

Report towards Ending Immigration Detention of Children and Seeking Adequate Reception and Care

May 2020, Greece

To: The UN Special Rapporteur on the human rights of migrants

By: EKO – Entrepreneurship and Social Economy Group; representing a joint submission together with Maat for Peace, Development and Human Rights Association.

- 1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.***

The Greek legislative framework does not prohibit the detention of migrant or asylum-seeking children, neither of their families; although it does suggest that their detention should be avoided by any possible means. In particular, according to the Law 3907/2011 (which is modeled upon the EU's Returns Directive), unaccompanied children, as well as families with children, are only to be under detention if no other less coercive measure can be applied. The legislator's approach on detention is explicit, defining it as a measure of last resort that should be used for the shortest period of time possible. In addition, any conducting authority is obliged to bear the best interests of the children under custody, in the pre-departure period.

Nevertheless, a special regulation concerning unaccompanied children under a 2016 Law (4375/2016, Ar. 46, 10A, a) sets as a rule that unaccompanied children shall not be detained, unless there is a "very exceptional case" that indicates otherwise. Even those exceptional cases formally have an exclusive time limitation to the necessary, until children can be safely referred to proper facilities of accommodation; that is the respective time period cannot exceed forty-five (45) days.

A recent legislation, voted by the Greek Parliament in 2018, that is in effect since May 1, 2020, sets the special legal status of an "unaccompanied minor", suggesting that unaccompanied foreign children should be referred to an appropriate facility with respect to their human rights. However, according to the latest report of the Greek National Center of Social Solidarity (EKKA, 30/04/2020), at this time, there are 276 unaccompanied children in "protective custody". This definition refers to the detention, inter alia, of a minor who has disappeared, that is in no relevance with the Criminal Law definition of "detention", embodied to the Greek legislation in 1991. In fact, the legislator's approach in 1991 had taken no account of any refugee or migrant situation, but still this is the framework which applies nowadays in Greece for unaccompanied children.

Considering the growing numbers of migrant children with no guardian reaching Greece, the Prime Minister, Kyriakos Mitsotakis, announced a new campaign titled: "No Child Alone" in November, 2019. It refers to an inclusive policy which creates a binding framework to ensure that children's

human rights are fully respected. In particular, 2.500 unaccompanied minors living in camps on the Greek islands shall be transferred to safe and proper long-term hosting facilities in the mainland. This policy also refers to the development of such facilities, as well as to the special training of care workers, while minors shall have unhindered access to Health Care and Education. However, there was no announced provision concerning children in detention.

Here below are the respective Laws in Greek, and in English non official translation.

Original text in Greek:

Νόμος 3907/2011, Άρθρο 32

Κράτηση ανηλίκων και οικογενειών (Άρθρο 17 της Οδηγίας)

- 1. Οι ασυνόδευτοι ανήλικοι και οι οικογένειες με ανήλικους κρατούνται, ως έσχατη λύση, μόνο εφόσον δεν μπορούν να εφαρμοσθούν για τον ίδιο σκοπό άλλα επαρκή αλλά λιγότερο επαχθή μέτρα και για το ελάχιστο απαιτούμενο χρονικό διάστημα.*
- 2. Στις οικογένειες που κρατούνται σε αναμονή της απομάκρυνσης τους παρέχεται χωριστό κατάλυμα, με το οποίο εξασφαλίζεται επαρκής ιδιωτική ζωή.*
- 3. Οι υπό κράτηση ανήλικοι έχουν τη δυνατότητα να ασχολούνται με δραστηριότητες ελεύθερου χρόνου, όπως δραστηριότητες παιχνιδιού και ψυχαγωγικές δραστηριότητες που αρμόζουν στην ηλικία τους και, ανάλογα με τη διάρκεια της παραμονής τους, έχουν πρόσβαση στην εκπαίδευση, σύμφωνα με το άρθρο 72 του ν. 3386/2005.*
- 4. Στους ασυνόδευτους ανήλικους παρέχεται κατά το δυνατόν κατάλυμα σε ιδρύματα τα οποία διαθέτουν προσωπικό και εγκαταστάσεις που λαμβάνουν υπόψη τις ανάγκες προσώπων της ηλικίας τους.*
- 5. Τα βέλτιστα συμφέροντα του παιδιού λαμβάνονται πρωτίστως υπόψη κατά την κράτηση ανηλίκων σε αναμονή απομάκρυνσης.*

