

THEMATIC
SITUATION
REPORT

Coping with a fundamental rights emergency

The situation of persons crossing
the Greek land border in an
irregular manner



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Charter of Fundamental Rights of the European Union

Article 1

Human dignity is inviolable. It must be respected and protected.

Article 4

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 18

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

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Main findings

"The humanitarian situation of migrants and asylum seekers in Greece is extremely worrying. Improving the reception facilities is very urgent. The Greek authorities are benefiting from European solidarity through a package of financial and practical assistance and I urge them to put all necessary measures in place to assist the persons in need. Greece also needs to swiftly adopt the legislation reforming its national asylum system so that a sustainable situation can be found to this emergency."

Cecilia Malmström, EU Commissioner for Home Affairs, Brussels, 15 December 2010

Migration trends

Greece is an EU Member State with extensive sea and land borders with third countries: Turkey, Albania and the Former Yugoslav Republic of Macedonia (FYROM). Since the early 1990s, a significant flow of persons seeking international protection and irregular migrants cross these borders: some of them (primarily Albanians) seek to remain in Greece, while many others attempt to reach other EU Member States, either through the sea route to Italy or the land route via FYROM and Serbia or via Albania, Croatia and Slovenia.

The strengthening of border surveillance and other measures taken by other southern EU Member States led to a significant reduction of arrivals in Italy, Malta and Spain. Migration routes into the EU changed targeting first the sea and then the land border between Greece and Turkey. Since 2010, Greek external EU land and sea borders account for 90% of all detections of irregular border crossing along all EU external land and sea borders. Crossings at the eastern border in the Evros region reached peaks as high as 350 persons a day. The majority of persons cross the 12.5 km land border area near the city of Orestiada, although recently the number of those coming through the river has increased.

On 12 January 2011, FRONTEX reported that since 2 June 2010 over 38,000 undocumented persons have been detected crossing the Greek-Turkish land border. The largest group of persons (44%) comes from Afghanistan, while the other most numerous nationalities are Algerians (16%), Pakistani (8.5%), Somali (6%) and Iraqi (4%).

The humanitarian crisis at the border

The situation at the land border with Turkey and particularly the living conditions in the centres, where those apprehended crossing the border irregularly are held, is worrisome. It creates crucial concerns regarding the respect of fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union.

In 2010, at least a recorded 45 people lost their lives trying to cross the border in the Evros region: 26 of them died within the operational area of Orestiada, four at the banks of the Evros river and 15 at sea in the vicinity of Alexandroupolis. In the first week of January 2011 alone,

four bodies were found in the area – all young males who had died of hypothermia. On 29 January 2011, the FRA counted 48 unmarked graves during its on-site visit at the make-shift cemetery on a hill about 500 metres from the nearest paved road near the village of Sidero.

The treatment of persons apprehended at the border is not conducive to identifying persons in need of international protection. There is a complete absence of independent social and legal counselling, apart from periodic visits by the United Nations High Commissioner for Refugees (UNHCR). In addition, persons who submit an asylum request at the border are likely to be held in detention for much longer, as they need to wait for the first instance procedure to be completed before being released. Although a considerable number of persons come from refugee-producing countries, such as Afghanistan, Somalia or Iraq, only 80 asylum applications were lodged in Evros in 2010. This situation contributes further to the well-documented congestion of the Attica Aliens Police Directorate in Athens, thereby impacting on the Greek asylum system as a whole.

International organisations, bodies and mechanisms – including UNHCR, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), UN Special Rapporteur on Torture – as well as non-governmental organisations (NGOs) – such as Human Rights Watch, Doctors without Borders and Pro-Asyl – have reported the gaps in the asylum process and highlighted the insufficient reception facilities and inhuman conditions in detention facilities in Greece. UNHCR has described the situation in Evros as a “humanitarian crisis”, thus implying the need for an emergency response and making concrete suggestions for urgent measures to be taken.

The European Court of Human Rights (ECtHR) has ruled that the return of an asylum seeker from Belgium to Greece under the Dublin II Regulation constituted a violation of Article 3 of the European Convention on Human Rights.¹ National administrations and courts in several EU Member States have suspended returns of asylum seekers to Greece under the Dublin II Regulation. Requests for preliminary rulings on returns under Dublin II are also pending before the Court of Justice of the European Union (CJEU).²

The Greek response

Although described as a humanitarian emergency, the situation in Evros is not handled as such. No emergency situation has been declared by the Greek government. Civil protection assets have not yet been deployed.

More generally, there is no evidence of a comprehensive emergency response to address the conditions in the detention centres despite the availability of EU funds. According to the

¹ ECtHR, *M.S.S. v Belgium and Greece*, No. 30696/09, 21 January 2011.

² CJEU, C-411/10, *NS v. Secretary of State for the Home Department*, reference for a preliminary ruling, 18 August 2010; and C-493/10, *M.E. and Others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, reference for a preliminary ruling, 11 October 2010. Both cases were joined by order of the President of the CJEU on 9 November 2010.

European Commission,³ Greece received in 2008 and 2009, in addition to the normal funding, a further €2.2 million and €4.9 million, respectively, in **emergency funding under the European Refugee Fund (ERF)** in order to reinforce reception capacities. In December 2010, the EU granted an **additional €9.8 million ERF emergency funding to Greece to cover immediate and urgent needs** related to healthcare, food and social care, improvements of accommodation centres and construction of new ones, addressing the backlog of asylum applications and facilitation of access to asylum procedures. However, with the exception of medical programmes (staff were deployed by the Ministry of Health to Evros on 28 February 2011) and a forthcoming legal aid programme by UNHCR, **the FRA found no evidence that these resources are used to improve the current situation at the Evros border.**

In August 2010, Greece submitted to the European Commission a National Action Plan on Asylum Reform and Migration Management, which provides a basis for the identification and adoption of immediate, short-term and long-term measures. On 17 December 2010, the Minister of Citizens' Protection announced in Parliament that following the presentation of the Greek Action Plan on asylum and migration the European Commission will provide substantial financial support for its implementation.⁴

The FRA found that authorities focus primarily on the implementation of Law 3907/2011 published on 26 January 2011. The law transposed the Return Directive⁵ and reformed the country's asylum system. It provides for the creation of an Asylum Service, an Appeal Authority, a First Reception Service and screening centres for new arrivals. There is widespread hope that the new law will resolve all relevant problems. Hence, most efforts in Athens focus on the implementation of the new law and not on addressing the immediate humanitarian situation at the border. However, implementation of the new law will take considerable time; the law itself allows for a 12-month implementation period. In the meantime, persons in administrative detention are held in inhuman conditions, which are also alarming from an EU public health perspective.

Factors contributing to the current crisis

The FRA identified a number of factors that contribute to the current fundamental rights crisis in Evros. These include:

- **Fragmentation of responsibilities for migration and lack of systematic coordination:** At a national level, responsibility for border control, migration and asylum issues is fragmented among four different Ministries. Formal coordination mechanisms for migration issues set up by Law 3386/2005 have in practice not been functional. At policy level, the FRA noted

3 Statement of Cecilia Malmström, European Commissioner for Home Affairs, following the judgment of the ECtHR on the transfer of asylum seekers under the EU Dublin Regulation on 21 January 2011, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/35&type=HTML>.

4 See Joint statement by Mr Christos Papoutsis, Minister of Citizen Protection of Greece and Cecilia Malmström, European Commissioner in charge of Home Affairs, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/450>. See also the statement by Minister Papoutsis, in which he indicated a sum of €230 million, available (in Greek) at: www.minocp.gov.gr/index.php?option=ozo_content&lang=&perform=view&id=3385&Itemid=459.

5 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348.

informal and ad hoc forms of coordination between the relevant Ministries to be effective in some instances, but not sustainable in the long run, as they are largely based on personal contacts and relationships. By contrast, no coordination mechanisms appear to exist between Ministries at operational level. In particular, sharing of information, coordination and implementation of activities in public administration at national, regional and local level (horizontally – between competent authorities – and vertically – within a Ministry) was found to be highly problematic.

- **Systematic detention practices in unsuitable facilities:** In practice, no alternatives to the deprivation of liberty of persons entering Greece in an irregular manner exist. Except for persons requiring urgent hospitalisation, all other individuals are initially held in detention facilities, regardless of whether there is a risk of absconding, thus contributing to the overcrowding of facilities. Moreover, facilities to place irregular migrants are unsuitable. These are either converted warehouses or purpose-built facilities which have a prison-like design.
- **Lengthy bureaucratic procedures:** These hamper any efforts of local police authorities to get budget approval to undertake rudimentary emergency building repairs in the detention facilities, such as replacing windows and unblocking toilets.
- **Unclear division of responsibilities at a local level:** following the reorganisation of the public administration system through the ‘Kallikratis’ plan⁶ implemented since January 2011, the competencies of municipalities, regions and ‘decentralised public administration’ are still unclear, impacting substantially on their ability to cover essential needs in detention facilities. For example, in the past informal arrangements between the local police and Evros *Prefecture* (administrative authority) covered the provision of food through catering contracts, but following the abolition of prefectures neither the police nor the region or the municipalities interviewed could tell the FRA which body is now responsible. While the catering company continues to deliver food, it was not clear how payments would be made. Other services, such as the cleaning of blankets and building maintenance, heating and repair, have been interrupted or are sometimes paid by *Médecins Sans Frontières* (MSF) or provided informally by the army or even paid by individual police officers from their own pocket.
- **Limited NGO presence in Evros:** The difficulties faced by the Greek authorities in improving the humanitarian situation at the border are accompanied by a virtual absence of NGOs and civil society actors that can provide services. NGOs have focused efforts on advocacy and raising awareness. Only MSF deployed permanent teams to Evros in December 2010. The Church distributes humanitarian assistance (primarily clothing) on an *ad hoc* basis and uncoordinated with MSF.

6 More information available from the Ministry of Interior, Decentralisation and E-government (in Greek) at: www.vpes.gr/el/Regions/programma/

- **No system to tap into local resources:** For example, no support has been sought or provided by the University of Thrace, which has a Medical School in Alexandroupoli and a Law School in Komotini, both at reasonable distance from the detention centres. In addition, municipalities with capacity to host vulnerable groups or provide social service support remain uninformed and do not engage.
- **Inertia among local actors:** There is nobody at local level who takes on a role of coordinating a response. This results in different local actors, including the police, local authorities and other local public institutions, such as the university or the hospital, working in parallel or not being aware that they could contribute. Key local actors, such as some mayors interviewed by the FRA were not even aware of the existence of the 2011 law, which nevertheless assigns them responsibilities. The result is an overburdened police.
- **Unused infrastructure in other parts of Greece:** In other parts of Greece, for example on the Aegean islands, there are detention facilities that are no longer fully used. To alleviate the overcrowding in Evros, migrants for whom there is prospect for removal could be transported by sea/air, as Alexandroupoli and the islands have ports and airports. Similarly, the possibility to refer persons to facilities for persons requiring specific support (such as HIV counselling) are also not fully exploited.
- **The dire financial situation of Greece** also impacts on the management of asylum and migration. The available national budget is small. Procedures to disburse funds are complex. The staff available is limited and so is the capacity to absorb European Union funding.

