

Out the Back Door:

The Dublin II Regulation and illegal deportations from Greece



AITIMA



Map of Greece. CIA World Factbook.

I FOREWORD

This report was prepared by a team from three organisations – the Norwegian Helsinki Committee (NHC), the Norwegian Organisation for Asylum Seekers (NOAS) and Aitima. The authors of the report are Ivar Dale and Berit Nising Lindeman (NHC), Sylo Taraku and Kishwar Hanif (NOAS) and Spyros Rizakos (Aitima), an experienced asylum lawyer practising in Greece.

The main information presented in the report was gathered during a fact-finding mission to Greece, Turkey and Iraq in April-May 2009, with follow-up investigations throughout the summer of 2009.

The team interviewed a number of representatives of NGOs, government representatives and numerous current and former asylum seekers in Norway, Greece, Turkey and Iraq.

We wish to express our gratitude to some of those who helped us gather the information for this report, and those who offered their valuable advice and comments: Alexia Vassiliou (Greek Council for Refugees, Athens), Mariana Tzeferakou (Greek Group of Lawyers, Athens), Oktay Durukan (Helsinki Citizens Assembly, Istanbul), Gülseren Yoleri (Human Rights Association, Istanbul), Ville Forsman, Director, Amnesty International Turkey, Falah Mustafa Bakir (Head of Foreign Relations in the Kurdistan Regional Government, Iraq), Giorgos Tzarbopoulos (UNHCR Athens), UNCHR Turkey, Darine El-Hajj and Charles Lynch-Staunton (UNHCR Erbil).

Persons fleeing persecution or who are in search of a better life rarely leave telephone numbers or e-mail addresses when they move on. Certain European governments do not keep registers of when, where or how these persons travelled – especially when they did so against their will. While speaking to researchers may improve the general situation for refugees in the long run, those we spoke to knew that it probably would not help the immediate situation facing these people.

We are therefore especially grateful to all those who agreed to share their experiences with us.

Oslo/Athens, October 2009

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II CONCLUSIONS AND RECOMMENDATIONS

Based on evidence gathered during investigations in Greece, Turkey and Iraq between April and September 2009, and corroborated by reports and findings of international human rights monitoring bodies and NGOs, we argue that the principle of non-refoulement is severely threatened by the Greek practice of illegal deportations, and consequently by transfers of asylum seekers to Greece under the Dublin II Regulation.

In this report we present specific instances of illegal deportations by the Greek authorities of persons with pending asylum cases, as well as of other groups. Such deportations take place in such an arbitrary manner that there is no basis for claiming that Dublin returnees enjoy a higher degree of protection than others.

States party to the Dublin II Regulation must abide by their independent obligations to prevent refoulement to any state where an asylum seeker may risk refoulement to a place where his life and freedom is in danger (as defined by a Refugee Convention reason) or (s)he might suffer treatment contrary to Article 3 of the European Convention on Human Rights and Freedoms (ECHR).

This obligation cannot be circumvented by reference to multilateral agreements such as the Dublin II Regulation, which defines which state is responsible for processing an asylum claim. Chain refoulement is directly and indirectly prohibited by Article 33 of the Refugee Convention and Article 3 of the ECHR. This is the correct interpretation of the legal obligations of European states, and is in line with case law from the ECtHR as referred to in the *TI vs. UK* case¹ which decided that indirect removal to an intermediary country, which is also a Contracting State, [did] not affect the responsibility of the State to ensure that the applicant is not, as a result of the decision to expel, exposed to treatment contrary to Article 3.

Based on findings from our investigations and developments in Greek asylum policy since our April 2008 report *A Gamble with the Right to Asylum in Europe*², we recommend the following:

- In conjunction with the UNHCR Greece should develop a new national asylum system based on the full inclusion of the right to seek and enjoy asylum and the right to an effective legal remedy against all negative decisions.

1 *TI vs. UK*, ECHR, application no. 43844/98, 7 March 2000.

2 NOAS/The Norwegian Helsinki Committee/Greek Helsinki Monitor: *A Gamble With the Right to Asylum in Europe*, <http://noas.org/file.php?id=53>

- Greece must repeal the recent Presidential Decree (PD) 81/2009, which by abolishing the existing decision-making at second instance fails to allow asylum seekers the right to an effective remedy.
- Greece must respect its international obligations and stop the practice of deporting (would be) asylum seekers without allowing them to apply for asylum, or without giving them the opportunity to challenge the legality of the deportation or the decision behind it.
- Greece must introduce guidelines for border guards, police officers and coastguard officers on the human rights of asylum seekers. In particular, a national policy plan and training for decision makers on determining refugee status should be developed.³
- Greek Police, and especially the deportations section, should use a comprehensive database which will include information about pending asylum claims.
- In consideration of their own non-refoulement obligations, all states party to the Dublin II Regulation should suspend transfers of asylum seekers back to Greece, and allow them the right to have their claims processed in accordance with article 3 (2) of the Regulation.
- The EU should clearly condemn the recent deterrence policies of Greece with respect to illegal deportations and “push backs”, highlighted in our and other relevant reports.
- The European Commission ought to place Greece under a monitoring mechanism with a concrete plan of action to combat the risks facing Dublin returnees and other asylum seekers in its territory.
- A fair responsibility-sharing mechanism should be concluded at the EU level to ease Greece’s burden in dealing with the relatively high number of asylum seekers crossing its borders.

³ A copy of the UNHCR Handbook on the determination of refugee status should be made available to all persons dealing with the processing of asylum claims. The following document from the Council of Europe Committee of Ministers Recommendation R(98)15 *on the training of officials who first come into contact with asylum seekers, in particular at border points*, 15/12/1998, available at www.coe.int/t/cm should also be made available to all border guards and police officers.

III INTRODUCTION

This report follows up on our initial report, *A gamble with the right to asylum in Europe: Greek asylum policy and the Dublin II Regulation*⁴, published in 2008, which described the serious shortcomings of the Greek asylum system. Our view, that no asylum seeker should be returned to Greece under the Dublin II Regulation, was shared by international human rights and refugee protection agencies, including the UNHCR⁵, Human Rights Watch and Amnesty International. Unfortunately, European countries party to the Dublin II Regulation have far from implemented these recommendations; Norway's suspension of transfers to Greece in the spring of 2008 was partially lifted in spring 2009.

We argue that the situation in Greece has deteriorated to such an extent that European states cannot uphold their obligations under refugee and human rights law while at the same time returning asylum seekers to Greece. Furthermore, a suspension on transfers to Greece ought to be implemented until evidence can be provided that Dublin returnees will enjoy effective protection against *refoulement* in Greece and will have access to safe and adequate asylum procedures.

Despite recognizing the vast shortcomings of the Greek asylum system, the general attitude displayed by participating Dublin states has been that transfers to Greece do not constitute a breach of the principle of non-refoulement. That conclusion is also reached in a 2008 decision by the European Court of Human Rights (ECtHR):

... there is nothing to suggest that those returned to Greece under the Dublin Regulation run the risk of onward removal to a third country where they will face ill-treatment contrary to Article 3 without being afforded a real opportunity, on the territory of Greece, of applying to the Court for a Rule 39 measure to prevent such.⁶

In this case, the ECtHR is referring to a legal remedy under Rule 39 of its procedures, whereby individuals wishing to challenge an order made by a national court of a state party to the European Convention on Human Rights can petition the ECtHR directly for an interim measure to preserve and protect the rights and interests of the parties in a dispute before the Court, pending a decision on the admissibility and merits of the case. It is a procedure that has increasingly been used in extradition and deportation cases of asylum seekers. However, in effect it is a procedure that is hard to access for asylum seekers⁷, especially in Greece.

4 www.noas.org/file.php?id=53

5 <http://www.unhcr.org/482199802.pdf>

6 <http://www.unhcr.org/refworld/country,,ECHR,,IRN,,49476fd72,0.html>

7 <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11978.htm>

Based on investigations carried out by the Norwegian Helsinki Committee (NHC), the Norwegian Organisation for Asylum Seekers (NOAS) and AITIMA in Greece, this report aims to demonstrate that asylum seekers and Dublin returnees to the territory of Greece *continue* to risk refoulement and are not able to contest deportation or the decision behind it.

Asylum seekers face particularly great difficulties as a result of:

1. The lack of access to asylum procedures.
2. Serious flaws in the Greek asylum system.
3. Illegal deportations⁸.

This also applies to asylum seekers returning to Greece under the Dublin II Regulation.

We will present briefly the two first problems mentioned, as they have already been thoroughly documented in a number of recent reports from EU investigative bodies and human rights organizations. We have also covered these challenges in our previous report, where the Greek asylum procedure and practice was found effectively to undermine the legal right to asylum as afforded by relevant international human rights law.

In this follow-up report we will present a number of alarming cases, including instances of illegal deportations by Greek authorities of persons with pending asylum cases. Such deportations take place in such an arbitrary manner that there is no basis for claiming that Dublin returnees enjoy a higher degree of protection than others.

