

# Why Greece is not a Safe Host Country for Refugees

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## Abstract

This paper questions whether the Greek law and procedure for asylum seekers renders Greece an unsafe third country. In terms of the law and the practice, Greece seems to apply the accountability rather than the protection principle with respect to non-state actors, leaving asylum seekers vulnerable. UNHCR considers that Greece generally observes the principle of *non-refoulement* and that the fundamental deficit of the Greek system is focused on the failure to satisfy the 'basic subsistence needs' of refugees and asylum-seekers. It is argued here that the deficiencies of the Greek asylum system have to do with its 'archaism', its calculated ambivalence towards the legal situation of the victims of non-state agents, the lack of effective remedies and, last but not least, the absence of adequate social protection of refugees and asylum seekers.

## 1. Introduction

In 1999, one of the authors of the present paper expressed serious doubts in this journal as to whether Greece could be characterized as a safe host country, despite the recent reform of its refugee law.<sup>1</sup> Following that, it has been contended, again in this journal, that the practice of the so-called 'Appeals Board', as restructured by the 1999 reform, constituted a major positive development.<sup>2</sup> The explicit optimism of the above article implicitly suggested that Greece could harmonize its refugee law with international standards. However, the 'Appeals Board' is not of a judicial nature, having a purely consultative status with the administration; this is

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<sup>1</sup> A. Skordas, 'The new refugee legislation in Greece', 11 *IJRL* 678–701 (1999). On the general framework of Greek refugee law and policy see also N. Sitaropoulos, 'Modern Greek asylum policy and practice in the context of the relevant European developments', 11 *JRS* 105–117 (2000), N. Sitaropoulos, 'Comparative legal study on subsidiary protection — Greece' in D. Bouteillet-Paquet (ed), *Subsidiary Protection of Refugees in the EU: Complementing the Geneva Convention?*, Brussels, Bruylant, 2002, 529–568.

<sup>2</sup> M. Stavropoulou, 'The practice of the Greek Appeals Board: A major leap ahead', 12 *IJRL* 90–96 (2000).

why we prefer the term ‘consultative appeals committee’.<sup>3</sup> Moreover, despite its positive contribution, the above committee has not been able to reorient the fundamental directions of the practice of the Greek Ministry of Public Order which is responsible for the implementation of the asylum legislation.

In May 2000, the British High Court (Queen’s Bench Division) applied the Dublin Convention in the case of *R v. Secretary of State for the Home Department ex parte Bouheraoua and ex parte Kerkeb*.<sup>4</sup> The applicants were Algerian nationals, who were threatened by non-state agents in their country of origin. The Court refused to allow their return to Greece because it considered that there was a real risk that the Greek authorities would apply, not the protection, but the accountability principle with respect to victims of non-state agents. The Court of Appeal upheld this judgment.<sup>5</sup> However, in the *Elshami and Berisha* case, British courts adopted the contrary position and considered Greece as a safe host country to which Kosovo Albanians could be returned.<sup>6</sup> Finally, the British High Court recently (late 2002) rejected similar arguments of Sudanese applicants in the case *Hanoun Baghr Manoun Miedhat, Philip Shakir Fakhori Rimon and Fawzi Gleddis Talaat*.<sup>7</sup>

The position of UNHCR (Headquarters) with respect to Greece and the application of the Dublin Convention was formulated in an internal paper dated 15 July 1999<sup>8</sup> as an answer to an Austrian NGO. This letter made clear that UNHCR considers that Greece generally observes the principle of *non-refoulement* and that the fundamental deficit of the Greek system is focused on the failure to satisfy the ‘basic subsistence needs’ of refugees and asylum-seekers.<sup>9</sup>

<sup>3</sup> The exact name currently used by the Ministry of Public Order is ‘consultative asylum committee’.

<sup>4</sup> Judgment of 22 May 2000, Case no CO/878/1998, CO/2734/1998 (transcript copy on file with the authors). See also ECRE Documentation Service, No. 5, Oct. 2000, ‘Legal Developments’, 21. This article is an adapted version of the expert opinion on the Greek system submitted to the High Court.

<sup>5</sup> Judgment of 11 May 2001, [2001] *EWCA Civ* 747, C/000/2271 (copy on file with the authors).

<sup>6</sup> *Queen v. Secretary of State for Home Department; An Immigration Officer ex parte Agon Elshani and Mentor Berisha*, [1999] *EWCA Civ* 1071 (23 Mar. 1999). See also *The Queen on the Application of Besim Berisha and Immigration Appeal Tribunal*, [2002] *EWHC* 1526 (Admin), accessible through [www.bailii.org](http://www.bailii.org).

<sup>7</sup> The transcription of the applicants’ names is that of Mr R Pulham, IND, in his letter of 27 Aug. 2002 to Patterson Sebastian and Co Solicitors; Cases CO/1579/2002, CO/1279/2002, CO/751/2002 respectively; hearings took place on 29 Aug. 2002 (information provided by Ms Y. Patterson of the Patterson Sebastian and Co., Solicitors, 1 Olympic Way, Wembley, Middlesex HA9 ONP).

<sup>8</sup> Document on file with the authors.

<sup>9</sup> ‘In the case of Greece, it is certainly the requirement of “treatment in accordance with accepted international standards” which is the most difficult to ascertain, in particular after recent reported improvements concerning the observance of the non-refoulement provisions. So far, we have not issued a precise definition of the standards associated with “accepted international standards”. In the 1995 “Overview of Protection Issues in Western Europe” document, we referred to “treatment according to basic human standards” which was also described as “that refugees must be able to satisfy basic subsistence needs”.

The Greek legal practice after 1999 has convinced us that Greece is still a non-safe host country for refugees, without distinction between those transferred under the Dublin system or those directly arriving from a third country and requesting asylum. The non-provision of aid to refugees for the satisfaction of their 'basic subsistence needs' is only one aspect of the problem. In fact, the Greek refugee system is unfair not in the moral, but in a strictly legal sense. In 2002 and 2003, UNHCR Athens stressed the seriously defective application of Greek asylum law by the Ministry of Public Order, mainly due to chronic shortages of human resources and lack of appropriately trained personnel.<sup>10</sup> The same office has expressed its serious concern at the stark fall of the Convention refugee status recognition rate in 2002 in Greece to 0.3 per cent from 11.2 per cent in 2001, while the respective EU average in 2002 was 10.6 per cent and in 2001 it was 15.8 per cent.<sup>11</sup> In 2003, the refugee status recognition rate in Greece fell further to a record rate of 0.06 per cent.<sup>12</sup> Due to the structural deficits of the Greek system an effective refugee protection cannot be afforded unless a radical reform is introduced, which seems very unlikely at the present time.

It should be noted that the lack of effective refugee protection is not the 'fallout' of a security-oriented policy; after all, Greek refugee legislation has

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As you rightly inferred from the December 1998 press briefing summary, the general reception conditions for asylum-seekers in Greece are from ideal (sic). However, after consultation with BO Athens, we feel that it would be premature for UNHCR to argue that these conditions would generally result in treatment *not* in accordance with "basic human standards". At this point in time, UNHCR should normally not raise objections against the transfer of asylum-seekers to Greece, unless this would be clearly indicated by the particular circumstances of the specific case. Since UNHCR consistently emphasized that the fulfillment of the abovementioned criteria have to be assessed *in regard to each individual case*, there may be exceptional circumstances in which UNHCR would advocate a non-transfer from one Dublin country to another. This would be the case, for instance, in regard to a specific vulnerable asylum-seeker (e.g. an asylum seeker who is in need of particular medical care) which would require special attention and treatment in the third country. (. . .)

Although we therefore do not object against the transfer of asylum-seekers to Greece, UNHCR considers reception conditions (including accommodation, social assistance, etc.) for asylum-seekers in Greece, including returnees under the Dublin Convention, still unsatisfactory. While there is a reception center for asylum-seekers known as Lavrio, its capacity is clearly insufficient and there is no guarantee that an asylum-seeker will be actually referred to that center. In the absence of state assistance, UNHCR, through its implementation partners, does provide limited assistance to needy/vulnerable refugees, and in certain (exceptional) cases to asylum-seekers or persons granted humanitarian status. Therefore, asylum-seekers who are returned to Greece under the provision of the Dublin Convention may face some difficulties in obtaining the necessary assistance from the Greek government in terms of accommodation and their daily subsistence needs'. The above reflected the position also of UNHCR Athens in 2002.

<sup>10</sup> UNHCR BO for Greece, *Annual Report on Refugee Protection in Greece in 2001*, Athens, Apr. 2002 (in Greek), 4; UNHCR BO for Greece, *UNHCR Positions on Crucial Issues Relating to Refugee Protection in Greece*, Athens, Oct. 2003 at [www.unhcr.gr](http://www.unhcr.gr). Its serious concerns at the Greek asylum system has also expressed the Greek National Commission for Human Rights with a series of resolutions and recommendations in 2001, 2002 and 2003 (see NCHR documents 2001, 2002 and 2003 at [www.nchr.gr](http://www.nchr.gr)).

<sup>11</sup> UNHCR BO for Greece, Press release no 63/02, 10 Dec. 2002 (in Greek) and statistics at [www.unhcr.gr](http://www.unhcr.gr). Arguably this fall of refugee status recognition rates in Greece is related to an increased cautiousness of the Greek authorities after the Sept. 11 events.