The involvement of the EU

On 24 October 2010, FRONTEX received a request from the Greek Minister of Citizen Protection to deploy for the first time Rapid Border Intervention Teams (RABITs) – groups of specialised border guards by 27 EU countries to deal with emergency situations at the EU's external borders – as well as operational means to increase the control and surveillance levels at Greece's border with Turkey. Five days after receiving the request, on 2 November 2010, FRONTEX finalised arrangements for the deployment of 175 border-control specialists from 26 EU Member States and technical resources at the Greek-Turkish land border. All costs incurred in relation to the deployment are reimbursed by FRONTEX. On 3 December 2010, the Agency's deployment of RABITs was extended until 3 March 2011. FRONTEX will continue to be active in the region afterwards in the context of the Joint Operation Poseidon Land to ensure that Greece has the appropriate operational support to ensure effective border management in the region.

The deployment of substantial resources by FRONTEX at the border with Turkey as part of its RABIT operation has had an overall positive impact on the initial processing of individuals. In particular, procedures in place seem to have reduced the risk of informal push-backs to Turkey for persons who have crossed irregularly into Greece.

The operational assistance provided by the EU through FRONTEX covers only initial processing and does not impact on the most critical fundamental rights concern – the inhuman conditions in which persons are currently being held, because the reception of persons crossing the borders irregularly is seen as falling outside the mandate of FRONTEX.

Greece, as an EU Member State, has an obligation to respect the EU Charter of Fundamental Rights. In order to ensure that fundamental rights are not violated and given the apparent inability of Greek authorities to address the situation effectively (already in 1999 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment raised concerns with regards to the detention facility in Feres),⁷ there is an urgent need to develop alternative solutions. Such solutions shall ensure the protection of fundamental rights and provide humane and appropriate living conditions in reception and detention centres, as well as adequately responding to the needs of particularly vulnerable groups, such as families, pregnant women and unaccompanied minors. It is evident that Greek authorities urgently need operational practical support, particularly in coordinating action on the ground and in effectively absorbing EU funding.

⁷ See 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 26 October to 2 November 1999, paragraph 31. See also 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 27 August to 9 September 2005, paragraph 27 (in particular last sentence).

Background to this report

Concerned by relevant reports of the European Commission, FRONTEX, the Council of Europe, international organisations and NGOs on the fundamental rights situation in the Evros border region, the FRA with the consensus of its Executive Board in January 2011 decided to investigate the situation in depth. FRA's visit on site aimed to understand the obstacles and difficulties in responding immediately to the humanitarian emergency and to provide evidence-based advice to the relevant authorities to fully respect fundamental rights.

This report is based on data collected directly by FRA staff through interview-based fieldwork research with key actors, including all relevant public authorities, and through observation of the actual conditions. In addition, secondary data were collected and analysed.

Semi-structured personal interviews with representatives of competent national, regional and local authorities, the Greek National Commission for Human Rights, the Greek Ombudsman, the Hellenic Centre for Disease Control and Prevention (KEELPNO), FRONTEX, UNHCR, as well as key NGOs, such as the Greek Refugee Council, Arsis and Praksis, were carried out by two senior FRA staff members.⁸ The interviews were complemented by desk review of existing material as well as on-site visits to selected facilities, including detention centres in the Evros region. The FRA National Focal Point of its racism and xenophobia network, RAXEN, provided logistical support and carried out case studies which illustrate the issues covered in this report.

The Greek authorities, FRONTEX and all other actors involved provided the FRA with all relevant data and information. In particular, the Aliens Division of the Hellenic Police granted the FRA unimpeded access to all facilities and was completely transparent, greatly facilitating its work. The FRA would also like to thank the Deputy Minister of Labour and Social Security and the General Secretary of Migration Policy in the Ministry of Interior for their key input.

The situation in Greece provides an opportunity to examine how EU standards operate under stress. By documenting the situation in Greece, this report intends to illustrate the challenges in applying EU policies in the field of immigration, asylum and return. In this sense, while the current report focuses on Greece, it addresses an issue of EU relevance and importance.

The report's findings shall primarily serve to identify and implement immediate solutions to the plight of the thousands who cross the border and are apprehended and detained. This report may serve, more generally, to provide evidence for the development of effective policies at EU and national level for similar situations that may occur in future.

⁸ One staff member is a senior legal expert on asylum and migration issues and one staff member is a senior social scientist, expert on discrimination and integration issues.

1. Migration trends at the southern EU borders

In its 2010 World Migration Report, the International Organisation for Migration (IOM)⁹ highlighted the global mismatch between labour supply and demand as one of the key reasons for irregular migration. The report notes the absence of adequate legal channels for migration especially for labour migration of both high and low skilled persons. As more people are moving to find work than the possibilities offered by labour mobility agreements, a number of them resort to crossing borders without authorisation.

Another category of persons crossing borders irregularly concerns those fleeing persecution who face difficulties in obtaining travel documents from their national authorities, either because they would need to approach the very same authority which is responsible for their persecution or because events force them to leave the country at short notice. In addition, lengthy procedures or bureaucratic obstacles often make it impossible for asylum seekers to obtain legal permission to enter the European Union. They therefore often move along the same routes as migrants, using the same transport and the services of the same smugglers.¹⁰ This has been particularly the case at the EU's southern borders and Greece is no exception to it.

Persons entering Greece irregularly may belong to several different categories: arrivals include persons who are seeking international protection, unaccompanied and separated children, as well as irregular economic migrants. Different legal regimes apply to these categories which impact on the way they must be treated at borders. While economic migrants can be returned, persons seeking international protection have to be referred to domestic asylum procedures. Unaccompanied and separated children, in turn, require special protection measures. These different categories must be identified upon entry to avoid undifferentiated treatment which would violate basic fundamental rights enshrined in the EU's Charter of Fundamental Rights, and other human rights instruments, such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child, etc.

Over the past five years, migration routes at the southern European border underwent an important shift. In 2006, the Spanish towns of Ceuta and Melilla, the Canary Islands, Sicily and the island of Lampedusa, as well as the Greek-Turkish sea border were particularly affected by arrivals.¹¹ Primarily as a result of closer cooperation between Spain and transit countries in West Africa, detections at the sea border of Spain decreased by 70% in 2007.¹² Irregular movements shifted to the Italian and the Greek sea borders, a trend which continued in 2008.¹³ Following the return of almost 1,000 persons to Libya by the Italian authorities in summer 2009, arrivals in

9 IOM, *World Migration Report 2010: The Future of Migration – Building Capacities for Change*, 2010, p. 29, available at: http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf.

10 *Ibid.*, p. 41.

11 FRONTEX, *Annual Report 2006*, p. 7, available at: http://www.frontex.europa.eu/gfx/frontex/files/justyna/annual_report_2006%5B1%5D.pdf.

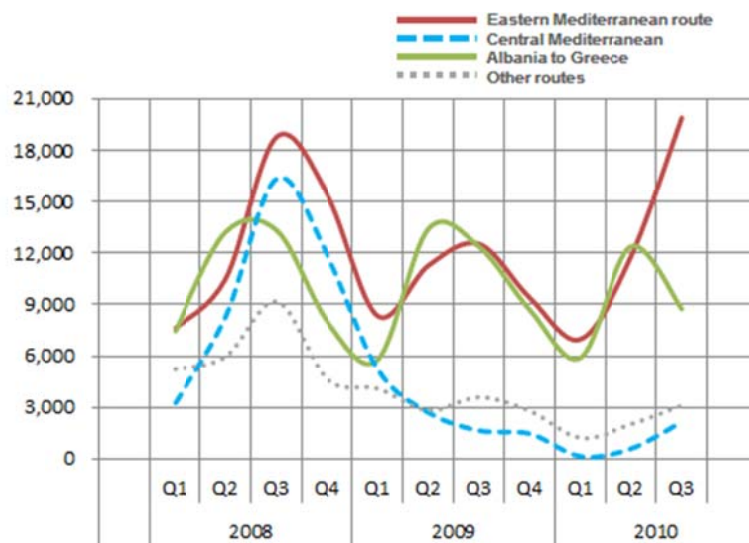
12 FRONTEX, *General Report 2007*, p. 14, available at http://www.frontex.europa.eu/gfx/frontex/files/justyna/frontex_general_report_2007_final.pdf.

13 FRONTEX, *General Report 2008*, p. 12, available at http://www.frontex.europa.eu/gfx/frontex/files/justyna/frontex_general_report_2008.pdf.

Italy and Malta almost stopped. Italy reported a 96% drop in arrivals in the first three months of 2010 compared with 2009. In 2009, the number of detections of irregular border crossings in Greece accounted for 75% of the EU total.¹⁴

At the end of 2010, Greece reported around 90% of all detections of irregular crossings at external EU land, sea and air borders,¹⁵ although detections fell since the deployment of the RABIT teams by FRONTEX.¹⁶ This development is the result of the accelerating shift in migration routes from the central to the eastern Mediterranean.

Figure 1: Number of detections between border crossing points, by major migration route, since 2008



Source: FRONTEX, 2010

A general shift from sea to land borders can also be observed. In the third quarter of 2010, about 29,000 detections of irregular border crossings were reported at the external land border of the EU, which constitutes the highest number of detections at the land border since early 2008 when FRONTEX started collecting data. Of these detections, 63% were reported at the Greek external land border with Turkey.¹⁷ Between the second and third quarter of 2010, migration movements have doubled at the Greek-Turkish land border.

Leaving aside the migration from Albania, for the overwhelming majority of arrivals Greece is not the final destination. Many try to reach other EU Member States, where family members, friends or people they know can support them. Some persons plan however to settle in Greece, given that regular migration channels catering for the formal labour market are not sufficient to

14 FRONTEX, *General Report 2009*, p. 11, available at:

http://www.frontex.europa.eu/gfx/frontex/files/general_report/2009/gen_rep_2009_en.pdf.

15 FRONTEX, *Current migratory situation in Greece* (update 29 November 2010), p. 1, available at:

http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvZW4vZGVmYXVsdF9tdWx0aWxpc3RhX3BsaWtvdvdy8xMzY/situation_of_irregular_migration_in_greece_29_11_2010.pdf.

16 See FRONTEX News Release, 12 January 2011 at http://www.frontex.europa.eu/rabit_2010/news_releases/.

17 FRONTEX, *FRAN Quartely*, Issue 3, July-September 2010, p. 10, available at: www.frontex.europa.eu/situation_at_the_external_border/art22.html.

cater for existing needs, particularly in regard to domestic care work for children and older persons. It is, however, difficult to estimate the number of those who seek work opportunities in the informal Greek labour market.

2. Migration management in Greece

Fragmentation of responsibilities

At a central level, responsibility for the management of migration and asylum is fragmented. Four Ministries play a central role: the Ministry of Citizen Protection is responsible for border control and surveillance, asylum, and returns, including the running of screening and removal centres. The formulation of migration policy and the issuance of residence permits fall under the competence of the Ministry of Interior, Decentralisation and E-government. The Ministry of Health and Social Solidarity is in charge of reception facilities for asylum seekers, whereas the Ministry of Labour and Social Protection has been assigned responsibility for coordinating the government actions relating to migration.

The Greek Action Plan

An Action Plan on Migration Management was developed by the Greek authorities in 2010. The process to develop the plan was participatory involving all main actors, including civil society representatives. The Action Plan provides a comprehensive and well-thought structure for addressing the gaps in the Greek system for managing asylum and migration.

Substantial efforts have been made towards the implementation of the Action Plan. Two important steps were taken at a legislative level setting the basis for the implementation of the Action Plan. First, in November 2010 a Presidential Decree was adopted introducing important changes to the asylum procedure for a transitional period.¹⁸ The Presidential Decree provides for a number of procedural safeguards and introduces appeals boards to review the decisions made by the administration. It also assigns an important role to UNHCR.

