



**ASYLUM SITUATION IN GREECE
INCLUDING FOR DUBLIN II TRANSFEREES
31 January 2011**

In its December 2009 ‘Observations on Greece as a country of asylum’, UNHCR described in detail the prevailing situation concerning access to and operation of the Greek asylum system, reception conditions, treatment of people transferred under the Dublin II Regulation, and other related elements. Based on those observations, UNHCR recommended against transfers to Greece of asylum seekers from other Member States until such time as significant improvements could be made to the system and conditions described therein.

Meanwhile, new asylum legislation has been adopted in Greece, and the first measures towards its implementation taken, steps which UNHCR has publicly welcomed. It is difficult to assess the effectiveness of the transitional arrangements after only a few weeks. However, as of January 2011, UNHCR maintains its position that transfers of asylum-seekers should not take place, due to ongoing concerns about systemic problems in the Greek asylum and reception systems, and the resulting situation of asylum-seekers, including those subject to the application of Dublin II. The aim of this paper is to provide updated information about the situation affecting asylum-seekers, in light of developments since end of 2009.

**1. ACCESS TO A FAIR AND EFFECTIVE ASYLUM CLAIM
DETERMINATION**

Access to the procedure

Significant obstacles remain in place, including for Dublin II transferees, to lodge or re-register an asylum claim in Greece.

Asylum-seekers arriving at the Greek frontiers, including land, air and sea borders, do not in general have access to information, in writing or verbal form, about the asylum procedure, including how to apply or re-register. Written leaflets that were previously provided at Athens Airport and, sporadically, at entry points in Evros, are no longer up to date nor available in many of the relevant languages. Following the adoption of new legislation (Presidential Decree 114/2010 of 22 November 2010) regulating the asylum procedure during a transitional period, the authorities have announced plans to draft a new information leaflet which is, however, not yet available.

Translation and interpretation is generally not available at land, air or sea borders. This prevents effective communication between asylum-seekers and border or other officials, thereby impeding access to the procedure, and the provision by the officials of relevant information, in languages that both parties could understand. On an exceptional basis, interpretation services in certain languages have been available in the Evros region, near the border between Greece and Turkey, in the context of the operation currently being conducted by Frontex Rapid Border Intervention Teams (RABITs). However, these interpretation services are aimed at ascertaining information for the purpose of the Frontex operation, specifically regarding nationalities and travel routes. They have not, to UNHCR's knowledge, focussed on ascertaining whether those people intercepted are seeking asylum, or on providing them with relevant information on that subject.

UNHCR has observed that few people explicitly request asylum in the Evros border area. Where they do so, they face a number of legal and practical impediments. These include prolonged detention, frequently in deplorable conditions, which is used for a significant proportion of irregularly-arriving people. Other obstacles facing people who may wish to claim asylum include the lack of information, including on their legal situation and entitlements; the lack of legal assistance; and the absence of effective communication with outside parties generally, all of which have a deterrent effect on potential asylum seekers.

According to UNHCR's observations, the procedures followed in case of arrest after illegal entry in the Evros region involve, in a large number of cases, the issuance of deportation orders, without any prior assessment of the person's individual situation. Such deportation orders are frequently accompanied by detention orders. The length of the detention is largely based on the feasibility of deportation, which itself is based on the results of a nationality assessment, undertaken by Frontex RABIT teams, which are regularly used by Greek officials as the basis for their administrative processes.

People determined to be of certain nationalities – including Iraqis, Syrians, Georgians and Iranians, among others – have frequently been detained for extended periods. It has been observed that the nationalities with extended detention periods may be liable to return to Turkey pursuant to the readmission protocol between Turkey and Greece. UNHCR is aware of a number of cases of return of third country nationals from Greece to Turkey during 2010 under the readmission agreement. It is noteworthy in this connection that Turkey, which maintains the geographical limitation to the 1951 Convention and does not accept responsibility for refugees from outside Europe, has in the recent past removed people onwards to its neighbouring countries.

In-country, asylum applications can, in principle, be lodged at all Police Directorates, including at Athens International Airport and at Petrou Ralli (Athens). Practice varies in the different regions of Greece, but under Presidential Decree 114/2010, adopted in November 2010, persons will generally be able to apply, if they can provide an address within the jurisdiction of the competent Directorate. The requirement for a fixed address, as well as other factors, such as the lack of reliable information, interpreters and legal aid, may, however, continue to pose serious obstacles of access to the asylum procedure.

According to Presidential Decree 114/2010, adopted in November 2010, it will be possible to register asylum applications and conduct interviews at Athens International Airport, including for Dublin transferees; a process which had just commenced at the end of January 2011.

a. Asylum decision-making during the transitional period

In November 2010, Presidential Decree (PD 114/2010) was adopted, establishing transitional arrangements for dealing both with first instance and appeals cases, including the significant backlog of over 47,000 pending appeals. It assigns the responsibility for determining asylum applications at first instance to Police Directorates in fourteen locations (including two airports) and establishes independent appeals committees, which are responsible inter alia including for the backlog, in which UNHCR participates as a full member.

