



Observations on Greece as a country of asylum

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OBSERVATIONS ON GREECE AS A COUNTRY OF ASYLUM

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D) Introduction: Recent developments and key recommendations

UNHCR notes with appreciation the commitment of the Government of Greece to address serious shortcomings in the Greek asylum procedure, to which UNHCR and others have drawn attention in recent years. On November 26, 2009, the Minister of Citizen Protection established a Committee of Experts on Asylum. This Committee, which includes representatives of relevant Ministries and agencies, as well as academics, NGOs and UNHCR, is tasked with presenting a proposal for the reform of the Greek asylum system. This is a welcome development.

The Committee is expected to propose new asylum structures and procedures, as well as amendments to Presidential Decree 81/2009, in order to improve the legal framework pending the adoption and entry into force of new, comprehensive legislation. The Minister of Citizen Protection has announced that reform of the asylum system is intended to ensure humane and fair treatment of persons seeking international protection, to restore the credibility of Greece's asylum system and to transfer responsibility for the asylum procedure from the police to an authority without law enforcement responsibilities.

While it may take some time before the foreseen improvements can be implemented, UNHCR is encouraged by the process which has been initiated. UNHCR looks forward to continued close cooperation with the authorities and stands ready to advise and support Greece in the design and implementation of the new measures. It encourages EU Member States and institutions to lend their support to this important endeavour.

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 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.

The issuance of this paper is based on UNHCR's 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.

UNHCR has previously published a number of reports which address the situation of people seeking international protection in Greece. These include "*Asylum in the European Union. A Study of the implementation of the Qualification Directive*"¹ (November 2007); a position on "*The Return of Asylum-Seekers to Greece under the 'Dublin Regulation'*",² (April 2008) and "*Unaccompanied minor asylum-seekers in*

¹ UNHCR, November 2007, <http://www.unhcr.org/47302b6c2.html>

² UNHCR, April 2008, <http://www.unhcr.org/refworld/pdfid/4805bde42.pdf>

Greece”³ (April 2008). Reports have also been published by, among others, the UN Committee for the Prevention of Torture⁴ and Human Rights Watch.⁵

This paper supersedes UNHCR’s previous positions. UNHCR hopes that this updated paper will be helpful to the Greek authorities in their assessment of the reform of the asylum procedure, as well as to authorities in other countries contemplating the transfer of asylum-seekers to Greece.

II) Protection challenges in Greece

This chapter outlines the main protection challenges. The sequence follows the experience of persons seeking international protection in Greece. Sources include testimony given directly to UNHCR or provided to UNHCR partners, as well as information from other reliable sources.

In view of the large number of persons arriving in Greece in an irregular manner, there is no doubt that the situation is one of “particular pressure”.⁶ According to official data, 95,239 people arrived in Greece in an irregular manner in 2006. In 2007, the number stood at 112,364 and in 2008, at 146,337. Until end August 2009, the number was reported to be 81,777.⁷

Government statistics show that in 2007, 25,113 persons applied for asylum in Greece. The 2008 total was 19,884. In the first half of 2009, Greece registered 9,777 applications. However, as explained further below, the registration of applications has not kept pace with demand, and therefore the number of registered applications for asylum does not necessarily reflect the number of persons who would wish to apply. Nonetheless, in the first half of 2009, Greece registered the 6th largest number of asylum applications in the EU after France (19,838), the United Kingdom (19,665), Germany (11,979), Sweden (10,127) and Italy (9,974).⁸

³ UNHCR, April 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=48abd557d&skip=0&query=unaccompanied%20Greece%20children>

⁴ Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 29 September 2008 (CPT/Inf (2009) 20), Strasbourg, 30 June 2009, <http://www.unhcr.org/refworld/pdfid/4a49fb732.pdf>

⁵ Human Rights Watch, “Stuck in a revolving door. Iraqis and other asylum-seekers and migrants at the Greece/Turkey entrance to the European Union”, November 2008, <http://www.unhcr.org/refworld/pdfid/492e6c622.pdf> and “Left to survive: Protection breakdown for unaccompanied children in Greece”, December 2008, <http://www.unhcr.org/refworld/pdfid/4950a7382.pdf> and “Greece: Unsafe and Unwelcoming Shores”, October 2009, <http://www.hrw.org/en/reports/2009/10/31/greece-unsafe-and-unwelcoming-shores>

⁶ See COM(2006) 401 final, Proposal for a Regulation of the European Parliament and the Council establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism, http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0401en01.pdf

⁷ Statistics as provided to UNHCR on a regular basis by the Greek authorities. UNHCR statistics are reported in “Asylum Levels and Trends in Industrialised Countries” 2007, 2008, www.unhcr.org

⁸ See “Asylum Claims in Industrialised Countries, Monthly trends January – June 2009”, www.unhcr.org

Refusal of entry at the border with Turkey and returns to Turkey

The return from Greece to Turkey of people who may be in need of international protection can occur in several ways: (1) refusal of entry at the land border, (2) “push-backs” at sea, and (3) deportation after arrest inland. In some cases, return takes place without any formalities or access to procedures in Greece. In others, removal to Turkey is effected under deportation processes implemented under the Greece-Turkey Readmission Agreement.⁹ According to UNHCR’s observation, among those returned to Turkey are Iraqis, Afghans, Somalis, Iranians as well as Turkish nationals.

UNHCR has received numerous reports of attempted or actual deportation to Turkey and documented 27 such cases (involving a total of over 550 persons) which occurred between April 2008 and September 2009. 501 of the individuals concerned were subsequently located by UNHCR, its partners or relatives and friends of the removed individuals. Some were in Turkey (including Turkish nationals and others), some had been removed from Turkey to their countries of origin, and some had re-entered Greece. The individuals included unaccompanied children. It appears that in these cases, the relevant safeguards in Greek¹⁰ and international law¹¹ were not applied.

In some cases, loss of documentation or interruption of asylum procedures without notice to the concerned individuals may have meant that the individuals’ status as asylum-seekers was not evident to the Greek officials. In two cases of registered asylum-seekers, deportation was stopped following intervention by NGOs and protests by the individuals concerned. In four other cases, the individuals affirm that they had expressed to the Greek authorities their wish to seek asylum, but were not registered as asylum-seekers. It appears that many of the affected persons did not receive information about their right to seek asylum or about procedures for doing so. The absence of interpretation and legal counselling services may aggravate this problem.¹²

UNHCR made written interventions with the Greek authorities in 11 of the 27 cases.¹³ To date, the Ministry of Interior responded to six of these interventions. Responses include: (a) denials that “push-backs” took place, (b) claims that the persons removed were in fact released with a police notice to leave the country within 30 days, and (c) statements that transfers of detainees to areas close to the Greek-Turkish land border from other detention facilities (on the mainland or in other border locations) were undertaken to reduce congestion in those facilities.

