

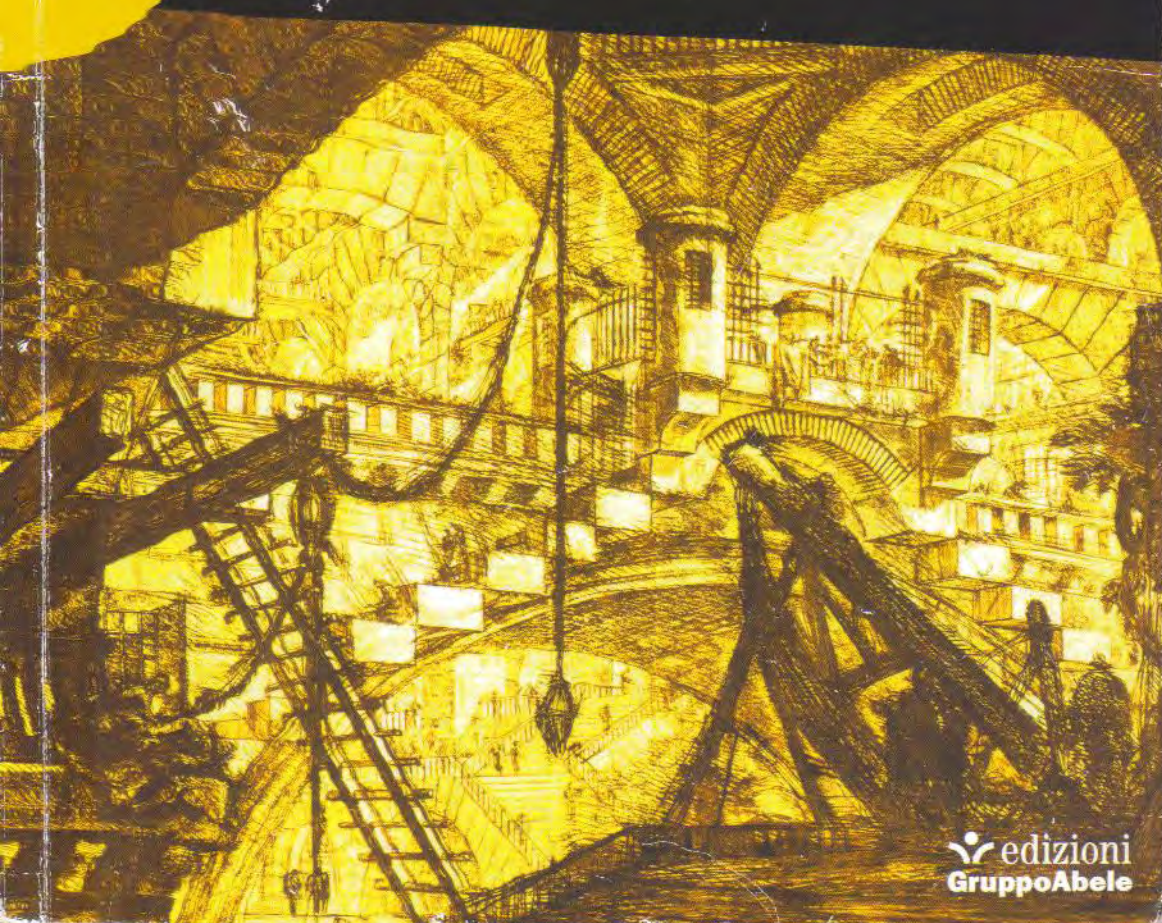
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La detenzione amministrativa degli stranieri  
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## INDICE

|  |        |
|--|--------|
| <b>Editoriale</b> , <i>Stefano Anastasia e Valeria Ferraris</i>  | pag. 7 |
| <b>LA DETENZIONE AMMINISTRATIVA DEGLI STRANIERI. ESPERIENZE IN EUROPA</b>  |        |
| Funzione pubblica e gestione privata dei Centri di detenzione amministrativa per stranieri: esperienze europee a confronto, <i>Caterina Mazza</i>                  | » 11   |
| La détention administrative d'étrangers en Suisse: une exception faite règle?, <i>Clément de Senarclens</i>  | » 28   |
| La detenzione amministrativa nel Regno Unito: teoria e prassi in materia di trattenimento dei soggetti vulnerabili, <i>Elisabetta Dolzan</i>                       | » 46   |
| Il panorama dei Centri di internamento per stranieri in Spagna: dal controllo delle frontiere alla gestione della criminalità, <i>Cristina Fernández Bessa</i>     | » 68   |
| Migration and State crimes. A critical criminological approach and a case study in Greece, <i>Stratos Georgoulas e Dimos Sarantidis</i>                            | » 92   |
| La detenzione amministrativa in Italia. Una analisi attraverso i dati, <i>Valeria Ferraris e Stefano Anastasia</i>   | » 110  |
| Betwixt and between: the forgotten space. Experiences of detention inside Turin's CIE, <i>Abigael Ogada-Osir - Emanuela Roman - Ulrich Stege - Maurizio Veglio</i> | » 117  |
| Lampedusa: quando la detenzione amministrativa diventa illegale, <i>Francesca Cancellaro</i>   | » 134  |
| Vite che contano. Il viaggio di Mohamed e degli altri, dispersi nel Mediterraneo, <i>Marzia Coronati</i>   | » 147  |

