THE DUBLIN II TRAP

TRANSFERS OF ASYLUM-SEEKERS TO GREECE

AMNESTY INTERNATIONAL

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Cover photo: Asylum-seekers waiting to submit their asylum applications at the entrance of the Police Asylum Department of the Aliens Directorate, Headquarters of Hellenic Police, in Petrou Ralli, Athens, June 2009.

CONTENTS

GLOSSARY

Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EU	European Union
GCR	Greek Council of Refugees
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MRCTV	Medical Rehabilitation Centre for Torture Victims
MSF	Médecins sans frontières
NGO	Non-Governmental Organization
PD	Presidential Decree
Refugee Convention	1951 Convention relating to the Status of Refugees
RSD	Refugee status determination
UNHCR	United Nations High Commissioner for Refugees (UN Refugee Agency)

1. INTRODUCTION

Amnesty International is concerned that state parties to the European Union (EU) Dublin Regulation continue or have resumed the return of asylum-seekers under this Regulation[1] to Greece despite continuing serious concerns with regard to the treatment of asylum-seekers, refugees and migrants in Greece. The Dublin Regulation is an EU law for determining which member state is responsible for deciding an asylum application lodged within the EU,[2] and usually requires that asylum-seekers be returned to the first country they entered upon arriving in the EU. Individuals transferred under the Dublin II system[3] face a myriad of risks to their human rights in Greece, including most seriously a risk of *refoulement* through failures in the asylum system at both procedural and substantive levels. As this report will highlight, these failings are: difficulties in accessing the asylum system and registering a claim; unfair examinations of asylum claims; a lack of procedural safeguards as required by international law to ensure the correct identification of those in need of international protection, and to prevent violation of the principle of *non-refoulement*.[4] These procedural failings include the abolition of a substantive appeal, and a lack of legal counselling, interpretation and information about the asylum procedure. On top of these systemic failings, expulsions to Turkey, including of asylum-seekers, are creating further risks of indirect or chain *refoulement*.[5] In addition, the vast majority of asylum-seekers transferred under the Dublin Regulation are automatically detained in inadequate conditions at the airport upon their arrival in Greece. Elsewhere in the country reception conditions fall far short of requisite standards, and economic and social rights are not met. In view of these findings, Amnesty International must repeat its call to state parties to the Dublin Regulation to immediately suspend all transfers to Greece under the Regulation until such time as reforms are implemented ensuring that requisite levels of human rights protection are met for refugees and asylum-seekers in Greece.

During 2007/8, in response to growing concern about the dire asylum conditions in Greece expressed by, among others, the UN Refugee Agency (UNHCR), the Commissioner for Human Rights of the Council of Europe and various non-governmental organizations (NGOs), a number of European countries took steps to suspend or reduce Dublin II transfers to Greece.

Given the evidence of serious continuing problems outlined in this report it is therefore of significant concern that, since the first half of 2009, some state parties to the Dublin Regulation, including Finland, the Netherlands, Belgium and Norway, which were previously circumspect in or had suspended applying the Regulation, have resumed returns of asylum-seekers to Greece.[6] European countries commonly argue that if breaches of human rights take place in Greece then individuals can seek redress there since Greece is a party to the relevant human rights conventions and treaties. However, Amnesty International and other organizations have repeatedly raised concerns about the obstacles faced by individuals in accessing their rights or effective remedies in practice.

Since March 2008, Amnesty International has called upon EU member states to make use of the sovereignty clause under Article 3.2 of the Dublin Regulation.[7] This allows a state to examine an asylum claim, even if such examination is not its responsibility under the criteria of the Regulation, including to avoid transferring asylum-seekers to the state which is

responsible until that state guarantees access to a fair asylum procedure and adequate reception conditions in compliance with international human rights law and standards as well as EU law.[8]

In April 2008, UNHCR advised EU member states to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice. This advice was based on concerns regarding the access to and quality of the Greek asylum procedure, the fact that the reception conditions continued to fall short of international and European standards, and the undue hardships faced by asylum-seekers, including "Dublin returnees", in having their claims heard and adequately adjudicated. UNHCR's view was that a combination of these factors may give rise to the risk of *refoulement*. In December 2009 the UN Refugee Agency issued an updated report in which it stated that it "continues to advise Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation or otherwise".[9]

Amnesty International's research findings indicate that the situation for asylum-seekers who are returned to Greece has not improved since it called upon the EU member states not to transfer asylum-seekers to Greece. Concerns relate to both the Presidential Decree (PD) No. 90/2008 of July 2008 (which transposed the EU Asylums Procedure Directive) and the amending PD No. 81/2009 of July 2009. Indeed, the situation has worsened with the adoption of PD 81/2009, which abolished the second stage of asylum procedures, leaving asylum-seekers with no recourse to an effective appeal. An asylum-seeker whose application has been rejected may only apply to the Council of State for annulment of that decision. According to UNHCR, the adoption of this new legislation has introduced changes to the asylum procedure "which have further diminished the prospects of asylum-seekers, including Dublin II transferees, having their claims determined in a fair procedure in Greece".[10]

Moreover, the detention conditions in which people returned to Greece are held at Athens airport, particularly vulnerable individuals such as children, as well as the small number of reception facilities for asylum-seekers, raise serious concern.

This report assesses transfers of asylum-seekers to Greece under the Dublin Regulation against the legislation and practices of the authorities in recent years. Although Greece has formally transposed relevant EU asylum legislation, Amnesty International's research has found that this legislation as well Greece's obligations under wider international law are not being complied with in practice.

Greece, as a state party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its Protocol as well as other relevant instruments, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), must ensure that it does not breach the principle of *non-refoulement*.[11] Amnesty International reiterates that, in order to meet this obligation, and as required by international standards, Greece must give individuals within its jurisdiction[12] and seeking international protection access to an asylum determination system with full procedural safeguards.

In 2007, out of 20,684 asylum applications examined at first instance, only eight applicants (0.04 per cent) were granted asylum; out of 6,448 applications examined on appeal, refugee

status was granted in 132 cases (2.05 per cent).[13] In 2008 out of 29,573 applications, refugee status was granted in 14 cases (0.05 per cent) in the first instance, and 344 applications for asylum were granted out of 3,342 applications examined in the second instance (10.29 per cent).[14] According to the statistics provided to UNHCR by the Ministry of Interior, in the first seven months of 2009 approximately 20,000 asylum applications (19,640 at the first instance, 810 at the second instance) were examined, of which 20 asylum claims were granted. Over the same period, 24 asylum-seekers were granted humanitarian status (including those whose status was renewed), while 61 received subsidiary protection (under PD 90/2008). Amnesty International considers that these recognition rates are disturbingly low.

Amnesty International believes that in view of current huge divergences in the quality of EU member states' asylum systems coupled with the absence of an automatic suspensive right of appeal against Dublin II transfers where the safety of a receiving state is questioned, the current Dublin system places individuals at risk of *refoulement*. In this regard, amendments to the Dublin Regulation proposed by the European Commission in December 2008 to provide effective remedies against transfers and to introduce a temporary suspension mechanism are to be welcomed.[15] However, pending revision of the Dublin system, there is an urgent need to ensure that arrangements for returning asylum-seekers under the Dublin Regulation comply with the obligations of EU member states under international law, particularly where these obligations apply to vulnerable groups, the maintenance of family unity and the protection of asylum-seekers from *refoulement* or other human rights violations.

At the end of 2009 the newly elected Greek government publicly acknowledged a number of problems in the current asylum system in Greece and announced that changes were needed to the asylum determination procedure. Among the plans announced were the removal of decision-making powers on asylum applications from the police and the establishment of a Central Asylum Service as the authority determining asylum applications at first instance.[16] In addition, it was announced that until more substantial changes came into effect the existing legal framework (PD 81/2009) should immediately be improved so that asylum-seekers can receive better and faster assistance. A Committee of Experts, comprising of representatives of the UNHCR and national NGOs, was established to prepare proposals on the issues concerned. Draft new legislation on asylum determination procedures is anticipated in March.

While Amnesty International welcomes the acknowledgement of current failings and proposed new measures, any such measures will need to comprehensively address all of the issues highlighted in this report. Furthermore the real test will be in the implementation of any new measures. Amnesty International remains concerned that even if new and improved legislation is introduced, the practice may remain inadequate and will require careful monitoring before Greece is considered to have a fair asylum procedure.

2. RESEARCH METHODOLOGY

Between September 2008 and October 2009, Amnesty International representatives carried out fact-finding visits and conducted interviews in Athens, Patras, Lavrio, Thessaloniki, Crete, Igoumenitsa, Konitsa and the Evros area. They spoke to: refugees, asylum-seekers and irregular migrants as well as government authorities, intergovernmental agencies, NGOs and lawyers working with asylum-seekers; and representatives of embassies of EU member states.

Amnesty International was given access to the detention facilities in Athens airport where Dublin II returnees are often detained upon their return to Greece. Amnesty International also visited detention facilities in Evros, Igoumenitsa and Patras, where asylum-seekers as well as irregular migrants are detained; shelters for child asylum-seekers in Crete and Konitsa; and residential centres for asylum-seekers in Lavrio and Thessaloniki. In the course of these visits, although the organization focussed particularly on the plight of Dublin II returnees, it also collected information about the asylum system in Greece as a whole. Amnesty International continued to collect information until February 2010.

Amnesty International wishes to thank all the individuals and organizations that assisted in the research and provided information, particularly the asylum-seekers who agreed to be interviewed.

Amnesty International interviewed 51 asylum-seekers – 44 men and seven women – who had been transferred to Greece from other states (Germany, Iceland, UK, the Netherlands, Sweden, Belgium, Austria, Denmark, Switzerland and Cyprus). Their countries of origin included Afghanistan, Armenia, Iran, Iraq, Somalia and Sudan. Three of the male asylum-seekers said they were minors, in spite of their asylum application cards recording them as adults. Four of the asylum-seekers had been transferred with children aged between five months and 17 years. The first transfer documented took place in 2002, the last in January 2010. Care has been taken to avoid the inclusion of information that could reveal the identity of the asylum-seekers interviewed in order to respect confidentiality, and to ensure that any information provided does not prejudice their ongoing asylum proceedings.

3. BACKGROUND INFORMATION

3.1. THE DUBLIN II SYSTEM

...at the level of implementation, it has become evident that asylum applications are assessed differently in similar situations.
Dutch State Secretary for Justice Nebahat Albayrak [17]

Since 1999 the European Union has been working to create a Common European Asylum System (CEAS) with common asylum procedures and uniform status for refugees throughout the EU. The first phase of the system was completed in 2005 with the adoption of a set of four main legal instruments: the Dublin Regulation, the Reception Conditions Directive,[18] the Qualification Directive[19] and the Asylum Procedures Directive.[20] These directives provide minimum standards for the treatment of asylum claims in the EU but in practice have not yet been fully implemented by all member states.[21] The second phase is now underway, including recast proposals to amend the above instruments, with the stated intention of completing the CEAS by 2012.

The Dublin Regulation is premised on the assumption that there are equivalent standards of protection in all EU member states. However, practices and refugee recognition rates differ widely between the member states resulting in what amounts to a lottery for asylum-seekers arriving in the EU. This fundamentally calls into question the fairness of the Dublin II system.

3.2. RECENT REPORTS AND ACTIONS ON GREECE

Over recent years many organizations have reported on the deplorable treatment of asylum-seekers in Greece. In its 2005 report, *Out of the Spotlight: The rights of foreigners and minorities are still a grey area*,[22] Amnesty International highlighted the failure of the Greek government to comply with human rights law and standards regarding access to asylum procedures, the detention of migrants and their protection from discrimination and ill-treatment. Since 2008, a succession of further reports have been provided by, among others, UNHCR,[23] the Council of Europe,[24] Pro Asyl,[25] and Human Rights Watch.[26] Key concerns identified included: a lack of procedural safeguards and access to the asylum procedure; arbitrary detention often in inadequate detention conditions; a lack of proper reception conditions; and the low recognition rate of refugees and those in need of other forms of protection. Further impediments to those seeking asylum, such as the effective removal of a substantive appeal right, have arisen from the adoption of PD 81/2009. The Pro Asyl, Human Rights Watch and UNHCR reports also refer to cases in which Greek coastguards have forced asylum-seekers back to Turkey or conducted unlawful expulsions at the border.

On 31 March 2008 the European Commission initiated an infringement procedure against Greece before the European Court of Justice (ECJ). According to the Commission, Greece failed to adopt the laws, regulations and administrative measures necessary "to ensure, in every case, examination of the merits on applications for asylum of third-country national who ... are transferred to Greece",[27] as provided for in the Dublin Regulation.[28] On 22 October

2008 this procedure was withdrawn as a result of legislative changes introduced by Greece in transposing the EU Asylum Procedures Directive.[29] However, due to ongoing concerns about implementation in practice and the new July 2009 legislation on the asylum procedure, in November 2009, the Dutch Refugee Council, Pro Asyl, the British Refugee and Migrant Justice and the Finnish Refugee Advice Centre filed a complaint with the European Commission against Greece, concerning the country's failure to comply with EU law.[30]

Amnesty International Greece, among other bodies, including the National Commission for Human Rights[31] and the Greek Council for Refugees, also submitted a complaint to the European Commission in November 2009. The complaint argued that PD 81/2009, amending PD 90/2008, is incompatible with Article 39 of the Asylum Procedures Directive. Although PD 81/2009 permits asylum-seekers rejected at first instance to submit an application for annulment before the Council of State, it does not qualify as an effective remedy since the Council of State can only examine the legality of the administrative ruling rejecting an asylum application at first instance, and not the substantive merits of a claim. On 3 November 2009, the European Commission sent Greece a letter of formal notice, which constitutes the first stage of an infringement procedure, on the issue of access to the asylum procedure, respect of fundamental rights, including the principle of *non-refoulement*, when conducting border controls and treatment of asylum-seeking unaccompanied minors.[32]

It is worth noting that, with the aim of improving the situation of asylum-seekers in Greece, bilateral agreements have been concluded between the Greek and Dutch authorities.[33] However, Amnesty International considers that these agreements alone do not justify the return of asylum-seekers to Greece while the legislation and practice in the asylum procedure do not comply with international and regional law and standards. Moreover, even if the Greek government were to engage in a genuine and full reform of the asylum system, its implementation will not be achieved in the short term and will need to be carefully monitored.