⁹ Law 2926 of June 27, 2001, Agreement between the Hellenic Republic and the Republic of Turkey on cooperation of the Ministry of Public Order and the Ministry of Interior of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal immigration.

¹⁰ P.D. 220/2007, article 19 on guardianship.

¹¹ Convention on the Rights of the Child (CRC, 1989), to which Greece is a party.

¹² Conclusion drawn from UNHCR internal reports from its border monitoring activities in Greece, as well as reports produced in the context of projects (in which UNHCR participates) at border locations of Greece.

¹³ When determining whether or not to make a written intervention, UNHCR considers, amongst others, if the allegations of deportations potentially resulting in *refoulement* are well-substantiated by credible sources, specificities of the case including profile and vulnerability and other considerations.

Push-backs

According to the reports received by UNHCR, many people arriving through the Greek-Turkish land border without permission to enter Greece are arrested and detained in police stations in the Evros region, where their arrival and/or detention is not always registered.¹⁴ UNHCR has received several reports of persons forced back to Turkey across the Evros River, which forms the border. Serious incidents have also been reported at the sea, including for instance of the puncturing of rubber boats¹⁵ and the removal of engine and oars, reportedly undertaken as ‘deterrent’ measures.¹⁶ Although contested by the Coast Guard authorities due to lack of substantial evidence, an incident was documented by UNHCR with a remarkable consistency of testimony received by UNHCR's partners, according to which 12 Somalis were prevented from landing on the Greek territory by the Coast Guard, but were subsequently rescued by a private rescue vessel.¹⁷

Deportation after group arrests or detainee transfers

During the summer of 2009, UNHCR documented group arrests by the Greek police (“round-ups”) and group transfers from detention centres in various locations across the country, to detention centres in the Greek-Turkey land border region.¹⁸ UNHCR raised concerns about the detainees’ lack of access to legal or other assistance. Non-NGOs governmental organisations were unable to monitor the situation of the detainees or respond to their needs. Detainees and former detainees in detention facilities in the Evros region have testified that they witnessed persons who were recently transferred there being removed in the same manner as new arrivals, as described above.¹⁹

¹⁴ In several cases deported persons were allegedly registered as detainees at police stations and then, upon deportation, officially registered as “released”. The CPT has recommended that the Greek authorities take immediate steps to ensure that individualised custody records are kept at the location where the persons are detained, after having observed during its (September 2008 mission) discrepancies between the detention registers in the Border Guard stations in Alexandroupoli and Orestiada prefectures (close to the border with Turkey) and the persons actually held there. See CPT report, op. cit., p. 15.

¹⁵ Op. cit., HRW, “Stuck in a Revolving door”, p. 43-44-45

¹⁶ Op. cit., HRW, “Stuck in a Revolving door”, p. 44.

¹⁷ UNHCR documented case, July 2009, involving 12 Somalis (11 men and 1 woman). The group reportedly was prevented from reaching Greek territory by the Coast Guard authorities outside the island of Mytilene. They were subsequently rescued by a passing tourist vessel. Testimony by the persons concerned was given to UNHCR partners in July 2009. Upon UNHCR’s written intervention, the responsible Ministry conducted an internal investigation, which concluded that the said allegations were unfounded, because of lack of substantial evidence. UNHCR informed the authorities that the individuals concerned were afraid to press charges for fear of reprisals.

¹⁸ Similar practices have been documented by Human Rights Watch, “Greece: Unsafe and Unwelcoming Shores”, 31 October 2009, op. cit., footnote 5.

¹⁹ UNHCR has documented in July - August 2009 at least 10 cases of group arrests followed by police transfers from overcrowded detention centers in various locations in Greece to detention facilities in the Evros region.

Deportations governed by the Greece-Turkey Readmission Agreement

Official statistics²⁰ indicate that returns to Turkey under the agreement include Iraqis and Iranians,²¹ nationalities which constitute a significant proportion of asylum claims which are recognised in other EU countries.²² Among the cases of return on the basis of the Readmission Agreement²³ documented by UNHCR is a group²⁴ of persons claiming to be Turkish nationals. This case highlights the non implementation in practice of safeguards²⁵ for people seeking international protection. In this case, the individuals' asylum applications were not registered, despite interventions by NGOs, UNHCR and lawyers. The persons concerned were located in Turkey after their transfer in July 2009 from detention centres in Greece. Their return without consideration of their request for international protection highlights the need for safeguards to ensure respect for the principle of *non-refoulement*.

Onward deportations from Turkey to other countries

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.²⁶

²⁰ Official statistics concerning the application of the Greek-Turkish Readmission Agreement, as provided by the Greek Ministry of the Interior to UNHCR. Statistics for application of the Readmission Agreement in 2008: Returns to Turkey: 230 (202 Iraqis, 15 Turks, 11 Georgians, 2 Iranians); Data for 1st half 2009: Returns to Turkey: 108 (82 Iraqis, 22 Turks, 3 Iranians, 1 Syrian).

²¹ See article 8 of the Implementation Protocol to the Readmission Agreement, which favors the acceptance of readmission by Turkey of nationals of countries neighboring Turkey. In addition, UNHCR has observed that most Iraqis and Iranians tend to cross into Greece through the land-border in which case simplified procedures upon entry may be applied (see article 6 of the Protocol, relating to arrest in a border area), while Afghans and Somalis tend to enter Greece by sea in which case application of the simplified procedure is not possible.

²² 2008 protection rates in first instance decisions on applications from Iraqi nationals in EU Member States with more than 100 applications from Iraqis in 2008, not including Greece, varied from 32% in the United Kingdom to 99% in Cyprus. For applications from Iranian nationals, the 2008 protection rate varied from 7% in Cyprus to 80% in Italy. See "2008, Global Trends, Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons", 16 June 2009, <http://www.unhcr.org/pages/4a02afce6.html>

²³ Op. cit., footnote 9.

²⁴ UNHCR case no. 23, involving deportation from Evros to Turkey on 30 July 2009, on the basis of the Readmission Agreement between Greece and Turkey, after transfer from detention centre in Chania / Crete. This case involved 17 Turkish Kurds (including four children).

²⁵ The Agreement states however that its implementation is without prejudice to the international obligations of the States Parties.

