

# PRO ASYL

Bundesweite Arbeitsgemeinschaft für Flüchtlinge e.V.

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Frankfurt/M., 21 February 2008

## **Petition to the German Federal Parliament to stop deportations of refugees to Greece**

By the present petition we request the Petition Committee of the German Federal Parliament to make the following recommendations to the German Federal Parliament:

**The Federal Government is requested to instruct the Federal Office for Migration and Refugees not to order any deportations to Greece in the context of the Council Regulation Dublin II and instead to assume the responsibility for the asylum procedures.**

### **Statement of reasons**

In October 2007 PRO ASYL published a report on the situation of refugees in Greece.<sup>1</sup> The results of the study: Greece systematically disregards human rights obligations towards asylum seekers. The Greek coastguard forces refugee boats on the Mediterranean to go back in the direction of Turkey, thereby violating the ban on *refoulement* of the Geneva Convention on the Status of Refugees (no Contracting State shall return a refugee to a persecutor state, Art. 33 §1 GRC). The Greek coastguard puts refugees ashore on uninhabited islands<sup>2</sup>, and deliberately damages refugee boats. In addition, the report documents cases of ill-treatment, even of torture, by the coastguard.

The living conditions of the refugees reaching Greece are sub-standard. In contravention of the requirements of the EU Reception Directive, Greece has no semblance of a reception system for refugees guaranteeing them a life in dignity and a minimum of state benefits.

Despite the horrifying scenario in store for refugees there, asylum seekers are being deported from Germany to Greece. The basis for these deportations is the Council Regulation known as Dublin II<sup>3</sup>. This regulation sets out which EU state is responsible for carrying out the asylum procedure. This competence is determined by criteria according a certain rank order. In the bulk of cases the competence is determined by the place of entry to the EU. However, if an EU state issues a visa for a refugee, this provides the basis for its competence for the asylum procedure. Exceptions are made for families and unaccompanied minors. Families have the right to reunion up to the first decision on

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<sup>1</sup> Pro Asyl, "The truth may be bitter, but it must be told". On the situation of refugees in the Aegean and the practices of the Greek coastguard, October 2007.

<sup>2</sup> On recent allegations see reports in spiegel online of 9.1.08, <http://www.spiegel.de/politik/ausland/0,1518,527533,00.html>.

<sup>3</sup> Council Regulation (EC) No 343/2003 of 18 February 2003.

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asylum. Unaccompanied minor refugees can go through their asylum procedure at the place where they first lodged an application for asylum (even if they entered via another state).

Independently of the above criteria, every Dublin state can also take on the competence according to the "sovereignty clause" (Art. 3(2) Dublin II). In the cases in which Greece is actually responsible due to the regular criteria, Germany can justify its competence by the Federal Office for Migration and Refugees making use of this clause and assuming these obligations. There should be a general instruction by which the right to take over the responsibility for the asylum procedure is used in all cases in which there is a possibility of returning a person to Greece.

So far the competent Federal Ministry of the Interior (BMI) – despite all previous reports – has refused to take such a decision. Questioned by Member of Parliament Josef Winkler (Bündnis 90/Die Grünen) the Parliamentary Secretary in the BMI, Peter Altmaier, replied that from 1.1.07 to 31.10.07 Germany had asked Greece to take over 364 cases.<sup>4</sup> Greece had granted this request in 217 cases and 84 asylum seekers had already been returned. Germany deports minors, not just adults to Greece. In the last few weeks only the return of unaccompanied minors to Greece has been suspended.

Secretary Altmaier further stated that the federal government did not intend to suspend removals of asylum seekers to Greece. It assumed that asylum seekers returned to Greece would be dealt with according to the rules of European asylum law and international law, and there was no evidence to the contrary. The European Commission was responsible for compliance with European law, the BMI representative said.

The BMI has not yet realistically appraised the situation in Greece and by allowing refugees to be sent back has left them to an uncertain fate.

We are not concerned to let Greece out of its responsibility for refugee protection. Together with the Group of Lawyers for the Rights of Refugees and Migrants, PRO ASYL published the report on Greece on 29 October 2007 in Brussels and in Athens and called upon both the Greek government and the European Commission to take action. The Greek government promptly promised to undertake comprehensive investigations. So far there has been no sign of this. No steps have been taken to change structures.