4. DUBLIN II RETURNS TO GREECE: DETENTION, REFUGEE STATUS DETERMINATION, AND RISK OF *REFOULEMENT*

At present, the refugee status determination (RSD) system in Greece lacks the necessary procedural safeguards required by international law to ensure the correct identification of those in need of international protection, and to prevent violation of the principle of *non-refoulement* (see further below under Expulsions and the principle of *non-refoulement*). However, despite these failings, Dublin II transfers continue to take place. In the first 10 months of 2009 there were 7,857 applications for transfers from EU member states to Greece, which agreed to take 2,770 people. A total of 995 transfers actually took place.[34] Amnesty International's research has shown that, after their return to Greece, individuals (consistent with the general treatment of asylum-seekers in Greece) face a range of human rights violations, rendering the inclusion of this country in the Dublin II system of transfers unacceptable at the present time. The following sections of the report will assess: the challenges asylum-seekers face upon return to Greece including detention; difficulties in gaining access to the asylum procedure, and to lawyers and interpreters; the lack of an independent and specialized decision-making authority; and the lack of thorough examinations of asylum claims, including the right to an effective appeal. The research findings confirm that Greece is currently in breach of its international obligations, which require that asylum-seekers be given access to a fair and satisfactory asylum system, with full procedural safeguards.[35]

4.1 DETENTION AT ATHENS AIRPORT

REFUGEE CONVENTION
Article 31

Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

ASYLUM PROCEDURES DIRECTIVE

Article 18

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.
2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

EU CHARTER OF FUNDAMENTAL RIGHTS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 5

1. Everyone has the right to liberty and security of person.
No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

In order to go to the toilet at nights I had to step over dozens of persons, men and women, sleeping on the floor of the cell and corridor.

Detained woman from Afghanistan

Under international law, the detention of asylum-seekers and migrants should only ever be used as a last resort, when it can be justified in each individual case that it is a necessary and proportionate measure that complies with international law.[36] Alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention.[37]

Article 13(1) of PD 90/2008, currently in force, stipulates that: "a national of a third country or a stateless person who is applying for refugee status cannot be detained for the sole reason of his illegal entry and stay in the country." However, Article 13(2) states that police have a right to "confine" asylum-seekers in certain locations for as long as necessary in order to ascertain the method of entry, identity and country of origin of asylum-seekers who have entered the country irregularly and en masse; or on grounds of public interest or public order; or when this is considered necessary for the speedy and effective completion of the above procedure. The time limit of the "confinement" cannot exceed 60 days.

Article 13(3) provides asylum-seekers with a right to challenge the decision ordering their detention by submitting objections or an appeal against it to the competent administrative court. Moreover, Article 13(4) states that women asylum-seekers should be detained separately from men, that the authorities should refrain from detaining children and pregnant women seeking asylum, and that adequate medical care should be provided to detained asylum-seekers. Article 13(4) also requires that the relevant authorities should inform the detained asylum-seekers of the reasons for and expected duration of their detention. However, Amnesty International is concerned that these standards are not being observed in practice.

In 2009, the European Court of Human Rights found Greece to be in breach of Article 3 ECHR twice in relation to detention, in the cases of an asylum-seeker and an Afghan irregular migrant respectively in *S.D. v. Greece* and *Tabesh v. Greece*.[38] In the case of *S.D. v. Greece* the Court held unanimously that there had been violations of Article 3 and Article 5 (1) and (4) (right to liberty and security). The Court ruled that S.D., while an asylum-seeker, had experienced detention conditions that amounted to degrading treatment, that his detention was unlawful and that he had been unable to have the lawfulness of his detention reviewed by the Greek courts. The European Court found similar violations in the case of *Tabesh v. Greece*. As this report will show further, lodging a complaint at national or international level is problematic for Dublin II returnees, as access to legal aid is denied to most of them or made difficult.[39]

Amnesty International is concerned that the vast majority of Dublin II returnees interviewed by the organization were automatically detained, normally for a period of a few days, on arrival at the Athens airport.[40] If they are detained they are always held in the main detention facility, guarded by police. The facility is divided into two sectors. The first consists of three rooms, each of which is approximately 7m2. The second includes three rooms, each approximately 50m2. The same facilities are used for the detention of irregular migrants or other asylum-seekers who have been detained after attempting to leave Greece, allegedly with false documents. Amnesty International visited the Athens airport detention facility in October 2009. At that time the detained asylum-seekers included a number of children, held together with their families, and a woman who was clearly in an advanced stage of pregnancy.

None of the asylum-seekers interviewed by Amnesty International said that they had been informed of the reasons for their detention, nor of their right to challenge the decision to detain them.

A., an Afghan national, was transferred to Greece from Sweden in late 2008. He holds an Afghan birth certificate, which Amnesty International has seen, according to which he was 16 at the time of his return to Greece. He reported that his father had been abducted by Taliban fighters, and subsequently tortured and killed. He told Amnesty International representatives that, immediately upon his arrival in Greece, he was detained at the airport without being informed of the reasons for his detention. He said his detention lasted four days, following which he was given a pink card that is the legal documentation proving that the holder has applied for asylum in Greece,[41] without having undergone an asylum interview.[42] The pink card records a different date of birth, appearing to show that he was an adult at the time of his first entry into Greece, when he was allegedly 14 years old.

In 2009 UNHCR also reported on Dublin II cases of minors returned from Finland who were registered with duplicate data, both as children and as adults.[43]

In its April 2008 position paper on "Dublin returnees" to Greece, UNHCR noted that: "[d]ue to the lack of sufficient asylum personnel to ensure the immediate identification, registration and processing of asylum applicants, 'Dublin returnees', including vulnerable individuals, are automatically detained, before their status is clarified and a decision taken to either interview the applicant or refer him/her to the Central Asylum Department".[44] On the basis of interviews with asylum-seekers carried out by Amnesty International in 2009, the situation does not appear to have changed since then, and the routine detention of Dublin II returnees continues to be reported.

Many asylum-seekers interviewed told Amnesty International they were verbally abused while in detention, including two asylum-seekers who claimed that they had been ill-treated by police officers while held at the Athens airport detention facility. Interviewed asylum-seekers reported that one police officer in particular had violently pushed and verbally abused the detainees.

M., an Iraqi national who claims that he belongs to the Christian minority, was transferred to Greece in mid-2008, after he had applied for asylum in another EU country. He was detained at the airport immediately upon arrival, and told Amnesty International: "While I was speaking on the card phone with a friend, a police officer told me to stop talking, punched me and broke my tooth. He grabbed me violently by the hair and pushed me back into my cell." Allegedly he complained to another officer about the incident but no action was taken by the authorities to investigate the incident.

Another Afghan asylum-seeker told Amnesty International that he had been verbally abused, stripped and punched by police officers while in detention at the airport in late 2009. Incidents of ill-treatment by the police, including of detained asylum-seekers and migrants, have been documented in the past by Amnesty International,[45] as well as by other organizations.[46] Most recently, the UN Committee on the Elimination of Racial Discrimination expressed its concern about "reported cases of ill-treatment of asylum-seekers and illegal immigrants, including unaccompanied children".[47]

During the October 2009 visit of Amnesty International representatives to the detention facility at Athens airport, the Greek police informed them that no medical examination is routinely carried out on asylum-seekers when they are detained but that medical care is provided, whenever necessary, either by a medical doctor or nurse at the airport, or in a hospital. It is to be noted that a medical unit providing health care for detained asylum-seekers at the airport operated from October 2009 for a trial period of three months. According to information available to Amnesty International, this service is currently no longer provided. Prior to that, no such services existed, and medical care was provided only externally, in hospitals to which asylum-seekers could be transferred. If Dublin II returnees have severe health problems, the Greek police are usually informed of this by the authorities of the EU countries from which returnees have come. It appears that in some cases, asylum-seekers suffering from severe illnesses have been less likely to be detained.

In individual interviews with asylum-seekers who were not currently in detention, Amnesty International was told that during their detention at the airport they were not allowed by the police to have access to their medication, which was in their luggage.[48]

During the visit to the airport detention facility, Amnesty International observed that detained asylum-seekers or irregular migrants were held in conditions of severe overcrowding and that

the material conditions of detention were inadequate. Although there were 46 beds available for detained people, the total number held in the facility, according to the police, was between 80 and 90 individuals.[49] The floors of the three larger rooms were covered with mattresses, which looked unhygienic and dirty, for those who did not have a bed. The problem of overcrowding at the airport detention facility was also reported in articles in the press, which noted that, on some occasions, the number of detained persons in the facility reached 240.[50] According to a statement made to the press by a police officer at the airport, "Every time a representative of AI or the UNHCR visits the area, the reality is being 'hidden' with the immediate transfer of detainees to other detention areas."[51]

Poor conditions of detention in general are recognized by the police authorities. In particular, the Panhellenic Federation of Police Officers stated that they are very concerned about the detention, transfer and deportation conditions of "illegal migrants", the insufficient human resources and infrastructure, as well as the inadequate hygiene and security in the workplace and especially in detention facilities in police stations and the areas where migrants are being accommodated.[52]

In conclusion, Amnesty International is concerned that most Dublin II returnees interviewed by the organization had been detained upon their arrival in Greece, and is also concerned about the detention conditions, especially the overcrowding, lack of hygiene, detention of unaccompanied minors and pregnant women, and incidence of alleged ill-treatment.

4.2. DIFFICULTIES IN LODGING ASYLUM APPLICATIONS

ASYLUM PROCEDURES DIRECTIVE

Article 6 (5)
Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.

When I got to Greece they just kicked me out of the airport without explaining anything to me.
S., asylum-seeker from Afghanistan

Article 4 of PD 90/2008, on procedures for recognition of refugee status, stipulates that "every foreign national or stateless person has the right to submit an asylum application". Registered asylum-seekers should be informed about the procedure, their rights and obligations, the deadlines and the result of their application in a language that they understand (Article 8).

Amnesty International is concerned that, in practice, provisions in Greek law which protect the right to apply for asylum are not fully implemented and that some individuals returned to Greece under the Dublin Regulation have been unable to gain access to an asylum determination procedure.

Prior to July 2009, Dublin II returnees, who had not previously applied for asylum in Greece, generally applied for asylum at Athens airport, where asylum interviews were also conducted (see below under Lack of impartial and specialized decision making authority).[53] Under PD 81/2009, however, asylum-seekers have experienced additional problems in gaining access to an asylum determination procedure.

When asylum-seekers submit their asylum application to the authorities they receive a document known as a pink card, which needs to be renewed every six months.

Under the new system, Dublin II returnees are required, within three days of their release from Athens airport, to go to the Central Police Asylum Department of the Aliens Directorate, Headquarters of Hellenic Police, in Petrou Ralli, Athens (hereafter Attica Police Headquarters), to present their asylum applications.[54] Under the law this is the only authority in the Attica area that can receive asylum applications. At present, around 20 claims are registered in one day, although up to 2,000 persons may be queuing to apply for asylum, while there is no standard system for prioritizing those who want to enter the building and submit their asylum applications.[55]

Some asylum-seekers interviewed by Amnesty International reported that they were not clearly informed, in a language they understood, about the three-day deadline. Many who went to the Asylum Department of the Attica Police Headquarters had to wait in line for several hours, sometimes overnight, in order to gain access to the Police Headquarters. Similar problems were experienced by registered Dublin II returned asylum-seekers, who have to report their address to the Asylum Department.

N. is an Iraqi asylum-seeker. Allegedly his father was working for a US company as a translator and was killed by Iraqis because of his post. N. was also allegedly working for a US company when he was kidnapped for one week and his family was asked to pay US$20,000 in order for him to be set free.

He first arrived in Greece in 2007 with one of his brothers and his sister and travelled to Belgium, where one of his brothers had obtained asylum. He was returned to Greece with his brother and sister under Dublin II. They allegedly all received pink cards without being given the opportunity to explain their reasons for seeking asylum.

Since they were homeless and living on the streets in Athens, N. went to the Iraqi embassy and asked for his sister to be sent back to Iraq. He explained to Amnesty International representatives that he continued living in Greece and was not able to renew his pink card after the six- month expiry period. So he remained in the country without any documentation.

N. left Greece for a second time in 2008 and reached another EU country; he was returned to Greece for a second time under Dublin II in 2009. He said that, in the airport, he was asked to give his reasons for seeking asylum in a short paragraph. He was not given any written notice by the airport police.

When Amnesty International representatives contacted the airport police to request that a notice be issued so that this asylum-seeker could go to Attica Police Headquarters, the police explained that his name was not included in their papers. As a result he was not allowed to enter the building. With the assistance of the Red Cross, he was finally given permission to enter after weeks of trying. The police told him that, in order to receive an asylum application card, he would have to bring a rental contract within two weeks. Since he had

no money, no job and was homeless, he could not register his asylum claim. As of November 2009, he continued to hold no legal documents.

On several occasions while conducting research for this report, Amnesty International delegates observed very long lines of asylum-seekers in front of the Attica Police Headquarters. Concerns about access to the Petrou Ralli building for asylum-seekers have been raised by a number of other organizations, including Human Rights Watch[56] and Pro Asyl.[57]

These problems, including long waiting times and difficulties in gaining access to the Attica Police Headquarters building, are discussed further below.[58] They present a significant administrative barrier to accessing the asylum system, and in some cases have posed significant dangers to the physical integrity of asylum-seekers who have to queue for many hours outside Petrou Ralli.

In October 2008 a Pakistani asylum-seeker was killed and 15 other people were injured while they were queuing to submit their asylum application at the Police Headquarters in Petrou Ralli. The incidents are reported to have happened during a stampede which followed police attempts to forcibly prevent an outbreak of disorder among a group of approximately 3,000 asylum-seekers who had assembled in front of the building. The Police Headquarters Asylum Department had reportedly been refusing to accept new asylum applications for the previous two months.[59]

In January 2009 a Bangladeshi asylum-seeker was killed in similar circumstances, when police reportedly used force to control the crowd, after a long line of asylum-seekers had formed at the Police Headquarters.

In view of the practical difficulties for all asylum-seekers in lodging applications at the Asylum Department in Athens, Amnesty International is concerned that the new requirement for Dublin returnees to submit – within a short deadline – their asylum applications there may result in significant additional obstacles to their access to the asylum system.

In addition, Amnesty International is concerned that some Dublin II returnees may not be allowed to have their asylum application substantively determined. According to UNHCR, if the Dublin II returned asylum-seeker had already applied for asylum in Greece and his application had been rejected and the period to appeal had lapsed during his absence, he or she will be served his deportation order at the airport and he will not have access to the asylum procedure.[60]

4.3. LACK OF AN IMPARTIAL AND SPECIALIZED DECISION-MAKING AUTHORITY

ASYLUM PROCEDURES DIRECTIVE

Article 8(2)
Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:
(a) applications are examined and decisions are taken individually, objectively and impartially;
(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

Amnesty International has concerns about the lack of independent and specialized decision-making personnel to conduct refugee status determinations, including for returnees to Greece under the Dublin Regulation.

Under Greek law, the police are responsible for all aspects of the asylum determination procedure, including receiving applications, interviewing asylum-seekers and taking decisions on granting asylum at first instance.[61] Under the system in place until July 2009, Dublin II returnees who had not applied for asylum in Greece were supposed to be interviewed by police officers at the airport, while a first instance decision on their asylum application was taken at the Police Headquarters in Petrou Ralli. The police were also represented on appeal panels taking second instance decisions on asylum claims.

Under the new PD, the police continue to be tasked with receiving and deciding on asylum applications. These decisions are normally taken by police officers at the Department Director level at the Asylum Department of the Aliens Department of the Attica Police Headquarters. The police decisions are meant to take into consideration the advice provided by Advisory Refugee Committees which should include representatives of the police, the local municipality and UNHCR. As of the end of February 2010, however, UNHCR has refused to participate on such panels, citing concerns that the new procedures "do not sufficiently guarantee the efficiency and fairness of the refugee status determination procedure in Greece as required by international and European legislation".[62] Moreover, under PD 81/2009 the second instance appeal stage has been abolished, thus depriving asylum-seekers of their right to an effective remedy (see below under The right to an effective appeal).

