NEW ISSUES IN REFUGEE RESEARCH

Research Paper No. 231

Putting solidarity to the test: assessing Europe's response to the asylum crisis in Greece

Paul McDonough

Affiliated External Researcher
Program in Refugee and Asylum Law
University of Michigan

E-mail: paul.n.mcdonough@gmail.com

Evangelia (Lilian) Tsourdi

Law Faculty and Institute for European Studies
Université Libre de Bruxelles

E-mail: liliantsourdi@gmail.com

January 2012

UNHCR
The UN Refugee Agency

Policy Development and Evaluation Service

Policy Development and Evaluation Service
United Nations High Commissioner for Refugees
P.O. Box 2500, 1211 Geneva 2
Switzerland

E-mail: hqpd00@unhcr.org
Web Site: www.unhcr.org

ISSN 1020-7473

Introduction

The challenges facing refugees in Greece are widely known. Since 2007, a stream of reports has documented serious deficiencies during every stage of the refugee experience, from arrival at the border through implementation of a final asylum decision. The humanitarian situation has improved somewhat in 2011, but at the same time the challenge facing Greece has grown. The European Union's administrative and physical external border control regimes have become more stringent, rendering many former routes into the EU inaccessible.

2010 saw a massive shift of migration flows to the Evros region, the land border between Greece and Turkey.[1] More than 80% of all irregular entries into the EU now cross this border. Greece bears the responsibility for securing the rights and providing for the needs of nearly all the refugees among this population, as an EU law known as the 'Dublin regulation' requires that most people in need of protection request it of the first member state they physically enter.

Greece has about 2% of the EU's population and GDP, and one of its less developed asylum systems. By 2010-2011, human rights conditions there had led several member states to stop sending people back under the Dublin regulation. In January 2011 the European Court of Human Rights (ECtHR) found Greece liable for ill-treatment of an asylum seeker, and for failing to provide a means of legal redress, and found Belgium had violated the same standards by returning him to Greece.[2]

Hundreds of individuals had already appealed to the court and to national courts for orders stopping transfers to Greece. Those member states that had not yet stopped transfers quickly did so. The Court of Justice of the European Union (CJEU) ruled in December 2011 that member states may not transfer asylum seekers in the face of "substantial grounds" for believing there is a serious risk to their fundamental rights, and must either find another responsible state or process the asylum application themselves.[3] At this point, the Dublin system has essentially ceased to operate with respect to Greece.

The Dublin regulation is part of a "common European asylum system" (CEAS) developed incrementally since the 1999 Amsterdam Treaty. The CEAS has added a layer of enforceable EU law to Greece's international obligations toward refugees. It has also established practical mechanisms to assist member states in implementing EU asylum policies. The EU has engaged these mechanisms, since late 2010 under an overarching "action plan" on migration developed by the Greek government and submitted to the European Commission.

Frontex, the EU borders agency, has increasingly operated in Greece since 2006. At the request of the Greek government in spring 2011, the European Asylum Support Office (EASO) deployed

[1] Frontex, "Situation at the External Borders (January – Sept 2010)" (in the first nine months of 2010 detections of irregular crossings dropped significantly along all routes into the EU, except for the Evros border, where they rose by 372% over 2009, with an average of 128 people detected each day). Subsequent reports and the research conducted for this article indicate that migrants continued to cross this border in large numbers throughout 2011.

[2] MSS v Belgium and Greece, app. No. 30696/09, 21 January 2011 ("numerous reports and materials . . . agree[d] as to the practical difficulties involved in the application of the Dublin system in Greece, the deficiencies of the asylum procedure and the practice of direct or indirect *refoulement*").

[3] Joined Cases C‑411/10 (N.S.) and C‑493/10 (M.E.), 21 December 2011.

its first field operation in the form of Asylum Support Teams (AST), which assist member states that face particular pressures. The Greek government requested the application of the emergency funding mechanisms of the European Refugee Fund (ERF) during the course of both 2010 and 2011.

This article evaluates solidarity efforts undertaken thus far to support Greece in its asylum and migration crisis. It is based on law and policy analysis and interviews with stakeholders involved in practical aspects of migration and asylum policy in Greece. The first section outlines the situation facing refugees in Greece as it has evolved during the lifespan of the CEAS. The second section discusses the meaning of 'solidarity' in international and European law, aiming to define the duty – if any – other states or the EU owe to Greece.

The main section then assesses the extent to which programmes enacted by European and other international actors have improved human rights conditions, and alleviated administrative burdens on Greece, and identifies gaps where critical needs remain unmet. The concluding section analyses the degree to which the EU is fulfilling its duty of solidarity toward Greece and what further steps Greece needs to take in order to fulfil its obligations towards refugees, and suggests additional solidarity measures that are feasible within current legal frameworks.

Background: refugees in Greece

After the first phase of development of the CEAS which led to the establishment of common minimum legal standards, European attention increasingly focused on the shortcomings of the Greek asylum system. Reports from NGOs, EU bodies, and international bodies documented serious human rights violations relating to access to the territory, significant barriers to requesting asylum, low quality asylum procedures yielding extremely low refugee recognition rates, severe shortcomings in social support, and appalling migrant detention conditions.

Responding to this criticism, and to pressure from the European Commission over the gaps between its laws and CEAS standards, Greece instituted reforms of its asylum laws and practices in 2010-2011. A significant increase in mixed migration flows entering Greece coinciding with the national financial crisis vastly complicated these efforts. This section reviews how the Greek asylum system evolved to its present state, and the challenges Greece faces in meeting the needs of arriving refugees.

Migration flows

After decades of net outward migration, Greece has seen net immigration since the 1990s, in the wake of its increasing prosperity following entry into the EU, the collapse of communism in Eastern Europe, and accession to the Schengen open borders agreement.[4] Levels of irregular

[4] Magliveras, K. "Greece", in *International Encyclopaedia of Laws: Migration Law*, by Vaheule, D. (ed.) (Alphen aan den Rijn, NL: Kluwer Law International, 2010), at pp. 15-18.

immigration have risen significantly in recent years. Overall, by the end of 2010, about 90% of people detected irregularly entering the EU arrived first in Greece.[5]

Alongside the developing common asylum policy, borders policy has also been Europeanised. Here the focus is on preventing the arrival of undocumented migrants, and on returning those already present. Stringent security requirements and carrier sanctions have made air travel prohibitively difficult for refugees unable to secure visas in advance. Frontex joint operations Hera starting in 2006 intercepted small vessels approaching the Canary Islands, and in cooperation with West African authorities turned them back within African territorial waters.[6] With support from Italy including military equipment, in 2008-09 Libya undertook to prevent departures of migrant boats.[7] Frontex instituted operation Nautilus 2009 in the same region.

Arrivals in the western and central Mediterranean virtually ceased, until an upsurge at Malta and Lampedusa in 2011. In 2010 arrivals on the Greek Aegean islands dropped significantly following intensified Frontex operations there. In the first nine months of 2010, Frontex recorded significant reductions in arrivals along all routes into the southern EU except the Evros land route, where detections of irregular crossings rose by 372% over the prior year.[8] Also in 2010, Frontex's operation Attica began to coordinate efforts to return irregularly staying migrants from Greece to their home countries.

Actual return of irregular migrants from Greece is a rarity. Lawful returns pose a host of human rights and administrative challenges. Many people entering Greece are in fact refugees. Even if they do not request international protection, many come from countries such as Afghanistan, Iran, Iraq and Somalia, to which forced return is problematic. For the rest, return depends to a great extent on agreement and cooperation between Greek and Turkish authorities regarding identification of and responsibility for the people concerned.

Notwithstanding readmission agreements between Turkey and Greece, as well as other neighbouring countries, this is not usually achieved. On the other hand, the administrative and practical difficulties of irregular onward travel within the EU from Greece, and the rule of the Dublin regulation directing those who later request asylum in other EU countries back to Greece, largely prevent onward movement.

Greece and the common European asylum system

The end result of this is a flawed and dysfunctional asylum and migration system that is also under serious, system-wide strain. Greece has fewer than 1000 reception places available all told, yet received over 10,000 new asylum applications in 2010 alone. Even though only a fraction of refugees in Greece are able to submit asylum applications, the backlog of unprocessed claims

[5] EU Fundamental Rights Agency, "Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner", March 2011, p. 12 (citing Frontex reports).
[6] Frontex Press Release, 'Longest FRONTEX coordinated operation – HERA, the Canary Islands', 19 Dec. 2006.
[7] For an analysis see Moreno-Lax, V., "Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea", 23 *IJRL* vol.2, at pp. 174-220.
[8] Frontex, *Situation at the External Borders (Jan.-Sept. 2010)*.

and pending appeals had grown to around 47,000 by the end of 2010.[9] In 2010, 105 out of 3,455 first instance decisions granted protection, an increase on prior years but still far below average EU rates for similar populations of protection seekers.[10]

Until 1999, UNHCR examined asylum claims in Greece, referring those identified as refugees for resettlement. Presidential decree 61/99 established a national status determination system.[11] Specialised staff within police directorates carried out first instance interviews. A committee including four government officials, a representative of UNHCR and an NGO lawyer examined appeals and made recommendations to the Minister of Public Order, who made the final decisions.

Greece transposed the main EU asylum directives through Presidential Decrees 220/2007, 90/2008 and 96/2008, and 81/2009.[12] (EU regulations have immediate legal effect. Directives, by contrast, usually describe frameworks within which member states should enact 'transposing' legislation establishing enforceable laws.) This process was not smooth: the European Commission has taken formal action against Greece at least once for non-transposition or incorrect transposition or application of each of the five main CEAS measures.[13] Greece updated its laws before the infringements resulted in formal judgments of the CJEU.

The resulting procedures and ongoing practices were nonetheless heavily criticised for falling short of EU standards. For example, in late 2007 two reports drew heightened attention to Greece. ProAsyl, a German NGO, documented serious human rights abuses against refugees attempting to reach Greece via the Aegean Sea.[14] According to ProAsyl, Greek coast guard and border authorities routinely physically abused migrants, and pushed them away from Greek territory without considering possible protection needs.

A UNHCR study described an asylum system which essentially failed to grant asylum at all, rejecting applications with standardised language identifying the applicant as an economic migrant without protection needs.[15] A 2008 Human Rights Watch report documented physical abuse, systematic expulsions without allowing asylum applications, perfunctory asylum

[9] Press release of 5 April 2011 of the Ministry of Citizens' Protection, *Guidelines for the processing of 47.000 pending asylum claims at second instance*, available (in Greek) at: http://www.yptp.gr/asylo.php?option=ozo_content&perform=view&id=3583&Itemid=465%20&lang=&lang=&lang

[10] EUROSTAT, *Data in Focus: Asylum applicants and first instance decisions on asylum applications in 2010*, Doc. No. 5/2011, at p. 10.

[11] Presidential Decree 61/99 on the recognition of aliens as refugees, Official Gazette of the Hellenic Republic, Volume first, Number 63.

[12] Presidential Decree 220/2007 on the amendment of Greek legislation in order to comply with Directive 2003/9/EC, Official Gazette of the Hellenic Republic, Volume first, Number 251, 13 November 2007, accessible at (in Greek): http://www.et.gr/index.php; Presidential Decree 90/2008 on the amendment of Greek legislation in order to comply with Directive 2005/85/EC, Official Gazette of the Hellenic Republic, Volume first, Number 138, 11 July 2008, accessible at (in Greek): http://www.et.gr/index.php; Presidential Decree 81/2009 amending Presidential Decree 90/2008, Official Gazette of the Hellenic Republic, Volume first, Number 99, 30 June 2009, accessible at (in Greek): http://www.et.gr/index.php.

[13] European Commission, Directorate General of Home Affairs Newsroom, http://ec.europa.eu/home-affairs/news/infringements/infringements_by_policy_asylum_en.htm.

[14] ProAsyl, *The truth may be bitter but it must be told: The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard*, October 2007.

[15] UNHCR, *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, 2007.

proceedings without legal representation or adequate interpretation, administrative barriers to even making an asylum application, and inhumane detention conditions.[16] Numerous NGO reports affirmed these and similar findings.

Notwithstanding such concerns, the member states for the most part continued to apply the Dublin regulation mechanically to transfer asylum seekers to Greece. The additional administrative burdens the Dublin system places on Greece further strain its asylum capacity, in turn heightening the risk of human rights violations. In December 2008 the European Commission, in the context of draft amendments to the Dublin regulation, proposed an EU-level mechanism to suspend transfers to a member state whose asylum system is under "particular pressure".[17] This proved controversial and has not been adopted. The same month, the ECtHR appeared to affirm that states may assume their counterparts duly uphold their legal and humanitarian obligations in cases of 'Dublin return'.[18]

One of the Commission's interventions against Greece, concerning the 'interruption' practice, threatened to render the system unworkable. Under presidential decree 61/99, asylum files were closed if applicants left their declared places of residence without informing the authorities. In effect, people returned under the 'take back' rule of the Dublin regulation could not have the merits of their applications considered.[19]

Following the initiation of a formal infringement proceeding, Greece enacted decree 90/2008 which updated its asylum procedures to close this gap. The next intervention began in November 2009 when coalition of NGOs wrote formally to the Commission alleging misapplication of "the EU asylum *acquis* in relation to all aspects of the asylum procedure and the treatment of asylum seekers".[20] The subsequent infringement action proceeded to a second letter of formal notice, sent in June 2010.[21]

In September 2010 the Greek government presented an "action plan on migration management" aimed at, among other issues, the shortcomings that had prompted the 2009 infringement action. The plan was finalised following an intensive one month consultation with key stakeholders in migration and asylum issues in Greece.[22] Its main priorities are to modernise screening procedures for migrants; restructure the asylum procedure; increase reception capacity for children and vulnerable groups; and upgrade detention conditions and improve return procedures.

