

PRESS RELEASE

16 March 2010

**Greece: GHM and Human Rights Commissioner intervene before European Court
in asylum cases concerning the Netherlands and Greece**

Greek Helsinki Monitor (GHM) submitted today to the **European Court of Human Rights**, its third party intervention, in a group of cases concerning the transfer of asylum seekers from the Netherlands to Greece on the basis of the EC ‘Dublin Regulation.’

Also today, **Council of Europe Commissioner for Human Rights Thomas Hammarberg (CHR)** published its own third party intervention in the same group of cases submitted to the Court.

The two texts (reprinted in full below) are complementary.

The CHR describes in general the problems faced by asylum seekers in Greece while GHM addresses the specific problems faced by Dublin transferees in all states of the procedure.

CHR and GHM concur that current asylum law and practice in Greece are not in compliance with international and European human rights standards.

This is also the UNHCR’s repeated conclusion.

At the same time, CHR expressed his full support to the Greek government’s decision and ongoing efforts to overhaul the refugee protection system and overcome its current serious deficiencies.

GHM, along with other Greek NGOs, also consider that these efforts are in the right direction and have offered repeated advice and comments to the government. The new measures will be effectively evaluated only after they are legislated and implemented (<https://wcd.coe.int/ViewDoc.jsp?Ref=PR219%282010%29&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>).

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Third – party intervention in proceedings concerning 14 applications v. the Netherlands and Greece (no. 36092/09 , ABSHIR SAMATAR; no. 30416/09, ABWALI; no. 26494/09, AHMED ALI ; no. 32758/09, ALEM ABRAHA ; no. 33212/09, ALI ELMI ; no. 31930/09, AWEYS AHMED ; no. 28631/09, DJELANI SUFI and HASSAN GUDUUD ; no. 37728/09, MALAAQ SHOWRI ; no. 32212/09, MOHAMED ILMI ; no. 29940/09, MOHAMMED JELE ; no. 32729/09, MOOSA MAHAMOUD ; no. 34565/09, NUUR HAJI ; no. 29936/09, SAIED AHMED ; and no. 32256/09, YAHIA YASIR)

16 March 2010

ANSWERS TO THE QUESTIONS TO THE PARTIES

A. To the Government of the Netherlands

1. With regard to the information provided previously that a Dutch Government official will be present during the transfer of an asylum seeker to Greece pursuant to Council Regulation (EC) No. 343/2003 of 18 February 2003 (“the Dublin Regulation”), the Government are requested to specify what exactly this presence entails. Does the official accompany the asylum seeker to the office of the police department at Athens airport? Does the official stay with the asylum seeker until an asylum application is lodged?

Competent NGOs in Greece are aware that foreign embassy officers, including from the Embassy of the Netherlands, if they so request, can be present during the lodging of the asylum application at the Athens airport. However, there is no evidence that they play any, or an effective, role in the procedure **after** the lodging of the application at the airport that is the most crucial for securing effective access to the asylum procedure.

2. In the light of the applicant’s claims and the documents which have been submitted, would she face a risk of being subjected to treatment in breach of Article 3 of the Convention if she were transferred to Greece, followed by a return to her country of origin?

“Based on investigations carried out by the Norwegian Helsinki Committee (NHC), the Norwegian Organisation for Asylum Seekers (NOAS) and AITIMA in Greece ... during a fact-finding mission to Greece, Turkey and Iraq in April-May 2009, with follow-up investigations throughout the summer of 2009..., asylum seekers and Dublin returnees to the territory of Greece continue to risk refoulement and are not able to contest deportation or the decision behind it... States party to the Dublin II Regulation” including the Netherlands “must abide by their independent obligations to prevent refoulement to any state where an asylum seeker may risk refoulement to a place where his life and freedom is in danger (as defined by a Refugee Convention reason) or (s)he might suffer treatment contrary to Article 3 of the European Convention on Human Rights and Freedoms (ECHR). This obligation cannot be circumvented by reference to multilateral agreements such as the Dublin II Regulation, which defines which state is responsible for processing an asylum claim. Chain refoulement is directly and indirectly prohibited by Article 33 of the Refugee Convention and Article 3 of the ECHR. This is the correct interpretation of the legal obligations of European states, and is in line with case law from the ECtHR as referred to in the TI vs. UK case (application no. 43844/98, judgment 7 March 2000) which decided that indirect removal to an intermediary country, which is also a Contracting State, [did] not affect the responsibility of the State to ensure

that the applicant is not, as a result of the decision to expel, exposed to treatment contrary to Article 3."¹

In December 2009, UNHCR stated that *"While no Dublin transferees were among the persons deported from Greece to Turkey documented by UNHCR, there are no safeguards in place to protect Dublin transferees from such practices. The cases documented by UNHCR included deportations of other documented asylum-seekers. To the police implementing arrests, Dublin transferees cannot be distinguished based on their documentation from other asylum-seekers, and are thus exposed to the same risk of removal."*²

The situation in Greece has not changed at all since the time of the publication of these reports, in late 2009. Hence, Dublin transferees continue to face the risk of refoulement to Turkey and from there to their countries of origin where they will risk a violation of their rights under Article 2 or 3. Thus, the Court should conclude that there would be a violation of Article 3 of the Convention for applicants to be transferred to Greece under Dublin II Regulation.

3. Having regard to i) the reports referred to by the applicant, relating to the way in which asylum applications are processed in Greece and asylum seekers treated, and

ii) the applicant's claim that, if transferred to Greece, she runs a real risk of being (indirectly) returned to her country of origin without the Greek authorities having established through a rigorous scrutiny that she will not run a real risk of being subjected to treatment in breach of Article 3 in that country,

is it compatible with Article 3 and/or Article 13 of the Convention for the Netherlands authorities to:

a) apply the Dublin Regulation without sufficiently examining the claim, supported by the submitted reports, that Greece cannot be considered a safe third country and/or without ascertaining that Greece will actually submit the applicant's asylum application to a rigorous scrutiny;

b) apply the Dublin Regulation without examining the merits of the applicant's claims?

*"In consideration of their own non-refoulement obligations, all states party to the Dublin II Regulation should suspend transfers of asylum seekers back to Greece, and allow them the right to have their claims processed in accordance with article 3 (2) of the Regulation."*³

"UNHCR remains concerned that asylum seekers face serious challenges in accessing and enjoying effective protection in Greece in line with international and European standards. In UNHCR's view, the adoption of Presidential Decree 81/2009106 in July 2009 has introduced changes to the asylum procedure which have further diminished the prospects of asylum-seekers, including Dublin II transferees, having their claims determined in a fair procedure in Greece... Until the reform of the Greek asylum system is put in place, UNHCR has no choice but to continue to recommend against transfers to Greece under the Dublin II Regulation or otherwise. This position is based on the problems observed in the Greek asylum procedure, which the Greek

¹ Norwegian Helsinki Committee (NHC), the Norwegian Organisation for Asylum Seekers (NOAS) and Aitima *"Out the Back Door: The Dublin II Regulation and illegal deportations from Greece"*, October 2009; available at <http://www.noas.org/file.php?id=240> [thereafter *"Out the Back Door"*].

² UN High Commissioner for Refugees (UNHCR) *"Observations on Greece as a country of asylum"*, December 2009; available at <http://www.unhcr.org/refworld/docid/4b4b3fc82.html> [thereafter *"UNHCR Observations"*].