²⁶ 1) UNHCR case no. 5, April 2007, involving 136 persons (123 Iraqis, 4 Iranians, 3 Bangladeshis, 2 Afghans, 2 Pakistanis, 1 Indian, 1 Kashmiri of unclear nationality) who were forcibly returned from Bari (Italy) to Igoumenitsa. There, the persons previously registered as asylum-seekers were released, whereas the others were transported to detention facilities in the Evros region without the opportunity to claim asylum. One Iraqi managed to seek asylum through the help of his fiancée, but all others were deported to Turkey. 2) UNHCR case no. 8, involving 31 Afghans and 2 Iranians deported to Turkey in November 2008 after having been arrested in the Patras harbour area. The group included "pink card" holders (i.e.

Conclusion on border practices

In light of the above, it appears that in the border areas in Greece currently no adequate mechanisms are in place to identify people seeking international protection, and to ensure that they are not removed before a full and fair examination of their claims has taken place.

Access to the asylum procedure

Some people who are apprehended at the border or after irregular entry into Greece do not express the wish to seek asylum in Greece. In some cases they may be reluctant to apply because of problems in the Greek asylum system, including the limited prospects of recognition, and inadequate conditions of reception. Many are aware that an application will involve registration in Eurodac, and likely return to Greece if they seek asylum in another country participating in the Dublin II Regulation.

For those who wish to apply for asylum in Greece, access to the procedure remains challenging. Applications may in theory be lodged at all points of arrival on Greek territory. According to article 2 of Presidential Decree 90/2008, the “competent authorities to receive and register asylum claims” are: (1) the Asylum Departments of the Aliens' Directorates of Attica and of Thessaloniki, (2) the Security Departments of the National Airports, and (3) the Subdirectorates and Security Departments belonging to the Police Directorates across the country (there are 53 Directorates).

In practice, it appears difficult to lodge an asylum claim outside Athens,²⁷ owing to various factors. Border authorities frequently refuse to register claims, and refuse entry, or remove irregularly arriving people, as described above. Greece lacks arrangements at points of entry whereby people seeking international protection can be identified. Interpretation, legal advice or other forms of assistance or procedural counseling are scarce. Only a handful of structures are, periodically, in place which could provide such assistance, for instance under an EC-funded project²⁸ or other NGO activities. At sea and land entry points, experienced staff are not available to respond to the needs of vulnerable persons such as unaccompanied children or traumatized individuals.

registered asylum-seekers). According to the testimony of one of them, another member of the group was subsequently deported to Afghanistan. 3) UNHCR case no. 9, October 2008, involving the deportation to Turkey and then to Afghanistan of an unaccompanied Afghan child registered as asylum-seeker in Greece. 4) UNHCR case no. 10, involving an Iraqi Kurd who according to his own testimony, was deported in October 2008 by plane to Iraq (Erbil). 5) UNHCR-documented case no. 15, involving 2 Afghans and 2 Iraqis, deported in April 2009 to Turkey. The Iraqis were subsequently deported to Iraq according to their own testimony when interviewed (by phone from Iraq) by an NGO. 6) UNHCR documented case no. 18, involving an Afghan deported to Turkey in May 2009 and subsequently to Afghanistan, according to his testimony to his lawyer (by phone from Afghanistan).

²⁷ The difficulty of filing claims outside the capital is reflected in the fact that 90% of asylum applications are lodged in Athens, at the Attica Aliens' Immigration Directorate of the Police (“Petrou Ralli”).

²⁸ Aegeas project, *Enhancing reception capacity for migration flows at border areas of Greece (external EU maritime and land borders)*, funded by the EC budget line ‘Migration Management – Solidarity in Action 2007 (Reception)’.

The only “reception” facilities at borders are administrative detention centers for irregular entrants. In mid-2009, legislative amendments²⁹ prolonged the maximum period of administrative detention on account of illegal entry or residence from three to six months and under certain circumstances to twelve months. The deterioration of detention conditions due to over-crowding resulting in part from the longer detention periods is reported to have deterred people from seeking asylum.³⁰ These factors prevent persons who would wish to seek asylum from securing access to procedures and being able to pursue their claims.³¹

Even at the Asylum Department at “Petrou Ralli” in Athens, registration of claims is difficult, as the system lacks capacity to meet the demand. Applications are received on only one day per week. At present, around 20 claims are registered in one day, although up to 2,000 persons may be queuing to apply for asylum. Persons seeking to apply for asylum may be obliged to return repeatedly over several months before having the opportunity to register. No standard prioritization system applies. Registration staff are police personnel who lack training for this specialized function, and are insufficient in number. Asylum claimants are expected to provide an address in Greece, and given the difficulties asylum-seekers face in securing accommodation,³² 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.

A specific procedure exists at Athens airport for new asylum claims lodged by persons without permission to enter.³³ In this procedure, UNHCR has not observed particular barriers to the filing of an asylum claim, although airport applicants may be detained for a maximum period of up to four weeks, during which they are interviewed. However, the same absence of procedural guarantees applies as at other entry points: there are generally no interpreters available, and legal and procedural counselling and assistance is not provided. If a decision is not taken within the four-week maximum detention period, applicants are released, permitted to enter the territory and required to report to Petrou Ralli. There, they are required to declare a place of residence, after having received at the

²⁹ Greek Law 3772/2009, amending the relevant provisions of the general Migration Law 3386/2005 concerning administrative deportation and detention procedures.

³⁰ Persons who lodged asylum claims during detention at border areas were in most cases held for the maximum period of detention, while those who did not could be released earlier. UNHCR internal reports from its border monitoring activities, and AEGEAS counterparts reports of the period June-August 2009.

³¹ In relation to safeguards needed to ensure effective access to procedures and protection, see ExCom Conclusion No. 71 (XLIV) 1993, para. (i). ExCom Conclusion No. 74 (XLV) 1994, para. (i). ExCom Conclusion No. 82 (XLVIII) 1997, para. (d) (ii). Also, UN High Commissioner for Refugees, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 50(a), <http://www.unhcr.org/refworld/docid/3b36f2fca.html>

³² See section on accommodation for asylum-seekers, below.

³³ Presidential Decree 90/2008 on the transposition of Council Directive 2005/85/EC from December 1, 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13-12-2005).

airport the so-called “pink card”.³⁴ They are however confronted with the same difficulties as other applicants at Petrou Ralli.

Detention of asylum-seekers

While detention of asylum-seekers who arrive in an irregular manner is not mandatory under Greek legislation,³⁵ in practice they are systematically detained, along with other irregular entrants. Administrative detention is legitimized through the issuance of a deportation order within 48 hours of the arrest, accompanied by a detention order, which is lifted only following court procedures (“objections against detention”). Alternatives to detention are not considered and no individual assessment of the need to detain an asylum-seeker takes place.³⁶ At several entry points, the period of detention is prolonged if the individual applies for asylum. The threat of prolongation of detention, combined with the substandard conditions in many detention facilities, may deter persons from applying for asylum.³⁷

Conditions in administrative detention facilities are generally inadequate, with the exception of two new detention centers in Samos³⁸ and in Fylakio-Evros.³⁹ However, also these concerns arise due to severe overcrowding, lack of well-trained staff, the absence of formalized regulations and financial constraints. In other locations, irregular migrants and asylum-seekers are detained in unsuitable facilities, such as warehouses and police stations.