---

[16] 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.

[17] European Commission (2008), *Proposal for a Regulation of the European Parliament and of the Council establishing an application for international protection lodged in one of the Member States by a third-country national or a stateless person* (Recast), COM (2008) 0243 final.

[18] *KRS v United Kingdom*, app. No. 32733/08, 2 December 2008.

[19] See UNHCR, "The return to Greece of asylum-seekers with "interrupted" claims", July 2007.

[20] Dutch Council for Refugees et al., Complaint to the Commission of the European Communities Concerning Failure to Comply with Community Law, November 2009, at p.8, available at: http://www.proasyl.de/fileadmin/fm-dam/q_PUBLIKATIONEN/Beschwerde_gegen_Griechenland_10.11.2009.pdf.

[21] The process by which the Commission enforces compliance with EU law involves a series of notices and answers that can eventually lead to an action before the CJEU.

[22] ICMC, *Mayday! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe*, September 2011.

Newly enacted laws based on these objectives provide for new interim asylum procedures, the creation of screening centres at the border, and the establishment of a permanent asylum service to examine claims. The third section of this article will analyse these initiatives and their impact.

This article presents the results of a series of investigative interviews carried out in Greece in August 2011 against the background of the recent history of asylum and migration in Greece, and the legal frameworks discussed in the next section. The interviews aimed to assess the activities of Frontex, EASO, the new asylum committees, and Greek authorities, as well as NGOs and international organisations, in addressing Greece's asylum crisis under the aegis of the action plan. The article seeks to build on research undertaken by various non-governmental organisations, independent researchers, international institutions and the FRA by evaluating progress made during 2011 investigating remaining obstacles to the effective application of European and international support.

Solidarity and refugee law

This section assesses the legal duties of the member states of the EU to support Greece in fulfilling its responsibilities to arriving refugees. It summarises the main rights of refugees under international and European law, which create Greece's primary legal obligations, then explores the "principle of solidarity" and the degree to which it obliges other states to assume any of Greece's responsibilities. After discussing solidarity and its effect in international and in EU law, the section applies it to interpret the obligations that EU asylum law places on the member states and EU institutions.

Obligations to refugees in international and European law

Under the 1951 Convention, a refugee is someone unwilling to return to their home country "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".[23] No state may return (*refoule*) a refugee whose "life or freedom would be threatened" on these grounds.[24] The Convention also describes social, political and economic rights of refugees. As the connection between refugee and host state deepens over time, the scope of these rights increases.

The EU has issued directives interpreting the 1951 Convention, and describing minimum standards for asylum determination procedures.[25] From 2005 to 2008 the member states enacted national legislation implementing these directives. The directives for the most part reflect the

[23] 1951 Convention Relating to the Status of Refugees, 25 July 1951, as amended by the 1967 Protocol Relating to the Status of Refugees, 31 January 1967, [1951 Convention], article I(A)(2).
[24] Ibid., article 33(1).
[25] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L31/18 [Reception Conditions Directive], Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304 [Qualification Directive], Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13 [Asylum Procedures Directive].

rules of the Convention.[26] They establish a right of refugees to receive asylum in the EU. They go beyond the Convention in also extending protection to people outside the Convention definition, who are at risk of "serious harm" in the form of a death sentence, torture or inhuman or degrading treatment, or through "indiscriminate violence" in an armed conflict.

An administrative component of the CEAS, the Dublin regulation, governs the allocation of responsibility for asylum applications.[27] One member state is responsible for each application. The regulation provides a hierarchy of criteria for identifying the responsible state, in principle the state primarily responsible for the person's presence in the EU. In effect, this usually means the state first entered. As many refugees travel without visas, making air travel to the EU virtually impossible, this tends to shift the EU's aggregate responsibility for refugees toward states at its eastern and southern periphery.

Solidarity and responsibility sharing in EU borders and asylum policy

Until 2009, the EC treaty directed the EU legislative bodies to adopt measures "promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees".[28] The Treaty of Lisbon repealed and replaced the articles describing the CEAS, omitting that language.[29] Instead, it introduced a new article 80,[30] requiring that "the principle of solidarity and fair sharing of responsibility, including its financial implications" govern all policies enacted under articles 77 through 79 (regulating border checks, asylum and immigration).

Article 80's prominent use of the term indicates that, whatever 'solidarity' means, it is intended as a guiding principle of the CEAS. The CJEU, the final arbiter of the EU treaties, applies its own rules of interpretation, which differ somewhat from those of international treaty law. It reads EU laws and treaties in light of the background of international and constitutional law the member states share. Its interpretation of solidarity relating to borders and asylum policy would consider international law, EU law in other sectors that apply solidarity, and any common understanding found in the constitutional traditions of the member states.

[26] See e.g., Philippe De Bruycker, et al., *Study for the EP, Setting up a Common European Asylum System: Report on the application of existing instruments and proposals for the new system*; James Hathaway, "EU Accountability to International Law: The Case of Asylum", 33 *Mich. J. Intl. L.*, vol.1, fall 2011, pp. 1-7 at p. 4 (noting some remaining incompatibilities with international law).

[27] 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, OJ L50 [Dublin Regulation].

[28] Treaty Establishing the European Community, OJ C 325, article 63(2)(b) (pre-Lisbon Treaty).

[29] The Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community, 13 December 2007 ('Lisbon Treaty'), C306/1, article 65.

[30] Unless otherwise noted, all references to EU treaty provisions refer to the consolidated version of the treaties in force as of January 2012.

The solidarity principle in international law

'Solidarity' may be becoming a general principle, with a common core meaning shared across areas of public international law.[31] Even if it falls short of generality, it may operate in particular areas.[32] Something akin to solidarity is visible in refugee law sources. The preamble to the 1951 Convention asserts that international cooperation is required to adequately address refugee issues. Since 1990 the UNHCR Executive Committee has "repeated the principle of burden sharing" in every annual session, and has tied that principle to "international solidarity".[33] The UN General Assembly has also consistently supported the principle of solidarity in its resolutions pertaining to UNHCR.[34] Preambles, conclusions and resolutions do not bind states, but they can help to indicate the existence of a principle of law. If it exists, the principle of solidarity in international refugee law is 'soft', i.e. persuasive rather than enforceable. It may, however, help to inform the meaning of 'solidarity' as a principle of EU law.

Another approach to identify a solidarity principle in refugee law is to argue by extension or analogy from other areas of international law. Some have argued such a principle is rooted in the UN law of peace and security, or in disaster law which shares with refugee law the common factor of forced flight.[35] Solidarity in peace and security law, however, normally acts against miscreant states, whereas in refugee law it is the state receiving refugees whose sovereignty is concerned.

Disaster law may present the more instructive analogy. As with refugee law, its basic rights and duties flow between a state and individuals. The existence of an international convention to protect refugees signifies heightened international interest in their rights, versus disaster law which normally concerns a state's own citizens. An affected state has a duty to provide humanitarian support to victims, and a right to request assistance. It may even be obliged to request help from other states if necessary to uphold core human rights standards.[36]

The solidarity principle in EU law

An international understanding of a principle of law can help to inform its EU meaning as the member states adhere to a common background of international law. International law is however only one aspect of the interpretation of public law in the EU. Commonly held

[31] Rüdiger Wolfrum, "Solidarity amongst States: An Emerging Structural Principle of International Law", in Flavia Piovesan and Ines Virginia Prado Soares, eds., *Dirieto ao desenvolvimento* (Belo Horizonte, 2010), pp. 57-72 at p. 72.
[32] See e.g., Karel Wellens, "Solidarity as a constitutional principle" in Ronald St John Macdonald and Donald M. Johnston, *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (Martinus Nijhoff, 2005) pp. 775-807, at pp. 788-89.
[33] Tally Kritzman and Yonatan Berman, "Responsibility Sharing and the Rights of Refugees: The Case of Israel", 41 Geo. Wash. Int'l L. Rev. pp. 619-649 at p. 630.
[34] For a list of these resolutions, see Agnes Hurwitz, *The Collective Responsibility of States to Protect Refugees* (Oxford Univ. Press, 2009), at p. 143 n94.
[35] Karel Wellens, "Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections", in Rüdiger Wolfrum and Chie Kojima, *Solidarity: A Structural Principle of International Law* (Springer, 2010), pp. 3-38 at pp. 13-19.
[36] Ibid.

constitutional principles, applications in the EU treaties, and the need to interpret a term similarly across different spheres of EU law are also key interpretive factors.

Solidarity has constitutional status in member states such as France, Spain, and Portugal, applying to social services owed to individuals. In federal systems such as Germany and Spain, it can rather (or also) refer to state to state support analogous to that envisaged by article 80, particularly financial support.[37] To date the CJEU rulings on 'solidarity' have addressed tensions between the common market and social duties owed to citizens, and are of limited help in understanding the meaning of solidarity in the CEAS.

Article 222 TFEU introduces broader state to state solidarity in that the EU shall "act jointly in a spirit of solidarity" and its member states "shall assist" a member state that requests help in the event of a terrorist attack or disaster. Article 80 extends the principle to all legal acts based on articles 77-79, which cover the main structures of EU borders, asylum and immigration policy as well as applying in specific situations such as emergencies.

Article 80 is only the most specific of several calls for solidarity in the EU treaties that pertain to the CEAS. Under article 4(3) of the Treaty on European Union (TEU), the member states have a general duty to follow "the principle of "sincere cooperation" and "assist each other in carrying out tasks which flow from the Treaties". TFEU article 74 requires the Council to enact "measures to ensure administrative cooperation between" member states and with the Commission in all areas covered by Title V TFEU. Within that title, article 67(2) states "solidarity between Member States, which is fair towards third-country nationals" as a guiding principle in framing "a common policy on asylum, immigration and external border control".

Malcolm Ross argues that "the methodologies and practices" of the CJEU would likely lead to the recognition of solidarity as an EU constitutional principle, subject to application by the court.[38] Given the court's prior jurisprudence, it seems the principle would apply differently in different sectors of EU law. In employment and other social law under the solidarity chapter of the EU Charter of Fundamental Rights, solidarity manifests in a duty of the state to uphold socioeconomic rights of individuals.

Drawing as well on international law and the analogy to disaster law would indicate that EU states have a duty to extend requested support to a member state facing such an inflow of refugees as to render help necessary in upholding the rights of those refugees. Article 80 TFEU's specific reiteration of the solidarity principle indicates it is a strong principle within the CEAS, and its applicability across all CEAS measures shows it is meant to apply not only to emergencies but to structural factors as well.

[37] Peter Gussone, *Das Solidaritätsprinzip in der Europäischen Union und seine Grenzen* (Duncker & Humblot, 2006), pp. 31-32.

[38] Malcolm Ross, "Solidarity – A New Constitutional Paradigm for the EU?", in Malcolm Ross and Yuri Borgmann-Prebil, eds., *Promoting Solidarity in the European Union*, Oxford University Press (2010), pp. 23-45 at pp. 42-43.

Solidarity applied to borders and asylum: the legal impact of article 80

Depending on the legal impact of article 80 TFEU, there may be scope, or even a mandate, for new EU measures to further implement practical solidarity. The emphasis placed on the principle in article 80, added to the more general requirements of articles 67 and 4, renders 'solidarity' impossible to ignore in the context of the CEAS. Since the Lisbon Treaty broadened the scope of solidarity in the CEAS in 2009, the components of the CEAS that predate 2009 should be examined against the principle.

Solidarity and responsibility sharing must mean something beyond "sincere cooperation", if article 80 is to add meaning to article 4(3). The language of article 80 indicates financial support, but not only financial support. Some legal acts grounded in articles 77-79, such as the Frontex and EASO regulations,[39] establish elements of mutual support among member states. The temporary protection directive,[40] grounded in article 78(2)(c), enables joint EU action to handle a "massive inflow" of "displaced persons", but it has never been invoked. Article 78(3) empowers the Council to "adopt provisional measures" to support a member state "confronted by an emergency situation characterised by a sudden inflow" of third country nationals. These are all arguably solidarity measures.

Other laws, notably the main CEAS directives and the Dublin regulation, place duties on the member states without providing means to balance the financial and administrative demands resulting from those duties. Rather than directly offsetting the structural imbalances created or exacerbated by these laws, Frontex, EASO and the ERF are palliatives aimed at some of their effects. A significant gap remains between the demands the CEAS structures place on certain member states, and support available to those states.

Article 80 helps to highlight that gap. Since article 80 applies to the entire CEAS, it arguably requires new measures to offset those effects of the CEAS that existing solidarity measures do not compensate for. While there is no definitive interpretation of article 80, there are indications of its outlines. A 2011 study for the European Parliament of the "scope and implications" of article 80 proposed that the principle it expresses "includes, at a minimum, [a] duty of cooperation through implementation, policing and penalization of infractions of EU law."[41]

The study identified trust between member states as central to EU border and asylum law, and argued that the "expression and significance [of article 80] lie in cooperation through a) all Member States properly implementing all agreed directives and regulations and b) supporting

[39] 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, L349/1 [Frontex Regulation], Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, L132/11 [EASO Regulation], supported respectively by articles 77(1)(b), (c); and 78(1), (2). Both regulations also draw on article 74.