Secondly, a new law was adopted in January 2011¹⁹ establishing an asylum service as well as a first reception service and transposing certain aspects of the Return Directive. It establishes an Asylum Service as well as a First Reception Service as separate structures within the Ministry of Citizen Protection. The law provides for the creation of screening centres throughout the country, where persons entering the country in an irregular manner will be channelled to the appropriate procedure. The screening centres shall also identify persons with specific needs and refer these to the competent bodies for individual follow up. According to the law irregular migrants will stay in the screening centres for 15 days (Article 11) which can exceptionally be extended for an additional period of 10 days. After that, individuals should either be returned, referred to reception facilities for asylum seekers, structures for vulnerable groups or pre-removal detention facilities or otherwise be released.

¹⁸ PD 114/2010 of 22 November 2010.

¹⁹ The Law on the establishment of an Asylum Service and a First Reception Service, adaptation of the Greek legislation to the provisions of the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals and other provisions was adopted on 18 January and published on 26 January 2011. The Greek version of the law is available at: www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/l-YPASYL-PAP.pdf.

However, infrastructure and resources need to be found in order to set up the necessary reception and detention capacities. Moreover, the political will needs to be translated into implementing action. Also in the past, Article 81 of Law 3386/2005 provided for the creation of special places for pre-removal detention to be set up by decision taken by the Ministries of Interior, Economy and Finance, Health and Social Solidarity and Public Order. However, such a decision was never taken for the centres in Evros.

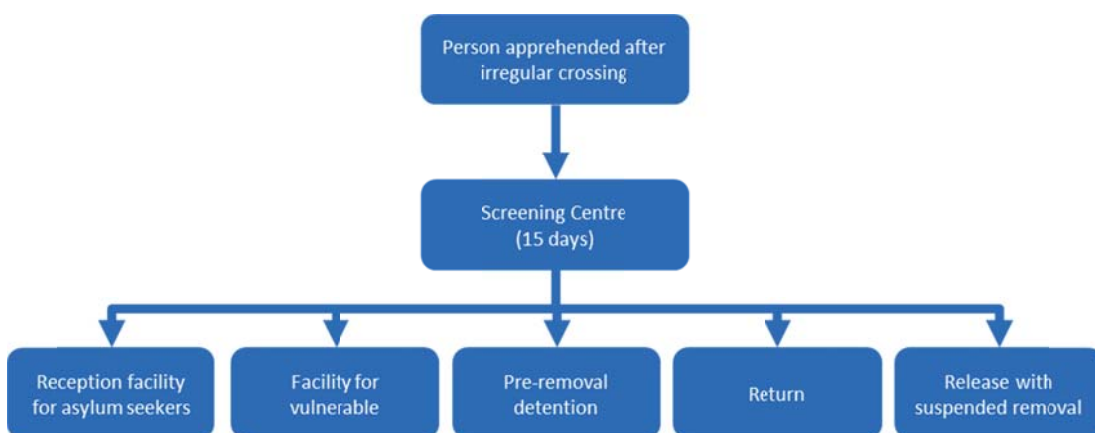
The 2011 law also provides a mechanism to deal with non-removable irregular migrants. Persons whose removal is postponed or suspended will be documented with a certificate of suspension of removal (Article 24). They may also be allowed employment under certain conditions (Article 37 (5)). If implemented accordingly,



Migrants sleeping on the ground in Athens

this mechanism will reduce the number of persons living in Athens, Patras and other major centres without papers and who are reliant on the informal economy for survival. By reducing the number of persons living in a grey zone, this measure can also contribute to ease tensions with local communities, which recently emerged in certain parts of the country.

Figure 2: Flow of new arrivals according to the 2011 law



Source: FRA, 2011

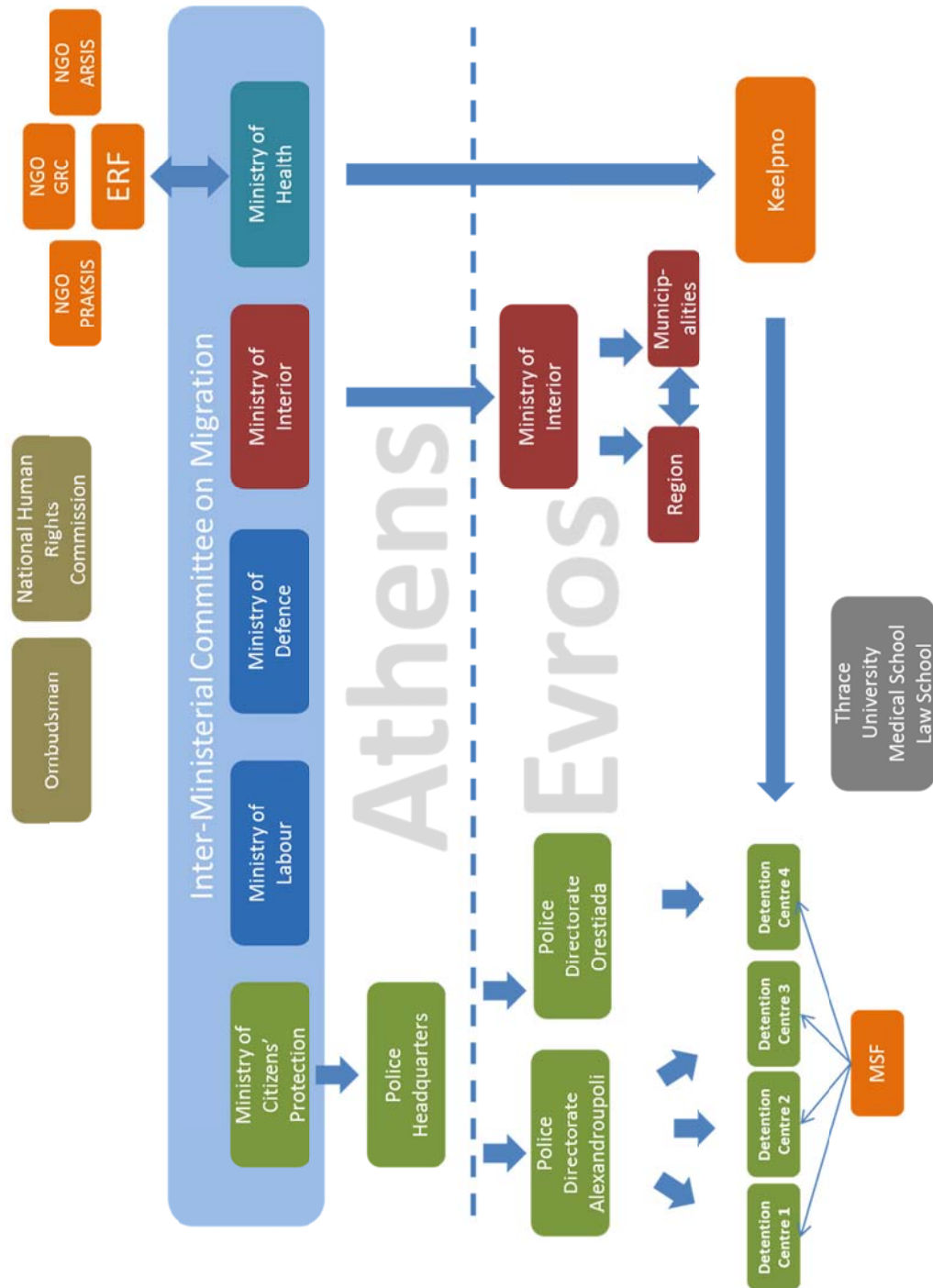
Coordination

Implementation of the Action Plan and the 2011 law requires concerted efforts by different governmental institutions. Four Presidential decrees are foreseen to implement the 2011 law which need consultation between various ministries – that is, Article 5 (3) on procedures for reception and processing of asylum seekers; Article 8 (7) on the functioning of first reception services; Article 5 (2) on the Central Service, the Regional Asylum Offices and their staff's duties and Article 8 (6) on the funding of first reception centres and detention centres. Moreover, the identification of infrastructure suitable as screening centres as well as adequate structures for the reception of asylum seekers will require common efforts as will the establishment of a functioning referral system for vulnerable groups.

Formally established coordination mechanisms have been non-functional.²⁰ The preparatory work on the Action Plan as well as on the screening centres occurred outside these formal mechanisms which are seen by some interlocutors to be in need of urgent reform. An informal task force has been recently established under the responsibility of the Deputy Minister of Labour in charge of coordinating action of all concerned. Hence, coordination between the different ministries takes place informally. While such informal coordination has been effective particularly between some ministries, this was felt to be primarily the result of good personal relationships, something which is not sustainable in the long run. The following graph intends to illustrate the various actors involved and how they are interlinked to each other. The arrows show lines of communication or contact.

²⁰ The inter-ministerial Migration Policy Monitoring Committee and its Special Committee established by Law 3386/2005 (Art. 3) has met only occasionally in the past.

Figure 3: Key actors



Note: ERF = European Refugee Fund

Source: FRA, 2011

3. The humanitarian crisis in Evros

This chapter summarises the situation as found by the FRA in Evros. It touches upon the processing of persons who crossed the border in an irregular manner, the conditions of detention and the identification of vulnerable groups and persons with specific needs.

FRA staff was allowed to visit the detention facilities. Living conditions there can only be described as inhuman. In a recent interview, the responsible Minister of Citizens' Protection stated that he feels personally ashamed for the conditions for the detention of irregular migrants, adding, however, that possibilities [for improvement] are limited.²¹ Despite such open and unreserved agreement that such conditions constitute a flagrant violation of fundamental rights, little or nothing is done to improve them.

On the basis of interviews with practically all relevant authorities and other stakeholders, it was established that there is a serious communication gap, on the one hand, between the centre (Athens) and the region (Evros), and, on the other hand, between different institutions in the Evros region. Communication and reporting lines are almost exclusively vertical within Ministries and the police. Efforts at horizontal coordination exist at the highest (Ministerial) level, but decisions cannot reach easily the operational level. Furthermore, horizontal communication between key institutions at local level in Evros, is weak and coordination at this level is non-existent.

Crucial potential resources available at local level are not used. Many buildings in the region appear empty, while detention facilities are overcrowded. Medical needs in the detention facilities are acute, but no support has been requested from the Thrace University Medical School and the University Hospital of Alexandroupoli with hundreds of highly qualified medical doctors and students, for example, to set up voluntary schemes to visit detention facilities and provide basic medical care. Municipalities with key resources know of the dire humanitarian situation of the new arriving migrants, but were never asked to contribute. There is a lack of legal information and guidance; the School of Law in Komotini, however, was never asked to contribute, for example, by setting up a legal clinic based on volunteer schemes.

21 Interview of 5 January 2011 to 'Epikaira', available (in Greek) at: www.epikaira.gr/epikairo.php?id=8276&category_id=0.
["Πράγματι, οι συνθήκες στις οποίες κρατούνται οι παράνομοι μετανάστες δεν μας τιμούν ως χώρα. Προσωπικά, αισθάνομαι ντροπή. Δυστυχώς, οι δυνατότητές μας είναι περιορισμένες."]



The Hospital in Alexandroupoli with empty spaces, which could be temporarily used for hosting vulnerable persons

There is an expectation that problems will be resolved through actions designed, coordinated and implemented from Athens; experience, however, shows that this is normally not the case. International experience has demonstrated, such as in the Presidium project implemented in Lampedusa by the Italian Interior Ministry with the support of the International Organization for Migration (IOM), Save the Children (Italy), the Red Cross (Italy) that the establishment of a specialised actor equipped with resources and the authority to co-ordinate actions at the local and operational level contributes to resolving such issues quickly and efficiently.

