



**Submission by the Office of the United Nations High Commissioner for Refugees  
in the case of  
Xb. v. France and Greece (Appl. No. 44989/08)**

**Introduction \***

By letter of 14 August 2009, the European Court of Human Rights (“the Court”) invited the Office of the United Nations High Commissioner for Refugees (“UNHCR”) to submit a written intervention as a third party in the case of *Xb. v. France and Greece* (Appl. No. 44989/08). UNHCR welcomes the opportunity to make a submission in this present case, which raises a number of legal issues relating to refugee protection.

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problem of refugees.<sup>1</sup> Paragraph 8 of its Statute<sup>2</sup> entrusts UNHCR with the responsibilities of supervising international conventions for the protection from refugees, whereas Article 35 of the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”)<sup>3</sup> obliges States to cooperate with UNHCR in the exercise of its mandate.

Part 1 of this submission addresses the application of the procedure in France under the Dublin II Regulation.<sup>4</sup> Part 2 describes the legal status and situation of asylum-seekers in Greece, including those subject to Dublin II. Part 3 considers the risk of expulsion from Turkey of people removed from Greece to Turkey who may be in need of international protection, while part 4 addresses the international protection needs of people from Somalia. Attached to the submission are four annexes, describing the situation of Dublin II transferees in Greece (Annex 1); documented cases of deportation (or attempted deportation) from Greece of persons who may have international protection needs (Annex 2); documented cases of deportation from Turkey of people who may have international protection needs (Annex 3); and international protection needs of Somalis, in particular from Mogadishu (Annex 4).

**1. Transfer of asylum-seekers under the Dublin II Regulation and remedies available against transfer decisions**

The Dublin II Regulation<sup>5</sup> establishes a system to determine responsibility for examining an asylum claim lodged in an EU Member State or in Iceland, Liechtenstein, Norway or Switzerland, which participate in the Dublin II system, (hereafter “Member States”). The Regulation aims at ensuring that each claim is examined by one Member State.<sup>6</sup> Among the criteria in the Dublin II Regulation, responsibility may be attributed to a State “where it is established, on the basis of proof or circumstantial evidence ... that an [the] asylum-seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country....”<sup>7</sup> Asylum-seekers are frequently transferred

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

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

<sup>2</sup> *Ibid.* para. 8(a).

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

<sup>4</sup> 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, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF> (hereafter ‘the Dublin II Regulation’ or ‘Dublin II’). Persons transferred from another Member State to Greece under the rules of Dublin II are henceforth referred to as “transferees”.

<sup>5</sup> Dublin II Regulation, Recital 4, Article 1.

<sup>6</sup> According to the EC in its original proposal, main purposes of the system included to “ensure that asylum-seekers have effective access to the procedures for determining refugee status” and at the same time “to prevent abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States with the sole aim of extending his/her stay in the European Union”. COM(2001)447 final, 2001/0182 (CNS), Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national, Brussels, 26.07.2001, Explanatory Memorandum, page 3.

<sup>7</sup> Dublin II Regulation, Art 10(1).

from other Member States to Greece on the basis of this provision. The Regulation provides that responsibility shall cease 12 months after the irregular border crossing took place.<sup>8</sup>

Member States seeking to transfer asylum-seekers under Dublin II obtain the requisite proof of irregular entry into Greece in many cases via the “Eurodac” database, established under the Eurodac Regulation<sup>9</sup> to facilitate the operation of the Dublin II system. Under the Eurodac Regulation, Member States must record the fingerprints of all asylum-seekers and all persons apprehended “in connection with the irregular crossing... of the border” who are over 14 years old.<sup>10</sup> Thus where a person has moved from Greece to another Member State, that Member State will be able to request Greece to acknowledge responsibility under Dublin II based on the fingerprint match. Once Greece has accepted the request made by the Member State, responsibility for examining the asylum application will be transferred to Greece.<sup>11</sup> Greece is then obliged to take back the applicant for the purpose of examination of his/her claim.<sup>12</sup>

The Dublin II Regulation provides that the decision to transfer a person to the Member State responsible for his/her claim “may be subject to an appeal or review”, which shall not suspend implementation of the transfer unless “the courts or competent bodies so decide on a case by case basis if national legislation allows for this”.<sup>13</sup>

## **2. Procedure for transfer from France under the Dublin II Regulation and remedies available against transfer decisions**

In France, an asylum-seeker must approach the *Préfecture* to request a provisional stay permit (*autorisation provisoire de séjour*) and to apply for asylum.<sup>14</sup> The *Préfecture* is in charge of checking, through Eurodac and other means, if France or another Member State is responsible for examining the claim of the concerned asylum-seeker. If Eurodac reveals that the asylum-seeker’s fingerprints were taken in another Member State, he/she is issued with a notice<sup>15</sup> that responsibility for his/her case is being considered on the basis of the Dublin II Regulation. Such asylum-seekers are not admitted to the French asylum procedure and, until recently, were not considered eligible for reception assistance,<sup>16</sup> including social benefits and accommodation, which are available to other categories of asylum-seekers. However, the Conseil d’Etat in October 2009 decided that asylum-seekers denied access to the procedure on the basis of Dublin II should have access to reception assistance pending implementation of the transfer to another Member State.<sup>17</sup>

The Dublin II Regulation may also be applied to an asylum claim after the first instance refugee status determination body, the Office français de protection des réfugiés et des apatrides (“OFPRA”),<sup>18</sup> has commenced its examination of the application. In such circumstances, examination of the application is interrupted.<sup>19</sup>

If France receives a positive response to a request for transfer to a State it considers responsible under Dublin II, the authorities in turn issue the asylum-seeker a decision denying him/her a provisional stay permit, plus a separate written and motivated decision concerning the transfer to the requested State.<sup>20</sup> He/she may either be asked to travel by his/her own means to the requested State or be placed under administrative detention in anticipation of transfer.