## MIGRATION AND STATE CRIMES. A CRITICAL CRIMINOLOGICAL APPROACH AND A CASE STUDY IN GREECE

Stratos Georgoulas e Dimos Sarantidis

*The critical criminological thought can and has to discuss about the relation between crime and migration issues. By invalidating the myths that constitute common rhetoric in political and media analysis – through which repression policies become stricter and stricter – State crime and the crimes of bodies of official and unofficial social control against refugees and immigrant populations are coming into light. A fundamental question is whether or not planned or enforced State policies can become or are the real crime. The present article first makes some theoretical assumptions on the issue of State crimes against migrant populations and then seeks to examine the application of those theories in practice through a case study taking place in a refugees' and immigrants' detention centre in Greece.*

**Keywords:** Detenione amministrativa; crimini dello Stato; migrazione; criminologia critica.

### 1. Migration and the role of critical criminology

The critical criminological discourse should ask questions concerning the root of the problem and not the superficial empirical explanation of the connection between criminal pathogenicity and population displacement. In particular, the issue of connecting moving populations and crime has developed a wave of misunderstanding, which is reflected in conventional criminological researches, and is also reproduced and maintained in the wider society through the fear of victimization. Quantitative researches of gangs of migrants (White et al., 1999; Collins et al., 2000) and over-representation of migrants in crime are considered statistically unreliable, since one cannot prove a direct causal relationship (Mukherjee, 1999). In addition, they do not take into account the over policing of migrant populations and discrimi-

ination against them deriving from the mechanisms of justice (Cunnen, 1995). Furthermore, such a ratio is maintained almost two centuries, as shown in the research of Pearson (1983) for England in the 19th century and of Gleeson (2004) for Australia at the end of the century, culminating in the researches of the School of Chicago in the first half of the twentieth century, and guided much of the subsequent U.S. research and theory (Taylor, Walton and Young, 1973).

The critical criminological discourse is not only criticizing the continuous production of relevant research findings. It raises questions such as, why the State operates selectively in order to define an act as criminal by setting aside other operations that cause social harm, many of which are produced by the State and its institutions at the expense of displaced populations? The *new criminology* thinking highlights questions like the following: why are immigrants and refugees over-represented in official victimology statistics (Poynting, 2008)? Why crimes against migrants are not recorded by official agencies of social control and are not treated as crimes against victims who are non-immigrants (Poynting and Noble, 2004)? Why the State does not face the same way accidents (sometimes fatal) with immigrant victims (Tombs, 2007; Hocking and Guy, 2008)?

Especially on the issue of refugees and asylum seekers, the critical criminological discourse has started to ask questions such as why the *developed* countries with a lower number of refugees (in relation to the *developing*) are characterized by the most as oppressive and repressive policies (Pickering, 2008)? Why the policies enforced at borders by the official social control oppress human rights without relying on international agreements and laws (Wonders, 2006)? How some specific governmental policies target refugees as a vulnerable population causing social damage and revealing the failure of the welfare state systems (Crawly, 2001; Hathaway, 1991)?

The critical criminological discourse has begun to manifest interest in highlighting the issue of crimes of the State against refugee populations. The act of the entrance of a migrant into a country is automatically been characterized as illegal, without even the recognition of the basic rights recognized by the criminal law procedure. We put forward the following general research hypotheses:

- How the structure, function and specific practices that take place in detention centres (such as prolonged detention, living conditions, the response by the agencies of formal social control, and methods such as body control) cause harm to detainees (Silove et al., 2000), with special reference to unaccompanied minors (Human Rights and Equal Opportunity Commission, 2004) and private detention centres (Pickering, 2008).

- How non-repressive policies, as part of a welfare policy, cause problems of exclusion from health services, education, employment, etc., by essentially preventing the enforcement of announcements concerning integration/inclusion and attain these people as outsiders, making them vulnerable to the operation of formal social control (Esmaili and Wells, 2000; Fitzpatrick, 1999; Fitzpatrick, 2000; Gibney, 2000).
- By what means does the policing at the border operate and how the border control, as an on-going process (Weber, 2000) changes the character of the border and reconstructs the nature of structural powers beyond established and recorded in official legal documents formalities of national sovereignty, international relations and universal human rights (Aas, 2011). In this problematic area, issues of the surveillance of the body are brought, and body can be an identity that can serve as key access (or exclusion from) modern society (Aas, 2006).

Concerning the Greek reality, and according to what is mentioned above, the question of how the immigration and refugee policy, determines the terms *deviation* and *crime*, in relation to migrant populations, should be clarified in a historical and social context. Special emphasis should be given to the fact that terms and control bodies that have been developed in the early twentieth century in order to reproduce the police of non-assimilation and illegal immigration are used (Georgoulas, 2009).

In terms of a scientific approach to this phenomenon there is a need to put specific research questions concerning the crimes of the State against migrants, by participating in the above mentioned critical criminological debate, and respond by presenting a case study, which also aims to initiate a future criminological research orientation in Greece.

## 2. A Case Study: The Refugees and Immigrants Detention Center of Pagani

### 2.1. Living conditions

Seeking to study more effectively crime policies on migrant populations in Greece, a participant observation took place from April 2009 to March 2010 in Pagani detention centre located near the town Mytilene at Lesbos.