<sup>12</sup> Based on data from Jan. until Nov. 2003, information provided by UNHCR BO for Greece.

never been particularly sensitive *vis-à-vis* the threat of terrorism. It is noteworthy that domestic law still does not confer upon the administration the competence to apply the exclusion clause of the Geneva Convention Relating to the Status of Refugees during the procedure of refugee recognition. To activate the clause, it is necessary to undertake an interpretative exercise of national and international law, which is beyond the everyday operations of a standardized administrative practice.<sup>13</sup> It is worth mentioning that for many years Greece has acquiesced both to the activities of the members of the Serbian élite in the Milosevic era<sup>14</sup> and, until 1999, when Abdullah Öcalan was arrested in Kenya, to the political presence of PKK in Greece. Over almost three decades, the Greek public opinion has been rather sympathetic towards the different kinds of ‘guerillas’ in Western Europe, as well as towards the armed activities of Palestinian organisations against Israel. The response of Greek public opinion post-September 11 revealed once more the irrationality of the domestic discourse concerning terrorism.<sup>15</sup>

The deficiencies of the Greek asylum system have to do with its ‘archaism’, its calculated ambivalence towards the legal situation of the victims of non-state agents, the lack of effective remedies and, last but not least, the absence of adequate social protection of refugees and asylum seekers.

## 2. Main features of Greek refugee law

The legal status of refugees in Greece is determined by articles 24 and 25 of Law 1975/1991 on the legal status of aliens<sup>16</sup> (as amended by, *inter alia*, Law 2452/1996 on the legal status of refugees),<sup>17</sup> by Presidential Decree 61/1999 on refugee status recognition procedure,<sup>18</sup> by the Geneva Convention Relating to the Status of Refugees of 1951<sup>19</sup> and by the New York Protocol of 1967.<sup>20</sup> Greece is also bound by the Dublin Convention<sup>21</sup> and by the Convention Applying the Schengen Agreement.<sup>22</sup>

As far as recognition of refugee status is concerned, article 25.1 of Law 1975/1991, as subsequently amended, as well as article 1 of Presidential

<sup>13</sup> See A. Skordas, above n. 1, 682–684.

<sup>14</sup> See T. Michas, *Unholy Alliance — Greece and Milosevic’s Serbia*, Texas A&M University Press, 2002 and H. Smith, ‘Greece faces shame of role in Serb massacre — War crimes tribunal will hear secrets of support for Milosevic’s ethnic cleansing’, *The Guardian*, 5 Jan. 2003, <http://www.observer.co.uk/international/story/0,6903,868843,00.html>, viewed on 6 Jan. 2003.

<sup>15</sup> G. Auernheimer, ‘Terrorismus und Antiamerikanismus in Griechenland’, 50 *Südosteuropa* 497–501 (2002).

<sup>16</sup> *Official Journal of the Hellenic Republic (OJHR)* A, 184.

<sup>17</sup> *OJHR* A, 283.

<sup>18</sup> *OJHR* A, 63.

<sup>19</sup> Ratified by Legislative Decree 3989/1959, *Official Journal of the Kingdom of Greece (OJKG)* A, 201.

<sup>20</sup> Ratified by Law 389/1968, *OJKG* A, 125.

<sup>21</sup> Law 1996/1991, *OJHR*, A, 196.

<sup>22</sup> Law 2514/1997, *OJHR* A, 140.

Decree 61/1999, make a direct reference to article 1A of the Geneva Convention, as well as to the New York Protocol. The Greek legislation incorporates, thus, the normative order of the Geneva Convention into the domestic legal order. However, despite that formal incorporation, Greek practice often seems to ignore international norms and to neglect domestic jurisprudence. A good example is offered by Law 1975/1991 before its modification in the year 1996. The law attempted to restrict the application field of the Geneva Convention through the introduction of two additional criteria of admissibility for the recognition of the refugee status. According to article 25.1a before the enactment of Law 2452/1996, an alien's application for her/his recognition as a refugee was inadmissible if it was not submitted immediately upon her/his arrival to the competent authorities at the frontier. The applicant was to be recognized as a refugee according to article 25.1b of Law 1975/1991, only if s/he came directly from a country where her/his life or freedom would be threatened, according to the Geneva Convention.

These provisions had been sharply criticized in the legal and political discourse because they conveyed wide powers of discretion to the military and police authorities. In administrative practice, these provisions led to *refoulement* of asylum-seekers, although they had a well-founded fear of persecution, merely because their country of origin did not have a common border with Greece or because they arrived through a transit country.<sup>23</sup> It should be mentioned that the above provision of the law was enacted and subsequently applied, despite the fact that the Supreme Administrative Court of Greece, the Council of State, had already decided in its Judgment 830 of 1985<sup>24</sup> that, according to article 1A of the Geneva Convention, it is not necessary for a refugee to arrive in the country of asylum directly from the country of persecution. Both Law 1975/1991, adopted six years after the above judgment, and the subsequent administrative practice ignored this jurisprudence, even though article 28.1 of the Greek Constitution stipulates that 'the generally recognized rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and *shall prevail over any contrary provision of the law*'.<sup>25</sup> The Council of State reaffirmed its jurisprudence in its Judgment 3103/1997 which, however, had been

<sup>23</sup> For the interpretation of the 'direct' arrival to the country of asylum, see J. Pugash, 'The dilemma of the sea refugee: Rescue without refuge', 18 *Harvard International Law Journal* 590 (1977).

<sup>24</sup> Judgment 830/1985; see also Judgment 932/1988, abstracts 88, 89 in 3 *IJRL* 740–742 (1991).

<sup>25</sup> Our italics. Translation by E. Spiliotopoulos, X. Paparrigopoulos, S. Vassilouni, *The Constitution of Greece*, Athens, Directorate of Studies, Hellenic Parliament, 1995. On the relationship between international and municipal law, see A. Fatouros, 'International law in the new Greek Constitution', 70 *AJIL* 501–503 (1976), E. Roucouas, 'Le droit international dans la Constitution de la Grèce du 9 juin 1975', 29 *Revue Hellénique de Droit International* 64–66 (1976).

adopted after the modification of the law. Article 2 of Law 2452/1996, followed by Presidential Decree 61/1999, abolished altogether the conditions of admissibility provided for in Law 1975/1991. It is a fact, however, that both legislation and the administration face difficulties in incorporating the letter and the spirit of international agreements into domestic law and practice.

According to article 1.1 of Presidential Decree 61/1999 any alien may apply to be recognised as a refugee under the 1951 Geneva Convention/1967 New York Protocol, upon their entry into Greek territory. The asylum application is to be lodged in writing or orally with any Greek authority. Article 1.1 specifically stresses that an asylum applicant includes not only a person who expressly 'requests asylum' in Greece, but also anybody who 'in any manner whatever asks not to be deported to another country on the ground of fear of persecution' on any of the five Geneva Convention grounds. The same provision proscribes the applicant's 'removal' (*apomakrynsi*) from Greece in any manner whatsoever until the delivery of a final administrative decision upon the application. In case the authority that receives the asylum claim is not a police authority, it is to forward *ex officio* the relevant claim to the competent police authority.<sup>26</sup>

The asylum claim is to be lodged by the refugee applicant in person and includes all 'protected members' of her/his family, that is, the applicant's spouse, unmarried children under the age of 18 of both spouses, as well as their parents and their children over the age of 18 who have special mental or physical needs and may not lodge an autonomous asylum application.<sup>27</sup> An asylum application may also be lodged by an alien minor between the age of 14 and 18, unaccompanied by their parents, on condition that the authorities may conclude that the unaccompanied minor is mentally mature enough to 'realise the significance' of that application. In any other event, the case of an unaccompanied minor (under 18) is to be referred by the police to a public prosecutor who is authorised by the same statute to act as the minor's guardian.<sup>28</sup>

Competent authorities for processing asylum applications are the 'aliens' sub-directorates or units', the 'security units of the airports' and the 'security sub-directorates or units of police directorates'.<sup>29</sup> All these authorities are parts of the Greek Ministry of Public Order (Police). Article 2.2 of Presidential Decree 61/1999 enjoins the examination of the asylum application within a period of three months, except for the cases of applications lodged in (air)ports where the applications are to be examined on the same day (accelerated asylum procedure, see below). The authority that examines and prepares the file regarding the asylum

<sup>26</sup> Arts. 1.2 and 2.1 of Presidential Decree 61/1999.

<sup>27</sup> Art. 1.3 of Presidential Decree 61/1999.

<sup>28</sup> Art. 1.4 of Presidential Decree 61/1999.

<sup>29</sup> Art. 2.1 of Presidential Decree 61/1999.

application is to forward the file to its superior aliens police directorate or sub-directorate. The asylum file is then to be forwarded to the asylum office of the Ministry of Public Order.<sup>30</sup> Convention refugee status is recognised by a decision issued by the Secretary General of the Ministry of Public Order following the recommendation of the state security directorate of the above Ministry.<sup>31</sup> The duration of Convention refugee status in Greece is five years, renewable.<sup>32</sup>

An asylum application is to be examined according to the accelerated procedure provided for by article 4 of Presidential Decree 61/1999 in the following cases:

- The asylum application is lodged upon arrival at the point of entry in an (air)port;
- The application is manifestly unfounded and the persecution claims are obviously unsubstantiated, fraudulent or abusive of the asylum procedure;<sup>33</sup>
- The applicant comes from a third safe host country where the applicant has no risk of being persecuted on any of the Convention grounds, nor of being *refouled* to the country of nationality or habitual residence.<sup>34</sup>

In the second and third cases, article 4 of Presidential Decree 61/1999 makes an express reference to the 1992 Resolutions of the EU Immigration Ministers regarding manifestly unfounded asylum applications and the concept of safe third host country, stipulating that these Resolutions should be used as interpretative guidelines in practice, along with the UNHCR Executive Committee Resolutions no. 30 and no. 58. The authority that decides upon these applications is the chief of the section of police, security and order of the Ministry of Public Order, following a recommendation of the directorate of state security of the Ministry of Public Order.<sup>35</sup> According to article 1.1 sub-paragraph 1 of Presidential Decree 61/1999 as an asylum seeker is also to be regarded any alien who is forwarded back to Greece from another EU member state in accordance with the Dublin Convention. The asylum cases transferred to Greece from another EU member state are examined under the normal or the accelerated asylum procedures, depending on the circumstances of the case.<sup>36</sup>

<sup>30</sup> Art. 2.9 of Presidential Decree 61/1999.

