immediately prior to departure. In addition, the official dossiers of the returning parties rarely include a medical history, something that is indicative of non-adherence to the Operation Regulation of Pre-removal Centres which makes medical examination and the filling out of a health card for each detainee necessary (Article 12). The Ombudsman stresses yet again that providing returning parties who exhibit a health problem with a fit to fly certificate, according to the guidelines of the FRONTEX Code of Conduct, does not mean that the rules of national law are not to be additionally implemented. As has been previously mentioned, the Hellenic Police is required to take care in ensuring the health of all detainees and to ensure the existence of filled out and updated medical information on the health of the detainees to be returned as it constitutes a guarantee both for the preservation of their health as well as the necessary care of the policemen escorting them.

The Ombudsman proposes that the returning parties are updated in a timely manner, the presence of an interpreter during all stages prior to departure, and the issuance of the medical certification of the ability to travel (fit to fly) for all returning individuals.

Readmission operations to Turkey

The Ombudsman participated, through its external monitoring officers, in 24 readmissions of third country nationals from Lesbos to Turkey in 2018, specifically 7 operations by air and 17 by sea. Given the political importance of the EU-Turkey Joint Statement of 18/3/2016 which has led to unique conditions in Greece's sea border, both for the reception and asylum procedure as well as the right of people in practice, who remain in geographical restriction on 5 islands until the final rejection of any possible asylum request on their part, often in overpopulated conditions which give rise to various risks for their safety and welfare; their administrative detention may last for months, the Independent Authority has proposed random external monitoring of the readmission operations to Turkey, feeling that this constitutes a basic guarantee of respecting fundamental rights in the field. Readmission is an extraordinary procedure based on Article 2 of the Return Directive, to which the basic guarantees of fundamental rights are nonetheless applied.

Readmissions to Turkey exhibited the **basic problems** that were mentioned previously with regard to the other return operations in 2018.

1- Lack of timely updating of returning parties with regard to the actualisation of the readmission operation.

2- Lack of medical files and lack of certification of the ability to travel (fit to travel).

The lack of medical and nursing staff and interpreters in the closed wing of Moria which operates as a pre-removal centre exacerbates the aforementioned problems.

In addition, the following was confirmed in 2018 also with regard to readmissions:

3- The lack of individualised assessment with regard to the use of restraining means. Operations by sea from Lesbos exhibited long-standing and generalised restraining practices of returning parties, with handcuffs of the Velcro type, usually until boarding of the ship. Handcuffs of the Velcro type are a better practice than metal handcuffs and **the Ombudsman awaits** commitment on the part of Hellenic Police for reform of the regulatory framework which governs restraining means in general. In addition, **the Ombudsman proposes** individualised assessment according to the principle of proportionality on the need or lack thereof for

the enforcement of restraining means and re-examination of these means during the course of the operation.

Organisational issues that can be improved include, inter alia, the following:

- Problematic preparation of transportees to Lesbos from other police precincts (e.g. Kos): Personal items, lack of completeness of official dossiers.
- Non-provision of breakfast to returning parties.
- Lack of tote bags for the personal items of returning parties.

The generally good collaboration of the Police Precinct of Lesbos with the Ombudsman's monitors contributes to the gradual resolution of certain problems, such as the need for an interpreter to be present during body searches of returning parties to facilitate communication and reduce potential tensions. Significant **improvements** over the course of the year following proposals by the Ombudsman resulted in the provision of more interpreters in sea operations to cover the basic languages of returning foreigners and in the appropriateness of the search area prior to boarding of the ship. Certain FRONTEX officers contested the presence of a female monitor of the Ombudsman during the body search of returning parties which led to an agreement between the Ombudsman and the Fundamental Rights Officer of the main service of FRONTEX who specified that contested the presence of a male or female monitor is in every case necessary to evaluate whether the behaviour of the official carrying out the check is appropriate or not, and it is up to the monitor to solely have auditory contact, at certain points, of the body search.

The common feature of readmissions is the **dysfunction of the asylum procedures** which lead to a partial lack of legal certainty. During 2018, it was especially observed that the lack of completion of the official dossier which accompanies the detainees is not just dependent upon the police precinct of origin but also upon the information of the corresponding Regional Asylum Office. For example, implementation of recent Law 4540/18 did not resolve the problem of the need for prompt settlement of subsequent asylum requests. The Ombudsman stressed that it considers the inclusion in readmission operation of third country nationals, who allege new substantive grounds in order to be granted international protection and/or claim a reason for exemption from the border procedure of Law 4375/16 due to vulnerability, without their subsequent request even being examined at a preliminary stage, to be problematic. **The Ombudsman proposes** the amendment of Law 4540/18 for greater legal certainty with regard to subsequent asylum requests and suspension of removal.