[40] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L212/12 [Temporary Protection Directive].

[41] Vanheule, D., et al., study for the European Parliament, *The Implementation of Article 80 TFEU on the Principle of Solidarity and Fair Sharing of Responsibility, including its Financial Implications, between the Member States in the field of Border Checks, Asylum and Immigration*, 2011, p. 31.

Member States in developing their systems for border management, asylum and immigration to function to the benefit of the EU as a whole".[42]

The authors of the study connect the term 'necessary' in article 80 to two further fundamental principles of EU law, subsidiarity and proportionality.[43] Subsidiarity is linked with the exercise of a competence that is shared between the Union and its member states.[44] In this case the Union may only act if the objectives will be better achieved at Union level.[45] The authors go on to argue that in the asylum context, policy-making requires a double scrutiny 1: establishing whether or not Union measures are required and 2: determining whether or not member states will be able to implement them unaided or whether additional solidarity measures are necessary.[46] Thus if it is clear that individual member states might not be able to implement by themselves a measure due to its implications, then Union action may be required.

In a December 2011 communication on solidarity in asylum, the Commission also linked solidarity and trust.[47] It acknowledged an EU responsibility to assist member states under pressure to ensure "adequate reception of asylum seekers and refugees and access to protection,"[48] and that "the Union has a duty not only to its Member State[s], but also to asylum applicants."[49]

Asylum for refugees is a common EU responsibility. The CEAS skews the physical, administrative and financial obligations necessary to fulfil that responsibility toward certain member states. Article 80 TFEU provides the legal basis to establish new measures, or to amend the existing CEAS instruments, "as necessary" to implement the principle of solidarity. The remainder of this article will examine the need for EU support to ensure adequate reception conditions and access to asylum for refugees in Greece. It will compare the impact of existing measures against that need, and highlight areas where effects of the CEAS in Greece fall outside the scope of those measures. The final section will identify opportunities within the scope of article 80's call for solidarity to extend new support to Greece or member states in a similar situation.

Measures taken in support of Greece

The most significant support extended to Greece in 2011 emanated from European financial support, supplemented by practical co-operation measures. The Greek Action Plan on Migration

[42] Ibid. at p. 100.
[43] Ibid. at p. 38. ("The Member States' expected loyalty in implementing EU policy appears not to be sufficient; if solidarity is needed, then Union action may be required".)
[44] The area of freedom, security and justice is one of shared competence. See Article 4 TFEU.
[45] See also Article 5(3) TEU.
[46] Vanheule, D., et al., study for the European Parliament, *The Implementation of Article 80 TFEU on the Principle of Solidarity and Fair Sharing of Responsibility, including its Financial Implications, between the Member States in the field of Border Checks, Asylum and Immigration*, 2011, at p. 38.
[47] European Commission, Communication on enhanced intra-EU solidarity in the field of asylum: An EU agenda for better responsibility-sharing and more mutual trust, Brussels, 2 December 2011, COM(2011) 835 final, at pp. 11-12.
[48] Ibid. at p. 2.
[49] Ibid. at p. 10.

Management provides the framework for these initiatives.[50] Its priority areas include identification and referral procedures at the borders, asylum procedures, reception conditions, and return.

The Ministry of Health and Social Solidarity (MoHSS) administered funds distributed from the European Refugee Fund (ERF). The Ministry of Citizens' Protection (MoCP) likewise administered funds from the European Borders Fund and the European Return Fund. Recipients included UNHCR in Greece, NGOs, and national institutions. The ERF supported the bulk of the measures; 9.8 million out of the 14.6 million Euros from the ERF fell under the emergency measures framework.

The European Asylum Support Office (EASO) began operations in Greece in May 2011 on the basis of a 2-year plan agreed with the Greek government.[51] EASO plans to deploy 40-50 experts seconded from the member states over this period. The deployment is incremental; size and scope are tailored to match progress and evolving needs.[52] The main support from Frontex came in the form of "Rapid Border Intervention Teams" (RABITs) at the Greek-Turkish land border from November 2010 until March 2011.[53] Frontex followed this deployment with joint operation "Poseidon Land" which coordinates the deployment of seconded border guards in the same region.

In addition to ERF funding, UNHCR received funding from the UK Borders Agency (UKBA) under a three-year agreement that became effective in June 2010.[54] The Greece component depends on annual re-approval.[55] The agreement supports UNHCR actions at Greece's entry and exit points relating to entry screening, reception, detention, and asylum procedure capacity building.[56]

Greece signed memoranda of cooperation with the Netherlands and Germany in 2009 and 2010 respectively that led to exchanges of expertise on several aspects of the asylum process. In November 2011, Greece signed a memorandum of understanding with Norway, Lichtenstein and Iceland intended to provide 20 million Euros to support two programmes.[57] The first will fund civil society and UNHCR actions addressing urgent needs for the reception and screening of new arrivals and for the accommodation of vulnerable groups, and support voluntary returns with the cooperation of IOM. The second will focus on building the capacity of national asylum and migration management systems to safeguard the right to seek asylum and ensure legal protection and care for unaccompanied children.

---

[50] The Greek Government submitted the plan to the European Commission in August 2010.
[51] European Commission, *The European Asylum Support Office (EASO)*, MEMO 11/415, Brussels, 19 June 2011.
[52] Interview with EASO Project Managers (Asylum Support Teams), Athens, 30 August 2011.
[53] FRONTEX, *RABIT Deployment to Greece Extended until March 2011*, Frontex Press Release, Warsaw, 7 December 2010.
[54] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[55] Ibid.
[56] Ibid.
[57] EEA Financial Mechanism 2009-2014, Memorandum of Understanding – Hellenic Republic [final draft August 2011], available at: http://www.eeagrants.org/asset/4183/1/4183_1.pdf and EEA Grants, *Asylum and migration as key priorities in Greece*, Press Release 01.11.2011, available at: http://www.eeagrants.org/id/2672.

ERF emergency funding measures are strictly limited to a six month timeframe.[58] These were to start in Greece in December 2010, but were allowed by special arrangement to start any time within the first two months of the programme. This helped to increase "absorption capacity": whereas in 2010 Greece could use only 6% of available emergency funding, in 2011 the figure was nearly 60%.[59] This section will analyse selected actions undertaken with European support. Assistance focused on aiding in border control operations; enhancing reception capacity and setting up screening centres; improving access to the asylum system; improving the quality of asylum procedures; and ameliorating harsh detention conditions.

Border control operations

Frontex operations have taken place at the Greek-Turkish borders and around the islands of the Aegean Sea. In November 2010 the growing numbers of irregular entrants at the Greek-Turkish borders led to the deployment of the first ever Frontex rapid border intervention teams, in the region of Evros. A large concentration of migrants and border control operations play out as well at the western port city of Patras, a major exit point for onward migration within the EU. Numbers are smaller than in Evros, and Frontex is not involved, as this port city is not on the external EU borders but facing Italy.

Mapping the situation and solidarity measures undertaken

The Commissioner for Home Affairs characterised the situation in Evros as increasingly worrying and expressed concerns about its humanitarian implications.[60] The RABIT deployment responded to an increasing number of irregular arrivals at the Greek-Turkish land border which in 2010 reached 44,088, up from 8,787 in 2009.[61] The operation consisted of 175 'border control experts' from 26 member states and Schengen-associated countries.[62] Before the start of the RABIT operation two Frontex coordinated activities were already ongoing in the Evros operational area: JO Poseidon Land (since 2008) and Project Attica (since 2009).[63] They were suspended during the first ever RABIT deployment, that took place from November to March 2010, and reinstated after its completion.

Currently, the states participating in Poseidon Land provide 70-80 guest officers as experts, and about 2 to 3 interpreters per month.[64] The mission is supported by Project Attica[65] that includes

[58] Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC, L144/1, articles 5(2), 5(3).
[59] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[60] Statement by Cecilia Malmström, European Commissioner for Home Affairs on the request of the Greek government to get assistance via Rapid Border Intervention Teams at the land border between Greece and Turkey, MEMO/10/516, Brussels, 24 October 2010.
[61] Official statistics by the Hellenic Police, available (in Greek) at:
http://www.astynomia.gr/images/stories//2011/statistics2011/08-03-2011syl-elltoyrk-20092010.jpg
[62] Carrera, S., Guild, E., *Joint Operation RABIT 2010' – FRONTEX Assistance to Greece's Border with Turkey: Revealing the Deficiencies of Europe's Dublin Asylum System*, November 2010, at p. 5.
[63] Frontex, *RABIT Operation 2010 Evaluation Report*, Warsaw, August 2011.
[64] Interview with Frontex Operational Officer (Land Borders Sector), Alexandroupolis, 22 August 2011.

approximately 8 to 12 experts per month, plus 4 to 6 interpreters.[66] The experts include specialists of border surveillance; that is general border control including checks at border control points (BCP), thermal vision van operators, dog handlers, and document experts. In addition, there are experts in "second line" activities, like screening and debriefing interviews.[67] Screening is to identify nationality. Debriefing consists of an interview, on a voluntary basis, to gather intelligence regarding the operations of smuggling and trafficking rings. Apprehended migrants are detained locally and registered, before either being released or sent to larger detention facilities, depending on their nationality.

The legal framework for the Frontex seconded experts includes the Frontex regulation and parts of the RABIT regulation that pertain to joint operations.[68] According to these, guest officers have executive powers only in the presence and under the command of the Hellenic police.[69] It is the responsibility of the host state to identify and handle persons in need of protection per international standards.[70]

Patras has long been a major exit point from Greece towards the rest of Europe. There are no formal reception facilities in Patras, leaving hundreds of immigrants in the streets, without food and other basic necessities.[71] Since August 2011, a new port has started operating, a facility which is more strictly fenced and surveilled, making it harder for irregular migrants to enter passenger ships heading to Italy.[72] However, Patras remains the main area where irregular migrants and asylum seekers are concentrated, living now outside the centre of the city in olive groves, and recently numerously in abandoned houses and factories, until they find the way to continue their journey.[73] Registration and screening of those arrested in the streets or at the ports takes place at Patras.[74]

Outcomes and remaining challenges

Arrivals of irregular migrants at the Greek-Turkish border continue to be significant. Statistics released by the Hellenic police (covering up to November 2011) attest to 51,188 individuals arrested, an increase over the same period of 2010 when 46,523 arrests were made.[75] Compared to 2010 there has been a decrease of about 23% in irregular entries in Northern Evros (Police

[65] Project Attica is not limited geographically to the Greek-Turkish border but ranges throughout Greece (wherever there are pre-return detention centres). It aims at support in return matters and includes a wide range of activities such as screening, facilitating co-operation with third country embassies, co-ordination of pre-return detention and facilitation and co-ordination of pre-return flights.
[66] Ibid.
[67] Second-line activities are not undertaken at border control points but at police stations and border control units (managed by the Hellenic Police).
[68] Frontex, *RABIT Operation 2010 Evaluation Report*, Warsaw, August 2011.
[69] Ibid.
[70] Ibid.
[71] Interview with UNHCR Consultant (Borders) in Patras, Patras, 25 August 2011.
[72] Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011.
[73] Ibid.
[74] Interview with UNHCR Consultant (Borders) in Patras, Patras, 25 August 2011.
[75] Official statistics of the Hellenic Police, available (in Greek) at their website:
http://www.astynomia.gr/images/stories//2011/statistics2011/08122011-syl_methor.jpg

Directorate of Orestiada) but at the same time an increase of 169% in the area of Southern Evros (Police Directorate of Alexandroupolis).[76] As the Frontex operation has been ongoing these numbers point to the fact that for the moment the intensity of the migratory flows has not altered.

Police authorities in Evros found the presence of Frontex to be helpful for their work although they also pointed out that the high numbers of arrivals have been continuous.[77] Lawyers working with asylum seekers there agreed that registration is speedier and the identification of nationality is more accurate than before, although there is still significant room for improvement.[78] Research undertaken by FRA in the region concluded that there are now 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.[79]

Concerns remain in the area of identifying the protection needs of arrested migrants. According to the Frontex operational plan "while carrying out first or second line border control duties, all participating members shall inform about and support local authorities in handling persons seeking protection whenever such information is obtained."[80] The two procedures in which Frontex participates, screening and debriefing, are geared to nationality identification and intelligence collection. Information regarding reasons of flight from the country of origin is not systematically recorded or processed.[81]

Although these procedures are not intended to identify protection needs, they are usually the most substantive interviews migrants undergo before being deported.[82] Frontex officers do report international protection requests or other needs that might have been raised during screening or debriefing procedures to the Hellenic police for follow-up.[83] However, the FRA noted that the limited human resources, the absence of interpreters within the Hellenic police and an extremely heavy workload, constitute serious obstacles to undertake individual follow up measures.[84] Lawyers are not present during registration.[85] Therefore, in view of the absence of a specific needs-assessment interview and of legal information it is only within detention that migrants might for the first time have a meaningful opportunity to express their protection and other needs.

---

[76] Ibid, available (in Greek) at:
http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=5071&Itemid=429&lang=

[77] Interview with Orestiada Police Directorate, Orestiada, 23 August 2011; Interview with Feres Border Security Post, Feres, 22 August 2011.

[78] Interview with Greek Council for Refugees lawyer posted at Orestiada, Athens, 26 August 2011; Interview with Greek Council for Refugees lawyer posted at Alexandoupolis, Alexandroupolis, 22 August 2011. The latter stated that according to their experience at a rough estimate, 10-20% of identification is mistaken – about half the proportion as before Frontex started their operation.