Access to the territory

The principle of non-refoulement²² prohibits the expulsion, deportation or return of persons to territories where they face threat of persecution, a real risk of torture, and arbitrary deprivation of the right to life or irreparable harm. This includes the prohibition to return a person to a transit country where the person is not protected from return to persecution or serious harm (chain refoulement). The principle of non-refoulement is also enshrined in the Schengen borders code.²³

22 Convention Relating to the Status of Refugees, 28 July 1951, Art. 33 and Protocol Relating to the Status of Refugees, 4 October 1967; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Art. 3.; UN Human Rights Committee, A.R.J. v. Australia, Communication No. 692/1996, UN doc. CCPR/C/60/D/692/1996, 11 Aug. 1997, para. 6.8 - 6.9 and UN Human Rights Committee, CCPR General Comment No. 31, 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', UN doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12. and CCPR General Comment No. 20, 'Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)', 10 March 1992, para. 9; European Convention of Human Rights, Art. 3, as interpreted by the European Court of Human Rights in, e.g., Soering v. United Kingdom (1989) 11 EHRR 439, Chahal v. UK (1996) 23 EHRR 413, Garabayev v. Russia (2007) ECHR 38411/02, and Soldatenko v. Ukraine (2008) ECHR 2440/07.

23 Schengen Borders Code, recital 20 and Art. 3(b).

Turkey maintains the geographical limitation to the 1951 Convention Relating to the Status of Refugees, which means that it does not consider as refugees persons coming from outside of Europe. While Turkey is working on the establishment of an asylum system, the country cannot be considered safe for persons seeking asylum. For individuals returned from Greece, UNHCR reported the risk of onward returns by Turkey to their country of origin without determining whether these persons are in need of international protection or not.²⁴

Respect for the principle of non-refoulement requires that before returning a person to the country from which he/she has crossed the border in an irregular manner, an individual assessment is made in order to determine if the person seeks or may be in need of international protection or if there are other bars to return. Once a person has crossed the border, he/she cannot be pushed back informally to the other side.

Information received from former army conscripts deployed at the border indicated that in the past years informal push backs took place both at the land border as well as at the Evros river. This is confirmed by a number of reports.²⁵ To the knowledge of the FRA, there are no clear instructions or rules of engagement within the Hellenic police in dealing with migrants who have just crossed the border. This may be one of the reasons for past push backs.

The FRA has reasons to believe that with the deployment of the RABIT operation, the risk of informal push backs of third-country nationals to Turkey has decreased. As explained to the FRA by patrolling officers, the current *modus operandi* at the border is to apprehend and bring to the police station every single individual who has crossed into Greek territory. In the past months, FRONTEX has reacted firmly to individual instances reported by deployed RABIT officers, whereby the Greek police allegedly returned migrants forcibly back to Turkish territory.²⁶

The FRA welcomes considerations by FRONTEX to annex to the Operational Plan, which regulates the follow up to the RABIT operation, clear guidelines in order to prevent informal push-backs over the border for persons already on Greek soil. Their inclusion in an operational plan would also have a wider effect as it would contribute to foster a common understanding of existing fundamental rights obligations among border guard officers in the European Union.

While the presence of border police officers from other countries may in itself discourage the restoration of previous patterns of informal push backs, this is not sufficient to guarantee respect of fundamental rights. There is a need for the Hellenic Police to develop specific rules of engagement as soon as possible clearly prohibiting any informal push back at the border and defining the measures to be taken when persons are already irregularly on Greek soil.

24 UNHCR, Asylum Situation in Greece Including for Dublin II transferees, 31 January 2011, page 2, forthcoming. See also ECtHR, *M.S.S. v. Belgium and Greece*, paras. 192, 334.

25 UNHCR, Observations on Greece as a country of asylum, December 2009, p. 4, available at <http://www.unhcr.org/refworld/pdfid/4b4b3fc82.pdf>; 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, available at <http://www.hrw.org/en/reports/2008/11/26/stuck-revolving-door-0>; Migreurop, *European borders: Controls, detention and deportations, 2009/2010 report*, available at http://www.migreurop.org/IMG/pdf/rapport-migreurop-2010-en_-_2-121110.pdf, p. 101.

26 See Spiegel Online, 11 December 2010: *Grenzpolizisten jagen Flüchtlinge in Minenfeld*, available at <http://www.spiegel.de/politik/ausland/0,1518,734123,00.html>.

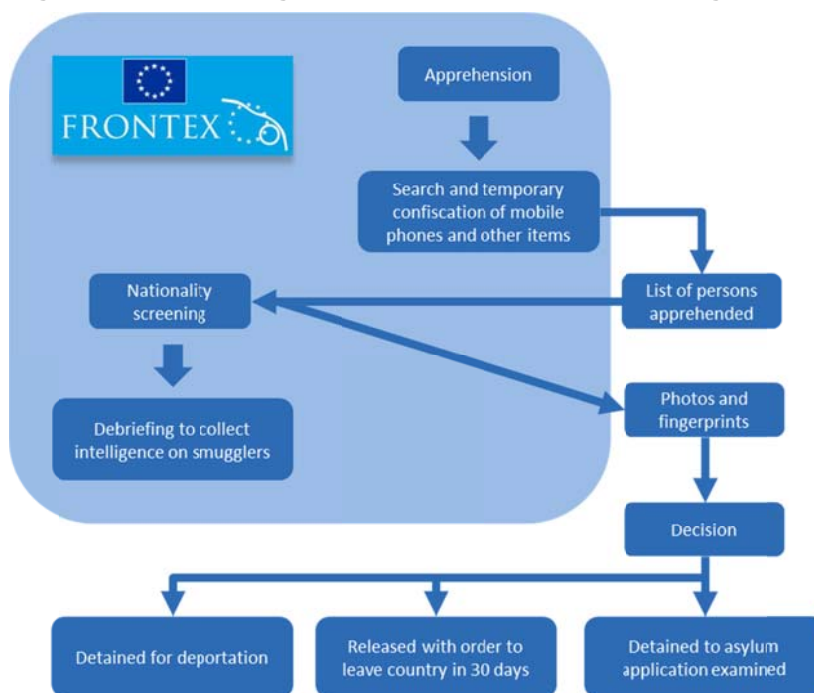
Processing of irregular migrants

From a fundamental rights perspective, a central goal of all processing arrangements for arriving persons is to ensure that no one is returned directly or indirectly to territories where they face a threat of persecution, a real risk of torture, arbitrary deprivation of the right to life or irreparable harm.²⁷

Persons apprehended after crossing the border are brought to the competent police station where they are interviewed and processed on the basis of Law 3386/2005 on the entry residence and social integration of third country nationals.²⁸

The process includes essentially search and temporary confiscation of selected personal items (e.g. mobile phones), a brief interview by the Hellenic police, a nationality screening, taking photos and fingerprints²⁹, and sending the (paper) file to the Police Directorate to prepare a detention and/or deportation decision.

Figure 4: Processing persons apprehended crossing the border irregularly



Source: FRA, 2011

27 UNHCR Protection Policy Paper “Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing”, available at <http://www.unhcr.org/refworld/category,POLICY,,,4cd12d3a2,0.html>.

28 Codification of legislation on the entry, residence and social integration of third-country nationals on Greek territory, Law 3386/2005 (as amended).

29 A procedure observed and timed by the FRA during its visit. It was carried out by police officers manually – no electronic scan of fingerprints is available – and lasted approximately 20’ for two persons processed simultaneously. The reports are also hand written and need to be subsequently typed to a PC by police officers, as no civilian administrative staff is available. Evidently, this does not indicate an optimal use of the scarce police human resources.

During this time these persons are held on the basis of Article 76 (3) of Law 3386/2005. This provision allows for temporary detention up to three days if, on the basis of the general circumstances, there is a risk of absconding or if the person constitutes a danger for public order or if he/she avoids or obstructs the procedure for expulsion or return. After the three days deadline, detention can be extended, if a decision of deportation is issued. These provisions have not changed with the recent Law 3907/2011. Hence, the Hellenic police has a certain degree of discretion in deciding whether to detain a person crossing the border irregularly. In practice, however, except for cases requiring immediate hospitalisation, everyone is detained temporarily for the initial period required for identification and processing in one of the detention centres, including persons belonging to vulnerable groups, such as pregnant women, babies and unaccompanied minors.

The processing of irregular migrants is primarily carried out by the Hellenic police, except for the nationality screening which is done jointly by FRONTEX and Hellenic police teams. The screening by the joint teams is the only extensive interview carried out with an irregular migrant at the border, unless he/she is interviewed by FRONTEX to obtain information about patterns of organised crime (debriefing interview).

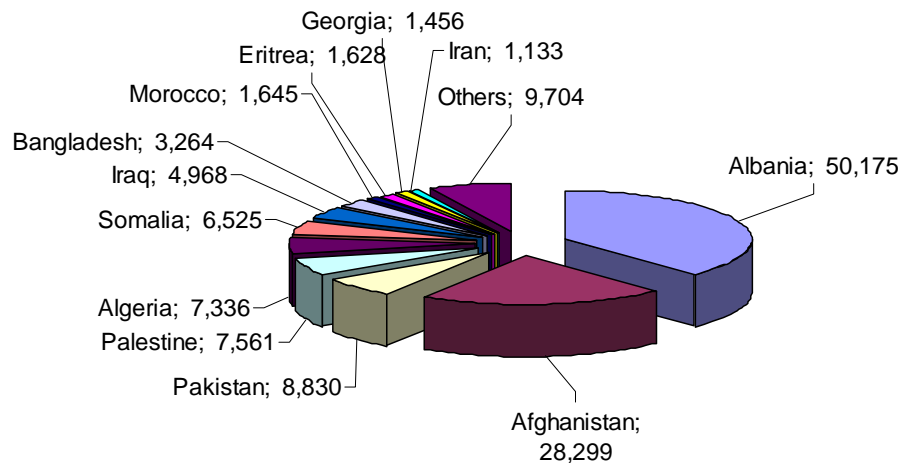
In the absence of an interview focusing on reasons of flight it is primarily during the screening or debriefing interviews with FRONTEX that a migrant may raise international protection considerations as well as any other specific needs. If such considerations and needs are mentioned, the FRA was informed that FRONTEX officers would report this to the Hellenic police for follow up. However, the FRA noted that the limited human resources, the absence of interpreters within the Hellenic police and its extremely heavy workload, constitute serious obstacles to undertake individual follow up measures. While the FRA was informed that they could and do exceptionally ask FRONTEX to use their interpreters, this is clearly not a sustainable solution.

The lack of interpreters and, more importantly, the absence of specialised NGOs providing independent social and legal counselling frustrate the limited efforts made to provide information to the migrants about their legal status, the reasons for detention and the possibility to request asylum. When speaking to the migrants held in the facilities, the FRA was confronted with a generalised lack of understanding about why they were detained and for how long they would remain there. This resulted in heightened stress and could contribute to the frequent violent acts within the facilities that were reported to FRA.