The registration of new applications, as well as processing of applications at first instance, re-started at Petrou Ralli (Athens), on 10 January 2011, following issuance of a Circular of the Chief of Police containing procedural guidelines on the implementation of PD 114/2010. Registration and interviewing was due to commence in other locations in January 2011. At the time of writing, it had also commenced at Athens Airport, but had not begun in all other planned locations. While this is a welcome development, UNHCR has observed that this processing has commenced without all of the requisite additional resources to meet the demands for new registration and the efficient processing of applications at first instance, nor (as yet) with the required training for officers involved in interviewing and decision-making.

Access to professional and accurate interpretation, which has been recorded as a key obstacle in the past, will only gradually improve as investments and plans made to date for increasing the number of interpreters available to support the process, and strengthening the quality of their services, are limited. Legal assistance is also likely to remain inaccessible to the vast majority of asylum seekers, particularly those outside Athens, at least until NGOs receive the pledged funding to significantly increase their capacity.

Until the necessary resources are available and the necessary capacity built, significant problems in securing access and the fair and effective assessments of and decisions on asylum claims are likely to remain.

Recognition rates for all nationalities remain far below EU averages, including for groups of people who in other countries are frequently recognised as needing refugee status or other forms of protection. The total (rounded) number of first instance asylum decisions made in the first three quarters of 2010 in Greece is very low, at 2860. Within this figure, decisions for specific nationality caseloads can be analysed. In Greece, in this period the

protection rate¹ for Afghans was 8 %, for Somalis 0 % and for Iraqis 8 %. If compared to the five EU member States which received the highest numbers of asylum claims in the first three quarters of 2010,² it can be noted that the average protection rates for the same caseloads were as follows: Somalis 70 %, Afghans 45 %, Iraqis 51%. For UNHCR, this signifies that the approach taken in Greece is not consistent with the standards or interpretative approaches taken by other Member States. While complete harmonisation should not be expected, the breadth of the disparity – and the low levels of protection accorded overall - give cause to believe that the flaws in the process are fundamental.

Until the publication of PD 114/2010, asylum-seekers did not have access to an effective remedy against negative decisions at first instance. As the Advisory Appeals Boards which were established by the (now superseded) Presidential Decree of July 2009 were never constituted, the previous (non-independent) administrative appeals procedure never became operational. Therefore, the only legal remedy against negative first instance decisions has been an appeal to the Council of State, which lacked automatic suspensive effect and which was limited to points of law.

The new, independent Appeals Committees (to review both new appeals and the backlog of over 47,000 pending cases), which were created under PD 114/2010 for the transitional period, have not yet been activated. Rules of procedure required by the Presidential Decree, as well as operational modalities, particularly for the backlog, remain to be determined. Other preparations, including the mobilization and training of the necessary personnel, must take place before the Committees can begin to function. Given the significant challenges to implementation of these arrangements, which must address both new appeals as well as the backlog, time will be needed before an effectively functioning appeal system will be in place in Greece. It also remains to be seen, how – in addressing the backlog of appeals – the cases of Dublin transferees will be reviewed.

In the context of expulsion procedures, the right to appeal against a deportation order, although provided by law, is ineffective in the absence of legal aid. Deportation orders are issued in Greek, with no translation provided for recipients; and reports have been noted of cases where deportees have not received orders at all. The appeal process against deportation orders consists exclusively of a written procedure with strict deadlines and without automatic suspensive effect at the judicial level. Asylum-seekers are frequently not informed about their rights and appear unaware of the content of decisions concerning their cases, and the individual is potentially subject to removal at any time. As a result, there is also no effective remedy outside the asylum procedure against a deportation order.

¹ Including recognition as refugee, granting of subsidiary protection and granting of any other national protection status.

² According to EUROSTAT data, Germany received 37,105 applications in Q1-3 of 2010, Sweden 22,670, Belgium 18175 and the United Kingdom 17,700. Note that for France no Q3 data are available, but it received 33,050 applications in the first 8 months of 2010. For the asylum decisions made in those five countries recorded so far in EUROSTAT for Q1-Q3 (note that for some caseloads / countries only info for Q1 and Q2 is available)

b. Further reforms

In addition to the transitional arrangements described above, on 18 January 2011, the Greek Parliament has adopted a Law, which provides, *inter alia*, for the establishment of a new Asylum Authority, comprised of qualified civilian staff, responsible for the adjudication of asylum applications in first instance, under the Ministry of Citizens' Protection. The establishment of the asylum service as well as of independent committees deciding on appeals, provide the basis for significant improvements and progress on asylum institution-building, as well as for fair and efficient decision-making on individual claims. The new law envisages that the asylum service will be operational within one year from its adoption. However, the availability of the financial means to set up, equip, train and operate the system will continue to pose significant challenges to its implementation. These constraints mean that current weaknesses in the system will continue to impact directly on persons seeking international protection, including Dublin transferees.

