

**UNHCR's oral intervention at the European Court of Human Rights
Hearing of the case *M.S.S. v. Belgium and Greece*,
Strasbourg, September 1, 2010**

Mr. President, Distinguished Judges,

Introduction

The Office of the United Nations High Commissioner for Refugees would like to thank the Court for the invitation to submit written observations as a third party in the present case, and for authorizing UNHCR to intervene in today's hearing. It is an honour for me, as the Director of International Protection of this institution, to represent UNHCR on this occasion.

The Statute of the Office was adopted 60 years ago by the UN General Assembly and it confers responsibility on UNHCR to supervise the application of provisions of the international conventions for the protection of refugees. This supervisory responsibility extends to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

It is against this background that UNHCR has a particular interest in the case before you, since it raises issues of law and of State practice that relate to the implementation of international refugee law instruments. The treatment that is accorded to asylum-seekers and refugees under the 1951 Convention cannot be considered in isolation from international human rights instruments, such as the European Convention on Human Rights.

In the exercise of our mandate, the Office has over many years monitored state practice in Greece and the asylum situation in that country. This has led us to the considered assessment that the Greek asylum system falls short of international and European standards, including the 1951 Convention and 1967 Protocol. The Greek authorities themselves acknowledge the magnitude of the problem, and their inability at present to fulfill key international obligations in this regard.

By contrast, the operation of the Dublin Regulation is predicated on the presumption that all participating States will respect the rights of asylum-seekers, examine their claims in a fair and effective procedure, and grant protection in line with international and European law. As this Court has already emphasized in *T.I. v. UK*, each Contracting State remains, however, responsible under the European Convention on Human Rights. It cannot therefore rely in each and every case on international responsibility-sharing arrangements for deciding asylum claims. In light of *T.I.*, the Contracting State – in this case Belgium - would need to ensure that the individual concerned is not, as a result of its decision to transfer, exposed to a risk of ill-treatment. In this regard, UNHCR shares the Court's view that effective procedural safeguards against such risks must exist in the Dublin receiving State – in this case Greece - to protect the applicant from such risks.

In UNHCR's view, the Greek asylum system does not, at present, adequately protect asylum-seekers, including Dublin transferees, against return to territories where there is a risk of persecution or serious harm. This assessment is largely based on the fact that even in cases where individuals manage (against all odds) to have access to the asylum procedure in Greece, they are not afforded a fair and effective examination of their claims, and they are not, as a result, identified as being in need of international protection and would risk onward removal to danger. Lack of protection from refoulement is related to, and compounded by, inadequate reception and detention conditions for asylum-seekers that do not guarantee the standard of treatment foreseen under the 1951 Convention and European law.

Allow me to set out briefly the two primary systemic deficiencies of the Greek asylum system that are of direct relevance to the present deliberations.

As for inadequate protection from refoulement, I would like to make four points.

The first point: Asylum-seekers in Greece – including those transferred back to Greece under the Dublin Regulation – face major obstacles in accessing the asylum procedure. Information about their rights and the applicable procedure is not readily available. At present, no written information is given to asylum-seekers on the procedures. Even the official leaflet that was provided to asylum-seekers in the past, including to Dublin transferees, became outdated in July 2009 and did not contain key information, including on the obligation for Dublin transferees to report for a further interview. Interpretation services are also not available for asylum-seekers at the Athens airport.

More specifically, in relation to Dublin transferees, they are obliged upon transfer to register or to report to the Attica Aliens' Directorate of the Police (Petrou Ralli). However, Dublin transferees have great difficulties in complying with this requirement. There is a three-day deadline which is excessively short, given the circumstances. Access to the Directorate is not guaranteed in practice, even when the Dublin transferees present themselves with the police referral note. Like all other asylum-seekers, they depend on the arbitrary selection that is made by security guards at the entrance to the Directorate's premises. Cooperation between Greece and sending countries therefore does not obviate the difficulties that many Dublin transferees face in practice when trying to register.

The second point: For those claimants whose applications are registered and examined, the quality of the assessment of asylum claims and decision-making are extremely poor, in our assessment. This is due, among other things, to untrained and unqualified personnel. There is a lack of some procedural safeguards. Legal aid services are generally absent, although the proceedings are quite complex. Interpretation is severely deficient.

It is therefore not surprising that nearly all asylum applications in Greece are rejected at first instance. In 2009, less than one percent of cases decided at first instance were granted refugee status or subsidiary protection. This figure diverges fundamentally from practice at first instance in other EU Member States receiving large numbers of claims. This is of particular concern in the light of the continued risk of persecution and of human rights violations faced by a significant number of Afghan asylum-

seekers. It also affects Afghans associated with, or perceived as supporting the Afghan Government and the international community, particularly in areas where anti-Government elements are active.