³ *"Out the Back Door."*

authorities also acknowledge, and which are set out in detail in this paper. UNHCR will keep the situation in Greece under active review and revise its position according to developments."⁴

The Court should therefore conclude that, until there is such a reform of the asylum procedure and will be evaluated by NGOs and the UNHCR as guaranteeing in a sustained way effective access to asylum protection, any Dublin transfer to Greece should be held as violating Article 3 and/or Article 13 of the Convention.

In view of the requirement to secure effective protection of Convention rights (see e.g. *Soering v. the United Kingdom*, 7 July 1989, Series A no. 161, § 87, and *Assenov and Others v. Bulgaria*, 28 October 1998, Reports of Judgments and Decisions 1998-VIII, § 102), is it relevant to take into account in determining question 3a) that UNHCR has recently suspended its participation in the examination of more than 30,000 pending asylum applications in Greece due to reservations about new regulations?

UNHCR has "*supervisory responsibility under paragraph 8 of the Office's Statute in conjunction with Article 35 of the 1951 Convention relating to the status of refugees and Article II of its 1967 Protocol. In EU law, UNHCR's supervisory responsibility is reflected, inter alia, in Declaration 17 of the Treaty of Amsterdam which requires consultations with UNHCR on matters relating to asylum... The Greek asylum procedure is governed by Presidential Decree (P.D.) 81/200990 which entered into force in July 2009. This P.D. introduced a number of changes in the asylum procedure which, in UNHCR's assessment, have a negative impact on efficiency in first instance and may aggravate the already large backlogs. Furthermore, it removes important safeguards, including access to an independent administrative review at the second instance... The Refugee Committee is made up of two members of the police and one member of the Regional Authority. UNHCR declined the invitation to be part of the Refugee Committee for lack of confidence in the quality of the new procedure... In UNHCR's assessment, the measures described above amount to abolition of an independent review of the first instance decision and jeopardize the right to an effective remedy. Consequently, UNHCR declined to play a role in the Refugee Committees for the examination of the asylum claims at first instance and in the Advisory Committees for the examination of the backlog of pending appeals.*"⁵

Given UNHCR's institutionally and legally recognized supervisory responsibility in the asylum procedure, its assessment that the procedure fails to meet the international standards and its absence from the Refugee Committees should be considered again by the Court as **the** expert opinion on the actual absence of effective protection of Convention rights. In effect, in *K.R.S. v. the United Kingdom* (Application no. 32733/08 – Decision 2 December 2008): "*The Court notes the concerns expressed by the UNCHR whose independence, reliability and objectivity are, in its view, beyond doubt. It also notes the right of access which the UNHCR has to asylum seekers in European Union Member States under the European Union Directives set out above.*"⁶

B. To the Government of Greece

1. With regard to the information provided previously by the Government of Greece that an asylum seeker transferred to Greece pursuant to Council Regulation (EC) No. 343/2003 of 18 February 2003 ("the Dublin Regulation") is able to apply for asylum at the office of the police department at Athens airport, and also having regard to the information contained in the various reports referred to by the applicant, the Government are requested to indicate

⁴ "*UNHCR Observations.*"

⁵ "*UNHCR Observations.*"

⁶ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=845221&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

a) whether, subsequent to the lodging of such an asylum application, the asylum seeker concerned is subjected to an obligation to report to the authorities and whether he or she has an effective means of complying with this obligation; and

b) whether the processing of the asylum application is dependent on any other factors, such as the asylum seeker having an address.

“Keeping track of developments in one’s case also presents a number of problems for asylum seekers and Dublin returnees in Greece, who may find they have been removed from the asylum process due to illegal practices by the authorities. Asylum seekers face problems renewing their identity cards or changing their address – seemingly small matters, but ones which can have serious consequences such as being thrown out of the asylum process altogether. If an asylum seeker has lost his or her red card, or only carries a copy of it, he or she is in real danger of being deported or removed from Greek territory, since the authorities rarely check their records to find out if someone is registered as an asylum seeker. According to Alexia Vassiliou of the Greek Council for Refugees, the Greek asylum system functions as a “trap” to asylum seekers. However resourceful, they risk never receiving the decision of a rejected claim for asylum. Hence, they may also pass the deadline for filing an appeal, without ever being aware of it. The red card of registration may still be valid, but technically his or her presence in the country would already be illegal.”⁷

“Information about the relevant procedures and rights, and/or interpretation in languages that asylum-seekers understand, are not readily available. There are no interpreters appointed at the airport; interpretation needs are met through knowledge of English, French and German by police personnel with assistance of employees of airline companies. Although UNHCR was informed that the content of the Note for referral to Petrou Ralli [police aliens’ division] is explained to the asylum-seeker and the latter signs a declaration for to this regard, there is concern on the implementation of this practice without interpreters available. As regards information, a previous leaflet on asylum is no longer distributed as copies are not available and, as UNHCR was informed, it is outdated in any case. The Asylum Department provides Dublin returnees with a list of refugee organisations in Greece including UNHCR. According to the process in place since 2008, Dublin transferees are detained for up to 24 hours at the airport without a detention order. Since the summer of 2009 when the new procedures entered into force, the transferee is released after maximum 24 hours with a police notice informing him/her to appear at “Petrou Ralli” in Athens within three days, in order to declare his/her address and to receive a date for his/her asylum interview. The obligation to submit a claim (or report in connection with a previous claim) at Petrou Ralli exposes Dublin transferees, like other asylum applicants, to significant problems of access to asylum procedures which may prevent them from registering their claims in a short period of time, or at all. If all deadlines for appealing a negative decision have lapsed during the person’s absence from Greece, however, the Dublin transferee will be served with a deportation order at the airport, without access to the asylum procedure... Asylum claimants are expected to provide an address in Greece, and given the difficulties asylum-seekers face in securing accommodation, this proves impossible for many people. Consequently, it is difficult for the authorities to notify asylum-seekers of developments in their case, and for asylum-seekers to meet deadlines for important procedural steps, including the filing of an appeal.”⁸

The situation slightly improved in recent weeks. A NGO AITIMA EU- and state-funded project secures at the airport adequate interpretation and legality of the procedure; it also provides

⁷ “Out the Back Door.”

⁸ “UNHCR Observations.”

counselling, assessment of vulnerable persons, and access the “Petrou Ralli” facility. However, all related NGO projects have until now been ad hoc with short-term duration with no sustainability.

2a. With regard to the information provided previously by the Government of Greece that an asylum seeker has a right to housing, the Government are requested to elaborate on the kind of accommodation that will be made available to asylum seekers being returned to Greece pursuant to the Dublin Regulation and whether, in light of the current large influx of asylum seekers, the availability of accommodation can be guaranteed.