It is important to note that the *reception centres* although existing as an infrastructure were never been formally instituted by the State. Another paradox of the *reception centres operation* is the peculiar administrative ar-

rangements characterizing them, since there is not any specific State body responsible for the administration of the infrastructure.

Regarding the case of Lesbos island during the decade of 1990, migrants arriving, were arrested, and then driven to monasteries and churches in the village of Agiasos. In 2001 the first detention centre in Mytilene (capital of Lesbos) began operating in an open camp near the airport. After a transfer of the detention centre to an old prison in Mytilene in 2003 the detention centre was transferred to a former storehouse at an area, called Pagani. It kept working until August 2010. Specifically, in October 2009, following a visit by the Deputy Minister of the Citizen Protection a temporary shutdown of Pagani was ordered<sup>1</sup>. Serious allegations of human rights violations had been reported by European and domestic organizations. In addition, protests and demonstrations, during the summer of 2009, took place by the local community and the European movement NoBorder. Revolts and hunger strikes by the hundreds of detainees were also an almost every day phenomenon. The actions of NoBorder contributed decisively in making the Pagani case widely known at a European level, so that Pagani was at that time, the most famous detention centre of immigrants and refugees in Europe.

The living conditions in the detention centre were extremely difficult. The number of detainees during the winter months was limited in contrast to the summer period. The official capacity of the centre could in no case exceed the 280 people. In summer 2008 the detainees were more than 1000. In April 2009 the detention centre population reached the number of 90, in May 200, in June 400, in July 800 and during the months of August and September exceeded even the number of 1000. In October the number was between 600 and 800 detainees. The awful conditions of detention, but also some issues linked to the internal function of the centre – including the absence of basic facilities, overcrowding, and different speeds of release of the detainees<sup>2</sup> – were some of the main reasons for continuous revolts of detainees and demonstrations by citizens.

<sup>1</sup> Despite that order, Pagani remained open from November 2009 until August 2010 and refugees were still detained for a period of 1-2 days until the bureaucratic procedures were fulfilled in order for the detainees to be transferred to other detention centers in Greece.

<sup>2</sup> By saying “different speeds of release of the detainees” we mean that, without specific reasoning by the authorities, a detainee was very often released, for example in a 10 days period, while another detainee could remain detained for weeks or months. This practice was making detainees wonder why there is such injustice and different treatment and caused uncertainty since nobody knew the exact date of his/her release.

In Pagani there were seven rooms, one of which was for the detention of women and one or two – depending on the population – for the detention of unaccompanied minors. In the remaining five or six rooms, men of various nationalities were detained. In many cases more than one hundred people had to share one toilet and one bathroom, water supply and drainage were not properly working since they were old and there were often leaks, bad smells and as a result serious health risks. The chambers, the mattresses and blankets were always dirty. In winter the heating was inadequate, while conversely, the summer temperatures inside the chambers were very high, as there was almost no ventilation. The phone booths were in the yard, while the yarding of the detainees was not always taking place in an everyday basis. Wards housed detainees from different countries and different religions and this was often leading to great tension. For example, in mid-June 2009 there was a fighting between Egyptians and Somalis, leading many to go to hospital with serious injuries. The existence of permanent medical staff was also problematic as there were days when there was no doctor at the detention centre, while the days the doctor was present, she remained there for a very limited time.

The detention period was ranging from several days to several weeks or months and the detainees never knew the exact date of their release. This uncertainty was leading to intense nervousness of detainees, which, combined with the bad detention conditions frequently lead to riots and hunger strikes. Particular concern was caused by the prolonged detention of unaccompanied minors, since a considerable time was required (several weeks to months) firstly for a commissioner to be designated to assume responsibility of their temporary custody and secondly to find a special reception centre to host unaccompanied minors. So, keeping minors (whose ages usually ranged from 10 to 18 years old) was a clear violation of the rule of law both domestic and international.

As it is shown from the above, there was a serious violation of basic human rights in Pagani. The detention centre operated without the specialized personnel required and without the basic organization and infrastructures. According to the UN High Commission for Refugees, a migrants' reception centre requires adequate living conditions, access to legal aid, free movement, access to education and employment. None of those was applicable in the case of Pagani.

## 2.2. *The role of the Greek police and detainees' rights*

In accordance with Greek law on the procedure for international protection, the authority responsible for such requests is the Greek Police. How-

ever, the examination and judgement of international protection applications by the police is in contradiction with the simultaneous role of the police to prevent irregular migration. There are, therefore, reasonable doubts about the possibility of developing an objective and impartial judgement by a deciding body, which is in a *conflict of interest* position. Moreover, for an objective assessment regarding the applications for international protection there must be a substantial knowledge of refugee law and continuing information on socio-political developments in countries of origin of applicants. The fulfilment of these conditions is demanding for these decision-maker and consultant bodies, which are, however, charged both with numerous other police and administrative functions, and have not the appropriate scientific training in order to judge fairly on asylum applications.

### a) *Police violence*

In the case of the detention centre of Pagani, during the field research, phenomena of intense psychological violence and in many cases physical violence were observed. Regarding the cases of physical violence, it was not possible in some cases to obtain sufficient evidence of guilt of the police, and in many other cases the detainees themselves did not wish to bring any legal action because of the fear that the police would make reprisals. This was often expressed by detainees in conversations we had with them. For example, we were informed by a group of seven Afghans in June 2009 about: "Police yesterday came in our room and hit us when we asked them to let us get out in the yard for a while, because for three days now we were in our rooms all the time". In July 2009, a group of five Somalis reported a similar incident concerning verbal and physical violence when some detainees complained about the lack of some essential supplies. In all cases the detainees indicated that they do not wish to complain formally about these incidents because of fear.

