



**Written Submission by the Office of the United Nations High Commissioner for Refugees in the
Case of Sharifi and others v Italy and Greece (Application No. 16643/09)**

1. Introduction*

By letter of 3 September 2009, the European Court of Human Rights (“the Court”) invited the Office of the United Nations High Commissioner for Refugees (“UNHCR”) to submit a written intervention as a third party in the case of Sharifi and Others v Italy and Greece (application no. 16643/09). UNHCR welcomes the opportunity to make written submissions in respect of the present case, which raises a number of legal issues relating to refugee protection.

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problem of refugees.¹ Paragraph 8 of its Statute² confers responsibility upon UNHCR to supervise the application of the 1951 Convention, and Article 35 of the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”)³ obliges States to cooperate with UNHCR in the exercise of its mandate.

Parts 2 to 4 of this submission address the principle of *non-refoulement*, both direct and indirect, the situation of asylum-seekers in Italy and Greece, and access to asylum procedures. Attached to the submission are four annexes, describing cases of returns from Italy to Greece (Annex 1) and from Greece to Turkey (Annex 2); and cases of *refoulement* from Turkey (Annex 3). UNHCR’s current eligibility guidelines on international protection needs of asylum seekers from Afghanistan are attached as Annex 4.

2. Risks of *refoulement*

2.1 The *non-refoulement* principle

The obligation of States not to expel or return (*refouler*) a person to territories where his or her life or freedom would be threatened is a cardinal protection principle enshrined in Article 33 of the 1951 Convention. In addition, international and European human rights law has established *non-refoulement* as a fundamental component of the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. The duty not to *refouler* is recognized as applying to refugees irrespective of their formal recognition, thus including asylum-seekers whose status has not yet been determined. It encompasses any measure attributable to a State which could have the effect of returning a person to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect *refoulement*.⁴

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoys under applicable international legal instruments and recognized principles of international law.

¹ *Statute of the Office of the United Nations High Commissioner for Refugees*, UN General Assembly Resolution 428(V), Annex, U.N. Doc A/1775, 1950, para. 1, <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

² *Ibid.*, para. 8(a).

³ The 1951 Convention relating to the Status of Refugees, 189 U.N.T.S. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>.

⁴ See UNHCR, Note on international protection, 13 September 2001, A/AC.96/951, pp. 5-6, <http://www.unhcr.org/refworld/docid/3bb1c6cc4.html>. See also Summary Conclusions: The Principle of Non-Refoulement, June 2003, <http://www.unhcr.org/refworld/docid/470a33b00.html>. See also UN High Commissioner for Refugees, T.I. and the United

In UNHCR's view, a reliable assessment of the risk of "chain *refoulement*" must be undertaken in each individual case, prior to removal to a third country, including pursuant to a readmission agreement. No asylum-seeker should be returned to a third country for determination of his or her claim without sufficient guarantees, in each individual case. This should include guarantees that the person will be admitted to that country; will enjoy effective protection against *refoulement*; will have the possibility to seek and (if necessary) enjoy asylum; and will be treated in accordance with accepted international standards.⁵ The prohibition of indirect or "chain *refoulement*" has been recognized by the Court in its decision *T.I. v. the United Kingdom* and reiterated in *Abdolkhani and Karimnia v Turkey*.⁶

2.2 Refusal of entry and removal of asylum seekers from Italy to Greece

UNHCR is concerned about practices of refusal of entry which have been applied by Italian border officials. According to information received directly by UNHCR, and credible reports provided to UNHCR, asylum-seekers and people who may be in need of international protection have been returned to Greece without being informed adequately about their right to seek asylum in Italy, and without being afforded the possibility to lodge an asylum application. The examples listed in Annex 1 illustrate UNHCR's concerns in this regard. Among these problematic cases, UNHCR is aware of cases of removal in which deportation orders have been issued to unaccompanied minors without any assessment of their needs, nor examination or referrals to competent authorities of requests for international protection. In UNHCR's view, such practice is contrary to the principle of the best interest of the child, which should be a primary consideration in all actions regarding children.⁷

2.3 Refusal of entry and removal from Greece to Turkey

UNHCR also has significant concerns regarding the practice of removals from Greece to Turkey, including many conducted outside the framework governing such returns under Greek law.⁸ Annex 2 lists 27 cases which occurred between April 2008 and September 2009. The list is based on the testimony of affected individuals (interviews conducted by UNHCR at border areas and in detention facilities), and on reports from UNHCR partners, including non-governmental organizations. In all cases, the persons were later located, either in their countries of origin after onward removal from Turkey; in Greece, after a new attempt to reach the European Union; or in Turkey.⁹ In one case, the individuals were asylum-seekers whose claims were not registered in Greece despite intervention by UNHCR and other agencies.¹⁰ UNHCR notes with concern that children were involved in five of the 27 instances, in apparent disregard of relevant safeguards in Greek¹¹ and international law.