“Dublin transferees face the same obstacles in securing access to accommodation and other reception assistance as other asylum-seekers. UNHCR has recorded a number of cases of vulnerable Dublin transferees, such as persons with mental health problems and a female victim of trafficking, where no accommodation was offered, despite the fact that the few available places are for vulnerable cases or families. Single men, among others, are generally denied accommodation, and often end up sleeping in parks or abandoned houses. In addition to the cases reported by UNHCR, according to transcripts of interviews by the Austrian Red Cross and Caritas Austria, only one out of 14 Dublin transferees interviewed by those organizations in Greece managed to receive accommodation in a reception centre managed by the Hellenic Red Cross. The others were left unassisted and were living on the streets, in parks, in public gardens, in abandoned houses or in overpriced and overcrowded shared rooms... Accommodation for registered asylum-seekers is officially available in just 12 reception centers, with a total of 811 places. Four of these are State-run; the others are run by NGOs. The latter do not apply standard operating procedures. In addition, the sustainability of NGO-run centers is not assured as these centers depend on ad hoc sources of funding. Given that there were nearly 20,000 asylum applications in 2008 alone, it is clear that the accommodation capacity is grossly insufficient. As a result, many asylum-seekers have no shelter or other State support. Single adult male asylum-seekers have virtually no chance to benefit from places in reception centers, as the few places available are reserved for families or vulnerable persons. Eight centers host unaccompanied children, with capacity for 405 children. One center accommodates only asylum-seekers with psychiatric problems. The reception centers are generally understaffed and under-resourced, lacking appropriate support services and often offering inadequate material conditions, resulting from funding shortages. Psychosocial support and specialized care for asylum-seekers with special needs, including victims of torture, is only sporadically available. As a result, residents – including unaccompanied children – often leave the centers after a short stay.”⁹

There are no plans to increase the very limited number of accommodation places even for the vulnerable groups, and there are no separate plans for Dublin transferees. The combination of two factors, a serious fiscal crisis that, in early 2010, has forced the Greek government to dramatically curtail public expenditure and the current large influx of asylum seekers, excludes that any such plans can be expected even in the middle-term future.

2b. In addition, are asylum seekers provided with (the means to procure) essentials such as food and medical care during the time the asylum application has not yet been finally decided? If not, in what way are asylum seekers meant to obtain such essentials?

“Registered asylum-seekers do not receive any financial allowance to cover their daily living expenses, notwithstanding the relevant provisions to this effect in Greek law (P.D. 220/2007, transposing the EU Reception Conditions Directive, article 1 paragraph 16 and article 12). As a result, many asylum-seekers in Greece live in conditions of acute destitution.”¹⁰

⁹ “UNHCR Observations.”

¹⁰ “UNHCR Observations.”

The same holds for medical care with the exception of the theoretical access by holders of asylum application cards to state hospital care, like all other destitute persons in Greece. Many do not appear to be aware of that right; those who are aware make full use of it.

3. In the light of the applicant's claims and the documents which have been submitted, would she face a risk of being subjected to treatment in breach of Article 3 of the Convention if returned, even indirectly, to her country of origin?

In reviewing individual claims the Court as well as Dutch and Greek authorities should take into consideration Somalia's current 2010 evaluation by the UNHCR: *"The collapse of the state, lawlessness and anarchy in Somalia, led to one of the worst humanitarian crises in the world today, translating into unacceptable suffering of innocent civilians who see their basic rights violated every day."*¹¹ *"Somalia remains one of the countries generating the highest number of displaced people and refugees in the world."*¹²

4a. What procedure will be applied to the applicant – as an asylum seeker transferred in application of the Dublin Regulation –, upon her return to Greece?

4b. Can this procedure be considered as constituting an effective remedy before a national authority as required by Article 13 of the Convention? In particular:

i. Will the applicant have access to the services of an interpreter at all stages of the procedure?

ii. Will the applicant have access to (State-funded) legal assistance, if required?

iii. If the asylum application is rejected, what possibilities of appeal exist?

"Dublin transferees (including those who previously applied for asylum in Greece and those who have not done so) face problems which may hinder or preclude their efforts to register (or re-register) their applications for asylum, barring them from access to the process and to an effective claim examination. Information about the relevant procedures and rights, and/or interpretation in languages that asylum-seekers understand, are not readily available [see above under question 1 to Greece]. According to the process in place since 2008, Dublin transferees are detained for up to 24 hours at the airport without a detention order. Since the summer of 2009 when the new procedures entered into force, the transferee is released after maximum 24 hours with a police notice informing him/her to appear at "Petrou Ralli" in Athens within three days, in order to declare his/her address and to receive a date for his/her asylum interview. The obligation to submit a claim (or report in connection with a previous claim) at Petrou Ralli exposes Dublin transferees, like other asylum applicants, to significant problems of access to asylum procedures which may prevent them from registering their claims in a short period of time, or at all. If all deadlines for appealing a negative decision have lapsed during the person's absence from Greece, however, the Dublin transferee will be served with a deportation order at the airport, without access to the asylum procedure... Dublin transferees are exposed to the same difficulties as other persons arriving in Greece and seeking to obtain international protection. Pink card holders, including Dublin transferees, are not exempt from arrests, including in Athens and Patras, followed by summary deportations. They are exposed to the same long waiting periods before a decision is made on their asylum claim. If a final decision has been taken in the asylum case of a Dublin transferee or deadlines for appeal have expired, then the returnee is detained and receives a deportation and

¹¹ UNHCR Somalia Briefing Sheet, February 2010

<http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4b791d4c9&query=assessment%20somalia>

¹² UNHCR Briefing Notes, 12 March 2010 <http://www.unhcr.org/4b9a3c0f6.html>

detention order, with no opportunity in practice to re-open the case or challenge the negative first instance decision.”¹³

In early 2010 the situation remains unchanged. In essence, Dublin transferees are met at the airport by police officers with usually no or only inadequate interpretation services, unless an Embassy official or a NGO is present.

If the person had previously applied for asylum in Greece and during his/her absence deadlines have lapsed, the Dublin transferee will be served with a deportation order at the airport, without access to the asylum procedure. Hence, any other state, before even considering the transfer of a person in Greece, should seek information that that person does not fall into this category in which case s/he will not have access to the asylum procedure.

If this is not the case, the Dublin transferee’s asylum application will be registered with all the risks that the possible absence of adequate interpretation entails. S/he will be asked to show up at the Petrou Ralli police aliens’ division within three days to declare his/her address and to receive a date for his/her asylum interview: currently the date given is in 2011! Then s/he will have to manage to accommodate him/herself and live in Athens until the interview and then the decision. Again there is no adequate interpretation from/into most languages for the interview. The decision will take several months to more than one year to be issued. If the person has not managed to find a permanent address on his/her own, there may be a problem to receive the initial documents (and future notifications).

Unless s/he has access to a NGO there is no effective legal aid available. With the new system established with the PD 81/2009, there is no appeals procedure against what is almost certain to be a rejection decision by the Refugee Committee. S/he can only seek before the Council of State (state administrative supreme court) a cassation but only on points of law and not on the merits, assuming legal aid for this very expensive remedy can be found. Otherwise, a deportation order will be issued.

The problems faced by asylum seekers in Greece described in the 2009 NGO and UNHCR reports were confirmed in early 2010 after a visit by the CHR: *“Strasbourg, 11/02/10 - The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, concluded yesterday a three-day visit to Greece during which he held discussions with a number of authorities including the Vice-President of the Government, the Minister of Justice and the Minister of Citizen Protection. He also met with national, international and non-governmental organisations... The Commissioner noted with deep concern that asylum seekers in Greece continue to face enormous difficulties trying to gain access to the asylum procedure, and do not always enjoy basic safeguards such as interpretation and legal aid. He welcomed the current plans to proceed with an overhaul of the system and move towards a fair, accessible and swift asylum procedure. This includes in particular the establishment of an independent asylum agency and screening centres at entry points. During the visit, the Commissioner stressed that asylum and immigration are issues that can only be tackled effectively by a concerted effort at European level and that solidarity by other EU countries must therefore be increased.”*¹⁴

¹³ “UNHCR Observations.”