The Greek National Commission for Human Rights, a national, advisory, human rights body, has noted that "the police cannot be tasked with the prevention of illegal migration as well as asylum procedures", and has repeatedly requested that asylum determination procedures be assigned to bodies other than the police.[63] Partly similar concerns were raised by UNHCR, which reported that, in 2008, 65 officers were available to decide asylum claims at the Central Police Asylum Department in Petrou Ralli. Of these, only 11 were qualified Asylum Officers.[64]

In addition, the Greek Ombudsman in October 2009 referred to a number of flaws in the asylum application procedures carried out by the police. In particular, the Ombudsman referred to a practice that has been reported by a number of NGOs and asylum-seekers over the past two years. According to them, decisions rejecting asylum applications were written in Greek, and handed by the police to the asylum applicants simultaneously with their pink cards, with the result that they were not able to understand either the decision on their application, or the relevant deadline for lodging an appeal.[65]

The non-participation of UNHCR in the Advisory Refugee Committees renders concern about the fairness and effectiveness of the asylum procedure even greater, since the specialization of its staff and their impartiality will now be absent from any part of the process, having previously at least been part of the second-tier appeal panels.

Amnesty International considers that the examination of asylum applications by police officers who lack proper training, qualifications or expertise, not only jeopardizes the fairness and efficiency of the asylum determination procedure, but also contravenes Article 8(2)(c) of the Asylum Procedures Directive, according to which, "… Member States shall ensure that: the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law".

4.4. LACK OF THOROUGH INTERVIEWS AND EXAMINATIONS OF CLAIMS

ASYLUM PROCEDURES DIRECTIVE

Article 12
Personal interview
Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview. A personal interview shall take place under conditions which ensure appropriate confidentiality.

I was asked to write in a few lines the reasons for my asylum application. I wrote in my language "I want a lawyer, I want a translator, I want asylum".
M., asylum-seeker from Afghanistan returned from Belgium

One or more full and thorough asylum interviews are an important component of a fair asylum determination procedure. Interviewers should create a climate of confidence, enabling asylum-seekers to bring their stories to light and put forward in full their reasons for claiming asylum.[66] International standards require a shared duty between the determining authority and the asylum-seeker of ascertaining and evaluating relevant facts. If the determining authority fails to take proper steps to ascertain relevant facts, it may be unable to properly identify whether the person is a refugee and therefore risks breaching its obligations, most notably the principle of *non-refoulement*.

Under the asylum system in force until July 2009, Greek law stipulated that decisions on asylum should normally be based on a personal interview with the applicant.[67] Article 10 of Presidential Decree 90/2008 stated that the interview was aimed, amongst other things, at confirming what is alleged in the asylum application, including an explanation by the applicant of the reasons for leaving his or her country of origin and for requesting protection. In addition, Article 10(1) provided that asylum-seekers had to be given sufficient time to prepare for the interview.

Under PD 81/2009, Article 3 no longer states explicitly that asylum-seekers should be given adequate time to prepare for the interview.

Previous and current Greek law are clear on the need to carry out asylum interviews to make an assessment of and take decisions on asylum applications. However, Amnesty International is concerned that, in the vast majority of cases examined during this research, in practice asylum interviews were either not conducted at all or were conducted in a perfunctory manner.

Until July 2009, asylum interviews with Dublin II returnees, who had not previously applied for asylum in Greece,[68] were conducted at Athens airport, often after a detention period of a few days. Reportedly, they usually consisted only of basic questions about the applicant's name, date of birth and nationality. Asylum-seekers have told Amnesty International that the police at the airport who interviewed them did not inform them explicitly that they were having an "asylum interview", or that they were required to provide relevant information and evidence in support of their claim for international protection. Many of the asylum-seekers interviewed by Amnesty International stated that, at the airport, they were asked neither about the reasons for having fled their countries nor about their fears of returning.[69] Some of the asylum-seekers interviewed by Amnesty International stated that they were not interviewed at all but were just provided with a pink card. Under the system at the time, receiving a pink card meant that an interview had been conducted, even if it had not. This reported practice could have serious implications for the fair determination of the asylum claims since important information regarding the validity of their claims was not registered and seen by the competent decision-making bodies.

O. was returned to Greece from Germany under the Dublin II system in mid-2008. He is a Sudanese national, and had not applied for asylum in Greece before. He claims he is of Darfuri origin and that he had been detained by the secret services of the Sudanese authorities in 1997 and tortured, in an unofficial detention facility. He was subsequently released from detention and left the country. He told Amnesty International that, upon arrival at Athens airport, he was not interviewed for the purpose of asylum determination and was only given a pink card. Signs of torture were subsequently recorded and documented by a medical doctor from the Medical Rehabilitation Centre for Victims of Torture, a Greek NGO.[70]

K. and her brother A., Iranian nationals, were returned to Greece from the UK at the end of 2008. They had not applied for asylum in Greece before. In interviews with Amnesty International, A. alleged that he had been imprisoned in Iran because of his political activities as a local leader of a Kurdish minority group. K. stated that she had been beaten by Iranian police, apparently in connection with the political activities of her brother. She claimed that her knee had been injured as a result of the beatings and that this caused ongoing difficulties for her in walking. Both A. and K. told Amnesty International that, after their return to Greece under the Dublin Regulation, police at the airport did not carry out an asylum interview with them and that they were immediately given a pink card.

Amnesty International's findings are consistent with information from other NGOs working on refugee and asylum issues in Greece.[71] Alexia Vassiliou, a member of the legal assistance unit of the Greek Council of Refugees (GCR),[72] in her article on Dublin II transfers to Greece, noted that: "the 'interview' usually lasts five minutes and, in most cases, the only question asked – in English – is why the applicant came to Greece".[73] According to Greek Helsinki Monitor, asylum interviews in Petrou Ralli are "brief and superficial and do not provide a sound base for examining the particular asylum cases".[74]

Amnesty International remains concerned that the failure to provide proper and thorough interviews for those who were returned to Greece before July 2009 hampered their access to an effective asylum determination procedure and impaired their chances of receiving international protection.

Since July 2009, asylum interviews with Dublin II returnees applying for asylum in Greece for the first time have usually been carried out at the Asylum Department of the Attica Police Headquarters. (As noted above, Dublin II returnees now have to report to the Police Headquarters in Athens within three days of their release from the airport.)

Although there are some designated asylum personnel to carry out asylum interviews at the Police Headquarters, Amnesty International remains concerned that, given the concerns about the lack of training, expertise and sufficiency of specialized personnel, asylum-seekers are not being provided with full and thorough interviews which would assist in the identification of people who require international protection.

4.5. LACK OF INTERPRETATION SERVICES

ASYLUM PROCEDURES DIRECTIVE

Article 10
Guarantees for applicants for asylum

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:
(a) they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities.
(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary … these services shall be paid for out of public funds.

At the airport there was no interview and no interpreter, they only shouted to me in Greek to get out of the airport.

H., asylum-seeker from Somalia returned from the UK

According to Greek legal provisions on the asylum procedure, the personal interview should take place with the assistance of an interpreter.[75]

Reports have been received about the apparent lack of sufficient interpretation services available during the stages of registration and examination of asylum claims for all asylum-seekers, at both the airport and Attica Police Headquarters.

A leaflet issued by the Ministry of Interior, which explains the basic asylum procedure in Greece, exists in five languages in order to inform asylum-seekers of their rights. However, although Amnesty International representatives have seen this leaflet in other detention areas across Greece, it is not distributed in the detention facilities at the airport and was not given to any Dublin II returnees interviewed by Amnesty International upon their arrival in Greece. (The leaflet referred to the asylum system before July 2009.)

All but one of the asylum-seekers interviewed by Amnesty International stated that there were no interpreters or translators at the airport, including nine of whom were interviewed after July 2009.

N., an Afghan asylum-seeker, was returned to Greece from Austria in October 2009. At Athens airport he was detained and then, upon release, given a notice in Greek requiring him to report to Petrou Ralli within three days. N. claimed that he does not speak Greek or English, and the airport police did not explain to him in any language that he understands what was contained in the notice. The police officer gave him the paper and said, in Greek: "Go away." As a result, N. did not go to Petrou Ralli to apply for his asylum application card before the required deadline.

A lack of interpreters has resulted in many asylum interviews being conducted in English, even though neither the police officer nor the asylum-seeker had a satisfactory command of the language. There were also instances in which the interpreter was left alone with the applicant[76] and the interview was actually conducted by the interpreter. Human Rights Watch reported that: "It also appears that, because of the lack of interpreters, some asylum-seekers are being asked to provide interpretation services, without receiving any payment."[77] The European Commissioner for Human Rights has reported a "severe shortage of interpreters" in the Greek asylum determination system.[78]

Although police officers assured Amnesty International representatives on 25 September 2008 that interpreters are provided for interviews, it was not possible to verify this given that Amnesty International was only allowed to attend one asylum interview at the airport. This was in the case of A., a female Afghan asylum-seeker, transferred with her four children from Denmark. In that case, in April 2009, Amnesty International provided a male interpreter during the asylum interview, since there was no interpreter at the airport to assist the police.

Asylum-seekers told Amnesty International that the questions were usually asked in English or Greek, even if the interviewee could barely or not at all understand the language. UNHCR has also concluded that: "due to a lack of interpretation and legal services, asylum-seekers are often interviewed in a language they do not understand and without being counselled on their rights during the asylum process".[79]

Under the new PD 81/2009 system the asylum interviews of most asylum-seekers take place at the Attica Police Headquarters. The PD does not refer explicitly to Dublin II returnees, but in practice this is the office where they are interviewed.

An Afghan asylum-seeker transferred from Belgium under the Dublin Regulation in October 2009 told Amnesty International representatives that, when he arrived at the airport, he received a notice to present himself at the Attica Police Headquarters on a given Saturday morning. There were so many people waiting when he arrived there that the police told him to come back the following Wednesday. After waiting for three hours, his fingerprints were taken and he was given a pink card. There was a translator present, who simply wrote his name on the card. He was given a notice (in Farsi) to report at the office in February 2010 for an asylum interview. Of all the people interviewed by Amnesty International, this was the only case of someone being given a notice in a language they could understand.[80]

Amnesty International's findings on the lack of sufficient and appropriate interpreters have been echoed by other organizations. The Greek Ombudsman reported in October 2009 on the "insufficient interpretation services" during the asylum application procedure.[81] Based on its observations of asylum interviews, UNHCR reported in December 2009 that interpreters were often unable to provide quality translations.[82]

Amnesty International is concerned that there is still a severe lack of sufficient and appropriate interpretation services available in the Greek asylum system. This raises concerns about whether Dublin returnees receive information, in a language they understand, about their right to seek asylum, the reasons for and length of their detention, and the asylum application procedure. Moreover, it raises serious concerns that asylum applicants are unable to explain fully and thoroughly the reasons why they are applying for asylum in Greece. This creates risks that incorrect decisions are made and refugees are not identified, in breach of Greece's obligations.

4.6. ADMINISTRATIVE BARRIERS TO ACCESSING THE ASYLUM SYSTEM DUE TO HOMELESSNESS

"Is this why Greece asked me to come back? In order to let me [live] on the streets with nothing? This is the second time I have been returned to Greece under Dublin II and I'm homeless again. I know how things are here and I don't want to stay. They don't give me a pink card because I don't have a rental contract."

N., Iraqi asylum-seeker, transferred under the Dublin Regulation

Until July 2009, the majority of asylum-seekers returned to Greece under Dublin II were given a pink card by the airport police. This card did not state their address; instead, asylum-seekers had to go to the Asylum Department of the Attica Police Headquarters to report their address. However, a significant number of the asylum-seekers interviewed by Amnesty International reported that the airport police did not inform them of this obligation.

It is very common for asylum-seekers transferred under the Dublin Regulation to be homeless. Greek legislation makes it difficult to find employment, and due to the small number of available places in reception centres, many asylum-seekers are destitute. The legislation allows a pink card holder (registered asylum-seeker) to be issued a work permit. However, there are many bureaucratic obstacles to this, including the procedure for obtaining a tax identification number which requires the asylum-seeker to provide proof of a permanent address.

According to Greek law, a person applying for asylum can make a declaration to the police, when they submit their asylum application, that they are homeless (PD 220/2007 Article 6). Indeed, this declaration of homelessness is a necessary step, without which the Ministry of Interior (and since October 2009, the Ministry of Citizens' Protection) will not notify the Ministry of Health to seek accommodation for the asylum-seeker.[83] In practice the police do not always inform asylum-seekers of their right, if homeless, to be enrolled in the relevant list of the Ministry of Health so as to be provided with accommodation and do not automatically accept such declarations.

Without an address registered on the asylum application card, the pink card will not be renewed after six months and the applicant will not be in possession of a document which legally entitles him or her to stay in the country. This results in a risk of the asylum-seeker being arrested, detained and even deported. Six of the Dublin II returnees interviewed by Amnesty International had experienced problems renewing their pink cards. Some had tried to renew their card in Patras in 2008 but the police would not renew their card since they were homeless and living in a camp, and could not provide a permanent address.[84]

Although, in law, homelessness should not be a barrier to renewal of the card, in practice the police generally refuse to register individuals as "homeless". In the few cases where they have registered homeless asylum-seekers, they usually have only done so after the intervention of a third party, such as an NGO.[85]

M., an asylum-seeker from Iran, who was transferred from Belgium at the end of 2008, was not allowed to register on his card the address of the hotel where he was staying because he was not renting an apartment. The fact that he was staying at a hotel was considered insufficient. The police finally permitted him to register his address as the name of the hotel after Amnesty International intervened.

The homelessness of Dublin II returnees has wider implications. According to UNHCR, Dublin II returnees who could not provide an address upon arrival in Greece and who were notified by the Greek authorities on the status of their asylum application through the "Notification of Persons of Unknown Residence Procedure", were particularly disadvantaged.[86] The absence of an effective notification mechanism resulted in returnees not being able to follow up the outcome of their asylum applications, and risked missing the deadline to lodge their appeal according to the requirements of the former system (PD 90/2008).

Under the new system (PD 81/2009), Dublin II returnees are asked not only to report their address but also to provide a rental contract or official notice from the person who rents the flat where they are living. They receive their pink cards from the Asylum Department at Petrou Ralli, but the asylum application cards will not be supplied unless they can produce this evidence of their address. This condition constitutes yet another barrier to access to the asylum procedure.

A six-member Iraqi family, returned to Greece from the Netherlands in late 2009, was not given accommodation by the state. In order to be provided with pink cards, the family was asked by the Asylum Department not only to provide the police with its address but also to submit a rental contract. The family, who had no financial resources, was provided with accommodation through other Iraqi asylum-seekers who paid their rent, and they were finally issued with pink cards. Due to the hardship of the situation in which they found themselves, the

family decided to go back to Iraq voluntarily after less than a month in Greece. The reasons why the family had sought asylum were that the father had allegedly been threatened and injured because he had served as a witness in a criminal case in Iraq, while his two sons had been shot and injured when their house was broken into. The father was also suffering from psychological and physical problems that were diagnosed by doctors in the Netherlands.