Kingdom. Submission by the United Nations High Commissioner for Refugees, 4 February 2000, Appl. No. 43844/98, <http://www.unhcr.org/refworld/docid/42f7737c4.html>.

⁵ See UNHCR, ExCom *Conclusion on International Protection*, 9 October 1998, No. 85 (XLIX) - 1998, <http://www.unhcr.org/refworld/docid/3ae68c6e30.html>. Also, UN High Commissioner for Refugees, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)*, February 2003, para. 15, <http://www.unhcr.org/refworld/docid/3fe9981e4.html>.

⁶ *T.I. v. the United Kingdom*, 7 March 2000, Appl. No. 43844/98, in which the Court stated that "the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention." See also *K.R.S. v. United Kingdom* Appl. No. 32733/08, 2 December 2008, as well as in *Abdolkhani and Karimnia v. Turkey*, 22 September 2009, Appl. No. 30471/08, paras. 88-89.

⁷ The "best interest of the child" is enshrined in Article 3(1) of the United Nations Convention on the Rights of the Child and referred to in *inter alia* Executive Committee Conclusion No. 47 (XXXVIII) 1987, para. (d) in which it is "stressed that all action taken on behalf of refugee children must be the principle of the best interests of the child as well as by the principle of family unity". See also ExCom Conclusion No. 107 (LVIII), 2007, para. (b) (v).

⁸ The legal framework referred to here is the Agreement between the Hellenic Republic and the Republic of Turkey on cooperation of the Ministry of Public Order and the Ministry of Interior of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal immigration, Law 1926 of June 27, 2001 and the Greek Migration Law, 33-86-2005.

⁹ See Annex 2, "Edirne", case (14) and "Chania Group", case (24).

¹⁰ See Annex 2, "Chania Group", case (24).

¹¹ PD 220/2007, article 19 on guardianship.

UNHCR made written interventions with the Greek authorities in 11 of the 27 cases.¹² As of the date of this submission, the Ministry of Interior, via local or central police authorities, had responded to six of these interventions. Responses include: (a) denials that ‘push-backs’ are taking place, (b) claims that the persons reportedly removed were in fact released with a Police Note to leave the country within 30 days;¹³ and (c) statements that transfers of people to Turkish authorities from Greek detention facilities in border areas were undertaken to reduce congestion in those facilities.

2.4 Risk of refoulement from Turkey

UNHCR is concerned that persons who may be in need of international protection risk expulsion from Turkey to countries where they may face persecution or other forms of serious harm.¹⁴ UNHCR has received information recently about cases in which people wishing to seek asylum, or who had been recognised by UNHCR as refugees in Turkey or in other countries, were removed, or appear to have been removed, from Turkey to countries where they are or could be at risk of persecution or serious harm, or of further removal to such a country. This includes cases involving asylum-seekers who had been expelled to Turkey from Greece, and involving removal from Turkey to Afghanistan, including of minors. The attached Annex 3 lists a number of cases which illustrate these risks.

2.5 Risk of refoulement to Afghanistan

UNHCR has issued revised Guidelines¹⁵ (attached as Annex 4) which document the persistent and significant risks of persecution and other forms of serious harm which continue to threaten many people in Afghanistan. Under current circumstances, UNHCR is concerned that the return of Afghans who are seeking international protection to Afghanistan, or to countries from which they may be returned to Afghanistan, could breach the principle of *non-refoulement*.

3. Situation and Legal Status of Asylum Seekers in Italy and Greece: Access to Territory, Access to Procedures, Reception Conditions, and Treatment of Children

3.1 Italy

There are no comprehensive statistics for the arrival in Italy via Greece of people who may be asylum-seekers. Persons who evade border controls at Italy’s Adriatic ports often go unreported and try to reach other countries in Europe.