¹⁴ http://www.coe.int/t/commissioner/News/2010/100211Greece_en.asp

Comment on the *K.R.S. v. the United Kingdom* ECtHR decision

In the *K.R.S.* case, the Court declared the application inadmissible and lifted the interim measure indicated under Rule 39 of the Rules of Court to the UK.¹⁵ Its main arguments were:

“On the evidence before it, Greece does not currently remove people to Iran (or Afghanistan, Iraq, Somalia or Sudan – see Nasserri above) so it cannot be said that there is a risk that the applicant would be removed there upon arrival in Greece, a factor which Lord Justice Laws regarded as critical in reaching his decision (see above)... There is nothing to suggest that those returned to Greece under the Dublin Regulation run the risk of onward removal to a third country where they will face ill-treatment contrary to Article 3 without being afforded a real opportunity, on the territory of Greece, of applying to the Court for a Rule 39 measure to prevent such [removal]... The Court notes in this regard that assurances were obtained by the Agent of the United Kingdom Government from the Greek “Dublin Unit” ... that asylum applicants in Greece have a right to appeal against any expulsion decision and to seek interim measures from this Court under Rule 39 of the Rules of Court. There is nothing in the materials before the Court which would suggest that returnees to Greece under the Dublin Regulation, including those whose asylum applications have been the subject of a final negative decision by the Greek authorities, have been, or might be, prevented from applying for an interim measure on account of the timing of their onward removal or for any other reason. The Court recalls in this connection that Greece, as a Contracting State, has undertaken to abide by its Convention obligations and to secure to everyone within their jurisdiction the rights and freedoms defined therein, including those guaranteed by Article 3. In concrete terms, Greece is required to make the right of any returnee to lodge an application with this Court under Article 34 of the Convention (and request interim measures under Rule 39 of the Rules of Court) both practical and effective. In the absence of any proof to the contrary, it must be presumed that Greece will comply with that obligation in respect of returnees including the applicant. On that account, the applicant's complaints under Articles 3 and 13 of the Convention arising out of his possible expulsion to Iran should be the subject of a Rule 39 application lodged with the Court against Greece following his return there, and not against the United Kingdom.”

However, the 2009 UNHCR report makes clear that asylum seekers run the risk of removal to Turkey and from there to their country of origins where they risk persecution or serious harm:¹⁶

“Official statistics indicate that returns to Turkey under the Greece-Turkey Readmission Agreement include Iraqis and Iranians, nationalities which constitute a significant proportion of asylum claims which are recognised in other EU countries. Among the cases of return on the basis of the Readmission Agreement documented by UNHCR is a group of persons claiming to be Turkish nationals. Their return without consideration of their request for international protection highlights the need for safeguards to ensure respect for the principle of non-refoulement. Persons removed from Greece to Turkey are at risk of onward removal from Turkey, including to countries where they may face persecution or other forms of serious harm. Cases documented by UNHCR include several in which people wishing to seek asylum, after having been expelled from Greece to Turkey, were removed from Turkey to countries where they could face persecution or serious harm. This included removal of asylum-seekers (including children) from Turkey to Afghanistan and Iraq.”

Somali are also granted refugee or other protection status in other EU countries but are refused it in Greece. The most recent UNHCR statistics indicate, in fact, that, in 2008, Greece rejected all 79

¹⁵<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=845221&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

¹⁶“UNHCR Observations.”

applications by Somali, while the Netherlands granted to 35 Somalis refugee status and to 1,451 Somalis complementary protection status, while they rejected 817 applications from Somalis. Thus, recognition rate for Somalis was 0% in Greece and 65% in the Netherlands. By comparison, in 2008, the overall recognition rate for Greece was 0.1% and for the Netherlands 52%.¹⁷ Hence, for Somali asylum seekers the recognition rate is higher than average in the Netherlands and zero in Greece, where on the contrary they run the risk of “chain refoulement” to Turkey and from there to Somalia.

Moreover, the Court in *K.R.S.* stated that there was nothing in to suggest that returnees to Greece under the Dublin Regulation, including those whose asylum applications have been the subject of a final negative decision by the Greek authorities, have been, or might be, prevented from applying for an interim measure on account of the timing of their onward removal or for any other reason. It also presumed that Greece complied with its obligation to make the right of any returnee to lodge an application with the Court under Article 34 of the Convention (and request interim measures under Rule 39 of the Rules of Court) both practical and effective. In its 2009 report, the UNHCR is categorical that such persons are denied their rights to an effective remedy against negative asylum decisions and deportations for several reasons, most importantly the effective absence of legal aid:¹⁸

“In UNHCR’s assessment, the measures described above amount to abolition of an independent review of the first instance decision and jeopardize the right to an effective remedy. Consequently, UNHCR declined to play a role in the Refugee Committees for the examination of the asylum claims at first instance and in the Advisory Committees for the examination of the backlog of pending appeals. Moreover, access to judicial review (on points of law) before the Council of State is limited by a number of practical and legal obstacles, which weaken the effectiveness of the remedy. These include:

- *Complicated procedural rules for submitting applications for annulment of negative decisions;*
- *Court decisions on a request for temporary suspension of execution of the challenged decision may take 10 days to 4 months, leaving the applicant without protection against deportation during that time;*
- *Although free legal aid is provided by law, the system does not function in practice, with gaps in coverage of expenses and great delays in the payment of lawyers’ compensation. Thus relatively few lawyers are willing to be included in the free legal aid list of the Lawyers’ Associations.”*

The Commissioner for Human Rights has also written in his 2009 report:¹⁹

“The Commissioner is also particularly worried about the non-existence of a comprehensive legal aid scheme available to asylum seekers. Information on existing remedies against detention measures and legal aid to, detained or not, asylum seekers in need of it should be provided ex officio, as soon as an asylum application is lodged.”

It must be added that the few lawyers willing to be included in the aid list are young lawyers who are not legally qualified to file for cassation before the Council of State; almost all of them also lack experience on how to file applications to the Court, let alone request Rule 39 interim measures.

¹⁷ See Tables 10 and 12 in “2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, 16 June 2009. Annexes.” http://www.unhcr.org/statistics/08-TPOC-TB_v5_external_PW.zip

¹⁸ “UNHCR Observations.”

¹⁹ <https://wcd.coe.int/ViewDoc.jsp?id=1401927&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

Following all the above as documented through recent UNHCR (and NGO) reports, the Court should instead follow the following mid-2009 case law of a German and of a French courts to suspend Dublin transfers to Greece because of the lack of legal protection for those applicants.

Recent relevant national case law²⁰

Decisions by German and French Courts (June – July 2009)

In two court decisions, respectively from German and French courts, Dublin transfers to Greece were suspended by the court because of the lack of legal protection for the applicants.