In October 2009, the authorities announced the temporary closure of the Pagani detention center on Lesbos island and the intention to replace it with new facilities in 2010. This centre is located in an old warehouse. When UNHCR staff visited the facility in late August 2009, it held more than 850 people, including 200 unaccompanied children, mostly from Afghanistan, in a building with maximum capacity for 300 people. One room housed over 150 women and 50 babies, many suffering from illness related to the unsanitary conditions and overcrowding.⁴⁰

³⁴ The “pink card” documents the registration of an asylum claim and as such provides proof of the holder’s legal residence. The issuance of the “pink card” is provided for in art. 5 of Presidential Decree 220/2007 (Official Gazette A’ 251/13.11.2007) on the minimum standards for the reception of asylum-seekers.

³⁵ Presidential Decree 90/2008, see footnote 33.

³⁶ UNHCR advocates for consideration of alternatives to detention, see: *UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, guideline no. 4, <http://www.unhcr.org/refworld/docid/3c2b3f844.html>. See also *S.D. v. Greece* (Appl. No. 5341/07, 11 June 09), where the European Court found a violation of Article 5(1) of the ECHR in relation to the detention of an asylum-seeker.

³⁷ UNHCR and others have observed that some persons are deterred from applying for asylum, and others withdraw their claims, in order to secure earlier release. In August – September 2009, 17 asylum-seekers, mostly Afghans, detained at the detention centre of Pagani-Lesvos, withdrew their asylum claims and were subsequently released (as reported to UNHCR by the Ecumenical Refugee Programme, in letters of 20 August 2009 and 4 September 2009).

³⁸ Opened in December 2007.

³⁹ Opened in June 2007.

⁴⁰ Reported in UNHCR Briefing Note “UNHCR alarmed by detention of unaccompanied children in Lesbos, Greece” (28 August 2009), <http://www.unhcr.org/4a97cb719.html>

Police detention facilities are also extensively used, despite being inappropriate for holding people longer than a few days. In the Evros region in particular, UNHCR has identified poor hygienic conditions in the main Border Guard Police Stations,⁴¹ as well as failure to separate men, women and unaccompanied minors,⁴² and limited access to medical care for detainees.⁴³ Asylum-seekers have also described police violence in detention.⁴⁴ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) reported in October 2008 on allegations of ill-treatment and on the poor general conditions.⁴⁵ Detainees do not have access to information, legal counseling and interpreters, except in the few facilities where services are provided by NGOs or others through limited EC-funded projects.⁴⁶ Even in these locations, the high numbers of persons needing assistance mean that these services are not available to all who need them. The European Court of Human Rights recently found in the case of *Tabesh v. Greece*⁴⁷ that the detention of the applicant, an Afghan asylum-seeker, for three months (in 2006 – 2007) in the premises of the Sub-Directorate of the Alien Police of Thessaloniki amounted to degrading treatment within the meaning of Article 3 of the European Convention on Human Rights. The Court emphasized that, while the applicant was detained there for a three-month period, such premises are designed to accommodate persons only for a very short duration. However, this practice appears to continue.

A new legislative framework⁴⁸ regulating detention was adopted in July 2009, allowing for a maximum detention period of up to six months with the possibility of extension to 12 months. Around the time the law came into force, the police made large-scale arrests of undocumented migrants.⁴⁹ The combination of the new provisions for extending detention periods combined with mass arrests put particular strain on the existing facilities. Both police and coast guard detention centers saw unprecedented overcrowding and material shortcomings. In September and October 2009, to make maximum use of the limited detention spaces, numerous detainee transfers took place, notably from the islands to detention facilities in the Evros region. In the detention centers in the Evros region, as described above, safeguards against deportations to Turkey are inadequate.

⁴¹ UNHCR monitoring visit in Tycherio, Ferres and Soufli on 23-27 March.

⁴² UNHCR monitoring visit in Soufli on 24 February 2009 and in Tycherio on 5 May 2009, and UNHCR monitoring visit in Soufli on 23-27 March 2009.

⁴³ UNHCR monitoring visit in Tycherio, Ferres and Soufli on 23-27 March 2009.

⁴⁴ According to testimony given to UNHCR (by an Iraqi asylum-seeker in Austria, following arrest and detention in Greece, in January – March 2009). See also Norwegian Organisation for Asylum-seekers, Norwegian Helsinki Committee, Greek Helsinki Monitor, “A gamble with the right to asylum in Europe”, <http://www.noas.org/>, Suweini case, p. 59-60, Mushref case, p. 62-63, Abdullah case, p. 63-64.

⁴⁵ CPT report, 30 June 2009, op. cit. footnote 4, page 12.

⁴⁶ See footnote 28 (Aegeas project).

⁴⁷ *Tabesh v. Greece*, 8256/07, ECtHR judgement of 26 November 2009, available (in French only) <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=40880914&skin=hudoc-en&action=request>

⁴⁸ Art. 76, par. 3, of the Law 3386/2005 as amended by art. 48, par. 2, of the Law 3772/2009 (OJ A’ 112/10.7.2009).

⁴⁹ See footnote 19, UNHCR- documented cases of group arrests.

Accommodation and other reception assistance for asylum-seekers

General situation

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.⁵⁰ 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.⁵¹ One center⁵² 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,⁵³ 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.

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.⁵⁴ As a result, many asylum-seekers in Greece live in conditions of acute destitution.

Situation in Patras

There has been considerable attention during 2009 to the situation of irregular migrants in Patras, including asylum-seekers and refugees, who lived in a makeshift camp.⁵⁵ Patras is a major exit point for irregular migrants seeking to cross to Italy. The situation by mid-

⁵⁰ See also the section on Dublin transferees, referring to UNHCR-documented cases of homeless asylum-seekers.

⁵¹ As reported to UNHCR by the Ministry of Health and Social Solidarity on 21 August 2009 (UNHCR meeting with Deputy Minister).

⁵² 'IOLAOS' in Athens, run by the Greek Council for Refugees (NGO), with a capacity of 10 persons.

⁵³ Personnel and asylum-seekers have reported shortages of food, hygiene items, bedding, etc. See "Unaccompanied minor asylum-seekers in Greece" (April 2008), op. cit. footnote 3.

⁵⁴ P.D. 220/2007, transposing the EU Reception Conditions Directive, article 1 paragraph 16 and article 12.