According to information from Italy’s Central Directorate of Immigration and Border Police of the Ministry of Interior, during 2008 a total of 5,644 persons were returned to Greece from Adriatic sea ports, including 2,106 from Ancona, 1,610 from Venice, 1,198 from Bari and 730 from Brindisi.¹⁶ In this context it should be kept in mind that a large proportion of people arriving in Italy by sea apply for international protection. In 2008, the proportion of asylum-seekers among boat arrivals was approximately 75% of whom some 50% were recognized as refugees or as needing another form of protection.¹⁷

¹² When determining whether or not to make a written intervention, UNHCR considers, amongst others, if the allegations of deportations potentially resulting in *refoulement* are well-substantiated by credible sources, specificities of the case including profile and vulnerability and other considerations.

¹³ UNHCR note: this appears to imply that the persons have independently and voluntarily returned to Turkey.

¹⁴ It should be noted in this context that Turkey maintains a geographic limitation: refugee status determination is therefore carried out by UNHCR for asylum seekers originating outside of Europe.

¹⁵ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, July 2009, Rev., <http://www.unhcr.org/refworld/docid/4a6477ef2.html>.

¹⁶ Fortress Europe, L’osservatorio Sulle Vittime Dell’emigrazione, 29 April 2009, <http://fortresseurope.blogspot.com/2006/01/speranza-patrasso-la-corte-europea.html>.

¹⁷ UNHCR estimates. Statistics regarding the refugee status determination procedure in 2008, http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0966_asilo_31_dicembre_2008.pdf.

3.2 Greece

Border control measures intended to deter irregular migrants also affect refugees and others in need of international protection. Life-threatening incidents have been reported, notably at sea borders with Turkey, including allegations of efforts to prevent arrivals on Greek shores by the puncturing of rubber boats,¹⁸ and removal of a boat engine and oars.¹⁹

Greece lacks reception structures at points of entry where people seeking asylum could be identified. Such structures are in place only at a handful of places where an EC-funded project²⁰ is implemented or comparable NGO-run activities exist. The only “reception facilities” at borders are the administrative detention centres for irregular entrants. At both sea and land entry points, there is a lack of experienced staff to provide assistance to those who may need it to file an asylum claim, or to deal with vulnerable persons such as unaccompanied and separated children or traumatized individuals. Without interpretation services, no effective communication between new arrivals and detention centre staff is possible. These factors prevent persons who would wish to seek asylum from securing access to procedures, and denies them the conditions which would enable them to pursue their claims.²¹

The difficulty of lodging an asylum application in border areas is reflected by the fact that 90% of asylum applications in Greece are lodged in Athens, at the Attica Aliens Directorate (“Petrou Ralli”). Even there, however, registration of claims is difficult. Those seeking to apply must wait in lengthy queues, and may be obliged to return repeatedly over periods which can stretch for months prior to registration. Registration staff, who are police personnel, are insufficient in number and inadequately trained in asylum issues. These obstacles further hinder access to an effective claim examination.²²

While legislation²³ provides for asylum seekers arriving irregularly not to be detained, in practice, if asylum-seekers arrive irregularly in Greece, they are systematically detained, along with other irregular entrants. Alternatives to detention are not considered and no individual assessment of the need to detain an asylum-seeker takes place.²⁴ At several entry points, the period of detention is prolonged if the individual applies for asylum. The threat of prolongation of detention, in combination with the substandard conditions in many detention facilities, would appear to deter persons from applying for asylum.²⁵

¹⁸ Human Rights Watch, *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, 26 November 2008, 1-56432-411-7, p44, <http://www.unhcr.org/refworld/docid/492e6c62.html>.

¹⁹ *Idem*.

²⁰ Aegeas project, *Enhancing reception capacity for migration flows at border areas of Greece (external EU maritime and land borders)*, funded by the EC budget line ‘Migration Management – Solidarity in Action 2007 (Reception).

²¹ ExCom Conclusion No. 71 (XLIV) 1993, para. (i). ExCom Conclusion No. 74 (XLV) 1994, para. (i). ExCom Conclusion No. 82 (XLVIII) 1997, para. (d) (ii). Also, UN High Commissioner for Refugees, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 50 (a), <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.

²² *Ibid.*, para. 23, <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.

²³ Presidential Decree 90/2008.

²⁴ According to UNHCR alternatives to detention of asylum-seekers until status is determined should be considered, UN High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, guideline no. 4, <http://www.unhcr.org/refworld/docid/3c2b3f844.html>. See also *S.D. v. Greece* (Appl. No. 5341/07, 11 June 09), where the European Court found a violation of Article 5(1) of the ECHR in relation to the detention of an asylum seeker.