<sup>31</sup> Art. 3.1 of Presidential Decree 61/1999.

<sup>32</sup> *Ibid* art. 3.2.

<sup>33</sup> Art. 4 of Presidential Decree 61/1999 in conjunction with art. 25.2 of Law 1975/1991, as amended by Law 2452/1996.

<sup>34</sup> *Ibid*.

<sup>35</sup> Art. 4.2 of Presidential Decree 61/1999.

<sup>36</sup> See also F. Liebaut (ed), *The Dublin Convention — Study on its Implementation in the 15 Member States of the European Union*, Danish Refugee Council, Jan. 2001, *passim*. In 2001 Greece lodged 19 applications with other EU states and accepted 656 applications from other EU states (statistics of the Greek Ministry

### 3. The issue of persecution by non-state agents in Greek refugee law

As is widely accepted by legal theory and state practice, the Geneva Convention protects not only persons who have a well-founded fear of being persecuted by agents acting as organs of the state, but also by private persons who act either on behalf of the state or as members of revolutionary movements, or even by local populace where the authorities do not provide effective protection against such persecution. Although state practice may differ as to the exact scope and legal justification of the protection of persons persecuted by private groups, there is no doubt that the Geneva Convention does not limit the application of article 1A to persecution by the authorities and organs of the state. Such a conclusion may be drawn not only through the direct interpretation of the above Convention, but also through the international law state responsibility.<sup>37</sup> The question is whether and to what extent the Greek authorities recognize non-state actor persecution.

The question of the agents of persecution has not yet been dealt with by the Supreme Administrative Court of Greece, the Council of State, which is competent to control the legality of administrative acts (article 95.1a of the Constitution). Since the rejection by the administration of an asylum application constitutes an administrative act, the Council of the State is also competent to decide on the legality of acts refusing recognition of refugee status. In the above-mentioned Judgments 830/1985 and 932/1988, the applicant was a Turkish citizen of Kurdish origin who feared persecution as a member of a Youth Organisation banned by the Turkish authorities. In Judgments 3832/1992<sup>38</sup> and 3833/1992, the applicants belonged to the Tamil minority in Sri Lanka and feared persecution by the authorities. In Judgment 3103/1997, the applicant was an Iraqi Kurd who had arrived in Greece via Turkey. He requested refugee status in Greece because he had a well-founded fear of persecution in Iraq, but also in Turkey, where he was threatened by members of a rival Iraqi organisation to the Kurdish party in which he participated. His application was rejected

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of Public Order). In 2000 Greece accepted 485 applications for readmission of asylum applicants in the context of application of the 1990 Dublin Convention, see UNHCR BO for Greece, *Annual Report on Refugee Protection in Greece in 2000*, Athens, Mar. 2001 (in Greek, hereinafter *Report 2000*) at 5.

<sup>37</sup> On the agents of persecution, see, for instance, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1979, para. 65; G. Goodwin-Gill, *The Refugee in International Law*, 2<sup>nd</sup> edition, Oxford, Clarendon Press, 1996, 70–74; N. Sitaropoulos, *Judicial Interpretation of Refugee Status: In Search of a Principled Methodology based on a Critical Comparative Analysis of British, French and German Jurisprudence*, Athens, Baden-Baden; Ant. N. Sakkoulas Publishers, Nomos Verlagsgesellschaft, 1999, 283–320; H. Dipla, *La responsabilité de l'Etat pour violation des droits de l'homme*, Paris, Pedone, 1994, 55–75; J. Wolf, 'Zurechnungsfragen bei Handlungen von Privatpersonen', 45 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 232–264 (1985). See also UK Court of Appeal, *R v. Secretary of State for the Home Department, ex parte Adan*, 23 July 1999, reproduced in 11 *IJRL* 702–729 (1999).

<sup>38</sup> See abstract 226, 7 *IJRL* 512–513 (1995).

by the administration on grounds of admissibility in the aforementioned sense of article 25.1 of Law 1975/1991. The Council of State quashed the administrative act on the ground that the reasoning of the act was inadequate. The Court did not specifically deal with the issue of the agents of persecution. Finally, in Judgment 3381/1997,<sup>39</sup> which quashed an administrative decision rejecting an application for *ab initio* examination of an asylum application, the applicants were also Tamil who maintained that they feared persecution by the authorities in Sri Lanka.

A more recent case dealt with the application of Ali Ali, son of Hussein and Qadria, an Iraqi citizen, born in Iraq in 1946. The applicant, who lived in Northern Iraq, fled his country to avoid persecution by the two dominant political parties of Iraqi Kurdistan, namely KDP and PUK. On 7 November 1997, he applied for asylum in Greece. His application was initially rejected by the decision 9135/31466/26.04.1998 of the Secretary-General of the Ministry of Public Order. The applicant appealed against that decision to the Minister of Public Order, who rejected the application by Decision 9135/31466/23.11.1998. A week later, the Ministry of Public Order adopted Decision 9135/31466-597523/30.11.1998, according to which the applicant had to leave Greece in three months. In a relatively recent written statement concerning the *Ali Ali* case, the Greek Ministry of Public Order communicated some information to the UK Immigration and Nationality Dept, Third Country Unit, Croydon, UK.<sup>40</sup> According to the document:

2. The applicant did not present any element relative to his claims for fear of persecution. These concerned the fear of his return to Iraq, due to the fact that he had deserted the army and the obstacles he faced at his professional activities (painter) in the area of Northern Iraq.
3. (...)
4. There is no doubt that our country applies the 'protection' approach to all asylum applications.

This statement contradicts the Decision 9135/31466/23.11.1998 of the Minister of Public Order rejecting the asylum application of Ali Ali that had stated the following: 'The flight of the applicant from Northern Iraq was due to threats by the two Kurdish parties KDP and PUK; this cannot support the application for asylum, because the threats are not attributed to state authorities and do not justify fear of persecution in the sense of the Geneva Convention'.

The case, through an application for annulment, was brought before the Greek Council of State on 10 February 1999 and is still (early 2004)

<sup>39</sup> See abstract and note in *Yearbook of Refugee and Aliens Law — 1998* (Athens, Ant. N. Sakkoulas Publishers, UNHCR BO for Greece, 1998, in Greek), 51–55

<sup>40</sup> MPO ref. 95/31466- [deleted] . . . -468473, dated 20 Feb. 2001 and signed by the Head of the Asylum Office Mr Dimitrios Galatoulas.

pending. It is therefore clear that, according to recent practice, Greece does not offer effective refugee protection to victims of non-state persecution and does not apply the protection principle, contrary to some public statements otherwise.

This kind of misinformation effort can be clearly derived from the Greek authorities' response to the request of the UK Immigration Service in the *Bouheraoua and Kerkeb* case. The Service describes as follows the communication with the Greek Ministry of Public Order on the *Ali Ali* file and decision:

I would further draw the Court's attention to the fact that the decision issued simply contains a summary of the reasons for refusal. I understand that the file contains a more fully reasoned explanation by way of an internal submission. *I have asked that a copy of this fuller document be sent to me.* I spoke to Mr. Galatoulas about this on 2<sup>nd</sup> May 2001, *but understand that the document is a confidential internal memorandum and that it is not possible to disclose it to me.*<sup>41</sup>

The response of the Greek authorities clearly qualifies the nature and character of the administrative practice: there exists a 'reasoning' with respect to the administrative acts rejecting the asylum application, which is included in the file of the applicant. However, the information cannot be disclosed. Therefore, it can reasonably be concluded that the applicant himself is unable to respond to that information. The *Ali* case has been decided on the basis of information and reasons undisclosed to the applicant and to the authorities of a Contracting State to the Dublin Convention. Non-disclosure of the relevant information and inconsistencies of the authorities render a fair hearing impossible and diminish the credibility of the Greek Ministry of Public Order.

The statistics on the practice of the administration *vis-à-vis* Sudanese nationals in general may be helpful as an example demonstrating the insufficiencies and inconsistencies of the Greek refugee policy. As far as the number of Sudanese refugee applicants recognized as refugees under the Geneva Convention is concerned, the Greek practice has been hitherto restrictive. According to the official statistics of the Greek Ministry of Public Order, regarding the years 1996–2002, the situation is as follows:

1996: three applications, one recognition decision;  
1997: six applications, no recognition decision;  
1998: twenty applications, two recognition decisions;  
1999: seventeen applications, eleven recognition decisions;  
2000: forty one applications, five recognition decisions;  
2001: forty five applications, six recognition decisions;  
2002: fifty eight applications, one recognition decision.

<sup>41</sup> Witness statement dated 02 May 2001, CO: 2374/98 and 878/98, para. 15, emphasis added.

The above data show that in Greece in the above six years (1996–2001) out of 132 refugee status applications of Sudanese nationals, only 25 were accepted. It is unfortunately not possible to draw any conclusions on the question of the agents of persecution from the relevant administrative decisions because they are not accessible. Another cause for concern is the great fluctuation in the number of ‘applications/recognitions’ from year to year in the above period. Moreover, according to statistics of the Greek Ministry of Public Order, from 1997 until and 2001 there were 1 715 ‘humanitarian status’ recognition or renewal decisions. Out of these ‘positive’ administrative decisions only 33 concerned Sudanese nationals, although Sudan is a state with enormous humanitarian problems. It is noteworthy that Greece still does not have a legal regime for the protection of victims of armed conflict (on these issues, see below).