⁵⁵ A makeshift encampment at Patras used to house some 3000 undocumented migrants including persons having sought asylum in Greece and others intending travel to and seek asylum in other countries. There were some 1,500 to 2,000 persons, mostly Afghans including some 250 separated and unaccompanied children in the encampment. Others lived in abandoned buildings or on the streets.

2009 had degenerated into a humanitarian crisis causing serious social tensions.⁵⁶ In this context, the Greek authorities demolished the camp on July 12, 2009.

During the operation, 44 unaccompanied children were identified and transferred to a reception facility in northern Greece at Konitsa. Around 25 asylum-seekers were transferred temporarily to hotels in Patras. Since the operation, many of the asylum-seekers and migrants have scattered around the city.⁵⁷ Some live outdoors without shelter. Others have found accommodation in houses (rented by themselves or others), or in run-down buildings. Still others, including many persons of Sudanese, North African and Middle Eastern origin, live in another nearby area around and under old train carriages.

In late September 2009, when UNHCR visited the Ayias area near the settlement's former location,⁵⁸ some fifty homeless Afghans gathered. They were living outdoors, their belongings hanging from the trees. No food, water or other assistance was provided to them, apart from limited services offered by volunteers with some support of one NGO.⁵⁹ Most had no documentation. Some held expired deportation orders. All indicated their wish to leave Greece. Many complained of violence at the hands of the police. Among them was an Afghan boy claiming to be only ten years old. Asked if those who possess official "pink cards" attesting to the registration of their asylum applications⁶⁰ were protected from police actions, the Afghans replied that "the card means nothing".

Unaccompanied and separated children

Identification and referral

Unaccompanied and separated children arriving irregularly in Greece are in general accorded the same treatment as adults. Greece has not established an adequate framework for the identification of unaccompanied and separated children and their referral to appropriate child protection mechanisms, whether at border entry points or inland.

Initial arrest and detention procedures for children are conducted by security forces (police and in some cases coast guard authorities), without support from qualified civilian staff such as social workers or child welfare personnel. Interpreters are rarely available at the point of entry.⁶¹ No formal age assessment process with appropriate safeguards is in place.⁶² UNHCR has noted⁶³ that in many instances, separated children are recorded as

⁵⁶ Numerous incidents were reported: serious injuries among people trying to climb the port fence or to jump onto the trucks which embark into the ferries; clashes among aliens of different nationalities in their effort to get closer to the port gates; clashes among migrants and the police or coast guard; tense confrontations among local citizens with different views, and allegations of beatings and ill-treatment by police or coast guard officers of migrants, including children.

⁵⁷ These observations were made by UNHCR staff on mission to Patras, 30 September – 1 October 2009.

⁵⁸ During the above-mentioned 30 September – 1 October 2009 mission.

⁵⁹ Hellenic Red Cross.

⁶⁰ Legal basis for issuance of "pink card", see footnote 34.

⁶¹ Findings from UNHCR missions to land and sea border areas, July 2009.

⁶² The authorities have not defined any procedures for age determination. Presidential Decree 90/2008 (O.G. A' 138/11.7.2008) permits use by police authorities of examinations for determining age, but there is no legally defined standard procedure defining the type of examination or margin of error to be applied.

adults or as accompanied by adults, although legal or family ties with the adults are not established. The police are required to refer the children to the Public Prosecutor's Office, which is by law the temporary guardian, and to reception places where available. This process may be delayed or not completed if children are released from detention with a police note to leave the country within 30 days. It is observed that the Public Prosecutor assumes his/her tasks as temporary guardian in some cases only partially or not at all, due also to the fact that the Court's Social Service, provided for by the law, is not established yet. Assistance from NGOs or other non-State bodies is available only on an ad hoc basis, usually through the implementation of specific, time-limited projects.⁶⁴

Detention and reception

As is the case for irregularly arriving adults, unaccompanied children are in general arrested and issued a detention and deportation order.⁶⁵ The children are detained, in most cases, until (a) administrative procedures related to their identification are completed, and (b) guardianship procedures and referral to specialized structures are concluded. This may take from a few days to several months. UNHCR has observed children in severely overcrowded centers, detained together with adults.⁶⁶ Due to lack of access to child protection or other support services, many children in detention follow the advice of smugglers or traffickers.

In the Samos detention facility (official capacity 350 persons), only one ward, with 20 places, is available for unaccompanied children. The centre has accommodated over 5,700 persons since 1 January 2009, with the population at times reaching over 800 persons.⁶⁷ Because of overcrowding, the ward for separated children has been opened also to families, and consequently separated children have been placed along with adults in other wards, where even beds were unavailable. In many smaller detention facilities in Evros (e.g. Ferres, Soufli) where irregular migrants, including children, have been transferred and held for considerable periods, there are no separate areas for children.⁶⁸

Until the temporary closure of the Pagani detention center in October 2009, it was the sole detention center for irregular migrants on Lesbos. The overcrowding and lack of appropriate services led several of the 200 unaccompanied children held there to initiate hunger strikes and protests to demand their release. Such tensions and media reports on the conditions within the center led to the new Government's⁶⁹ decision to close it

⁶³ See "*Unaccompanied minors asylum-seekers in Greece: A Study on the treatment of unaccompanied minors applying for asylum in Greece*", op.cit. footnote 3.

⁶⁴ See footnote 28 (Aegeas project).

⁶⁵ In most cases, as is the case with adults, the deportation order cannot be executed, as the deportation is not feasible (e.g. when no travel documents can be issued or when no cooperation is established on returns between Greece and the country of origin).

⁶⁶ Reports from the 2008-2009 implementation of the AEGEAS project, in Lesbos, Samos, Chios and Evros, and UNHCR Border Monitoring Reports of the same areas, during the said period.

⁶⁷ Report of the Prefecture of Samos, dated 26/08/2009. The centre hosted at the time 814 persons.

⁶⁸ Reports from UNHCR's roving expert in the "Aegeas" Project during missions on 23-26 February 2009 and 5-10 May 2009.

⁶⁹ Parliamentary elections were held in Greece on 4 October 2009.

temporarily for renovation. However, as long as no adequate new facilities are opened, new arrivals are transferred to other detention centers which are also overcrowded.