The UNHCR in Greece underlined that “there is a real risk that an asylum seeker transferred from other European states to Greece will face the same serious shortcomings as other asylum seekers, that may lead to the rejection of his or her asylum application and the exposure of the individual to a deportation operation to Turkey without proper assessment of his/her case”⁹. The UNHCR office in Turkey echoes their concern: there is a *serious danger* that Turkey will deport such individuals to Iraq, Iran or Afghanistan without assessing their need of protection¹⁰.

8 By ‘*illegal deportations*’ we refer to the process and practice of removal of asylum seekers without their cases having been examined, or the removal of persons who wish to apply for asylum but who are in effect barred from presenting their claim to the authorities. We also include in this definition the following groups: Deportation of asylum seekers who have been refused protection in Greece after a flawed assessment of their claim, as well as those in need of protection who have chosen not to apply for asylum in Greece, being aware of its flawed asylum assessment procedures.

9 Interview with Mr. Giorgos Tzarbopoulos, UNHCR, Athens, 22.04.09

10 Interview with UNHCR Turkey, 28.04.09

IV THE DUBLIN II REGULATION AND CHAIN-REFOULEMENT

One of the main ideas behind the Dublin II Regulation is to ensure that asylum seekers have their applications assessed in one member country, and one country only. A precondition for such a system is that all countries are bound by the same relevant conventions, and that consequently, an asylum seeker will receive comparatively similar treatment regardless of which country assesses his claims.

However, member countries deporting persons formerly registered in Greece back to Athens are mistaken in their assumption that such persons are given access to proper asylum procedures upon their return. In fact, the situation for Dublin returnees, if anything, is even more complicated than for “regular” asylum seekers.

Our previous report provided a thorough description of the situation for Dublin returnees in Greece, including several interviews with transferred asylum seekers. We have registered no improvements for this group since then. The problems in the Greek asylum system listed below apply equally to Dublin returnees as it does to “regular” asylum seekers.

The principle of non-refoulement is the cornerstone of asylum and international refugee protection law. The essence of the principle is the prohibition against the return of a person to a country where that person may be exposed to persecution or other serious harm to life or freedom. The right to seek and to enjoy asylum from persecution is enshrined in the Universal Declaration of Human Rights and, most importantly, in the 1951 Refugee Convention and its 1967 Protocol. The prohibition against non-refoulement in international law is vital to ensure protection from violations of fundamental human rights, including the right to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of the person. These rights are threatened when someone is forcibly returned, directly or indirectly, to a country where he or she may face persecution or similar dangers.

The fundamentality of the observance of the principle of non-refoulement without derogation is clear from international and European conventions relating specifically to the prohibition against torture and ill-treatment.¹¹ The absolute nature of the non-refoulement duty in cases arising from the prohibition against torture is made clear by the case law of the ECtHR in the *Soering vs. UK*¹² and *Chahal cases*¹³. In the context of refugees, States are obliged not to return a person “in any

11 Article 3 of UNCAT prohibits States from transferring an individual to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

12 *Soering vs. UK* (1989, para 88) case no. 14038/88, judgment of 7 July 1989

13 *Chahal vs. the United Kingdom*, no. 22414/93, judgment of 15 November 1996, (1996, para 80)

manner whatsoever” to territories where the life or freedom of that person would be threatened on account of one of the Convention grounds.

However, the direct removal of a refugee or an asylum seeker to a country where he or she fears persecution is not the only form of refoulement. States are also responsible for the application of this principle so as to ensure that asylum seekers are not subsequently returned to their countries of origin without an exhaustive examination of their claims. Indirect removal of a refugee from one country to a third, where they are sent onward to the place of feared persecution, constitutes indirect or chain-refoulement. In this case, both countries bear joint responsibility under the principle of non-refoulement.

Although all states party to the Dublin II Regulation are bound by non-refoulement provisions in the Refugee Convention (art. 33 (1))¹⁴, the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR) (art. 3) and the 1987 Convention for the Prevention of Torture (art. 3), one cannot automatically assume that all states respect these provisions in practice. One should bear in mind that all member states have an individual responsibility not to subject any asylum seeker to refoulement, be it directly or indirectly. The legal responsibility to ensure a thorough investigation of the risk of refoulement before transferring an asylum seeker to a third country¹⁵ lies with the decision-making authorities of each country. They must ensure that an asylum seeker does not risk chain-refoulement, i.e. risk of persecution for a convention reason and/or torture or inhuman or degrading treatment.

The prohibition of indirect or chain-refoulement has been recognized in state jurisprudence, notably by the German Constitutional Court in its decision of 14 May 1996 (2 BvR 1938/93 and 2 BvR 2315/93) where the Court expressed the view that the principle of non-refoulement prohibits not only direct return to a country of persecution, but also return to other countries where the risk of refoulement exists.¹⁶

With respect to agreements made between states allocating responsibility for the determination of an applicant’s asylum claim jurisprudence from the ECtHR, the Court has reiterated a similar view to that of the German Constitutional Court in the above case; that indirect removal to an intermediary country, which is also a Contracting State, [does] not affect the responsibility of the State to ensure that the applicant is not, as a result of the decision to expel, exposed to treatment contrary to Article 3 of the ECHR.¹⁷

14 “1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

15 EXCOM, (the executive committee of the UNHCR, comprising representatives of the governments of member states) has repeatedly stated that in all cases the “fundamental principle of *non-refoulement* including non-rejection at the frontier” must be ensured. (Conclusions 6 and 22). Furthermore, EXCOM has also stated that there must be a clearly identified authority responsible for examining requests for refugee status and that a frontier authority should not reject an asylum claim without reference to that authority. (EXCOM Conclusions 8 & 15(j))

16 The Court therefore confirmed that the responsibility of a State under Article 33 of the 1951 Convention can include indirect refoulement via an alleged “safe” third country.

17 ECtHR ruling: T.I. vs. the United Kingdom (Dec), no 43844/98, reports 2000-III

V RELEVANT INTERNATIONAL CASE LAW

A decision by the European Court of Human Rights

On the decision by the European Court of Human Rights in *K.R.S. vs. United Kingdom* on 2 December 2008 (application no. 32733/08)¹⁸, which includes a relatively thorough reference to our previous report, *A Gamble with a Right to Asylum in Europe*, the court states the following:

“... there is nothing to suggest that those returned to Greece under the Dublin Regulation run the risk of onward removal to a third country where they will face ill-treatment contrary to Article 3 without being afforded a real opportunity, on the territory of Greece, of applying to the Court for a Rule 39 measure to prevent such. (...) asylum applicants in Greece have a right to appeal against any expulsion decision and to seek interim measures from this Court under Rule 39 of the Rules of Court.

This report shows that this decision is not correct – both in its conclusion about the risk of chain-refoulement and when claiming that asylum seekers in Greece have a real opportunity to apply to the Court for a Rule 39 measure to prevent such refoulement. Our findings in the section below on deportations from Greece show that in practice, the opportunity for asylum seekers in Greece to contest possible refoulement and to seek interim measures from the European Court of Human Rights under Rule 39 of the Rules of Court are illusory.

In order to exercise the right to a remedy from the European Court of Human Rights detainees must have access to legal aid. Most do not.

In our previous report which the Court mentioned we had analyzed the lack of legal aid. As the situation remains the same we would like to cite this analysis again:

Asylum seekers are as a rule given no information about the right to legal assistance and about how help can be obtained. Lawyers have to contact asylum seekers on their own initiative in order to help them, since there is no arrangement whereby asylum seekers are assigned a legal representative by the authorities. It is the experience of Greek Helsinki Monitor that lawyers are not always given access to detention facilities where asylum seekers are held in custody, as they sometimes have to give the names of their clients in order to be admitted. Such regulations are in themselves an obstacle.

¹⁸ <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=49476fd72&skip=0&query=rule%2039>

It is also a problem that there are very few lawyers in Greece who work on asylum cases. According to NGOs we interviewed, there are about 15 lawyers who offer free legal assistance to asylum seekers. These are affiliated with NGOs, and are financed partly with means from Greek authorities, and partly through grants from the European Refugee Fund. There are also about 10 volunteers who try to help. In addition, there are a few lawyers who work with asylum cases on a purely commercial basis. Compared to the large number of asylum seekers the total number of persons offering legal assistance is inadequate in meeting the urgent need for legal assistance among asylum seekers in Greece, especially in light of the many negative decisions.

Spyros Kouloheris, the director of the legal section of Greek Council for Refugees, says that the lawyers' time is mainly spent helping asylum seekers obtain access to the asylum procedure and to deal with other administrative matters – matters which nevertheless are of practical importance – for example finding a reception place. According to him there is little or no time for writing, on behalf of the applicant, a substantial complaint against a refusal in individual asylum cases.

The reality described above is confirmed by Marianna Tzeferakou from the Greek Group of Lawyers:

Asylum seekers in Greece don't have a real legal representation to appeal. There are just a few lawyers who work with asylum cases, mostly with bureaucratic work. We don't have access to the asylum seekers' files, and we don't have time to write about violations we see in the asylum process every day. Greek authorities don't provide any legal aid for asylum seekers at any stage of the asylum process.