Amnesty International is concerned that asylum-seekers returned to Greece under Dublin II – who have neither the means to rent accommodation nor family members or friends who can host them and provide relevant documentation, or who are not given any of the limited accommodation places provided by the state (see below under Reception Conditions) – will face significant obstacles in accessing the asylum application procedure, and will be at risk of not obtaining legal documentation. This can result in a risk of arrest, ill-treatment, detention or expulsion, including *refoulement* (see below under Expulsions and the principle of *non-refoulement*).

4.7. LIMITED ACCESS TO LEGAL ASSISTANCE

ASYLUM PROCEDURES DIRECTIVE

Article 15

Right to legal assistance and representation
Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request.

Asylum-seekers in Greece do not enjoy sufficient free legal aid. The number of lawyers providing free legal assistance is very small in comparison to the huge number of asylum-seekers. NGOs, teams and lawyers acting on a voluntary basis do provide free legal assistance. They usually focus on the most serious and urgent cases.
Mariana Tzeferakou, lawyer

Amnesty International believes that as part of a fair asylum procedure, asylum-seekers must be provided with access to free legal assistance, to UNHCR and to appropriate NGOs, and must be made aware of these rights. The Greek asylum procedure falls short of these standards and cannot be considered fair or effective at the present time.

According to Greek law, registered asylum-seekers have the right to be advised at their own expense by a legal or other counsellor.[87] In reality, asylum-seekers rarely have the financial resources to pay for legal counsel.

The asylum-seekers interviewed by Amnesty International reported that, while at the airport, they did not receive any legal advice. Apart from the Afghan woman with four children transferred from Denmark described above, who had access to an Amnesty International representative, none of them was made aware of their rights and duties while in detention at the airport facilities or during their asylum interview or had access to effective legal counsel, UNHCR or appropriate NGOs.[88]

As a general rule, lawyers representing asylum-seekers should have access to their records. According to GCR, it is difficult for lawyers to gain access to the files of asylum-seekers because asylum-seekers need to give specific authorization, and the authorities (police or other state authorities) have to authenticate their signatures. Such authentication is not always possible for people whose pink cards have expired or who have received a deportation order. Consequently, if an asylum-seeker fails or is not able to authorize his or her lawyer due to their status, then the lawyer will be unable to obtain the asylum-seeker's files in order to effectively represent them. The Greek Ombudsman has also raised concern about this administrative obstacle.[89] Even when the lawyer has the necessary authorization, access to the file is not immediately granted. There are cases in which lawyers, who requested copies of the files, had still not received them a year later.[90]

As outlined above, the absence of a legal aid system during the first stage of the asylum procedure severely limits the ability of most asylum-seekers to access legal advice or representation.[91] The only way to receive free legal assistance is through the non-governmental or charity sector, but the number of lawyers in Greece who can provide their services to registered asylum-seekers free of charge is extremely limited. Those, who do so, include lawyers working for NGOs such as the GCR, the Ecumenical Programme for Refugees or the Team of Lawyers for the Rights of Refugees and Migrants. The Red Cross also ran a programme of legal advice for refugees in Patras following the campsite evictions of July 2009 (see below under Access to accommodation).

Greek legislation provides for the granting of legal aid only with regard to an application to annul a negative decision to the Council of State.[92] Article 11(2) of PD 90/2008 states: "The asylum applicant who files an annulment application against the negative decision is provided with free legal aid in accordance with Law 3226/2004 (Legal aid for low income persons)." However, the provision of legal aid for applications for annulment is not immediate but must be granted by the Council of State judge in charge of the case. Moreover, one of the main problems with the free legal aid system is that lawyers are reluctant to add their names to the legal aid lists of local Bar Associations since the proceedings are lengthy and payment often takes over a year.[93]

While there are private lawyers who could take on asylum applications, their fees are usually too high for asylum-seekers' budgets.[94] Most NGOs which offer legal counselling to asylum-seekers suffer from a lack of resources and/or are reliant on project funding of limited duration. According to Lazaros Petromelidis, Director of GCR: "*There cannot be national strategies and policies with occasional funding given by the EU. When this funding stops the structures stop working as well.*"

Many organizations working on refugee issues are currently struggling to find adequate funding. According to Giannatos Dimitrios, director of Mosaic, an NGO offering psychological support to

asylum-seekers: "Now, as the years go by, no new structures are being created. Support for refugees' legalization is getting harder. We have entered a descending phase. In the coming years we think that the situation will become even more tense."

On 17 December 2008 the Board of the Union of Trainees and New Lawyers of the Athens Bar Association expressed its deep dissatisfaction about the fact that hundreds of lawyers faced obstacles in submitting asylum applications at the Petrou Ralli building, with the average waiting time to submit asylum applications on behalf of their clients exceeding six hours.[95] On 17 June 2009 the Athens Bar Association commented on the organization of asylum determination procedures in Greece as "tragic".[96]

4.8. THE RIGHT TO AN EFFECTIVE APPEAL

EU CHARTER OF FUNDAMENTAL RIGHTS

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. [97]

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.[98]

ASYLUM PROCEDURES DIRECTIVE

Article 39

Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal.

Until July 2009 there was a right of appeal against a first instance refusal of an asylum claim before a six-member Appeals Board. This was made up of a legal adviser, acting as President of the Board, two representatives from the Ministry of Foreign Affairs (diplomatic officer and legal adviser to the Ministry of Foreign Affairs), a senior police officer, a representative of the Athens Bar Association, and a representative of UNHCR in Greece. Although the Appeals

Board had decision-making powers, it was not an independent body but functioned under the jurisdiction of the Ministry of the Interior and Public Order.

In addition, according to Article 29 of PD 90/2008, an applicant who received a negative decision on appeal had the right to apply for annulment of that decision before the Council of State. However, this is an expensive and time-consuming judicial proceeding. Only asylum-seekers who received free legal assistance, or the few who could afford to pay high fees to lawyers, could resort to the Council of State (see above under Limited access to legal assistance).

Furthermore, the application for annulment did not automatically suspend the deportation proceedings against an asylum-seeker whose application had been rejected in the second instance. Legal representatives had to apply to the Council of State for suspension of the deportation procedure and a temporary order to stop his or her deportation. According to Article 13 of the ECHR, in cases where an appellant claims that his or her life or integrity would be at risk in their own country, a judicial procedure which does not suspend the deportation decision cannot be considered as effective.[99] In the case of *Jabari v Turkey*, the European Court of Human Rights ruled that "…given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned."[100]

PD 81/2009 abolishes the second stage appeal procedure and the Appeals Board described in the paragraph above, leaving asylum-seekers with no recourse to an effective appeal.[101] Now the only remaining means of seeking redress against the rejection decision is to apply to the Council of State for it to be annulled. The review by the Council of State can only examine procedural aspects of the negative decision. This clearly contradicts the recent proposal of the European Commission to amend the Asylum Procedures Directive, in order to specify that the right to an effective remedy before a court or tribunal requires a "full examination of both facts and points of law".[102] An application for annulment before the Council of State still does not result in suspension of the deportation procedure initiated against a failed asylum-seeker. However, the failed asylum-seeker has the right to request suspension of the deportation order (Article 52, PD 18/1989).

It may take between 18 months and more than two years for the annulment application to be considered after it has been lodged, which is why the asylum-seeker also needs to file an application to suspend the deportation order. Moreover, since the decision on the suspension application could be issued six to 18 months later, an application to issue a provisional order to prohibit the deportation should also be filed. Both of these applications need to be filed by a lawyer. Delays in delivering provisional orders to stop deportations (issued between 10 days and four months after application) place many asylum-seekers at risk of arrest, detention and expulsion, including refoulement, since pending the issuing of such orders, their documentation (pink card) is not valid.

PD 81/2009 also stipulated that pending appeals would be decided upon by the Deputy Minister of Interior, assisted by Advisory Appeals Committees, which have been downgraded

from a decision-making to an advisory role. In practice this means that those who applied for asylum under the old system will still have the right to appeal when they receive their rejection decisions.[103] The Advisory Committees had not been established as of February 2010.

Amnesty International is very concerned about the impact of the changes introduced in July 2009. Removing the right to an effective appeal fundamentally undermines the fairness of the asylum procedure. It creates a real risk that incorrect decisions will be left unchecked and the principle of *non-refoulement* breached. It deprives asylum-seekers of their right to an effective remedy as guaranteed under Article 13 of the ECHR (as well as relevant case-law) and Article 39 of the Asylum Procedures Directive. UNHCR has also expressed its concerns about PD 81/2009, stating that it would "not participate in the new asylum procedure unless structural changes are made".[104]

A., an alleged Christian Iranian asylum-seeker, who was returned to Greece in late 2009 from Switzerland, had applied for asylum in Greece under the old system and was given a pink card. He told Amnesty International representatives that if he goes back to Iran he will be killed because he has converted to Christianity. When he was returned to Greece under Dublin II, he was given the decision rejecting his asylum at the airport in Greek. This stated that he had 30 days[105] within which to lodge his appeal. A. was not given any explanation of this notice in a language that he understands. The meaning of the notice was explained to him by Amnesty International representatives just a few days before the deadline expired. He stated that he had no faith in the Greek system and would prefer not to lodge an appeal.

Amnesty International considers that Greek asylum procedures do not meet the relevant standards under international refugee and human rights law. As illustrated above, the lack of access to a fair and effective asylum procedure, the inadequacy of refugee status determination (including in Dublin II cases), the obstacles impacting on the ability of asylum-seekers to register and to appeal, rendering them at times illegally in the country and at risk of deportation, the abolition of a substantive appeal and the absence of effective legal advice and interpreters in the asylum procedure give rise to a serious risk of *refoulement*.

5. EXPULSIONS AND THE PRINCIPLE OF *NON-REFOULEMENT*

Greece, as a state party to the Refugee Convention and its Protocol as well as other relevant instruments, including the ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ECHR must ensure that it does not breach the principle of *non-refoulement*.[106] Greece is required to ensure that it does not send any individual, in any manner whatsoever, directly or indirectly, to a country where they face a risk of persecution or other serious human rights abuses.

According to Article 5 of PD 90/2008, asylum-seekers have the right to stay in Greece and cannot be removed until the administrative procedure of the asylum claim has been completed. However, a number of organizations, such as UNHCR,[107] Human Rights Watch,[108] the GCR, Pro Asyl[109], the Norwegian Helsinki Committee,[110] other Greek non-governmental organizations as well as media[111] have reported the practice by the Greek authorities of expelling asylum-seekers to Turkey prior to their claim being determined in a fair and satisfactory asylum procedure.[112]

The sections above describe gaps and flaws at various stages of the asylum determination procedure, as well as administrative barriers resulting mainly from homelessness experienced by asylum-seekers and specifically by Dublin II returnees. Amnesty International is concerned that these failures by the Greek authorities to ensure that asylum-seekers have access to a full and fair asylum determination procedure is placing them at risk of *refoulement*. This risk affects Dublin II returnees in the same way as it affects asylum-seekers in general. In addition to these procedural failings, the practice of expelling individuals prior to effective consideration of claims to international protection create real risks of a breach of the principle of non-*refoulement*, either directly, or indirectly through onward or chain *refoulement.*

Amnesty International has ongoing concerns about the situation of H.B., a person seeking asylum in Greece, whose case was first documented in a report published in 2005.[113] H.B. is a Turkish citizen of Kurdish origin. Since 1994 he had been a member of an organization which is banned in Turkey, the Revolutionary People's Liberation Party-Front (Devrimci Halk Kurtuluş Partisi-Cephesi, DHKP-C). He was convicted of membership of the above-mentioned organization and was imprisoned between 1995 and 2002 in various locations around Istanbul, some of which were high security "F-type" prisons. In an interview with representatives of Amnesty International in January 2005, H.B. said that he was tortured while in prison on various occasions and had gone on hunger strike in protest about the living conditions in prison. H.B. also suffered serious burns all over his body after setting himself alight in one of the clashes with the police authorities that followed the widespread protests by political prisoners of "F-Type" prisons across the country. H.B. provided evidence to support his asylum claim, including a medical report issued by the Centre for Rehabilitation of Victims of Torture in Greece which confirmed that the physical symptoms noted by the Centre's doctors were consistent with the type of torture he had described being subjected to in prison. H.B. also provided as evidence a series of media reports published at various times since 2001 documenting his political activities in Turkey, as well as a series of documents issued by the Turkish prison authorities and courts confirming his conviction for his

membership of DHKP-C. He came to Greece for the first time in December 2002. His asylum application was rejected on 14 February 2004. He appealed and travelled to Germany, from where he was returned to Greece under Dublin II on December 2004. He was detained and was about to be expelled to Turkey after receiving the decision to "interrupt" the examination of his appeal application. He appealed for the annulment of this decision to the Council of State, and his expulsion to Turkey was suspended. He was again given a pink card on January 2005. In 2005, Amnesty International expressed its concerns about the reasoning of the Board's decision at first instance and in particular the lack of clarity provided in the Board's statement regarding the non-substantiation of the applicant's claims through the evidence provided. In August 2008 the suspension of his expulsion was ordered but up to the time of writing, he has still not been granted asylum in Greece.

In April 2009 H.B. went on a hunger strike that lasted more than 25 days, demanding recognition as a refugee in Greece. At a meeting with Members of Parliament and Youth Against Racism, the Deputy Minister of the Interior promised that H.B. would be recognized as a refugee in Greece. However, this promise has still not been fulfilled. Amnesty International has already expressed the view that the evidence provided by the applicant to the organization leads to the conclusion that should he be returned to Turkey he would be at risk of persecution and emphasizes that the threat of his expulsion to Turkey still exists, since he has not been granted refugee status in Greece.[114]

In another case:

S.E. is a refugee from Iran, where his father was actively involved in a forbidden party, the Kurdistan Democratic Party. When he was 17 years old, S.E. and his family fled from Iran to northern Iraq. There he and his father became active members of the same party. When the security situation in northern Iraq worsened and his father was wounded in an attack against him, the family decided to flee to Turkey. There they were recognized as refugees by UNHCR in 2003. Despite this, the Turkish authorities did not allow them to settle in the country, refused to resettle them to another country and tried to deport them to Iran.

S.E. told Amnesty International delegates that in October 2004 he tried to reach Greece on a small boat together with 12 other people. When they were close to the island of Lesvos, a police boat came towards them. Their boat capsized and three people drowned. S.E. was rescued and taken to the hospital in Mytilini. After a few days he was transferred to the prison. He said that he was detained in poor conditions, he could not take a shower and there was no warm food. He also told Amnesty International that he was refused the right to apply for asylum, no legal counsel was made available to him and he was prevented from having contact with the outside world. After three months he was released and received an order to leave Greece within 30 days. He arranged travel to the UK.