#### 4. Humanitarian status and temporary protection

Article 24.4 of Law 1975/1991, in conjunction with article 8 of Presidential Decree 61/1999, introduced another category of persons who were protected on ‘humanitarian grounds’. ‘Humanitarian refugee status’<sup>42</sup> in Greece is provided for by article 25.4 of Law 1975/1991, as amended by Law 2452/1996,<sup>43</sup> in conjunction with article 8 of Presidential Decree 61/1999. According to article 25.4 of Law 1975/1991, the Minister of Public Order ‘in exceptional cases, particularly for humanitarian reasons, may approve the temporary residence of an alien whose refugee status application has been rejected, until his departure from [Greece] becomes possible’.<sup>44</sup>

Article 8 of Presidential Decree 61/1999 provides the substantive and procedural details regarding the application of article 25.4 of Law 1975/1991. Article 8 stipulates that an alien whose refugee status application has been finally rejected by the administration (Secretary General of Ministry of Public Order) and who has been granted a temporary residence permit by the above executive organ, according to article 25.4, is provided by the police with a ‘special residence card for humanitarian reasons’, valid for

<sup>42</sup> The exact terminology used in order to define the beneficiary of humanitarian refugee protection in Greece is ‘alien with a special residence permit for humanitarian reasons’ (art. 8 of Presidential Decree 61/1999). This terminology is not used consistently throughout Greek legislation. Other similar terms used to describe the same status are ‘person residing in Greece temporarily for humanitarian reasons’ (art. 4 of Presidential Decree 189/1998 on refugee employment) and ‘persons remaining [in Greece] for humanitarian reasons’ (Presidential Decree 266/1999 on refugee reception and social welfare). The terminological opaqueness of Greek law has been compounded by the new administrative practice of providing temporary residence permits, on humanitarian or *force majeure* grounds, to aliens (immigrants) who have not entered at all the refugee status recognition procedure (art. 37.4 of Law 2910/2001).

<sup>43</sup> This Law regulated issues relating to refugee protection amending provisions of Law 1975/1991.

<sup>44</sup> This competence was transferred to the Secretary General of the Ministry of Public Order by Ministerial Decision 7004/3/26/10 Mar. 1999, *OJHR* B, 1578, 5 Aug. 1999.

one year, subject to renewal. This residence card covers the alien's family (according to the aforementioned family definition of article 1.3 of Presidential Decree 61/1999), as well. As a consequence, in practice humanitarian refugee status may in principle be applied for, or granted *ex officio* by the Ministry of Public Order, only after an initial rejection by the administration of Convention refugee status. Article 8.2 of Presidential Decree 61/1999 has indicatively laid down the following *substantive criteria* that 'should in particular be taken into consideration' by the Ministry of Public Order for granting a humanitarian residence permit:

- (a) It is objectively impossible for the asylum seeker to be removed or to return to her/his country of origin or habitual residence due to *force majeure* (eg serious health reasons in relation to the main refugee applicant or members of his family, existence of an international embargo against the alien's country, civil war followed by massive violations of human rights);
- (b) The fulfilment of the requirements of the principle of *non-refoulement* as enshrined in article 3 of the European Convention on Human Rights (ECHR), or in article 3 of the UN Convention against Torture (CAT), both ratified by Greece.<sup>45</sup> Article 3 ECHR prescribes that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'. Article 3.1 CAT is expressly alien protection-oriented, proscribing the expulsion, return or extradition of persons 'where there are substantial grounds for believing that [these persons] would be in danger of being subjected to torture'. The CAT has specified that for determining the existence of such prohibitive grounds, the contracting states are to take into account 'all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights' (article 3.2 CAT). The above provisions have been effectively interpreted and applied by the competent judicial organs (European Court of Human Rights and the UN Committee against Torture) in cases involving extradition or deportation of aliens, including asylum seekers.<sup>46</sup>

With regard to the *substantive conditions* for granting humanitarian refugee status, Greek refugee law, as already mentioned, proscribes the return of a rejected refugee applicant if this return is impossible for *force majeure* reasons

<sup>45</sup> Greece ratified ECHR and CAT by Legislative Decree 53/1974, *OJHR* A, 256 and Law 1782/1988, *OJHR* A, 116 respectively.

<sup>46</sup> See relevant ECHR case law in A. Mowbray, *Cases and Materials on the European Convention on Human Rights*, London etc, Butterworths, 2001, at 110–128; see also H. Lambert, 'The European Court of Human Rights and the right of refugees and other persons in need of protection to family reunion', 11 *IJRL* 427–450 (1999). On refugee-related CAT case law see 11 *IJRL* 202–226 (1999) and B. Gorlick, 'The Convention and the Committee against Torture: A complementary protection regime for refugees', 11 *IJRL* 479–495 (1999).

related to the applicant's person, or her/his family's or their state of origin. The law also makes express reference to article 3 ECHR and article 3 CAT that provide a wide protective spectrum in favour of persons in need of effective international protection.

In order, though, for Greek administrative authorities to apply these international human rights protection standards and principles on the domestic plane, they need to be aware of the relevant international human rights law doctrine and, above all, of the relevant dynamic, evolving jurisprudence of the competent judicial organs.<sup>47</sup> This is a really crucial problem regarding the implementation of the above international legal standards by the Greek administration. It is at least questionable whether the competent Greek administrative organs have the necessary background to apply those standards on a practical basis.

Factual grounds on which humanitarian refugee status has been granted in Greece by the Ministry of Public Order are the following: international embargo against the country of origin, long residence in Greece, young age, family or health reasons, dire economic situation in the country of origin and civil war or indiscriminate violence in the country of origin. It is to be noted that victims of civil war, especially when ethnic or tribal grounds are involved, have also been granted humanitarian refugee status.<sup>48</sup> However, the problem with Greek refugee law is that it recognizes no right for a humanitarian status. This decision lies within the absolute discretion of the administration.

Greek refugee law does not provide for any deadline regarding the examination of humanitarian refugee status applications in cases where this has been submitted by a rejected refugee applicant. By contrast, the law enjoins the examination of an asylum application within three months from the lodging of that application. However, in practice, ordinary asylum examinations (asylum interviews) in the region of Attica, which receives the vast majority of asylum applications, usually take place a year after the lodging of the relevant application. As a consequence, this produces a serious additional delay to the procedure for humanitarian status applications which depend upon the initial rejection of a refugee status application.

Exceptions exist where the Ministry of Public Order grants *ex officio* humanitarian refugee status, rejecting the refugee status application in first instance, as it is entitled to do by virtue of article 25.4 of Law 1975/1991 in conjunction with article 8 of Presidential Decree 61/1999. Greek law does

<sup>47</sup> Case law of the competent Greek administrative organs adjudicating on refugee status and humanitarian refugee status applications is not publicly available.

<sup>48</sup> Relevant administrative case law is not publicly available. See also Greek Council of State's Judgments 3832/1992, 3833/1992 and 3381/1997 annulling, on points of law, administrative decisions rejecting refugee status applications of Sri Lankan Tamil applicants related to the Sri Lankan civil war: see abstracts of above case law in *Yearbook of Refugee and Aliens Law — 1998* (Athens, Ant. N. Sakkoulas Publishers, UNHCR BO for Greece, 1998, in Greek), at 43–49 and 51–55.

not provide for the participation of any other non-ministerial organ in the procedure that leads to the granting of humanitarian refugee status. Although in asylum appeal instances the consultative appeals committee<sup>49</sup> is also involved, the Minister is not bound by its recommendation. In fact an informal information provided by a subordinate police officer, which is not communicated to the participants to the procedure, may weigh more than the recommendation of the appeals committee and may substantially influence a decision of the Minister of Public Order regarding the granting or refusal of humanitarian status.

Humanitarian refugee status in Greece is considered by Greek law as temporary. This is particularly evident in Presidential Decree 189/1998 on refugee employment. Article 4 of this Decree provides for the right to *temporary* employment of, among others, humanitarian refugees, 'in order to cover their immediate life needs'. Self-employment of humanitarian refugees is not allowed.

The duration of the protection provided by humanitarian refugee status is one year and may be renewed annually by the administration for as long as the factual background that enjoins this status persists.<sup>50</sup> In practice though several humanitarian refugees encounter difficulties in renewing their humanitarian refugee cards,<sup>51</sup> a fact flowing from the relevant inadequate law that provides the administration (subject to no substantive judicial control) with a wide discretion when deciding upon such cases in first instance or on appeal.

A third category of protected persons was introduced by Law 2452/1996. Article 25.6 of Law 1975/1991, as modified, provides for the temporary protection of specific groups of aliens who seek protection in Greece for reasons of *force majeure*. These persons can be temporarily admitted into the country. The above provision is designed to protect specific groups, usually the victims of armed conflict, who seek protection in Greece. The protected persons need not apply for recognition of refugee status, but they remain in the country provisionally until the *force majeure* in their country of origin no longer exists. The exact scope of the provision has to be specified by a common ministerial decision of the Ministries of Defense, Foreign Affairs, Public Order, Finance and Social Security. The necessary ministerial decision has not yet (early 2004) been issued, more than seven years after the enactment of the above Law 2452/1996. This fact alone demonstrates the unwillingness of the Greek authorities to provide temporary protection to victims of armed conflict.

<sup>49</sup> See below section 5.

<sup>50</sup> Art. 8.1 of Presidential Decree 61/1999.

<sup>51</sup> UNHCR BO for Greece, *Report 2000* at 6. Serious concerns relating to the inadequate protection provided to 'humanitarian refugees' were also expressed by the Greek National Commission for Human Rights, *Resolution on the protection of 'de facto refugees' by Greece*, 17 Dec. 2003, in Greek at [www.nchr.gr](http://www.nchr.gr).