As a result of the lack of legal assistance and/or limited resources among those who provide legal assistance, the complaints as well as the interview reports tend, as a rule, to be short and superficial. The complaints usually do not contain more than a few sentences stating that an appeal is lodged against the decision. This naturally means that the basis for a real and thorough examination of the individual grounds for seeking asylum in the instance of appeal is very poor indeed.

The team behind this report has not registered any improvement with regards to the problems described above. Tzeferakou also described the problem of providing legal representation to refugees who are detained in Evros:

It is a big problem that they are kept incommunicado and the NGOs don't have access there. Lawyers are being accused of having connections to smugglers. We are often forced to make interventions merely based on what we hear. We don't have access to the police detention centres along the border at all.¹⁹

¹⁹ Interview with Marianna Tzeferakou, Athens, 22.04.09.

Obtaining legal aid to appeal against expulsion decisions and to seek interim measures from the European Court of Human Rights is made extremely problematic in a situation where an individual is being held incommunicado and when NGOs are denied access to detention centres.

The Norwegian Appeals' Board made reference to the *K.R.S. vs. United Kingdom* decision when a more restrictive practice was established in May 2009. Their conclusion was that transfers to Greece could be carried out under certain conditions²⁰. The general suspension of the returns was repealed, as all cases should be treated individually. In each treatment the applicants' situation after the return would be decisive. The Appeals' Board distinguishes between those who are in a particular vulnerable situation and others who can take care of themselves.

However, the situation for asylum seekers in Greece with regards to the legal safety is generally so poor, and the danger of refoulement so serious, that one cannot distinguish between vulnerable asylum seekers and others in this context.

Decisions by German and French Courts

In two court decisions, respectively from German and French courts, Dublin transfers to Greece were suspended by the court because of the lack of legal protection for the applicants.

In a decision by Verwaltungsgericht Frankfurt on 8.7.2009 (K 4376/07.F.A.(3)), the court reached a similar conclusion. The following is from an English summary written by Professor Dr. Juris Holger Hoffman:

The main argument of the court is that the applicant did not get a fair asylum procedure according to the rules of the qualification and the reception directive. This fact – in the opinion of the Court – reduces the discretion of the German office of asylum insofar as the question of Art. III par. 2 Dublin II is concerned. The VG Frankfurt holds that the discretion is reduced to zero because of the disastrous practice concerning asylum cases in Greece. To give substance to this, the Court quotes several new statements by the UNHCR concerning the situation of asylum seekers in Greece. The most recent UNHCR position paper dates from 15.04.2008. Concerning the Greek asylum procedure in theory and practice the court quotes the intergovernmental consultations on migration, asylum and refugees: Report on policies and practices in EGC participating states, Geneva 2009, chapter "Greece". The court had in its oral hearing heard a representative of the UNHCR concerning the question whether the situation in Greek law and practice is still as described by the UNHCR in 2007 and 2008. The employee of the UNHCR said that the UNHCR will no longer take part in the Greek asylum procedure because of its unfairness (a UNHCR press release from 17.07.2009 is available, furthermore a report by Thomas Hammerberg, Council of Europe Commissioner for Human Rights, 04/02.2009). The legal

20 <http://www.une.no/Aktuelt/For-pressen/Pressemeldinger/Retur-til-Hellas--pa-visse-vilkar/>

representative of the applicant had mentioned in Court that in July 2009 by a decree of the Greek government the Court of second instance and a second oral hearing were omitted.

The shortcomings of the asylum procedure, which are not going to be improved in the near future, the non-existing social benefits and housing for asylum applicants, the impossibility to find work on a legal basis during the very long running asylum procedure and the lack of information and legal guidance during the whole procedure led the Frankfurt Court to the opinion that the criteria of a fair asylum procedure are not fulfilled. This is why the Court held the German government responsible for applying Art. 3 para. 2 of Dublin II and for leading the asylum case in Germany and for that purpose for bringing the applicant back from Greece to Germany.

The other relevant decision is from the Tribunal Administratif de Paris of 31.7.2009, case number 0912502/9-1, halted the transfer of a family to Greece in June 2009²¹.

On the basis of evidence from the Hammerberg report a French decision highlights the threat of a violation of the basic human rights of asylum seekers and Dublin returnees under EU asylum law and international asylum law in Greece. The reasoning in the French decision is similar to the German decision above and is based on the failure of an effective right to seek asylum in Greece. The French court also included evidence from the Hammerberg report and the report of the European Committee for the Prevention of Torture (CPT). The reception and detention conditions for asylum seekers in Greece were also criticized as was the inadequate use of the sovereignty clause in article 3 (2) of the Dublin II Regulation.



21 Tribunal administratif de Paris, Décision n° 0912502/9-1, 31 Juillet 2009.

VI THE LACK OF LEGAL SAFEGUARDS FOR ASYLUM SEEKERS AND DUBLIN RETURNEES IN GREECE

In order to understand the risk of refoulement in Greece for people in need of international protection, including Dublin returnees, one should be familiar with the serious flaws presented by the Greek asylum system, and which effectively denies asylum seekers a right to adequate protection under the present asylum laws in Greece. We will also briefly discuss the working methods of the Greek police when dealing with asylum seekers.

Greece has received unprecedented criticism in recent years because of the problems presented by its asylum system. One would assume that this criticism would lead to serious efforts by the Greek authorities to improve its asylum system. However, according to all accounts, the situation of asylum seekers in Greece has instead deteriorated. The latest in a list of many negative developments was the implementation of the new Presidential Decree (PD) 81/2009 which in practice has abolished the existing decision-making body at second instance in Greece. There are not many remedies left after this measure. The first instance rejects virtually all asylum applications.

The UNHCR considered that these new developments were “likely to make protection in Greece even more elusive for those who need it”²², and on 17 July 2009²³ felt compelled to state that they will not participate in the new asylum procedure:

The United Nations High Commissioner for Refugees notes with great concern that the structural changes introduced by the new Presidential Decree 81/2009 do not sufficiently guarantee efficiency and fairness of the refugee status determination procedure in Greece as required by International and European legislation.

The following provides a brief overview of the main problems of the Greek asylum system, including developments following the implementation of the new Presidential Decree 81/2009.

22 <http://www.unhcr.org/refworld/country,,,,GRC,4562d8b62,4a8a73261e,0.html>

23 <http://www.statewatch.org/news/2009/jul/greece-unhcr.prel.pdf>

Lack of access to a proper asylum procedure

A person who tries to enter Greek territory in order to ask for asylum is usually turned back by the coast guard in the Aegean Sea or by the minefields on the Greece-Turkey border.

As immigrants often get turned away at the border or arrested and issued with an automatic deportation order, very few will actually be registered as asylum seekers in the border areas when entering the country.

The vast majority must travel to Athens to obtain registration at the Central Asylum department at Petrou Ralli, where as many as 2,000-3,000 queue up every Saturday. Out of these, only a few will actually be registered. Before the implementation of Presidential Decree 81/2009 200 asylum seekers were registered each week. Since 20 July 2009 this number has been reduced to 50.

Many would-be asylum seekers complain that they are unable to successfully lodge an application for asylum with the Greek authorities, even after repeated attempts.

With regards to detainees, their requests to apply for asylum are routinely ignored, and are registered only when the person in question is assisted by a lawyer. However, this in itself is often not enough for the authorities to initiate proper procedures. Detainees who have applied for asylum are almost always released with a deportation order and a note to leave the country within 30 days, as if an asylum application had never been lodged.

The asylum interview

Prior to the implementation of Presidential Decree 81/2009, asylum seekers were not interviewed in a satisfactory manner. The decision in their case (almost always a negative one) was wholly based on a meaningless or non-existent interview, during which the asylum seekers were not afforded an opportunity to explain the actual reason why he or she was seeking asylum.

The interviews were conducted by a police officer and lasted merely a few minutes. They did not go into any depth, and were often conducted without an interpreter, particularly when conducted at the police station in Athens Airport. This is also where Dublin returnees first come in contact with the Greek authorities.

Under the new system introduced by Presidential Decree 81/2009 asylum interviews will be conducted by committees consisting of two police officers, one representative of the Regional authorities and one representative of the UNHCR. One would assume that this new system would increase the quality of the interviews. However, as the UNHCR points out, this is not the case:

The new PD decentralizes asylum decision-making in the first instance to over 50 police directorates across the country which are faced with serious shortcomings related to expert personnel, interpretation services and legal aid.

At the time of writing, the new system has not been fully implemented, as the UNHCR has stated that it will not participate, and because civil servants in the Attica Region, where the vast majority of asylum seekers live, refuse to work for the new committees. This also means that very few interviews have been conducted in Athens since 20 July 2009. This situation also affects Dublin returnees, all of whom arrive at Athens airport.