In another case, on 29 June 2009, the Greek authorities led two Palestinian families (two couples with children) to the detention centre. They were extremely physically and psychologically tired, since they had just been arrested, after a long and dangerous journey in the sea. In the sight of the very bad condition of the detention centre, the overpopulation and the fact that husbands would be separated from their wives and children, the Palestinians started complaining about this treatment. The police did not seem to understand them at all and these complaints led one police officer to start talk in an offensive way. The families' kids started crying while one of the women was in the 5<sup>th</sup> month of pregnancy and was extremely worried because of the discomfort suffered and the great psychological pressu-

re. The other woman had severe pain in her body (much later when they went to the detention centre, the doctor told her she should make special medical exams, since it was likely to have stones in her kidney), while the children continued to cry. A police officer came with very fast pace and started shouting: "Get into the wards! You will not do what you want, we are the bosses!" He began pushing the detainees and especially the father who had in his lap his seven-year old daughter, who was crying constantly watching the policeman turning against her father. The policeman also turned and shouted against the pregnant woman and then pushed her. The woman got terrified and started running shouting: "My baby! I am pregnant! This is Guantanamo!" The rest of the family was following her until the police stopped them. The police called an ambulance and the pregnant woman went to the hospital. This was one indicative incident showing the racist and violent attitudes, characterizing many of the police officers in Pagani. The sight of a police officer swearing and pushing a woman, even if he did not know that she is pregnant, and pushing a father holding in his arms his child, is repulsive and problematic. Despite the fact that this was another incident of police violence, the victims didn't want to bring any charges against the police. They just wanted to leave the detention centre as soon as possible.

On the 23 October 2009 a report was made to the Police Headquarters for an incident concerning the beating of detainees during an uprising, and especially for the case of intense physical violence against a Palestinian seventeen-year-old unaccompanied minor. An administrative examination took place, but the final outcome reported that "although the police used violence by beating some detainees, this was not excessive, but necessary [...]. In addition, the victims in the process of identification did not recognize any police perpetrator of the beating, so the charges could not be personally addressed to anybody". It is worth noting that the witnesses had informally claimed that they had been threatened by the police in order not to mention any of the real incidents that took place. Concerning the beating of the seventeen-year-old unaccompanied minor the use of excessive force against him was formally justified as follows: "An uprising took place and the detainees set fire in their room. The boy was sleeping in the room and in order for the police to wake him up, they started hitting him with the bludgeon..." Despite this, the witnesses did not confirm the incident when questioned by the police officer who conducted the administrative inquiry. In addition, the preliminary examination of the public prosecutor was almost fully based on the outcomes of the administrative examination conducted by the police. As a result the case was set on file. At this point it is important to mention

that the administrative examination by the police of cases concerning police misconduct is highly problematic, since it has to do with the legal paradox that auditor and audited are from the same organization.

Regarding the cases of psychological violence against detainees, the phenomenon of racist prejudices of some police officers was very common and was resulting in abuse and denigration against detainees. In May 2009, during a conversation with a police officer at the detention centre we were talking about the overcrowding of detainees in and the poor sanitation. At some point he told us: "All those who come from Asia are parasites... What should we (the police) do? Start sinking the boats they are coming?" One of his colleagues listening to our conversation replied: "We need a Great Alexander to clean them all, all of them are uncivilized and barbarians". Such kind of thoughts was not the exception, but on the contrary the rule for many police officers in Pagani. For some of those this was just part of their daily talk but for others this kind of racist culture was reflected in their attitude against detainees. They used to swear in the Greek or English language saying words like *fuck*, *shut up* and made offensive gesture. In many cases they were telling the detainees not to complain about the bad detention conditions because, otherwise, they would remain detained for a much longer period.

#### b) *The right to be informed*

The detainee, should be fully informed of the reason of his detention, and the rights he has according to law. In case of foreign detainees who do not speak the Greek language, their rights should be explained in the most appropriate way (through an interpreter, consular, etc.). In addition, the rights and obligations of the detainees should be in a written form. Particular attention should be paid for the full briefing of detainees seeking asylum.

The migrants who had been arrested by the authorities and arrived in Pagani had not received any information about the reasons of their detention or their rights. During the summer of 2009 an average of 50 people arrived at Pagani on an everyday basis, and the only information they were receiving (the 50 people who had just arrived and the hundreds of people who were already detained) was coming from the two lawyers who were there. The authorities (after recommendations by the lawyers) posted forms outlining the rights and obligations of the detainees. However, many people cannot read and for those who can, after reading their rights and obligations more questions were arising but there was not always somebody to give them answers.

c) *Communication of the detainees with people of their choice*

The contact of detainees with relatives or other persons of their choice includes (according to the law) both telephone and personal contact. The police should facilitate the detainee to contact any person he desires in order to inform him/her about the place and cause of his detention. In Pagani, the authorities were, first of all, taken away the mobile phones of the detainees and the only way a detainee could communicate with the outer world was through 2-3 payphones located in the courtyard. Bearing in mind the fact that yarding was taken place on a very limited time -about half an hour a day, and sometimes not on a daily basis- it becomes apparent that the communication of the detainees with people they desired was extremely problematic. Problematic was also the fact that many detainees did not have the required amount of money to buy a phone card.