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<sup>8</sup> Ibid, Art 10(1). Despite this provision, it is possible that responsibility may continue if a State which is asked to accept responsibility does not challenge the request on the basis that the 12 months has expired.

<sup>9</sup> European Union: Council of the European Union, *Council Regulation (EC) No 2725/2000 of 11 December 2000 Concerning the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of the Dublin Convention*, 11 December 2000, <http://www.unhcr.org/refworld/docid/3f4e40434.html> (“Eurodac Regulation”).

<sup>10</sup> Eurodac Regulation, Arts 4(1), 8(1).

<sup>11</sup> Dublin II Regulation, Article 16(4)

<sup>12</sup> Ibid, Article 16(1)

<sup>13</sup> Dublin II Regulation, article 19(2).

<sup>14</sup> Art. L 741-2 of the code on entry and stay of foreigners and on the right to asylum (*code de l'entrée et du séjour des étrangers et du droit d'asile*, hereafter the “*CESEDA*”).

<sup>15</sup> The notice is valid for 15 days, renewable thereafter.

<sup>16</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers,

[http://www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddcfda14&skip=0&query=Council%20Directive%202003/9/EC%20of%2027%20January%202003%20laying%20down%20minimum%20standards%20for%20the%20reception%20of%20asylum%20seekers)

[bin/texis/vtx/refworld/rwmain?page=search&docid=3ddcfda14&skip=0&query=Council%20Directive%202003/9/EC%20of%2027%20January%202003%20laying%20down%20minimum%20standards%20for%20the%20reception%20of%20asylum%20seekers](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddcfda14&skip=0&query=Council%20Directive%202003/9/EC%20of%2027%20January%202003%20laying%20down%20minimum%20standards%20for%20the%20reception%20of%20asylum%20seekers)

<sup>17</sup> Ordonnance n° 332631/332632, 20 October 2009, *Mirzoiian*.

<sup>18</sup> [www.ofpra.gouv.fr/](http://www.ofpra.gouv.fr/).

<sup>19</sup> Art. L 723-1 and L 742-2 of the *CESEDA*.

<sup>20</sup> Art. L 531-1 al. 2 of the *CESEDA*.

According to French law,<sup>21</sup> the asylum-seeker in principle has an opportunity to contact a lawyer and to contest the transfer decision by presenting observations to the *Préfet*. In practice, however, such challenges are successful in very few cases. Thereafter, such transfer decisions may effectively be challenged only through the expedited administrative procedure set out in the administrative justice code, *le référé liberté*.<sup>22</sup> This expedited procedure<sup>23</sup> has no suspensive effect as such, but the law requires the administrative judge to deal with it within 48 hours. One of the admissibility criteria of this procedure is the existence of “an emergency”.<sup>24</sup> In a 2003 decision, the Conseil d’Etat found that the proposed transfer of an asylum-seeker to another Member State constitutes such an “emergency” which can justify the use of the “*référé liberté*”.<sup>25</sup> The other admissibility criterion is the existence of a “serious and manifestly unlawful violation of a fundamental freedom.”<sup>26</sup> The right to asylum, with its guarantees, is considered to be such a fundamental freedom.<sup>27</sup> Therefore, if the judge concludes in the circumstances of the case that the transfer constitutes a serious and manifestly unlawful violation of a fundamental freedom, the measure may be suspended and the administration requested to issue the applicant a provisional stay permit for the duration of the examination of his/her asylum claim.<sup>28</sup>

Transfer decisions taken by *Préfectures* in accordance with the Dublin II Regulation are often contested for failure to respect the obligation to provide information,<sup>29</sup> lack of reasonable time to submit observations after notification of the transfer decision,<sup>30</sup> respect for the right of family unity<sup>31</sup> or violation of the various deadlines set out in the Dublin II Regulation. More recently, applicants have contested the prevailing conditions for asylum-seekers in the State deemed responsible, notably Greece and Poland.<sup>32</sup> To date, only administrative tribunals, i.e. lower courts, have opposed transfers to Greece. The Conseil d’Etat, by contrast, has found in two recent decisions<sup>33</sup> that the proposed transfer of asylum-seekers to Greece did not constitute a grave and manifestly unlawful violation of a fundamental

<sup>21</sup> Art. L 531-1 al. 3 of the CESEDA

<sup>22</sup> Art. L 521-2 of the *référé liberté*

<sup>23</sup> This procedure was examined by the court in *Gebremedhin vs. France*, n° 25389/05, 26 April 2007. See para. 65 et seq.

<sup>24</sup> Art. L 521-2 of the Code of administrative justice. According to art. L 523-1 al. 2, the decision of the administrative judge can be appealed within 15 days before the Conseil d’Etat. The Conseil d’Etat is also subjected to a 48 hours deadline to make a decision. In the context of the *référé liberté* there are two admissibility conditions: there should be a threat to a fundamental freedom, and there should be a situation of emergency. The Conseil d’Etat in its 2003 decision held that in situations where a person is under expulsion to another EU state or to a third state, situations of emergency may justify the use of the *référé liberté*. The emergency as such does not justify the suspensive effect.