Asylum documents

According to Presidential Decree 220/2007 asylum seekers should be issued with a document confirming their status within three days after the registration of their claim. The document in question, which is commonly referred to as the “red card” or “pink card”, confirms the applicant’s status as an asylum seeker, and is supposed to protect him or her against refoulement. However, there are a number of ways in which a person can be deported in spite of holding such a card, as described in later chapters of this report. Greek police regularly check the documents of asylum seekers and immigrants on the street in all parts of Greece, and they run the risk of being detained if they do not carry this document.

Bureaucratic traps

Keeping track of developments in one’s case also presents a number of problems for asylum seekers and Dublin returnees in Greece, who may find they have been removed from the asylum process due to illegal practices by the authorities. Asylum seekers face problems renewing their identity cards or changing their address – seemingly small matters, but ones which can have serious consequences such as being thrown out of the asylum process altogether.

If an asylum seeker has lost his or her red card, or only carries a copy of it, he or she is in real danger of being deported or removed from Greek territory, since the authorities rarely check their records to find out if someone is registered as an asylum seeker.

According to Alexia Vassiliou of the Greek Council for Refugees²⁴, the Greek asylum system functions as a “trap” to asylum seekers. However resourceful, they risk never receiving the decision of a rejected claim for asylum. Hence, they may also pass the deadline for filing an appeal, without ever being aware of it. The red card of registration may still be valid, but technically his or her presence in the country would already be illegal.

24 Interview with Alexia Vassiliou, Athens, 22.04.09

Assessment of asylum claims

The previous system

The previous system in Greece provided for two instances for the examination of asylum claims. The first instance decision was based on interviews conducted by police officers. Rejected asylum seekers had the right to appeal. Based in Presidential Decree 90/2008, the Appeals' Board was mandated to assess asylum claims – a serious improvement, although the Board was not independent as such. Although there was also one member from the Lawyer's Bar and one from the UNHCR, the State held the majority of seats.

The decisions in the first instance, made on the basis of the interviews described above, were almost always negative. A study carried out by the UNHCR in 2007 on the implementation of the Qualification Directive in selected EU Member States has shed light on some of the challenges currently faced by the Greek asylum system:

... all 305 first instance decisions taken between October 2006 and April 2007 by the Ministry of Public Order – relating to applicants from Afghanistan, Iraq, Somalia, Sri Lanka and Sudan – were negative. None of the decisions contained any reference to the facts or provided any legal reasoning. All featured a standard paragraph stating that the applicant left his/her country in order to seek employment and more generally to seek improved living conditions. With the consent of the Ministry of Public Order, the case files were reviewed. Of 305 first instance case files reviewed, 294 did not contain the responses of the applicants to standard questions reportedly posed by interviewing police officers. No other information was provided in these files regarding the applicants' claims. In the overwhelming majority of the reviewed case files, the interviewing police officer registered the reasons for departure from the country of origin as "economic".²⁵

Rejections typically concluded, very briefly, that the applicant came to Greece for economic reasons. This conclusion was reached regardless of whether the applicant stated that this was the reason, whereas his or her *actual* claims were either not noted, or the applicant was not given the chance to present them at all.

In the second instance, the situation was slightly better but the overall situation remained the same. The Appeals' Board had members that could contribute to a more thorough assessment of asylum claims, these being representatives of the UNHCR and the Athens Lawyers' Bar. However, the way this Board was working did not give these members an opportunity to seriously improve the situation. In each session the Board had to examine so many cases that it did not have the time to assess each claim properly. Moreover, the cases brought to the Board appeared to be mostly

25 <http://www.europarl.europa.eu/document/activities/cont/200805/20080529ATT30342/20080529ATT30342EN.pdf>

unfounded ones, whereas the claims from refugees from Afghanistan, Iraq, Somalia or Sudan were not brought to the Appeals' Board. Thus, the recognition rate remained extremely low compared to other European countries.

The new system

The new Presidential Decree modified Presidential Decree 90 from 2008. The intention is now that asylum claims will be examined at one final stage by Police Directors all over the country, who will be assisted by advisory committees. These advisory committees will consist of two police officers, one representative of the Region and one representative of the UNHCR. The Appeals' Board is abolished and loses its influence, also with regards to pending claims. The one legal remedy now available to asylum seekers is to submit an appeal to the Council of the State, the Higher Administrative Court, which does not deal with the essence of their claim.

This change represents a serious setback, since the treatment of asylum seekers in Greece, already unacceptable, will deteriorate still further under the intended new status determination system – it envisages responsibility for assessing claims at first instance should lie with police directorates.

The UNHCR considered that these new developments were “likely to make protection in Greece even more elusive for those who need it”, and on 17 July 2009 felt compelled to state that they will not participate in the new asylum procedure:

The new PD decentralises asylum decision-making at first instance to over 50 police directorates across the country which are faced with serious shortcomings related to expert personnel, interpretation services and legal aid.

It also abolishes the existing appeals' board, which was the decision-making body at second instance, and only maintains a limited judicial review before the Council of State, thus not guaranteeing the rights to an “effective remedy”. Furthermore by designating the Alternate Minister of Public Order as the decision-making authority for the pending appeals (backlog), it would not be compatible with EU Legislation that requires an independent organ from the first instance decision-making body.

In light of the above, at the present stage the UNHCR cannot participate either at the Advisory Refugee Committees for the examination of the asylum claims at first instance or at the Advisory Appeals' Committees for the examination of the backlog of some 30,000 pending appeals.²⁶

26 <http://www.statewatch.org/news/2009/jul/greece-unhcr.prel.pdf>

On 16 July 2009 a group of 15 Greek NGOs working with asylum seekers published an intervention²⁷, in which they wrote that the new Presidential Decree deprives asylum seekers of the right to have their asylum claim examined at second instance, in violation of European standards.

On this background, one must conclude that Greece cannot guarantee a fair examination of asylum claims and protection of asylum seekers, including Dublin returnees. As such, Presidential Decree 81 represents a violation of the EU directive on procedures to be followed.

Unaccompanied minors

In particular, minors seeking asylum ought to be protected under various international human rights laws and conventions and national Greek law²⁸. However, reports from various human rights organisations highlight the fact that Greece does not give any protection to this vulnerable group. The UNHCR reports that Greek authorities entrusted with the protection of their rights rarely intervene in matters relating to their reception or welfare rights²⁹. In the Human Rights Watch Report *Left to Survive* (2008), some children said they did not want to apply for asylum because they had experienced ill-treatment and violence at the hands of state agents³⁰.

The fact that the risk of refoulement also concerns unaccompanied minors in Greece is especially alarming. In the 2008 study mentioned above, the UNHCR expressed concern about deportation orders being issued to minors entering Greece illegally. The HRW report also highlighted that the practice of refoulement, rejection at the borders and return to Turkey potentially bars children from seeking asylum in the same way that it does for adult asylum seekers in Greece.

There is no provision in Greek law that requires the authorities to assess whether a deportation of an unaccompanied child is in his or her best interests, or whether adequate care is available upon return. The 2001 Greece-Turkey Readmission Agreement described in more detail in a later chapter, does not contain any exceptions for unaccompanied children.

The working practices of the Greek police

A major problem in Greece is the fact that the police is simultaneously responsible for arrests and deportations of illegal migrants as well as being the responsible authority for the determination of their asylum claim at first instance. The role of the Greek police as both prosecutor and protector causes confusion.

27 <http://www.statewatch.org/news/2009/jul/greece-ngos-migrants.pdf>

28 Greek national law Presidential Decree 220/2007 transposing article 19 (1) of EC Directive 2003/9/EC requires minors be protected by a guardianship system. Greece is also bound to give minor alien children special protection under article 22 of the United Nations Convention on the Rights of the Child 1989, ratified by Greece in 1993.

29 UNHCR office in Greece, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, pp 50-57

30 Interviewed children reported being beaten by border guards, police, coast guard, Human Rights Watch Report, December 11 2008, *Left to Survive*, page??

The police's handling of asylum cases is also weakened by a lack of required education in asylum law and procedure, and hence a lack of ability to handle asylum cases in accordance with international refugee and human rights law.

The organizational structure of the Greek Police Department may easily result in the deportation of an asylum seeker with a pending asylum claim. Greek police operates with two different databases for foreign citizens - one is used by the Deportation Section, whereas the second is used by the Asylum Section. This causes a situation where the Deportation Section may be ignorant of important information available at the Asylum Section, and not taking the effort to double-check the status of asylum-seekers with this register.

In practice, an asylum-seeker may be mistakenly taken as an illegal immigrant for example if he or she for any reason is not carrying the red card on their person upon arrest. Combined with the indifference towards detainees demonstrated by many of police officers, as well as the lack of access to interpreters, the result is that the desperate efforts by an asylum-seeker to make the police understand that he or she has a pending asylum claim often will have no result.

In the end, the deportation process, formal or informal, inevitably takes its course, and the asylum seeker is transported out of the country, i.e. refouled.

Some of the cases we present in the next chapter are very characteristic in this respect.