Nonetheless, good cooperation on the part of the police authorities with the Independent Authority has had a positive effect on communication for finding solutions for improving the process, both on-site as well as with the Readmission Unit of the

Immigrant Management Directorate of Headquarters. In addition, Hellenic Police maintains its commitment towards the Ombudsman for exclusion of individuals from readmission when a request for a temporary injunction is pending at the Administrative Courts, respecting the pending judgement and the constitutional right for judicial protection.

Furthermore, the Ombudsman observed the positive response of the Hellenic Police for exemption from readmission of individuals, inter alia, in cases where the Appeals Authority had referred the interested party to the residence permit process for humanitarian reasons, but this has not been communicated to the person by the Regional Asylum Office which uses standardised forms. The same also occurred in the case of an individual for whom we noted incomplete issuing of the decision of the Committee of the Appeals Authority which mentioned prior to the operative part that *according to the principle of preserving the family unit, the asylum seeker could initially have requested a residence permit (article 24 PD 141/2013) provided that the rest of his family, namely his spouse and four under-age children had already been recognised as refugees*⁷.

The foregoing represent examples of good cooperation for ensuring, through external monitoring of returns/readmissions, the fundamental rights of every person, such as the right to judicial protection, access to international protection, and protection of family cohesion.

7. *while this was never translated during issuing of the decision by the Regional Asylum Office in Lesbos.* With the intervention of the Ombudsman that a serious issue results of breakdown of the family unit while the protection of family life must necessarily be taken into account both according to the European Convention on Human Rights (article 8) as well as in accordance with the Return Directive (article 5), Hellenic Police exempted him from readmission.

5. THE PROPOSAL FOR A RECAST RETURN DIRECTIVE BY THE EUROPEAN COMMISSION

On 12/9/2018, the European Commission published its proposal for a recast of the Return Directive of 2008. The recast proposal has the goal of bolstering the effective implementation of procedures to increase the number of returns which fell, according to the Commission, between 2016-2017. Bolstering the efficiency of the system of returns was also a goal of the revised Return Handbook⁸ which the Commission had issued one year prior, in order for specific, uniform guidelines to exist for the member states. It is therefore not a surprise that many of the guidelines of the revised Handbook, upon which the Ombudsman had commented in detail in its Report on the returns for 2017, constitute proposals for regulatory requirements in the present initiative of the Commission for “targeted,” as it calls it, amendment of the Directive.

The main points of the European Commission’s proposal pertain to the following:

1. The risk of absconding on the part of the foreigner (Article 6)⁹ as a condition for detention, for which a list of objective criteria is now introduced, among which some are established as (rebuttable) evidence in order for the relevant judgement not to be left to the discretion of the member states.
2. the cooperation of the foreigner (article 7) which is introduced as an explicit obligation
3. the now required issuing of a return decision when the lawful stay of the foreigner expires (article 8)
4. the introduction of a shorter deadline for a voluntary return (article 9)

8. 27 September 2017 [Commission Recommendation No. C(2017) 6505] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf

9. The articles in the text that follows refer to the Commission’s recasting proposal and not to the Return Directive in effect.

5. the prohibition of entry as an independent measure during exit control from the country (article 13)
6. the management of returns through the exchange of information and FRON-TEX as a central link (article 14)
7. the appeals and actions (article 16) introducing a 5-day deadline for appeal against return following the issue of a final decision rejecting an asylum request and the rule for judicial appeal at the 1st instance only. In addition, restricting the automatic suspensive effect of the appeal against return only in the event of invoking the non-refoulement principle when this has not been judged in the asylum procedures.
8. administrative detention (article 18) for which a minimum duration of 3 months is established; in addition, the grounds of public order, public security, and national security are introduced as justification.
9. the borders, for which special simplified procedures are established with significant exemptions with regard to the detention times (four months and subsequently additional detention according to the limits of Article 18, in other words up to 18 months), the non-possibility of voluntary return, the appeals procedures (48-hour time limit) etc. (article 22).

The overall picture which results from the foregoing proposal of the Commission is the following:

- a) **The return system becomes stricter without keeping a good balance with ensuring fundamental rights in all cases.** The reduced deadlines and diminished suspensive effect of appeals seems to give rise to risks with regard to the right of substantive appeal that the European Convention on Human Rights and the EU Charter of Fundamental Rights (article 47) guarantee, as well as other rights, such as the protection of health, childhood, and family cohesion.
- b) **The extraordinary procedures at the border seem to authenticate a “state of emergency”** three years after the refugee crisis in the summer of 2015. These procedures are extraordinarily restrictive as regards to the procedural guarantees for the right to asylum and personal freedom and tend to act as a substitute to the established and cohesive procedures for dealing with mixed, refugee and migrant flows.
- c) The most serious problem from the Commission’s proposal appears to be the **generalisation of detention for return and the exception having become the rule** with the establishment of a minimum time period (3 months)

of detention, whereas the Return Directive in effect considers this to be an extraordinary measure whose implementation is governed by the principle of proportionality. The principle of proportionality, according to the EU Court of Justice imposes “a gradation of the measures to be taken in order to enforce the return decision.”¹⁰ Deprivation of freedom, indeed through administrative measures, as a rule, overturns the rule of law foundation of proportionality in the restriction of personal freedom. The exceptions introduced, especially that of public order (in the Commission’s text the even more abstract concept of “public policy”¹¹), introduce margins for abuse of the measure and are narrowly interpretable according also to the case law of the EU Court of Justice¹².