<sup>25</sup> Conseil d’Etat, *Ministère de l’intérieur c/ Nikoghosyan*, Ordonnance n° 262913, 25 novembre 2003 ; « *Considérant, d’une part, qu’une décision de remise à un Etat étranger, susceptible d’être exécutée d’office (...), crée pour son destinataire une situation d’urgence au sens de l’article L. 521-2 du code de justice administrative, alors même que l’administration exprime son intention d’en différer l’application effective...* ». <http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000008209106&fastReqId=1521264578&fastPos=1>

<sup>26</sup> The French expression is « *atteinte grave et manifestement illégale à une liberté fondamentale* ».

<sup>27</sup> In France, the constitutional value of the right of asylum derives from Article 4 of the preamble to the 1946 Constitution, incorporated into the 1958 Constitution.

<sup>28</sup> The administrative judge took such a decision in : Tribunal Administratif de Paris, *Janagha Hossainee*, 17 July 2009, Ordonnance n° 911567/9; Tribunal Administratif de Cergy Pontoise, *Alpha Oumar Barry*, 28 May 2009, Ordonnance n° 0905925.

<sup>29</sup> Article 3(4), Dublin II Regulation. See Conseil d’Etat, *Chermykhanov*, 30 juillet 2008, Ordonnance n° 313767 ; « *Considérant, d’autre part, qu’aux termes de l’article 3 du règlement (CE) n° 343/2003 du Conseil, du 18 février 2003 : « (...) 4. Le demandeur d’asile est informé par écrit, dans une langue dont on peut raisonnablement supposer qu’il la comprend, au sujet de l’application du présent règlement, des délais qu’il prévoit et de ses effets » ; qu’il ne résulte pas de l’instruction que M. et Mme A aient été informés par écrit dans une langue qu’ils comprenaient des conditions d’application du règlement, de ses délais et de ses effets ; qu’ainsi, faute d’avoir mis les requérants à même de bénéficier des garanties procédurales prévues par le paragraphe 4 de l’article 3 du règlement (CE) n° 343/2003 du Conseil, du 18 février 2003, le préfet de la Loire-Atlantique a porté une atteinte grave et manifestement illégale à la liberté fondamentale que constitue le droit d’asile (...)* ». <http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000019279045&fastReqId=1164869490&fastPos=1>

<sup>30</sup> Conseil d’Etat, *Dociev*, 6 mars 2008, Ordonnance n° 313915 ; « *Considérant, d’une part, que si M. A soutient qu’il n’a pas été mis à même de bénéficier des garanties prévues par l’article L. 531-1 du code de l’entrée et du séjour des étrangers et du droit d’asile, notamment en raison de la circonstance que lui auraient été notifiées simultanément ces garanties et la décision fixant la Pologne comme pays de réadmission, il ressort des pièces du dossier qu’il lui a été indiqué, en langue russe, par des documents qui lui ont été remis à cet effet ou par le truchement d’un interprète, la nature de ces garanties, qu’il lui a été laissé le temps nécessaire pour présenter ces observations et qu’il a pu faire prévenir un parent résidant en France et son conseil ; qu’ainsi, la procédure de réadmission n’est entachée d’aucune irrégularité sur ce point (...)* ». <http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000018397472&fastReqId=1843850113&fastPos=1>

<sup>31</sup> Conseil d’Etat, 3 June 2005, n° 281001,

<http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000008214771&fastReqId=484555406&fastPos=1>.

<sup>32</sup> For Greece, Tribunal administratif de Paris, *Janagha Hossainee*, 17 July 2009, Ordonnance n° 911567/9; Tribunal administratif de Cergy Pontoise, *Alpha Oumar Barry*, 28 May 2009, Ordonnance n° 0905925. In these two decisions, the administrative tribunals relied, *inter alia*, on UNHCR’s position of 15 April 2008 on the return of asylum-seekers to Greece under the Dublin regulation and various documents of the Council of Europe, such as the Hammarberg report following his visit to Greece in December 2008 or the report of the Committee for the Prevention of Torture of June 2009. For Poland ; Conseil d’Etat, *Dociev*, 6 mars 2008, Ordonnance n° 313915.

<sup>33</sup> Conseil d’Etat, *Rayis Ahmadzay*, 20 September 2009, Ordonnance n° 332309 and Conseil d’Etat, *Malang Jan Pashe*, 30 September 2009, Ordonnance n° 332310.

freedom. To reach this conclusion, the Conseil d'Etat found that the applicants had contested the Greek asylum system only in general terms and that, in any case, Greece is party to the 1951 Convention and the European Convention on Human Rights. However, in the *Dociev* decision, the Conseil d'Etat conducted a thorough examination of the Polish asylum practice with regard to Chechen asylum-seekers, particularly with regard to the issue of *non refoulement*, in order to determine whether the implementation of the transfer would constitute a grave and manifestly unlawful decision violating a fundamental freedom.<sup>34</sup> It concluded that the Polish practice with regard to Chechen asylum-seekers offered all the necessary guarantees.

