

Indefinite detention: a direct infringement of national, European and international law

Administrative detention is a measure imposed under exceptional and case specific circumstances, for a prescribed period of time. As the European Court of Human Rights (ECtHR) has stated, in administrative detention “account should be taken of the fact that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country” (ECtHR, *Amuur v. France*, application no. 19776/92, 25.06.1996, § 43).

To this day, the widespread, systematic and prolonged detention imposed to third country nationals in view of their return, or to asylum seekers, has been of disputable lawfulness. This has been enhanced by detention conditions that have repeatedly been characterized as inhuman and degrading treatment.

The Opinion 44/2014 of the Legal Council of the State, adopted by a Ministerial decision of the Minister of Public Order and Citizen Protection, attempts to abolish even the minimum safeguards prescribed by law, namely the prohibition of indefinite detention and the provision of a maximum time limit in the case of a return.

In particular, according to the Legal Council of the State, “in case an alien has been held in detention for 18 months in view of deportation or return [...] the competent authorities [...] may automatically impose the measure of mandatory stay in the area of detention”.

The Legal Council of the State, inter alia, justifies this opinion by stating that if detainees are released after the maximum time limit of 18 months is exhausted, “this will inevitably lead to an excessive increase of illegal immigrants in the country and will result to adverse effects on public order and security, taking into account that these immigrants lack the necessary means of subsistence”. The interpretation of this Opinion is that the Legal Council of the State considers that the common feature of all irregular migrants, namely those without legal documentation, is that they are a danger to public order and security.

The aforementioned opinion is contrary to international and European law and the relevant case law of the European Courts of Strasbourg and Luxembourg. To name only a few:

1. According to national and European legislation, the permissible time period of detention cannot, under any circumstances, exceed 18 months. The European Court of Justice, which interprets European Law in a binding way, has clearly stated that “where the maximum duration of detention provided for in Article 15(6) of Directive 2008/115 has been reached [...] the person concerned must in any event be released immediately [...] Article 15(6) of Directive 2008/115 in no case authorises the maximum period defined in that provision to be exceeded” (ECJ, case C-357/09 PPU *Said Shamilovich Kadzoev (Huchbarov)*, § 60 and 69). Any contrary interpretation, opinion or ministerial decision is a direct infringement of EU law and the national law transposing it.
2. “In order to determine whether someone has been “deprived of his liberty” [...] a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question, should be taken into account” (ECtHR, *Guzzardi v Italy*, appeal n. 7367/76, 06/11/1980, § 92). The fact that a measure of absolute deprivation of liberty, such as the obligation to stay in a detention center under the permanent supervision of the police authorities, is referred to as a “restrictive measure” and not as “detention” does not allow the Greek authorities to derogate from their obligations as set by national and EU legislation. Pursuant to this legal framework, the competent authorities have the obligation to immediately release

the person in question, when the maximum duration of detention has been reached, while the imposition of indefinite detention is forbidden.

The first decisions that are of disputable lawfulness have already been published and forwarded to detainees reaching 15 months of detention. According to these decisions, detainees are called to agree and collaborate with the authorities for their return before the 18 month period elapses. On the contrary, the “restrictive measure” of mandatory stay at the detention center where they already are or “in any other place of detention required” will be imposed against them. In various detention centers all around the country the first reactions have already begun. Those include hunger strikes and other manifestations indicative of the psychological stress the detainees are enduring, especially since no clear information has been given to them regarding the continuance of their detention or its duration.

The indefinite administrative detention is in direct contrast with the requirements of the rule of law. It leads to the infringement of fundamental rights invested to all persons in Greek territory by the Greek Constitution and amounts to illegal practices by the Greek administration that are therefore subject to revision by the national, European and international law.

The Greek Council for Refugees:

- **Expresses deep concern about this development and calls for the immediate withdrawal of the relevant Ministerial Decision.**
- **Calls on the competent authorities to immediately revise the policy of widespread, systematic and prolonged detention, by aligning with the current legislation that defines administrative detention as a measure of last resort, both in the framework of the return process and of the examination of asylum applications.**