Unfortunately, we consider what we have highlighted as applicable to as early as the Returns Report of the previous year, that the point of view that downgrades rights and guarantees to strengthen the effectiveness of returns overlooks the basic *“malfunctions in the system of returns, such as the outlay and the time consuming character of the procedures of return, the degree of cooperation of the countries of origin or readmission, the malfunctions of the administrative mechanism on issues of coordination and capacity of the competent services from the point of view of staffing and a clear regulatory framework etc.”* As was confirmed by the experience of the Greek Ombudsman as a national external monitoring mechanism in the re-admissions of 2018 with regard to the issue that were referred to earlier with the Asylum Service, the administrative deficiencies *“can, if they are solved, have a catalytic role to play in the effectiveness of returns. This is in contrast to, for example, the increase in administrative detention, regarding which the Ombudsman, in 2017, already posed the question as to whether it covers weaknesses in the administrative mechanism”*.

The trend of administrative detention becoming the rule, indeed with a minimum duration (articles 6 and 18) and with rebuttable evidence instead of the required consideration of all the parameters of each individual case with regard to the risk of absconding, is at the epicentre of the criticism of the **Fundamental Rights Agency of the EU (FRA)** in its detailed opinion on the recasting of the Directive. In the opinion, inter alia, the organisation stresses the risk for the right to a hearing if the measure of prohibition of entry is separated from the procedural

10. CJEU El Dridi, C-61/11 PPU, 28.4.2011.

11. Which can be found in article 11 par 2 of the Return Directive for the limits to entry prohibition. Restriction of free circulation within the EU through prohibiting the entry is a different issue, nonetheless, from deprivation of freedom.

12. CJEU J.N. v. Staatssecretaris voor Veiligheid en Justitie, C-601/15 PPU, 15.2.2016.

guarantees of the return decision (article 13), the need for appropriate guarantees for personal information in the intended exchange of information of article 14, the need to protect stateless persons, the avoidance of rules that seem to undermine voluntary return in articles 9 and 14, the introduction of an unreasonable deadline (5 days) for appeals (article 16) or the excessively restrictive suspensive effect of appeals (article 16), the establishment of guarantees for the right to asylum, non-refoulement and the right to effective appeal against the immediate linking of the return decision with the expiry of the lawful stay (article 8), the identification of the measure that are connected to the obligation proposed by the Commission for cooperation on the part of the foreigner with article 7 etc. Of pivotal importance for the FRA is the establishment of an extraordinary procedure at the border which, beyond the restrictions that it introduces to a large number of rights, it considers problematic mainly because it prejudices the asylum procedures under revision. FRA proposes its abrogation (article 22) until there is consensus on the new Common European Asylum System (CEAS).

The abrogation of the special border procedure was also a key proposal of the **European Council on Refugees and Exiles (ECRE)** in its detailed observations for the Commission's proposal, which was published as early as November 2018. It stresses that, should this be maintained, it precedes, inter alia, procedural guarantees, the protection of unaccompanied minors and other vulnerable individuals who must be excluded from this procedure. The observation on the additional detention time at the border is relevant, (op cit. Article 22) in that it *"thus introduces a new ground for detention, that of having previously applied for international protection"*. In contrast of the view that governs the proposal for recasting the Directive, the ECRE stressed that *"the criteria for judging the risk of absconding cannot be so wide that any person could be seen as a potential absconder"* and commenting on the restriction of voluntary return, it noted that *"the opportunities for third-country nationals to leave humanely and with dignity should be expanded rather than reduced."*

The proposal for recasting the Return Directive was not accompanied by an impact study because the European Commission felt that one was not necessary. Nonetheless, the competent Committee (LIBE Committee)¹³ assigned to the **European Parliament Research Service an alternative impact study** for the proposal. The study¹⁴, which was made public in February 2019, arrives, inter alia, at the following conclusions:

13. competent for Civil Liberties, Justice and Home Affairs

14. [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)

1) **clear-cut documentation does not result**, in contrary to the European Commission's argument, in greater efficiency in irregular migrant returns.