Translation in English:

Law 3907/2011, Article 32

Detention of children and of families (Article 17 of Directive)

- 1. Unaccompanied minors and families with minors are to be under detention, as a measure of last-resort, only if no other adequate but less coercive measure, for the same purpose, can be applied, and for the shortest period of time possible.*
- 2. Families which are under detention waiting for their departure, shall be provided a separated accommodation, ensuring an adequate standard of private life.*
- 3. Detained minors can be engaged with leisure time activities, such as playing and recreational activities fitting their age, and depending on their stay, they have access to education according to article 72 of the law 3386/2005.*

4. *Unaccompanied minors are provided, when possible, accommodation in foundations which have personnel and facilities that take into account the needs of people their age.*
5. *The children's best interests are the first to be taken into account during detention in the pre-departure period.*

Original text:

Νόμος 4375/2016, Άρθρο 46 (παρ. 10,β)

[...] οι αρμόδιες αρχές [...] Αποφεύγουν την κράτηση των ανήλικων. Ανήλικοι που έχουν χωριστεί από τις οικογένειές τους και ασυνόδευτοι ανήλικοι κατά κανόνα δεν κρατούνται. Σε όλως εξαιρετικές περιπτώσεις, ασυνόδευτοι ανήλικοι οι οποίοι υποβάλουν αίτηση διεθνούς προστασίας ενόσω κρατούνται βάσει των σχετικών διατάξεων των ν. 3386/2005 και 3907/2011, παραμένουν υπό κράτηση ως έσχατη λύση και για μόνο λόγο την ασφαλή παραπομπή τους σε κατάλληλες δομές φιλοξενίας ανηλίκων. Η κράτηση επιβάλλεται αποκλειστικά για τον αναγκαίο χρόνο μέχρι την ασφαλή παραπομπή τους και δεν μπορεί να υπερβαίνει τις 25 μέρες. Σε περίπτωση που, λόγω εξαιρετικών περιστάσεων, όπως η σημαντική αύξηση της εισόδου ασυνόδευτων ανηλίκων, και που, παρά τις εύλογες προσπάθειες των αρμόδιων αρχών δεν έχει καταστεί εφικτή η ασφαλής παραπομπή τους σε κατάλληλες δομές φιλοξενίας, η κράτηση μπορεί να παραταθεί για διάστημα 20 ημερών. Ανήλικοι που έχουν χωριστεί από την οικογένειά τους και ασυνόδευτοι ανήλικοι κρατούνται χωριστά από ενήλικους κρατούμενους. Σε περίπτωση κράτησης ανηλίκων, αυτοί έχουν τη δυνατότητα να ασχολούνται με δραστηριότητες ελεύθερου χρόνου, συμπεριλαμβανομένων των παιχνιδιών και των ψυχαγωγικών δραστηριοτήτων που αρμόζουν στην ηλικία τους και απρόσκοπτη πρόσβαση στην εκπαίδευση.

Translation in English:

Law 4375/2016, Article 46 (par. 10,b)

[...] the responsible authorities [...] Avoid the detention of minors. Minors who have been separated from their families and unaccompanied minors who apply for international protection while detained on the basis of the relevant provisions of the laws 3386.2005 and 3907.2011, are under detention as a measure of last-resort and for the only reason of their safe reference to appropriate facilities of hosting minors. Detention is applied on for the necessary time period until their safe reference and cannot exceed a 25 days limitation. In case that, due to exceptional circumstances, such as a significant increase of unaccompanied minors' admission, and if the reasonable efforts of responsible authorities have not rendered their safe reference to appropriate facilities achievable, detention can be extended for another 20 days period. Minors who have been separated from their families and unaccompanied minors are detained separately from adult detainees. In case of minors' detention, they can engage with leisure time activities, including games and recreational activities that fit their age, and have unhindered access to education.