The caselaw reveals that varying approaches have been taken by the courts in considering whether to suspend transfers under Dublin II, both in the lower courts and in the Conseil d'Etat. In some cases, the courts have been prepared to examine in detail the procedures and their operation in other Member States before deciding on the lawfulness of a transfer - including in the case of proposed transfer to Poland under Dublin II which was challenged before the Conseil d'Etat. In others, including the Conseil d'Etat's decision regarding Greece, a significantly less extensive review of the situation has been undertaken, observing only that the country is a party to relevant international or regional Conventions, without addressing the implementation of these Conventions and the availability in practice of access to protection through the asylum procedure.

### 3. The legal status and situation of asylum-seekers in Greece, including under Dublin II

#### 3.1 Risk of return to persecution or serious human rights violations

##### 3.1.1 The *non-refoulement* principle

The obligation of States not to expel or return (*refouler*) a person to territories where his or her life or freedom would be threatened is a cardinal protection principle enshrined in Article 33 of the 1951 Convention. In addition, international and European human rights law prohibits the return of a person to a risk of torture and cruel, inhuman or degrading treatment or punishment. The duty not to *refouler* applies, inter alia, to asylum-seekers whose status has not yet been determined. It encompasses any measure attributable to a State which could have the effect of returning a person to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes refusal of entry at the border, interception and indirect *refoulement*.<sup>35</sup>

The Dublin II Regulation is predicated on a presumption that other Member States will respect the rights of asylum-seekers who are deemed to be their responsibility, and will examine their claims in a fair and effective procedure.<sup>36</sup> However, in the case of Greece, UNHCR has stated that problems in respect of access to and quality of the Greek asylum procedure, combined with inadequate reception conditions, may give rise to the risk of *refoulement*. Greek practice may also lead to the removal of people who may to countries where they may be at risk of persecution or serious harm ("chain *refoulement*") The prohibition of indirect or "chain *refoulement*" has been recognized by the Court in its decision in *T.I. v. the United Kingdom* and reiterated in the *Abdolkhani and Karimnia v Turkey* judgment.<sup>37</sup> It is against this background that UNHCR has recommended that governments refrain from returning asylum-seekers to Greece under the Dublin II Regulation.<sup>38</sup>

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<sup>34</sup> « (...) il ressort des pièces du dossier que si, comme le relève M. A en défense, l'entrée de la Pologne dans l'espace Schengen ne saurait par elle-même avoir une quelconque influence sur les garanties accordées aux étrangers sollicitant l'asile dans cet Etat-membre, les autorités polonaises paraissent, en l'état de l'instruction, offrir des garanties qui assurent aux demandeurs d'asile, qui ne sont nullement privés de liberté, la possibilité de demeurer dans cet Etat le temps que leur demande d'asile soit examinée et qui font obstacle, lorsque la qualité de réfugié ou une autre forme de protection leur est reconnue, à un refoulement vers leur pays d'origine, même via un pays tiers ; que, dans ces conditions, en jugeant que l'arrêt du 19 février 2008 du préfet de Tarn-et-Garonne portait au droit de M. A une atteinte grave et manifestement illégale à son droit de solliciter le statut de réfugié, le juge des référés du tribunal administratif de Toulouse a commis une erreur de droit (...) ».

<sup>35</sup> See UNHCR, Note on international protection, 13 September 2001, A/AC.96/951, pp. 5-6, <http://www.unhcr.org/refworld/docid/3bb1c6cc4.html>. See also Summary Conclusions: The Principle of Non-Refoulement, June 2003, <http://www.unhcr.org/refworld/docid/470a33b00.html>. See also UN High Commissioner for Refugees, *T.I. and the United Kingdom*. Submission by the United Nations High Commissioner for Refugees, 4 February 2000, Appl. No. 43844/98, <http://www.unhcr.org/refworld/docid/427737c4.html>.

<sup>36</sup> See Dublin II Regulation, Recitals 4, 5, 12 and 15; Art. 3(1) et seq.

<sup>37</sup> *T.I. v United Kingdom*, 7 March 2000, Appl. No. 43844/98, in which the Court stated that "the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention." See also *K.R.S. v. United Kingdom* Appl. No. 32733/08, 2 December 2008, as well as in *Abdolkhani and Karimnia v. Turkey*, 22 September 2009, Appl. No. 30471/08, paras. 88-89.

<sup>38</sup> UNHC Position on the Return of Asylum-seekers to Greece under the Dublin Regulation, April 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4805bde42&skip=0&query=UNHCR%20position%20on%20the%20return%20of%20Asylum%20seekers%20to%20Greece%20under%20the%20Dublin%20II%20Regulation>

### 3.1.2 Access to asylum for people returned to Greece under Dublin II

Despite some recent improvements in access to asylum procedures for people returned to Greece under Dublin II, such access is not always guaranteed. Moreover, even for those who are able to enter or re-enter the asylum procedure, there are concerns that people who are in need of international protection may not be recognised as such, due to problems in the operation of the Greek asylum procedure. Dublin transferees furthermore face the same problems as other asylum-seekers with regard to access to reception assistance. Reception conditions are not in line with the minimum standards required by international standards, including EC legislation.<sup>39</sup> The inadequacies in reception conditions are such that they may hinder or prevent asylum-seekers from effectively pursuing their claims.

#### 3.1.2.1 Access to asylum procedures

Persons transferred to Greece under Dublin II (including those who previously applied for asylum in Greece and those who have not done so) face problems which may hinder or preclude their efforts to register (or re-register) their applications for asylum.