After a dangerous trip by train, van and twice in a muggy load compartment of a lorry, in March 2005 he applied for asylum in the UK. After being detained for four months, in September 2005, he was transferred to Greece under the Dublin Regulation. In Athens he was reportedly detained for a few days and then released with an order to leave the country within two days. He embarked on a hunger strike in front of the GRC building and was arrested. He was placed in detention in Athens for three months. Allegedly he could not apply for asylum and could not speak or meet with a lawyer. When he was released he received an order to leave the country within 30 days.

He stayed illegally in Athens and worked as a volunteer for an organization which helps Iranian refugees. One year and five months later he was arrested again, detained for 20 days, and then transferred to the border area of Evros. In February 2007 he was allegedly forced by the Greek police to cross the river in the middle of

the night together with more than 100 hundred people. Around 13-14 people at a time were transferred onto a small boat. In the morning they were arrested and questioned by the Turkish police. Because he was afraid of being expelled to Iran, he said he was Iraqi. After a few days he was transferred to the Kurdistan region of Iraq. There he was allegedly detained in Erbil for two and a half months before being released in May 2007.

In October 2007 he again fled to Turkey, as the situation in northern Iraq was not safe for him. After a month he reached the Greek island of Kos on a small boat. This time he was not detained, but received an order to leave the country. Fearing that he would be forcibly returned to Turkey, he traveled irregularly to the Netherlands. S.E. told Amnesty International that although he informed the Dutch government that he wished to apply for asylum, he was arrested and detained for two months because he had used a false passport. Afterwards he was held in immigration detention for another two and half months. As of February 2010 the Dutch authorities were still seeking to transfer him to Greece.

In other cases, the difficulties in obtaining or renewing a pink card have resulted in a risk of *refoulement* for registered and unregistered asylum-seekers including Dublin II returnees, before an asylum determination procedure has been completed.

S., an Afghan woman, was transferred from the Netherlands to Greece in 2009 under the Dublin Regulation. She states that she worked for an international humanitarian NGO in Afghanistan. She claims she is in need of protection because her brother had been attempting to force her into marriage and had subjected her to beatings, which resulted in her partially losing her sight in one eye. S. told Amnesty International representatives that her pink card was stolen in Thessaloniki and that she immediately reported this to the police station. However, the police officers detained her for a day, threatening to send her back to Afghanistan, since they did not believe that she had had a pink card in the first place. She was eventually able to call a social worker from Médecins du Monde (Doctors of the World), who had assisted her and could confirm that she was indeed a registered asylum-seeker. Only after this intervention was she allowed to leave the police station.[115]

The GCR provided information to Amnesty International about the following two cases:

A. is a Pakistani asylum-seeker who arrived in Greece in October 2007. He managed to submit his asylum application in June 2008. When he went to renew his pink card in December 2008, the police postponed the renewal repeatedly from one Monday to the next. Because his card was not renewed, he was caught by the police in February 2009. He showed them his card but they insisted that he was staying illegally in Greece. In March 2009 GCR received a certificate stating that A.'s application was still pending. The lawyer immediately took the certificate and gave it to the deportation department, where the lawyer was told that A. was at the airport about to be deported. His deportation was cancelled almost at the last minute.

On 22 April 2009 GCR received a phone call from J.S., who told them that he was in Turkey at the Edirne centre [detention centre for foreigners] together with his friend K.A. Both of them are Afghan asylum-seekers who had been in Greece since September 2007 and whose cards are still valid. They said that they had been approached in the area of Evros by people who reportedly offered to hire them for agricultural work but who later threatened them with guns, and took their money. The men, claiming to be police officers, ignored the fact that J.S. and K.A. had both shown copies of the cards identifying them as asylum-seekers, put them in a plastic boat, crossed the river which forms the border between Greece and Turkey, and left them in Turkey. GCR was in contact with J.S. and K.A. for a short while after their expulsion to Turkey; they reported that they were to be sent from Turkey to Iran. This information was confirmed to GCR by a Turkish lawyer.

Amnesty International has also followed closely a case concerning Turkish citizens of Kurdish origin including four unaccompanied minors, who were returned to the Turkish authorities under the framework of the bilateral Readmission Agreement between Greece and Turkey, despite the fact that they had requested asylum in Greece. On 27 August 2009, Amnesty International wrote a letter to the Minister of Interior and copied the relevant authorities expressing, amongst other issues, its concerns over the case and the failure to respect the principle of *non-refoulement*. In the letter, Amnesty International also requested clarification about the course of events.

The asylum-seekers were among a group of 43 people (40 Turkish citizens of Kurdish origin and three Syrian citizens of Kurdish origin), who were arrested by the Greek coastguard on the northern coast of Crete on 20 July 2009 for irregular entry into the country. On 27 July 2009, 21 of these individuals, including four unaccompanied minors, reportedly expressed their wish to seek asylum but the police officers on duty reportedly refused to register their applications or facilitate their access to the Chania Police Directorate to lodge their asylum applications. With the assistance of lawyers and interpreters from a local NGO and the Chania Bar Association who had visited the 43 individuals on that day, 17 adults wrote and signed short asylum applications and tried to submit them to the police officers on duty. However, according to members of the local NGO and the representatives of the Human Rights Committee of the Chania Bar Association, the police officers responsible for their detention refused to accept their applications. On 28 July 2009, the Human Rights Committee of the Chania Bar Association submitted written asylum applications to the Chania Police Directorate, using a Court Process Server with a letter explaining the grounds for such submission. A few days letter, the Chania Police Directorate returned the asylum applications on the grounds that they were not submitted in person by the applicants themselves.

However, on 27 July, without warning, all individuals were transferred under police custody by boat to Athens and from there to Evros in the border region with Turkey on the following day.

UNHCR, Amnesty International and various other NGOs including the Chania Migrants Forum and the GCR sent faxes and letters to the competent central and local authorities requesting that the removal of the asylum-seekers be halted. However, 18 Turkish asylum-seekers of Kurdish origin, including the four unaccompanied minors, were among the 40 detainees who were handed over to the Turkish authorities on 30 July 2009. Two of the three Syrian asylum-seekers of Kurdish origin were released while the third was detained in the holding facility of the Aliens' Subdirection of the Attica Police Directorate. The Greek Ombudsman's office launched an investigation into the incident in October 2009 but had not published its findings as of March 2010.[116]

UNHCR has located the persons concerned in Turkey after their transfer and noted that "…their return without consideration of their request for international protection highlights the need for safeguards to ensure respect for the principle of *non-refoulement*".[117]

In addition to the cases above, Amnesty International has received a number of allegations from Iraqi and Afghan citizens, including people who stated that they were minors, saying that when they entered Greek territory they were unable to apply for asylum, despite their need for protection, mainly because they were refused access to the Petrou Ralli building. As a result, they were subsequently detained by Greek police as undocumented migrants and were expelled to Turkey where they faced a risk of chain *refoulement*. For instance, a 17-year-old unregistered Afghan asylum-seeker returned to Greece from Italy told Amnesty International delegates:

"I was detained in the Patras police station for a few days and then was put on a bus with 60 persons from Afghanistan, Iraq and Palestine. We were transferred to Fylakio detention centre in Evros, and were detained for 25 days. One day the police took us out and drove us to the forest. They beat us and took away all our belongings. Then they put us on a boat piloted by a Greek man. If someone spoke or moved in the boat, the police beat him. There were approximately 35 people in the boat. When we reached Turkish land, the police told us to go. I walked and found a small town and then I went to Istanbul. I was later informed that others were arrested by the Turkish police."

Turkey maintains a geographical limitation with regard to the Refugee Convention and refuses to recognize people of non-European origin as refugees. Amnesty International is concerned that people who are in need of international protection in Turkey are prevented from accessing their internationally recognized rights due to Turkish asylum regulations, which do not conform to international standards and which are unfairly and arbitrarily applied. Furthermore, Amnesty International is concerned that refugees, asylum-seekers and others in need of international protection are forcibly expelled from Turkey to countries where they are at risk of persecution. Amnesty International is also concerned that asylum-seekers and migrants are illegally detained in Turkey.[118]

According to the statistics provided to UNHCR by the Greek Ministry of Interior for 2008, 10,760 Iraqis were arrested pending deportation, 221 of whom were finally deported to Iraq despite the ongoing insecurity and risks of human rights violations in that country. It is also noteworthy that the proportion of Iraqi asylum-seekers who receive international protection in Greece is extremely low.[119]

Amnesty International is opposed to all forcible returns to Iraq at the present time, including those that occur directly as well as those that occur indirectly. In line with UNHCR's position,[120] Amnesty International believes that all individuals from southern and central Iraq should be granted refugee status or a complementary form of protection. Regarding Iraqis from the Kurdistan region of Iraq, an individual assessment in a fair and satisfactory asylum procedure should be made to assess whether they are in need of refugee status or complementary protection. However, if Iraqis from the Kurdistan region of Iraq do not qualify for refugee status or complementary protection, they should be granted temporary humanitarian protection until the status of Kirkuk has been finally and peacefully resolved and it is otherwise safe for them to return.[121]

Amnesty International is concerned that asylum-seekers in Greece may be at risk of *refoulement* due to the authorities' failure to provide a full and fair asylum determination procedure. To the police Dublin II returned asylum-seekers are indistinguishable from other asylum-seekers and are exposed to the same risks.[122]

Non-refoulement, as explained above, is an international obligation of fundamental importance. The fulfilment of such obligations towards refugees and others in need of international protection requires that refugee status determination procedures are carried out as effectively as possible to ensure that individuals who are in need of international protection are recognized as such and are given the protection to which they are entitled under international law.

6. ECONOMIC AND SOCIAL RIGHTS OF ASYLUM-SEEKERS TRANSFERRED TO GREECE

RECEPTION CONDITIONS DIRECTIVE

Article 13
2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

The police officers asked me in Greek to "go out" of the airport detention facility. I had no money at all and other passengers gave me a ticket for the bus to Athens. I lived on the streets for several months.
M, Iraqi asylum-seeker

I slept in the parks in Greece while my parents had everything in the Netherlands.
A.M., Armenian refugee, returned from the Netherlands

I cannot sleep in Omonoia Square at night, I feel tired of this living.
J., Somali asylum-seeker, returned from the UK

My future is in the park. I walk in circles in the park all day long. In Sweden they told me that the situation for me in Greece would be the same as it was in Sweden. How can I go to school? My back hurts because I sleep in the park…
A., Afghan minor returned from Sweden

In 2003 the EU adopted minimum standards on the reception of asylum-seekers. The EU considers "it is necessary that applicants for asylum be ensured a dignified standard of living in all the European Union as applicants do not have the right to choose the Member State that will examine their application (due to the application of the Dublin Regulation)."[123]

PD 220/2007 has transposed the Reception Conditions Directive[124] into the Greek legal system which, for registered asylum-seekers in Greece, recognizes a number of rights to, for example, adequate material conditions in reception centres, free medical treatment, employment and education. The legislation also includes special provisions for the care of unaccompanied minors and members of vulnerable groups such as victims of torture. However, Amnesty International's research reveals that for most asylum-seekers these rights are not respected in reality.

This section assesses the obstacles asylum-seekers face to gain access to accommodation and health care. In interviews with 51 asylum-seekers returned to Greece under the Dublin Regulation, many of them reported significant problems in relation to these issues.

6.1. ACCESS TO ACCOMMODATION

RECEPTION CONDITIONS DIRECTIVE

Article 13
General rules on material reception conditions and health care
1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.

Article 14
Modalities for material reception conditions
1. Where housing is provided in kind, it should take one or a combination of the following forms:
(a) premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border;
(b) accommodation centres which guarantee an adequate standard of living;
(c) private houses, flats, hotels or other premises adapted for housing applicants.

In Iran I had a good job, good car, good education but I was not free. And I wanted to be free. If I return as a Christian to Iran my life is finished. Today I can't live on the streets...
Iranian asylum-seeker returned from Switzerland

We have seen cases where both families with infants and unaccompanied minors have to sleep in parks.
GRC staff member

The right to adequate housing is guaranteed in, among other standards, the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Greece is a party.[125] According to the UN Committee on Economic, Social and Cultural Rights, the right to adequate housing includes legal security of tenure and protection from forced eviction and other harassment and threats; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.[126]

According to Article 6 of PD 220/2007, asylum-seekers may receive free accommodation in an asylum-seekers' centre or in any other space provided by the state. Asylum-seekers who have no place of residence may apply to enrol on the relevant waiting lists of the Ministry of Health to be provided with accommodation.

The overall capacity of reception centres is low in comparison to the increasing number of asylum-seekers in the country. According to UNHCR's 2009 report, accommodation for registered asylum-seekers is officially available in 12 reception centres, which are generally understaffed and under-resourced.[127] The centres provide 811 places, while, according to UNHCR, there were 19,884 asylum applications in 2008 alone. There are eight special reception centres for unaccompanied and separated minors in Greece, providing 405 available places in total[128]. It has been reported that the shelter for asylum-seekers in Thessaloniki, run by an NGO and subsidized by the Ministry of Health, will close at the

beginning of March 2010. The centre in late February 2010 was accommodating 52 people, including 11 families.[129] Amnesty International representatives interviewed two asylum-seekers returned under Dublin II: a Somali woman who suffers from health problems and a Somali woman with a one-year-old child. They said that the only provision that has been made for them is a monthly allowance of 120 Euros for three months after the closure of the shelter.

According to GCR, in May 2009 approximately 80 families of asylum-seekers were known to be living on the streets in Athens. Some had been waiting for more than 10 weeks to find accommodation. In addition, GCR holds waiting lists of hundreds of single males, who have the greatest difficulty in finding accommodation, since families and other vulnerable groups are treated as a priority. It is worth noting that the vast majority of Dublin II returnees in Greece are single males.

The following example illustrates the difficulties that asylum-seekers face when returned to Greece under the Dublin Regulation, in relation to access to housing. At the same time it shows how quickly the authorities respond when widespread publicity is given to the issue.

A., a female asylum-seeker from Afghanistan, her husband and her four children (aged between five months and eight years) stayed in Denmark with her family for six months after having passed through Greece. Her eight-year-old daughter went to school there. In Denmark she gave birth to her fourth child.

When the family received the decision that they had to return to Greece, A.'s husband disappeared and did not travel back with the rest of the family. In a bid to stop the return, A. embarked on a hunger strike in Denmark seven days before she was due to leave. She also sewed her lips together with metallic thread. Her case raised concern in Denmark, and a Danish reporter came to Greece to report on conditions in the reception centre. The Greek authorities managed to find accommodation within two days, which is extremely unusual. The Ministry of Health booked a hotel room in the centre of Athens for six days. Then the NGO Médecins du Monde accommodated the family in its shelter in Athens.

As of November 2009, the family was being accommodated in an apartment near the Lavrion shelter, provided by the Municipality of Lavrion.

Many of the asylum-seekers Amnesty International interviewed, who had been sent back to Greece under the Dublin Regulation, had become homeless and had no access to adequate housing. Because of the lack of sufficient housing provided by the state and the poverty that Dublin II returnees face, many of them had moved into the Old Court of Appeal building in Athens and the Patras makeshift camp. One of the returned asylum-seekers interviewed by Amnesty International, who was an alleged victim of torture from Sudan, was living in the Old Court of Appeal, and three Afghan asylum-seekers who had been returned from Italy, Austria and the UK were living in the Patras camp and were interviewed there.