²⁵ UNHCR has assessed, through testimonies by individuals during its missions as well as following reports by NGOs, that some asylum seekers are deterred from applying for asylum, and others withdraw their asylum claims, in order to secure earlier release. In practice, the duration of detention depends on the nationality of the detainee and the feasibility of deportation and is influenced by the long delays before the examination of the asylum claims. In August – September 2009, 17 asylum seekers, mostly Afghans, detained at the detention centre of Pagani-Lesvos, withdrew their asylum claims and were subsequently released (as reported to UNHCR by the Ecumenical Refugee Programme, in letters of 20 August 2009 and 4 September 2009).

Police detention facilities are also extensively used, despite being inappropriate for accommodating people longer than a few days.²⁶ In the Evros region in particular, UNHCR has visited the main Border Guard Police Stations and has assessed severely substandard hygienic conditions,²⁷ as well as no practice of separating men, women and unaccompanied minors,²⁸ and limited access to other medical care.²⁹ Unaccompanied minors are routinely detained. In testimony to the European Committee on Prevention of Torture, asylum-seekers have also described police violence while in detention.³⁰

Access to information, legal counselling³¹ and interpreters is not generally available to detainees, except in a few locations where such services are provided by NGOs or other actors through short-term projects.³² Even in those locations, these services cannot be offered to all persons who need them. Access to the asylum procedure is consequently not assured in Greece for detainees wishing to apply for asylum.

For asylum-seekers who are not detained, an insufficient number of places are available in under-resourced, mainly NGO-run centres across the country. As a result, large numbers of asylum-seekers are homeless or live in extremely poor conditions, with no social support from the State. Lack of monitoring by the authorities, lack of standardization among the various facilities and of appropriate counselling contributes to many cases where residents, including minors, leave the centres and disappear after a short stay.

Children, including unaccompanied and separated children, are in general accorded the same treatment as adults in response to their irregular entry. Greece has not established an adequate framework for the identification and referral to proper protection mechanisms of unaccompanied and separated children. The absence of such a framework impacts particularly at border/entry points, but also on children arrested or found irregularly inside Greece.

For children, first reception and arrest and detention procedures are conducted by security forces (police and in some cases coast guard authorities), without support from qualified civilian staff (i.e., social workers, child welfare personnel). Interpreters are rarely available at the point of entry.³³ No formal age

²⁶ According to UNHCR, separate detention facilities to accommodate asylum-seekers should be used and the use of prisons should be avoided, UN High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, guideline no. 10 (iii), <http://www.unhcr.org/refworld/docid/3c2b3f844.html>.

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

²⁸ UNHCR monitoring visit in Soufli on 24 February 2009 and in Tycherio on 5 May 2009, and UNHCR monitoring visit in Soufli on 23-27 March 2009.

²⁹ UNHCR monitoring visit in Tycherio, Ferres and Soufli on 23-27 March 2009. See for access to medical care, UN High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, guideline no. 10 (v), <http://www.unhcr.org/refworld/docid/3c2b3f844.html>.

³⁰ See Council of Europe: Committee for the Prevention of Torture, *Response of the Government of Greece to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 23 to 29 September 2008*, 30 June 2009, CPT/Inf (2009) 21, <http://www.unhcr.org/refworld/docid/4a49fc2a2.html>, p. 12. Allegations referred among other things to “slaps, kicks and verbal insults”. The CPT also documented a case of a foreign national who displayed injuries consistent with allegations of ill-treatment at Omonia Square Police Station. See also Norwegian Organisation for Asylum Seekers (NOAS), the Norwegian Helsinki Committee (NHC), and Greek Helsinki Monitor (GHM), “A gamble with the right to asylum in Europe”, Oslo and Athens, 9 April 2008, www.noas.org/file.php?id=53; In this report, see also the Suweini case, p. 59-60, the Mushref case, p. 62-63, and the Abdullah case, p. 63-64.

³¹ According to UNHCR, detained asylum-seekers should be entitled to be informed of the right to legal counsel, UN High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, guideline no. 5 (ii), <http://www.unhcr.org/refworld/docid/3c2b3f844.html>.

³² Among these projects, the “AEGEAS” Project (Feb 2008- Sep 2009) was implemented in several key entry points at the land and sea borders with Turkey, namely the islands Lesbos, Samos, Chios and the region of Evros. Partners were the local Prefectures, the Ministry of Merchant Marine, the Ministry of Interior, and UNHCR. The Project was funded by the European Commission programme “Migration Management- Solidarity in Action 2007/ Reception”.