Original text:

Νόμος 4554/2018, Άρθρο 13 (παρ. 3)

Στον ορισμό του ασυνόδευτου ανήλικου κατά την έννοια των διατάξεων του παρόντος νοείται ο ανήλικος που εγκαταλείπεται ασυνόδευτος μετά την είσοδό του στην Ελλάδα και ο χωρισμένος από την οικογένειά του ανήλικος ή χωρισμένος ανήλικος της περίπτωσης γ' της παραγράφου 2.

Άρθρο 20 (παρ. 1)

Ο επίτροπος ασυνόδευτου ανήλικου εμπιστεύεται τη διαβίωση και την πραγματική φροντίδα του ανήλικου σε κατάλληλο κέντρο φιλοξενίας μετά την πράξη τοποθέτησης του ΕΚΚΑ.

Translation in English:

Law 4545/2018, Article 13 (par. 3)

According to the law 4545/2018 a minor is defined as an unaccompanied minor if he/she is found abandoned after his/her entrance in Greece ,or separated from his/her family or separated as defined in art.c', paragraph 2.

Article 20 (par. 1)

The custodian of an unaccompanied minor is trusted with the living conditions and the true care of the minor in an appropriate hosting facility, following ΕΚΚΑ's locating act.

Original text:

Προεδρικό Διάταγμα 141/1991, Άρθρο 118

- 1. Σε προστατευτική φύλαξη τίθενται πρόσωπα τα οποία, λόγω ηλικίας ή ψυχικής ή πνευματικής κατάστασης στην οποία βρίσκονται, είναι επικίνδυνα στη δημόσια τάξη ή εκθέτουν τον εαυτό τους σε κίνδυνο.*
- 2. Σε προστατευτική φύλαξη τίθενται, μέχρι την παράδοσή τους στους οικείους τους, ιδίως: α. ανήλικοι, που εκούσια ή ακούσια, έχουν εξαφανιστεί β. ψυχοπαθείς γ. μεθυσμένοι*
- 3. Η προστατευτική φύλαξη δεν θεωρείται σύλληψη υπαγόμενη στις διατάξεις του κώδικα Ποινικής Δικονομίας.*
- 4. Τα πρόσωπα που τίθενται σε προστατευτική φύλαξη δεν κλείνονται στο κρατητήριο, εκτός αν δεν μπορεί να αποτραπούν με άλλο τρόπο οι κίνδυνοι που προκαλούν στον εαυτό τους ή τους άλλους.*

Translation in English:

Presidential Decree 141/1991, Article 118

- 1. Under protective custody are set people who, due to their age or psychic or mental situation, are dangerous for public order or expose themselves to danger.*
- 2. Under protective custody are, until reference to their intimates, especially: a. minors, who either voluntarily or involuntarily, have disappeared b. psychopaths c. drunk individuals.*

3. *Protective custody is not considered as an arrest under Criminal Law.*
 4. *Individuals who are under protective custody are not detained in holding cells, unless there is no alternative to avoid possible dangers to themselves or others.*
2. ***Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.***

Detention is not appropriate in cases of children and vulnerable individuals in general. Authorities are directed to apply identification procedures and provide special psychosocial care to unaccompanied children and families with minors. This may include placement in proper facilities and social support. In particular, according to the Law 4375/2016, unaccompanied minors are appointed a guardian, so that the risk of disappearance is eliminated.