d) *Protecting health of the detainees*

According to the Greek law, protecting the health of the prisoner is a basic obligation of the police authority. Medical care is provided by the doctor performing the medical service of the police, and, in his absence, by another doctor, while the prisoner is entitled under the examination by the official doctor to ask to be seen by a doctor of his choice. Special medical care must be provided to vulnerable cases. The detainees in Pagani were coming from a long and arduous journey. Among them there were vulnerable cases like children, unaccompanied minors, elderly, pregnant women people with either severe disease or a common cold etc. Many were also victims of torture or trauma suffered during their journey. The appalling detention conditions and hygiene in the wards aggravated the detainees' health. Therefore the number of people seeking medical help was quite big. Inside the detention centre there was one doctor and a nurse during the morning. Serious cases were transferred to the hospital of Mytilene. The medical staff, therefore, within the detention centre was completely inadequate for the large number of the detainees. Examples of such cases were hundreds.

Indicative is a case of an elderly asylum seeker who was detained for a long time and medical care for him was almost absent, notwithstanding his cardiac problems. The hygiene in the wards and the bad psychological conditions, due to his detention, aggravated the situation of his health. Finally, because the authorities had been detaining him - together with one hundred or more people in the same room - until the time his asylum interview would take place, he decided to withdraw his asylum application - and therefore to abandon the international protection he was wishing to apply for.

In October 2009 eight pregnant women were detained for more than ten days each in a room where there was not even space to walk because there were mattresses everywhere. They were released after a visit and subsequent action taken by the vice-Minister of the protection of citizen. Unaccompanied minors were on hunger strikes, but there was not sufficient medical staff to monitor their health status.

2.3. *Arrests in the sea - testimonies*

Immigrants and refugees arriving to Mytilene from the Turkish coast are identified and arrested, in most cases, by the port authorities or Frontex. In case they manage to reach the Greek coast, the police arrest them. Great concern rises from the fact that testimonies of refugees and immigrants, and reports of international and national organizations show a practice of the Greek authorities concerning illegal push-back operations from Greece to Turkey, which clearly violate basic rules of domestic, European and International law.

Concerning the case of the Greek islands -including Lesbos- the German Ngo Pro Asyl and the Group of Lawyers for the rights of immigrants and refugees in their common report (2007) stated: "The Greek coast guard systematically maltreats newly arrived refugees. It tries to block their boats and force them out of Greek territorial waters. Regardless of whether they survive or not, passengers are cast ashore on uninhabited islands or left to their fate on the open sea. In one reported case on the Chios island, the degree of maltreatment amounted to torture (serious beating, mock execution, electric shocks, pushing a refugee's head into a bucket full of water)".

On May 20, 2009 we had an interview with a seventeen-year-old Afghan unaccompanied minor, called S.M. He talked about the methods used by the Greek authorities to prevent the entrance of himself and his friends in Greece. S.M. managed to arrive in Greece after four attempts in a period of almost one year. In his fourth attempt, together with three other Afghanis, they tried to come to Greece with an inflatable boat. «We started our journey from the coast of Ayvalik in Turkey at 22:00, on last Saturday. None of us knew swimming. We arrived close to the coast of the island by Lesbos, and then the Greek authorities appeared. The men wore dark blue uniforms and the ship was as big as the ones that are anchored in the port of Mytilene<sup>3</sup>. They helped us to go on board and then took all the things we had and threw them into the sea. They forced us to pull our shoes and threw them in the sea as well. After that they beat us with a rope. All men - five or six uniformed - were drunk,

<sup>3</sup> This description shows that he talks about the Greek coast guard police.

laughing and mocking us. They started insulting us and asked in English why we came. After they transferred us to the midway between Greece and Turkey, they threw us, one by one, in our plastic boat and gave us only one of the two paddles. It was the scariest moment for all of us, because nobody knew swimming and feared that we could fall into the water. By using the paddle and our hands, we arrived to Lesbos at about 10:00 on the 24 of May 2009».

#### 2.4. *The detention of asylum seekers and the discouragement by the authorities for making an asylum application*

The right to request asylum is provided by the Geneva Convention of 1951. However, the asylum procedure in Greece does not meet some basic requirements. In the case of Pagani, beyond the general difficulties asylum seekers face in Greece it is worth noting that the overall treatment of asylum seekers by the authorities resulted in the complete discouragement of those who wished to make an asylum application, to such an extent that the detainees in Pagani were deriding anyone who decided to make an asylum application. The detention centre was totally unsuitable for hosting asylum seekers, the detention was prolonged and this seems to work as punitive act for somebody who wished to make a claim for the refugee status.

During the end of July 2009 twenty-three detainees asked to apply for asylum. At that time the number of detainees had begun to exceed 1000, which, combined with inadequate space, increasing temperature and prolonged detention, was making detention inhumane. Asylum seekers, seeing that the timing of the examination of their asylum claim was uncertain began to withdraw their asylum applications. Until the beginning of September, eighteen asylum seekers had withdrawn their applications.