VII ILLEGAL DEPORTATIONS FROM GREECE TO TURKEY

While the actual asylum process in Greece is seriously flawed, the issue of illegal deportations makes the situation more serious still. Asylum seekers risk being pushed back without the chance to lodge an application for asylum. They may also be deported from Greece at any stage during the application process. The lack of safeguards for all categories of migrants in Greece also applies to those returned under the Dublin II regulation.

The practice of illegal deportations of migrants from Greece to Turkey is well known and has been documented by a number of organizations. PROASYL and the Greek Group of Lawyers explain in their report *The truth may be bitter, but it must be told* that:

Refoulement by the Greek coast guard within national territorial waters and at the external borders of the EU is occurring on a systematic scale. (...) In the Evros region (Greek-Turkish border), refugees are arrested upon arrival by the Greek border guard and detained without official registration. They are held, deprived of their fundamental rights. They are detained without contact to the outside world (incommunicado) for several days and are then illegally and forcibly returned to Turkey where their life and liberty may be at risk or where they are at risk of deportation to their countries of origin.³¹

Similarly, Human Rights Watch notes in a thoroughly documented report that:

Police in the Evros region systematically arrest migrants on Greek territory and detain them for a period of days without registering them. After rounding up a sufficient number of migrants, the police take them to the Evros River at nightfall and forcibly and secretly expel them to the Turkish side.³²

In the UNHCR Position on the Return of Asylum Seekers to Greece under the Dublin Regulation (April 2008), European countries participating in the Dublin cooperation were warned against returning asylum seekers to Greece on the basis of poor legal guarantees and the danger of refoulement:

Nonetheless, this note highlights a number of challenges in respect of access to and the quality of the Greek asylum procedure. Furthermore, reception conditions continue to fall short of international and European standards. As a result asylum seekers, including Dublin returnees,

³¹ Proasyl/GGL: *The truth may be bitter, but it must be told*, http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Englisch/Griechenlandbericht_Engl.pdf

³² Human Rights Watch: *Stuck in a Revolving Door*, <http://www.hrw.org/fr/node/76211/section/4>

continue to face undue hardships in having their claims heard and adequately adjudicated. The UNHCR is concerned that all these factors taken together may give a rise to the risk of refoulement.³³

In our report *A Gamle with the Right to Asylum in Europe*, we described the case of Taleb, an Iranian asylum seeker who arrived in Greece on 15 April 2006. He entered the country by car from Turkey, and was arrested by the police. Along with several others, he was deported illegally to Turkey:

We were transported in a truck. We were three Iranians and the rest were Iraqis. In all, we were about 30 persons. They collected our cell phones and threw them in the river. There was a commander who beat us with a stick while we climbed into the truck. There were 7-10 persons who escorted us to the border with three or four cars. Two of them were commando soldiers, the others were in civilian clothes, but they carried automatic weapons. They used binoculars to look over to the Turkish border. When all was clear, they forced us to cross the border into Turkey.

There is a huge mobility in the population of immigrants and asylum seekers to and from Greece, making it impossible to keep track of their whereabouts and status. Certainly, some are never registered, neither when they enter nor when they leave, nor when they are deported. Even though large numbers are detained in the border areas, nobody knows the full picture as the detention centres do not keep reliable records of those detained and monitoring groups are not given proper access.

The European Committee for the Prevention of Torture and inhuman and Degrading Treatment or Punishment (CPT) visited a number of border area detention facilities in September 2008. Their report³⁴, published on 30 June 2009, harshly criticises the conditions in the detention facilities. CPT also confirms that Greek authorities do not ensure the individual custody records are kept. During the visits by CPT in 2008 and 2007, the persons mentioned in the detention registers in both Alexandroupoli and the Orestiada facilities did not correspond with the persons actually held in the facility.

Marianna Tzeferakou of the Greek Group of Lawyers explains that most of the detainees are deported from Evros:

It is a big problem that they are kept incommunicado and that NGOs don't have access to them. Lawyers are being accused of having connections to smugglers. We are often forced to make interventions merely based on what we hear. We don't have access to the police

33 <http://www.unhcr.org/refworld/docid/4805bde42.html>

34 <http://www.cpt.coe.int/documents/grc/2009-20-inf-eng.htm>

detention centres along the border at all. A lot of so-called push-back also takes place here: All those that our organisation has met with have been detained as a group, often together with a smuggler. According to the law, they must be registered, and if they are to be deported, their case must be brought to the court. However, some may be registered, many not. We must assume that they are pushed back.

The practice is also confirmed by the UNHCR in Greece, who told us that there are clear indications that summary/unofficial deportations are taking place from Greek territory to Turkey.

Many are sent back to Turkey apparently without consent from the Turkish authorities, namely outside the Readmission Agreement procedure. We have strong indications that this happens, based on information we receive from people reporting that they have been forcibly returned to Turkey or from their relatives, as well as by NGOs or lawyers. It is not easy to document these cases and the scale on which it happens. According to information collected during UNHCR monitoring missions as well as what is received from various sources, immigrants, including potential asylum seekers and people in need of protection who have not received any information or legal counselling about their rights, are brought to the Evros border and forced to cross by boat to the Turkish side. According to this information, some of them are temporarily detained and then registered as “released”, while others are returned without any previous formal registration while in detention.”³⁵

A decision by the European Court of Human Rights, *S.D. vs. Greece*³⁶ also highlights this practice of detaining and deporting immigrants – including those who explicitly ask for asylum:

The Court also noted that the applicant’s asylum application had not been registered until the third attempt, and that the authorities had then failed to take his asylum seeker status into account. His detention with a view to expulsion had in fact had no legal basis in Greek law after that date since asylum seekers whose applications were pending could not be deported. His detention had therefore been unlawful, in violation of Article 5 para. 1. S.D. had been unable to have the lawfulness of his detention reviewed by the Greek courts. There had been no possibility in Greek law for him to obtain a decision on the matter, in violation of Article 5 para. 4.

While many agree that illegal deportations do take place, documenting such cases is made problematic by a number of factors. Firstly, illegal deportations are naturally not registered as such. Deportees are not able to bring the matter to the attention of relevant authorities or NGOs, and documenting the case would often involve inquiries on both sides of the Greek-Turkish border. Also, it is difficult to obtain a permit to access Turkish detention centres.

35 Interview with Giorgos Tzaropoulos, UNHCR, Athens, 22.04.09

36 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851175&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

The fact that Greek authorities do indeed deport asylum seekers with pending applications is particularly dramatic, as it completely disregards legal procedures and the rights of such individuals.

In addition to formalized deportations taking place under the Greece-Turkey Readmission Protocol, there are a number of types of illegal deportations from Greece. They may be roughly divided into five categories, of which this report provides examples:

1. those who do try to seek asylum in Greece, but find that they are not given access to asylum procedures
2. those who haven't applied for asylum because they rightly consider the chances of gaining refugee status in Greece to be so small that they use the country only for transit but are "caught" on their way to other European countries
3. those who did not initially intend to seek asylum in Greece, but do so when detained by the police. They are regularly ignored when requesting asylum or expressing fears of returning to their home country
4. those who have applied for asylum but have been rejected or thrown out of the asylum process due to the unfair asylum system
5. those who have successfully lodged an application for asylum with Greek authorities, yet are deported before their claims to asylum have been assessed.

It gives little meaning to look for different patterns of risk among the different "sub-groups"
– Greek police largely ignore which category a person falls into. The main goal seems to be to rid Greece of as many non-Western migrants as possible and to keep them from entering other European countries. The threat of deportation concerns asylum seekers, would-be asylum seekers and illegal migrants alike. All appear to be under an equal risk of deportation when detained
– including those returned to Greece under the Dublin II Regulation.

1. Deportations of persons without pending asylum applications

As regards persons who have not (yet) sought asylum in any European country, examples are numerous – the group behind this report met many such individuals, particularly in the camp in Patras, which was bulldozed by the police on 12 July 2009. Many have made repeated attempts at transit through Greece. We shall describe two typical cases involving repeated attempts to transit through Greece without documents, and repeated illegal deportations:

Case 1

An ethnic Uzbek from Afghanistan³⁷ entered Greece for the first time in April 2008. He was immediately arrested in Alexandroupolis, placed together with about 50 others in a wooden boat and transported back to the Turkish side of the border. One week later, he made a second attempt, this time making it to Athens, where he spent eight months before again being arrested. This time, however, he was released after a week. Travelling to Patras, he was arrested for the third time – this time he was also beaten by the police – then transported back to the Greek-Turkish border, put in a wooden boat and sent across to Turkey; his second deportation. After a third entry to Greece, he was arrested again, now in Larisa. At the time of the interview, the man was growing weary and said he now wanted to seek asylum in Greece in order to avoid another deportation.

Case 2

Another such case, this time concerning masses of individuals seeking asylum upon deportation, comes from an Afghan citizen interviewed in the Pagani detention centre in Mitilene.³⁸ His story gives a good description of how such deportations are organized.