The following is from an English summary written by Professor Dr. Juris Holger Hoffman of a decision by Verwaltungsgericht Frankfurt on 8.7.2009 (K 4376/07.F.A.(3)):

“The main argument of the court is that the applicant did not get a fair asylum procedure according to the rules of the qualification and the reception directive. This fact – in the opinion of the Court – reduces the discretion of the German office of asylum insofar as the question of Art. III par. 2 Dublin II is concerned. The VG Frankfurt holds that the discretion is reduced to zero because of the disastrous practice concerning asylum cases in Greece. To give substance to this, the Court quotes several new statements by the UNHCR concerning the situation of asylum seekers in Greece. The most recent UNHCR position paper dates from 15.04.2008. Concerning the Greek asylum procedure in theory and practice the court quotes the intergovernmental consultations on migration, asylum and refugees: Report on policies and practices in EGC participating states, Geneva 2009, chapter “Greece”. The court had in its oral hearing heard a representative of the UNHCR concerning the question whether the situation in Greek law and practice is still as described by the UNHCR in 2007 and 2008. The employee of the UNHCR said that the UNHCR will no longer take part in the Greek asylum procedure because of its unfairness (a UNHCR press release from 17.07.2009 is available, furthermore a report by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 04/02.2009). The legal representative of the applicant had mentioned in Court that in July 2009 by a decree of the Greek government the Court of second instance and a second oral hearing were omitted.

The shortcomings of the asylum procedure, which are not going to be improved in the near future, the non-existing social benefits and housing for asylum applicants, the impossibility to find work on a legal basis during the very long running asylum procedure and the lack of information and legal guidance during the whole procedure led the Frankfurt Court to the opinion that the criteria of a fair asylum procedure are not fulfilled. This is why the Court held the German government responsible for applying Art. 3 para. 2 of Dublin II and for leading the asylum case in Germany and for that purpose for bringing the applicant back from Greece to Germany”

The other relevant decision is from the Tribunal Administratif de Paris of 31.7.2009, case number 0912502/9-1, halted the transfer of a family to Greece in June 2009 (Tribunal Administratif de Paris, Décision n° 0912502/9-1, 31 Juillet 2009).

On the basis of evidence from the [2009] Hammarberg report²¹ a French decision highlights the threat of a violation of the basic human rights of asylum seekers and Dublin returnees under EU asylum law and international asylum law in Greece. The reasoning in the French decision is similar to the German decision above and is based on the failure of an effective right to seek asylum in Greece.

The French court also included evidence from the Hammarberg report and the report of the European Committee for the Prevention of Torture (CPT). The reception and detention conditions for asylum seekers in Greece were also criticized as was the inadequate use of the sovereignty clause in article 3 (2) of the Dublin II Regulation.

²⁰ The text is copied from “Out the Back Door.”

²¹ <https://wcd.coe.int/ViewDoc.jsp?id=1401927&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 10 March 2010

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Original version

Third party intervention by the Council of Europe Commissioner for Human Rights, under Article 36, paragraph 2, of the European Convention on Human Rights

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Application nos.

26494/09 AHMED ALI v. the Netherlands and Greece
28631/09 DJELANI SUFI and HASSAN GUDUUD v. the Netherlands and Greece
29936/09 SAIED AHMED v. the Netherlands and Greece
29940/09 MOHAMMED JELE v. the Netherlands and Greece
30416/09 ABWALI v. the Netherlands and Greece
31930/09 AWEYS AHMED v. the Netherlands and Greece
32212/09 MOHAMED ILMI v. the Netherlands and Greece
32256/09 YAHIA YASIR v. the Netherlands and Greece
32729/09 MOOSA MAHAMOUD v. the Netherlands and Greece
32758/09 ALEM ABRAHA v. the Netherlands and Greece
33212/09 ALI ELMI v. the Netherlands and Greece
34565/09 NUUR HAJI v. the Netherlands and Greece
36092/09 ABSHIR SAMATAR v. the Netherlands and Greece
37728/09 MALAAQ SHOWRI v. the Netherlands and Greece

Introduction

1. On 9 November 2009, the European Court of Human Rights (hereinafter: ‘the Court’) invited the Council of Europe Commissioner for Human Rights (hereinafter: ‘the Commissioner’) to intervene as a third-party in the Court’s proceedings, and to submit written observations concerning the above cases relating to the transfer of asylum seekers from the Netherlands to Greece under Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national (hereinafter: ‘the Dublin Regulation’).

2. According to the Council of Europe Committee of Ministers’ Resolution (99)50,¹ the Commissioner is mandated to foster the effective observance of human rights, to assist member states in the implementation of Council of Europe human rights instruments, in particular the

European Convention on Human Rights (hereinafter: ‘the Convention’), and to provide advice and information regarding the protection of human rights across the region.

3. The protection of the human rights of asylum seekers and refugees is a priority theme of the Commissioner’s present work concerning all Council of Europe member states. The Commissioner has repeatedly stressed the importance of guaranteeing the individual right to seek and enjoy asylum and has addressed a number of relevant recommendations to member states.

4. The present written submission is based on the Commissioner’s visits to Greece from 8 to 10 December 2008² and from 8 to 10 February 2010, as well as on continuous country monitoring. During his visits the Commissioner held discussions with a number of state authorities and met with representatives of non-governmental, national and international organisations.

5. Section I of the present written submission deals with certain basic features of refugee protection in Greece; Section II focuses on major issues concerning asylum procedures and human rights safeguards; Section III deals with asylum seekers’ reception and detention conditions, and is followed by the Commissioner’s conclusions.

I. Observations on the current framework of refugee protection in Greece

6. The Commissioner is fully cognisant of the considerable, mixed migration (immigrants and asylum seekers) flow pressures that have been exerted on Greece, as is the case for other Mediterranean Council of Europe member states, for many years. The increase of irregular migration into Greece that has occurred particularly in the last five years has further strained this country’s resources. Nonetheless, the complex international phenomenon of migration should be dealt with by Greece and all other Council of Europe member states concerned in a manner which is not only efficient but also effectively respectful of the Council of Europe human rights standards.

7. Greece received the sixth largest number of refugee applicants in the EU during the first half of 2009 (9 800 applications).³

8. In 2009, a total of 15 928 asylum applications were lodged in Greece; there were 11 recognitions of Convention refugee status and 18 grants of humanitarian status or subsidiary protection. The Commissioner has noted with concern that in 2009 the recognition rate at first instance was 0,04% for Convention refugee status and 0,06% for the other two statuses. The pending applications at first instance in 2009 reached 3 122. As regards asylum appeals in 2009, there were 12 095 appeals, 25 recognitions of Convention refugee status and 11 grants of humanitarian or subsidiary protection. The respective recognition rates on appeal were 2,87% and 1,26%. On 10 February 2010 the Commissioner was informed by the Minister of Citizen Protection of the fact that the total of pending asylum claims in early February 2010 was as high as 44 560, and found this to be worrying.

9. The Commissioner noted that during the first ten months of 2009 Greece received 7 857 applications from other EU member states to receive back refugee applicants under the Dublin Regulation. Of these applications, 2 770 were accepted and 106 rejected. The final transfers to Greece during that period totalled 995.

10. During both his visits to Greece in December 2008 and February 2010, the Commissioner was the recipient of deep concerns expressed by, among others, the Greek National Commission for Human Rights, the Greek Ombudsman and the UNHCR Office in Greece with regard to the entry and access of asylum seekers to the asylum procedure in Greece. The Commissioner received reports indicating instances where the Police (in charge of the asylum procedures) even refused to

receive asylum applications. Sometimes asylum seekers are reportedly also unwilling to claim asylum in Greece because of the aforementioned extremely low recognition rates and the prospect of having almost no chance to be recognised as a refugee at first instance.