As long as the conditions in Greece continue to be so bad, however, Germany must take responsibility for the refugees concerned and take charge of the asylum procedure itself pursuant to Art. 3(2) Dublin II. Deportations to Greece must be stopped immediately.

The following arguments justify the assumption of competence for asylum procedures and the stopping of deportation to Greece:

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<sup>4</sup> BT Drs. 16/7216 (record of parliamentary question-time).

## 1. No effective access to asylum procedure

The Greek asylum system currently does not guarantee effective access to the asylum procedure or a hearing for the applicant when lodging an asylum application. Access to the procedure is problematic because most asylum applications cannot be registered by the competent authorities at all. It is usually the local police stations that are responsible for deciding whether an asylum application can be lodged. About 95% of all asylum applications in Greece are lodged in Athens. The competent police station is over-taxed with the number of asylum applications being lodged. According to the Greek government about 40,000 applications are currently waiting to be processed.

Up until September 2007, just under 300 people a day attempted to register with the Attica Police Asylum Department and lodge their application for asylum. The Department was able to register about 120 asylum applications each day. After September 2007 the handling capacity fell to just under 80 cases a day. The Greek authorities then created another system of granting appointments. For several months now, asylum seekers have had to queue up on Sunday to get an appointment for the following week. Of the over 1000 people who have queued outside the building in the last few weeks only about a quarter have received such an appointment. The others were forced to try again the following Sunday and had to go through the same degrading procedure of standing in line with a low chance of success<sup>5</sup> (see appendix).

Lawyers and UNHCR in Greece state that there is no access to the building and thus to a regular asylum procedure. Apart from those using this appointment system, the only asylum seekers entering the building of the Attica Asylum Department are those accompanied by lawyers and organisations, according to the Ecumenical Program for Refugees, the Group of Lawyers for the Rights of Refugees and Migrants and UNHCR Greece.

Those seeking protection are deprived of their rights by the fact that access to the building is difficult, not to say impossible. According to reports by lawyers, it is usual practice that asylum seekers who do not register with the Asylum Department within five days are called "untraceable". The reasons why someone might be prevented from registering – e.g., that they are prevented from entering the building – are not taken into account.

The problems involved in registering and gaining access to the asylum procedure are shown on the example of the following case documented by PRO ASYL.

On 23 January 2008 the 26-year-old Iranian asylum seeker K.P.<sup>6</sup>, whose parents have refugee status in Germany, was deported from Frankfurt to Greece. The authorities did not consider using the humanitarian clause or the Dublin II regulation's sovereignty clause. Mr P. was placed in police custody at Athens airport immediately after his arrival in Greece on 23 January 2008. Karl Kopp, Director of European Affairs of PRO ASYL, flew to Athens on 31 January 2008 to find out what was happening. With the Greek lawyer

<sup>5</sup> Source: Conversation between Karl Kopp and lawyer Giota Massouridou, Group of Lawyers for the Rights of Refugees and Migrants, on Monday, 4 February 2008 and the report "Results of research carried out from 31 January to 7 February 2008 in Athens on the situation of asylum applicants returned from Germany to Greece" (appended).

<sup>6</sup> Federal Office: Ref. No. 5284782/438; a pending petition procedure: Ref. No. Pet 1-160-266-033032.

Marianna Tzeferakou, mandated by PRO ASYL, Karl Kopp visited Mr P. in detention. Mr P. reported to them that a policeman had interviewed him immediately on his arrival from Germany – but without an interpreter. He did not know whether his asylum application had been understood. On the second day a policeman appeared and asked whether he wanted to make other statements. Here, too, there was no interpreter. Mr P. was at no time informed of his rights. The legal basis for Mr P. being held in custody was not clear even to the lawyer. Until lawyer Tzeferakou visited him, Mr P. had been refused permission to telephone his relatives.

PRO ASYL had contacted the German embassy as early as on 25 January 2008 but it remained inactive in the days after the arrival of P. Yet the Federal Office for Migration and Refugees had stated that the German embassy would monitor the matter to check on access to the asylum procedure. This was general procedure in cases of returns to Greece, according to the BMI.

Only when the lawyer threatened to report the matter to the Public Prosecutor was Mr P. released. Then PRO ASYL accompanied him during the process of registering. Mr P. was told that he could not enter the Asylum Department as long as he did not have a place of residence. To this end he was to present confirmation of having accommodation with the signature of the main tenant or the owner.