On 20-21 July 2009 the Greek police evicted around 100 individuals who had been living in the Old Appeal Court of Athens. Many people, including irregular migrants and potential asylum-seekers, had lived in the disused courthouse in Sokratous Street for the previous three years, in squalid conditions with no water, electricity or proper sanitation. Their number reached approximately 600 in the spring of 2009. It appeared that no alternative accommodation was provided for the inhabitants of the disused courthouse either before or after the eviction. The

inhabitants had refused to move, claiming they had no other place to live.[130]

On 12 July 2009 the Greek authorities forcibly evicted about 200 people from the makeshift camp in Patras, who had remained in the camp even after unofficial warnings that the camp would be demolished. Before the eviction, the makeshift camp in Patras had been occupied for some 13 years, by approximately 300 people of Afghan origin, including asylum-seekers and irregular migrants. A significant number of these individuals were children, many of them unaccompanied.[131] Nearly 60 minors were transferred to the Konitsa center for minors, while 65 registered asylum-seekers received accommodation in a local hotel. In the weeks following the eviction, there were reported to be some 80 to 100 individuals who were homeless and living in fields close to Patras without shelter or access to water, sanitation and medical assistance. Among those left unprotected were said to be a small number of unaccompanied minors as young as 14 years old.

Amnesty International was concerned that, in breach of international law, people were forcibly evicted from their homes without adequate notice, any prior consultation with the community, due process of law including access to legal remedies, and provision of adequate alternative accommodation for many of those who were evicted. Forced evictions violate a range of international and regional human rights standards to which Greece is a party, including the right to adequate housing. Evictions may only be carried out as a last resort, once all other feasible alternatives have been explored, and only when all appropriate procedural protections are in place. All persons, irrespective of their legal status, must be guaranteed protection against forced evictions.

In September 2009, Amnesty International was informed that the regional authorities of Patras decided to discontinue the provision of accommodation for the approximately 65 registered asylum-seekers who had been living inside and around the campsite and who were provided with accommodation in a local hotel in the days following the eviction. Following pressure by a local committee working on the rights of refugees, the regional authorities reportedly conceded to provide accommodation for those asylum-seekers who were documented by the police as present in the campsite on the day of the eviction.

Amnesty International is concerned that the authorities have failed to provide basic accommodation to asylum-seekers, including for some of the vulnerable individuals, leaving them to fend for themselves in destitution. Only nine of the 51 Dublin II returnees interviewed by Amnesty International had been provided with state accommodation, the duration of support ranging from several days to several years. Nearly all of the 51, including women and a single parent family, had lived on the streets for several days, weeks or months. Only a small number managed to find alternative proper accommodation. The great majority of those interviewed by Amnesty International were either homeless or staying in the homes of friends and family for short periods of time.

6.2. ACCESS TO HEALTH CARE

RECEPTION CONDITIONS DIRECTIVE

Article 13
General rules on material reception conditions and health care
Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

Article 15
Health care
1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness.
2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

Article 17
Provisions for Persons with Special Needs
General principle
1. Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

I suffer from pneumonia after living on the streets for a long time. Although I have a pink card I'm not accepted in public hospitals.
A., Somali asylum-seeker returned from Sweden in 2005

Under international law, refugees, asylum-seekers and migrants benefit in the same way as any other individual from the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health". This right entails non-discriminatory access to services, which are equivalent to those available to surrounding host communities.

According to Article 14 of PD 220/2007, registered asylum-seekers should receive free medical, pharmaceutical and hospital treatment, and applicants with special needs should be given special treatment. In addition, according to the ministerial decision 139491/3.11.2006, asylum-seekers with pink cards are entitled to free medical care in public hospitals. However, Amnesty International's research revealed that these services are rarely available in reality.

In practice it is common for registered asylum-seekers to be asked to pay for hospital services because hospitals administrations are often unaware of this legislation. In many cases NGOs have to intervene by showing them the law.

It is significant that Article 84 of the Law 3386/2005 on entry, residence and social inclusion of third country nationals in Greece explicitly states that authorities should not

provide treatment to those whose stay in the country is illegal, and who have no passports. The only exceptions allowed are for children and emergency hospital care.

Médecins du Monde, whose clinic is situated in the centre of Athens, told Amnesty International that the clinic has insufficient resources to cope with the numbers of people who seek their help. Therefore they have had to decide not to treat migrants and asylum-seekers who do not possess a pink card. In addition, MSF reported one incident where, because of the cost involved, it was not possible for them to buy or gain access through the public hospitals to medical equipment needed for an Afghan asylum-seeker (returned from the UK at the end of 2008 under Dublin II) who had severe mobility difficulties as a result of a problem with his leg.[132] However, Amnesty International was also made aware of an unaccompanied minor Afghan asylum-seeker living in a shelter in Crete who was provided with a free transplant operation at a local hospital.[133]

Many of the asylum-seekers interviewed by physicians of the NGO MOSAIC suffer from depression and despair, feeling that there is no way out of their situation.[134] MSF's mission in Greece has made similar findings.

During its research, Amnesty International representatives received a number of complaints about difficulties in accessing health services by Dublin II returnees.

K., an Iraqi asylum-seeker returned from the Netherlands in late 2009, was hospitalized upon arrival. He suffered, among other things, from psychological problems that were diagnosed by doctors in the Netherlands. In the meantime, his wife and four children remained in detention at the airport. At the hospital he was allegedly cuffed by his hands and feet to the bed. He did not understand why this was done. He claimed that an interpreter told him on the phone that the doctors tied him up because "he was crazy". The next morning he was taken to a room where the patients behaved violently or inexplicably. He told Amnesty International representatives that he was examined by a doctor and then released. He joined his family in the detention facility but was not given any medication, nor did he receive another visit from a doctor. He did not have any treatment after his release from the airport.

In another case:

H., a Somali single mother and asylum-seeker who was returned to Greece from the Netherlands, allegedly had broken a bone in her back as a result of an injury she suffered during the civil war in Somalia. She said that while in the Netherlands, a Dutch doctor told her that she needed an operation. She was returned to Greece before the expected date of the operation. However, once there, a Greek doctor at a public hospital told her that an operation was not necessary, and just gave her some medication. She told Amnesty International that she was in pain and had mobility problems, and said that she "feels that something is wrong".

Amnesty International is particularly concerned about gaps in healthcare provision for torture survivors, a category of asylum-seekers who should receive special treatment under Article 17 of the Reception Conditions Directive.

According to Article 20 of PD 220/2007, registered asylum-seekers who are victims of torture, rape or violence should receive free, medical treatment for their trauma in specialized units. This procedure should take place before the asylum interview. In Greece the relevant specialized body for such cases was formerly the Medical Rehabilitation Centre for Torture

Victims (MRCTV), the Greek branch of the International Rehabilitation Council for Torture Victims (IRCT). The MRCTV has operated in Greece since 1989 and has been funded by the EU. However, EU funding ended when the EU decided that such centres should be funded by national governments and its activities have been suspended as of September 2008.[135]

Today it is a nightmare for me to think of what will happen to the victims of torture. I have to express my deepest despair… Dublin II should stop, it is a crazy situation. If the patient asylum-seeker does not have a shelter we cannot give him efficient medical treatment.
Maria Kalli Piniou, former director of the Medical Rehabilitation Centre for Torture Victims

To conclude, Amnesty International has serious concerns about asylum-seekers' access to health care in Greece. There seems to be no standard practice for the treatment or medical examination of Dublin II returnees, either on their arrival at Athens airport or after their release. Health authorities appear not to be aware of their obligations to provide medical treatment, without pay, to asylum-seekers. Moreover, since many Dublin II returnees find themselves homeless, they are exposed to a number of additional health threats that are not being adequately addressed due to their limited access to the public healthcare system.

7. CONCLUSION

Due to the ongoing and serious failings in the asylum system in Greece, Amnesty International calls for an immediate halt to all transfers to the country under the Dublin Regulation. As highlighted in this report, asylum-seekers transferred under this piece of EU legislation face a range of human rights violations due to Greece's failure to meet its obligations under human rights and refugee law. Until such time as these are remedied, state parties to the Regulation risk breaching their own obligations by sending asylum-seekers to a country which is unable to effectively protect their rights. Amnesty International has serious concerns about the risk of *refoulement*, occurring through failings in the asylum system in Greece, including through the obstacles faced by individuals in accessing the asylum system; the absence of fair examinations of asylum claims, particularly after the entry into force of new legislation that abolishes an effective appeals procedure; the lack of access to legal counselling, interpretation services and information about the asylum procedure; and the lack of a specialized/competent body to decide on asylum claims. The current practice of expulsion to Turkey of people, who might have applied for asylum, creates a further risk of indirect or "chain" *refoulement*. In addition, the lack of accommodation facilities and inadequate access to healthcare impact on their economic and social rights.

While Amnesty International welcomes recent government statements and developments indicating a desire to positively reform the asylum and migration system, without actual changes in law and practice Greece will continue to fail in its obligations to refugees, asylum-seekers and migrants, and other EU member states must ensure they do not breach their own obligations by transferring asylum-seekers to Greece.

What the Greek situation acutely highlights is that the Dublin II system is premised on a currently flawed assumption that all EU member states offer an equivalent standard of refugee protection. Until such time as the reality of the vastly disparate standards of protection across the EU is addressed, in a coordinated and concerted way, asylum-seekers who are unfortunate enough to have Greece as their first port of call will face being left outside the refugee protection system and serious risks to their human rights and safety.

8. RECOMMENDATIONS

To EU member states and other state parties to the Dublin Regulation:

- Amnesty International calls upon state parties to suspend transfers of asylum-seekers to Greece under the Dublin Regulation until the situation for asylum-seekers and refugees in Greece has improved and the asylum system is fully compliant, both formally and in practice, with international and regional, including EU, standards and procedures.

- Ensure that no individual is directly or indirectly *refouled* to their country of origin, or any other country in respect to which they claim persecution, in line with obligations under international and regional law.

To EU member states and institutions:

- Amnesty International recommends that the European Commission fully and thoroughly investigate the extent to which Greece's laws and practices comply with the EU asylum *acquis* in accordance with its powers to initiate infringement proceedings before the European Court of Justice.

- Amnesty International calls upon EU member states and the European Parliament to fully engage in the current revision of the Dublin Regulation with a view to strengthening the protection of asylum-seekers and refugees, in particular, by ensuring effective remedies against the transfers and the introduction of a temporary suspension mechanism.

- Amnesty International recommends that EU member states and the European Parliament further engage in the reform of the Dublin II system in order to achieve more equitable responsibility-sharing among member states, take account of actual protection standards in member states, and consider personal preferences of asylum-seekers, community ties and other factors that link them to a particular EU member state.

To the Greek authorities:

General Recommendations

Amnesty International recommends that the Greek authorities:

- Establish and implement a comprehensive national asylum system consistent with international and regional, including EU, standards on protection and reception.

- Establish and continue a meaningful dialogue with UNHCR and with organizations that assist refugees, in drafting and implementing all primary and secondary legislation that has an impact on refugees, asylum-seekers and persons who may be in need of protection.

- Ensure that all asylum-seekers whose first instance decisions are rejected are given the right to a substantive appeal with suspensive effect.

On *refoulement*

Protect asylum-seekers, refugees and others in need of international protection against *refoulement*

- Ensure that no individual is directly or indirectly *refouled* to their country of origin, or any other country in respect to which they claim persecution, in line with Greece's obligations under international and regional law. In particular the following should be ensured:

    - Asylum-seekers, refugees and others in need of international protection, still awaiting a final decision on their claim, are not returned in any manner whatsoever to their country of origin, or any other country in respect to which they claimed persecution, unless their claim for protection has been substantively examined and rejected on appeal following a full and fair refugee status determination procedure; all such returns must be carried out in safety and dignity for the returned individual;

    - Asylum-seekers are not expelled or "pushed-back" to Turkey, or any other country which currently lacks the requisite protection standards, so as to protect against a situation of chain or indirect *refoulement*.

On access to the refugee status determination procedure

- Ensure that all persons who may be in need of protection within Greece's jurisdiction, including within its territory, at its borders, and those returned under the Dublin Regulation, are given access to a fair and effective refugee status determination procedure. To achieve this, the authorities should:

    - ensure that all persons who may be in need of protection and who are returned under Dublin arrangements are provided with information on the asylum procedure in a language that they understand, and that they are given access to legal counsel;

    - receive and immediately log all asylum applications, oral or written, with the assistance of trained interpreters if necessary. All asylum applications should be presented to a competent decision-making body that is independent from the police and specialized;

    - ensure that state officials receive thorough training in human rights standards, as well as in the principles and standards of refugee protection in order that they can adequately identify and refer people who are requesting asylum to the appropriate authorities. Cases of state officials refusing to receive asylum applications and/or failing to transfer them to a competent authority should be promptly and effectively investigated;

    - establish a monitoring procedure in partnership with organizations that assist refugees and UNHCR, in order to monitor the access of persons who may be

in need of protection to the territory of the country and to the asylum procedure;

- ensure that all asylum applications are registered where appropriate and registration is not dependent on providing evidence of accommodation;

- promptly issue documentation identifying that a person has registered as an asylum-seeker, such as a pink card. This documentation should remain valid for the duration of the entire asylum determination procedure and not require renewal at periodic intervals.

On the refugee status determination procedure

- Establish a system for determining asylum claims that is independent of the police and that meets international and regional procedural standards for determining refugee status. To achieve this the authorities should ensure that:

  - claims are determined by a decision-making body that is competent and specialized, and provided with objective, independent and relevant information on the countries of origin or any country to which applicants might be sent;

  - claimants are provided with a full and thorough interview by a fully qualified official of the responsible independent body, who should interview the applicant personally. Applicants should be interviewed by a person of the same gender if they so wish;

  - access to free, independent and competent legal assistance through the legal aid system is made available at all stages of the asylum process, including the provision of trained and independent interpreters in order to enable the lawyer to communicate effectively with the asylum-seeker;

  - legal representatives, with authority to represent an asylum-seeker, have access to all appropriate information;

  - adequate interpretation services are made available to applicants throughout the asylum process as well as to detainees at the borders, in police stations and detention centres;

  - written information on the asylum procedure, in a language which they understand, is provided to asylum-seekers and migrants;

  - there is an effective appeals procedure, including a review of both facts and law by an independent appeals body with decision-making powers, and the suspension of deportation pending the appeal;

  - efforts are made to improve the quality of decision-making, including, for example, through independent monitoring and guidance on decision-making similar

to the UNHCR "Quality Initiative" in the UK;[136]

- unaccompanied minors are offered guidance throughout the asylum determination process by child experts;

- appropriate discretionary remedies, such as extended time limits or postponed interviews, are available due to medical or other compelling reasons should circumstances render an asylum applicant unable to attend in person an interview or pink card renewal, without the proceeding being interrupted.