11. In 2009, 78,87% of all asylum applications were lodged at the Central Police Asylum Department at Petrou Ralli Street. However, the Commissioner has been informed that the Department has only 11 qualified Asylum Officers. During his last visit in February 2010, the Commissioner was informed by the Director of the Department that asylum applications could only be registered on Saturdays and that the number of registered applications ranged from fifty to sixty per week. Applications on other days are received only if they concern exceptional humanitarian cases.

12. The staff members of that Department noted that the number of human resources currently allocated is too low to handle the asylum applications efficiently. The Commissioner was also informed that the competent first instance Advisory Refugee Committees, in charge of examining asylum applications, do not function properly due to the non-participation of members from the regional Department for Aliens and Immigration. Moreover, UNHCR has declined to participate in the current asylum procedure, even though the current law provides for its membership in the Advisory Refugee Committees (see Section II), noting that ‘the structural changes introduced by the new Presidential Decree 81/2009 do not sufficiently guarantee efficiency and fairness of the refugee status determination procedure in Greece as required by International and European legislation’.⁴

13. In his 2009 report concerning the human rights of asylum seekers in Greece, the Commissioner noted with concern the serious public disorder that was created on 26 October 2008 and subsequently widely reported in the press, in front of the premises of the above Asylum Department where approximately 3 000 aliens were queuing in order to submit an asylum application. The public disorder led to police intervention, and the death of one and the injury of a number of other asylum seekers. During both his visits the Commissioner was informed that at weekends asylum seekers queue up en masse in front of the above Asylum Department waiting for a ‘ticket’ for an appointment in order to lodge an asylum application.

II. Major issues concerning the asylum procedure in Greece and human rights safeguards

Legal framework

14. The Commissioner is aware that in 2007 and 2008 there were certain positive developments in Greek refugee law: In November 2007 Presidential Decree 220 transposed Directive 2003/9/EC concerning the reception of asylum seekers. In July 2008 Presidential Decrees 90 and 96 amended Presidential Decree 61/1999 (the major piece of legislation regulating asylum procedures until then) and transposed respectively Directive 2005/85/EC concerning the asylum procedures and Directive 2004/83 concerning the qualification of refugee or subsidiary protection.

15. However, the Commissioner has noted with concern that on 30 June 2009 Presidential Decree 81/2009 concerning asylum was promulgated and had as an effect the lowering of international protection standards in Greece. The Commissioner has been particularly concerned about the abolition of the examination of the merits of asylum claims at second instance by the Appeals Committee and the transfer of the asylum decision-making responsibility at first instance to the Police Directors around Greece. This Decree created an Advisory Refugee Committee composed of two police officers (the most senior acting as President of the Committee), one staff member of the Department for Aliens and Immigration of the respective region and a UNHCR representative in each Police Directorate. A major issue of concern to the Commissioner has been the reported lack of sufficient initial and continuous training that should have been made available by the state to the

members of these Committees. The first instance decisions can be appealed only on points of law, through an application for annulment, before the Supreme Administrative Court (Council of State) (see subsection below on remedies).

16. Following the parliamentary elections in Greece in October 2009, the new government established a Committee of Experts to provide advice on the reform of the Greek asylum system. This Committee, comprising experts from the Citizen Protection, Interior and Health Ministries, the UNHCR, the Greek Council for Refugees and the Ombudsman as well as academics, was mandated to propose amendments to the existing law and practice and suggestions with regard to the composition and operation of a new civil authority that would deal with asylum claims, staffed by civil servants, with no police force members as is the case today.

17. The Commissioner has been informed that the proposals of the above Committee were submitted to the Greek government on 22 December 2009. The Minister of Citizen Protection informed the Commissioner during their meeting in Athens on 10 February 2010 that a Bill was under preparation and trusted that the new asylum legislation would be in place by May 2010.

Legal aid for asylum seekers

18. The first comprehensive legal aid statute (Law 3226) in Greece was introduced in 2004. Legal aid under the above-mentioned Law has been provided for low income persons only with regard to civil and criminal cases. Administrative law proceedings were not covered even though the Council of State has recognised the right to legal assistance for persons without means in proceedings before it.

19. The Commissioner has noted with regret that Article 11, paragraph 1, of Presidential Decree 90/2008 that transposed Directive 2005/85/EC provides that asylum seekers have the right to consult legal or other counsel 'at their own expense'. Paragraph 2 of the same Article provides for legal aid only for the judicial review cases brought before the Council of State, on condition that the application for annulment before the Council of State is not 'manifestly inadmissible or manifestly unfounded'.

20. During both his visits to Greece the Commissioner has been informed by Greek refugee lawyers that the system of legal aid provided for by law does not function in practice. Several factors hinder access to lawyers providing free legal aid: lack of sufficient information to asylum seekers about possible legal counselling; only a few lawyers are registered in the legal aid list of the Bar Association, as there is an important delay in fee reimbursement, coupled with low fees; the procedure for benefiting from the legal aid scheme is complicated.

Interpretation for asylum seekers

21. Whilst Presidential Decree 81/2009 provides for an interview to be carried out by the first instance Advisory Refugee Committee and for the selection of an interpreter able to ensure appropriate communication in a language understood by the refugee applicant, during both his visits the Commissioner has noted with grave concern the chronic problem of lack of sufficient interpretation in the Greek asylum system. Already in 2001 the Greek National Commission for Human Rights (NCHR) had stressed that the lack of official interpreters in asylum procedures violated the elementary procedural principles of the rule of law and fundamental principles of international human rights law.⁵ Seven years later grave concerns were again expressed on the same issue by the NCHR, a sign of a lack of any real progress in this area.⁶ Of particular concern is the reported lack of qualified interpreters in the regional Police Directorates, now wholly in charge of

the first instance asylum procedures, where co-detainees or other migrants are used by the Police for interpretation when asylum applications are lodged.

22. The Commissioner notes that on 10 August 2009 the Greek Ombudsman issued an Opinion concerning issues of lawful notification of first instance asylum decisions and appeals, highlighting the practice of unlawful notification of negative asylum decisions due to insufficient interpretation or inappropriate methods of informing the refugee applicants about the appeal procedure upon notification.⁷ The Greek Ombudsman recommended that the Greek authorities, *inter alia*, include in the first instance decisions a text in the most common languages of the asylum seekers informing the latter of the asylum procedure, including appeal deadlines and NGOs that may provide aid.

Asylum seekers' access to domestic and international remedies

23. The Commissioner recalls his Recommendation concerning *the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders*, where he stresses the need for the right of judicial remedy within the meaning of Article 13 of the Convention not only to be guaranteed in law but also to be granted *in practice* when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the Convention.⁸

24. Until the promulgation of Presidential Decree 81/2009, first instance decisions taken by the Greek Police could be appealed before an Appeals Committee. The Appeals Committee is now abolished and the only remedy available to asylum seekers against a negative decision is the application for annulment before the Council of State, which is competent for judicial review of administrative decisions.