The available places in eight special reception centers for children in Greece as officially reported by the Greek Ministry of Health to UNHCR⁷⁰ are 405 in total (for both asylum-seeking and other children). This number is low compared to overall arrivals, which totaled some 6,000 unaccompanied and separated children in 2008 alone.⁷¹ Even when space in specialized reception centers is available, lack of funds or personnel to escort the children often prevents their transfer, leaving them in detention in the meantime.⁷² Without standardized rules, specialized staff and support services,⁷³ the adequacy of the children's centers is also questionable, and many children abscond.⁷⁴

The Agiassos center in Lesvos is a facility for unaccompanied and separated children, and one of the few which also accepts children not registered as asylum-seekers. However, the 90 places in the centre are insufficient, noting that in 2008 alone, 3,649 undocumented children (mostly Afghan) arrived on Lesvos, and 1,450 in the first eight months of 2009.⁷⁵ The centre in Anogia, Crete, with a capacity of 25, like the ones in Makrynitsa and Thessaloniki, in principle accepts only registered asylum-seeking unaccompanied children. In practice, however, not all claims of children residing in the centre in Anogia and wanting to seek asylum have been registered. UNHCR raised concerns with the former Interior Ministry over this practice, as some children have remained over a year in this center without registration of their asylum claims. Consequently, for the duration of their stay, these children were not protected from arrest.

Guardianship

The public prosecutor for juveniles in general acts as temporary guardian for unaccompanied and separated children, according to Presidential Decree 220/2007.⁷⁶ Temporary guardians may propose the appointment of a permanent guardian through the court,⁷⁷ but for many children, this does not occur.⁷⁸ Although guardianship arrangements should be put in place "as soon as possible,"⁷⁹ UNHCR is aware of many cases in which

⁷⁰ According to information provided to UNHCR by the Ministry of Health on 21 August 2009, the centres accommodating separated and unaccompanied children (asylum seeking and other), are: Makrynitsa (30 places), Anogia (25), Agiassos (100), Agrias (55), Konitsa (90), Thessaloniki (55), Thessaloniki (30), Athens (10).

⁷¹ MOI data communicated to UNHCR by the Ministry of Health.

⁷² Reports from the 2008-2009 implementation of the AEGEAS project, in Lesvos, Samos, Chios and Evros, and UNHCR Border Monitoring Report in the Dodecanese (2-6 June 2009).

⁷³ UNHCR visits to the Agiassos centre in Lesvos (August 2009) and to the Konitsa centre (April 2009).

⁷⁴ "Unaccompanied minors asylum-seekers in Greece", April 2008. op. cit. footnote 3.

⁷⁵ Data communicated to UNHCR by the Police Directorate of Lesvos.

⁷⁶ Art.19 of the P.D. 220/2007 (OG A' 251/13.11.2007), transposing the EU Directive on Reception Conditions.

⁷⁷ According to the Greek Civil Code, articles 1589 to 1654.

⁷⁸ This is because the social service responsible for appointing permanent guardians foreseen by the law was never established, and very few structures or persons are prepared to assume this responsibility de facto (mainly NGOs or Directors of the reception centers).

⁷⁹ P.D. 220/2007, art 19 para. 1.

a guardian was appointed after several months or not at all.⁸⁰ In practice, most children never meet their temporary guardian, with thousands of children in some cases reported to be under the care of one public prosecutor.⁸¹ UNHCR has observed that public prosecutors are not able to keep track of the children under their care and rarely object to detention on the grounds that it conflicts with the child's best interest. Temporary guardians do not ensure enrolment in school as part of their mandate,⁸² nor in general intervene in the child's asylum procedure,⁸³ or follow up on the child's socio-economic situation and welfare. There is no procedure in place for determining what actions would be in the child's best interest.⁸⁴

In sum, there are serious legislative and administrative shortcomings as regard for unaccompanied and separated asylum-seeking children, and consideration of the child's best interest is not assured. Access to asylum procedures for unaccompanied and separated children is seriously hampered by the fact that the temporary guardian does not establish direct contact with the child and often does not provide support and advice.

Asylum procedures for unaccompanied children

Children who seek asylum face the same obstacles as adults regarding the processing of their claims, and their claims receive no priority.⁸⁵ Information on the procedure is often not provided to them, and many children are illiterate or cannot read the languages in which information is provided.⁸⁶ For children of 16 and older who are considered "mature"⁸⁷ the asylum authorities are not obliged to notify the Public Prosecutor of the start of the asylum procedure. The notification obligation also does not apply when it is expected that the child will turn 18 before a first instance decision is taken, or if the child is married or has been married.⁸⁸ This leaves many unaccompanied and separated children, without representation by a guardian or lawyer throughout the asylum procedure. According to reports by Human Rights Watch, on average the asylum interviews of children without representation last no more than 10 to 15 minutes.⁸⁹

The authorities do not provide statistics for asylum outcomes relating to unaccompanied and separated children. However, UNHCR has observed that before the introduction of

⁸⁰ As assessed by UNHCR during its missions at entry points.

⁸¹ As assessed by UNHCR, in Lesbos the acting Public Prosecutor is the temporary guardian of all the unaccompanied children detained in Lesbos since beginning 2008, approximately 2,500 children.

⁸² UNHCR, "Unaccompanied minors asylum-seekers in Greece", April 2008, page 77, op.cit. footnote 3.

⁸³ Public prosecutors and the police share the view that public prosecutors cannot act on behalf of children in administrative procedures, see Human Rights Watch "Left to Survive", op. cit. footnote 5.

⁸⁴ UNHCR, "Unaccompanied minors asylum-seekers in Greece", page 77, op. cit. footnote 3.

⁸⁵ UNHCR, "Unaccompanied minors asylum-seekers in Greece", op. cit. footnote 3, which revealed that e.g. in Anogia, one of the oldest centres for the reception of unaccompanied and separated children, the majority of children residing there did not receive final administrative decisions (following the appeals process) until long after reaching adulthood.

⁸⁶ Only one information leaflet is available in six languages, referring however to the old asylum procedure (prior to the adoption of the P.D. 81/2009).

⁸⁷ The police determines "maturity". Criteria for this test are not regulated.

⁸⁸ Presidential Decree 90/2008, art 12.1-3.

⁸⁹ See HRW, "Left to survive", p 46, op.cit. footnote 5.

the new asylum procedure in Presidential Decree 81/2009 (see further below), many claims of unaccompanied and separated children were rejected at first instance. Most appeals remain pending, often long after children reach 18 years of age.

Quality of the asylum procedure

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.

First instance procedure

With the introduction of the new P.D., asylum decision-making at first instance is decentralized to 53 Police Directorates across the country. To make an application, an asylum-seeker must appear in person and submit a written application. Fingerprints and photographs are taken and the asylum-seeker is required to submit all relevant identity documents. Under the new procedure, the "pink card" is issued only once the interview by the Refugee Committee takes place, which can be months after the filing of an asylum claim. Until that time, the only documentation asylum seekers receive is a letter stating the appointment for the asylum interview. This letter serves in practice as documentation of the registration of an asylum claim and as proof of legal residence. It does not have any basis in law.

