



The return to Greece of asylum-seekers with “interrupted” claims

Introduction

This Note updates the UNHCR memorandum of November 2005 concerning certain aspects of the asylum legislation in Greece, which may act as a bar to effective access to an asylum procedure when returning asylum-seekers to Greece, including pursuant to the *EU Regulation 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* (the “Dublin II Regulation”). Specifically, the concerns raised by UNHCR in its memorandum of November 2005 revolved around the provisions of Article 2(8) of Presidential Decree 61/1999 of 6 April 1999 which have the effect of denying many asylum-seekers returned to Greece such as under the Dublin II Regulation, but also otherwise, any substantive consideration of their refugee claim once they have been “interrupted”.

“Interruptions” as a potential bar to access asylum procedures

Article 2(8) of Presidential Decree 61/1999 requires asylum-seekers to inform the authorities of their place of residence at the time of registration and any subsequent changes thereof. If an asylum-seeker leaves his or her place of residence without duly informing the relevant Greek authorities, this is considered an implicit withdrawal of his or her asylum application and would prompt the General Secretary of the Ministry of Public Order to decide to “interrupt” examination of his or her application. The asylum-seeker may appeal against the “interruption” decision within three months of the issuance of that decision, but the appeal may only succeed and the asylum-seeker allowed to have his or her asylum application examined in substance if he or she produces documentary evidence proving the absence from the place of residence was due to reasons of *force majeure*.

The short time-limit for filing an appeal against the “interruption” decision, together with the hefty burden of proof, would in effect deny asylum-seekers returned to Greece any possibility of substantive consideration of their protection needs. If Greece subsequently removes such asylum-seekers to a country where they claimed their life or liberty would be threatened, this may amount to a breach of the *non-refoulement* obligation of States enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees. The State that returned the asylum-seeker to Greece in the first place would also bear responsibility for indirect *refoulement*.

Above applies to any asylum-seeker returned to Greece, and not only those returned under the Dublin II Regulation. In February 2006, however, the European Commission initiated infringement procedures against Greece for non-compliance with the Dublin Regulation, insofar as it did not allow examination in substance of the refugee claims of certain persons returned to the country under the agreed apportionment of responsibility. While these infringement procedures are still pending, the Greek authorities have recently changed their "interruption" practice in respect of certain asylum-seekers returned to Greece, albeit those returned under the Dublin II Regulation only. According to the Greek authorities, these changes to the "interruption" practice as described below will be legislated in the forthcoming Presidential Decree transposing the various EU Directives in the field of asylum for Dublin II returns. It is not yet clear when these will be adopted or enter into force.

The practice for asylum-seekers returned under the Dublin II Regulation:

- (i) If the pending asylum claim initially lodged in Greece was "interrupted" for reasons of the asylum-seeker's non-compliance with the obligations imposed on him/her (for instance, failure to inform the authorities of a change of his/her place of residence), the "interruption" decision is revoked and the asylum-seeker re-enters the refugee status determination procedure. States are requested to confirm this in the individual case.
- (ii) In the case of an asylum-seeker whose refugee claim was denied at first instance but received no notification of that decision, he/she will be notified of the negative decision upon return to Greece; the person has the right to appeal against the negative decision within the deadlines provided for by Presidential Decree 61/1999.
- (iii) Where the refugee claim was refused at first instance and the decision was notified to the asylum-seeker including through the so-called procedure of "notification to persons of unknown residence" (employed in cases of absence from the declared place of residence) but the asylum-seeker has not appealed against the negative decision within the established time-limit, the first instance decision would be considered definitive with no appeal possibilities.

Asylum-seekers returned to Greece outside the Dublin II procedure, such as under bilateral re-admission agreements as exists between Greece and Italy for example, are excluded from the scope of the new policy and may face the risk of *refoulement*. It should be noted that such a distinction between Dublin II returnees and others is, in UNHCR's view, not justified.

UNHCR already highlighted in its comments to the Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (the 'Asylum Procedures Directive'), that this is a problem which may arise when explicit or implicit withdrawal of an asylum application leads to rejection or closure of a file, without an effective possibility to reopen. It is for this reason, that in UNHCR's view, in such cases, the refugee status determination procedures should be halted and the file closed, with the proviso that it could be reopened at any time when the asylum-seeker so requests because of changes in his or her personal situation.

Conclusion

With respect to **Greece**, UNHCR considers that those aspects of Presidential Decree 61/1999 dealing with "interruption" of examination of asylum applications should be brought, by law, into full conformity with the requirements of both the Dublin II Regulation and established international standards. In all cases, it should be ensured that persons in need of international protection are identified effectively and that refugees are not subject to *refoulement*.

In cases of "interruption", it should be made possible in all circumstances to reopen the claim. Without these essential guarantees, the transfer of asylum-seekers to Greece under the Dublin II Regulation, bilateral re-admission agreements or otherwise, could have adverse consequences for the persons concerned.

With respect to **returns under the Dublin II Regulation**, in view of the fact that the changes in practice on "interruption" are partial and are not yet set out in law, UNHCR therefore recommends the generous use by Member States of its discretionary power under Article 3(2) of the Dublin II Regulation. UNHCR also encourages Member States to take into account other factors which may impede access to entitlements and benefits for persons in need of international protection and which may lead to indirect *refoulement*.

UNHCR maintains in this regard that the credibility of a mechanism such as the Dublin II Regulation is contingent upon the existence of harmonized standards in practice. At present, significant inequalities persist between Member States of the European Union. UNHCR also notes the need for more equitable burden-sharing arrangements within the European Union particularly for States facing comparatively large numbers of asylum-seekers.

As for **returns outside the Dublin II Regulation**, UNHCR urges that no return of asylum-seekers should be foreseen, either under bilateral

readmission agreements or otherwise, unless it can be ensured in the individual case that the person will have access to a fair procedure.

UNHCR further notes that this Note only highlights problems of access due to the “interruption” of asylum claims in Greece. It does not delve into additional considerations which may be relevant when considering returns to Greece including the effectiveness of access or protection available.

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