[79] FRA, *Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner*, 2011, at p. 20.

[80] Interview with Frontex Operational Officer (Land Borders Sector), Alexandroupolis, 22 August 2011.

[81] Ibid.

[82] Human Rights Watch, *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, September 2011, at p. 42.

[83] FRA, *Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner*, 2011, at p. 22.

[84] Ibid.

[85] Interview with Greek Council for Refugees lawyer posted at Alexandoupolis, Alexandroupolis, 22 August 2011.

The Frontex involvement has had a positive impact in building the capacity of the Hellenic police, improving the efficiency and quality of nationality identification, and reducing informal push-backs. However, its limited mandate in identifying persons in need of international protection and the fact that identification remains the responsibility of an overburdened and understaffed Hellenic police leave a clear gap in safeguarding the rights of migrants and refugees during border control operations. The FRA report notes that the fact that no system exists to determine if a person proposed for readmission is in need of international protection, also puts the EU at a grave risk: EU assistance is provided to determine nationality and hence to facilitate readmission without having parallel assistance provided to identify whether persons to be readmitted are in need of international protection.[86]

The screening centres are expected to identify persons in need of international protection and other vulnerable individuals once they are fully operational. In the short term the financing of programs that enable a more permanent presence of a certain number of lawyers, interpreters and social workers in the border area that are being implemented is a positive step. Further actions envisaged could include the continuation of EU financing of such actions in addition to financially facilitating the permanent presence of civilian staff (doctors, nurses but also social assistants and psychologists) within detention centres. Moreover, given the significance that nationality identification procedures have to the fate of migrants and refugees, impartial legal counselling and information should be ensured at registration.

Reception capacity and provision of services

One of the main weaknesses of the Greek asylum system is its extremely limited reception capacity. In December 2009 UNHCR reported that accommodation was available in only 12 reception centres with a total of 811 places.[87] The MoCP confirmed that 46,356 applications for asylum were pending in August 2010.[88] As the European Court of Human Rights (ECtHR) observed, "an adult male asylum seeker has virtually no chance of getting a place in a reception centre".[89]

Mapping the situation and solidarity measures undertaken

Homeless asylum seekers do not receive any state assistance and survive on ad hoc assistance from NGOs, churches or local municipalities. Increasing accommodation capacity, at the entrance points as well as in areas of great accumulation of persons that might be in need of international protection, was one of the actions to be undertaken through the ERF emergency measures.

[86] FRA, *Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner*, 2011, at p. 24.
[87] UNHCR, *Observations on Greece as a country of asylum*, December 2009, at p. 10.
[88] Ministry of Citizens' Protection, Press Release on the signature of a Presidential Decree dealing with the new asylum procedure, 6 August 2010, available (only in Greek) at: http://www.ydt.gr/index.php?option=ozo_content&lang=GR&perform=view&id=3245&Itemid=443.
[89] *MSS v Belgium and Greece*, app. No. 30696/09, 21 January 2011, at par. 258.

NGOs run most existing centres as well as a few apartments, relying on ad hoc funding, for example via the ERF. This raises liquidity problems which affect the operation of the centres, the morale of the staff and the provision of services.[90] State funded centres, such as the reception centre in Lavrio (Attica) administered by the Red Cross, had faced funding delays which impeded service provision for the residents.[91] The Red Cross used to advance its own funds in order to cover the expenses of the centre, and expect reimbursement from the government.[92] As the organisation also had to cover expenses entirely from own funds for another reception centre in Volos as well as a centre for homeless people it could not easily afford to run the Lavrio centre this way.[93] Following a new arrangement with the MoHSS in Athens, the centre now receives regular monthly funding instalments.[94]

Linked to the effectiveness of the system was the action relating to the development of an effective referral system to allow for the coordination of emergency services provided to persons who may need international protection. Up to that point the referral of asylum seekers to accommodation structures was done through the Directorate of Social Welfare & Solidarity of the Ministry of Health, among its many other tasks.[95] The action also envisaged that standard operating procedures (SOPs) for the reception of adult asylum-seekers and unaccompanied minors would be developed and harmonised.

Both the regular and emergency ERF proposals included actions to provide social care, especially health or psychological care to vulnerable groups. Finally, EASO Asylum Support Teams (AST) aim to assist Greece in planning a strategy to increase and sustain reception capacity for prioritised categories of asylum seekers, in developing a reception management system, and writing a training action plan for reception centre staff.[96]

Outcomes and remaining challenges

Reception capacity did not increase appreciably during 2011. During the ERF emergency programme, one new reception centre opened in Athens. It is run by Apostoli, an NGO of the Archbishopric of Athens and provides 20 beds for unaccompanied minors. A centre for families in Athens (Mystakidio) was to open in autumn 2011, with space for 48 people. The bulk of the ERF funds were spent to enable NGOs to run existing reception facilities. This was a valuable outcome, but meanwhile the great majority of asylum seekers remain homeless.

UNHCR supported the development of SOPs. Visits to all existing reception facilities, review of age assessment procedures and a workshop with reception facilities' staff in June 2011 informed a draft document that was presented in a further workshop to civil society representatives and

[90] UNHCR, *Unaccompanied Minors Asylum Seekers in Greece: A Study commissioned by UNHCR's office in Greece*, April 2008.
[91] Interview with the Director and social worker of the Lavrio Reception Centre (run by the Red Cross), Lavrio, August 2011.
[92] Ibid.
[93] Ibid.
[94] Ibid.
[95] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[96] Interview with EASO Project Managers (Asylum Support Teams), Athens, 30 August 2011.

reception staff.[97] The referral action was not completed within the 6-month period of the emergency ERF measures. The National Centre for Social Solidarity, a state organisation under the authority of the MoHSS, assumed responsibility for it from September 2011.[98] This authority is expected to launch its operation within January 2012.[99] Members of the EASO teams have provided the MoHSS with technical advice and have tried to build capacity of the ministry, particularly regarding referral to accommodations and reception capacity.[100]

Emergency ERF funds also supported projects to deploy mobile health units. For example PRAKSIS, an NGO, ran two mobile units that visited the islands of Samos, Xios, and Lesvos, as well as Thessaloniki up to the area of Promachonas.[101] Teams including doctors, nurses, psychologists, social workers, and cultural mediators/translators offered health care, medicine, basic sanitary items, and psychosocial assistance.[102] Medicines du Monde deployed a mobile unit (a converted bus) in the city of Patras. Two doctors, two nurses, a social worker and a psychologist saw around 30 patients per day.[103] Both programs had a 6-month life-span.

Funding constraints and the need to support existing centres limited the increase in reception places during 2011. Financial problems persisted after the expiration of the ERF emergency programme. For example, for two months during the summer of 2011, the centre housing unaccompanied minors on Lesvos reportedly furloughed all staff except a single guard, for lack of money.[104] Similarly, after the projects to provide medical and psychological assistance to homeless asylum seekers ended, this population was left unattended. Practitioners noted the need for permanent medical facilities, for example run by the municipality.[105]

There were further obstacles to raising reception capacity. Representatives of the MoHSS mentioned that the six month window to implement actions under the ERF emergency mechanism combined with cumbersome bureaucracy hindered their efforts.[106] For example, the procedures to authorise the use of state property to accommodate asylum seekers is so complex that it is impossible to access the available funding within the allotted six months.[107]

One obstacle to the construction of new reception capacity was resistance of local populations to new migration-oriented facilities. For example there is no reception centre in Patras, but the local population and authorities opposed plans to build a reception centre in the area. Apart from identified vulnerable persons, who might be sent to Athens and other cities, shelter is only real possibilities for available shelter in informal camps.[108] Administrative capacity to process requests for payments, do audits, and transfer funds to the centres is also lacking.[109]

[97] Interview with UNHCR Consultants (Ministry of Health and Social Solidarity), Athens 29 August 2011.
[98] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[99] Ibid.
[100] Ibid.
[101] Interview with PRAKSIS Director of Communication and Fundraising, Athens, 31 August.
[102] Ibid.
[103] Interview with Medicines du Monde doctor, Patras, 25 August 2011.
[104] Interview with UNHCR Consultants (Ministry of Health and Social Solidarity), Athens 29 August 2011.
[105] Interview with Medicines du Monde doctor, Patras, 25 August 2011.
[106] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[107] Ibid.
[108] Interview with Medicines du Monde doctor, Patras, 25 August 2011.
[109] Interview with UNHCR Consultants (Ministry of Health and Social Solidarity), Athens 29 August 2011.

Access to asylum procedures

Although Presidential Decree 114/2010 provides for the right of access to an asylum procedure,[110] in practice there are still significant obstacles. In principle, all police directorates as well as the security departments of the Athens and Thessaloniki airport police and the aliens' directorates of those two cities are "competent authorities to receive an application for international protection".[111] In practice, the majority of asylum claims are made at the Alien's Directorate of Athens.

Mapping the situation and solidarity measures undertaken

In theory, it is possible to ask for asylum at any point during border and registration procedures, although realistically no action is likely and a request may not be recorded prior to the completion of registration. Few irregular migrants request asylum upon arrest, or while detained. All stakeholders who ventured an estimate placed the proportion at fewer than one in twenty.[112] If they request asylum at the border, migrants are kept in detention during the asylum procedure.[113]

For those who do not claim asylum, the length of detention depends on nationality. Afghanis and Somalis are released in two or three days.[114] People from Turkey, Iran, Iraq, Syria and Georgia are returnable under the readmission agreement with Turkey and so are detained longer.[115] People from Morocco, Algeria, Tunisia, and Pakistani are released, though not as quickly as Afghanis.[116] Space limitations at the detention centres are also a factor – overcrowding can also result in early releases.[117] People who will be released within a few days generally prefer to avoid detention and either seek asylum in Athens or continue their journey towards other European countries.

Thus the detention practices of the border police deter asylum claims from people of certain nationalities – ironically, some of the very nationalities that tend to have the highest recognition rates once they do apply for asylum. Some peripheral police departments, for example at the Adriatic port city of Igoumenitsa, reportedly automatically detained people who voluntarily presented themselves and requested asylum but according to the Greek Ombudsman this practice does not persist.[118]

[110] Article 4, PD 114/2010.
[111] Article 2n, PD 114/2010.
[112] Interview with Orestiada Police Directorate, Orestiada, 23 August 2011, (2 or 3%); Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011.
[113]Interview with Orestiada Police Directorate, Orestiada, 23 August 2011; Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011 (noting however that unaccompanied minors who apply for asylum in Patras are not detained).
[114] Interview with Greek Council for Refugees lawyer posted at Orestiada, Athens, 26 August 2011.
[115] Ibid.
[116] Ibid.
[117] Interview with Orestiada Police Directorate, Orestiada, 23 August 2011.
[118] Interview with the Greek Ombudsman Senior Investigators, Athens, 30 August 2011.

In Athens, the Attica Aliens Police Directorate (Petrou Ralli) was a bottleneck in the asylum process. The Greek Ombudsman visited the site in October 2010 and noted that while about 60 asylum claims were recorded per week, most of these came from people in detention. Only about 10-15 people out of hundreds waiting at Petrou Ralli were able to register a claim, and only on Saturdays.[119] NGOs could "refer" particularly vulnerable individuals for registration on other days.[120] Detained persons were transferred in order to lodge an asylum application.

The most important of the measures to enhance access to asylum procedures through identification and referral at border points is the new initial reception service. This measure was foreseen in the Action Plan and enacted through Law 3907/2011. This law established an autonomous first reception service under the Minister of Citizen Protection.[121] It will consist of a central service unit, first reception centres (FRCs), and temporary or mobile reception units.[122] Initial reception centres would inform third country nationals of their legal rights, and that they could request asylum and have their claim registered at the centre.[123] Their claims would be referred for examination by the regionally competent authority.[124] The new asylum service would be responsible for registering asylum claims of those who have not undergone first reception procedures.[125]

One of the emergency ERF actions aimed at improving the system for registering asylum applications at the Alien's Directorate of Athens, mainly through the acquisition of IT equipment by the Ministry of Citizens' Protection. UNHCR also undertook to share improved tools for registration with the Greek authorities, for example to digitise records.[126]

Outcomes and challenges remaining

In the absence of the planned new initial reception centres, identification and referral remain extremely problematic at the border. Detention conditions have improved slightly but remain below minimum human rights standards. Asylum seekers in northern Evros, under the authority of the Police Directorate of Orestiada, are now reportedly released after the registration of their claims.[127] This is however a discretionary practice, and apparently not applied in southern Evros, under the Police Directorate of Alexandroupolis.[128]

In Athens, access at the Attica Aliens Police Directorate remains extremely difficult. Registration of asylum claims takes place every Saturday morning with asylum seekers arriving in front of the department from Friday night to take a priority number.[129] On average 50 claims are recorded

[119] Ibid.
[120] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011.
[121] Article 6, Law 3907/2011.
[122] Article 8, Law 3907/2011.
[123] Article 11, Law 3907/201.
[124] Ibid. The law envisages this to be the regional offices of the new asylum service.
[125] Article 1 par.2b, Law 3907/2011.
[126] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[127] E-mail exchange with Greek Council for Refugees lawyer posted at Orestiada, 12 December 2011.
[128] Ibid.
[129] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011.

per week through this procedure but non-governmental organisations continue refer vulnerable individuals for "frontloaded" registration on other days.[130] Police also briefly invited NGOs to refer for frontloading non-vulnerable asylum seekers whom they thought had particularly strong claims, but the idea was soon abandoned.[131] Asylum claims in Athens now consist of 50-60 registered every Saturday morning; vulnerable cases; and detainees.[132] This is a modest improvement compared to 2010 levels.