Such lack of information, combined with the absence of independent legal advice also explains why individuals follow alleged instructions obtained by smugglers not to apply for asylum at the border. In addition, most interlocutors stressed that those who seek asylum are likely to remain in the border detention facilities for a much longer period of time, as the police waits for a decision by the refugee commission before ordering their release. In one case, the additional burden that asylum seekers create on the police was also stressed, as they need to be escorted to the police directorate for asylum interviews, which takes away resources from other tasks. These reasons taken together explain why the number of asylum seekers at the border remains low, in spite of a considerable number of persons coming from refugee-producing countries,

such as Afghanistan, Somalia or Iraq: Figure 4 shows that in 2010, over 28,000 Afghans, 7,500 Palestinians, 6,500 Somalis and nearly 5,000 Iraqis were apprehended after having entered Greece in an irregular manner, many of whom at the border in Evros. Some try to lodge an asylum application after their release from detention and arrival in Athens, which creates additional resource problems to the Aliens Directorate in Athens.

Figure 5: Number of apprehensions in Greece, by nationality, 2010



Source: Hellenic Ministry of Citizen Protection, 2010

The nationality screening carried out by joint FRONTEX and Hellenic police teams has decreased the number of migrants registered under the wrong nationality. Since the deployment of screeners by FRONTEX under the Attica³⁰ project the number of persons registered, for example, as Palestinians decreased substantially, as many of them were identified as coming from North African countries.

The FRA is of the view that a proper identification of nationality is helpful, both for subsequent asylum procedures as well as return procedures, including avoiding the deprivation of liberty of individuals when there are no tangible prospects for removal.³¹ However, given its implications for the further treatment of a migrant, the evidence used to determine the nationality should be recorded, so as to allow the person to rebut it, when challenging the detention or deportation decision. The FRA welcomes that a standardised form has been introduced to document this

³⁰ See

http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvZW4vZGVmYXVsdF9tdWx0aWxpc3RhX3BsaWtvdvdy8xMzY/operational_activity_in_greece.doc.

³¹ See Return Directive Art. 15 (4) – 15 (6). Art. 15 (4) provides that “When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.” In the Grand Chamber case *Said Shamilovich Kadzoev v. Direktsia ‘Migratsia’ pri Ministerstvo na vutreshnite raboti* of 30 November 2009, the CJEU clarified that the concept of ‘reasonable prospect of removal’ “must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15 (5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods,” (para. 72 (5)).

process, which is signed by the Greek officer as well as the migrant (but not as yet by the interpreter, whose language expertise is used to assist in the determination of nationality).

The determination of nationality also assists the Hellenic Police in enforcing the readmission agreement with Turkey.³² While overall, readmission to Turkey was defined as difficult, some 500 persons, mainly from countries neighbouring Turkey were accepted back in 2010. Readmitted persons also include nationals from countries such as Iran or Iraq, where protection needs are not unlikely to exist.³³ Given the obstacles to access asylum procedures in the Evros region, there is a serious risk that persons returned under the readmission agreement with Turkey might indeed be in need of international protection. While the Greek authorities are responsible for the readmission process, the fact that no system exists to determine if a person proposed for readmission is in need of international protection, also puts the European Union at a grave risk: EU assistance is provided to determine nationality and hence to facilitate readmission without having a parallel assistance provided to identify whether persons to be readmitted are in need of international protection.

In the short term and until the screening centres are established, the Greek authorities should establish an *ex officio* examination, based on a thorough interview, to establish whether an individual, whose readmission is requested from the Turkish authorities, is in need of international protection. The Greek authorities could also consider assistance by UNHCR and the European Asylum Support Office (EASO) for this purpose.

³² Protocol of readmission between Greece and Turkey to combat irregular migration, adopted on 8 November 2001 and entered into force in April 2002.

³³ According to information received from the Ministry of Citizen Protection, out of the 501 persons readmitted by Turkey in 2010, there were 334 Iraqi nationals, 70 Syrians, 37 Iranians and 35 Georgians.

Detention conditions

The most problematic fundamental rights concern at the border relates to the conditions of detention in the facilities in which persons apprehended crossing the border irregularly are held for periods ranging from a few days to several months. The absence of alternatives to detention and the related practice to detain everybody who has crossed the border in an irregular manner, including pregnant women and families with small children, further exacerbates the situation.

The majority of migrants are held in four facilities. In Northern Evros, irregular migrants are usually held in the detention centre for foreigners in Fylakio established by the Evros Prefecture. No similar facility exists in Southern Evros, where irregular migrants are held in police detention facilities in Feres, Tycherio and Soufli, which are currently inadequate to host individuals for periods longer than a few hours. During the FRA visit, irregular migrants were also held overnight at a facility in Poros which was provided by the Army to the police commander in Feres. This facility as well as other police stations are used for initial detention and screening of migrants.

The vast majority of persons held in the four detention facilities in the Evros region are held longer than the three day temporary detention, but few are held the full six months permitted by law to effect a deportation. Most are not deported.

Figure 6: Evros municipalities with detention facilities for irregular migrants



Source: FRA, 2011

The dire conditions in the detention facilities have been described by monitoring bodies and NGOs, including the CPT, the Council of Europe Commissioner for Human Rights, the UN Special Rapporteur on Torture, UNHCR, as well as by Amnesty International and Pro Asyl. As

summarised by the European Court of Human Rights, these reports “describe a similar situation to varying degrees of gravity: overcrowding, dirt, lack of space, lack of ventilation, little or no possibility of taking a walk, no place to relax, insufficient mattresses, dirty mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care [...] [as well as complaints] of insults, particularly racist insults, proffered by staff and the use of physical violence by guards.”³⁴

The table below provides a snapshot of the situation found by the FRA in these facilities, either based on direct on-site observations by the FRA during the mission or obtained from interviews and further research. All facilities are seriously overcrowded, making it difficult to ensure separation by sex as well as separation of children from unrelated adults. Nor is it possible to separate persons kept in temporary detention, from those who have already obtained a removal decision and are held beyond three days.

Table 1: Overview of detention facilities in Evros region

Facility	Capacity (persons)	Detained during FRA visit (persons)	No of cells	Space in m ²	Separation of sexes (except families)	Separation of unaccompanied minors
Feres	30	140 - 150	3	One cell of 48m ² , one of 30m ² and one of approx. 40m ²	yes	no
Tychero	45	140 - 150	2	Two cells of 35m ² (CPT, 2005)	no	no
Soufli	38	140 - 150	1	One cell, approx. 110m ²	during FRA visit only men were held	no
Fylakio	374	Approx. 450	7	Women cell approx. 40 m ² and other 6 cells approx. 100 m ² each	no	no

Source: FRA

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends 4m² of space per detainee in multi-occupancy accommodation.³⁵

The Hellenic Federation of Border Guards on 22 January 2011 protested on its website³⁶ about the conditions of detention: “The conditions of detention, but also the conditions of work in all reception and detention centres are unacceptable. The detention facilities at the border region are not suitable for long term stay in detention. The conditions are dangerous both for the irregular migrants detained, as well as for the staff, who stay there for several months. An immediate solution must be found, so that a large number of border guards currently engaged

³⁴ ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011, para. 162.

³⁵ CPT, 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 17 to 29 September 2009, 2010, p. 38.

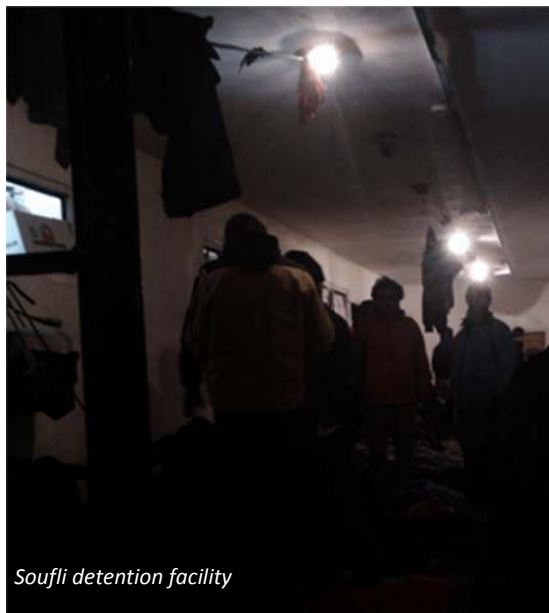
³⁶ Available (in Greek) at: www.posyfy.gr.

in detention duties can return to border patrol [...] sanitary conditions and health care are insufficient and contagious diseases may spread to officers and their families. This situation must be addressed immediately!”

On 11 December 2010 the local Police Officers Union of the Rodopi region near Evros, sent a formal letter to the Hellenic Police hierarchy and the Minister outlining 13 specific proposals or the improvement of the detention facilities in the town of Venna: “[...] Following a Ministerial decision of 2001 irregular immigrants are temporarily detained in old warehouses of the railway station. These facilities have not as yet been converted for human habitation according to the legal requirements, and consequently are inappropriate and dangerous for such use.”³⁷

Description of conditions during the visit to the centre in Soufli

The situation in Soufli³⁸ can be taken to illustrate how extreme overcrowding can be: on the day of the FRA visit on 29 January 2011, 144 persons were held in one room measuring about 110m².³⁹



Soufli detention facility

The FRA staff were allowed to go inside the cells. Persons were lying on the beds as well as on the floor tightly packed one next to each other. The FRA staff had to climb over the bodies to get in and move around. One person slept in a non-functioning shower. Three other individuals slept in a dark hole above the toilet/shower.

The air was filthy. The windows were covered with cardboard and rubbish. A large bin was full with rotting garbage but had to remain in the cell for another two days, as it is removed only every third day. The toilet door was out of its hinges leaning on the wall and had to be lifted in order to close. The shower had only cold water with freezing temperature outside

at around 0° Celsius. Some persons were evidently sick. An asylum seeker claimed that he was kept there since 12 August 2010, which means more than six months.

37 Formal registered letter, available (in Greek) at: www.eayn-rodopis.gr/index.php?option=com_content&view=article&id=112:2010-12-11-16-49-31&catid=34:news&Itemid=29.

38 See also ECtHR, *S.D. v. Greece*: in its judgment, the Court held unanimously that there had been a violation of Art. 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, because of the conditions in which the applicant had been detained in holding centres for foreigners; and a violation of Art. 5 (1) and 5 (4) (right to liberty and security), because of the unlawfulness of his detention and the fact that he had been unable under Greek law to challenge its lawfulness, available at: <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=66126107&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=5409&highlight=>.

39 Regarding the size of the cells see also the 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 27 August to 9 September 2005, available at: www.cpt.coe.int/documents/grc/2006-41-inf-eng.htm.

Attitudes

Police commanders in the facilities visited seemed to be overwhelmed by the situation and felt abandoned. Police officers with whom the FRA spoke, stressed that the police should only be responsible for guarding the facilities. The management and running of the facilities should be done by other staff, such as social workers, who are appropriately trained for this work.

Indeed, the FRA staff noted overall a tense atmosphere between the police officers and the migrants. In Feres, for example, police officers guard the facility by walking on the roof and looking through the iron bars covering the small yard.

The police appeared particularly concerned about migrants absconding, as this would apparently be treated as an “escape of prisoners” and lead to serious disciplinary measures. As a result of this fear of disciplinary measures, the police is reluctant to take any risk, resulting in reducing access to fresh air or the yard. Fear of absconding appears excessive in light of the fact that a large number of migrants are released after a few days.

Police guard the facility from the outside and are reluctant to enter the cells. Food, for example, is either provided through the bars or a few migrants are allowed to exit the cells to bring the food inside. Distribution is organised by the detainees themselves. Police officers do not seem to be trained on how to interact with migrants and appeared fearful of infectious diseases, partly also because of a misperception of existing risks. Given the presence of KEELPNO⁴⁰ in the region, a training on infectious diseases as well as training on intercultural communication would be helpful in reducing such tensions.