According to the process in place since 2008, Dublin transferees (including those who previously applied for asylum in Greece, as well as those who had not<sup>40</sup>) are detained for up to 24 hours at the airport without any detention order. Thereafter, the transferee is released with a police notice informing him/her to appear at the Central Police Asylum Department (Petrou Ralli, Athens) within three days in order to declare his/her address, and to receive a date for his/her asylum interview, and to request a "pink card", confirming that s/he is lawfully present in the country as an asylum-seeker.<sup>41</sup>

The obligation to submit a claim (or report in connection with a previous claim) at Petrou Ralli exposes Dublin II transferees, like other asylum applicants in Greece, to significant problems of access to asylum procedures. Some 90% of asylum applications in Greece are lodged at Petrou Ralli, as even greater obstacles exist elsewhere in Greece to registration of claims.<sup>42</sup> Those seeking to register at Petrou Ralli must wait in lengthy queues, and may be obliged to return repeatedly over periods which can stretch for months before being able to file their claims. For Dublin II transferees, it may thus prove impossible to register within the strict three-day time limit. Asylum claimants must show proof of an address in Greece in order to be permitted to enter the building where claims are registered; and given the difficulties asylum-seekers face in securing accommodation,<sup>43</sup> this requirement also proves impossible in practice for many people to fulfil. Moreover, registration staff, who are police personnel, are insufficient in number and inadequately trained in asylum issues. These obstacles further hinder access to the process and to an effective claim examination.<sup>44</sup>

#### 3.1.2.2 Access to procedural safeguards

To benefit from the rights accorded to them under international refugee law, asylum-seekers must have access to territory and to procedures in which the validity of their claims can be assessed. These essential prerequisites for refugee protection have been underlined by the General Assembly of the United Nations and by the Executive Committee of UNHCR.<sup>45</sup> In addition, asylum claim determination processes should entail basic procedural safeguards which apply to any request for international protection, including the right to a fair and impartial

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<sup>39</sup> Reception Conditions Directive, op. cit.

<sup>40</sup> People who did not previously file asylum applications in Greece may be transferred to Greece on the grounds, among others, that Greece has been deemed responsible on the basis of proof through Eurodac or otherwise that they entered the EU irregularly via Greece before; or that s/he held a Greek visa or other residence document (Dublin II Regulation, Articles 10, 9 respectively). In such cases, if such persons subsequently claim asylum in Greece after transfer, they are treated as new claims.

<sup>41</sup> The "pink card" documents the registration of an asylum claim and as such provides proof for the holder's legal residence. The issuance of the "pink card" is provided for in art. 5 of Presidential Decree 220/2007 (Official Gazette A' 251/13.11.2007) on the minimum standards for the reception of asylum-seekers.

<sup>42</sup> See Written Submission by the Office of the United Nations High Commissioner for Refugees in the Case of *Sharifi and others v Italy and Greece* (Application No. 16643/09).

<sup>43</sup> See 3.1.2.3 below; and Annex 1, for cases of people who have been unable to file claims because of inability to show proof of address.

<sup>44</sup> See, UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 23, <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.

<sup>45</sup> See for example, GA/52/132, PB 13 of 12.12.1997; Executive Committee Conclusion No. 81 (XLVIII) para. (h) of 17 October 1997; Conclusion No. 82 (XLVIII) para. (d)(iii) of 17 October 1997; Conclusion No.85 (XLIX) para. (q) of 9 October 1998; Conclusion No. 87 (L) para. (j) of 8 October 1999; Conclusion No. 93 (LIII) paras (a), (b)(i) and(ii) of 8 October 2002. .

examination by a competent authority, a right to a personal interview, to submit evidence and to an effective remedy, among other elements.<sup>46</sup>

Dublin transferees are exposed to the same risks as other persons arriving in Greece and seeking to obtain international protection. Pink card holders, including those transferred to Greece under Dublin, are not exempted in practice from arrests, including group arrests (or “round-ups”) which have taken place in Athens and Patras, among other places, followed by summary deportations.<sup>47</sup> They are furthermore exposed to the same long waiting periods as other asylum-seekers in Greece before decisions are made on their asylum claims.

Protection rates remain extremely low in Greece. In 2008, 0.05 percent of cases decided at first instance were afforded protection.<sup>48</sup> The figure of 0.05 percent at first instance in 2008 diverges significantly from practice at first instance in other EU Member States which receive similarly large numbers of applications. By comparison, in the five countries (Sweden, France, the U.K., Germany and Italy) which, along with Greece, received the largest number of applicants in Europe in 2007 (2008 recognition figures not available), the average protection rate at first instance was 39.4%.<sup>49</sup>

The asylum procedure in Greece generally suffers from lack of resources at all levels. UNHCR has observed that properly trained interpreters<sup>50</sup> and sufficient administrative support are lacking. The procedure – including the taking of decisions on claims – is implemented by police personnel, who have not received adequate training to enable them to conduct asylum interviews or reach well-argued first instance decisions.