On the 23<sup>rd</sup> of September 2009, finally, the examination of an asylum application of one of the very few asylum seekers who had remained in Pagani and had not withdrawn their application took place. Z.H. was born in 1989 in Afghanistan and was illegally detained in Pagani for more than three months. He was brought to Pagani on the 19<sup>th</sup> of July 2009 and was released on the 25<sup>th</sup> of October 2009. On the 27<sup>th</sup> of July 2009 he decided to apply for asylum and some days after the police decided to transport Z.H., among many asylum seekers to unknown detention centres. The working staff of the detention centre informed the Mytilene police that asylum seekers should not be sent to unknown destinations, since this was not only dangerous for them but they should also have the appropriate legal assistance at the place their asylum application would be examined. In addition, during the day of the transportation a lot of people gathered at the port and blocked the tran-

sportation of 63 people. Among those there were 13 asylum seekers. Z.H. continued being detained in Pagani and the refugee committee examined his application on the 23<sup>rd</sup> of September 2009. The committee, despite the law, interviewed the asylum seeker in a language relatively unknown to him (the interview the asylum seeker had with the committee took place in English and the interpreter was a police officer from the foreigners' office of Mytilene police department, since the Mytilene police had not an interpreter speaking Farsi). Despite the fact that Z.H. had finished with his interview the Mytilene police kept on detaining him until the 25<sup>th</sup> of October 2009.

We can also mention the cases of K.M., speaking French, and A.K., speaking Arabic. Both were held in detention for three months, without the police examining their asylum applications. The first applicant was released on the 17<sup>th</sup> of September 2009 and wanted to stay and wait in Mytilene, until his request would be considered. He told us that asylum seekers in the chambers of the detention centre of Pagani face daily ridicule by other detainees. It was inconceivable for the detainees that somebody applies for asylum in a detention centre where the authorities *punish* somebody who seeks international protection, by prolonged detention.

The second aforementioned applicant, A.K., was another applicant who withdrew the asylum request. A.K. suffered from a heart disease and the authorities knew it, but insisted on detaining him. When, few days before his release, he was informed that after his release he would have to return to Mytilene for the asylum application interviews, he asked to stop any process of examining his request and did not want under any circumstances to return to the island, having lost his confidence to authorities, as he said.

The above examples are strong indications that a systematic effort was taking place by the authorities in order to discourage refugees to apply for asylum. The prolonged detention of asylum seekers, the awful detention conditions of asylum seekers and the extremely low possibility for an asylum claim to be recognized by the Greek State led the detainees to believe that someone applying for international protection is at least naive.

#### 2.5. *The detention of unaccompanied minors*

The detention of minors constitutes a flagrant violation of international law to protect children's rights in accordance with Article 37b of the UN Convention on the Rights of the Child, and the guidelines of the UNHCR for refugee children (2009). Greece, moreover, does not comply with the minimum standards for the protection of minors as defined by the European Community law (Articles 17, 18, 19 the 2003/9 Council Directive). The establishment



in 2008 of the unaccompanied minors reception centre at Agiasos of Lesbos was a milestone in the efforts to provide protection and welfare services to unaccompanied minors. However, the reception centre reached occupancy in spring 2009. The overpopulation of the Agiasos reception centre signalled the overcrowding of the detention centre at Pagani as well. The jurisdiction concerning the hospitality of unaccompanied minors belonged to the Ministry of health, and its inability to fulfil the legal requirements concerning the accommodation of unaccompanied minors came into light. The number of children detained at Pagani that period was more than one hundred. On the 21<sup>st</sup> of July 2009, according to official data a hundred and thirty-four unaccompanied minors were detained. Many of them were younger than fourteen years old and were detained for more than one month. The children were detained in two filthy rooms with rodents, poor ventilation, an extremely smelly and suffocating atmosphere and totally unhealthy environment. At best the yarding duration was for half an hour a day. In addition, immigrants and refugees who were arrested for criminal offences were detained together with the minors. This overall situation caused psychological stress on children, and often caused tensions and conflicts among them. On the 19<sup>th</sup> of August 2009, a letter by an Ngo was sent to the Ministry of health, the Prosecutor, the Police Headquarters and the UNHCR. According to that letter, more than 270 unaccompanied minors were detained during that period. Many of them were younger than 14 years old and many had already been for more than two months. The detention was inappropriate: overcrowding, lack of yarding, poor medical care, etc. Besides the fact that every child was a refugee, among those children there were also cases who had suffered particularly traumatic experiences and needed immediate psychological support. Under those circumstances, about 150 of those detained minors began a hunger strike, which lasted several days. Among the hunger strikers there were children under 14 years who were clearly less *resistance* to such a venture. In the case of unaccompanied minors the problem was not only the bad conditions of detention (that was an issue known and overemphasized in the case of Pagani and had even been criticized repeatedly by the European Commission for the Prevention of Torture). An important issue was the fact that there were no perspectives at all for housing those children in suitable accommodation structures as required by law, because there were not such infrastructures. The existing reception centres were already overcrowded. In addition the prosecutor was delaying in appointing at least temporary guardians of these children, a precondition law demands for an unaccompanied minor for not to be detained. Undoubtedly, however, inappropriate detention conditions aggravated the situation, putting at an immediate risk the physical and mental health of