The Refugee Committee is made up of two members of the police and one member of the Regional Authority.⁹¹ UNHCR conducted research into the implementation of the decentralised first instance asylum process in 31 Police Directorates, during the period September – November 2009. The findings of this research were shared with the Government.⁹² These findings included, inter alia, shortcomings in training and expertise, conflicts-of-interest between asylum responsibilities and other duties, long waiting periods for interviews, continued problems in access to the asylum procedures, inadequate availability and use of country of origin information by the examining authorities, divergent practices between different Police Directorates, insufficient attention to needs of unaccompanied children who seek asylum and severe deficiencies in the provision of interpretation.⁹³

⁹⁰ Presidential Decree (P.D.) No 81/2009 modifying the Presidential Decree 90/2008 on the transposition into the Greek legislation of Council Directive 2005/85/EC of December 1, 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Official Gazette A' 99, 30.6.2009).

⁹¹ UNHCR declined the invitation to be part of the Refugee Committee for lack of confidence in the quality of the new procedure.

⁹² UNHCR letter to the Ministry of the Interior, dated 02 December 2009.

⁹³ Under P.D. 81/2009, the absence of proper interpretation services is not expected to improve. At the moment of the initiation of the implementation of the new legislative framework (July 2009) UNHCR conducted (through communications with the Asylum Department of the Police Directorates) an

Before the introduction of the new procedure, UNHCR observed over 40 asylum interviews in the period January - March 2009. Twenty of these interviews lasted just five minutes, while the longest lasted 35 minutes. The conditions in which the interviews took place were inappropriate, with all taking place in a noisy police station with over ten other persons present in the room. In this situation, confidentiality could not be guaranteed. Interpreters were often unable to provide quality translations. In the cases observed, there was no preparation before the interview. The interviewer opened a case-file for the asylum-seeker at the time of the interview. Research regarding the country of origin was not conducted in advance, since the interviewing police representative was informed only on the day of the interview of which applicants he/she would interview on that day. Although under the new procedure, the interview is conducted by a collective body (the Refugee Committee), the above-mentioned shortcomings remain, as in practice only one member, a police officer, leads the process.

The asylum procedure in Greece generally suffers from insufficient resources at all levels. When comparing the outcomes of the research into the implementation of new procedure with the findings resulting from observing interviews under the old procedure, it is clear that many shortcomings remain unaddressed.

The quality of many first instance decisions is poor. A number of decisions reviewed by UNHCR before and after the entry into force of the P.D. 81/2009 did not include sufficient references to the facts or to country of origin information, nor detailed legal reasoning. The grounds for rejection were usually standardised, referring to economic motivation for leaving the country of origin. This reasoning is used in the large majority of cases examined by UNHCR, including those of applicants originating from countries in conflict which generate significant numbers of refugees.⁹⁴

Second instance procedure

As regards second instance decision-making, the P.D. has abolished the independent Appeal Board (formerly the decision-making body at second instance), and replaced it with a limited form of judicial review before the Council of State.⁹⁵ For pending appeals,

assessment of the interpretation services provided at six crucial Police Directorates at entry points at land and sea borders with Turkey. According to this assessment, no Police Directorate had ever recruited permanent interpreters; interpretation services at the entry points covered by the AEGEAS project (terminated in October 2009) were offered but didn't cover all languages; for other languages or at entry points not covered by AEGEAS (such as the Dodecanese islands) interpretation needs are covered by other detainees speaking English, by police officers speaking English or by third country nationals living in those regions on a voluntary basis; all Police Directors declared that the lack of interpreters is the main problem of the asylum procedures at the borders.

⁹⁴ See UN High Commissioner for Refugees, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, p. 31-34, <http://www.unhcr.org/refworld/docid/473050632.html>. Observations of interviews and reviews of decisions and case-files by UNHCR in 2009 have confirmed that the described practices have not changed.

⁹⁵ The Council of State has competence to review cases on the law but not on the merits; in case of annulment of the challenged decision by the Court, the case is referred back to the Administration for reexamination and remedy of the legal deficiencies of the initial decision in conformity with the Court's ruling. UNHCR's comparative review of asylum procedures in 15 EU Member States shows that in the

the Advisory Committees are designated to hear the cases but will not have the decision-making power of the former Appeal Board, but merely an advisory role, making recommendations to the Alternate Minister of Public Order.⁹⁶ The Advisory Committees for the appeals backlog are yet to be established.

In UNHCR's assessment,⁹⁷ 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.⁹⁸

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.

Backlog of cases at first and second instance

As of 31 July 2009, the responsible authorities reported a backlog of 6,145 unprocessed first instance claims. On appeal, the backlog of unprocessed cases stood at 42,700.⁹⁹ These statistics do not include persons wishing to seek asylum who have not had the opportunity to lodge their applications.

Protection rates

Overall protection rates remain extremely low in Greece. In 2008, 0.06 % of cases decided at first instance were afforded protection.¹⁰⁰ In 2008, the Appeals Board reached

large majority of the States the appeal organs also conduct an examination on the merits which results in a final decision of the granting or not of refugee status.

⁹⁶ Responsibility for asylum issues has recently been transferred to the Minister of Citizen Protection. Once the new Advisory Committees are established, clarification will be required as to whom those Committees report in the new structure.

⁹⁷ See press release 09/32, "UNHCR will not participate in the new asylum procedure in Greece unless structural changes are made", http://www.unhcr.gr/Press_Rel/31_2009_17July.htm

⁹⁸ Ibid.

⁹⁹ Statistics received from Ministry of Interior.

¹⁰⁰ The "protection rate" is the percentage of positive decisions for both refugee status and subsidiary protection against the total number of substantive first instance decisions for a given period. In the European Union as a whole, the average protection rate for Iraqis stood at around 70% in many EU

a positive decision in 24 % of cases reviewed at appeal level.¹⁰¹ The figure of 0.06 % at first instance in 2008 diverges significantly from practice at first instance in other EU Member States which receive similarly large numbers of applications. By comparison, in the five countries (France, the U.K., Italy, Sweden and Germany) which, along with Greece, received the largest number of applicants in Europe in 2008, the average protection rate at first instance was 36.2%.¹⁰²

III) The transfer of asylum-seekers and beneficiaries of international protection to Greece under the Dublin Regulation

This chapter describes the situation of persons (“Dublin transferees”) transferred to Greece according to the Dublin Regulation.¹⁰³ The concerns summarised below which are valid for Dublin transferees are equally valid for persons who are returned from EU Member States to Greece under other arrangements.¹⁰⁴

The “Dublin Regulation”¹⁰⁵ establishes a system for determining responsibility for examining asylum claims lodged in the European Union and other participating States, based on specific criteria. The Regulation aims at ensuring that each claim is fairly examined by one Member State, with the aim of deterring multiple applications and enhancing efficiency. UNHCR has in previous positions recalled that the credibility of such a system is contingent upon the existence of harmonized standards of protection among Member States of the European Union. 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

Member States for 2008 and the average protection rate for Afghans at first instance stood at approximately 50%. For both nationalities, in Greece the protection rate was 0% in 2008, or in other words: no Iraqi or Afghan case was given a positive decision at first instance. See UNHCR statistics

<http://www.unhcr.org/pages/49c3646c4d6.html>.