Alternative measures to immigration detention are delimited through the provisions of the Law 4375/2016. The core requirement of Article 46 is the examination and application of some less coercive measures – alternatives to detention – prior to resorting to detention of an immigrant or an international protection applicant. Both asylum seekers and third-country nationals under removal procedures are provided with some specific alternatives to being detained in closed camps or even in Police holding cells. In particular, regarding the provisions which include vulnerable groups such as children and families, the Law provides four options of a less coercive approach:

- a. Regular reporting to the authorities
- b. Obligation to reside in a specific area
- c. Submission of certain documents
- d. Payment of a financial guarantee, the amount of which is to be settled by the Minister of Finance and the Minister of Public Order.

However, according to the 2017 Report of the Special Rapporteur on the human rights of migrants in his mission to Greece,¹ the above alternatives were not consistently examined, nor applied in practice. Although the latest 2019 Report praises the Greek government for making progress on the abolishment of detention practices, it also highlights that there is severe arbitrariness regarding the detention of children. As it is explicitly stressed “...unaccompanied minors and other children are being detained and treated as adults. Detention of children in the context of migration is prohibited under international law and should be discontinued”.²

¹ Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24/04/2017

² Human Rights Council, Press Release of the Special Rapporteur on the human rights of migrants on his mission to Greece, 12/13/2019

In fact, the main reason for which immigrant children are detained in Greece is the lack of appropriate hosting facilities, as well as the fact that the majority of assessments is not conducted by the Greek Asylum Service, but by the Greek Police.

Whereas the institutional and legal framework suggests that the best interests of the child must be considered above any reason for detention, the protection of human rights that could be achieved through the application of more humane alternatives to detention is often disregarded by the Greek authorities. When the aforementioned options are applied, even if they are not exhaustive, the children's rights are overall more protected and respected. Any non-detention measures that ensure unhindered access to psychosocial and health care, access to education, family life, and a treatment that addresses the children's age and particular needs, are the ones that respects the children's rights and align with the Parliamentary Assembly's of the Council of Europe rule that "unaccompanied minors should never be detained"³

Regarding community based reception solutions, according to an International Detention Coalition research⁴, there are at least six types of community placement alternatives operating in Greece, with varying scales, locations and of course capacities, working under the auspices of the National Center of Social Solidarity (EKKA). These are:

- a. Small scale open reception centers in the mainland (Centers and apartments that existed before the refugee-migrant "crisis", where adults, families and unaccompanied minors are accommodated and receiving support)
- b. Large scale open reception centers in the mainland. (Centers constructed by the Greek government, either near urban centers or isolated, in order to receive the increased influx of migrants since 2015, intended to host support services and case management, although it is unclear if they do so in many cases).
- c. Open reception centers on the islands (Open shelters in which the UNHCR, MSF and other international NGOs and volunteers provided assistance that the Greek government was in some cases unable to do so. These centers have been a matter of protest to the government, in unprecedented manners, until the covid-19 outbreak)
- d. Hotels and other accommodation (Hotels in Athens, supported by UNHCR have been used to accommodate families until relocation. Civil society is also engaged effectively, for example NGO "Solidarity Now" manages one respective hotel, while the Greek Council for Refugees hosts individuals in need in hotel rooms.
- e. Informal support centers and support networks (These are actors that provide significant support, created and run by citizens' initiatives)
- f. Self-funded accommodation (Many people who do not get the asylum seeker status resort in private accommodation, when possible by their economic capacity – when they do not fall into destitution)

³ Council of Europe, Parliamentary Assembly, Resolution 2020 (2014) Final version The alternatives to immigration detention of children

⁴ IDC, Operationalising Alternatives to Detention in Greece, Options Paper, May 2016

3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).

In the context of the Greek legal framework regarding asylum seekers a series of measures for the protection of migrant children's human rights should be applied on the basis of the Recast Reception Conditions Directive. Those measures ensure the effective application of migration policies and the efficacy of alternatives, as well as the protection of the rights and dignity of all individuals, regardless of their legal status. In particular, these include: meeting basic needs, respect for fundamental rights, documentation, interpretation and legal support, case resolution in a timely manner, as well as constant review of placement decisions. On the Basis of the above mentioned Directive all applicants are legally granted with access to food, housing, education, health care and employment.