Crossing the Turkish-Greek border, the man arrived in Greece for the first time in June 2008. He was immediately arrested and fingerprinted, but released after a week in detention with an order to leave Greece within 30 days. Although the man did intend to seek asylum in Europe, he wanted to avoid doing so in Greece:

“I didn’t apply for asylum because I heard from friends that Greece doesn’t grant asylum to refugees and doesn’t treat them well.”

After being released, the man travelled to Patras, where he stayed in the makeshift camp built by the Afghans in the town (the camp was bulldozed by Greek police two months after this interview took place). He managed to get on a boat to Venice, but upon arrival in Italy was immediately returned to Greece by the Italian authorities.

On 21 December 2008, he tried again to get on the boat leaving from Patras, but was arrested. The Greek police waited a few days to fill up a bus with detainees, then transported them to

37 Interview with Mr. A, Agia Sofia detention centre, 20.04.09

38 Interview with Mr. C, Pagani detention centre, Mitilene, 23.04.09

Alexandroupolis, where they stayed for about 20 days. They were not allowed to leave the building they were kept in, nor make any phone calls.

“One night after dinner the policemen took 150 people and put us inside a police bus for detainees. There were many policemen carrying a stick and commando soldiers carrying machine guns. They told us not to look at them, to look down and not to talk. The bus took an unpaved road for about an hour, then stopped in a place with trees by the river. We got off. It was very cold and we didn’t have clothes to keep us warm. We were shivering. The policemen and the commandos made sure that nobody was at the other side of the river then started putting the detainees into a big wooden boat.”

According to the man, many detainees did clearly express fear of returning to their home countries when they realized they were being deported. The Greek police, however, ignored them:

“When the detainees understood that they were going to be deported to Turkey they started to cry and shout that they didn’t want to go there because Turkey would send them back to their country, where they faced grave danger. I told them the same. One refugee who knew English translated for the policemen. But they ignored us. Refugees who tried to resist were beaten severely and forced into the boat. We were carried in turn as the boat could carry 50 people at a time. In the boat there were two policemen. One drove it and the other who carried a pistol pointed it at us.

So we arrived at the Turkish side. We walked for about one kilometre. Suddenly many armed Turkish soldiers appeared and arrested us. They took us to a big room with heating to spend the night. At dawn they divided us into groups by nationality and started to take the groups in turn. We were a few Afghans and we were left last. We were taken to a desert place and then the Turkish policemen told us that since we were Muslims they would set us free to walk to Istanbul.”

The man spent about three months in Turkey, before trying to re-enter Greece. He was again arrested in Mitilene. Although he did not want to seek asylum in Greece, he felt that there was no other option:

“This time I decided to apply for asylum in Greece. I don’t want to go back, and I can’t go to another European country. So I have no other choice.”

2. Deportations of persons seeking asylum upon arrest

Many would-be asylum seekers prefer not to seek asylum in Greece, as they are well aware that their chances of being granted asylum there are near non-existent and are also familiar with the lack of support that can be expected from the government while the case is pending. However, many also have a real fear of being returned to their home country, and therefore choose to seek asylum once they are detained by Greek police, in order to avoid deportation. Interviews with such individuals show that their fears are not taken seriously by Greek police, who tend to ignore their request.

Case 3

While in Erbil, Northern Iraq, the team behind this report met with a 20-year old Kurdish man whose story may serve to illustrate these forms of deportation.³⁹

This young man had intended to travel via Greece to another European country to seek asylum. However, he was arrested by Greek police before he could travel further. Upon his arrest, he expressed fear of persecution in his home country, but this was ignored. The police brought him from Athens to the border area, and “pushed him across” the border from Greece to Turkey.

“I was in Omonia in central Athens, when a friend and I were picked up by the police. I understood that they were going to send us out of Greece. I said I can’t go to Iraq, I have problems there, my life is in danger. The police man told me to shut up and slapped me in the face. We were handcuffed and taken to a police station in the Egaleo district, and kept there for three days. They hit me and took my money. They promised they would give the money back, but they kept it.”

Although the man had not sought asylum before in Greece, his repeated claims that his life would be in danger if returned to Iraq should have been enough for the police to consider that an asylum application had been lodged. However, the police did not pay attention to this:

“I told them please don’t send me to Iraq, I don’t want to go, my life is in danger there. I said, please let me stay here. They just slapped me.

One morning a big car came to the station and picked us up. We drove for a long time. Sometimes we stopped in petrol stations to get water or some food. We were driven to the Greek-Turkish border. They said, ‘this is the border’ and sent us across. On the Turkish side we were met by Turkish police. When they saw that we had no money, they let us go. We took a bus to Istanbul.”

The man later returned to Kurdistan, but settled in Erbil rather than his hometown of Kirkuk.

“I can’t live in Kurdistan, my life is in danger. It’s not about money! I can’t stay here. My neighbours in Kirkuk tried to kill me four times, they kidnapped my brother. They sent letters saying that if I don’t give them money, they will kill me. I am afraid to be found.”

³⁹ Interview with Mr. B, Erbil, 28.04.09

3. Deportations of asylum seekers who register their claim while in detention

There are also those who do try to seek asylum in Greece, but find that the authorities are unwilling to give them access to proper procedures.

Case 4

We conducted a telephone interview with a Kurdish man from Iraq, who was in Turkey at the time of our conversation.⁴⁰ The man spent a total of five years in Greece, where he managed to seek asylum twice, in addition to many unsuccessful attempts. At no point did he receive a decision in his case, nor was he given a proper chance to explain the reason for his asylum application. After five years and several arrests, he was deported by the Greek police to Iraq.

The man entered Greece in November 2004, and was immediately arrested. After spending three months in detention in Alexandroupolis, he was released with a note to leave Greek territory within 30 days. Instead, the man went to Athens, where he sought asylum:

“I went to Athens Immigration Police in Kolonos and submitted an asylum application. The police put a note on my application with an appointment in three months. On the day of the appointment I went there again, but the police sent me away without renewing the appointment.”

The man kept trying to get his documents in order, but it proved almost impossible:

“When the new facility of the Aliens’ Division in Petrou Ralli opened, I started trying to submit an asylum application there too. I went several times, as early as three in the morning, but nothing happened. So I stayed without papers.”

He was arrested in 2007, fingerprinted and released. In October 2008, he was arrested again. This time he was brought to the Asproyrgos detention centre. Only on 12 October 2008 was he allowed to submit an application for asylum (his second one). However, five days later, he was deported to Iraq without any kind of assessment of his claims:

“On 17 October 2008 the Asfaleia, the security police, came and took me. One of them, Yannis, began asking me if I would prefer to go to Iraq or Syria. I understood that they were taking me to the airport to deport me. I speak Greek very well, and tried to explain to them that I had applied for asylum, and that if I go back to Iraq my life would be in grave danger. Yannis told me they were going to deport me “dead or alive”. I understood that there was no point in protesting, and boarded the plane to Erbil.”

After arriving in Iraq, the man went to his home town, Mosul. Finding the situation difficult and after receiving threats from armed groups, he decided to take his family and leave Iraq again. The family is currently in Turkey.

40 Interview with Mr. D, Athens/Ankara, 24.04.09

4. Deportation of registered asylum seekers with pending claims

A very alarming case involves use of force at gun-point to deport asylum seekers with pending asylum claims from Greece. The Greek Council for Refugees alerted us to a case which we then investigated during our visit to Istanbul. Two men from Afghanistan were being held in Edirne detention centre, after having been deported from Greece less than a week before.

A few days prior to the interview, we had received a rejection letter from the Turkish authorities⁴¹ to visit these detention centres due to the application having been made at a short notice. However, with the assistance of the Helsinki Citizens Assembly in Istanbul, we conducted an interview with the two men by telephone, using a Farsi interpreter.⁴² The interview confirmed that not only did the two men have valid asylum applications pending in Greece, but had been deported to Turkey under very disturbing circumstances.

Case 5 - Male asylum seeker from Afghanistan

The first of the men, a 23-year old from the Loghar province in Afghanistan, had entered Greece from Turkey in September 2007 and was immediately registered by the police in Mitilini. In Athens, he was issued with the so-called red card at Allodapon, the central police station on Petrou Ralli Street in Athens. The man renewed the card at least four times, most recently one month before his deportation. This means the card was valid at the time of his deportation.

Case 6 - Male asylum seeker, Afghan born in Iran

The second of the men, a 26-year old Afghan born in Iran, had entered Greece from Turkey in 2006 and sought asylum. Like the first man, he too had renewed his red card on numerous occasions, most recently one month before his deportation.

On 19 April 2009, these two men were together in the Greek town of Soufli near the Greek-Turkish border, looking for work.

“We were at the train station, and were approached by four men. They asked what we were doing there, we said we were looking for work. They said they had work for us, and even bought us fruit juice. We waited until the evening, when we were taken to an area with agricultural work. After half an hour they suddenly took out guns and said they were from the police.”

The two men were searched, and their money was taken from them. The police found a photocopy of one of the men’s documents, and tore it up.