25. The Council of State offers safeguards of independence and impartiality as an *ultimum remedium* in the asylum process. However, given the well-known, chronic problem of excessively lengthy proceedings in Greek administrative courts, especially before the Council of State,⁹ it is not possible to consider this remedy as effective in the context of refugee protection, which by definition requires prompt decision-making by all competent authorities. The average length of proceedings before the Council of State is currently reported to be five and a half years, while interim measure decisions are reported to be rendered in a period ranging from 10 days to 4 months. Moreover, the Council of State is only allowed to examine appeals on points of law and cannot review the merits of the case, in particular the existence of a risk of persecution in the country of origin.

26. The Commissioner also notes that the lodging of an application for annulment does not automatically suspend the deportation order delivered following a negative asylum decision. The appellant needs to request the suspension of that order separately until the Council of State delivers a judgment on the application for annulment.

27. In view of the above, the Commissioner is worried that asylum seekers in Greece face a serious, real risk of being deprived of their right to an effective remedy in respect of the violations of the Convention of which they allege to be victims, which is guaranteed under Article 13 of the Convention and Article 39 of the Directive 2005/85/EC. The notion of an effective remedy under Article 13 requires a scope of review conducted by a domestic court able to address the key elements of whether there has been a violation of the Convention.¹⁰

28. As regards access to the European Court of Human Rights, although this is guaranteed in principle for every individual within Greece's jurisdiction, lodging an application before the Court appears to be very difficult in practice. The same applies for requests made under Rule 39 of the Rules of the Court (interim measures): the number of such requests introduced from and against

Greece seems to be quite low compared to other state parties,¹¹ and can be linked to difficulties, described in other parts of the present written submission, in accessing interpretation services and lawyers, in particular for people in detention, and to the lack of proper legal information available in general.

Protection of asylum seekers from *refoulement*

29. During both his visits the Commissioner was informed by migrants he met and by Greek refugee lawyers about instances of non registration by the Police of asylum claims and of instances of *refoulement*, especially from Greece to Turkey. Such forced returns have occasionally taken place before the migrants were able to apply for asylum, but also concern ‘pink card’ holders registered as asylum seekers in Greece. Characteristically, during the Commissioner’s discussions with migrant detainees at the Feres border guard station in December 2008, one of them reported that of the group of 65 persons who were arrested in 2008, having crossed the Evros river, 50 of them were ‘immediately deported’.

30. Another particularly disturbing case, noted in the Commissioner’s 2009 report on Greece, has been the reported expulsion in March 2007 from Greece to Turkey through the Evros River of an Iranian irregular entrant who attempted to reach her refugee husband in Greece with her 6-year old child who suffered from heart problems. Reportedly she was later recognised as a refugee by UNHCR in Turkey and family reunification subsequently occurred in Greece.

31. In this context, it is noted that despite the Commissioner’s recommendations, Greece has not as yet acceded to the 1963 Protocol No. 4 to the European Convention on Human Rights which, inter alia, proscribes the collective expulsion of aliens, while Turkey still adheres to the geographical limitation of the 1951 UN Refugee Convention, thus excluding from refugee status persons coming from outside of Europe.

32. During his visit to Greece in February 2010 the Commissioner was informed of and concerned at another reported case of *refoulement* concerning a group of 43 Kurds who had arrived at the town of Chania, Crete on 18 July 2009; 17 of them applied for refugee status. According to NGO reports, on 27 July 2009 they were all transferred to the aliens’ detention centre of Venna (North East Greece) from where they were subsequently expelled to Turkey. A series of other collective expulsions of migrant groups, ranging from 30 to 120 persons, to Turkey (through the land border of the Evros department) from various eastern Aegean islands were reported by Greek refugee lawyers to have occurred in July and August 2009. The Commissioner was informed by Greek refugee lawyers of more similar collective expulsions that have reportedly occurred in December 2009, January and February 2010.

33. The Commissioner underlines that such practices are not compatible with member states’ obligations recalled by the Committee of Ministers Twenty Guidelines on Forced Returns (especially Guideline 3 - prohibition of collective expulsion) and with the states’ fundamental obligation under the Convention not to return a person to a country where they would face a real risk of being subjected to treatment contrary to Article 3, or even Article 2. The Commissioner is concerned that asylum seekers returning to Greece by virtue of the Dublin Regulation may face such risks, jeopardising the enjoyment by them of their human rights enshrined in the Convention.

III. Asylum seekers’ reception and detention conditions

Asylum seekers’ accommodation

34. In February 2010 the Commissioner was informed that there were eleven reception centres for asylum seekers, including asylum seeking minors, in Greece with a total capacity of 741 persons. All of them are managed by non-governmental organisations and financially supported (partly or wholly) by the state.

35. Given the fact that asylum applications between 2005 and 2009 ranged from 9 050 to 25 113 per year, the Commissioner considers that the above reception capacity is far from satisfactory. The Commissioner regrets to note that such a serious deficiency in the asylum seekers' reception capacity harshens even further the lives of thousands of asylum seekers and their families, children in particular. It also raises serious issues with regard to the protection of, *inter alia*, their right to social and medical assistance and their right to benefit from social welfare services, as provided for notably by the European Social Charter (ratified by Greece), and the 'Refugee Reception Directive' (2003/9/EC, transposed by Presidential Decree 220/2007). In fact, many asylum seekers are detained in aliens' detention centres often in substandard conditions, or simply live out in the open (see subsection below on asylum seekers' detention).

36. On 8 February 2010 the Commissioner visited the town of Patras, one of the major irregular exit points of migrants, including asylum seekers, from Greece to other EU member states. For approximately ten years, and until July 2009, a number of migrants - the majority reportedly of Iraqi and Afghan nationality, including asylum seekers and minors - had lived in an unauthorised settlement in Patras. According to the UNHCR Office in Greece, an estimated 3 000 persons lived in that settlement in conditions that have been described by that Office as 'unacceptable from the points of view of living and hygiene standards'. During his meeting with the Commissioner in December 2008, the former Minister of Interior Prof. Pavlopoulos conceded that the situation was serious and informed the Commissioner that efforts were made by state authorities to provide the migrants of the settlement with basic welfare and medical services. The Commissioner was also informed then of a plan to create an irregular migrants detention centre of with a capacity of 1 000 persons at Drepano-Rio, near Patras. To his regret, the Commissioner noted during his visit to Patras in February 2010 that no such centre had been established.

37. In fact, after the dismantling by the authorities of the unauthorised settlement in July 2009, the migrants, including asylum seekers, scattered around the town of Patras, including the nearby area of Ayias, where some have since camped under the trees of a private olive grove. This area was squatted mainly by approximately 300 Hazara Afghans. In addition, approximately 200 Pashtun Afghans, Somalis, Sudanese, North Africans and migrants from the Middle East were reportedly squatting in the open air, in construction sites or in disused train carriages in Patras. The Police authorities in Patras informed the Commissioner that approximately 70% of the Afghans are registered asylum seekers and holders of the relevant 'pink cards'.

38. On 8 February 2010 the Commissioner visited the olive grove in Ayias and met with a group of three male Afghans, approximately 20 years of age, who had still remained under an olive tree covered by cardboard and plastic sheets to be protected from the heavy rain. The Commissioner was informed that the olive grove had been raided by the police the previous week and many of the squatters had abandoned the field. The three Afghans who talked with the Commissioner had been in Greece for an average of two years and expressed their fear of being subjected to violence if returned to their country of origin. They claimed that they received no state aid. Food was allegedly provided only by members of the local civil society and medical care was available by the local Red Cross in the town of Patras. The Commissioner noted in particular the three Afghans' fear of contact with police authorities and the coast guard, a fact that made them avoid contacts with the Red Cross in the town even if they were in need of basic medical aid.