³³ Findings from UNHCR missions to land and sea border areas, July 2009.

assessment process with appropriate safeguards is in place.³⁴ UNHCR has noted³⁵ that in many instances, separated children are recorded as adults or as accompanied by adults with whom legal or family ties are not established. Referral processes consist of the notification by the police to the Public Prosecutor's Office who is by law the temporary guardian, followed by formal referral to reception places where available. This process may be considerably delayed or not completed at all when children are released from detention with a police note to leave the country within 30 days. In this context, representatives of the Public Prosecutor assume their tasks as temporary guardians only partially or not at all. Assistance from NGOs or other non-State experts is available only on an ad hoc basis, and usually through the implementation of specific, time-limited projects.³⁶

The available places in the existing special reception centres for children in Greece³⁷ are 400 in total (for both asylum-seeking and non asylum seeking children), which is insufficient to meet demand.³⁸ These reception centres available do not operate under standardized rules and suffer from lack of sufficient specialized staff and support services.³⁹

3.3 Legal Basis for cooperation between Italy and Greece

3.3.1 The Readmission Agreement

The 1999 Readmission Agreement between Italy and Greece⁴⁰ provides that third country nationals who have already crossed or stayed in the territory of one signatory State and who are attempting to reach the territory of the other state without meeting the requirements for regular entry, are to be readmitted by the first State, upon request of the second State, without formal proceedings.⁴¹

The Readmission Agreement contains a number of theoretical safeguards. Article 6 specifies that the obligation to readmit is not applicable *inter alia* to those individuals recognized by the requesting State as refugees under the 1951 Convention, or as stateless persons under the 1954 Statelessness Convention.⁴² It also excludes from its scope those third country nationals "to whom the Dublin Convention of 15 June 1990⁴³ is applicable". At the time of signing the Readmission Agreement, Greece and Italy were party to the Dublin Convention, an instrument determining which country among the signatory parties would be responsible to examine an asylum application. In 2003, the Dublin Convention was replaced by the Dublin

³⁴ The authorities have not defined any official procedures for age determination. Presidential Decree 90/2008, (O.G. A' 138/11.7.2008), permits use by police authorities of medical examinations for determining age, but there is no legally defined standard procedure governing the type of medical examination or margin of error to be applied.

³⁵ Survey commissioned by UNHCR's Office in Greece "Unaccompanied minors asylum seekers in Greece: A Study on the treatment of unaccompanied minors applying for asylum in Greece", April 2008.

³⁶ Aegeas project, *Enhancing reception capacity for migration flows at border areas of Greece (external EU maritime and land borders)* funded by the EC budget line 'Migration Management – Solidarity in Action 2007 (Reception).

³⁷ Greek Ministry of Health figures provided to UNHCR.

³⁸ In 2008, some 6,000 unaccompanied and separated children were reported to have entered Greece (MoI data communicated to UNHCR by the Ministry of Health).

³⁹ Survey commissioned by UNHCR's Office in Greece "Unaccompanied minors asylum seekers in Greece: A Study on the treatment of unaccompanied minors applying for asylum in Greece", April 2008.

⁴⁰ Readmission Agreement signed between the Italian and the Greek Governments on 30 March 1999 (in Italian: *Accordo tra il Governo della Repubblica Ellenica ed il Governo della Repubblica Italiana sulla riammissione delle persone in situazione irregolare*), original text published both in Italian and Greek, within the Greek Official Journal. The agreement was not officially published in Italy.

⁴¹ Art. 5, Readmission Agreement. Art 8 only requires that the entry or the stay of third country nationals in the territory of the contracting Party be certified and the readmission request submitted to the competent authorities of the other State.

⁴² UN High Commissioner for Refugees, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, October 2003, available at: <http://www.unhcr.org/refworld/docid/415c3cfb4.html>.

⁴³ European Union, *Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention")*, 15 June 1990, Official Journal C 254 , 19/08/1997 p. 0001 - 0012, available at: <http://www.unhcr.org/refworld/docid/3ae6b38714.html>.

II Regulation⁴⁴, laying down “criteria and mechanisms for determining the [EU] Member State responsible for examining an application for asylum lodged in one of the Member States by a third country national”, a binding and directly-effective European Community legal instrument. In practice, however, Italy does not apply the Dublin II Regulation to asylum seekers it wishes to return to Greece, invoking instead the Readmission Agreement as its basis for such returns. This is despite the fact that the Readmission Agreement would appear inconsistent with the terms of the Dublin II Regulation, which contains specific safeguards and procedures for the transfer of asylum seekers among the Dublin participating states, which are not observed in practice.⁴⁵

Article 18 of the Readmission Agreement is intended to take into account the risk of chain-*refoulement* by specifying that the readmission can be refused if the foreigner, in the State of destination or in another State to which s/he could be later transferred, is at risk of inhuman or degrading treatment or punishment, the death penalty, or his/her life can be put in danger based on race, religion, nationality, belonging to a specific social group, political opinion. Furthermore, paragraphs 2 and 3 of article 23 contain safeguard clauses whereby the provisions of the Readmission Agreement should not prejudice the application of the 1951 Convention, or other international human rights instruments binding its signatories. However, as set out below, UNHCR is concerned that in practice, these exceptions are not respected or applied.