The overall number of registered asylum claims is far less than the number of people wishing to claim asylum. UNHCR noted in June 2011 that "access to the procedure and registration of asylum claims remains one of the most serious problems, mainly at the Attica Aliens Police Directorate, where access for those who wish to file an asylum claim is extremely limited".[133] Providers of legal aid agree with this assessment. The NGO Greek Council for Refugees (GCR) states that every week they receive tens of asylum seekers reporting that they have been trying to register their claim for weeks.[134]

As long as the Greek police remain responsible for asylum claims and continue to be understaffed while having to respond to multiple duties, this problem will not be overcome easily.[135] The right to universal access to claim asylum will be better safeguarded through the new asylum service, but it is not yet clear when that service will become operational. The ERF emergency action on the acquisition of IT equipment was not implemented due to administrative constraints within the MoCP, and cumbersome procurement procedures.[136]

Asylum procedures

Asylum procedures were extremely problematic, with the Hellenic police solely responsible for the examination of claims at first instance, lack of professionally trained interpreters, and the curtailment of the right to an effective remedy.[137] The result of these policies was that during the course of 2010 the recognition rate at first instance (including subsidiary protection and humanitarian status) was around 3%[138] while at the same time 47,000 applications for asylum were still pending in April 2011.[139] Thus the improvement of asylum procedures was another key point of the Greek Action Plan.

---

[130] Ibid.
[131] Interview with the Ecumenical Refugee Program Manager and lawyers, Athens, 30 August 2011.
[132] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[133] UNHCR, *The situation of refugees in Greece, Observations and proposals of the UNHCR*, 16 June 2011, available at: http://www.unhcr.gr/genikes-plirofories/ellada.html.
[134] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, 31 August 2011.
[135] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[136] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[137] Presidential Decree 81/2009 assigned responsibility for the examination of second instance claims to the Council of State in front of which first instance claims could only be challenged for points of law. See as well UNHCR, *Observations on Greece as a country of asylum*, December 2009, at pp. 15-17.
[138] EUROSTAT, *Data in Focus: Asylum applicants and first instance decisions on asylum applications in 2010*, Doc. No. 5/2011, at p. 10.
[139] Ministry of Citizens' Protection, *Guidelines for the processing of 47.000 pending asylum claims at second instance*, Press release of 5 April 2011 available (in Greek) at: http://www.yptp.gr/asylo.php?option=ozo_content&perform=view&id=3583&Itemid=465%20&lang=&lang=&lang

Mapping the situation and solidarity measures undertaken

Legislation envisaged short-term and long-term solutions. In the long-term Law 3907/2011 stipulates the establishment of an autonomous Asylum Service within the Ministry of Citizen Protection headed by a Director for the examination of asylum applications on first instance.[140] This service would be composed of a central service and 13 regional asylum offices.[141] The law also envisaged the establishment of appeals committees (under the Minister of Citizens Protection but with independent character) to examine applications at second instance.[142] For the transitional period and until these new services are set up, Presidential Decree 114/2010 establishes that the Hellenic police, in particular 14 police directorates situated in different geographic departments, retain the responsibility to examine asylum claims at first instance.[143]

Apart from the high-ranking police officer, it also provides for the presence of a representative of UNHCR, or of an organisation co-operating with UNHCR, empowered to also ask questions during interviews.[144] The General Secretary of the MoCP is to take the final decision on the basis of the report drawn up by the police officer (or the territorially competent Police Director when it concerns a border or accelerated procedure).[145] Regarding second instance decisions the decree reinstated appeals panels, with a decision-making and not only a consultative function, consisting of: a civil servant of the Ministry of Justice or the Ministry of Interior with a degree in law as president, a representative of UNHCR, and a jurist specialised in refugee and human rights law.[146]

In order to realise these ambitious plans, actions targeted to the asylum procedures reform were envisaged under both the regular and emergency ERF budget. The enhancement of free legal aid provided by non-governmental organisations at all stages of the asylum procedure was one of the priorities of the regular ERF. Another priority under the same fund was boosting the interpreting and translation services of the asylum authorities. Complementary actions in these two fields were to be undertaken also through emergency ERF funding and in particular the UNHCR asylum reform project.

In particular, the MoHSS earmarked some 15% of the ERF emergency funds for UNHCR to support its asylum reform project and other efforts. This project aimed to implement actions which include the presence of UNHCR advisors at first instance interviews, participation of UNHCR representatives as full members in second instance appeal committees, a strategy for dealing with the backlog of cases, support for setting up a COI research and documentation unit in the MoCP that will be transferred to the new asylum service and training of police involved in asylum issues.[147] Another asylum activity in the project related to funding of local NGOs to provide legal aid as well as interpretation in most parts of the asylum procedure.[148]

[140] Article 1, 2, Law 3907/2011.
[141] Article 1, par.3, Law 3907/2011.
[142] Article 3, Law 3907/2011.
[143] Article 2 point o, PD 114/2010.
[144] Article 10 par.1, PD 114/2010.
[145] Article 2 point s, PD 114/2010.
[146] Article 26, par.1, PD 114/2010.
[147] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[148] Ibid.

Finally, one of the general aims of the EASO AST was to support the implementation of efficient asylum procedures and standards.[149] Amongst other actions planned is training (with the involvement of UNHCR) organised for all members of the appeal committees, interviewers and decision makers as well as for the new staff of the new asylum service.[150]

Outcomes and challenges remaining

As the area of asylum procedures is very broad and encompasses several aspects the researchers decided to focus on 4 specific points below which they considered of great importance for the quality of asylum procedures. Through the asylum reform project UNHCR has established a unit with a manager and implemented various actions; the impact of some of them is analysed below.

First instance interviews

First instance interviews are currently conducted in 14 police directorates, with a great number of claims being examined in the Attica Alien's Police Directorate. UNHCR has deployed advisors to first instance proceedings. They mainly cover Athens but expanded to Thessaloniki, Evros, and to all points, with the additional UKBA funded consultants.[151] UNHCR cannot cover every interview in Athens, nor in the other regions, for example, maybe 3 out of 10 in Evros.[152] Hellenic Police in the Attica Aliens' Department reported that advisors try to cover as many interviews as possible per day.[153] They choose amongst themselves which interviews they wish to attend and are free to attend whichever interview they wish.[154] Advisors undertake an in-depth preparation before each interview with an emphasis on updated country of origin information.[155] This preparation is crucial for the establishment of the credibility of the claim.[156]

As UNHCR stressed in their interview the consultants provide the tools to the police officer to make the right decision; the opinion includes legal reasoning, COI, and may run in a pretty obvious direction, but does not spell out whether status should be granted.[157] It is not UNHCR's role to dictate decisions, but to give the authorities the tools to make good decisions.[158] There is also a question of non-discrimination, as UNHCR cannot be present in every interview.[159] However, even if this advisory opinion does not influence the police authority's decision at the first degree, it provides valuable ground work for a just decision in the appeals committees.[160]

[149] Interview with EASO Project Managers (Asylum Support Teams), Athens, 30 August 2011.
[150] Ibid.
[151] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[152] Ibid.
[153] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011.
[154] Ibid.
[155] Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011.
[156] Ibid.
[157] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[158] Ibid.
[159] Ibid.
[160] Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011.

Apart from the presence of UNHCR advisors another positive development has been the upgrading since 2010 of the infrastructure for these interviews. For example, in Petrou Ralli interview cubicles were built to give a degree of privacy, and personal computers were procured.[161] However, there are still problems with the infrastructure and supplies, for example during the whole month of April 2011 there were no interviews in Petrou Ralli as there was a shortage of supplies such as ink.[162] Several stakeholders opined that both the quality and time of examination had improved at first instance under the new asylum law.[163] Recognition rates are not publically available yet. Officially the first instance rate is somewhat more than 2%, an increase over the 0.03% of 2010, but not near European averages.[164]

There are also some worrying trends. Since November 2011 there have been reports of instances where asylum seekers arrested randomly in the centre of Athens are immediately led to the Attica Alien's Department for a short interview without having the possibility to contact their lawyer or organisations with which they might be in contact for the preparation of their case.[165]

In addition several providers of legal aid stated that asylum seekers who claimed asylum while detained face difficulties during their asylum process: they do not receive information on when their interview is set to take place thus they cannot contact their lawyer in a timely manner, their interviews are often shorter and are not informed of the deadlines for appealing this decision.[166] This is not the case for detained asylum seekers at the borders-as there almost all migrants are detained upon arrival-but other difficulties apply: documents are difficult to find, the client cannot think clearly due to the physical hardship and psychological strain of detention, or it is not possible to get enough time with the client.[167]

Legal Aid

According to PD 114/2010 free legal assistance is only provided in case of an application for judicial protection.[168] However, since appeal committees are administrative and not judicial instances asylum seekers who do not have the means to ensure their legal representation rely on legal aid provided by non-governmental organisations. Thus actions to support their capacity through both the regular and the emergency ERF measures were of great importance.

[161] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011.
[162] Interview with the Ecumenical Refugee Program Manager and lawyers, 30 August 2011.
[163]Interview with Orestiada Police Directorate, Orestiada, 23 August 2011; Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011; Interview with the Ecumenical Refugee Program Manager and lawyers, Athens, 30 August 2011.
[164] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, 31 August 2011.
[165] Greek Council of Refugees, *Mass Illegal Arrests of Asylum Seekers*, Press Release, 4th November 2011, available at: http://www.gcr.gr/en/node/607.
[166]Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, Athens,31 August 2011; interview with the Ecumenical Refugee Program Manager and lawyers, Athens, 30 August 2011.
[167] Interview with Greek Council for Refugees lawyer posted at Orestiada, Athens, 26 August 2011.
[168] Article 15 par. 2, PD 114/2010. This would refer only to the appeal against a second instance decision which is possible before the regionally competent 3-person administrative court. However, at this point, courts are only able to examine points of law and not the facts of the case.

For example the Greek Council for Refugees benefiting from funding from the UNHCR Asylum Reform Project-that was initially financed from both emergency measures until July 2011 and the UKBA program- as well as from the regular ERF had a capacity of about 20 lawyers from February until July 2011.[169] The program has continued from September 2011 with regular ERF and funding provided by UNHCR.[170] Thirteen to fourteen lawyers were based in Athens, two in Thessaloniki, five in Evros and one in Komotini.[171] In Evros two lawyers work at the largest centre in North Evros at Fylakio, and three lawyers handle the others.[172] The programme covers visits to detention centres and representation during first instance interviews.[173] Since the beginning of the program cooperation with local authorities has greatly improved; authorities now understand the role and value of the organisation and how visits of lawyers in the detention centres can assist them in their work.[174]

The funding also assisted in the creation of a 3-person "screening team" at the Athens office.[175] This team is tasked with making a first registration of asylum seekers that approach the GCR office and then refer cases they believe need legal aid to GCR lawyers or to social workers who will provide them with more specialised assistance.[176] This is important for the work of the organisation; as a very large number of persons address themselves to this organisation daily, urgent cases were lost as lawyers had to interview everyone presenting themselves.[177] Through the programmes the organisation also funds its own interpreters necessary for both the work at its office as well as for communicating with detained asylum seekers.[178]

Another non-governmental organisation based in Athens, the Ecumenical Refugee Programme (ERP), benefitted from funding through the ERF and UNHCR. It provided through its programmes legal aid and representation during both first and second instance asylum procedures and one of its projects focuses on vulnerable groups and detainees.[179] Currently the organisation has a capacity of four lawyers and two interpreters and for the first time a social assistant, who is very important for their work with particularly vulnerable asylum seekers.[180] The importance of legal representation at the first instance can be highlighted from the organisation's statistics for one of its projects: for 29 interviews taking place from March-June 2011 and where asylum seekers were represented by ERP lawyers they received 65-70% positive opinions (also for subsidiary protection and humanitarian status) by the police (with the final decision expected by the Secretary General).[181]

[169] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, Athens, 31 August 2011.
[170] Ibid.
[171] Ibid.
[172] Interview with Greek Council for Refugees lawyer posted at Alexandoupolis, Alexandroupolis, 22 August 2011.
[173] Ibid.
[174] Ibid.
[175] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, Athens, 31 August 2011.
[176] Ibid.
[177] Ibid.
[178] Ibid.
[179] Interview with the Ecumenical Refugee Program Manager and lawyers, Athens, 30 August 2011.
[180] Ibid.
[181] Ibid.

The actions implemented under the ERF emergency measures, the regular ERF funding and UNHCR definitely boosted the capacity of civil society organisations to provide legal aid. However the numbers of specialised lawyers remains low; the organisations mentioned above are two of the biggest free legal aid providers in the Greek asylum system. Bearing in mind their actual capacity, the numbers of asylum seekers in Greece, the precariousness of their funding- exclusively project-based funding- and the lack of free legal aid supported by the state it becomes apparent that in practice large numbers of asylum seekers have no access to legal aid, unless if they can afford it by their own means.

Interpretation

Interpretation is a key factor to quality of asylum interviews. The actions related to improving the interpretation capacity of authorities during asylum procedures are being realised through the NGO Metadrasi. Metadrasi provides registered, trained interpreters specialised in asylum and migration issues.[182] At the first instance they are not able to handle all the interviews; or to cover geographically all 14 Directorates that are examining asylum applications. To extend their ability to provide interpretation services, Metadrasi also provides interpretation by telephone or teleconferencing. At second instance they provide the appeals committees with interpreters.[183]

Before the second instance committees and in the Police Directorate of the Airport Metadrasi's interpreters are the only interpreters.[184] In the Attica Alien's Department, as Metadrasi does not have the ability to cover the entirety of interviews, the remainder are carried out by interpreters identified and engaged by the police, as was the case before Metadrasi became involved.[185] Many of these interpreters do not have formal qualifications.