children. The authorities, under the pressure of continuous formal petitions, demonstrations and protests of the NoBorder and local community movements were forced to lead a large number of detainees, particularly vulnerable groups, including unaccompanied minors in an open reception – camp named PIKPA, which was used by the Prefecture of Lesbos until then as a campground for children. It is worth noting that a large number of unaccompanied minors were set free from PIKPA, without ensuring their referral to a special reception area, as provided by law. So, they continued their journey to Athens by ship unaccompanied, with danger, arriving in Athens to fall victim to any kind of exploitation. The breach on the part of the Greek State's obligation to ensure the *best interest of the child* was confirmed recently by the European Court of Human Rights (ECHR), on the case of a fifteen-years old unaccompanied minor, who was detained in Pagani during 2007 (ECHR, 05-03-2011, *Rahimi v Greece*, appl. No. 8687/08). It was ruled that there was violation of Article 3 (prohibition of inhuman or degrading treatment), Article 13 (right to an effective remedy) and Article 5 § 1 and 4 (right to liberty and security) of the European Convention on Human Rights.

### 3. Conclusions

On the 15<sup>th</sup> of March 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a public statement. This was a reaction to Greece's failure to tackle the Committee's deepest concern regarding the detention conditions of irregular migrants and the state of the country's prison system. In particular, the CPT deplored Greece's persistent failure to resolve the profound shortcomings affecting the detention regime and conditions for irregular migrants and the continuing deterioration in living conditions and treatment of prisoners in the country. The seriousness of this statement also arises from the fact that this was the sixth time that the Committee made a public statement since its foundation in 1989.

According to the Joint statement by the AIRE Centre (Advice on Individual Rights in Europe) and Amnesty International (21-01-2011) "Greece – the first EU country of entry for many thousands of asylum-seekers fleeing from countries including Afghanistan, Iran, Iraq and Somalia – does not have – and has not had for several years – asylum determination procedures or adequate reception conditions in line with international law, including the minimum requirements under EU law. It has also not ensured that such asylum-seekers are treated with respect for their dignity on arrival. [...] Some have been re-

moved from Greece despite the fact that such removal placed them at real risk of further grave human rights violations. Despite all of this, several EU member states and other countries participating in the Dublin II system have been exacerbating the situation by insisting on returning asylum-seekers to Greece, rather than opting – as they may under the Dublin II system – to take responsibility for processing claims for international protection. By resorting to expediency in their interpretation of the Dublin II Regulation, and insisting on returning asylum-seekers to Greece, European states have acted duplicitously. They have knowingly circumvented their international legal obligations, including under the ECHR and the EU Charter of Fundamental Rights. They have caused untold suffering as a result; and have violated the rights of asylum-seekers and refugees, including by exposing them to *refoulement*.<sup>4</sup>

These are relatively recent developments at European level,<sup>4</sup> contributing to the effort made in this article to answer research questions regarding the crimes of the State against migrants. Part of the findings of our fieldwork therefore seems to be confirmed with the most formal and categorical manner.

Our main question was related to the need for the critical criminological reason to manifest interest and highlight the issue of crimes of the State against migrant populations. We gave particular emphasis to the question of how the structure, function and specific practices that take place in detention centres (such as long detention, living conditions, treatment by the agencies of formal social control, etc.) are causing harm to the detained populations, and become, ultimately, a hidden, non-treatable, but substantially the real crime. Case studies about the detention of migrants and refugees, as the one of Pagani, are important research tools to gather and evaluate data on crimes conducted by the State and its bodies of social control, victimizing people who migrate. Issues such as the harmonization of national legislation with basic international and European law principles concerning migration and refugee law, the reception of migrants and the way authorities officially and unofficially treat them can be identified, documented and critically analysed by criminologists. Elements that bring into light the racist and conservative policy of the Greek State towards migrants seem to be characteristic of the present migration policy and many of those were identified and recorded during the fieldwork at the detention centre of Pagani.

<sup>4</sup> The references made are indicative, since there is a vast number of reports and ECHR cases concerning the violation of migrants' fundamental rights by the Greek State.

## REFERENCES

- Aas-Franco, K. (2011), *Crimmigrant bodies and bona fide travelers: surveillance, citizenship and global governance*, in *Theoretical Criminology*, 15: 331-346.
- Aas-Franco, K. (2006), *The body does not lie: identity, risk and trust in technoculture*, in *Crime Media Culture*, 2(2): 143-158.
- Collins, J., Noble, G., Poynting, S. and Tabar, P. (2000), *Kebabs, Kids and Cops: youth, ethnicity and crime*, Sydney: Pluto Press.
- Crawley, H. (2001). *Refugees and Gender: law and processes*, London: Jordan Publishing.
- Cunneen, C. (1995), *Ethnic Minority Youth and Juvenile Justice: beyond the stereotype of ethnic gangs*, in *Current Issues in Criminal Justice* 6(3): 387-394.
- Esmaeli, H., Wells, B. (2000), *The Temporary refugees: Australia's legal response to the arrival of Iraqi and Afghan boat people*, in *UNSW Law Journal* 23(3): 224-245.
- Fitzpatrick, J. (1999), *The end of protection: legal standards for cessation of refugee status withdrawal of temporary protection*, in *Georgetown Immigration Law Journal*, 13: 343-381.
- Fitzpatrick, J. (2000), *Temporary protection of refugees: elements of a formalized regime*, in *American Journal of International Law* 94: 279-306.
- Georgoulas, S. (2009), *Divide and rule: Ethnic diversity in the migration policy of the Greek State*, in *International Journal of Academic Research*, vol 1, no 2, pp. 199-205.
- Gleeson, K. (2004), *From Centenary to the Olympics: gang rape in Sydney*, in *Current Issues in Criminal Justice* 16(2):183-201.
- Gibney, M. (2000), *Between control and humanitarianism: temporary protection in contemporary Europe*, in *Georgetown Immigration Law Journal* 14: 689-707.
- Hathaway, L. (1991), *The Law of Refugee Status*, Toronto: Butterworths.
- Hocking, B. A. and S. Guy (2008), *Dead man working? Critical criminology, human rights and the workplace*, in Thalia, A. and Cunneen, C. (eds) *The Critical Criminology Companion*, 191-203, Sydney: Hawkins Press.
- Human Rights and Equal Opportunity Commission (HREOC) (2004), *A Last Resort? National Inquiry into Children in Immigration Detention*, Sydney: HREOC.
- Mukherjee, S. (1999), *Ethnicity and Crime: an Australian research study*, Report prepared for the Department of Immigration and Multicultural Affairs, Canberra: Australian Institute of Criminology.