On the reception of refugees and asylum-seekers

- Ensure that asylum-seekers and refugees reside in adequate conditions consistent with international and regional, including EU, law on economic and social rights and standards on reception. To achieve this the authorities should ensure that:

  - asylum-seekers and refugees have effective access to state-funded health care, including mental health services;

  - asylum-seekers and refugees are provided adequate housing and forced evictions in breach of international law do not occur;

  - domestic law which allows asylum-seekers holding a pink card to obtain a work permit be implemented;

  - active measures are taken, through local government structures and with the participation of civil society organizations, to encourage the integration and acceptance of refugees and asylum-seekers in local communities;

  - all relevant state officials receive training on sensitivity to refugees and asylum-seekers, including victims of torture, unaccompanied minors, and lesbian, gay, bisexual and transgender refugees and asylum-seekers.

On the detention of Dublin II transferred asylum-seekers

- Ensure that detention of Dublin II returnees only ever occurs in exceptional circumstances, on grounds prescribed by international law and in compliance with the principles of necessity and proportionality;

- Ensure that a presumption against detention is provided for in law and observed in practice;

- Ensure that a range of alternative, non-custodial measures, such as reporting requirements, are available, accessible and fully considered before resorting to detention;

- Ensure that if detention takes place, asylum-seekers are informed of the reason for their

detention in writing in a language that they understand, and that they are granted access to legal counsel, interpreters, doctors, refugee-assisting organizations, members of their families, friends, religious and social assistance in addition to the UNHCR;

- Ensure that each decision to detain an asylum-seeker is automatically and regularly reviewed as to its lawfulness, necessity and appropriateness by means of a prompt, oral hearing by a court or similar competent independent and impartial body, accompanied by the appropriate provision of legal aid;

- Ensure that the detention of vulnerable people who have sought asylum, including minors, torture survivors and pregnant women is prohibited;

- Ensure that medical personnel have access to detention facilities and are trained with regard to the particular needs of asylum-seekers, including psychological needs;

- Ensure that detention conditions comply with international and regional standards, and protect asylum-seekers' right to dignity.

On allegations of ill-treatment

- Conduct prompt, impartial and comprehensive investigations into all allegations of ill-treatment and torture of refugees and asylum-seekers by law enforcement officials;

- Ensure that training of law enforcement officials includes training on the use of force, and is designed to address racist or discriminatory conduct.

ENDNOTES

1 Also known as the Dublin II Regulation, previously the Dublin Convention. Council Regulation No. 343/2003 of 18 February 2003.

2 Iceland, Norway and Switzerland are additionally parties to the Dublin Regulation.

3 The Dublin System is comprised of the Dublin Regulation and the EURODAC Regulation, which establishes a Europe-wide fingerprinting database for unauthorized entrants to the EU. Council Regulation No. 2725/2000 of 11 December 2000.

4 The principle of *non-refoulement* is the cornerstone of international refugee protection, and obliges states not to return anyone to a country where they would be at risk of serious human rights violations.

5 Indirect, or chain, *refoulement* can occur where there is no legal guarantee of refugee protection in the state the returned person would be sent to. It can also occur where, in practice, the asylum procedures of the state in question do not meet accepted standards with full procedural safeguards necessary to ensure correct decision-making, or if the state is known to be making incorrect decisions.

6 In February 2009 Finland resumed the returns, having halted transfers of asylum-seekers to Greece since June 2008. Prior to 3 March 2009, the Belgian Asylum and Migration authorities had asked for written guarantees from the Greek authorities before transferring asylum-seekers to Greece that the person concerned would have the opportunity to apply for asylum upon their return if they wished to do so. After that date the Belgian authorities stopped requesting such guarantees, and explained to Amnesty International that the guarantees were no longer needed because Greece had implemented the EU legislation on asylum matters (letter from the Minister of Migration and Asylum affairs to the Belgian (Flemish) Section of Amnesty International, 16 July 2009). On 7 May 2009 the Norwegian Immigration Appeals Board resumed conditional returns to Greece, having temporarily halted them in February 2008 to gather further information about possible violations of the rights of asylum-seekers. Henceforth the Appeals Board will determine in each case whether or not return to Greece is appropriate, taking into particular account the asylum-seeker's vulnerability (Conditional returns to Greece, www.cisionwire.com/utlendingsnemnda/conditional-returns-to-greece). In the Netherlands the transfers had been halted by Dutch courts, which expressed their concern about the Greek asylum procedure. At the end of 2008, however, the Council of State ruled that a Somali asylum-seeker could be transferred to Greece, since there were no concrete indications that she would be *refouled* from Greece (Council of State, Ruling No. 200805917/1, 29 December 2008). On 28 May 2009 the Dutch State Secretary for Justice announced that the Netherlands would resume Dublin transfers to Greece. On 23 June 2009 the Minister of Justice informed the House of Representatives of the Dutch Parliament that there are agreements between the Dutch and the Greek authorities with regard to the transfer of asylum-seekers. According to these agreements, the Greek authorities are informed with at least 10 days' notice of the transfer of asylum-seekers; no more than 40 asylum-seekers are transferred within one week; and a Dutch official will be present during the transfer. Moreover, it is ensured that the asylum-seeker can file an asylum claim at the airport.

7 Letter of Amnesty International, EU Office, to the President of the JHA Council of 28 March 2008, http://www.amnesty-eu.org/static/documents/2008/Greece_Dublin_March_2008_logo.pdf; and Norway, Amnesty International Submission to the UN Universal Periodic Review, (EUR 36/001/2009), p. 8.

8 Article 3.2 of the Dublin Regulation: "By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant."

9 UNHCR, *Position on the return of asylum-seekers to Greece under the Dublin Regulation*, 15 April 2008. UNHCR, *Observations on Greece as a country of asylum*, December 2009, p. 21.

10 Ibid, p.19.

11 As contained in Article 33(1) of the Refugee Convention, Article 7 of the ICCPR, Article 3 of the Convention against Torture and Article 3 of the ECHR.

12 This includes individuals on the state's land territory, at its borders and extra-territorially where jurisdiction is established. Extra-territorial jurisdiction can be established where a state exercises power or effective control over individuals or an area.

13 Ministry of Citizens' Protection, Hellenic Police
www.astynomia.gr/images/stories/DOCS2/191108%20Stat_asyl%208mhnou%202007%20.pdf

14 Ministry of Citizens' Protection, Hellenic Police www.astynomia.gr/images/stories/DOCS2/250209statAsylou2008.pdf

15 See Proposal for a Regulation of the European Parliament and of the Council 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 or a stateless person (Recast) (COM (2008) 820 final). "On 3 December 2008, the Commission adopted a proposal amending the Dublin II Regulation in order to enhance the system's efficiency and to ensure that the needs of applicants for international protection are comprehensively addressed under the responsibility determination procedure. Moreover, in line with the Policy Plan on Asylum, the proposal is aimed at addressing situations of particular pressure on Member States' reception capacities and asylum systems, as well as situations where there is an inadequate level of protection for applicants for international protection.

Regarding the protection of asylum seekers falling under the Dublin Regulation:

- the content, form and timing for providing information to applicants for international protection are specified in greater detail in the Regulation;
- the right to appeal against a transfer decision, together with the obligation for the competent authorities to decide whether or not its enforcement should be suspended and to allow the person concerned to remain on the territory pending such a decision, are laid down. Moreover, the right to legal assistance and/or representation and, where necessary, to linguistic assistance is clarified in order to ensure a more effective right to seek a remedy;
- a new provision recalling the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection is included. Moreover, in order to ensure that detention of asylum seekers under the Dublin procedure is not arbitrary, limited specific grounds for such detention are proposed;
- the right to family reunification has been extended by, inter alia, including family members who are beneficiaries of subsidiary protection and who reside in another Member State and by making compulsory the reunification of dependent relatives;
- the proposal finally strengthens the protection afforded to unaccompanied minors during the Dublin procedure in order to better take into consideration their interests."

16 Press release, Ministry of Citizens' Protection, 26 November 2009; Message of the Minister of Citizens' Protection for Migrants' Day on 18 December 2009, both at http://www.yptp.gr; also UNHCR, *Observations on Greece as a country of asylum*, December 2009.

17 Speech by the Dutch State Secretary for Justice, Nebahat Albayrak. at the Erasmus School of Law, Erasmus University Rotterdam, during the opening of a conference on recent developments in European and international asylum policy and law, 3 April 2009. http://english.justitie.nl/currenttopics/speeches/archives-2009/90406conference-on-recent-developments-in-european-and-international-asylum-policy-and-law.aspx?cp=35&cs=1586

18 Council Directive 2003/9/EC of 27 January 2003.

19 Council Directive 2004/83/EC of 29 April 2004.

20 Council Directive 2005/85/EC of 1 December 2005.

21 UNHCR's Response to the European Commission's Green Paper on the Future Common European Asylum System, September 2007, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46e159f82&page=search, Asylum in the European Union. A Study of the Implementation of the Qualification Directive, November 2007, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=473050632&page=search, Amnesty International's response to Commission's Green Paper on Common European asylum system, www.amnesty-eu.org, and ECRE's Response to European Commission's Green Paper on the future Common European Asylum System, www.ecre.org.

22 AI Index EUR 25/005/2006. See also, Amnesty International France, *Respect des droits des demandeurs d'asile et réfugiés, Eléments d'analyse de la situation en Grèce*, 24 July 2009.

23 UNHCR, *Position on the return of asylum-seekers to Greece under the Dublin Regulation*, 15 April 2008 and UNHCR, *Observations on Greece as a country of asylum*, December 2009.

24 *Commissioner for Human Rights of the Council of Europe, Report Following his Visit to Greece on 8-10 December 2008*, 4 February 2009, and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of Greece on the visit to Greece from 23 to 29 September 2008*, 30 June 2009.

25 Pro Asyl, *The situation in Greece is out of control*, 13 November 2008, updated 19 February 2009.

26 Human Rights Watch, *Stuck in a Revolving Door, Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union,* 26 November 2008; see also Human Rights Watch, *No Refuge: Migrants in Greece*, 1 November 2009.

27 *Official Journal of the European Union*, 24 May 2008, C 128/25.

28 Article 3(1) of the Dublin Regulation: "Member States shall examine the application of any third country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible."

29 PD 90/2008.

30 Complaint of 10 November 2009, www.ecre.org/resources/Press_releases/1475

31 A national advisory human rights body.

32 Parliamentary Questions, answer given by Mr Barrot on behalf of the European Commission, 10 December 2009, E-5426/2009, http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-5426&language=EN.

33 On 13 and 14 July 2009, Greek and Dutch experts met in Athens to promote practical cooperation in the field of migration and asylum. This meeting was a follow-up of the visit by the Netherlands State Secretary for Justice, responsible for migration, Nebahat Albayrak, to Greece in May 2009. The meeting was jointly chaired by the Secretary General of Public Order of Greece, Constantinos Bitsios, and the Ambassador of the Kingdom of the Netherlands, Kees van Rij. During the expert meeting, best practice was shared and proposals were made for joint initiatives to be undertaken. In particular, cooperation will focus on further improving the identification process in relation to the asylum procedure and measures to improve border control. Cooperation between Greece and the Netherlands within Frontex and GDISC was also agreed. Further meetings to implement this cooperation were planned to take place in the following months. Press release contained in document 23490, No. 579 of the Dutch House of Representatives, 6 November 2009.

34 UNHCR Greece, Statistics based on information from the Ministry of Interior.

35 Included in these are access to an asylum procedure, an individualized examination and in-person interview by a qualified decision-maker in an independent and specialized decision-making body, provision of and access to up-to-date and objective country of origin information, access to interpretation and legal counsel, confidentiality, reasonable time to prepare a case, equality in access to evidence, a reasoned written decision, and the right to effective appeal and remedy.

36 See Article 5 of the ECHR and relevant jurisprudence concerning its interpretation. See also Amnesty International, *Migration-related Detention: A research guide on human rights on standards relevant to the detention of migrants, asylum-seekers and refugees,* November 2007, AI Index POL 33/005/2007.

37 Amnesty International, *Irregular Migrants and Asylum-seekers: Alternatives to immigration detention*, 1 April 2009, AI Index: POL 33/001/2009; Amnesty International, *Migration-related Detention: A research guide on human rights on standards relevant to the detention of migrants, asylum-seekers and refugees*, November 2007 (POL 33/005/2007).

38 Application No. 53541/07, Judgment of 11 June 2009; Application No. 8256/07, Judgment of 26 November 2009.

39 See also the report *Out of the Back Door: The Dublin II Regulation and illegal deportations from Greece*, by Norwegian Organisation for Asylum Seekers (NOAS), Norwegian Helsinki Committee and AITIMA, October 2009.

40 One of the asylum-seekers interviewed alleged that he had been detained at Athens Airport for approximately two weeks.

41. The pink card is a document issued by the Greek police which certifies that an individual has submitted an asylum application. It serves as the only personal document recognized by the Greek authorities for asylum-seekers awaiting a final decision on their application.

42 See below under Section 4.2. of this report

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

44 UNHCR, Position on the Return of Asylum-Seekers to Greece under the "Dublin Regulation", 15 April 2008.

45 Greece: *Out of the Spotlight: The rights of foreigners and minorities are still a grey area* (EUR 25/016/2005). The report also highlighted the failure of investigations to bring the perpetrators of violations to justice.

46 Human Rights Watch, *Stuck in a Revolving Door,* November 2008; CPT, Report on the visit to Greece published on 30 June 2009, www.cpt.coe.int/documents/grc/2009-20-inf-eng.htm; NOAS, Norwegian Helsinki Committee, Greek Helsinki Monitor, *A Gamble with the Right to Asylum in Europe: Greek asylum policy and the Dublin II,* 9 April 2008, http://www.noas.org/file.php?id=53

47 UN Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/GRC/CO/19, 28 August 2009.

48 Detained asylum-seekers are given back their luggage only when they are released from detention.

49 Detained asylum-seekers told Amnesty International that this number was in fact close to 130.

50 Stelios Vradelis, "El Venizelos is a warehouse of 240 souls!", *Ta nea*, 16 September 2009 www.tanea.gr/default.asp?pid=2&ct=1&artId=4536441http://www.tvxs.gr/v20894

51 Ibid.

52 Athens, 15 July 2009, Prot No. 800/6/7, letter from the Panhellenic Federation of Police Officers to the Minister of Interior. In October 2009, the Minister of Citizens' Protection decided to examine the possibility of releasing 1,200 irregular migrants who were not charged with criminal offences and who were detained in various police stations in Greece pending expulsion. In his speech he acknowledged amongst others that the irregular migrants detained pending their expulsion but whose expulsion could not take place, faced prolonged detention in inhumane conditions.

53 In a small number of cases, asylum applications were presented at Thessaloniki airport.

54 Amnesty International delegates have seen a number of written notices handed over by police at the Athens airport to Dublin II returnees, requiring them to present their asylum application in Petrou Ralli within the three-day deadline. In one case an asylum-seeker was given a two-day deadline.