In Patras interpreters used by the local police are not funded for the work they undertake related to asylum and have informal qualifications.[186] As the police share the same pool of people that are used in other court proceedings often interviews have to be postponed.[187] The interpreters are not subject to formal qualification standards. They serve at asylum interviews unpaid, and are paid for other interpretation tasks they perform for the police and court authorities.[188] This may raise doubts about the accuracy and impartiality of interpretation.

In the Evros area, Metadrasi has been able to provide services via teleconference since July 2011.[189] Since autumn 2011 they also provide interpreters in person for some languages.[190]

[182] More information on the work of the organisation in training interpreters are available at: http://sites.google.com/site/metadrasi/english-version/training-of-interpreters.
[183] Written response to a questionnaire by UNHCR representatives at the second instance appeals committees, received by e-mail, 23 December 2011.
[184] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[185] Interview with Attica Aliens' Police Directorate Official, Athens, 29 August 2011.
[186] Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011.
[187] Ibid.
[188] Interview with UNHCR first instance consultant, Patras, 25 August 2011 (the police have not elected to utilise the possibility of interpretation via teleconference).
[189] Interview with Greek Council for Refugees lawyer posted at Orestiada, Athens, 26 August 2011.
[190] E-mail exchange with Greek Council for Refugees lawyer posted at Alexandroupolis, 28 November 2011.

Metadrasi is not funded by the Greek state. Through UNHCR's asylum reform project, they cover three locations in Athens: the asylum procedures in Petrou Ralli, at Athens international airport, and Vironas where the second instance committees work.[191] The organisation has also been awarded funding through the regular ERF funding which has allowed it to implement further projects.[192]

Several stakeholders concurred that Metadrasi has shown the possibility and value of support from an expert agency and that this has improved the quality of asylum procedures.[193] However as the organisation cannot cover the entirety of interviews there is always a problem of shortage which leads to interviews being postponed, especially regarding African languages.[194] In addition, in areas where police have not made use of the organisation's services yet, interpretation and lack of independent professional interpreters was described as one of the main needs.[195] In Athens and the Attica Police Department where there is still a dual system with translators of Metadrasi and other non-formally qualified translators the concern about the quality and impartiality of the latter in some cases remains. Finally, given that this action is funded in its entirety by project funding that is subject to renewal, issues on its durability arise.

Right to an effective remedy

The 3-member appeals' committees started their work in 2011 as foreseen by PD 114/2010. For most of the year 5 committees were functioning (2 examining new appeals and 3 dealing with the backlog) but in December 2011 the number was raised to 10 (6 for the backlog and 4 for new appeals). UNHCR funds its own representatives, until July 2011 through the emergency ERF funding, and the Greek state funds the other members; the expert lawyer is paid by the Ministry of Citizens' Protection.[196] The members of the committees work now for the first time full-time on processing the appeals; previously, civil servants were called to participate in committees on top of their daily jobs.[197]

Members of the appeals committees stated that on average the rendering of a decision takes from 1-3 months although for particular reasons, it may take longer.[198] Three interviews are scheduled per day, but often not all three appellants show up.[199] Hearings last from one to three hours but this always depends on the complexity of the case, so sometimes it may take even longer.[200] Several stakeholders commented on the quality of the procedure: interviews are in depth and exhaustive, use of country of origin information is being made and decisions are well-

[191] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[192] An overview is available at: http://sites.google.com/site/metadrasi/home/ylopoioumena-programmata
[193] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[194] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, Athens, 31 August 2011.
[195] Phone interview with UNHCR Associate Advisor in Patras, 25 August 2011.
[196] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[197] Ibid.
[198] Written response to a questionnaire by UNHCR representatives at the second instance appeals committees, received by e-mail, 23 December 2011.
[199] Ibid.
[200] Ibid.

reasoned.[201] Lawyers have the possibility to intervene with questions and it is also for them to complete the file with a written submission after the oral proceedings.[202]

According to public statements by the Minister of Citizens Protection the backlog has dropped to 37,000 pending applications,[203] and recognition rates are estimated around 12.5%, although official figures for 2011 are not yet available.[204] In any case representatives of the appeals committees noted that these statistics include the interrupted cases to the examined cases.[205] If interrupted cases are not included (since they are not examined in substance), the recognition rate is much higher.[206] In addition there are significant discrepancies because of the different nationalities examined by the committees.[207] Backlog committees have mainly examined appellants from Afghanistan, Iran and Iraq and new appeals' committees have mainly examined appellants from Georgia, Pakistan, China and Bangladesh.[208]

All committee members had the chance to participate in a five days' training provided by UNHCR on RSD issues.[209] In addition they benefitted from training organised by the EASO AST. An Austrian asylum judge delivered a seminar to each committee focusing on interviewing and decision drafting techniques in order to improve their competence.[210] On other efforts, a comprehensive strategy on the clearing of the backlog, which involves issues of prioritisation, information and mapping is under discussion between UNHCR and the MoCP.[211] In what concerns longer-term solutions the Appeals' authority linked to the MoCP that is to consist of one or more 3-person committees is not operational yet. To date it is unclear whether the committee, once functioning, will examine appeals against new applications without dealing with the backlog or whether it will take over all pending applications.

[201] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, Athens, 31 August 2011; Interview with the Ecumenical Refugee Program Manager and lawyers, Athens, 30 August 2011.
[202] Interview with Greek Council for Refugees Director and Coordinator of the Legal Aid Unit, Athens, 31 August 2011.
[203] Official Discourse of the Minister of Citizen Protection given at 08.12.2011 before the Standing Parliamentary Committee on Public Administration, Public Order and Justice and transcribed at the website of the Ministry of Citizens' Protection, available (in Greek) at:
http://www.yptp.gr/index.php?option=ozo_content&lang=&perform=view&id=3969&Itemid=522.
[204] Press Conference of the Minister of the Citizens Protection given at 01.11.2011 on Schengen, Irregular Migration and other matters transcribed at the website of the Ministry of Citizens Protection, available at: http://www.ydt.gr/index.php?option=ozo_content&lang=GR&perform=view&id=3906&Itemid=520.
[205] Written response to a questionnaire by UNHCR representatives at the second instance appeals committees, received by e-mail, 23 December 2011.
[206] Ibid.
[207] Ibid.
[208] Ibid.
[209] Ibid.
[210] Ibid.
[211] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.

Detention conditions

Detention conditions in Greece are inadequate. The facilities at the Greek-Turkish border are especially alarming. Greece has been criticised repeatedly by the ECtHR,[212] the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),[213] the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[214] as well as by non-governmental organisations that studied detention policy and conditions.[215] Some of the most common problems noted were: overcrowding, at some centres no separation between men, women and unaccompanied minors, poor hygiene, no outdoor access, lack of specialised personnel, lack of information on rights, lack of legal counselling, and lack of interpreters.

Mapping the situation and solidarity measures undertaken

At the Greek-Turkish border given the inadequate structures and the large numbers of arrivals, the situation reached the seriousness of a humanitarian emergency.[216] Detention conditions in the region around Patras are poor enough to jeopardise health.[217] Lack of specialised personnel also affected the police officers who became tasked with multiple responsibilities, many of which are beyond typical policing duties and include catering for the everyday health, psychological and social needs of the detained migrants.[218] This load of work combined with the conditions of hygiene, the state of the infrastructure and the lack of interpreters has led to stress and exhaustion of personnel and in some cases may have even led to incidents of violence against detainees.[219]

The Initial Reception Service which will have under its remit initial reception as well as detention centres was envisaged to ameliorate serious flaws in the detention system. However, in the meantime the emergency ERF measures also envisaged the distribution of nutrition and non-food items also at the entrance points;[220] provision of medical, psychological and legal aid; and

[212] See for example *S.D. v Greece*, app. no 53541/07, Judgment of 11 June 2009, at par. 51, recently re-affirmed in *R.U. v Greece*, app. No. no 2237/08, Judgment of 7 June 2011, at par. 62-64.
[213] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Public statement concerning Greece*, 15 March 2011, available at: http://www.cpt.coe.int/documents/grc/2011-10-inf-eng.htm.
[214] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Greece (10-20 October 2010), A/HRC/16/52/Add.4, 21 April 2011, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/129/68/PDF/G1112968.pdf?OpenElement.
[215] For example Amnesty International, *Greece: Irregular Migrants and Asylum Seekers Routinely Detained in Substandard Conditions*, July 2010, and HRW, *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, November 2008.
[216] FRA, *Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner*, 2011.
[217] Interview with UNHCR Consultant (Borders) in Patras, Patras, 25 August 2011.
[218] Greek Ombudsman, National Human Rights Committee, Evaluation of the findings of a joint visit conducted at the detention centres in the Evros region, July 2011, p. 13, available (in Greek) at: http://www.nchr.gr/media/gnwmateuseis_eeda/Site_version2/sinthikes_kratisis_dikaiwmata_kratoumenw/porisma_evrou_2011.pdf.
[219] Ibid.
[220] This action was aimed primarily at gaps that became evident in detention centres. Note that all arriving migrants are initially detained.

enhancing the process of identification of particularly vulnerable persons within the protection seeking population. They specifically aimed at enhancing identification, reception and care provision relating to unaccompanied minors, as well as ensuring their access to the asylum procedure. The regular ERF measures also included actions for the provision of legal aid at the points of entry into Greece and the provision of social care and related advisory services, and health or psychological care with specific emphasis on the care of vulnerable groups.

Finally, the Hellenic Centre for Disease Control & Prevention (KEELPNO) in association with the 4th Health Region's Administration received financing to implement a program, through which it should intervene in the detention centre of Fylakio in Evros.[221] In addition, the program included the presence of doctors, nurses, interpreters and psychologists at a permanent basis at the detention centres of Soufli, Tychero, Ferres (all in Evros) and Venna (in Rodopi).[222]

Outcomes and challenges remaining

Law 3907/2011 envisaged setting up the initial reception service by the beginning of 2012. The director assumed office in September 2011,[223] but the reception centres face significant delays.[224] In May 2011 the MoCP mandated the establishment or refurbishing of 14 facilities around Greece as initial reception or detention centres.[225] The reaction from citizens, civil society, and local authorities was immediate and negative, and developed into a widespread movement.[226] Events in Evros were emblematic. Residents and local authorities protested upon learning of plans to create detention and first reception centres in the area.[227] A few days later unidentified individuals burned a disused military facility in Karoti that was to be renovated as a detention centre.[228] One reason for this hostility is prior experience of nearby detention centres – at some point, overcrowding forces the release of destitute migrants into the local town.[229]

Another reason for delay concerns available funding. The government intends to use the EU External Borders Fund to build some of the new centres, for example a joint facility for both screening and detention purposes (two separate centres on the same site) to be established near

[221] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011; Interview with PRAKSIS Director of Communication and Fundraising, Athens, 31 August.
[222] Ibid.
[223] See the website of the Ministry of Citizens' Protection:
http://www.minocp.gov.gr/asylo.php?option=ozo_content&perform=view&id=3780&Itemid=465&lang=&lang=EN
[224] Official Discourse of the Minister of Citizen Protection given at 08.12.2011 before the Standing Parliamentary Committee on Public Administration, Public Order and Justice and transcribed at the website of the Ministry of Citizens' Protection, available (in Greek) at:
http://www.yptp.gr/index.php?option=ozo_content&lang=&perform=view&id=3969&Itemid=522.
[225] Press Release of the Ministry of Citizens' Protection "*Regarding the functioning of centres of first reception and detention centres for migrants*", available (in Greek) at:
http://www.ydt.gr/index.php?option=ozo_content&lang=GR&perform=view&id=3664&Itemid=499.
[226] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[227] Ekathimerini "*Opposition to migrant center plans in Evros: Local and regional officials say plans for three new facilities will further downgrade area*", 31 May 2011, available at:
http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_31/05/2011_393040.
[228] Tsigannas, T., "*Barracks were set on fire in Evros*", article published in Kathimerini (print edition), 3 June 2011, available (in Greek) at: http://news.kathimerini.gr/4dcgi/_w_articles_ell_2_03/06/2011_444445.
[229] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.