## 5. Asylum review procedures in Greece

In case the Convention refugee status application is rejected, the refugee applicant may appeal<sup>52</sup> the decision of the Secretary General of the Ministry of Public Order to the Minister of Public Order within thirty days from notification. The Minister has to reach a decision on the appeal within ninety days since the filing of the appeal. The relevant deadlines are much shorter in cases of ‘accelerated asylum procedures’ provided for by article 4 of Presidential Decree 61/1999.<sup>53</sup> The ministerial decision on the appeal is to be preceded by the submission to the Minister of a relevant non-binding recommendation by the, mainly administrative, six-member consultative appeals committee which actually examines the appellant in person. This committee consists of the legal counsellor of the Ministry of Public Order (chair), a legal counsellor of the Foreign Ministry, an officer of the Foreign Ministry diplomatic corps, an officer of the Greek Police Force, a representative of the Athens Bar and the Legal Protection Officer of UNHCR BO for Greece. In current practice, the Minister of Public Order follows less or about half of the appeals committee’s recommendations.

If the appeal is rejected, the case may be reviewed *ab initio* by the Ministry of Public Order on condition that the applicant is able to produce ‘new crucial evidence regarding himself or members of his family, which, if known before the final decision [of the administration], would constitute a basic criterion for his refugee status recognition’. No *ab initio* examination, though, is allowed with respect to applications under the ‘accelerated asylum procedures’.

As is obvious, the whole asylum procedure, including the relevant appeal stage, is of a wholly administrative character. Contrary to European asylum norms regarding impartiality and procedural fairness,<sup>54</sup>

<sup>52</sup> Art. 3 of Presidential Decree 61/1999.

<sup>53</sup> In these cases, an appeal against the administrative decision rejecting the application is to be lodged within ten days from notification and the Minister of Public Order is to decide on the appeal within thirty days since the filing of the appeal, following the non-binding opinion of the appeal board (art. 4.4 and 4.5 of Presidential Decree 61/1999). If the applicant remains in transit zones of Greek (air)ports, the above deadlines are reduced by half (art. 4.6 of Presidential Decree 61/1999).

<sup>54</sup> See EU Commission, *Proposal for a Council Directive on Minimum Standards on Procedures in member States for Granting and Withdrawing Refugee Status*, Doc. COM (2002) 326 final/2, art. 38 *The right to an effective remedy before a court of law*: ‘1. Member States shall ensure that applicants for asylum have the right to an effective remedy of a decision taken on their application for asylum before a court of law. 2. Member States shall ensure that the effective remedy referred to in paragraph 1 includes the possibility of an examination on both facts and points of law . . .’ See also Council of Europe Committee of Ministers Recommendation No. R (98) 13 *on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of art. 3 ECHR*, where it is pointed out, *inter alia*, that in order for the above remedy to be considered effective the national authority before which the asylum seeker brings the case should be in principle judicial ‘or, if it is a quasi-judicial or administrative authority, it [should be] clearly identified and composed of members who are impartial and who enjoy safeguards of independence’.

as well as to established practice in other EU states, it is in effect the same administrative branch (Ministry of Public Order) that adjudicates on asylum cases both in first instance and on appeal. This practice is in sharp contrast to international human rights and refugee law, as well as the fundamental principle of objectivity and impartiality that should characterize all aspects of the asylum process. Moreover there is no judicial means for examining the asylum application on its merits and this is another major deficiency of Greek refugee law.<sup>55</sup> These very serious drawbacks of the Greek asylum procedure have been made public and brought to the attention of the Greek administration by the Greek National Commission for Human Rights.<sup>56</sup>

The situation is compounded by the fact that the relevant administrative case law is not publicly available, in contrast to the practice prevailing in many other EU member states. This makes it extremely difficult, if not impossible, to propose any kind of effective legal defence for refugee applicants, contrary to fundamental human rights law standards regarding the fairness of the relevant legal procedures.<sup>57</sup> At the same time, due to this legal opaqueness, there is no actual practical reason for the administration to produce a coherent asylum jurisprudence that could contribute to the establishment of the required minimum, at least, legal safety.

The only Greek court that may examine an asylum case on points of law (judicial review) is the Council of State before which an appeal (*'aitissi akyrossis'* = 'application for annulment') may be lodged against the final negative administrative decision.<sup>58</sup> Through this procedure, the Council of State has jurisdiction to review administrative acts *solely* for violations of law or abuse of discretionary power.<sup>59</sup> The Council of State also has the power to order the suspension of the administrative deportation order of a refugee applicant until the issue of its judgment on the above appeal. This suspension order is conditioned on the ability of the above Court to

<sup>55</sup> Ibid.

<sup>56</sup> Greek National Commission for Human Rights (NCHR), *Report 2001*, Athens, National Printing Office, 2002, at 127–128 (in Greek) and at [www.nchr.gr](http://www.nchr.gr). On NCHR and asylum in Greece see below.

<sup>57</sup> A relevant chronic, serious problem of Greek refugee practice is the severe shortage of properly trained, state interpreters at all stages of the refugee recognition procedures, in violation of fundamental standards regarding the fairness of the relevant legal procedures; see also art. 9 (*Guarantees for applicants for asylum*) of the EU Commission Proposal Doc. COM (2002) 326 final/2, cited above: '1. With respect to the procedures provided for in ... this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees: ... (b) They must receive the services of an interpreter for submitting their case to the competent authorities whenever reasonable ... In this case and in other cases where the competent authorities call upon the interpreter, the services shall be paid for out of public funds'.

<sup>58</sup> The rules of procedure of these applications before the Greek Council of State are laid down by Presidential Decree 18/1989 on the Council of State (*'Synvoulia tis Epikrateias'*).

<sup>59</sup> The Greek Council of State's jurisdiction over examination of an 'application for annulment' is based on the prototype of the French *recours pour excès de pouvoir*, see K.D. Kerameus, P.J. Kozyris (eds), *Introduction to Greek Law*, Deventer, Kluwer/Sakkoulas, 1993, 2<sup>nd</sup> edition, at 46–47.

conclude that the deportation would inadvertently harm the applicant.<sup>60</sup> However, the application for stay of execution does not have in itself a suspensive effect, with the consequence that the applicant can be deported before the Council of State orders the suspension of the deportation. Although the administration usually abstains from the deportation procedure upon the lodging of a suspension application, this practice is not based on hard law and does not correspond to a respective right of the applicant. In that respect, the Greek system is inconsistent with the principles and standards enunciated in *Conka* and constitutes a violation of the right to an effective remedy (article 13 ECHR).<sup>61</sup> In practice, the overall annulment application procedure is extremely lengthy, usually exceeding three years, due to the heavy caseload of the Greek Council of State and its lack of human resources.

Article 25.4 of Law 1975/1991, in conjunction with article 8 of Presidential Decree 61/1999, provides for the humanitarian refugee status procedure.<sup>62</sup> Humanitarian refugee status, as already noted, may be granted by the Ministry of Public Order on condition that Convention refugee status has been rejected in the first place. Greek refugee law does not provide for any reasoning of the humanitarian refugee status decisions, similar to the ordinary refugee status decisions. However, reasoning for negative administrative actions is prescribed by Greek administrative law. In practice, the relevant administrative (Ministry of Public Order) decisions, inaccessible to the public, are very short and include similarly short reasoning sentences, in sharp contrast to the prescriptions of the aforementioned case law of the Greek Council of State<sup>63</sup> and relevant fundamental principles of Greek administrative law. UNHCR, Athens has criticized the reasoning of the asylum decisions by the Greek Minister of Public Order in the first instance and on appeal for being 'generic and inadequate'.<sup>64</sup>

In contrast to Convention refugee status procedure, no administrative appeal procedure is provided for by Greek refugee law with regard to

<sup>60</sup> See relevant case law in Judgments of the Council of State, inter alia, 286/1990, 344/1990, 559/1990, 596/1996, abstracted in *Yearbook of Refugee and Aliens Law -1998*, at 65, 66, 67 and 127 respectively (in Greek).

<sup>61</sup> *Conka v. Belgium*, appl. no. 51564/99, Judgment of 5 Feb. 2002, para. 64 ff (accessible through [www.echr.coe.int](http://www.echr.coe.int)). On this judgment, see A. Skordas, 'Human rights and effective migration policies: An uneasy co-existence — the Conka judgment of the European Court of Human Rights', in C. Urbano de Sousa (ed.), *The Emergence of a European Asylum Policy — Amsterdam, Tampere and beyond*, Bruylant, Brussels, 2004 (forthcoming).

<sup>62</sup> On the substantive criteria regarding humanitarian refugee status laid down by art. 8.2 of Presidential Decree 61/1999 see above.

<sup>63</sup> See also Judgment 3832/1992, abstract 226, 7 *IJRL* 513–514 (1995).

<sup>64</sup> UNHCR BO for Greece, *Report 2000*, above n.36 at 6 and 7. On delays of asylum procedure in Athens see also Médecins Sans Frontières, Grèce, *Umbrella of Legal Protection for Forgotten Populations in Greece*, Athens, Feb. 2002 (in Greek), 14–15 and Amnesty International, Greek Section, *The Greek refugee policy, June 2002-November 2003*, Athens, Jan. 2004 at 18–21 (in Greek) at [www.amnesty.gr](http://www.amnesty.gr).

humanitarian refugee status cases. This serious procedural defect is arguably due to the fact that the humanitarian refugee status procedure is not autonomous but *de iure* dependent on the Convention refugee status (non-)recognition procedure. The aforementioned possibility for an exceptional application for *ab initio* examination is provided for only with regard to the Convention refugee status applications which have been rejected in first instance by the administration. As a consequence, in these cases the only legal means of appeal remains the application for annulment before the Council of State which is barred by law from examining the merits of a case.