41 Letter from the Ambassador of Turkey in Oslo to NHC, 23.04.09

42 Interviews with Mr. E and Mr. F, Istanbul, 25.04.09

“I said I was an asylum seeker. We said we had all the documents. But we were afraid they would kill us, because of the guns. They didn’t say they were deporting us to Turkey. They wore normal clothes, and didn’t have walkie-talkies or anything like that, but said they were police.”

The two men were blindfolded and put in a small boat. Two of the policemen got in the boat with them, and after about 20 minutes the men were told to hold on to some branches and get out of the boat. They were left in a forested area, from where they walked to a nearby road whereby they were detained by the Turkish Gendarmerie and sent to the Edirne detention centre. The Turkish police took photocopies of their remaining Greek asylum documents. At the time of our conversation, the two men were deeply distressed, and asking for help to return to Greece:

“They don’t listen to us, there is no lawyer or anyone who listens to us here. They say that we should arrange money for the plane, and they will deport us to Afghanistan. We say we don’t want to be sent to Afghanistan, that they should return us to Greece. But the police say we should find money for the plane. I said that if we are deported to Afghanistan, I will kill myself.”

The HCA contacted the two men again on 7 May 2009. The two men were still being kept in Edirne, in a large common room with about 40-45 other detainees. They explained that the number of detainees in a neighbouring room varied, from 5-100 people. Realizing the futility of asking to be returned to Greece, they had repeatedly asked to seek asylum in Turkey – both verbally and in writing:

“We tried many times to say that we wanted to apply for asylum. They never listened.”

On 4 May 2009, one of the men tried to escape from the detention centre, but was caught and severely beaten.

“I and another Afghan tried to escape. The door was not locked, so we managed to get out of the building, but a police car came and picked us up. They began to beat us the moment they arrested us, then they took us back to the police building. Four or five police officers came and continued to beat us up. It went on for two hours that day. The next morning they came and began to beat us again. They used a truncheon this time. My feet were bleeding. They beat me and kicked me. As a result, I have a lot of pain all around my body. I cannot sit; I can hardly stand on my feet. Even when I go to the toilet I cannot sit. One of the fingers on my right hand was black. I thought it was broken at first. The other guy was also beaten up very badly. He is in very bad shape right now. We haven’t received any medical attention whatsoever.”

This case was also brought to the attention of the Greek and Turkish offices of the UNHCR.

To our surprise, the two men were released from detention in Edirne on 2 June 2009. Their further fate, however remains unclear. At the time of writing, they were in Istanbul.

In another instance, deportation of a person with a pending asylum case was prevented only because of the direct involvement of an NGO, the Greek Council for Refugees.

Case 7

According to the GCR, a Pakistani asylum seeker was having great difficulties renewing his red card at the police station in Petrou Ralli in Athens. In spite of having returned on a weekly basis to renew his card since December 2008, the police had kept turning him away, until eventually he was arrested during a documents check on the street in February 2009. His repeated explanations that he had been trying to renew his red card were ignored, and he was brought to a detention centre where he was later met by a member of the GCR. On 5 March 2009, the GCR faxed the authorities, asking that the matter be investigated, but did not receive any reply.

Throughout March 2009, the organization worked to have the asylum seeker released from detention, yet their written requests were ignored. On 20 March 2009, the man was brought to the airport for deportation – based on a deportation order issued without them ever having checked his actual status in the country. This time, the man's own protests led to his being returned to detention.

The GCR continued working on this case, requesting a written confirmation that the man was indeed registered as an asylum seeker. On the day they received this confirmation, the man was again at the airport, awaiting deportation. It was only thanks to urgent phone calls from the GCR to the police authorities that the deportation of an individual with a valid, pending asylum application was prevented. The man was released.

The above case also exemplifies the arbitrary nature of the treatment asylum seekers receive from police authorities. While it is remarkable that the GCR managed to provide effective assistance in this case, it raises serious concerns of the fate of other persons who are not so lucky as to gain the attention of an NGO that can speak on their behalf. It also illustrates the poor level of communication between different police departments to bring clarity to the actual status of an individual in danger of deportation.

VIII DEPORTATIONS UNDER THE GREECE-TURKEY READMISSION AGREEMENT

In addition to the clear instances of illegal deportations described above, Greece also deports foreign nationals to Turkey under a formalized agreement.

However, there is evidence that the provision is applied to other groups besides illegal migrants, and that a large number of would-be asylum seekers are included among those who are returned in this manner. Organizations such as GCR have documented such cases.

Case 8

One such instance took place on 30 July 2009, when Greek police returned 40 Turkish citizens, mostly Kurds, to the Turkish authorities. Of these, 21 persons were asylum seekers, four of them unaccompanied minors.

Three days prior to the deportation, 21 individuals in the group had expressed a wish to seek asylum while in detention in the prefecture of Chania on Crete. However, the police refused to register the asylum claims or facilitate access to the competent authorities. Lawyers working for the NGO Migrants' Forum of Crete helped 17 of them write an asylum application, but these were not accepted by the police officers on duty. Shortly after, the detainees were transferred to an undisclosed location on mainland Greece.

The GCR appealed to the Ministry of Interior for further information about their whereabouts, but did not receive any response. Only on 4 August 2009 did the Rodopi police directorate respond to a letter, indicating that 40 Turkish citizens who had been brought to Venna from Chania on 28 July had already been transferred to the Kipi border crossing on 30 July 2009, and had been handed over to the Turkish authorities.

According to the Rodopi police directorate, they had been informed by the Chania police directorate that none of the detainees had applied to them for asylum.⁵

As Alexia Vassilou, who provided a detailed documentation of events in this case, says:

It is very disturbing to note that these asylum seekers, including unaccompanied minors, were denied the right of access to the asylum procedure and refouled even after the involvement and intervention of NGOs and legal counsellors and notwithstanding the express declaration of their wish to apply for asylum. It should be borne in mind that the majority of persons arrested and detained at the borders for illegal entry do not have access to legal counselling or

interpreters and are, therefore, rarely if ever given the opportunity to express their intention to seek asylum. This is one of the key reasons why fewer than 5% of all asylum claims are received at the borders.

The example above concerns individuals seeking protection from persecution in Turkey, but the situation is equally relevant to those who risk onward deportation from Turkey to their home country. In 2001, Greece and Turkey signed the “Agreement for the prevention of crime and especially terrorism, organized crime, drug trafficking and illegal immigration”. The Protocol for enforcement of article 8 of the agreement provides that through certain procedures, Turkey will accept returns of illegal immigrants crossing the Greek border from Turkey. Leading up to the ratification of the protocol, the UNHCR and NGOs urged the two governments to include a specific reference to refugees and the Geneva Convention, claiming that the agreement could constitute a breach of the principle of non-refoulement as Turkey has not ratified the 1951 Refugee Convention in its entirety.

Where an asylum seeker has made an asylum application in Greece, and this application has not been dealt with in substance, the question of their readmission to Turkey becomes in reality a question of readmission for the purpose of considering the substance of the asylum claim to ensure that the applicant receives the necessary protection deemed to be necessary in accordance with international refugee law. As Turkey has placed a geographical limitation on the extent of the 1951



Refugee Convention it is clear the majority of third country nationals seeking asylum are outside the scope of the protection system in Turkey as the majority of asylum seekers travelling through Turkey originate from Iraq and Afghanistan. Since the operation of the Greek “push-back” policy, Turkey has in recent months adopted a policy of unwillingness to take into its territory third country nationals from Greece. In June 2009, Turkey refused to honour the readmission agreement with Greece:

We refuse to become the world’s biggest refugee camp,” Egemin Bagis, the Turkish Minister for EU Affairs said, noting that the readmission agreement between Greece and Turkey will be honoured if similar pacts are agreed between transit countries for would-be migrants, such as Turkey, and countries of origin, such as Afghanistan and Pakistan.⁴³

Member states have obligations under the Refugee Convention and its non-refoulement obligation. It is thus clear that returning asylum seekers to Greece with the knowledge of their onward chain-refoulement orbit situations in Turkey is not in compliance with the non-refoulement duty of European states.

We are concerned about the readmission agreements, which are increasingly being concluded between the EU and third countries as well as between individual states and third countries. Under readmission agreements persons trying to enter the EU are often sent to countries with non-functioning asylum systems. Readmission agreements also run the risk of creating cases of chain-refoulement from the EU.

43 http://www.ekathimerini.com/4dcgi/_w_articles_politics_100006_29/06/2009_108478

IX TURKEY AND THE RISK OF CHAIN-REFOULEMENT

Although it is beyond the scope of this report to go into much detail about the current situation with regards to refugees in Turkey, an understanding of the Turkish context is essential when discussing the European commitment to non-refoulement.

Direct removal of a refugee or an asylum seeker to a country where he or she fears persecution is not the only form of refoulement that states have a duty to prevent. States also bear the responsibility to apply this principle to avoid asylum seekers being returned to their countries of origin without an exhaustive examination of their claims. Indirect removal of a refugee or chain-refoulement from one country to a third country, which would subsequently send the refugee onward to the country where they originally feared persecution, is equally covered under the legal definition of what constitutes refoulement. All countries involved in this chain have a duty to prevent this type of refoulement. Therefore, a reliable assessment of the risk of chain-refoulement must be undertaken in each individual case, prior to removal to a third country to ensure all states are abiding by their international legal obligations.