Responsibility for the operation of detention centres

A second major difficulty that local police stations are facing is the absence of a dedicated budget for each centre managed by the local police commander to cover running costs, such as catering, cleaning, disinfecting blankets and mattresses or the provision of soap or sanitary items. Apparently, the absence of such a dedicated budget coupled with a slow application process for funding running costs and an unclear division of responsibility between the various authorities on who should cover which costs results in acute problems, particularly when such costs escalate due to an increase in the number of detainees.

None of the official respondents provided the FRA with a clear answer regarding the authority that is responsible for the detention centres. However, this seems to have been a complex issue already in 2005, when the then Deputy Minister stated in a reply to a Parliamentary question: “[...] According to the plans developed for addressing irregular immigration the Interior Ministry is responsible for the oversight of the prefectural local authorities for the establishment and operation of Temporary Residential Centres and for providing the necessary funds for the provision of accommodation, food and medical care for the irregular immigrants. Our services are responsible for guarding the Centres, transporting detainees and generally supporting plans in this area. Also, according to Article 48 of Law 2910/2001, the responsibility for the

40 Centre for Disease Control and Prevention (www.keel.org.gr, website in Greek) has a small task force in Evros.

establishment of detention space for irregular immigrants lies with the services of the Interior Ministry. Specifically, aliens awaiting deportation are detained by the local police authorities and until deportation procedures are concluded may remain in special facilities, which are established by decision of the General Secretary of the Region and operate under the responsibility of the Region. This decision also establishes the specifications and terms for the operation of these facilities, while the Hellenic police has only the responsibility for guarding the facilities.”⁴¹

Article 81 of Law 3386/2005 foresees that special premises to detain persons pending removal should be established by a joint decision of five ministries laying down the standards and terms of operation of such centres. However, no such decision was ever taken for the centres in Evros.

It seems that arrangements were made in the past at a local level between the police directorates and the Prefecture, whereby the latter undertook to pay the bills for certain costs, such as catering and cleaning. According to a press statement of the Prefect the cost for catering was €250.000 monthly.⁴² Such arrangements have been overtaken by the re-organisation of local administrations which abolished the Prefectures and moved their tasks either to the municipalities or the regions.⁴³ Although the Prefectures already stopped to function on 1 January 2011 with the entry into force of the Kallikratis reform, at the end of January 2011, there was no clarity as to who would be responsible at least for those costs which were in the past covered by the Prefecture. While the Head of the Thrace and Macedonia region (who is responsible for Evros) was aware of the issue, this had not yet been discussed with any of the three municipalities that the FRA visited. Two out of three municipalities were even not aware of the new law and of possible new tasks that could derive from it for them.

With the 2011 law, the use of these facilities is assigned to the Ministry of Citizen Protection which can regulate them through a Ministerial decision (Article 15). In addition, the budget line used by the Prefectures to cover such costs is being moved from the Ministry of Interior to the Ministry of Citizen Protection. It remains, however, to be seen whether the new law can resolve the current stalemate as to who should pay for what.

As a result, essentially only the catering contract continued to be implemented without major interferences, as the catering company agreed to continue to deliver the food even if it remained unclear who would cover the invoices. Cleaning services have been substantially reduced and other services stopped. As an illustration, in Fylakio, the police had an arrangement with a local laundry service to clean the blankets. The bill was paid by the Prefecture. As the latter is not existent anymore, the company does not anymore accept to clean and disinfect the blankets as they fear that nobody would cover the costs. Blankets remain dirty. The interruption of such services further contributes to a deterioration of the conditions in the detention facility, creating tensions.

41 Deputy Minister response to parliamentary question (7017/4/4975/7-4-05), available (in Greek) at:

www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?sessionRecord=72a24034-8009-4d51-bea7-8811b08bba69.

42 See (in Greek): http://news.kathimerini.gr/4dcgi/_w_articles_ell_1_15/10/2010_418795.

43 The so-called 'Kallikratis reform' was adopted on 2 June 2010. The Greek version of the law is available at: www.ypes.gr/UserFiles/f0ff9297-f516-40ff-a70e-eca84e2ec9b9/KALLIKRATIS12.pdf.

A third difficulty identified by the FRA relates to repair works. The police does not have a budget line for repair works that they can use without requesting authorisation. Whenever repair works are required, the police station has to prepare a report which is sent to the competent Police Directorate which forwards it to the Ministry of Citizen Protection for approval. The approval has to be endorsed by the Ministry of Finance before it is sent back to the Police Directorate and from there to the requesting police station. As an illustration, the FRA was informed that a request for €1,500 to repair windows in one facility took two months to be approved. Urgent repair works (e.g. such as plumbing to repair sanitary facilities) are either advanced by police officers from their own pocket or covered exceptionally by MSF.

While in general terms everybody to whom the FRA spoke agreed that the conditions of detention in the Evros region were alarming, limited or no action has been taken to address the situation. Detention capacity in Evros has not been increased, in spite of many premises being empty or abandoned in the municipalities visited. Nor have containers temporarily been put up, such as for example in the basketball field next to Fylakio. Lack of funds and likely resistance by the municipalities to use infrastructures or ground which was not assigned to the police were mentioned as obstacles to increase detention capacity. Only in Feres did the police commander obtain the use of an army facility in Poros for initial processing of migrants. This arrangement which is based on good local cooperation seems to have been possible as it did not require additional funds.

Transfer of migrants from the Evros regions to reception centres for asylum seekers or other detention facilities in Greece also appeared difficult. Upon request by the FRA why persons in pre-removal detention could not be transferred to the islands, where currently arrivals are much lower, the Ministry of Citizen Protection informed that although space would be available in Samos and Chios, the staff running these facilities was paid by the Prefecture and their contracts have been terminated. The Ministry also raised the issue of transport costs, indicating that these could not be covered by the Return Fund.

Suffering could be reduced if arrangements for alternatives to temporary detention could be put in place for persons assessed to be at low risk of absconding. Such alternatives could include placement in open facilities run by NGOs, the Greek Red Cross or the local authorities, where migrants surrender their documents and mobile phones and remain at the disposal of the authorities until the initial processing under the aliens law is completed. As an illustration of the type of cases for whom such options should be considered, the FRA would like to mention a pregnant Afghan woman with a two-year old child detained with her husband in a ward in Fylakio together with around 70 other persons, primarily single males.

Identification of persons with specific needs

It is generally acknowledged that overall the process at the border is not suitable to identify persons with protection needs, nor persons with specific social or medical needs. The new law aims at addressing this gap by establishing screening centres where persons seeking international protection are separated from other migrants and which establishes a referral system to the competent bodies for persons belonging to vulnerable groups.

The 2011 law lists at Article 11 (2) seven categories of people who are defined as vulnerable. These include:

- a. unaccompanied minors;
- b. people with disabilities;
- c. elderly;
- d. women in pregnancy or postpartum;
- e. single parents with minor children;
- f. victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation;
- g. victims of trafficking.

The competent bodies to whom vulnerable individuals will be referred to will depend on the type of vulnerability and on whether the response required is medical, social or legal. For example, a victim of trafficking or of serious forms of sexual violence or exploitation will require a safe haven, medical and psycho-social support as well as legal support in case he/she wishes to obtain justice. By contrast, a single parent with minor children may require adequate housing and access to education or child care facilities. Different bodies at central, regional and municipality level are likely to be involved. Effective information-sharing and collaboration mechanisms will need to be set up in order to ensure a successful housing, medical and legal response.

An example on the need for coordination is access to anti-retroviral treatment (ATR) for HIV+ patients, which the University Hospital in Alexandroupoli highlighted as not being able to cover under their own funds. The doctors informed the FRA that in order for the Ministry of Health to be able to cover the costs for such treatment, migrants are required to provide a certification by their country of origin that such treatment is not available there. As hardly any migrant can provide such a certificate, such medical needs remain formally uncovered, although the hospital continues to provide treatment. At the same time, KEELPNO informed the FRA that they have lists of countries where such treatment is usually not accessible and that therefore persons originating from these countries can receive ATR from the Greek state.

In the discussions with the local municipalities, the latter confirmed to the FRA the existence of local structures for social care, indicating however that their resources are limited as they have to cater for a local population often composed of older persons who are themselves in need. Nevertheless, all three mayors met by the FRA indicated their willingness to consider opening up existing social services to migrants, provided additional funds would be allocated. One mayor

stressed, however, that any such support provided by the municipality should be of a temporary nature and that migrants should not be kept in the Evros region for prolonged periods of time.

Apart from informal meetings in Orestiada between the mayor and the police director, the FRA was informed that no meetings took place with the four mayors, covering the border region to Turkey, to discuss the role of the municipalities and to identify concrete resources that could be used to alleviate the suffering during the current crisis. In his discussion with FRA the newly elected Head of the Regional Administration (Perifereiarchis) promised to hold such a meeting very soon.

The current lack of coordination and cooperation between the various agencies and bodies is unlikely to be overcome, unless a specialised actor entrusted with coordination and the necessary authority is established. Within the Greek administration reporting lines are vertical and there is little experience in horizontal coordination at an operational level. The following case can serve as an illustration of the impact of such lack of coordination: KEELPNO identified a place in a centre for psychosocial counselling for a HIV+ migrant who was hospitalised in Evros. One day before the transfer was organised, the police handed out a deportation order to the migrant. Fearing of being deported, the person fled from the hospital.

Dealing with the deaths

Already in the late 1970s the first dead immigrants, mostly Turkish Kurds, were found in Evros. According to the Coroner of the Thrace region, several dozens of immigrants are found dead each year in or near the Evros river. The vast majority has not been identified. As mine fields have been cleared, hypothermia and drowning are the main causes of deaths.

When an immigrant's body is found the police are immediately notified. All crucial evidence is gathered and the scene is photographed. Subsequently the corpses are transferred to the mortuary of the General University Hospital of Alexandroupoli. There the Coroner of the Thrace region with the help of the police keeps a record of the personal data of the deceased (fingerprints, clothes, personal belongings of all sorts) and takes a DNA sample which is later on sent to the Criminology Laboratory of the General Police Directorate of Attica. If the corpse is identifiable, photographs are also taken and the police try to establish his identity.

The law provides for unidentified corpses to remain in the mortuary's freezers for three months. However, due to the lack of available freezers (only four with a maximum capacity of eight corpses), the coroner requests an order by the Public Prosecutor of Alexandroupoli for immediate burial. The coroner mentioned that without more freezers it is practically impossible to abide by the prescriptions of the law.

The bodies are placed in a body bag and handed over to the funeral undertaker. All unidentified deceased immigrants are considered to be Muslims for practical reasons. Each body bag bears the protocol number of the file of the deceased written with a permanent marker pen. This way each body can be linked to the DNA sample and the other personal data gathered during the autopsy.

In the past around 20 deceased immigrants were buried in the Muslim cemetery of Alexandroupoli, and others in Didimoticho and Agriani. The few who were identified as Pakistanis were buried by the Pakistani Community of Greece. As the number of deaths increased, the place in existing cemeteries was deemed as not sufficient. Around 2000, the Mufti and the local Muslim commission of the mosques searched for a suitable place to turn into a cemetery for the immigrants. A public site on a hill near the village of Sidiro was selected, where currently all non-identified immigrants are buried according to the Muslim ritual. The cemetery was fenced three or four years ago after concerns that wild animals could dig out the corpses.