## 6. Legal aid

Until 4 February 2004, when the first statute on legal aid (Law 3226/2004<sup>65</sup>) entered into force, in practice legal aid for aliens and asylum-seekers was non-existent in Greece. Greece actually has been found by the ECtHR to be in breach of the right to a fair trial in two cases regarding aliens to whom legal aid was not available in order to appeal to the Greek Supreme Court (Areios Pagos).<sup>66</sup> In both cases the appellants were aliens without means who had become involved in criminal trials in Greece. In both cases, the ECtHR held that Greece had violated article 6, paragraphs 1 and 3 (c) of the European Convention on Human Rights (ECHR).<sup>67</sup> The Greek National Commission for Human Rights (NCHR) expressed its grave concern at the lack of legal aid in Greece in its relevant report of 25 June 2001 and called upon the Greek state to proceed to the establishment of a comprehensive legal aid scheme programme.<sup>68</sup> Law 3226/2004 on legal aid is the first attempt of the Greek state to establish such a programme. It is to be noted though that this statute (article 1.1) conditions the provision of state legal aid to third country nationals on the latter's legal, permanent or habitual, residence in the European Union. Arguably this condition contravenes the civil right to legal aid, as established in contemporary international and European human rights law.<sup>69</sup> The above Law's scope covers only criminal, civil and commercial litigation. As a consequence, legal aid for asylum litigation,

<sup>65</sup> OJHR A, 24.

<sup>66</sup> Case of *Tivalib v. Greece*, appl. no. 42/1997/826/1032, Judgment of 9 June 1998, *Affaire Biba c Grèce*, no 33170/96, Arrêt du 26 septembre 2000 (accessible through [www.echr.coe.int](http://www.echr.coe.int)).

<sup>67</sup> The European Commission against Racism and Intolerance (ECRI) has also called upon the Greek authorities to ensure the right of aliens to fair legal proceedings, including legal defence, see ECRI, *Second Report on Greece adopted on 10 December 1999*, Doc CRI (2000) 32, 27 June 2000, para. 10.

<sup>68</sup> NCHR, *Report 2001*, Athens, National Printing Office, 2002, 133–142 (in Greek).

<sup>69</sup> See NCHR, *Opinion on the draft law regarding the provision of legal aid to citizens with low income*, 30 Oct 2003, in Greek, at [www.nchr.gr](http://www.nchr.gr). Art. 16.3 of Law 3226/2004 provides that legal aid may be extended to administrative cases through a Presidential Decree that should be proposed by the Ministers of Finance and of Justice.

which is of a purely administrative nature, is still not provided for by Greek law.

The serious lack of legal aid has been glaring for decades, in contrast with other European countries, in cases of aliens without means, chiefly asylum-seekers — particularly vulnerable individuals who require special protection. The sole legal assistance up to now in these cases has come from non-governmental organisations, sometimes in collaboration with the UN High Commissioner for Refugees and, occasionally, from Bar Associations.

In civil and criminal cases, legal aid is now regulated by Law 3226/2004. This Law in fact abolished the provision of article 195 paragraph 1 of the Code of Civil Procedure, in accordance with which the poverty benefit should be accorded to aliens on condition of reciprocity. The condition of reciprocity in this provision was contrary to the mandates of modern human rights law. Article 6 (1) of the ECHR also safeguards the right of all persons, without any discrimination on the basis of nationality, to a fair trial in cases of rights and obligations of a civil nature. Legal aid is provided, according to article 1 of Law 3226/2004 to ‘citizens with low income’, that is, individuals ‘whose annual family income does not exceed the two thirds of the lowest annual personal salaries provided for by the National General Collective Employment Agreement’. Greek law makes no provision for the granting of legal aid in the advisory stages of a civil or criminal case, where the provision of legal assistance plays a catalytic role in regard to the successful outcome of the relevant legal proceedings and the safeguarding of the relevant legal interests of the individual without means.

Even though legal aid in administrative law cases is not covered by Greek statutory legislation, the Council of State (Greek Supreme Administrative Court), in its judgments 515/2000 (Section B) and 521/2000 (Section B),<sup>70</sup> basing itself on article 14 of the International Covenant on Civil and Political Rights (Law 2462/1997), on article 6 ECHR, and on article 20.1 of the Greek Constitution, has proceeded to a wide interpretation of relevant Greek legislation. The Council of State, in applying, by analogy, Articles 194–204 of the Code of Civil Procedure, has expressly recognised the right of a *lawyer’s assistance* for persons without means in proceedings before it, and not merely the exception of the indigent litigant from the payment of charges and a bond stipulated by Presidential Decree 18/1989 concerning the Council of State.

There has been no case law so far of the ECrtHR relating to the conformity of Greek refugee law with the European Convention on Human Rights. In *Dougoz v. Greece*, the applicant had requested asylum in Greece, but the merits of his application were related to the conditions

<sup>70</sup> *To Syntagma* (Greek legal journal), 3/2000, 589 and 592, respectively.

of detention pending expulsion. The Court decided that Greece was in breach of article 3 ECHR because the conditions of detention of aliens, whilst awaiting their expulsion, amounted to inhuman or degrading treatment. Greece also violated article 5 of the Convention because the arrest of the applicant with a view to ensuring his deportation was arbitrary and the domestic courts did not have the power to control the lawfulness of the detention.<sup>71</sup> In *Peers v. Greece* the Court has found Greece in breach of article 3 ECHR due to the conditions of detention in the Koridallos prison in Athens. The significance of the above case is that it disclosed, *inter alia*, the enormous drug problem in Greek prisons.<sup>72</sup>

In 2002 the Greek National Commission for Human Rights, in similar fashion to international human rights organisations, issued a report which stressed the serious deficiencies of the current Greek asylum procedure, regarding, *inter alia*, the problematic situation of non-recognition, in many cases, by Greek authorities of the asylum seekers' right to access to lawyers upon their arrival in Greece, and the lack of information by the Greek authorities to asylum seekers regarding the relevant Greek procedures.<sup>73</sup>

On 15 June 2002, 45 international (including Amnesty International and Human Rights Watch) and Greek human rights NGOs also stressed publicly that:

Greek NGOs have documented an almost systematic absence of competent translators during examination by law enforcement officials or in court. Moreover, the Greek authorities frequently fail to inform foreigners of their rights, refuse them asylum application forms or even provide misleading information. Undocumented migrants or asylum seekers have often been tried without benefit of legal counsel, and sentenced to imprisonment or deportation after trials lasting only a few minutes. Detention conditions are in many cases degrading and inhumane, and access to lawyers and NGOs has been severely and arbitrarily limited. When authorized representatives of detainees have requested the full documentation for their cases, this has been denied by the authorities, on the grounds that this might hinder efforts to deport them.<sup>74</sup>

<sup>71</sup> Appl. no. 40907/98, Judgment of 6 Mar. 2001 ([www.echr.coe.int](http://www.echr.coe.int)).

<sup>72</sup> Appl. no. 28524/95, Judgment of 19 Apr. 2001 ([www.echr.coe.int](http://www.echr.coe.int)). On New Year's Eve 2003, three female inmates died in the above prison, due to the consumption of drugs and alcohol. According to the public prosecutor, the prison governor did not take any preventive measures, although she knew the activities concerning drug smuggling, see Greek daily *Kathimerini* (English edition, with IHT) 3 Jan. 2003, 1.

<sup>73</sup> NCHR, Report on issues relating to the reception of asylum seekers and their access to the asylum procedure in Greece, 6 June 2002, in 50 *Nomiko Vima* (Greek legal journal) 1598–1603 (2002) and at [www.nchr.gr](http://www.nchr.gr). See also Council of Europe, Office of the Commissioner for Human Rights, Report by Mr Alvaro Gil-Robles on his Visit to the Hellenic Republic, 2–5 June 2002, Doc CommDH (2002) 5, 17 July 2002, paras. 32–37; Council of Europe, Committee for the Prevention of Torture, Report to the Government of Greece on the visit to Greece, 23 September–5 October 2001, Doc CPT/Inf (2002) 31, 20 Nov. 2002, paras. 49–53.

<sup>74</sup> Statement of 45 Human Rights NGOs on 'frequent and grave violations of foreign detainees' rights in Greece', Athens, 15 June 2002 ([www.greekhelsinki.gr](http://www.greekhelsinki.gr)). On these issues, see the high standard of the case *Conka v. Belgium*, appl. no. 51564/99, Judgment of 5 Feb. 2002, para. 44.

The above statement has been corroborated by a report of June 2002 on the issue of transfer of asylum seekers from Norway to Greece in the context of the Dublin Convention, issued by the Norwegian Organisation for Asylum Seekers (NOAS) and the Norwegian Helsinki Committee.<sup>75</sup> According to this report, based on the above NGOs' recent visit to Greece:

the Greek system of asylum appears strongly objectionable on several accounts: by not providing all refugees with basic information, interpretation and judicial assistance; by extensive use of detention, even of children; and by what appears as tactical means to prevent refugees from seeking asylum. Furthermore, the Greek system of asylum appears to be excessively (and most likely inconsistently) strict. On the other hand, it would be wrong to regard it as unpredictable, insofar as it seems predictable that most asylum applications are rejected.

The report concludes stressing that 'Greece is in a difficult situation, in which the country neither has the possibility to turn down requests of transfer from countries further north in accordance with the Dublin Convention, nor the means to properly take care of asylum seekers once they are transferred to Greece'.

## 7. Welfare (social rights) of refugees and asylum-seekers in Greece

The living conditions for refugees and asylum seekers in Greece have been characterised as harsh by the UNHCR BO for Greece, while the Greek National Commission for Human Rights recently expressed its serious concern at this issue, submitting specific proposals to the Greek state.<sup>76</sup> These harsh living conditions have been prevailing in Greece for many years, a situation that according to UNHCR BO for Greece is due to the inertia of the competent Greek authorities who allegedly 'fear that the amelioration of living conditions of refugees would constitute an attraction for more asylum seekers'.<sup>77</sup>

Accommodation for asylum seekers, humanitarian (*de facto*) refugees and Convention refugees, is a major issue that has not been effectively tackled as yet by the Greek state. Even though Greek law has provided for the establishment of more asylum seekers' centres since 1991 (Law 1975/1991, article 24.2), Greece currently has two permanent (established by

<sup>75</sup> NOAS and the Norwegian Helsinki Committee, *The Transfer of Chechen Asylum Seekers from Norway to Greece in accordance with the Dublin Convention*, June 2002 (report accessible through [www.greekhelsinki.gr](http://www.greekhelsinki.gr)).