A serious danger facing Dublin returnees to Greece is that they may be caught in a “domino effect”, thus being chain-refouled and returned the same way they originally came – from Dublin member states to Greece, from Greece to Turkey, and from there to their country of origin. When this happens without their claims to asylum ever having been assessed, this entails acceptance that bona fide refugees on European soil may be returned to their persecutors at home without ever having been given an opportunity to explain their problems to a European migration officer.

As Oktay Durukan, a refugee rights advocate working for the Helsinki Citizens' Assembly in Istanbul, puts it:

Any discussion around the Dublin procedure in the EU should also take into account what happens on the Turkish side of the border – this is very important.⁴⁴

These concerns are also echoed by organisations such as Amnesty International:

Amnesty International is concerned that refugees, asylum seekers and others in need of international protection are forcibly returned (from Turkey) to countries where they are at risk of persecution in breach of the principle of non-refoulement.⁴⁵

⁴⁴ Interview with Oktay Durukan, Istanbul, 23.04.09

⁴⁵ Amnesty International: *Stranded: Refugees in Turkey denied protection, 2009*, <http://www.amnesty.org/en/library/info/EUR44/001/2009/en>

Indeed, being deported from Greece to Turkey does not simply involve being denied access to European economic conditions. Turkey is one of a very limited number of countries to maintain a geographical limitation on the Refugee Convention, stating that the country will only consider European nationals for refugee status. Only Monaco, Madagascar and Congo maintain the same limitation, although the two latter do accept refugees from the African continent. As such, the situation with regards to Turkey is quite unique. It is also quite telling that not a single European refugee has been recognized as such by Turkish authorities – although some have been granted permission to remain in the country. Needless to say, the situation is near impossible for non-European groups, who live in constant danger of being forcibly returned to their country of origin without having their claims for asylum assessed.

This danger is formally recognised in the latest judgment from the European Court of Human Rights in the case of *Abdolkhani and Karimnia vs. Turkey* of 22 September 2009, Case no 30471/08. In this case two asylum seekers from Iran – with recognised refugee status by the UNHCR in Iraq – entered Turkey in 2008 and were immediately deported back to Iraq. The first time was in June 2008 and again after being detained immediately on their re-entry to Turkey. Turkey arrested them and convicted them for illegal entry. Turkey again attempted to deport them to Iran, this time despite their statement to police at the time of their arrest that they wished to apply for asylum in Turkey. They also expressed fear for their lives, and that they might suffer torture and/or inhumane and degrading treatment if returned to Iraq or Iran. The court held that they faced deportation to Iran without access to asylum procedures and faced a risk of treatment contrary to article 3 of the ECHR if returned to Iran. Turkey was held liable for breach of the applicants' rights under the ECHR and its own non-refoulement obligations. These deportation orders had been issued despite the UNHCR's recognition of their refugee status and efforts to secure their release from detention and protection from refoulement.

The individuals' deportation was halted by means of a Rule 39 interim measure. The UNHCR made a third-party submission in the case, where it underlined the risk of direct and indirect refoulement facing asylum seekers from Turkey⁴⁶:

... individuals who seek protection in Turkey after they were recognized as refugees under UNHCR's mandate in countries of first asylum, notably Iraq, are denied access to the temporary asylum procedure for non-European asylum seekers and are at risk of direct or indirect refoulement as they are subject to detention and to deportation either to the previous country of asylum, or to the country of origin. This has been particularly true of cases of former members of the PMOI who were recognized as refugees under UNHCR's mandate while staying at the Temporary Interview and Protection Facility in Iraq ("TIPF"), including Mr. Abdolkhani and Mr. Karimnia (the applicants upon whose behalf UNHCR made third party submissions).

46 Page 8 para. 5.1.5

The Court also reiterated its decision in *T.I. vs. the United Kingdom* (March 2000), no. 43844/98, ECHR2000-III (referred to below) that the indirect removal to an intermediary country does not affect the responsibility of the expelling Contracting State. This is to ensure that the person removed, as a result of its decision to remove him/her, is not exposed to treatment contrary to Article 3 of the European Convention on Human Rights.

The decision in this recent case should be taken into account when assessing the risk of Dublin returnees to refoulement from Greece to Turkey and the onward risk of chain-refoulement from Turkey.

To date no reply has been received from the Turkish authorities. At the time of writing the applicants Mohsen Abdolkhani and Hamid Karimnia were still detained in Kırklareli Foreigners' Guesthouse in Turkey, and have been in detention for more than a year, in spite of the ruling from ECtHR.

This also illustrates why remaining in Turkey after a deportation from Greece is not a really a viable option for would-be asylum seekers from countries such as Iran, Iraq or Afghanistan. Several case studies were covered in the report *Viewpoints on Migration Control and Asylum in Turkey*, by the Helsinki Citizens' Assembly (HCA)⁴⁷.

While it is clear that persons arriving in Turkey by land from bordering countries or by air cannot apply for asylum in Turkey upon arrival, the situation for those *re-entering* Turkey from the Greek land border after an illegal deportation from the EU is no better. Although they are not entering Turkey voluntarily but are being forced back by Greek authorities – sometimes after successfully lodging an asylum application within the EU – they find themselves back at square one in Turkey, and are not in any way better positioned than those who just arrived directly from Iraq. This includes those who formerly were in possession of a red card in Greece.

Turning a blind eye to the illegal deportations from Greece to Turkey can constitute an acceptance of indirect refoulement on the side of European Union member states. As Durukan explains:

Iranians, Iraqis, Afghans and other deportable nationals will be deported from Turkey sooner or later, unless there is an intervention from the ECtHR in Strasbourg. That is the only working remedy. Refugees will risk second refoulement to countries of which they are not even citizens. It is quite a scary picture.

Refugees are not only in danger of being returned to their home countries – in spite of agreements being in place that Iran and Iraq do not readmit persons who are not their own nationals, organizations such as HCA have documented a large number of cases where third country

47 A printed version of the report can be ordered through www.hyd.org.tr

nationals are illegally forced to leave Turkey in this manner. For instance, a group of registered Uzbek citizens were deported to Iran by being forced into the mountains by Turkish police in September 2008.⁴⁸

According to Durukan, although many are detained for months in so-called foreigners' guesthouses⁴⁹, most are eventually deported to their home country. This impression is shared by Ms. Gülseren Yoleri of the Human Rights Association in Istanbul:

In cases where the decision to deport has not yet been finalized, people can spend 7-8 months in detention. However, 70-80% do get deported in the end.⁵⁰

In Iraq, The Head of Foreign Relations in the Kurdistan Regional Government, Mr. Fala Mustafa Bakir, confirms that Turkish authorities regularly hand over Iraqi citizens:

When people are captured without a valid visa in Turkey, they are collected and sent to the border. Turkish security services call Iraqi security and we do a document check. If they are Iraqi, we accept them, if not we reject them. We cooperate, because these are not refugees, they are illegals.⁵¹

Even though asylum seekers often claim persecution from governments, he shares the impression that there are asylum seekers among those who are deported:

The Turkish side does not care that much if they claim to have an established asylum case. If they are Iraqi, they send them here, and we have to accept them. And as a government, we can't push them back. Even if they sought asylum, we are caught in between, you know – after all we are the government.

The UNHCR similarly confirms the grave difficulties faced by asylum seekers on both sides of the Turkish-Iraqi border. According to UNHCR Turkey⁵²: "If a person is handed over to Turkey by the Greek police, there is a serious risk that he is deported back to, for example, Iraq."

48 See for example http://www.rferl.org/content/Uzbek_Refugees_Forcefully_Deported_From_Turkey_To_Iran/1201469.html

49 See especially Helsinki Citizens' Assembly: *Unwelcome Guests: Detention of Refugees in Turkey's Foreigners Guesthouses*, <http://www.hyd.org.tr/?pid=610>

50 Interview with Ms. Gülseren Yoleri, President of the Human Rights Association, Istanbul, 22.04.09

51 Interview with Mr. Falah Mustafa Bakir, Erbil, 28.04.09

52 Interview with UNCHR Turkey, 24.04.09



In Erbil, the UNHCR also voiced similar concerns about the fate of returnees:

The UNHCR closely monitors the situation of returning refugees and is aware of difficulties reported by some deportees, who reportedly may undergo investigation and in some instances, detention, upon arrival. UNHCR does not encourage, support or facilitate any return that is not voluntary.⁵³

The evidence contained in this report highlights the systematic policy of the Greek government to “push back” or forcibly return to Turkey non-nationals who may be in risk of persecution, torture, or inhuman and degrading treatment, as well as the danger of further chain-refoulement to their countries of origin.

Member states under the Dublin II regulations should not resume transfers to Greece until they are assured that Greek asylum policy is in compliance with international obligations for the fair exercise of asylum procedures.

53 Interview with UNHCR Erbil, Iraq, 28.04.09

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