2. RECEPTION CONDITIONS AND DETENTION

In UNHCR's view, upon return to Greece under the Dublin Regulation, asylum-seekers are likely to become homeless and destitute. There is a risk they will end up in detention under very poor conditions.

a. Material support and housing

Asylum-seekers in Greece, including Dublin transferees, in most cases have no material support, notwithstanding the legal obligation of the State to provide accommodation and minimum financial assistance. There are less than 1000 reception places available for asylum-seekers in Greece, while 16,000 asylum applications were lodged in 2009, and 10,273 during 2010.

Moreover, most of the existing twelve reception centres are run by NGOs, and depend on funding – largely from the European Refugee Fund. Disbursement of this funding in Greece is very slow. In the absence of secure funding, the level of services delivered to the few asylum-seekers provided with a space in one of the centers is equally low, including, for example, for referrals to hospitals and schools. As many asylum-seekers are left to live rough, they are unable to comply with the obligation to provide an address to the Police Directorate; 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 cover the living expenses of asylum-seekers in Greece. Reports suggest that significant numbers of asylum-seekers, including Dublin returnees are left unassisted, homeless or in overpriced and overcrowded shared rooms. People who are not accommodated in reception centres also face serious obstacles in gaining access to services including health care and education, among others.

At times, the authorities evacuate locations where third-country nationals, including asylum-seekers, reside as squatters, because of conditions that pose a risk to public health, but make no provision for their relocation. In central Athens, in 2009 and 2010, 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.

An ‘Action Plan’ tabled by Greece with the European Commission in August 2010 foresees an increase in reception places, as well as some specialized facilities for children, all of which would be welcome measures. Initial EU emergency funding will contribute to construction and refurbishment costs, but the resources required to ensure the ongoing effective running, staffing and maintenance of such facilities will be considerable. Current preparations also indicate that significant further time periods of time will be required before land can be identified for the building of new centers. Title to the properties must be secured and construction tenders prepared before work can begin on additional reception places. Even with the additional capacity of the proposed new and refurbished centers, total capacity will still fall far short of needs, should asylum claims remain at current levels. Thus the risk of homelessness, destitution and other conditions that hinder or render impossible the effective pursuit of an asylum claim remains great.

b. Detention

UNHCR further observes that in Greece the detention conditions for asylum-seekers, including Dublin transferees, fall short of international and European standards. This is regularly documented by UNHCR field visits (including recently to Athens International Airport where UNHCR observed deplorable conditions in detention), the 2010 Committee on Prevention of Torture (CPT) report on the visit of September 2009, the Council of Europe Commissioner for Human Rights visits of December 2008 and February 2010, the press release of the UN Special Rapporteur on Torture in October 2010, as well as the several rulings of the European Court of Human Rights finding violations, *inter alia*, of Article 3 ECHR, including recently in *A.A. v Greece* and *MSS v Greece and Belgium*.

Overcrowding and poor conditions in police detention centres have worsened since the entry into force, in the summer of 2009, of a law on administrative detention of irregular migrants which extended the maximum detention period, and in view of increased number of persons detained. Detainees generally lack understanding of their legal situation as well as communication possibilities, and have very limited access to interpretation and legal aid, including in order to challenge detention decisions.

In the Evros region (the area of the land border between Greece and Turkey), in late 2010, the available detention facilities were constantly overcrowded and facilities were not maintained at an adequate standard. With – at times - up to four times as many people as capacity would allow in some centres, there was insufficient room for all to sleep, lie

down or move freely. Women and children were detained together with unrelated single males, and unaccompanied children placed in particularly difficult circumstances, including with delays observed in gaining access to medical treatment, and the absence of other specialized facilities to meet their needs. Access to open air was generally insufficient. Essential non-food items were frequently not provided, and sanitary conditions at various points have been deplorable. In early 2011 the situation had not improved. The new legislation adopted by the Greek Parliament in early January 2011 and mentioned above, sets out a planned screening system for persons entering Greece in an irregular manner. It should include the establishment of centres of first reception as well as screening procedures and mechanisms to identify persons in need of international protection and those with special needs, such as unaccompanied children, at the earliest possible stage. These mechanisms should result in much shorter detention periods at least for these persons. However, the establishment of the screening system will require significant resources and time, until centres and procedures are established and functioning.

While Dublin II transferees are unlikely to end up in the Evros detention facilities upon their return to Greece from another Member State, the inability of the Greek authorities to provide for the basic standards required to ensure human dignity is of grave concern. There are no indications that Dublin II transferees are spared the hardships and treatment that – at present – are generally experienced by asylum seekers in Greece.

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