The legal procedures for the establishment of a new cemetery were not followed, although this seems to be a general feature also when other cemeteries are created or old Greek cemeteries expanded.⁴⁴ The burial place of Sidiro is thus a *de facto* cemetery, according to Article 2 (3) of the above-mentioned Ministerial Decree (A5/1215/1978) and is managed by the Mufti himself. No administrative supervision or control of any kind is currently being exercised over the Mufti concerning the administration of the cemetery.

⁴⁴ The establishment of new cemeteries and the administration of the existing ones are governed by the Emergency Law 582/1968 and the Ministerial Decision A5/1215/19.4-10.5.1978 (Journal of Government B' 424) on the terms for the establishment of cemeteries. According to Art. 2 (1) of this Ministerial Decision, new cemeteries may only be established according to the procedures defined in Art. 1 and 2 of Emergency Law 582/1968.



Cemetery in Sidiro

The Mufti arranges for the digging up of the grave and the wrapping of the corpse in a cerecloth. The body bag is buried next to each corpse. According to the Mufti, each deceased is buried in a separate grave and all deceased immigrants have been buried there. However, the FRA counted only 48 graves in that cemetery.

The Mufti indicated that he keeps a plan of the cemetery where he marks each new grave and the protocol number of the body bag of the

deceased person. There are no signs on the graves, although reportedly metal signs were put in the past indicating the individual person's protocol number, but they have since disappeared.

The older graves in the northern part of the cemetery are not identifiable because the pile of dirt that marks each individual tomb has been levelled down and the entire place has run to weeds. The Mufti admits that it is impossible to identify these older graves. He indicated that there were cases of people looking for their deceased relatives and that there were problems with the exhumation.

Payment for the burial has been covered by the Evros Prefecture with funds from the Ministry of Interior. Since 1 January 2011 the Evros Region (which has replaced the Prefecture) has ceased all payments and sends no invoices to the Ministry of Interior. The Region considers that under Article 8 of Law 3907/2011, the Service of First Reception should be competent for all relevant payments. However, such Service has not been established yet and responsibilities to cover the costs still need to be clarified.

4. The mid-term: putting the Action Plan into practice

The following chapter focuses on selected aspects covered by the Greek Action Plan. In the FRA view, the Action Plan can raise considerable practical challenges during its implementation phase. Purpose of this chapter is to illustrate that it is not sufficient to have a perfect plan to address the current gaps. On the contrary, the plan constitutes only a starting point.

The first section provides an overview of European solidarity mechanisms highlighting some of the constraints in making effective use of EU funding. The second section will discuss the need for enhanced reception facilities for asylum seekers, whereas the third section focuses on the need for solutions for non-refugees. This report does not cover the establishment of fair and efficient asylum procedures, as considerable work has been done on this issue by UNHCR who has documented existing challenges.⁴⁵



Homeless irregular migrants and asylum seekers sleep on pavements in Athens city centre

45 UNHCR, *Observations on Greece as a country of asylum*, December 2009, available at: www.unhcr.org/refworld/pdfid/4b4b3fc82.pdf; UNHCR, *Reception – Recognition – Integration: Proposals from the UNHCR Office in Greece*, June 2010, available at: www.unhcr.gr/Press_Rel/2010/RRIProposals.htm; UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - *Universal Periodic Review: GREECE*, November 2010, available at: www.unhcr.org/refworld/pdfid/4cd8f2ec2.pdf; UNHCR, *UNHCR Information Note on National Practice in the Application of Art. 3 (2) of the Dublin II Regulation in particular in the context of intended transfers to Greece*, June 2010, available at: www.unhcr.gr/dt/dublinIIreg.pdf, updated version forthcoming; UNHCR, *Asylum Situation in Greece including for Dublin II transferees* (forthcoming).

European solidarity

The implementation of the Greek Action Plan would be impossible without financial support by the European Union. Indeed, Commissioner Malmström announced that the European Commission would provide support to Greece for this purpose.⁴⁶ Financial support would primarily be channelled through the EU funds described below and operational support provided through the EASO.

The need for EU solidarity mechanisms is closely linked with the idea of a common Schengen area. People entering at one border crossing point are free to move and circulate across all Schengen States without border controls. Thus, Member States situated at the external land and sea borders of the EU have to allocate much more resources to border management than others. Moreover, Member States situated on the main entry routes are also likely to face a higher burden on their asylum procedures, regardless whether they are the final destination country or not. In that sense, the difficulties observed in Greece are not just a Greek problem, but an issue for the European Union.

The Dublin II Regulation serves to determine which EU Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the EU Member States.⁴⁷ With some exceptions, applicants entering the EU in an irregular manner are to be examined by the country through which borders they have entered the EU. The regulation has thus far-reaching consequences for a country that has practically become the single most important entry point of irregular migratory flows into the EU. In 2010, Greece received 6,822 requests (in 2009, 9,506 requests) to take back asylum seekers who lodged an asylum application in other EU Member States. While actual transfers were substantially smaller (1,202 persons in 2009 and 949 persons in 2010), they continued until late 2010,⁴⁸ when the European Court of Human Rights called for a halt to transfers to Greece.⁴⁹ Transfers were reduced or suspended primarily as a result of national or supra-national court orders, rather than out of considerations of solidarity in light of the overburdened asylum system in Greece.

In order to alleviate the burden of some Member States, EU solidarity mechanisms were set up in the past. These can essentially be grouped into three categories: (i) financial solidarity; (ii)

46 See Joint statement by Mr Christos Papoutsis, Minister of Citizen Protection of Greece and Cecilia Malmström, European Commissioner in charge of Home Affairs: Greece and the Commission agree to enhance cooperation on reforming the Greek asylum system, 27 Sept. 2010 available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/450>.

47 Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing 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 (OJ 2003 L 50).

48 According to information received from the Ministry of Citizen Protection, 139 individuals were returned to Greece under the Dublin II Regulation from 1 September to 31 December 2010. Most were returned from Hungary (27), Norway (22), Austria (18), Germany (16), Denmark (12) and Switzerland (11) and France (10).

49 A number of letters were sent by the ECtHR to EU Member States indicating that the Court would grant interim measures to individuals being returned to Greece under the Dublin II Regulation. See, for example, the letter to Belgium mentioned in a press release on 20 October 2010 at www.melchiorwathelet.be/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=204&cntnt01dateformat=%25d%2F%25m%2F%25Y&cntnt01returnid=313&hl=fr_FR or the letter to the Netherlands on 30 September mentioned in www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2010/10/13/5671201-overdrachten-aan-griekenland-in-het-kader-van-de-dublin-verordening.html.

operational support through FRONTEX and, in future, the EASO; and (iii) voluntary relocation measures.

Financial solidarity

The so-called ‘framework programme on solidarity and management of migration flows’,⁵⁰ encompasses financial solidarity mechanisms in the form of four funds: the EU Refugee Fund (ERF), the EU External Borders Fund, the EU Return Fund and the EU Fund for the integration of third-country nationals. These Funds are important solidarity tools. Although it is too early to indicate the actual absorption rate of these Funds,⁵¹ they have not been utilised to their full potential, diluting also their impact on addressing the current fundamental rights gaps. As an illustration, Greece has experienced problems with the implementation of its 2007 and 2008 annual programmes under the External Borders Fund which had to be revised with budget reductions of some 30% and 40% respectively.

Table 2 External Borders Fund 2007-2008 (€)

	2007	2008
External Borders Fund (original allocation)	17,955,556	18,324,110
External Borders Fund (as revised- rounded)	12,320,436	10,762,342

Note: Amounts shown include 25% national contributions by Greece.

*Source: European Commission*⁵²

Particularly problematic has been the use of ERF funds. Although not as large as the Borders and the Return Fund, ERF is the main tool to fund civil society action in support of asylum seekers and refugees. The following amounts were allocated to Greece under the ERF in recent years:

Table 3: Overview of ERF funding for Greece, 2008-2011 (€)

	2008	2009	2010	2011
Total budget	4,798,540.47	10,525,670.77	18,570,946.55	6,723,025.69
EU contribution	3,771,280.36	8,269,487.88	14,632,783.63	5,100,191.96
Public allocation	1,027,260.11	2,256,182.89	3,938,162.92	1,622,833.73
Emergency measures	2,750,000.00	6,195,000.00	12,250,000.00	-

Source: Hellenic Ministry of Health and Social Solidarity

However, slow processing times have reduced the impact of these funds. Funds envisaged for 2009 were in fact only transferred to the beneficiaries at the end of 2010. The following example concerning a project submitted for funding by the NGO Praxis illustrates such extreme delays. It concerns the housing of 330 refugees in 13 apartments combined with the provision of

50 Communication of 6 April 2005 from the European Commission to the Council and the European Parliament establishing a framework programme on solidarity and the management of migration flows for the period 2007-2013, COM/2005/0123 final.

51 The final report on the implementation of the first annual programme (2007) were submitted to the Commission only very recently and is under examination, whereas the final reports for the 2008 annual programmes are only due by the end of March 2011.

52 Slightly different figures were provided to the FRA by the Ministry of Citizens Protection as concerns the revised budget.

employment support. The project was implemented in 2009. However, the decision to fund the proposal was only taken in August 2010 and the first part of the funds (80%) transferred in December 2010, the rest still being outstanding at the time of writing this report. Figure 7 provides an illustration of the timelines.

Figure 7: Timeline for disbursing 2009 ERF funds to NGO Praksis



Note: ERF = EU Refugee Fund

Source: NGO Praksis⁵³

The NGO had to advance all costs, although like most Greek NGOs it has limited capacity to advance funds. Therefore, such administrative delays have severe implications on the projects. Although additional human resources had been assigned to the Ministry of Health to process the 2010 emergency funds, these resources did not appear to be adequate to overcome past bottlenecks. At this time of stretched resources, a FRONTEX-like hands-on approach could provide valuable real time support to the Ministry, for example, by directly shadowing colleagues working in the Ministry of Health.

Operational support

Financial and operational resources can also be allocated by the two key agencies for EU cooperation in migration management: FRONTEX⁵⁴ and the EASO, established more recently in 2010.⁵⁵ While FRONTEX has already been providing significant operational support to Greece over a considerable period of time, the EASO has sent ‘operational planning teams’ to Greece to develop a plan for the implementation of the Greek Action Plan with EU-support.

The support provided by FRONTEX through the deployment of RABITs in Evros is generally seen as a very effective way of providing assistance. The hands-on approach taken by FRONTEX has been successful in enhancing the capacity to guard the border and to screen new arrivals. It is

⁵³ More information at www.praksis.gr/.

⁵⁴ FRONTEX was established by Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349).

⁵⁵ The EASO was established by Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ 2010 L 132).

hoped that the teams sent by EASO will take a similar approach to assist the Greek authorities in their daily work, both as regards implementation of asylum procedures as well as reception conditions. The establishment of adequate asylum procedures must be accompanied by the provision of adequate living conditions.

Voluntary relocation

The pilot project for the relocation of refugees from Malta (EUREMA project supported by the ERF) indicates that additional solidarity mechanisms can be set up on a voluntary basis. France accepted almost 200 refugees from Malta in 2009-10, and Germany another 100, whereas eight other EU Member States participated with smaller numbers. The pilot project is an important ad-hoc example of responsibility sharing, although its impact is above all symbolic.⁵⁶ As a comparison, a total of more than 600 refugees have departed for the US from Malta since 2007, and another 250 are in the pipeline.⁵⁷ Although not yet discussed in the context of Greece, relocating refugees from Greece to other EU Member States might be considered in the future, if the country remains the main land and sea entry point of asylum seekers into the EU.