Pearson, G. (1983), *Hooligan: a history of respectable fears*, London: Macmillan.

Poynting, S. and Noble, G. (2004), *Living with Racism: the experience and reporting by Arab and Muslim Australians of discrimination, abuse and violence since 11 September 2001*, Report to The Human Rights and Equal Opportunity Commission, [http://www.hreoc.gov.au/racial\\_discrimination/isma/research/UWSReport.pdf](http://www.hreoc.gov.au/racial_discrimination/isma/research/UWSReport.pdf).

Poynting, S. (2008), *Ethnic Minority Immigrants, crime and the state*, in Thalia, A. and Cunneen, C. (eds), *The Critical Criminology Companion*, 118-128, Sydney: Hawkins Press.

Pickering, S. (2008), *The New Criminals: refugees and asylum seekers*, in Thalia, A. and Cunneen, C. (eds), *The Critical Criminology Companion*, 169-179, Sydney: Hawkins Press.

Silove, D., Steel, Z. and Watters, C. (2000), *Policies of deterrence and the mental health of asylum seekers*, in *Journal of the American Medical Association* 284: 604-611

Taylor, I., Walton, P., Young, J. (1973), *The New Criminology*, Routledge and Kegan Paul.

Tombs, S. (2007), *Violence, Safety Crimes and Criminology*, in *British Journal of Criminology* 47(3): 531-550.

Weber, L. (2006), *The shifting frontiers of migration control*, in Pickering S., Weber, L. (eds), *Borders mobility and technologies of control*, 21-43, Dordrecht: Springer.

White, R., Perrone, S., Guerra, C. and Lampugnani, R. (1999), *Ethnic Youth Gangs : do they exist? Overview Report*, Melbourne: Australian Multicultural Foundation.

Wonders, N. (2006), *Global Flows, Semi- Permeable Borders and New Channels of Inequality*, in Pickering, S and Weber, L.(eds), *Borders, Mobility and Technologies of Control*, 63-86, Dordrecht: Springer.

## SOURCES RELATIVE TO PAGANI DETENTION CENTER

Advice on Individual Rights in Europe (AIRE) and Amnesty International, Athens, 21 January 2011, Joint statement: "The European Court of Human Rights vindicates the rights of asylum-seekers in the EU", available at: <http://www.amnesty.org/en/library/asset/EUR03/001/2011/en/12e41c6a-0b4d-431b-af15-f919c5178a2d/eur030012011en.html> (accessed 12-01-2012).

European Court of Human Rights, (ECHR), 05-03-2011, *Rahimi v Greece*, appl. n. 8687/08, available at: <http://hudoc.echr.coe.int/sites/eng/pages/se-arch.aspx?i=001-104367> (accessed 23-11-11).

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Public statement concerning Greece under Article 10, paragraph 2, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 15 March 2011, at: <http://www.cpt.coe.int/documents/grc/2011-10-inf-eng.htm>.

Human Rights Watch, (2009), *Greece: Hunger Strike by 150 Detained Children a Sign of System's Failure*, available at: [http://www.huffingtonpost.com/human-rights-watch/greece-hunger-strike-by-1\\_b\\_267071.html](http://www.huffingtonpost.com/human-rights-watch/greece-hunger-strike-by-1_b_267071.html) (accessed 12-03-10).

ProAsyl, (2007), *The Truth may be bitter but must be told, The situation of Refugees in the Aegean and the Practices of the Greek Coast Guard*, available at: [http://www.proasyl.de/fileadmin/proasyl/fm\\_redakteure/Englisch/Griechenlandbericht\\_Engl.pdf](http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Englisch/Griechenlandbericht_Engl.pdf) (accessed 25-07-10).

United Nations High Commissioner for Refugees, 2009, *Allegations for ill-treatment at the detention center of Pagani, Lesbos – UNHCR asks further investigation*, Available in Greek at: [http://www.unhcr.gr/Press\\_Rel/41\\_2009\\_Oct25.html](http://www.unhcr.gr/Press_Rel/41_2009_Oct25.html) (accessed 15-11-09).

United Nations High Commissioner for Refugees, *Guidelines on International Protection n. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html> (accessed 20 July 2011).