The quality of first instance decisions is generally poor. Decisions reviewed recently by UNHCR did not include any reference to the facts or to country of origin information, nor detailed legal reasoning. The reason given for rejection was usually a standard phrase, referring to an economic motivation for leaving the country of origin. This standard reasoning was used in the large majority of cases recently examined by UNHCR, including those of applicants originating from countries in conflict which generate large numbers of refugees.<sup>51</sup> In 2007 research on asylum decision-making in the EU, UNHCR identified further problems in the Greek refugee status determination procedure, based on which UNHCR concluded that the claims of people in need of international protection may not receive a fair and effective examination.<sup>52</sup>

### 3.1.2.3 Access to reception assistance

Dublin transferees, like other asylum-seekers in Greece, are exposed to unsatisfactory reception conditions, including extremely limited access to accommodation.<sup>53</sup> UNHCR has recorded a number of cases, including of vulnerable Dublin transferees, such as persons with mental health problems and a female victim of trafficking, where no

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<sup>46</sup> See, UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 23, <http://www.unhcr.org/refworld/docid/3b36f2fca.html>. For detailed analysis of procedural guarantees and standards as required to ensure compliance with international protection obligations in the European Union context, see UNHCR, *Provisional Comments on the Proposal for a Council Directive on Minimum Standards and procedures in Member States for Granting and Withdrawing Refugee Status* (Council Doc 14203/04, Asile 64 of 9 November 2004) available at: <http://www.unhcr.org/refworld/docid/42492b302.html>.

<sup>47</sup> See annex 2. In three cases (9, 12 and 16) out of the 27 cases documented by UNHCR, registered asylum-seekers were amongst those deported.

<sup>48</sup> The “protection rate” is percentage of positive decisions for both refugee status and subsidiary protection against the total number of decisions for a given period. Amongst the rejected cases were 2,785 asylum applications lodged by Iraqis. In the European Union as a whole, the average protection rate for Iraqis stood at around 70% in many EU Member States for 2008. Similarly, 1,809 asylum applications lodged by Afghans and Iraqis were rejected. In the European Union as a whole, the average protection rate for Afghans at first instance stands at approximately 50%. For both nationalities, in Greece the protection rate was 0% in 2008, or in other words: no Iraqi or Afghan case was given a positive decision at first instance. See UNHCR statistics at <http://www.unhcr.org/pages/49c3646c4d6.html>.

<sup>49</sup> Source: UNHCR Statistical Yearbook (2007), <http://www.unhcr.org/4981b19d2.html>.

<sup>50</sup> Problems resulting from the lack of competent interpreters are described in detail in Human Rights Watch, “Stuck in a revolving door”, p. 99 - 101.

<sup>51</sup> See UN High Commissioner for Refugees, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, p. 31-34, <http://www.unhcr.org/refworld/docid/473050632.html>. Observations of interviews and reviews of decisions and case-files by UNHCR in 2009 have confirmed that the described practices have not changed.

<sup>52</sup> “As a result of the considerable deficiencies in the recording of decisions, interviews and the gathering of information related to applications in Greece, the research was not able to utilize either decisions or case files in order to discern legal practice in Greece. Indeed, it was not possible to verify from the case files whether Greek legislation was being applied at all, let alone the provisions of the Qualification Directive”. UN High Commissioner for Refugees, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, p. 33, 34, <http://www.unhcr.org/refworld/docid/473050632.html>.

<sup>53</sup> For asylum-seekers who are not detained, UNHCR has observed that an insufficient number of places are available in under-resourced, mainly NGO-run centres across the country. As a result, large numbers of asylum-seekers are homeless or live in extremely poor conditions, with no social support from the State. Lack of monitoring by the authorities, lack of standardization among the various facilities and of appropriate counselling contributes to many cases where residents, including minors, leave the centres and disappear after a short stay.

accommodation was offered,<sup>54</sup> despite the fact that the few available places are kept for vulnerable cases or families. Single men, among many others, are generally denied accommodation, and often end up sleeping in parks or abandoned houses. In addition to the cases reported by UNHCR,<sup>55</sup> according to the transcripts of interviews reported by the Austrian Red Cross and Caritas Austria,<sup>56</sup> only one out of 14 Dublin transferees interviewed in Greece managed to receive accommodation in a reception centre managed by a non-governmental body, the Hellenic Red Cross.<sup>57</sup> The others were left unassisted and ended up living on the streets, in parks, in public gardens, in abandoned houses or in overpriced and overcrowded shared rooms.<sup>58</sup>

### 3.1.3 Refusal of entry and removal from Greece to Turkey

UNHCR also has significant concerns regarding the practice of removals from Greece to Turkey, including many conducted outside the framework governing such returns under Greek law.<sup>59</sup> During the summer of 2009, UNHCR observed an increase in group arrests by the Greek police in, amongst other places, Athens and Patras, followed by deportation to Turkey.

Annex 2 lists 27 cases of deportation or attempted deportation that took place between April 2008 and September 2009. The list is based on the testimony of affected individuals (obtained in interviews conducted by UNHCR at border areas and in detention facilities), and on reports from UNHCR partners, including non-governmental organisations. In all cases, the persons were subsequently located, either in Turkey; in Greece, after a new attempt to reach the European Union; or in their countries of origin after onward removal from Turkey.<sup>60</sup> While no Dublin transferees were included in documented cases of deportation from Greece to Turkey, there are no safeguards in place and Dublin transferees are not exempted from such practices. To the police implementing arrests, Dublin transferees cannot be distinguished based on their documentation from other asylum-seekers, and are thus exposed to the same risk of removal. Three of the recorded cases involved deportation of registered asylum-seekers.<sup>61</sup> In one case, the individuals were asylum-seekers whose claims were not registered in Greece, despite interventions by UNHCR and other agencies.<sup>62</sup>

UNHCR made written interventions with the Greek authorities in 11 of the 27 cases.<sup>63</sup> As of the date of this submission, the Ministry of Interior, via local or central police authorities, had responded to six of these interventions. Responses include: (a) denials that “push-backs” are taking place; (b) claims that the persons reportedly removed were in fact released with a police notice to leave the country within 30 days; and (c) statements that transfers of people to Turkish authorities from Greek detention facilities in border areas were undertaken to reduce congestion in those facilities.