56 See European Parliament (2010), *What system of burden-sharing between Member States for the reception of asylum seekers?* Brussels, European Parliament, p. 46, available at: www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=29912.

57 Figures received from UNHCR Malta on 15 December 2010.

Reception facilities for asylum seekers

Over 10,250 persons applied for asylum in Greece in 2010. In addition, there is a backlog of over 47,000 applicants, whose claims need to be reviewed by the newly established appeals committees. Compared to it, according to the Greek Action Plan, there are only some 615 places available for adult asylum seekers and 330 for separated children.⁵⁸ The gap is evident.

A particularly challenging task will be the identification of facilities to use for the reception of asylum seekers. Responsibility for this task lies with the Ministry of Health.⁵⁹ However, the support of other ministries and public authorities will be necessary in order to identify a sufficient number of adequate buildings to host asylum seekers.

Several obstacles were mentioned to the FRA in this regard. The Ministry of Health informed that there are no public buildings within their own Ministry which could be used for this purpose. Nor have calls for support from other Ministries been very successful. Several buildings that were identified are owned by public institutions (funds) and can only be used if rental costs are covered – something which the Ministry of Health cannot afford. Another obstacle is the need to change the use of the buildings (for example, from office to living space), although this procedure was described as being fairly simple. By contrast, more complicated appeared the need to deal with the opposition of local authorities who are usually not keen on seeing a reception facility for asylum seekers in their municipality.

As a first step, the Action Plan identifies concrete buildings that could be refurbished and run as reception facilities. These include four facilities for immediate use, for a total of 273-355 additional places. Part of the ERF emergency funds will be used for this purpose. The FRA did not verify when these facilities will actually be in use.

These initial steps are integrated by medium term plans, including the creation of short-stay hostels, NGO-run facilities and a system of apartments. In light of the limited staff available to work on identifying facilities, the delays in processing proposals under the ERF and the above-mentioned obstacles in identifying public buildings that could be used for hosting asylum seekers, the FRA obtained indications that this will be a cumbersome process. The support to enhance reception capacities envisaged by the EASO should take due account of these difficulties and also be geared towards short-term solutions. For example, expert advice on how to build on and support the capacities that exist within communities, e. g. through schemes supporting private persons who are ready to host asylum seekers, could be one way to enhance reception capacities while waiting for larger infrastructure to be available.

58 See Greek Action Plan, pp. 15-18.

59 Presidential Decree 220 of 6 November 2007, Art. 1n.

Solutions for non-refugees

A considerable number of undocumented persons are living in the urban centres of the country. According to the Clandestino Research Project on the size and development of irregular migration to the EU, the number of irregular migrants in Greece was estimated between 172,000 to 209,000 in 2008.⁶⁰ With the limited support provided by the Greek authorities to asylum seekers and the non-functioning asylum procedures, it has been difficult to distinguish irregular migrants from persons seeking or in need of international protection. In some parts of the country asylum seekers and irregular migrants shared the same resources and have increasingly been seen as a threat to public order and security by the local population, leading to a rise in xenophobia and in some cases to violent outbursts.⁶¹

With the implementation of the new asylum system it is expected that obstacles to access asylum procedures will gradually be removed and that recognition rates in Greece will be aligned to those of other EU Member States. This will lead to a larger number of persons being recognised as being in need of international protection. As an illustration, among applicants pending a first instance decision as of December 2010, some 1,700 Afghans (compared to 15 persons in January-September 2010) or some 4,380 Iraqis (as compared to 10 persons in January-September 2010) would be recognised, if Greece were to apply an EU average recognition rate.⁶²

In spite of the likely increase in the number of persons who will be granted refugee or subsidiary protection status, there is no doubt that a considerable number of irregular migrants coming to Greece are not in need of international protection.

Several interlocutors indicated to the FRA that this is the most difficult group to deal with. Therefore, humane return procedures carried out in full respect of procedural guarantees are an important aspect, without which the asylum system loses credibility. However, Greece has only recently started to build up a system for returns, with the support of FRONTEX.

The limitations of the return system are also reflected by the delayed introduction of assisting voluntary returns, and, once introduced, by allocation of limited funds to it. IOM was provided with resources under the EU Return Fund (annual programme 2009) to run a pilot Assisted

60 Clandestino Research Project, *Size and development of irregular migration to the EU*, Comparative Policy Brief, available at: http://irregular-migration.hwwi.de/typo3_upload/groups/31/4.Background_Information/4.2.Policy_Briefs_EN/ComparativePolicyBrief_SizeOfIrregularMigration_Clandestino_Nov09_2.pdf.

61 On 8 October 2010, a demonstration of migrants and anti-authoritarian groups against a fascist movement occupying the Attiki square ended in a confrontation between a group of 50 immigrants and the police. Media sources reported that the immigrants were beaten by police. Also on Attiki square, during the night of 16 October, a group of fascists attacked a Bangladeshi mini-market. See <http://clandestinenglish.wordpress.com/2010/10/09/solidarity-demonstration-in-attiki-square-athens/>; <http://w2eu.net/2010/10/20/pogrom-attacks-attica-square/>; <http://www.occupiedlondon.org/blog/2010/10/17/397-fascist-anti-migrant-pogroms-continue-at-attica-square-in-athens/>; 'The Battle for Attica Square' on www.youtube.com/watch?v=gPI9PW7ONIQ; <http://w2eu.net/2010/10/05/the-jungle-of-athens/>.

62 According to Eurostat monthly (rounded) data on persons subject of asylum applications pending at the end of the month, by citizenship, age and sex, in December 2010 there were some 9,000 Iraqis and 5,200 Afghan applicants pending a decision. Applying an EU average recognition rate (refugee status and subsidiary protection) of 32.8% for Afghans (calculated by summing up the total number of Geneva Convention and subsidiary protection decision for the first three quarters of 2010 – 4,595 – compared with a total of 13,980 decisions taken) and 48.7% for Iraqis (calculated by summing up the total number of Geneva Convention and subsidiary protection decision for the first three quarters of 2010 – 6,005 – compared with a total of 12,320 decisions taken), the above estimate has been produced.

Voluntary Returns (AVR) programme. During the visit by the FRA in late January 2011, IOM had almost reached the set target of 400 individuals as per the resources allocated under the pilot.⁶³ Moreover, by a tight management of this budget, IOM will have managed to return a total of 540 persons by the end of March 2011.

A second call for proposals (EU Return Fund – annual programme 2009) was launched early 2011 with a closing date in late February, to which IOM applied. IOM further informed the FRA that they had 2,000 persons⁶⁴ registered with them already for return. However, this second call for proposals amounted to €800,000 and covered only 500 individuals.⁶⁵ The FRA received information by the Ministry of Citizen Protection that a third call from the 2010 annual programme would be issued later in the year for €5,000,000.

There is concern regarding delays in the use of funds for voluntary return, as only early 2011 a call for proposal under the 2009 annual programme was issued. Inadequate management of voluntary returns can (a) create gaps in the continuity of AVR implementation, at a crucial moment when Greece is trying to show enhanced efforts to manage migration and (b) impact on the situation of those individuals who, after having taken an informed decision, would like to return home.

The implementation of a return monitoring mechanism is also likely to pose operational challenges. The 2011 law (Article 24 (4)) puts the Ombudsman in charge of return monitoring. In the interview with the FRA, the Ombudsman office mentioned that it had little resources to undertake such a task and that it was therefore hoping to render the return monitoring operational through partnerships with NGOs and international organisations. However, this may be difficult, in the absence of Greece-based NGOs and international organisations which have the appropriate capacity and expertise. At the same time, while return monitoring could qualify for funding under the EU Return Fund, the statute of the Ombudsman does not allow this body to have a special account for extra-budget funding to be administered outside of current financial and administrative rules in force for public administrations.⁶⁶ As a result, potential EU funding sources cannot be used to increase the capacity of the Ombudsman to carry out return monitoring functions.

There is clearly a need for strengthening the capacity for assisted voluntary returns making use of the full potential of the EU Return Fund. Any obstacles in the use of relevant EU funding in line with Article 8 (6) of the Return Directive should be identified and removed.

The 2011 law introduces an innovative tool to deal with irregular migrants whose removal is suspended or postponed. While in the past irregular migrants were given a 30-day notice to leave the country, which led to many of them hiding in urban centres, the new law foresees the possibility to issue to these individuals a formal suspension of removal, entitling them to basic

63 Some 337 individuals were returned according to information received from the Ministry of Citizen Protection on 2 March 2011.

64 According to the Ministry of Citizen Protection 1.717.

65 See (in Greek): www.astynomia.gr/index.php?option=ozo_content&perform=view&id=4970&Itemid=442, at 3.2.

66 The Greek Ombudsman is not entitled (as Ministries are) to request issuing of a Collective Decision for Projects (Συλλογική Απόφαση Έργου – ΣΑΕ/SAE), which would enable them to manage directly extra-budget funding. The SAE has been created as a response to the need of absorbing directly EU funds through the Community Framework Programmes. It is a process initiated by the Ministry of Finance.

rights during the period until their departure can be implemented. Under certain conditions, individuals with suspended removal will be entitled to work. In this way, persons in removal proceedings will have a right to stay temporarily in the country facilitating their access to basic fundamental rights. It will also allow the authorities to have a better understanding of their numbers and whereabouts.

While probably the majority of economic migrants are using Greece with the intention to enter the European Union, some consider Greece as a destination country. This is primarily the case of Albanian migration in Northern Greece, but also for other individuals who come to Greece to work, for example in private households as domestic workers, particularly as carers. This has also resulted from a research undertaken by the FRA into the fundamental rights situation of irregular migrants.⁶⁷ Interviews with undocumented migrants show that existing labour migration schemes in Greece appear not to be sufficient to cover the labour needs and that domestic workers are recruited from the pool of irregular migrants, mainly through acquaintances.

Finally, various interlocutors informed the FRA that a number of irregular migrants currently in Greece entered the country regularly and/or had been working legally. In some cases, however, employers at some point refused to pay or could not afford the necessary social insurance contributions for the migrant, who as a result could not renew his/her residence permit. The FRA noted a readiness by the authorities to come up with a solution which would allow the migrants to re-acquire the lost status, although no agreement seemed to exist on how this could best be achieved. A review of the mechanisms determining annual quota for migrant workers in order to align these with actual labour needs coupled with a review of policies to prevent migrant workers becoming irregular with no fault on their own is currently under way by the Greek Interior Ministry.

⁶⁷ See http://fra.europa.eu/fraWebsite/research/projects/proj_irregularimmigrants_en.htm.

FRA - European Union Agency for Fundamental Rights

Thematic situation report

Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner

2011 - 47 pp. - 21 x 29,7 cm

A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website at fra.europa.eu.

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

EU Member State border authorities are facing difficulties at points of entry into the EU due to a rising influx of irregular migrants. This report describes the fundamental rights situation of persons irregularly entering the EU's external border between Greece and Turkey. Everyone is automatically detained, including children, pregnant women and babies. Conditions in the detention centres of the Evros region can only be described as inhumane. Although the situation is recognised as a fundamental rights emergency, no emergency measures have yet been implemented - despite the availability of EU funds.

This report identifies the factors contributing to the current situation where the coordination of local responses in the Evros region represents a key problem. Responsibilities for migration management are divided between four ministries and the allocation of responsibilities at local level is unclear. One way forward would be the development of a specific coordination mechanism at a local operational level, which has proven to work effectively in other EU Member States.

This report is based on field research carried out by the FRA in January 2011.