<sup>76</sup> See UNHCR BO for Greece, *Report 2000*, 10–11, NCHR, *Report 2001*, above nn.10 and 56, 169–177 (and at [www.nchr.gr](http://www.nchr.gr)). On the shortcomings of refugee welfare and integration policy in Greece see N. Sitaropoulos, 'Refugee welfare in Greece: towards a remodelling of the responsibility-shifting paradigm?', 22 *Critical Social Policy* 436–455 (2002), A. Skordas, 'The case of recognized refugee families in Greece: The "undesirable" integration', *Quarterly on Refugee Problems (AWR-Bulletin)*, 40.(49.) *Volume, Number 4/2002*, 210–221.

<sup>77</sup> UNHCR BO for Greece, *ibid.*

law) state reception centres for asylum seekers and refugees in operation, funded entirely by the Health and Social Welfare Ministry. The first and oldest one is at Lavrio (south of Athens) and has capacity for a maximum of three hundred persons.<sup>78</sup> A second permanent state reception center for asylum seekers with capacity of one hundred persons was established in Athens on 12 December 2002.<sup>79</sup> Since 1997 NGOs have become increasingly active in the field of refugee reception. In 1997, two small reception centres were established in Attica, managed by the Hellenic Red Cross and Médecins du Monde-Grèce, both partially funded by the EU. More small reception centers have been opened in and out of Athens after 1997 by NGOs. In 2003 there were eight (including the two permanent) reception centres in Greece with a total capacity of 1 300 persons.<sup>80</sup>

However, the refugee status applications (an application may involve more than one individual) in 1998 were 2 953, in 1999 were 1 528, in 2000 were 3 083, in 2001 were 5 499 and in 2002 were 5 664. From these figures it is evident that the majority of asylum seekers in Greece remain, in effect, homeless, at least during the first stage of their residency. In the majority of cases of refugee applicants, the waiting period until the delivery of the first administrative decision exceeds one year. In Attica, there are cases exceeding even two years. Moreover, priority at the Lavrio centre has been given by the centre's NGOs-managers to vulnerable individual cases, such as unaccompanied minors, elderly people and persons with special needs.

The Convention refugees' right to employment was not recognized in Greece until the enactment of Presidential Decree 209, in 1994.<sup>81</sup> According to the subsequent Presidential Decree 189/1998,<sup>82</sup> recognized Convention refugees and their spouses have the right to self- and wage-earning employment, as long as they have refugee status in Greece (Convention refugees are entitled to a five years' residence permit, renewable). Greek law also provides for the participation of Convention refugees in the vocational training schemes of the Manpower Employment Organisation (OAED) on the same terms as the Greek citizens.<sup>83</sup>

Employment of asylum seekers was first recognized in 1998 but is subject to an extremely strict legislative regime. The above Decree allows these persons to be employed 'temporarily in order to cover their immediate life needs'. Asylum seekers are allowed to work on condition they have been issued with an asylum seeker's card (which in practice, especially in Athens with the main bulk of asylum applications, includes a waiting

<sup>78</sup> Presidential Decree 266/1999, *OJHR* A 217.

<sup>79</sup> Presidential Decree 366/2002, *OJHR* A, 313.

<sup>80</sup> UNHCR BO for Greece, *UNHCR Positions on Crucial Issues Relating to Refugee Protection in Greece*, Athens, Oct. 2003, para. I.2 ([www.unhcr.gr](http://www.unhcr.gr)).

<sup>81</sup> *OJHR* A, 131.

<sup>82</sup> *OJHR* A, 140.

<sup>83</sup> Art. 3.1, Presidential Decree 189/1998.

period of at least 6 months), and they are not housed at the reception centre at Lavrio. This is a provision that discriminates in effect against the asylum seekers resident in the Lavrio centre. Greek law excludes these people from employment because they are provided with housing, food and social and health care by the Health Ministry and the NGOs (Hellenic Red Cross and the International Social Services) that currently run the Lavrio centre. It is, though, doubtful whether these persons can make a decent living while being asylum seekers in Greece, a waiting period that in many cases, especially in Athens, exceeds one or even two years. No financial assistance is in principle provided to them. In effect, Greek law prompts these persons to seek employment in the informal labour market, where they are exploited.

Humanitarian refugees may be employed as long as they are recognized as such. Those refugees' initial residence permit is valid for one year, renewable. Every working alien in Greece, irrespective of their legal status, is entitled by Greek law to the same work-related rights and benefits as native Greeks. However, no vocational training is provided for by law to qualified asylum seekers or humanitarian refugees, although in most of the cases these people remain in Greece for over one year. It is arguable that these people should be expressly allowed by law to join vocational training schemes and thus contribute to their own well-being as well as to the host country's development through lawful employment.

The Greek state does not provide any special financial assistance to asylum seekers or refugees. Such assistance has always been provided by Greek NGOs, such as the Greek Council for Refugees (GCR) and the Social Work Foundation (SWF), both partially funded by UNHCR, to vulnerable asylum seekers, Convention refugees and humanitarian refugees. UNHCR, Athens, in its annual report for the year 2002 underlined that 'a large number of refugees [in Greece] live beneath the poverty line'.<sup>84</sup> A large number of refugees and asylum seekers are in practice sheltered and fed by Greek humanitarian (including church-related) NGOs or by municipalities offering shelter and food to destitute people. In its report for the year 2000 UNHCR, Athens condemned the Greek authorities for their non-provision of fundamental social welfare (food and shelter) care to the vast majority of asylum seekers and refugees in Greece. UNHCR characteristically stated that the Greek authorities 'allege that there is a lack of resources . . . However it may well be discerned that [the authorities] are in fact cautious to adopt relevant measures fearing that an amelioration of living conditions of refugees would be a pull factor for more asylum seekers. Due to the harsh living conditions of refugees in

<sup>84</sup> UNHCR BO for Greece, *The Protection of Refugees and Asylum Seekers in Greece in 2002*, Athens, May 2003 at 14 (in Greek).

Greece, a few of them try to reach other western European states hoping to find there a more favourable environment'.<sup>85</sup>

Medical, pharmaceutical and hospital services are in principle provided for by Presidential Decree 266/1999<sup>86</sup> for all Convention refugees, asylum seekers and humanitarian refugees, on condition that they are not covered by insurance and are in need of financial assistance. The above services include health examinations in state hospitals, health centres and state regional medical centres, 'para-clinic examinations', provision of medication prescribed by a doctor in the above medical centres and hospitals and in-hospital care in state-run hospitals. However a large number of asylum seekers in the area of Athens who remain for a long period of time, in practice, without the asylum seeker's card, issued by the Ministry of Public Order (Police), due to police staff inadequacy, remain medically uncovered. These persons remain in effect illegally in the country and are, according to current law, entitled only to emergency medical care.

## 8. Other legal and political aspects of refugee protection — concluding remarks

Even though Greece is one of the main EU gateways in the areas of immigration and asylum, Greek refugee law and policy are still underdeveloped with a large number of serious drawbacks. Until the early 1990s Greece actually was a transit country for refugees who wished to and could be resettled, mainly through projects of UNHCR, to Western, industrialized states such as the US, Canada or Australia. Also, until January 1990 there was a bifurcated refugee status recognition procedure in Greece that allowed refugee status recognition both by the Greek state and by UNHCR BO for Greece (mandate refugees). Thus, UNHCR played until then the major role in the refugee status recognition process, while its role in legal and, above all, social protection of refugees, now along with a large number of national and international NGOs, is still significant. The first ever statute of Greece with special provisions on refugee protection was Aliens Law 1975/1991. This was admittedly a reactive piece of legislation of a generic, immigration control nature. The asylum-related provisions, in particular, of that Law laid down only a general asylum framework, allowing the Greek state to regulate the significant, practical details, including implementation through Presidential Decrees and Ministerial Decisions that are subject to no parliamentary scrutiny. A number of such Decrees and Decisions constitute the main body of current Greek refugee law.

The Convention refugee population in Greece is currently estimated at 7 000. Greece, with a population of 11 million, receives some of the lowest

<sup>85</sup> UNHCR BO for Greece, above n.36, at 10–11.

<sup>86</sup> *OjHR* A, 217.

numbers of asylum applications in the European Union.<sup>87</sup> The Greek rate of asylum applications per 1 000 inhabitants in the late 1990s was also the second lowest one in the EU: 0.14; while in Belgium, Ireland and the UK it was 3.52, 2.07 and 1.21 respectively.<sup>88</sup> The vast majority of asylum seekers in Greece have traditionally been originating in countries of the Middle East, that is, Turkey, Iraq and Iran. In 2001–2002 an increase of Afghan refugee applicants took place due to the political developments in that country.<sup>89</sup>

The relatively small inflow of asylum seekers into Greece is arguably one of the main factors that has contributed to the undeveloped character of the Greek refugee regime.<sup>90</sup> Unlike other EU states, such as the UK or Germany with large immigrant and refugee populations, refugees and asylum seekers have never been a major issue of public debate or controversy in Greece, despite their admittedly harsh living conditions. The civil society is still very weak, it is dependent on the state for the financing of its different activities, and it seems unwilling to confront the authorities in a way that would cause them a considerable political cost domestically and internationally.

As a consequence, the legal and social protection of refugees has, so far, met with the indifference, to a great extent, from both the Greek public and the state. By contrast, since the late 1980s the growing number of illegal immigrants (exceeding half a million), especially from former Eastern bloc countries, and their presence all over Greece as a very active labour force, has alarmed the public and become one of the most controversial, widely discussed issues.<sup>91</sup> The Greek state in this case has been extremely swift in its reaction, first by enacting the restrictive Aliens Law 1975/1991, then by the 1997 and 2001 illegal immigrants' regularization procedures, as well as by the latest Immigration Law 2910/2001 that entered into force on 2 June 2001.<sup>92</sup> Greece has also been very active in

<sup>87</sup> See UNHCR, *Asylum Trends in Europe*, 2000, Part II, Geneva, 30 Jan. 2001, at 3–14.