3.3.2 *The informal return practices conducted by Italy*

Transfers conducted under the Readmission Agreement are executed by Italian border officials simply by giving custody of the persons involved to the captain of the ship tasked to effect return, including in the case of minors. The captain countersigns a basic form with the individual’s name, nationality and sometimes date of birth, without following even the limited formalities provided in the Readmission Agreement, and in the absence of other safeguards or effective remedies. There is no mention of whether the person applied for asylum in Greece, and the identification process is carried out in an unprofessional manner.⁴⁶ UNHCR has unconfirmed reports of alleged mistreatment of people being returned by ships’ crews during return voyages.⁴⁷ Despite the presence of NGOs at the Adriatic ports tasked with providing information and counselling to potential asylum seekers, asylum seekers do not enjoy full access to these services before removal.⁴⁸

⁴⁴ Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (‘Dublin II Regulation’), OJ L50/1, 25.2.2003. The Regulation provides that ‘continuity between the system for determining the Member State responsible established by the Dublin Convention and the system established by this Regulation should be ensured’: Dublin II Regulation, Preamble paragraph 10.

⁴⁵ The interpretation and practice of the Dublin II Regulation by the Italian authorities is *inter alia* based on a translation error in the Italian version of the Regulation. The authorities argue that the practice of sending asylum seekers directly to Greece is permitted under Article 3(3) of which states that ‘Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention’. However, while the authoritative English text refers to a “third country”, i.e. to a country not bound by the Dublin Regulation, the Italian version omits the word ‘third’ - and Italy maintains this confers a right on Italy to send people without formalities to other Dublin participating States. Italian version: Regolamento (CE) n. 343/2003 del Consiglio, del 18 febbraio 2003, che stabilisce i criteri e i meccanismi di determinazione dello Stato membro competente per l’esame di una domanda d’asilo presentata in uno degli Stati membri da un cittadino di un paese terzo, published on the Official Journal of the European Union no. 50 of 25.2.2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:IT:PDF>. (accessed on 13.10.2009); English version: Council Regulation (EC) no 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, published in the Official Journal of the European Union no. 50 of 25.2.2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>.

⁴⁶ For example, on one hand-over form dated 21 August 2008 delivered to the Greek police, the Italian police had recorded the names of Barack Obama, Mullah Omar and Bashir Oscar (sic), all registered as irregular migrants from Iraq (See Annex 1).

⁴⁷ UNHCR’s concerns about the risk of violation of fundamental human rights of returnees in this context are echoed by the Council of Europe’s Committee of Ministers, which on 4 May 2005, through its Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, refugees and Stateless Persons (CAHAR), adopted a document entitled “Twenty Guidelines on forced return” (CAHAR), 925th meeting, 4 May 2005, *Twenty guidelines on forced return*, CM(2005)40, <https://wcd.coe.int/ViewDoc.jsp?id=856881>. Of particular relevance are Guidelines 18, 19 and 20.

⁴⁸ See Annex 1.

4 Procedures and Safeguards in the Asylum System

4.1 Access to Procedures

In order to benefit from the rights accorded to them under international refugee law, asylum seekers must have access to territory and to procedures in which the validity of their claims can be assessed. These essential prerequisites for refugee protection have been underlined by the General Assembly of the United Nations and by the Executive Committee of UNHCR.⁴⁹ In addition, asylum claim determination processes should entail basic procedural safeguards which apply to any request for international protection, including the right to a fair and impartial examination by a competent authority, a right to a personal interview, to submit evidence and to an effective remedy, among other elements.⁵⁰ In this section, UNHCR describes some aspects of the Italian and Greek practices in which access and compliance with procedural safeguards are inadequate.

4.1.1 Italy

The immediate rejection of asylum seekers at frontiers denies them the opportunity to lodge an asylum application and to receive a full and fair examination of their claims. If they are in need of international protection, such immediate rejection could result in *refoulement*, in cases where they could subsequently be returned to a country where they might face persecution or other forms of serious harm.