¹⁰¹ Ibid.

¹⁰² Source: UNHCR, 2008 Global Trends, Annexes, <http://www.unhcr.org/4a375c426.html>

¹⁰³ Main countries from which Dublin transferees are returned to Greece are the United Kingdom, Germany, Austria, Switzerland and smaller numbers from Sweden and Norway. The numbers of actual returns are less than half of the scheduled returns; for example, during August 2009, 234 persons were scheduled to return following positive response of the Greek authorities to the incoming request, but only 104 persons were actually transferred. (Official statistics on the application of the Dublin Regulation as provided on a regular basis by the Greek Ministry of Interior to UNHCR.)

¹⁰⁴ See the Italian practice of returning persons to Greece under a bilateral Readmission Agreement signed between the Italian and the Greek Governments on 30 March 1999 (in Italian: *Accordo tra il Governo della Repubblica Ellenica ed il Governo della Repubblica Italiana sulla riammissione delle persone in situazione irregolare*), original text published both in Italian and Greek, in the Greek Official Journal. The agreement was not officially published in Italy.

¹⁰⁵ 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, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>

¹⁰⁶ Op. cit. footnote 90.

procedure which have further diminished the prospects of asylum-seekers, including Dublin II transferees, having their claims determined in a fair procedure in Greece.¹⁰⁷

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

Risk of deportation

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.¹⁰⁸

Access to asylum procedures

Access to asylum procedures is not always guaranteed for Dublin transferees. In particular, if a negative decision has been issued prior to or during the individual's absence from Greece, and has been notified to an asylum-seeker registered as of "unknown residence", the applicant, upon return to Greece is likely to have missed all deadlines for appealing against this negative decision. With almost all asylum applications rejected at first instance, this practice affects many Dublin transferees. Dublin transferees furthermore face the same problems as other asylum-seekers with regard to access to reception assistance and quality of decisions.

Dublin transferees (including those who previously applied for asylum in Greece and those who have not done so)¹⁰⁹ face problems which may hinder or preclude their efforts

¹⁰⁷ Press Release of 14 May 2009 "UN Refugee Agency expresses concern over proposed Presidential Decree on Asylum" (in Greek).

¹⁰⁸ Three of the UNHCR-documented cases involved deportation of registered asylum-seekers: case no. 9, involving an Afghan unaccompanied child deported to Turkey after arrest in Patras; case no. 12, involving a Pakistani asylum-seeker. Attempts to deport him failed after successful intervention by an NGO; and case no. 16, involving an Afghan asylum-seeker who was arrested in Patras, transferred to Evros and subsequently deported to Turkey in a group of some 80 persons. In one other UNHCR-documented case, no. 23, the individuals were asylum-seekers whose claims were not registered in Greece despite intervention by UNHCR and other agencies.

¹⁰⁹ People who did not previously file asylum applications in Greece may be transferred to Greece on the grounds, among others, that Greece has been deemed responsible on the basis of proof through Eurodac or otherwise that they entered the EU irregularly via Greece; or that s/he held a Greek visa or other residence document (Dublin II Regulation, Articles 10, 9 respectively). If such persons subsequently claim asylum in Greece after transfer, they are treated as new claims.

to register (or re-register) their applications for asylum, barring them from access to the process and to an effective claim examination.¹¹⁰

Information about the relevant procedures and rights, and/or interpretation in languages that asylum-seekers understand, are not readily available.¹¹¹ According to the process in place since 2008, Dublin transferees are detained for up to 24 hours at the airport without a detention order.¹¹² 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.

Access to reception assistance

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,¹¹³ 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.

¹¹⁰ See, UN High Commissioner for Refugees, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 23, <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.

¹¹¹ 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 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.

¹¹² For vulnerable cases, detention can be prolonged in order to inform Police Headquarters who then inform competent authorities to proceed with necessary actions, such as finding shelter for unaccompanied children.

¹¹³ Austrian Red Cross and Caritas Austria, “The situation of persons returned by Austria to Greece under the Dublin Regulation. Report of a joint Fact-Finding Mission to Greece May 23rd – 28th 2009”, <http://www.unhcr.org/refworld/pdfid/4a93fbbf2.pdf>, p. 50-81.

Unaccompanied and separated children

UNHCR works in close cooperation with the Greek Council for Refugees (GCR). The Council recorded at least seven cases of unaccompanied children returned to Greece during 2009.¹¹⁴ In only one of those cases was the Public Prosecutor informed of the arrival of the child, thereby triggering the Public Prosecutor's responsibility for guardianship and for notifying the Ministry of Health and Social Solidarity of the need for appropriate accommodation. Even in this case, the child stayed in a detention center for more than two months, awaiting a place in a reception center. In the other six cases, the children were released either with their "pink cards" or with a Police Note referring them to Petrou Ralli. No assistance or care arrangements were made. The children were not offered accommodation or other assistance.

In two of those six cases, both returned from Finland, the children were registered with duplicate data, as children and as adults. According to the Police Notes, they were registered as adults at the time of their initial entry to Greece. The Finnish authorities, however, had registered them as children. Upon return to Greece, they received pink cards indicating they were adults. Following communication by GCR with the Dublin Unit of the Ministry of Interior, the latter confirmed that the Finnish authorities had registered them as children and that the transfer process had been governed by the fact that they were children. Reportedly, the Dublin Unit confirmed that both sets of data (registering them as adults, and as children below the age of 18 years) were registered in their file and that all police authorities should act with reference to both data.

V) Conclusion

In light of the situation described above, UNHCR continues to advise Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation or otherwise. UNHCR recommends that Governments make use of Article 3 (2) of the Regulation, allowing States to examine an asylum application even if such examination is not its responsibility under the criteria laid down in the Dublin Regulation; and of Article 15 with regard to unification of extended family members within the EU.

UNHCR is ready to work with the Greek authorities to address the ongoing challenges and encourages EU Member States and institutions to lend their support to the endeavour. Until respect for international and EU refugee law principles is assured, however, UNHCR cannot endorse the application of the Dublin II Regulation or other arrangements for transfer of asylum-seekers to Greece.

¹¹⁴ These children were returned from Austria, Belgium, Finland, Germany and the United Kingdom.