## 3.2 Effective access to remedies at domestic and international levels for asylum-seekers transferred to Greece, including from the European Court of Human Rights

### 3.2.1 Access to effective remedies against asylum decisions

The minimum procedural requirements that States must provide to ensure fulfilment of their refugee protection obligations, as described above,<sup>64</sup> include the right to an effective remedy against a negative decision.<sup>65</sup>

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<sup>54</sup> Annex 1, cases 3, 6 and 7

<sup>55</sup> Annex 1, case 8

<sup>56</sup> Austrian Red Cross and Caritas Austria, “The situation of persons returned by Austria to Greece under the Dublin Regulation. Report of a joint Fact-Finding Mission to Greece May 23<sup>rd</sup> – 28<sup>th</sup> 2009”, p. 50-81.

<sup>57</sup> Out of the eleven reception centres in Greece, which offer 811 places in total, four are State-run, whereas the others are run by non-governmental organisations.

<sup>58</sup> According to the transcripts of interviews reported in the report of the Austrian Red Cross and Caritas Austria, op. cit.

<sup>59</sup> The legal framework referred to here is the Agreement between the Hellenic Republic and the Republic of Turkey on cooperation of the Ministry of Public Order and the Ministry of Interior of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal immigration, Law 1926 of June 27, 2001 and the Greek Migration Law, 33-86-2005.

<sup>60</sup> See Annex 2, case 14 and case 24.

<sup>61</sup> Annex 2, case 9, case 12, case 16.

<sup>62</sup> See Annex 2, case 24.

<sup>63</sup> When determining whether or not to make a written intervention, UNHCR considers, amongst others, if the allegations of deportations potentially resulting in *refoulement* are well-substantiated by credible sources, specificities of the case, including profile and vulnerability and other considerations.

<sup>64</sup> See section 3.1.2.2 above.

<sup>65</sup> All asylum applicants whose claims have been declared inadmissible or rejected on the merits should have the right to at least one full appeal or review by a body that is independent of the first-instance decision-making authority, and the right to remain in the country for the duration of the appeal proceedings. See footnotes to 3.1.2.2. Further, UNHCR “reiterates the need for applicants to have a genuine opportunity to raise and have

In Greece, rejected asylum applicants in general lack information on the right to appeal and procedural steps they must take to exercise this right. Processing times on appeal are very long. Large backlogs of over 42,000 cases exist at second instance.<sup>66</sup>

In July 2009, Presidential Decree (PD) 81/2009<sup>67</sup> introduced a number of changes which, in UNHCR's assessment, further undermine the quality of the asylum procedure by removing important safeguards. With this Decree, asylum decision-making at first instance is decentralized to 53 police directorates across the country. By the end of September 2009, less than a quarter of the Advisory Committees for first instance refugee status determination by Regional Police Directorates had been established and had started to function. These directorates were facing serious difficulties, including lack of expertise and training for this new task, interpretation services, and administrative support. Legal aid for the applicants is also lacking. In UNHCR's view, these decentralized directorates are unlikely to be able to overcome existing challenges around management of their workload and quality of decision-making, based on the limited investment of resources and direction which has provided to them thus far.

The former decision-making body at second instance has been abolished under this new legislation, which introduces in its place a limited right to seek judicial review before the Council of State. For appeal cases which were pending at the time the changes took effect, the previous appeals committees were downgraded from decision-making to advisory bodies, with the Alternate Minister of Public Order as the decision-making authority. In UNHCR's assessment,<sup>68</sup> these measures jeopardize the right to an effective remedy. As safeguards ensuring a fair and efficient adjudication of claims are not in place, UNHCR has declined to participate in the Advisory Committees for the examination of the asylum claims at first instance and in the Advisory Appeals' Committees for the examination of the large backlog, which have yet to be established.<sup>69</sup>

### 3.2.2 Access to the mechanism of Interim Measures from the European Court of Human Rights

In Greece, asylum-seekers and other foreigners do not have access to state-funded legal assistance, and there is a very limited number of NGOs with notable and influential advocacy activity<sup>70</sup> who might also be in a position to provide such legal help. UNHCR considers that the conditions described above<sup>71</sup> which hinder or prevent asylum-seekers pursuing their protection claims - including lack of access to information on legal rights, to interpretation, and to reception conditions which could enable them to subsist during the process, among other things - are also likely to create obstacles to the pursuit of requests for interim measures or applications to the European Court of Human Rights.

## 4. Risk of expulsion from Turkey

Persons who may be in need of international protection risk being expelled from Turkey to countries where they may face persecution or other forms of serious harm. In the attached Annex 3, UNHCR has referred to information it has received about cases in which people wishing to seek asylum, or who had been recognised by UNHCR as refugees in

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considered any reasons which could preclude their removal to another state under on 'safe third country' grounds, before removal takes place. There should also be an effective remedy which is exercisable in practice against a negative decision based on this "safe third country" rule." UN High Commissioner for Refugees, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, <http://www.unhcr.org/refworld/docid/42492b302.html>: "(vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing stem. (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending." UNHCR, ExCom Resolution No. 8 (XXVIII) - 1977 - Determination of Refugee Status, UN High Commissioner for Refugees, *Thematic Compilation of Executive Committee Conclusions*, August 2009, 4th edition, available at: <http://www.unhcr.org/refworld/docid/4a7c4b882.html>.