In 2016 the Greek government set in action one of the most inclusive, respective policies, children's rights protection in the context of an emergency plan for the education of refugee and migrant children. The priority of the policy-makers has been to provide psychosocial care to migrant children regardless of their legal status, and their inclusion in the public education system following a preparation period.

The plan differs according to the children's age, and is adaptive to any specific needs or circumstances that have to be addressed among children with different backgrounds. In particular, that policy considers the accommodation of migrants, providing education both "on site" for those placed in open reception centers, and "off site" for those residing in hotels, rented apartments or shelters (accommodation supported by the UNHCR residency systems, NGOs or municipalities).

Regarding beneficiaries who live in open centers (camps), the Greek state has established school facilities, designed particularly to provide a preparatory education program to support the integration of children into the education system, in Greece or other receiving countries in Europe. The learning process incorporates courses like Greek language, Mathematics, foreign languages, computer science and arts, inter alia. Those accommodated in "off site" residences, as defined above, are included in the Greek public schooling program, studying in the nearest school to their residence. In addition, they follow preparatory courses and have complementary educational or psychological support within these schools.

Moreover, children aged between 15 and 18 years old, can follow technical and vocational courses in respective schools.

The distribution of children to public schools is ensured by the International Organization for Migration, which also takes care of the provision of necessary school supplies to primary school

students. Young children are also accompanied by IOM’s appointed caseworkers, so that they are provided comprehensive care in that special environment. When it comes to secondary school students, they are provided the necessary supplies by the Office of the UN High Commissioner for Refugees. Textbooks are provided by the Greek Ministry of Education.

In late November 2019, the Greek Government announced a new plan oriented to the protection and the proportional treatment of unaccompanied migrant children reaching Greece. The plan that is to be executed and monitored under the auspices of the Prime Minister’s Office, provides the transportation of 2.500 unaccompanied minors placed in refugee camps on islands, and another 1.300 estimated to reside out of official reception centers, to long-term hosting facilities in the mainland. Through enhanced cooperation with the European Union, international organizations and civil society, the government aims to end any mistreatment of children, chasing criminal networks that benefit from their vulnerable status. It constitutes an inclusive measure that would save almost 4.000 children from miserable life conditions, creating facilities that will provide decent housing to small groups, as well as proper care from doctors and psychologists. Nevertheless, until now the government has not made any progress in putting this Plan into Action.

4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.

According to the UN Special Rapporteur’s on the human rights of migrants Report⁵, despite the fact that the legal provisions of national and international law explicitly oblige authorities to exhaust any alternative measures to detention, especially when minors are considered, “the use of detention remains widespread in the criminal justice and migration contexts”. The report also suggests that “the use of pre-trial detention should be the exception, not the rule. Implementing alternatives to detention would help alleviate serious overcrowding in penal establishments”.

According to the Greek Council for Refugees Asylum Information Database Report, the Greek Asylum Service “tends to use standardized recommendations”⁶ regarding asylum seekers’ detention, despite the fact that it is the Asylum Service’s responsibility to assess and issue recommendations on detention. Moreover, even if it states that detention should not be prolonged, as it is a last-resort measure, the Asylum Service does not further engage, leaving it up to the Greek Police to determine if any alternatives shall be applied or not. Many analysts suggest that the government’s procrastination as far as less coercive alternatives are addressed, implies Greece’s discontent to receive new migrants.