Orestiada in Evros.[230] This fund can support the construction of centres, but cannot pay fully for their operation. This is problematic, as centres of first reception are very demanding in terms of procedures and expert personnel.[231]

Exceptionally, the Greek government asked for co-financing under the fund in order to cover certain cost categories such as costs related to food, medical care, cleaning or some equipment of the facilities concerned such as pillows, layers, blankets and some other necessary operational costs (the power and water supply).[232] In a written answer to questions of Greek MPs the Minister of Citizens Protection noted that the request for such actions under the 2011 program has been accepted by the EU.[233]

Some efforts are under way to improve the existing centres, such as the construction of a new police department and new detention centre in Feres, with a capacity of around 180 people, an effort co-funded by the EU under the External Border Fund.[234] There are also plans for the upgrading of further police buildings which are located at the external borders under the same fund.[235] The action refers to the co-financing of renovation and reconstructions costs of several Police Services, including the necessary furniture and IT equipment for the function/upgrade of the provided security services.[236]

In terms of overcrowding the situation is somewhat better as migrants tend to be released earlier and as mentioned above recently asylum seekers are also released in northern Evros soon after the registration of their claim.[237] The programmes that ran from February/March until July 2011 also had a positive impact in terms of available specialised non-security personnel. The Greek Ombudsman noted the significant positive effect of programmes aimed at improving detention conditions, but that since those programmes only ran through July 2011 a gap in service ensued immediately upon their ending.[238]

The KEELPNO programme funded under the ERF emergency measures ran successfully from January to June 2011. The organisation received additional funding of 179,850 EUR from the national budget starting in August 2011 through which it intervened in the detention centre of Fylakio in Evros.[239] However during the time of the researchers visit in August 2011 there were

[230]Ministry of Citizens Protection, External Borders Fund, Annual Program 2011, at page 19, available at: http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=2194&Itemid=440&lang=EN
[230] Interview with UNHCR Senior Protection Associate and Protection Associate, Athens, 29 August 2011.
[231] Ibid.
[232] Ministry of Citizens Protection, External Borders Fund, Annual Program 2011, at page 32, available at: http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=2194&Itemid=440&lang=EN
[233] Written Response by the Ministry of Citizens Protection to Parliamentary Question Nr. 2676/ 12-12-2011 posed by MP Plevris, Doc. No. 7017/4/14272, 2 January 2011, available (in Greek) at: http://www.minocp.gov.gr/images/stories//2011/kb_elegxos/2_1_2011_EP.%202676.doc.
[234] Interview with Feres Border Security Post, Feres, 22 August 2011.
[235] Ministry of Citizens Protection, External Borders Fund, Annual Program 2011, at page 17, available at: http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=2194&Itemid=440&lang=EN
[236] Ibid.
[237] E-mail exchange with Greek Council for Refugees lawyer posted at Orestiada, 12 December 2011; Interview with Orestiada Police Directorate, Orestiada, 23 August 2011.
[238] Interview with Greek Ombudsman, 30 August 2011.
[239] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.

shortages of doctors, nurses and interpreters at the detention centres. The program resumed fully in September 2011 and lasted until December 2011.

Medicines Sans Frontières (MSF), receiving funds from private donors, also intervened during the winter of 2011 offering primary health care and psychological support as well as logistic support in terms of non-food items distribution, covering toothbrushes, soap, toothpaste, sanitary towels, food for babies, and sleeping bags.[240] During the period of the KEELPNO programme the organisation handed over the medical and psycho-social components to MSF and maintained minimal logistical support through distribution of non-food items.[241] In August 2011 MSF had to intervene at the centres again to cover the needs of detainees until the KEELPNO program fully resumed.

Police officers posted at the border stations and detention centres greatly appreciated the presence of specialised staff in the detention facilities that improved conditions for both the detainees and the police personnel.[242] During the periods when no medical personnel were present police officers needed to transfer all cases to the nearest hospital, and in general respond to different aspects of the medical, psychological and social needs of the inmates thus losing capacity from the performance of the main policing tasks.[243]

The action to provide non-food items under the emergency ERF programmes was not implemented. The MoHSS had identified the Hellenic Red Cross as an implementing partner because of the broad reach of this organisation to different areas of Greece.[244] However, due to financing procedures of the Ministries involved (Ministry of Health & Ministry of Finance), the funds required for the first instalment of the final beneficiary were not available in due time.[245] Moreover, administratively the implementing partner had to guarantee 3% of the total amount through existing capital in a bank account. In the end, the whole amount of money remained blocked.[246]

Conclusion: applying solidarity

This concluding section assesses the gaps identified in the Greek asylum and migration system against the duty of solidarity. It addresses some issues that apply across the thematic areas studied, then the individual areas. It examines Greece's obligations under EU and international law, and the effects of EU policies on those obligations. It makes observations about how EU policies might better offset those obligations.

[240] Interview with MSF Emergency Coordinator, Soufli, 23 August 2011
[241] Ibid.
[242]Interview with Orestiada Police Directorate, Orestiada, 23 August 2011; Interview with Feres Border Security Post, Feres, 22 August 2011.
[243] Interview with Feres Border Security Post, Feres, 22 August 2011.
[244] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011; Interview with PRAKSIS Director of Communication and Fundraising, Athens, 31 August.
[245] Interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[246] Ibid.

Article 80 TFEU applies a strong duty of solidarity to "the policies set out in [articles 77-79] and their implementation". These include the legal bases for the asylum *acquis* as well as the Schengen borders code, Frontex, and EASO. The duty is to defray disproportionate impacts on Greece that result (or would result) from full implementation of CEAS standards. Solidarity should also account for EU acts that have their effects in Greece – such as the border operations that funnelled such large migration flows to Evros. Measures to offset these imbalances would comply with subsidiarity, because Greece's resources cannot meet the level of responsibility the CEAS demands of it.[247] The remainder of this section highlights some outstanding issues to be addressed to achieve a "full and inclusive application" of the 1951 Convention.[248]

Structural concerns affecting all aspects of asylum in Greece

It would be misleading to analyse the Greek asylum crisis without acknowledging the pervasive effect of three structural factors: arrival numbers, cumbersome bureaucracy, and financial distress. Regardless of the specific topic under discussion, nearly every stakeholder interviewed cited each of these as heightening the challenges of providing for the needs of refugees and migrants in Greece.

Since 2010, border authorities in Evros apprehend roughly 50,000 migrants per year. Presumably, more enter undetected. From border procedures through the asylum determination process, stakeholders consistently identified overcrowding as a major challenge. The heavy and persistent traffic of migrants and refugees creates extreme structural pressure on Greece's administrative and logistical capacity. The Dublin regulation adds to the pressure by eliminating the possibility of claiming asylum elsewhere.

Resource limitations result in inadequate services and failure to reach international standards in virtually every aspect of the refugee experience. Police in border regions are understaffed, and short of vehicles and equipment.[249] The asylum department of the Attica Alien's Police Directorate has 86 full-time officers.[250] The department must handle new applications, currently at about 10,000 per year, and the administrative needs of recognised refugees.[251] Beds, food, clothing, cleaning supplies, and literally everything else needed to serve basic needs of migrants and refugees is in short supply.

Even were sufficient external funds available, bureaucratic procedures are too slow and opaque to translate them to efficient service delivery. The significant increase in absorption of emergency ERF funds from 2010 to 2011 is encouraging, but the need for structural improvements in Greece remains. The consolidation of the prefectural level of government worsened the situation, by removing many of the structures that had supplied food and other basic needs. Ministries trying to implement programmes to alleviate the crisis face an inflexible

[247] Proportionality is disregarded here because it appears unlikely in the near term that EU measures might be disproportionate, i.e. might provide "too much" solidarity support.
[248] See e.g., reception conditions directive, recital (2). All the main CEAS measures contain similar language.
[249] Interview with Orestiada Police Directorate, Orestiada, 23 August 2011.
[250] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011. Other police services second officers to handle non-specialised tasks such as registration and renewal of identity cards.
[251] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011.

legislative framework that is not conducive to the swift distribution of funds.[252] Overworked civil servants cannot be expected to simultaneously operate existing procedures and implement new ones.

Essentially all stakeholders interviewed pointed out problems in attempting to address a long-term problem through emergency measures. The crisis has persisted for years, the populace and police are jaded, and morale is low.[253] Some ERF-financed efforts failed in 2010-2011 due to inability to carry out the necessary procedural prerequisites within the allotted six months. Administrative requirements such as co-financing can prove burdensome, as demonstrated by the abandonment of the collaboration to provide non-food items in detention centres. Successful efforts left gaps in service upon their completion. In November 2011 the European Commission proposed a new "asylum and migration fund" that might help to address such problems, for example by financing multiyear initiatives and considerably increasing the amounts available.[254]

Any review of the Greek asylum and migration crisis must also consider the broader economic crisis. Measures to reduce the budget deficit preclude allocating national funds to hire new civil servants. A civilian asylum authority being ultimately necessary to enable Greece to fulfil its responsibilities under the EU asylum *acquis*, it might be useful to redirect a small portion of the loans going to support Greece's national budget to directly fund the new asylum service instead, enabling the training and employment of staff from outside the current civil services.

The financial crisis also distracts policymakers. Ministries need to streamline and automate operations, such as procedures for disbursing funds and procuring equipment. Any significant reform, however, requires an act of the government. Changing basic frameworks such as financing and purchasing requires careful study pre-implementation, and monitoring afterwards. This is beyond the capacity of a government preoccupied by efforts to align its finances with the demands of EU and international authorities.

Particular challenges of border procedures, reception, asylum, and detention

At the border, Greece's primary responsibility is the duty of non-*refoulement*. EU law enforces a duty to provide access to asylum to those who express a protection need.[255] The rights and duties of the EU asylum *acquis* then engage. Even absent an asylum request, basic human rights standards preclude summary deportations. The institution of detention requires an especially heightened sensitivity to the protection of fundamental rights.

Lack of reception capacity is a glaring shortcoming. International human rights standards and the EU's reception conditions directive require the provision of housing, medical care, and elementary education, and support for basic needs such as food and clothing.[256] Each week in

[252] Interview with the Greek Ombudsman Senior Investigators, Athens, 30 August 2011; interview with Ministry of Health and Social Solidarity officials, Athens, 1 September 2011.
[253] Interview with Frontex Operational Officer (Land Borders Sector), Alexandroupolis, 22 August 2011.
[254] Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund COM(2011) 751 final.
[255] Asylum procedures directive, article 2(b).
[256] Reception conditions directive.

Evros, the authorities apprehend enough refugees or other migrants to overflow the total national housing capacity for asylum seekers. Even if all the people wishing to apply for asylum are in fact doing so, and all applications proceed to a final decision within the intended six months, Greece would still have to at least quintuple its reception capacity to meet housing needs.[257] Even were capacity sufficiently expanded, Greece's finances could not support running the centres.

Providing reception capacity raises issues beyond financing. There is no point in funding new centres that do not secure building permission, or that are set afire (as occurred in Evros). Financial incentives and mandates from higher levels of government might overcome the reluctance of local authorities, but popular hostility is a more complex challenge. Here, it may be instructive to consider the centre the Red Cross operates in Lavrio. Residents mingle easily with the local population. Children attend local schools. Adults hold jobs and patronise shops. Once initial reluctance is overcome, Greek communities can tolerate reception centres or even welcome the accompanying economic activity. A portion of EU funds earmarked for reception might be directed into outreach such as has succeeded in Lavrio, for example events to commemorate occasions such as World Refugee Day; informational brochures and presentations; and supporting volunteers to mentor residents in the practical aspects of living in the community.

EU law requires access to a full and fair asylum procedure for anyone who makes what "can be understood as a request for international protection from a Member State under the Geneva Convention".[258] Today, such access in Greece is illusory for too many refugees. The practice of detaining migrants who request asylum surely deters applications at border posts or police stations. This shunts prospective claimants to Petrou Ralli, where only a small minority can register a claim. It is difficult to estimate how many more people would request asylum if it were possible, but it is reasonable to expect an increase if these and other obstacles were removed. The current situation also raises serious questions regarding discrimination or arbitrary detention.[259]

Some administrative and practical barriers may be relatively easy to dismantle. Each apprehended person goes through a fast identification and registration process. This is an opportunity to provide information regarding asylum (using flyers already printed for distribution in detention centres and at Petrou Ralli in Athens),[260] and ask the reasons for coming to Greece. If means are made available to transmit the request to a centralised registry, the request can be registered, information on legal aid provided, and the first instance interview

[257] Greece currently has fewer than 1,000 beds in its reception centres. Daily apprehensions in Evros in 2010-2011 fluctuated within a range of about 150 to 300 or more. Not all apply for asylum. Nonetheless, there are now about 10,000 new asylum applications per year. Assuming each case takes half a year to resolve, that implies a year-round need to accommodate 5,000 people, compared to Greece's current national capacity of fewer than 1,000. This does not include the estimated 37,000 asylum seekers who still await decisions.

[258] Asylum procedures directive, article 2(b). Provisions such as article 18 of the EU Charter of Fundamental Rights express the right to asylum for refugees.

[259] Decisions to detain or to release often hinge on national origin. Article 5(1)(f) of the ECHR exceptionally allows detention for the purpose of removal, but article 18(1) of the EU asylum procedures directive prohibits applying such detention due to the act of applying for asylum.

[260] Article 10(1)(a) of the asylum procedures directive already requires that asylum applicants be informed about the procedures to be followed and their attendant rights and obligations.

scheduled in short order. This might considerably increase the number of asylum applications, slowing the determination process. However the right to request asylum is absolute. The current de facto solution of achieving efficiency through preventing applications in Greece and using the Dublin regulation to forbid their being made elsewhere in the EU is no answer.

Efforts already under way have demonstrated how external actors can facilitate the quality and capacity of the Greek asylum determination system. EU law obliges Greece to ensure, for example, that officials performing asylum determination have sufficient knowledge of asylum and refugee law, including accounting for "the applicant's cultural origin or vulnerability", and that interpretation is available where necessary.[261] All knowledgeable stakeholders agreed that including UNHCR consultants and professional interpreters improves the subjective quality of interviews. Centralisation of authority has also raised quality.[262] Enhanced quality at first instance enables appeals panels to correct errors. Similarly, the new appeals panels that place the assessments of UNHCR, the Greek authorities, and independent experts on a more or less equal footing show considerable promise.