<sup>66</sup> As at 31 July 2009, reported by the Ministry of Interior.

<sup>67</sup> Presidential Decree 81, modifying Presidential Decree 90/200, on transposition into Greek Legislation of Council Directive 2005-85-EC, minimum standards on procedures in member states for granting and withdrawing refugee status, Official Gazette A/99/30 June 2009.

<sup>68</sup> See press release 09/32, "UNHCR will not participate in the new asylum procedure in Greece unless structural changes are made", [http://hosting01.vivodinet.gr/unhcr/Press\\_Rel/09pr32en.pdf](http://hosting01.vivodinet.gr/unhcr/Press_Rel/09pr32en.pdf).

<sup>69</sup> See press release 09/32, previous footnote. As of end July 2009, the backlog on appeal was of 42,700 claims. The first instance backlog stood at 6,145. These figures do not reflect the large numbers of persons intending to seek asylum but who have not been able to register their applications.

<sup>70</sup> Supranational rights litigation, implementation and the domestic impact of Strasbourg Court jurisprudence: A case study of Greece » Dia Anagnostou and Evangelia Psychogiopoulou, Juristras, ELIAMEP, p. 7.

<http://www.juristras.eliamep.gr/wp-content/uploads/2008/09/casestudygreece.pdf>

<sup>71</sup> See section 3.1.2 above



Turkey or in other countries, were removed, or appear to have been removed, from Turkey to countries where they are or could be at risk of persecution or serious harm, or of further removal to such a country. This includes cases involving asylum-seekers who had been expelled to Turkey from Greece; and from Turkey directly to other countries where they feared persecution.<sup>72</sup>

In the case of a person who might previously have been expelled from Greece to Turkey, and from Turkey directly or indirectly to his/her country of origin, s/he would be likely to be at risk of being expelled to face persecution or serious harm once more. This might constitute a strong element for consideration in assessing whether such a person would qualify as a refugee.

## 5. International protection needs of asylum-seekers from Somalia

Annex 4 contains UNHCR's summary assessment of the conflict and high levels of violence currently prevalent in Somalia, including in South/Central Somalia and Mogadishu in particular.

UNHCR notes that the generalized violence associated with confrontations between armed groups in South-Central Somalia is a major cause of displacement. All parties disregard basic principles of international humanitarian law, such that the civilian population bears the brunt of the fighting. This violence which characterizes the conflict has sparked waves of displacement, including outward flows towards and through Yemen, among other places. In Mogadishu in particular, parties to the conflict appear to have no regard for the safety of civilians in conducting the war, in clear violation of international humanitarian and human rights principles.

Persecution is often at the core of the violence across the country. People associated with different political and military elements are at risk from opponents, with alliances and patterns of persecution shifting as the conflict moves and evolves. Persecution also occurs on the basis of Somali social norms and structures, which can target members of minority clans, among other excluded groups. State agents are not able or willing to provide protection to such people in Somalia today.

These factors, among other elements of the situation as described in Annex 4, mean that many asylum claimants from Somalia are in need of international protection, including notably members of the civilian population of Mogadishu as well as others at risk of persecution because of their individual or group profiles.<sup>73</sup> UNHCR thus considers that the expulsion from European States of Somalis who wish to seek international protection, without effective access to a fair claim determination, can create a risk of *refoulement*.

## 6. Conclusion

In UNHCR's view, based on observation of current Greek asylum law and practice, it is not assured that asylum-seekers transferred to Greece under the Dublin II Regulation will have access to the asylum procedure, to a fair and effective examination of their claims, to the grant of protection where needed, or to an effective remedy. UNHCR's observations have also confirmed the risk that asylum-seekers, including those transferred to Greece under Dublin II, may be expelled from Greece to Turkey. Consequently, the risk of expulsion to a territory where they may be at risk of persecution or serious harm cannot be excluded.

UNHCR considers that at present the procedure under Dublin II as implemented in France would allow the transfer to Greece of asylum-seekers who are not assured a fair and effective examination of their claims in Greece. This conclusion is based on the varying approaches taken by French courts in considering the lawfulness of such transfers.

In the case of asylum-seekers from Somalia, UNHCR considers that practices which would deny their access to fair and effective asylum procedures, and potentially lead to their removal to Somalia or other countries where they might face expulsion to Somalia, may be at variance with the principle of *non-refoulement*.

UNHCR, October 2009

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<sup>72</sup> These risks were also highlighted in the recent *Abdolkhani and Karimnia v Turkey* judgment, where the Court unanimously ruled that there had been a violation of article 3: *Abdolkhani and Karimnia v. Turkey*, 22 September 2009, Appl. No. 30471/08, paras. 88-89. See also *T.I. v United Kingdom*, 7 March 2000, Appl. No. 43844/98, in which the Court stated that "the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention." See also *K.R.S. v. United Kingdom* Appl. No. 32733/08, 2 December 2008.

<sup>73</sup> Regarding clan-related conflict and indiscriminate violence, see *Salah Sheekh v Netherlands*, 11 January 2007.