Furthermore, on the basis of several civil society actors’ reports, there is a special case of threat against migrant children’s human rights in respect to the P.D. 141/1991 provision on “protective

⁵ Human Rights Council, Press Release of the Special Rapporteur on the human rights of migrants on his mission to Greece, 12/13/2019

⁶ Greek Council for Refugees, https://www.asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/alternatives-detention#footnote2_mdzqate

custody”. According to the Amnesty International Director in Greece, Gavriil Sakellaridis, in November 2019,⁷ over 200 children were detained in closed detention facilities under “protective custody”, for the sole reason that they are unaccompanied minors, in full contrast to the European and international law’s requirements. He added that a new ordinance of the government sets minors over 15 years old to be treated as adults and be included in the fast-track procedures of asylum application examination, which bear an important danger of mistreatment that could lead to the children’s pushback to unsafe foreign environments.

Whereas protective custody under Greek legislation does not necessarily indicate detention, according to the UNCHR Working Group on Arbitrary Detention, it has mainly been applied through the detention of children in closed facilities or police holding cells, and in some cases in hospitals, also under the supervision of police forces.⁸ In accordance with the National Center’s for Social Solidarity (EKKA) latest report, mentioned above, 276 unaccompanied children are held under protective custody. Despite the fact that the “protective custody” status refers to a priority for placement in proper residences, the Greek state faces severe insufficiencies in appropriate facilities to host children, as confirmed by the UNCHR Working Group. As a result, many unaccompanied minors live under “unacceptable conditions”. Moreover many of them “are being held for prolonged periods in conditions similar to those of criminal detention, especially in police stations [...] together with adults, in dark cells, with no access to recreational or educational activities, and no information on what would happen to them in future”. In addition, the UNHCR delegates were informed that the agent responsible for these children “does not visit children in the detention facilities”. Regarding this continuous situation, the European Court of Human Rights has confirmed the violation of the European Convention on Human Rights.

Another obstacle, considering treatment of children with respect to their human rights, is that age assessment has been misconducted, resulting in unaccompanied minors’ and other children’s treatment as if they were adults, with the consequence to be detained with adults many times. Despite the legal provisions referring to a three stage assessment (clinical examination by pediatricians, psychosocial evaluation by qualified experts and skeletal age examination), in practice, the police relies mostly on dental and x-ray examinations which are not enough to precisely assess someone’s age. Thus, the core element of national and international law’s provision to prioritize above all, the best interests of a child is not applied in these circumstances.

5. *What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?*

Civil society organizations and non-state actors, working in the field of children’s human rights and of vulnerable migrants support that have proven to be efficiently involved in activities promoting the development, implementation, monitoring and evaluation of policies and practices concerning the safeguard of the children’s dignity and fundamental rights. A basic task for civil society actors was

⁷ Gavriil Sakellaridis’ Statement on the International Day for the Human Rights of Children, 2019

⁸ Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece, 2 - 13 December 2019

to launch inclusive education and awareness-raising programs, as well as campaigns to confront and prevent discrimination against these groups of children, highlighting in public the extent of their rights' violation whenever coercive detention measures are applied.

In addition, civil society actors along with academia have oriented their resources and use their capacity to conduct field research and case-analyses which on the one hand can entrench their advocacy for humane treatment of children, and on the other, it can provide qualitative and up-to-date information to authorities so that they can use it to respond to the children's needs. Their research contributes to the development of policy-making alternatives to detention considering the particularities in question, and to the implementation of policies and practices based on empirical evidence – instead of “assumptions about likely migrant behavior”.

EKO strongly suggests that the non-state actors' contribution to the cessation of the damage that detention causes de facto to minors proves to be effective and groundbreaking in several cases, in an effort to assist the state's policies and practices. Namely, NGOs with the respective qualifications cover the government's possible insufficiencies of appropriate hosting facilities by undertaking the supervision and function of group residences, hotels, or network of apartments. A joint monitoring procedure by the support of active and informed civil society actors has resulted in ameliorating the government's efforts, while holding fallible state actors responsible through close cooperation with a third party. Additionally, such actors provide guidance and training to many involve parties and professionals working with and for children in order to determine the best interests of the minors in all possible areas of life.