The third point: Within the asylum procedure, asylum-seekers do not have access to an effective remedy against negative decisions at first instance. A Presidential Decree was passed in July 2009 which abolished the (former) independent appeals board. It created a new, non-independent administrative appeals procedure. This procedure has, however, not become operational because the Advisory Appeals Boards have not been constituted. Moreover, it was envisaged that the new Advisory Appeals Boards would only deal with the backlog of some 46,000 appeal cases. As a result, the only legal remedy against a new negative first instance decision is an appeal to the Council of State. Such an appeal does not have an automatic suspensive effect. The Council of State, as highlighted by other speakers, may only consider points of law, not of fact. Again, more specifically for Dublin transferees, it is also our observation that they face particular difficulties in seeking to file appeals against negative decisions which may have been issued prior to or during their absence from Greece, including where they missed deadlines while their case was being adjudicated *in absentia*. Legal aid is also very difficult to secure in practice in Council of State proceedings.

The fourth point: In the context of the expulsion procedure, the right to appeal against a deportation order, although provided for by law, is ineffective in the absence of legal aid. The appeal process consists exclusively of a written procedure with strict deadlines and without automatic suspensive effect at the judicial level. As a result, there is also no effective remedy outside the asylum procedure against a deportation order. The individual is therefore potentially subject to removal at any time.

Because of the aforementioned reasons, it is our view that the Greek system does not adequately protect against *refoulement*.

A second deficiency of the system is related to the very poor reception and detention conditions in Greece.

Upon return to Greece under the Dublin Regulation, asylum-seekers are likely to become homeless and destitute, or to end up in very poor detention conditions.

Most asylum-seekers in Greece, including Dublin transferees, have no material support. There are just 865 reception places available for asylum-seekers in Greece. But if one compares this to the 16,000 asylum applications were lodged in 2009, and 4,701 during the first 6 months of 2010, reception capacity is obviously insufficient. Most of the existing eleven reception centres are run by NGOs, and they depend on funding from the European Refugee Fund. In the absence of secure funding, and this is the experience, the level of services delivered to asylum-seekers is equally low, including, for example, referrals to hospitals and schools. As many asylum-seekers are left to live rough, they are unable to provide an address, which is a key component of the asylum procedure. This can prevent them from receiving notification of developments on their asylum claims, and from meeting procedural deadlines. The absence of legal aid aggravates this situation.

There is no financial allowance to asylum-seekers in Greece. According to reports by an NGO that implemented a two-month project to assist Dublin transferees at the Athens Airport (March-April 2010), all of the 173 persons covered by the project were homeless.

At times, the authorities evacuate locations where third-country nationals, including asylum-seekers, are squatting, because of conditions that pose a risk to public health, but make no provision for relocation. In central Athens, during the last year, dozens of such sites were emptied and sealed in police operations. Those who had been living there were evicted and left homeless. Among them were asylum-seekers, including families with young children.

The detention conditions in Greece for asylum-seekers, including Dublin transferees, fall short of international and European standards. We have documented this in UNHCR field visits, and other reports on this subject are available. Overcrowding and poor conditions in police detention centres have worsened since the entry into force, in summer 2009, of the new law on administrative detention of irregular migrants which extended the maximum detention period to six or possibly twelve months, and in view of increased number of persons detained as a result.

Concluding remarks

In conclusion, it is against this background that UNHCR upholds its position that transfers to Greece under the Dublin Regulation should not take place until such time as these deficiencies are addressed. To ensure compliance with Member States' obligations under international and European law, Article 3(2) of the Dublin Regulation offers the possibility for participating states to take on responsibility for assessing asylum claims in such circumstances.

As for the future, the current Greek reform efforts are very much supported by UNHCR, followed closely by the Office, and considered a necessary step. However, the planned reforms have not yet been adopted in law. Moreover, their implementation will take considerable time and effort, since there is a need for the overhaul of the whole asylum system.

Overall, UNHCR remains gravely concerned about the systemic failure of Greece to provide an asylum system which affords an acceptable level of respect for basic rights of asylum-seekers and refugees. The Dublin participating states have created a system based on so-called inter-State trust. In this particular situation it operates at the expense of particularly vulnerable individuals and is at variance with not only their legal rights but also their human dignity. This cannot be sustained in the legal framework that the European Convention on Human Rights and the 1951 Convention relating to the status of refugees have established.