In cases where an asylum claim is considered and rejected, asylum seekers are entitled to an effective remedy,⁵¹ including the possibility to seek suspensive effect.⁵² However, practices of summary rejection at the border and forced return operations without formal legal decisions or access to a subsequent appeal mechanism do not fulfil these requirements. The current arrangements for return from Italy to Greece prevent new arrivals from receiving adequate information, denying asylum seekers an effective opportunity to express the wish to seek asylum, and enjoy basic procedural or substantive rights.

States participating in the Dublin II system may elect under the provisions of the Dublin II Regulation to request another State to take responsibility for a claim, or they may choose to refrain from returning asylum seekers to other Member States which are deemed responsible under Dublin II.⁵³ However, the immediate rejection of such people at frontiers without allowing them to lodge an asylum application is

⁴⁹ See for example, GA/52/132, PB 13 of 12.12.1997; Executive Committee Conclusion No. 81 (XLVIII) para. (h) of 17 October 1997; Conclusion

No. 82 (XLVIII) para. (d)(iii) of 17 October 1997; Conclusion No.85 (XLIX) para. (q) of 9 October 1998; Conclusion No. 87 (L) para. (j) of 8 October 1999; Conclusion No. 93 (LIII) paras (a), (b)(i) and(ii) of 8 October 2002.

⁵⁰ For detailed analysis of procedural guarantees and standards as required to ensure compliance with international protection obligations in the European Union context, see UNHCR, Provisional Comments on the Proposal for a Council Directive on Minimum Standards and procedures in Member States for Granting and Withdrawing Refugee Status (Council Doc 14203/04, Asile 64 of 9 November 2004).

⁵¹ *Gebremedhin [Gaberamadhien] c. France*, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007; *Gebremedhin [Gaberamadhien] c. France*, 25389/05, Council of Europe: European Court of Human Rights, 10 October 2006; UN High Commissioner for Refugees, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, <http://www.unhcr.org/refworld/docid/42492b302.html>.

⁵² *Gebremedhin [Gaberamadhien] c. France*, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007, § 58; See also the case of *Muminov v Russia* (2008), where the European Court stated that ‘Article 13 requires ... the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible’ (para. 101). See also ExCom Conclusion No. 8 (XXVIII), 1977, para. (e) (vi); and UNHCR’s Global Consultations on Fair and Efficient Asylum Procedures.

⁵³ As UNHCR has already observed in its “*Position on return of asylum-seekers to Greece under the ‘Dublin Regulation’*” of 15 April 2008, the Greek asylum system is currently affected by significant flaws, which make inadvisable, for now, the forced return of asylum seekers to Greece. The Office consequently encouraged EU member States bound by the Dublin Regulation not to send any asylum seekers to Greece, by making use of the “sovereignty clause” enshrined in Article 3.2 of that Regulation, which allows them to examine an asylum application lodged even if such application is not its responsibility under the other criteria laid down in that Regulation.

not permissible under the Regulation. Dublin II obliges the responsible Member State to “examine the application of any third country national who applies at the border or in their territory”⁵⁴, following determination of responsibility through application of the Regulation’s criteria. Without any process by which claims can be lodged and the Dublin criteria considered, Italian practice precludes identification of the responsible State under Dublin and fulfilment of the obligation to assess the applicant’s need for international protection.

4.1.2 Greece

The asylum procedure in Greece generally suffers from lack of resources at all levels. The procedure is implemented by the police, with staff who have not received adequate training to enable them to conduct asylum interviews or take well-argued first instance decisions. UNHCR has observed that properly trained interpreters⁵⁵ and sufficient administrative support are also lacking.

The quality of many first instance decisions is poor. A number of decisions reviewed recently by UNHCR did not include any reference to the facts or to country of origin information, nor detailed legal reasoning. The reason for rejection was usually a standard phrase, referring to an economic motivation for leaving the country of origin. This reasoning is used in the large majority of cases recently examined by UNHCR, including those of applicants originating from countries in conflict which generate large numbers of refugees.⁵⁶

There is a lack of proper information provided to applicants on the right to appeal and procedural steps to be taken in order to exercise this right. Processing times are very long, in particular on appeal. Large backlogs exist of over 6,000 cases at first instance and over 42,000 cases at second instance.⁵⁷ Procedural guarantees are very limited in the case of the so-called “fast-track procedure”.