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

56 Human Rights Watch, *Stuck in a Revolving Door.*

57 Re-integration Center for Returning Migrants-KSPM, 13 February 2009, www.proasyl.de/fileadmin/proasyl/fm_redakteure/STARTSEITE/Griechenland/Ecumenical_Refugee_Programme.pdf

58 See section 4.6. on Administrative barriers to accessing the asylum system due to homelessness.

59 *Ekathimerini*, 27 October 2008, www.ekathimerini.com/4dcgi/_w_Articles_politics_100008_27/10/2008_101628 and *Eleftherotypia*, 27 October 2008. At a press conference held on 10 November 2008 by UNHCR, GCR, Praxis, Ecumenical Program for Refugees and the Group of Lawyers for the Rights of Refugees and Migrants, these organizations asked for an independent and unbiased investigation by the ministerial and judicial authorities into the incidents and the guarantee of fast, fair and effective asylum procedures.

60 UNHCR, *Observations on Greece as a country of asylum*, December 2009. Amnesty International considers that applicants should be allowed to have a full asylum determination, including a substantive appeal. Although states may set deadlines for appeals, these must take into account the reasons why an asylum-seeker may not be able to present an appeal against a first instance decision.

61 Articles 2, 4 and 10 as amended under PD 81/2009.

62 See UNHCR press release, 32/09, 17 July 2009.

63 National Human Rights Commission, Decision of the 3rd Department on the draft of the PD for the Amendment of the PD 90/2008 "Adjustment of the Greek legislation to the Directive 2005/85/EC, on minimum standards on procedures in Member States for granting and withdrawing refugee status".

64 UNHCR, Position on the Return of Asylum-Seekers to Greece Under the "Dublin Regulation", 15 April 2008.

65 Greek Ombudsman, Press release, The serving of rejection decisions to asylum applicants, 15 October 2009.

66 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, 1992.

67 Article 10(2) lists a number of exceptional circumstances under which asylum decisions may be taken without a personal interview.

68 Those who had previously applied for asylum in Greece would have had their asylum interview in Greece (if it had been conducted) at the Asylum Department of the Attica Police Headquarters. On their return to Greece, they were usually informed of the decision (if a decision had already been made) either at the airport or at the Attica Police Headquarters. Following communication of the first instance decision, they had 30 days to file an appeal under the previous system.

69 According to international refugee law, the assessment of risk in a refugee determination should be forward-looking. While past persecution may be relevant in assessing future risk, it cannot alone make up the substance of a refugee claim.

70 The Medical Rehabilitation Centre for Victims of Torture ceased its activities, due to lack of funding, in September 2008.

71 See, for instance, Norwegian Organisation for Asylum Seekers (NOAS), Norwegian Helsinki Committee, Greek Helsinki Monitor, *A Gamble with the Right to Asylum in Europe: Greek asylum policy and the Dublin II Regulation*, April 2008.

72 The Greek Council of Refugees is an NGO providing legal aid to asylum-seekers.

73 Alexia Vassiliou, The Dublin Dilemma – "Burden shifting" and putting asylum seekers at risk, 15 February 2009, www.proasyl.de/fileadmin/proasyl/fm_redakteure/STARTSEITE/Griechenland/Greek_Refugee_Council_DublinSituationNote.pdf

74 NOAS et al, *A Gamble with the Right to Asylum in Europe: Greek asylum policy and the Dublin II*.

75 PD 90/2008 Article 10 as amended under the PD 81/2009. A similar provision is included in Article 3 of PD 220/2007, which implemented the Reception Conditions Directive. If the asylum applicant is a woman who has difficulty in expressing the reasons for her need for asylum, the interviewer should be a specialist female officer with the assistance of a female interpreter. Also, if the interviewee claims to be a victim of torture, an expert on torture issues should make a separate official statement of his or her opinion on this.

76 NOAS et al, *A Gamble with the Right to Asylum in Europe: Greek asylum policy and the Dublin II*.

77 Human Rights Watch, *Stuck in a Revolving Door*, November 2008.

78 Commissioner for Human Rights of the Council of Europe, Report Following his Visit to Greece on 8-10 December 2008, Issue reviewed: Human Rights of Asylum Seekers, CommDH(2009)6 (4 February 2009).

79 UNHCR, Position on the return of asylum-seekers to Greece under the "Dublin Regulation", April 2008

80 Of the nine Dublin II returnees interviewed after July 2009 only one said he had received a notice in a language that he could understand.

81 Greek Ombudsman, Press release 15 October 2009, The serving of rejection decisions to asylum applicants.

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

83 Alexia Vasiliou, GCR lawyer, "The Dublin Dilemma – 'Burden shifting' and putting asylum seekers at risk"

84 The police refused to register asylum applications from people living in this camp up to April 2009, since it was not considered to be a legal residence. For more information on Patras camp, see below.

85 See also, Ecumenical Refugee Programme: Re-integration Center for Returning Migrants-KSPM, www.proasyl.de/fileadmin/proasyl/fm_redakteure/STARTSEITE/Griechenland/Ecumenical_Refugee_Programme.pdf. The statement notes that "[w]ithout support from an NGO these people [Dublin returnees] were totally helpless in following up their cases and asserting any of their rights".

86 UNHCR, Position on the return of asylum-seekers to Greece under the Dublin Regulation, April 2008.

87 Article 11 of PD 90/2008. This provision was not amended by PD 81/2009 and thus remains in force.

88 Amnesty International notes that the Greek NGO Aitima recently started providing legal aid at Athens airport to Dublin II returnees with funding granted under the Emergency Measures of the European Refugee Fund. The project, while a welcome step, is of a temporary nature, expected to be implemented for approximately two months, and as such does not address the structural problem of lack of access to legal counsel for asylum-seekers.

89 Greek Ombudsman, Press release 15 October 2009, The serving of rejection decisions to asylum applicants.

90 Interview with Mariana Tzeferakou, lawyer, 29 July 2009.

91 See the report of the Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, published on 4 February 2009.

92 Prior to the changes introduced by PD 81/2009, legal aid was available only for annulment applications for a negative decision issued in the second instance.

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

94 A lawyer's costs for representing such a case in the Council of State is approximately €1,500.

95 Press Release of the Union of Trainees and New Lawyers of the Athens Bar Association, www.eanda.gr/news.php?extend.431

96 www.dsa.gr/word_docs/PROTASEIS_GIA_METANASTEYSH_17-6-2009.doc

97 It is established ECJ case law that individuals are entitled to effective judicial protection of the rights conferred on them by the Community legal order; "Community law requires effective judicial scrutiny of the decisions of national authorities taken pursuant to the application of provisions of Community law" (Case C-327/02, decision of 16 November 2004, para. 27). Effective judicial protection is a general principle of EC law (C-50/00, Union de Pequenos Agricultores, 2002). This requires that the appeal body has the power to review both facts and issues of law (ECJ, Judgment Dörr and Ünal, Case C-136/03, 2 June 2005, para. 57), to quash, if necessary, the decision of the administrative authorities (*Commission v. Austria*, C-424/99, 2001) and to grant interim relief (Unibet, C-432/05, 13 March 2007, para. 67). The notion of effectiveness also implies that the person should be able to access judicial protection in legal and practical terms.

98 Relevant European Court of Human Rights judgments concerning the right to an effective remedy include: *NA. v. the United Kingdom*, application no.25904/07, judgment of 17 July 2008 (full and ex nunc assessment of expulsion cases falling within the scope of Article 3 ECHR); *Jabari v. Turkey*, application no. 40035/98, judgment of 11 July 2000 (the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible) and *Chahal v. the United Kingdom*, application no. 22414/93, judgment of 15 November 1996 (under Art. 13, the appeal body must be competent to examine the substance of the applicant's complaint); *Muminov v. Russia*, application no. 42502/06, judgment of 11 December 2008 (ability of the appeal authority to effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate); *Conka v. Belgium*, application no. 51564/99, judgment of 5 February 2002 (see Jabari), *Gebremedhin v. France*, application no. 25389/05, judgment of 26 April 2007 (on the automatic suspensive effect of a remedy).

99 *L v Federal Republic of Germany*, Decision of 10 December 1984; *V and P v France*, Decision of 4 June 1991.

100 *Jabari v Turkey*, Application No. 40035/98, Judgment of 11 July 2000, para. 50.

101 AI Index EUR 25/005/2009, 15 May 2009.

102 Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection, Brussels, COM(2009) 554/4/2009/xxxx (COD)

103 At the moment there are some 42,700 pending appeals. It could take years before the Advisory Appeals Committees examine the applications and the competent Minister reaches a decision, therefore the asylum application cards continue to be renewed until a final decision is issued.

104 The transfer of the decision-making authority for pending appeals to the Deputy Minister of Interior has been a cause of concern regarding the access of the applicants to an independent review of the decision at first instance; see UNHCR Press release, "UNHCR will not participate in the new asylum procedure in Greece unless structural changes are made", No. 32/09, 17 July 2009. Following the restructuring of the Ministry of Interior after the national elections of October 2009, responsibility for asylum has been transferred to the newly established Ministry of Citizens' Protection.

105 The interviewee in this case had applied for asylum before July 2009 and the applicable deadline at that time for filing an appeal against a negative decision at first instance was 30 days.

106 See Article 33(1) of the Refugee Convention, Article 7 of the ICCPR, Article 3 of the Convention against Torture and Article 3 of the ECHR.

107 UNHCR, "Q&A: Greece's new immigration policies based on 'dangerous generalizations'", 10 July 2009.

108 Human Rights Watch, *Stuck in a Revolving Door*, 26 November 2008.

109 Pro Asyl, Group of Lawyers for the Rights of Refugees and Migrants, Athens, *The Truth May Be Bitter But it Must Be Told*, 29 October 2007.

110 Norwegian Helsinki Committee and AITIMA, *Out of the Back Door: The Dublin II Regulation and illegal deportations from Greece*, 22 October 2009.

111 *Ethnos*, Evdomi, "Allegations of refoulement of migrants to Turkey", 7 October 2008; *Avgi*, "Refoulement to Turkey", 19 November 2008.

112 Such returns also included pushbacks at the border and informal returns (where no formal decision to remove the person from Greek territory was taken) of unregistered asylum-seekers.

113 This case was documented in Amnesty International's report, *Greece: Out of the Spotlight: The rights of foreigners and minorities are still a grey area*, EUR 25/016/2005, at 25-27.

114 Amnesty International Greece press release, "Greece should provide international protection to the victims of political persecutions", 12 May 2009

115 Interview with Médecins du Monde in October 2009. They confirmed that they had to intervene and verify the asylum-seeker's identity in order for her to be released from the police station.

116 *Kathimerini*, 9 October 2009.

117 UNHCR, *Observations on Greece as a country of Asylum*, December 2009, p.5.

118 *Turkey: Stranded: Refugees in Turkey denied protection* (EUR 44/001/2009), and Amnesty International, *Denied protection in Turkey - refugees unlawfully detained*, 28 September 2009.

119 According to the statistics provided to UNHCR by the Ministry of Interior, in the first seven months of 2009 approximately 20,000 asylum applications (19,640 at the first instance, 810 at the second instance) were examined, of which 20 asylum claims were granted in total and three were granted to Iraqi nationals. Over the same period, 24 asylum-seekers were granted humanitarian status (including those whose status was renewed), seven of which were Iraqi nationals, while 61 received subsidiary protection (under PD 90/2008) of which 12 were Iraqi nationals.

120 See UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, August 2007, and UNHCR, *Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq*, December 2006.

121 Amnesty International considers that it is currently premature, while the status of Kirkuk has yet to be finally and peacefully resolved, to return any individual from the Kurdistan region of Iraq to that region, even when such an individual has been found not to be in need of international protection, following full and fair asylum procedures, and after having had their asylum claim rejected in a final appeal and having been found ineligible for complementary forms of protection. Even when the status of Kirkuk has been finally resolved and peaceful conditions prevail, states should return such individuals to the Kurdistan Region of Iraq only when all of the following conditions apply:

- The individual must have a close and enduring link with the Kurdistan region of Iraq which can provide them with a reasonable opportunity of reintegrating;
- No one should be returned to a situation where they would become internally displaced;
- Returns should be orderly and must take into account the capacity of the Kurdistan Regional Government to assist returnees in reintegrating;
- Returning governments should take due account of the effect that large scale returns could have on the stability of the Kurdistan region of Iraq, given its limited absorption capacity, particularly with regard to housing.

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

123 European Commission, Ensuring a decent standard of living for asylum-seekers in the European Union, http://ec.europa.eu/justice_home/fsj/asylum/seekers/wai/fsj_asylum_seekers_en.htm

124 Council Directive 2003/9/EC of 27 January 2003.

125 Article 11(1) of the ICESCR guarantees, "the right of everyone to… adequate… housing, and to the continuous improvement of living conditions." Additionally, Refugee Convention Art 21; Women's Convention Article 14(2); Children's Convention Articles 16(1) and 27(3); Convention on the Elimination of All Forms of Racial Discrimination Article 5(e)(iii).

126 General Comment 4 "the right to adequate housing" (Article 11(1)), CESCR, sixth session, 1991, para.8.

127 UNHCR, *Observations on Greece as a country of asylum*, p.10

128 The available places do not correspond to the number of arrivals each year. According to statistics provided to the UNHCR by the Greek authorities, some 6,000 unaccompanied and separated minors arrived in Greece in 2008 (UNHCR, *Observations on Greece as a country of asylum*, p. 13)

129 Amnesty International Greece wrote to the Ministry of Health, seeking reasons for the closure of the shelter and whether alternative accommodation was being provided, but had not received a reply as of the end of February 2010.

130 Greece: Further forced evictions leave large numbers homeless, (EUR 25/008/2009).

131 Greece: Amnesty International condemns forced evictions in Patras, (EUR 25/007/2009).

132 Interview on 23 September 2008.

133 Interview with the director and members of staff of the Anogia minors' shelter on 8 May 2009.

134 Interview on 23 March 2009 with the director and a psychologist of MOSAIC.

135 The former director stated that Greece no longer has an institution which can provide services for torture victims, issue certificates for them and therefore stop their refoulement to countries where they could again become victims of torture or even the death penalty. She estimated that approximately 1,200 persons of the total migrants arriving in one year, i.e. 15-20%, are torture victims.

136 See http://www.unhcr.org.uk/what-we-do/Quality-Initiative.html for more information.

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THE DUBLIN II TRAP
TRANSFERS OF ASYLUM-SEEKERS TO GREECE

Asylum-seekers in Greece lack protection under the current asylum determination system. They are frequently denied access to the asylum procedure, a fair hearing of their claim and since July 2009, have been denied the right to an effective appeal. There is little access to legal counselling, interpretation services and necessary information. Detention conditions can be very poor. There is insufficient provision of accommodation. But the biggest risk asylum-seekers face is *refoulement*, (forcible return to a place where they are at risk of human rights violations).

Under the European Union Dublin Regulation, asylum-seekers are required to register their asylum claim in the first EU country they enter as all EU countries are expected to provide the same level of human rights protection. In 2007/2008, because of growing concern about the inadequate asylum system in Greece, some states suspended or reduced transfers of asylum-seekers there. In 2009, however, some resumed the transfers, although there is little evidence that the asylum procedure meets the required standards.

This report examines the experiences of asylum-seekers transferred under the Dublin Regulation to Greece. It concludes that Greece fails to provide a full and fair asylum determination procedure and calls for the urgent suspension of these returns until necessary improvements are made in law and practice, in line with relevant regional and international standards.

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