2) the proposal is in line with the principle of subsidiarity; nonetheless, certain arrangements create **proportionality issues**: The prohibition of voluntary removal in certain cases (Article 9), the single degree of jurisdiction over refugees (Article 16), the limited deadline for appeal of 5 days and 48 hours at the border (Articles 16 and 22).

3) there will be **effects on various social and individual rights** of irregular migrants, including potential violations of **fundamental** rights.

The effects on rights, according to the European Parliament's Research Committee, are identified, inter alia, to include the following:

- › the principle of **non-refoulement** in relation to new evidence (Article 16), the restricted suspensive effect of the appeal (Article 22) and, additionally, the right to asylum from the requirement of a valid travel document (Article 7),
- › investigating the grounds for **administrative detention** and the establishment of rebuttable evidence which increase the risk of arbitrary detention and may lead to a larger number of individuals being detained, including children with their parents. Detention may lead to effects on the fundamental rights to education, health, private and family life.
- › **personal freedom which may potentially be infringed** due to the unwarranted possibility of cumulation of two periods of detention for the same reason: 4 months at the border (Article 22) and 18 months with the regular procedure (Article 18).
- › the right to a **hearing** due to the prohibition of voluntary removal (Article 9),
- › the right of **effective appeal** due to the deadlines for appeal and their restricted suspensive effect which were mentioned earlier, and to the right to re-examine an asylum request.

4) **significant expenses** will be incurred by the EU and the member states, such as the construction of new detention centres, and

5) the Commission's proposal raises **questions of cohesion** with other legislative texts of the Union, especially with **pending legislation** such as the proposed Regulation for asylum procedures¹⁵.

15. COM (2016) 467, July 2016.

The Rapporteur's report to the LIBE committee by the European Parliament¹⁶ in January 2019 seems to adopt the critical observations which were mentioned earlier on the proposal for recasting the Directive, proposing inter alia:

- for the list with the criteria on the risk of absconding on the part of the foreigner to be removed, in other words complete removal of Article 6 of the Commission's proposal,
- for the foreigner's obligation to cooperate to be substituted with measures taken by the member state to facilitate the latter's cooperation (Article 7),
- for the compulsory request for issuing a travel document in the third country to be abolished, as this is contrary to the right to asylum (Article 7),
- for the obligation of issuing a return decision to be separated from the asylum request rejection process (Article 8),
- for the deadline for voluntary return not to be reduced, nor for this to be denied in the event of risk of absconding (Article 9),
- for the prohibition of entry not to be separated from the return decision during exit control from the country (Article 13),
- for an exchange of information not to take place on returns, with FRONTEX as a central link (Article 14),
- for a suspensive effect to exist in appeals and for a single degree of jurisdiction to not be mandatory, and for the excessively restrictive deadline of 5 days for appeal to be abolished (Article 16),
- for the 3-month period not to be set as a minimum length of administrative detention, as proposed by the European Commission, but rather as a maximum limit, for the grounds of public policy, public security, and national security to be abolished as justification for detention (Article 18),
- for the special procedure at the border to be abolished, due to the restrictions to rights and guarantees that this introduces, as detailed in the aforementioned alternative impact study by the European Parliament, and for the appropriate procedural guarantees to be set in the pending Regulation proposal for asylum procedures.

Finally, it must be mentioned that the recommendation of the Rapporteur of the LIBE committee of the European Parliament is to add the safeguard of independent external monitors, appropriately trained in fundamental rights, for every forced return operation. It is also recommended that the member states be able to refer to the pool of monitors that FRONTEX has created (Article 10 of the proposal, Article 8 paragraph 6 of the Directive in force.)

16. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-632.950+01+DOC+PDF+VO//EN&language=EN>

This is the first time that the independence of the monitors is set as a guarantee of external monitoring of forced return operations, and the evolution of the related proposal is expected in the European Parliament.

Conclusion

The Greek Ombudsman continued with unabated effort, during 2018, to play an active role as an external monitoring mechanism in the return/readmission procedures of the Greek state, while also seeking, in conjunction with European and international bodies, a more comprehensive system for implementation of external monitoring. At the same time, it intervened in cases of returned parties in which, during the pre-removal monitoring, it ascertained that they required protection as well as in cases of administrative detention of uncertain legal validity. Fully sensing the Independent Authority's mission as an institutional guarantee both of fundamental rights of the returning foreigners as well as the constitutional right of petition and the legality and transparency of the related administrative action, the Ombudsman will continue to foster the view that fundamental rights are an integral part of legality in a substantive legal state. Guided by this rule of law mission, as a national and independent protection mechanism, it will continue to strive to contribute, through its proposals, to the wider field of European developments; in particular, in every case where guarantees of independence and protection of fundamental rights need to be strengthened especially in the external monitoring system for national and European returns, in light of the recasting of the Return Directive and the amendment of the European Regulation for the European Border and Coast Guard Agency.