Protection rates remain extremely low in Greece. In 2008, 0.05 percent of cases decided at first instance were afforded protection.⁵⁸ In 2008, the Appeals Board reached a positive decision in 10.29 percent of cases reviewed at appeal level.⁵⁹ The figure of 0.05 percent at first instance in 2008 diverges significantly from practice at first instance in other EU Member States which receive similarly large numbers of applications. For comparison: in the five countries (Sweden, France, the U.K., Germany and Italy) which, along with Greece, received the largest number of applicants in Europe in 2007 (2008 recognition figures not available), the average protection rate at first instance was 39.4%.⁶⁰

In July 2009, the entry into force of Presidential Decree (PD) 81/2009⁶¹ introduced a number of changes which, in UNHCR’s assessment, further undermine the quality of the asylum procedure by removing important safeguards. With this Decree, asylum decision-making at first instance is decentralized to 53

⁵⁴ Dublin Regulation, article 3(1).

⁵⁵ Problems resulting from the lack of competent interpreters are described in detail in HRW “Stuck in a revolving door”, p. 99 - 101.

⁵⁶ See UN High Commissioner for Refugees, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, p. 31-34, <http://www.unhcr.org/refworld/docid/473050632.html>. Observations of interviews and reviews of decisions and case-files by UNHCR in 2009 have confirmed that the described practices have not changed.

⁵⁷ As at 31 July 2009, reported by the Ministry of Interior.

⁵⁸ The “protection rate” is percentage of positive decisions for both refugee status and subsidiary protection against the total number of decisions for a given period. Amongst the rejected cases were 2,785 asylum applications lodged by Iraqis. In the European Union as a whole, the average protection rate for Iraqis stood at around 70% in many EU Member States for 2008. Similarly, 1,809 asylum applications lodged by Afghans and were rejected. In the European Union as a whole, the average protection rate for Afghans at first instance stands at approximately 50%. For both nationalities, in Greece the protection rate was 0% in 2008, or in other words: no Iraqi or Afghan case was given a positive decision at first instance. See UNHCR statistics at <http://www.unhcr.org/pages/49c3646c4d6.html>.

⁵⁹ Data provided by the Ministry of Interior.

⁶⁰ Source: UNHCR Statistical Yearbook (2007), <http://www.unhcr.org/4981b19d2.html>.

⁶¹ Presidential Decree 81, modifying Presidential Decree 90/200, on transposition into Greek Legislation of Council Directive 2005-85-EC, minimum standards on procedures in member states for granting and withdrawing refugee status, Official Gazette A/99/30 June 2009.

police directorates across the country, by the end September 2009. These directorates face serious challenges including lack of expertise and training for this new task, interpretation services, and administrative support. Legal aid for the applicants is also lacking.

The former decision-making body at second instance has been abolished under this new legislation, which instead introduces limited judicial review before the Council of State. For appeal cases already pending, the previous appeals committees were downgraded from decision-making to advisory bodies, with the Alternate Minister of Public Order as the decision-making authority. In UNHCR's assessment,⁶² these measures jeopardize the right to an effective remedy. As safeguards ensuring a fair and efficient adjudication of claims are not in place, UNHCR has declined to participate in the Advisory Committees for the examination of the asylum claims at first instance and in the Advisory Appeals' Committees for the examination of the large backlog, which have yet to be established.⁶³

At the Central Police Asylum Department of Attica (Petrou Ralli), the practice of registering new asylum applications only once a week (on Saturdays) continues. At present, only 30-40 applications are registered each Saturday, out of nearly 1,000 persons queuing to apply for asylum.

5 Conclusion

UNHCR considers that refusal of entry to Italy and removal from Italy to Greece, coupled with removal from Greece to Turkey, may in specific cases be at variance with the principle of non-refoulement. Refusal by Italy of entry at the border may mean that access to an asylum procedure in Italy is denied to persons seeking or in need of international protection. Once returned to Greece, asylum seekers face obstacles in gaining access to the Greek procedure. Even in cases where they do gain access, the Greek asylum system as it operates at present does not contain sufficient safeguards to ensure that persons in need of international protection will be recognized as such. Consequently, the risk of expulsion to a territory where they may be at risk of persecution or serious harm cannot be excluded.

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⁶² See press release 09/32, "UNHCR will not participate in the new asylum procedure in Greece unless structural changes are made", http://hosting01.vivodinet.gr/unhcr/Press_Rel/09pr32en.pdf.

⁶³ See press release 09/32, previous footnote. As of end July 2009, the backlog on appeal was of 42,700 claims. The first instance backlog stood at 6,145. These figures do not reflect the large numbers of persons intending to seek asylum but who have not been able to register their applications.