Asylum seekers' detention

39. In his 2009 report on Greece, the Commissioner noted that refugee applicants were being routinely detained in detention centres for three months (the maximum period provided for by Greek law at that time for irregular entrants subject to deportation). By Law 3772/2009 the maximum period for the detention of migrants in view of deportation became six months. A further extension of detention for 12 months is also possible under the same Law if the migrants do not cooperate with the authorities or there is a delay in the provision of the necessary documents by the authorities of the migrants' country of origin. During the Commissioner's visit in February 2010, legal practitioners informed the former that they had observed an increase in the actual average duration of detention in the period following the introduction of the above Law.

40. The Commissioner is concerned by the above legislative change, given the very high annual numbers of irregular migrants (including traffickers) who are apprehended and detained by police and coast guard forces in Greece every year. From 2006 to 2009 these numbers ranged from 95 239 to 146 337. In this regard, the Commissioner has noted a number of recent judgments delivered by the Court concerning the detention of migrants in Greece, notably in police stations, and violations of Article 3 or Article 5 of the Convention.¹²

41. In December 2008 the Commissioner visited the two separate warehouse-type detention rooms of the Feres border guard station, which date from 2000. There were 45 young, male, irregular migrants in detention, most of them Iraqis. The Commissioner noted with concern that there was no telephone available inside the detention area at Feres, while inmates complained that they hardly ever left their detention rooms. They were in fact crammed in the rooms, sleeping and stepping upon mattresses that had been placed on the floor and on a cement platform, one next to the other. In the bathrooms the conditions were squalid. Some detainees had obvious skin rashes on their arms and one with bare feet complained that the authorities did not provide him with shoes and clean clothes.

42. During the visit to Patras in February 2010, the coast guard authorities informed the Commissioner that a month earlier they had stopped using a couple of containers in the area of the port of Patras for the detention of irregular migrants, acknowledging their inappropriateness. The Commissioner had earlier been informed of cases of migrants with psoriasis held in those containers.

43. During the same visit, the Commissioner was also informed of degrading conditions of detention of migrants (including asylum seekers) at the centre of Pagani, on the island of Lesbos, which was operational until late 2009. After its visit there on 22 October 2009, UNHCR Greece reported that more than 700 men, women and children were accommodated there even though no appropriate infrastructures were in place. It was reported that in a cell there were approximately 200 women and children with only two toilets and one shower.¹³ On 10 February 2010, the Commissioner was informed by the Minister of Citizen Protection that this centre was finally closed.

44. Another centre used for the detention of migrants (including asylum seekers) of particular concern to the Commissioner is that in Venna (North East Greece), which is based in an old agricultural warehouse. In a visit report published on 3 January 2010 by the Greek League for Human Rights¹⁴ it was noted that the above centre consisted of six cells, each housing 15-25 persons, without heating, with doorless toilets/showers inside each cell. In the same report it is noted that there was no cleaning service in the centre and that both the detainees and the policemen reported the abundance therein of mice and cockroaches. In one of the cells, visited in late November 2009 by the delegation of the Greek League for Human Rights, there were detainees with clear signs of psoriasis on their bodies.

45. During his last visit to Greece the Commissioner was informed that on 3 February, the week before his arrival, there had been an uprising of migrant detainees at the above detention centre. The detainees reportedly protested about the material conditions of their detention and lack of proper medical care.

46. It was reported to the Commissioner that on 5 February 2010 the Misdemeanours Court of Rodopi tried and convicted 42 of the migrant detainees, originating mainly from Iraq, Afghanistan, Pakistan and Bangladesh, on charges of contempt of Authority and damage to property, and ordered their deportation. Greek lawyers following the case reported to the Commissioner that legal counsellors could not contact the migrant detainees before, during or after the above trial.

Conclusions

47. In conclusion, the Commissioner considers that current asylum law and practice in Greece are not in compliance with international and European human rights standards. In particular:

- access to refugee protection remains highly problematic, notably due to the non-functioning of the first instance Advisory Refugee Committees, lack of proper information on asylum procedures and legal aid that should be available to potential or actual asylum seekers, widely reported instances of *refoulement* or non-registration of asylum claims;
- the quality of asylum decisions at first instance is inadequate, notably because of structural deficiencies and lack of procedural safeguards, in particular concerning the provision of legal aid and interpretation;
- existing domestic remedy against negative asylum applications is not effective;
- asylum seekers, including persons transferred under the Dublin Regulation, face extremely harsh living conditions in Greece.

48. Since the beginning of his mandate, the Commissioner has been following developments relating to migration, and especially asylum, in Greece. The Commissioner is pleased to note the new Greek government's decision and willingness, shown to him during his visit in February 2010, to overhaul the refugee protection system and overcome its current serious, chronic and structural deficiencies.

49. The Commissioner fully supports these efforts and has urged the Greek authorities to proceed and engage with determination and commitment in the necessary legislative and administrative changes that would bring the Greek asylum system in line with international and European human rights standards.

¹ Resolution (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² See subsequent report concerning the human rights of asylum seekers, [CommDH\(2009\)6](#), 4 February 2009.

³ UNHCR, *Asylum Levels and Trends in Industrialized Countries, First Half 2009*, 21 October 2009, p. 5, available at: www.unhcr.org.

⁴ See press release of 17 July 2009, available at: http://hosting01.vivodinet.gr/unhcr/Press_Rel/09pr32en.pdf.

⁵ Greek National Commission for Human Rights, 'Proposals for the promotion of a modern, efficient framework of refugee protection in Greece', 8 June 2001, in Greek, section 9, available at: <http://www.nchr.gr>.

⁶ Greek National Commission for Human Rights, 'Comments of the NCHR on the asylum procedure and the application of relevant legislation', 17 January 2008, in Greek, section 2, available at: <http://www.nchr.gr>.

⁷ Prot. No 5733.2.5/07, available in Greek at <http://www.synigoros.gr>.

⁸ [CommDH\(2001\)19](#), 19 September 2001, paragraph 11.

⁹ See, *inter alia*, Council of Europe Committee of Ministers' Interim Resolution [CM/ResDH\(2007\)74](#) concerning excessively lengthy proceedings in administrative and other courts and lack of an effective domestic remedy and *Manios* group of cases, pending before the Committee of Ministers for supervision of execution, http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

¹⁰ *Smith and Grady v. the United Kingdom*, judgment of 27 September 1999, *Hatton and Others v. the United Kingdom* (Grand Chamber), judgment of 8 July 2003.

¹¹ In 2008, 11 requests were introduced (5 were out of scope, 0 granted, 6 refused); in 2009 12 requests were made (5 were out of scope, 1 granted, 6 refused).

¹² *Kaja v. Greece*, judgment of 27 July 2006, *Mohd v. Greece*, judgment of 27 April 2006, *John v. Greece*, judgment of 10 May 2007, *S.D. v. Greece*, judgment of 11 June 2009, *Tabesh v. Greece*, judgment of 26 November 2009.

¹³ Press release of 23 October 2009, in Greek, available at: <http://www.unhcr.gr>.

¹⁴ In Greek, available at: <http://www.hlhr.gr>, pp. 8-11.