UNHCR cannot yet cover all first instance interviews, and its pilot training has helped officers who make first instance recommendations to understand their humanitarian duties.[263] Metadrasi has established effective training schemes for interpreters, and prototyped innovative methods to amplify capacity, such as teleconferencing. The number of appeals committees was doubled in December 2011. Simply increasing EU financing for these and similar efforts could quickly raise the proportion of refugees in Greece who actually experience a "full and fair" assessment of their protection needs.

Detention is problematic on many levels. Current conditions are unacceptable. More fundamentally, there is no "responsibility to detain" under international or EU law. Although insofar as detention is actually practiced, the EU is responsible to see that it respects fundamental human rights, the EU and its member states are under no duty to assist Greece to enlarge detention capacity per se. EU law only requires that Greece, if possible, return irregularly staying third country nationals to their countries of origin. This could arguably be better and more humanely achieved by funding programmes that apply non-custodial means to encourage return.

Aspects of asylum that cut across themes

Legal aid and advice, and translation and interpretation services affect multiple themes discussed in this article. For example, harsh detention conditions and the absence of reception capacity impede legal aid, which in turn detracts from asylum proceedings. A detained person cannot freely meet with counsel, and is under serious emotional strain. Clients living in the streets often cannot be found when needed. Adequate reception facilities facilitate service delivery: it is, for example, simpler to operate fixed medical facilities than mobile units.

[261] Asylum procedures directive, articles 8(2)(c), 10(1)(b), 13(3).
[262] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011. (Authority over interviews was formerly dispersed across 53 local departments.)
[263] Interview with Attica Aliens' Police Directorate, Athens, 29 August 2011.

Legal information and counsel is critical at many points, and in perpetually short supply. Many migrants and refugees are unaware of their rights. One stakeholder described a detention centre where asylum information was provided only by sheets of paper affixed to a wall across the corridor from the room where detainees were confined. GCR lawyers report it is not uncommon for an asylum interview to conclude and the case be decided without the interviewee's being aware the interview is related to asylum, let alone having had time to prepare.

Legal counsel can be critical to safeguarding basic human and socioeconomic rights, particularly but not only in detention. The few NGOs that provide free advice to refugees are severely understaffed, and at times work unpaid when grants run out or receive pay with months of delay due to the precarious nature of project funding. Targeting further EU funds toward legal services may be a highly cost-effective way to increase both the capacity of the Greek asylum system, and its respect for fundamental rights.

Shortcomings relating to interpretation result in bottlenecks and gaps. During registration, interpreters and translated pamphlets could safeguard the rights to information regarding asylum, and to have protection requests recognised. Reception and detention centres need interpretation and translation to support health and other services, and to provide necessary information. The failure of an estimated three of each eight interviews in Patras to take place, for lack of an interpreter represents an obvious opportunity to increase capacity. The current situation of inconsistent quality of interpretation in asylum interviews places some applicants at a disadvantage, with the result that the fundamental right to asylum is unequally realised. Metadrasi has demonstrated approaches to increasing the availability and quality of interpretation. Expanding Metadrasi's training efforts, possibly including training recognised refugees who are fluent in the necessary languages as interpreters, would be a highly productive use of any new funds. Upgrading equipment to enable further use of tele- or even video conferencing for interpretation could further help to increase capacity quickly.

Greece has considerable untapped human resources. Athens and Thessaloniki each host teaching hospitals and law faculties. Advanced students could gain practical experience under the supervision of senior medical and legal professionals. Other sectors of society seem willing to help, if asked.

PRAKSIS has procured significant quantities of medicines through networking with pharmacists to locate surplus supplies. The municipality of Patras coordinates donations of food from places such as cafeterias, and of non-food items from local residents. Some church congregations organise efforts to assist refugees and migrants. ERF and other EU funds could usefully be directed simply to coordinating and targeting the efforts of these and other willing actors such as NGOs. One of the most broadly useful and cost-effective ways for the EU to enhance the entire capacity of Greece's asylum and migration services might simply be to identify resources, support the process of applying for and distributing funds, and connecting the actions and availability of such actors to critical points on the government's action plan.

REFERENCES

Articles, Books, Reports and Press Releases

Amnesty International, *Greece: Irregular Migrants and Asylum Seekers Routinely Detained in Substandard Conditions*, July 2010.

Carrera, S., Guild, E., *Joint Operation RABIT 2010' – FRONTEX Assistance to Greece's Border with Turkey: Revealing the Deficiencies of Europe's Dublin Asylum System*, November 2010.

De Bruycker, P. et al., Study for the EP, *Setting up a Common European Asylum System: Report on the application of existing instruments and proposals for the new system*, August 2010.

Ekathimerini "*Opposition to migrant center plans in Evros: Local and regional officials say plans for three new facilities will further downgrade area*", 31 May 2011.

European Commission, *Communication on enhanced intra-EU solidarity in the field of asylum: An EU agenda for better responsibility-sharing and more mutual trust*, Brussels, 2 December 2011, COM(2011) 835 final.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Public statement concerning Greece*, 15 March 2011.

EUROSTAT, *Data in Focus: Asylum applicants and first instance decisions on asylum applications in 2010*, Doc. No. 5/2011.

FRONTEX, *RABIT Deployment to Greece Extended until March 2011*, Frontex Press Release, Warsaw, 7 December 2010.

Frontex, *RABIT Operation 2010 Evaluation Report*, Warsaw, August 2011.

Fundamental Rights Agency (FRA), *Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner*, 2011.

Greek Council of Refugees, *Mass Illegal Arrests of Asylum Seekers*, Press Release, 4th November 2011.

Greek Ombudsman, National Human Rights Committee, Evaluation of the findings of a joint visit conducted at the detention centres in the Evros region, July 2011, p. 13.

Gussone, P., *Das Solidaritätsprinzip in der Europäischen Union und seine Grenzen* (Duncker & Humblot, 2006).

Hathaway, J., EU Accountability to International Law: The Case of Asylum, 33 *Mich. J. Intl. L.*, vol.1, fall 2011, pp. 1-7.

Human Rights Watch (HRW), *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union,* November 2008.

Human Rights Watch (HRW), *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece,* September 2011.

Hurwitz, A., *The Collective Responsibility of States to Protect Refugees* (Oxford Univ. Press, 2009).

Kritzman, T. and Berman, Y., "Responsibility Sharing and the Rights of Refugees: The Case of Israel", 41 *Geo. Wash. Int'l L. Rev*. 619-649.

Ministry of Citizens' Protection, Press Release on the signature of a Presidential Decree dealing with the new asylum procedure, 6 August 2010.

Ministry of Citizens' Protection, *Guidelines for the processing of 47.000 pending asylum claims at second instance,* Press release of 5 April 2011.

Ministry of Citizens Protection, External Borders Fund, Annual Program 2011.

Ministry of Citizens Protection, Written Response to Parliamentary Question Nr. 2676/ 12-12-2011 posed by MP Plevris, Doc. No. 7017/4/14272, 2 January 2011.

Official Discourse of the Minister of Citizen Protection given at 08.12.2011 before the Standing Parliamentary Committee on Public Administration, Public Order and Justice and transcribed at the website of the Ministry of Citizens' Protection.

Press Conference of the Minister of the Citizens Protection given at 01.11.2011 on Schengen, Irregular Migration and other matters transcribed at the website of the Ministry of Citizens Protection.

Ross, M., "Solidarity – A New Constitutional Paradigm for the EU?", in Malcolm Ross and Yuri Borgmann-Prebil, eds., *Promoting Solidarity in the European Union*, Oxford University Press (2010), pp. 23-45.

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Greece Report, (10-20 October 2010), A/HRC/16/52/Add.4, 21 April 2011.

Statement by Cecilia Malmström, European Commissioner for Home Affairs on the request of the Greek government to get assistance via Rapid Border Intervention Teams at the land border between Greece and Turkey, MEMO/10/516, Brussels, 24 October 2010.

Tsigannas, T., "*Barracks were set on fire in Evros*", article published in Kathimerini print edition, 3 June 2011.

UNHCR, *Observations on Greece as a country of asylum*, December 2009.

UNHCR, *The return to Greece of asylum-seekers with "interrupted" claims*, July 2007.

UNHCR, *Unaccompanied Minors Asylum Seekers in Greece: A Study commissioned by UNHCR's office in Greece*, April 2008.

UNHCR, *The situation of refugees in Greece, Observations and proposals of the UNHCR*, 16 June 2011.

Vanheule, D., Van Selm, J., Boswell, C. Study for the EP, *The Implementation of Article 80 TFUE on the Principle of Solidarity and Fair Sharing of Responsibility, including its Financial Implications, between the Member States in the field of Border Checks, Asylum and Immigration*, 2011.

Wellens, K., "Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections", in Rüdiger Wolfrum and Chie Kojima, *Solidarity: A Structural Principle of International Law* (Springer, 2010), pp. 3-38 at pp. 13-19.

Wellens, K., "Solidarity as a constitutional principle", in Ronald St John MacDonald and Donald M. Johnston, eds., *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (Martinus Nijhoff, 2005), pp. 775-807.

Wolfrum, R., "Solidarity amongst States: An Emerging Structural Principle of International Law", in Flavia Piovesan and Ines Virginia Prado Soares, eds., *Dirieto ao desenvolvimento* (Belo Horizonte, 2010), pp. 57-72 at p. 72.

International, European and Greek Legislative Instruments

1951 Convention Relating to the Status of Refugees, 25 July 1951, entered into force 22 April 1954, 189 UNTS 150, as amended by the 1967 Protocol Relating to the Status of Refugees, 31 January 1967, entered into force 4 October 1967, 606 UNTS 267 [1951 Convention].

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L212/12 [Temporary Protection Directive].

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L31/18 [Reception Conditions Directive].

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, OJ L50 [Dublin Regulation].

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304 [Qualification Directive].

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, L349/1 [Frontex Regulation].

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13 [Procedures Directive].

Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC, L144/1.

Presidential Decree (P.D.) 81/2009 amending Presidential Decree 90/2008, Official Gazette of the Hellenic Republic, Volume first, Number 99, 30 June 2009.

Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, L132/11 [EASO Regulation].

Presidential Decree (P.D) 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC, Official Gazette of the Hellenic Republic, Volume first, Number 195, 22 November 2010.

Law 3907/2011 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of the provisions of Directive 2008/115/EC, Official Gazette of the Hellenic Republic, Volume A', Number 7, 26 January 2011.

Interviews

(Alexandropoulis, 22 August 2011)-Mr. Miroslav Avramov, Operational Officer in Land Borders Sector, Frontex.

(Alexandropoulis, 22 August 2011)-Mr. Margaritis, Petritzikis, lawyer, Greek Council for Refugees (posted in Alexandroupolis-Evros).

(Feres, 22 August 2011)- Mr. Mokalis, Hellenic Police Vice-Director of the Feres Border Police Station.

(Orestiada, 23 August 2011)-Mr. Georgios Kalaintzis, Hellenic Police Vice-Director of Police Directorate of Orestiada.

(Orestiada, 23 August 2011)-Ms. Ioanna Pertsinidou, Emergency Coordinator Médecines Sans Frontières.

(Patras, 25 August 2011)- Mr. Aristeidis Andrikopoulos, Director of the Security Department of Achaia, Mr, Korbakis, Aliens Office of Achaia.

(Patras, 25 August 2011)-Ms. Athina Koutsochera, UNHCR Consultant (Borders).

(Telephone interview, 25 August 2011)-Mr. Nikos Komplas, UNHCR Assosicate Advisor (1st instance).

(Patras, 25 August 2011)-Mr. Panagiotis Kanellakis, doctor, Médecines du Monde.

(Lavrio, 26 August 2011)-Ms. Katerina Vrioni, social worker, and Mr. Vasilis Lyritsis, Director of the Lavrio Reception Centre, Hellenic Red Cross.

(Athens, 26 August 2011)- Ms. Aliki Karavia, lawyer, Greek Council for Refugees (posted in Orestiada-Evros).

(Athens, 29 August 2011)- Mr. Dimitris Matsoukas, Attica Aliens Police Directorate (Petrou Ralli).

(Athens, 29 August 2011)- Ms. Ariana Vassilaki, Snr. Protection Associate & Dafni Kapetanaki, Protection Associate, UNHCR.

(Athens, 29 August 2011)- Ms. Sofia Botziou, Ms. Evie Papada, Consultants (Ministry of Health and Social Solidarity), UNHCR.

(Athens, 30 August 2011)- Mr. Bertwin Lussenburg, Mr. Greg Pidakos, European Asylum Support Office (EASO) Project Managers (Asylum Support Teams).

(Athens, 30 August 2011)- Ms. Eftalia Pappa, Project-Manager/lawyer, Ms. Aliki Geogiadi, lawyer, Ecumenical Refugee Program of the Holy Synod of the Orthodox Church of Greece.

(Athens, 30 August 2011)- Ms. Maria Voutsinou, Ms. Koutroumpa Eleni, Senior Investigators, Human Rights Department, Greek Ombudsman.

(Athens 31 August)- Ms. Maria Moudatsou, Director of Communication and Fundraising/psychologist, PRAKSIS.

(Athens, 31 August 2011)- Ms. Maria Papamina, Coordinator of the Legal Aid Unit, Mr. Panagiotis Christodoulou, Director/Legal Advisor to the Board, Greek Council for Refugees.

(Athens, 1st September 2011)- Ms. Ninetta Zoi, Mr. Ioannis Avranas, Department of Refugee and Asylum Seekers Protection, Ministry of Health and Social Solidarity.

(23rd December 2011)- Written response to a questionnaire by UNHCR representatives at the second instance appeals committees, received by e-mail.