<sup>88</sup> See UNHCR, *Population Data Unit*, Selected country indicators, Geneva, 21 Feb. 2001, Table 1 and UNHCR, *Trends in Asylum Applications Lodged in Europe, North America, Australia and New Zealand, 2001*, UNHCR, Population Data Unit, Geneva, 31 Jan. 2002, Table 1.

<sup>89</sup> See European Council on Refugees and Exiles (ECRE), *Presentation to European Union High Level Working Group on Afghanistan*, 08 Mar. 2001 ([www.ecre.org/speeches](http://www.ecre.org/speeches)).

<sup>90</sup> Greece is one of the first signatory states, with a series of reservations, of the UN Refugee Convention and the 1967 Protocol. Until 1994 Greece kept her reservation to art. 17.1 (on wage-earning employment) of the UN Refugee Convention. She still keeps her reservation to art. 26 (on freedom of movement) of the Convention.

<sup>91</sup> See on the regularization process A. Skordas, 'The regularization of illegal immigrants in Greece' in Ph. de Bruycker (ed), *Regularizations of Illegal Immigrants in the European Union*, Bruylant, Brussels, 2000, 343–387.

<sup>92</sup> See A. Skordas, 'The new immigration law in Greece: Modernization on the wrong track', 4 *European Journal of Migration and Law* 23–48 (2002); N. Sitaropoulos, 'The new Greek immigration law: A step forward?', 15 *Tolley's Immigration & Nationality Law & Practice* 228–234 (2001). On Greek immigration law and policy see N. Sitaropoulos, *Immigration Law and Management in Greece*, Athens, Ant. N. Sakkoulas Publishers, 2003 (in English).

concluding co-operation and readmission agreements with neighbouring states to combat, *inter alia*, illegal immigration. However, Greek asylum law and practice remain underdeveloped with a large number of serious shortcomings in the areas of legal and social protection.<sup>93</sup> This situation affects, in particular, persons in need of international protection who may not however satisfy the criteria of the Geneva refugee definition, and whose civil and social rights are, as a rule, especially limited in host states.

Many aspects of asylum procedure in Greece have given serious concerns to both UNHCR, Athens, the Greek Ombudsman and the Greek National Commission for Human Rights. UNHCR, Athens in its latest reports has emphasized that access to asylum procedure has been problematic especially in the Athens area, since the competent authorities proceed to the registration and examination of asylum claims at a very slow pace, forcing asylum seekers to wait for their first asylum interview for many months. In addition the Greek Ombudsman has expressed his very serious concern about the difficulty that asylum seekers have to access the asylum procedure in Greek border areas, such as border islands of the Eastern Aegean Sea, when they are arrested and detained by Greek authorities for illegal entry. The main reasons for this situation, pinpointed by the Greek Ombudsman in a recent report, are the lack of provision of information by the authorities to the asylum seekers about the relevant legal procedure, the lack of state interpreters and the lack of special education of Greek police and port authorities under whose jurisdiction the above asylum seekers remain after they have been arrested.<sup>94</sup>

UNHCR, along with international NGOs like Amnesty International and the World Organization against Torture (OMCT), have recently recast their serious doubts and expressed grave concern about disrespect by Greek authorities towards asylum seekers' absolute right to apply for asylum on Greek territory, especially when the latter arrive in Greece through Turkey. In November 2001, UNHCR, Athens, strongly criticized the Athens Protocol of 8 November 2001 for the Implementation of article 8 of the Ankara Agreement between Greece and Turkey on Combating Crime, especially Terrorism, Organized Crime, Illicit Drug Trafficking and Illegal Migration.<sup>95</sup> The major reason for UNHCR's concern was the non-inclusion in that Protocol of any specific reference to the 1951 Geneva

<sup>93</sup> See also UNHCR BO for Greece, *Report 2000, Report 2002, passim*.

<sup>94</sup> Greek Ombudsman, *Report on inspection of the detention areas of economic immigrants and refugees on the isle of Kós*, 12 Nov. 2001 (in Greek, accessible through [www.synigoros.gr](http://www.synigoros.gr)), 6–7 and 12–15. See also Greek National Commission for Human Rights, *Report on issues relating to the reception of asylum seekers and their access to the asylum procedure in Greece*, cited above.

<sup>95</sup> By Law 2926/2001, *OJHR A*, 139, Greece ratified the 2000 Ankara Agreement with Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration.

Convention on the Status of Refugees 'as in the case of other readmission agreements that Greece has signed with third countries'.<sup>96</sup>

In fact, a resurgence of *refoulement* cases regarding asylum seekers arriving in Greece from Turkey started after the signing of the above Protocol. Both Amnesty International and OMCT condemned Greece for the clear *refoulement* to Turkey of 34 asylum seekers of Afghan and Iraqi origin in December 2001.<sup>97</sup> A similar case concerning *refoulement* by Greece to Turkey of 14 Afghan asylum seekers was recorded by the Greek Council for Refugees in February 2002. In 2003 the Greek Section of Amnesty International recorded more cases of *refoulement* from Greece to Turkey.<sup>98</sup>

The Greek National Commission for Human Rights, a new statutory organisation (National Human Rights Institution established according to the *Paris Principles*) with a consultative status with the Greek state on human rights issues, issued in 2001 two reports on the legal and social protection of refugees and asylum seekers in Greece. In both reports, NCHR expressed their serious concern about and pinpointed a series of major issues of refugee law and practice that called for the immediate action of the Greek state. In the former report,<sup>99</sup> NCHR proposed to the competent Ministries a series of amendments regarding the modernization of Greek asylum law and practice. The particular issues tackled by that report were the following: transfer of asylum competence from the Ministry of Public Order to the Ministry of Interior; freedom of movement of refugees and asylum seekers; accelerated asylum procedures; asylum seekers in transit zones; reception centres; information to asylum seekers about Greek asylum procedure; formation of a state interpreters corps; establishment of a special asylum task force for emergency cases; education of asylum personnel; asylum appeal procedure; legal aid for refugee and asylum seekers; unaccompanied minor refugees.

On 31 January 2002 NCHR expressed publicly its grave concern regarding the allegations of UNHCR and Amnesty International according to which Greek authorities have *refouled* to Turkey asylum seekers arriving from that country, violating, among other fundamental rights,

<sup>96</sup> The Protocol was ratified by Law 3030/2002, *OJHR* A, 163; see UNHCR BO for Greece, *Comments on the Greco-Turkish Protocol*, Nov. 2001. Art. 8 of this Agreement provides that, until the signing of a readmission agreement, the two contracting states will authorize the re-entry into their territory of persons who have illegally travelled through the territory of the other contracting state. Serious concerns were also expressed by NCHR in its *Resolution on the Protocol applying art. 8 of the Greco-Turkish Agreement on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration*, NCHR, *Report 2002*, above n.10, at 91–92 and at [www.nchr.gr](http://www.nchr.gr).

<sup>97</sup> See Amnesty International, Greece: *55 Iraqi Kurds and Afghans — Other foreign nationals denied the opportunity to apply for asylum*, AI Index: EUR 25/011/2001, 7 Dec. 2001 and 25/012/2001, 11 Dec. 2001; World Organization Against Torture (OMCT), Press Release, *Illegal deportation of asylum seekers from Greece to Turkey and fear of further deportation to Iraq*, 11 Dec. 2001.

<sup>98</sup> Amnesty International, Greek Section, *The Greek refugee policy*, above n.64 at 9–12.

<sup>99</sup> NCHR, *Proposals for the promotion of a modern, efficient framework for refugee protection in Greece*, 8 June 2001 in NCHR, above n.56 at 119–130 (in Greek). On NHRIs see [www.nhri.net](http://www.nhri.net).

those persons' right to seek asylum.<sup>100</sup> On 6 June 2002 NCHR underlined the serious drawbacks of the application of Greek refugee law, especially with regard to the access of asylum seekers to the refugee status recognition procedure, reception conditions and legal aid and counselling.<sup>101</sup> On 17 December 2003 NCHR reiterated its concern at the chronic problems of the Greek asylum regime and the precarious status of humanitarian (*de facto*) refugees in Greece.<sup>102</sup>

Thus, a comprehensive view of the Greek refugee system leads to the conclusion that Greece may not be considered a safe host country for refugees, at least for the time being, due to the grave inadequacies that, as shown above, asylum practice in this country demonstrates in the fields of both legal and social protection. The Greek refugee protection regime needs to be radically revamped. Regrettably, it seems the situation will only change if the competent authorities feel serious political and diplomatic pressure on the domestic plane, as well as in European and international *fora*. As mentioned in the first section, the defective Greek asylum practice is not seriously connected to a public security-oriented policy of the state. However, the international politico-legal developments after the terrorist events of September 2001 have paved the slippery road to a securitization of refugee protection, with detrimental effects upon human rights and the asylum regime worldwide. The urgently needed restructuring and modernization of the Greek asylum regime, as well as the efforts to combat contemporary terrorism, are to be squarely grounded in the fundamental principles of modern international and European law of human rights protection, which are flexible enough to permit states to take all reasonable measures against the scourge of terrorism.

<sup>100</sup> NCHR Resolution cited above.

<sup>101</sup> NCHR, report of 6 June 2002, cited above.

<sup>102</sup> NCHR Resolution cited above. See also Athens Conference Conclusions, *The Greek Presidency of the Council of the European Union: the Challenge of Asylum and Immigration*, 14 *IJRL* (2003), 632 ff, esp. 637–8.