If asylum seekers manage to register with the police or other bodies and receive a Red Card the following happens: the Red Card confirms that the holder has lodged an asylum application. It entitles him/her to stay in Greece for a period of six months and is renewed every six months. If the Red Card does not include an address the asylum seeker is considered “untraceable“. The rejection in the first instance, which is the rule, is then posted on a public notice board. The deadline approaches and if no appeal is made then the rejection takes effect.

Access to the asylum procedure and the protective rights laid down in the Geneva Convention is thereby de facto prevented by administrative action.

## **2. Detention of asylum seekers after being returned**

PRO ASYL has documented several cases of asylum seekers being immediately detained on being returned to Greece.

One case was that of the pending petition procedure of the Iranian asylum seeker K.P. (see above). Mr P. was only released from detention ten days after a lawyer had been contacted to intensively follow the case. Other asylum seekers are not represented by a lawyer and thus exposed to the practice of detention without legal protection. There is no legal basis for such detentions either in Greek or in European law.

In another case, that of a Syrian returned to Greece from Germany, the entry via the return process was classified as “illegal entry“ and deportation detention was immediately ordered. Mr S. was transferred from Frankfurt to Athens on 22 January 2008 at 9 am in a Lufthansa aircraft and has been held at Athens airport ever since. He is a Syrian national,

and was born on 1.1.80 according to documents of the Federal Office for Migration and Refugees. He was sent back with the agreement of the Greek authorities under Dublin II. In a letter the Greek authorities stated that Mr S. had lodged an asylum application in Greece before, under an alias as a Palestinian, and that he had been rejected in first instance. The Federal Office still insisted on returning him.

In a letter of 22 January 2008 the regional branch of the Federal Office in Reutlingen told the Sigmaringen Administrative Court that it was not necessary to stop the return, there being no evident legal claim to a suspension. Greece was a member state of the European Union, where asylum procedures were subject to the provisions of the Qualification Directive.

“According to the statement by the Athens Police of 14.5.07, which I enclose, Mr S’s the asylum application in Greece was rejected. The communication of 14 March 2007 (Reference No. 5238848) stated that the asylum seeker was not entitled to asylum in Germany and that deportation to Greece was ordered. The applicant can present any impediments to deportation, which would inhibit removal to Syria, to the Greek asylum authorities. – p.p. Buchner“ (excerpt from the letter from the Federal Office of 22 January 2008).

Mr S. has been in deportation detention since he was returned to Greece on 22 January. He was transferred to the old Elliniko airport where there is a deportation prison. He is threatened with imminent deportation to Syria.

The new deportation decision<sup>7</sup> says that Mr S. was detained at Athens airport on 22.01.08 at 12 pm on grounds of illegal entry – 76 paragraph 1b of law 3386/2005<sup>8</sup>.

The last visit of lawyer Marianna Tzeferakou took place on Saturday 16 February 2008. On that occasion Ms Tzeferakou lodged a new asylum application – an application to reopen the case, based on the Dublin II Council Regulation and new grounds for asylum. This new application is intended to prevent further deportation to Syria.

It is in no way comprehensible how the implementation of the EU regulation on competence, i.e. deportation to the competent EU member state by state authorities, could constitute an illegal entry. Nevertheless, that is the legal interpretation of the Greek authorities. Here we see that access to the asylum procedure is not guaranteed when an asylum seeker has spent some time in another EU state before making the application. There is a risk of illegal detention after being returned to Greece and of deportation to the persecutor state. In the case of the Syrian deported from Germany, there is a risk of serial deportation.

### **3. Serial rejection of asylum applications without examination**

In Greece, asylum rejections are not given an individual statement of reasons. A study conducted by the UNHCR showed that the negative decisions do not comment on the

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<sup>7</sup> Deportation Decision Minutes No. 366233/1b Case No. 04/000604024.

<sup>8</sup> Source: Statements by lawyer Tzeferakou on 19 February 2008.

grounds for asylum presented. There is no engagement with the facts, and a detailed legal assessment is lacking in all communications examined by the UNHCR.<sup>9</sup>

The decisions in second instance follow a similar pattern. In the week of 28 January 2008 to 1 February 2008 the competent committee conducted sessions on two days. 15 refugees were interviewed every hour<sup>10</sup>. Thus only four minutes were available to each asylum seeker to explain the reasons why s/he had fled and to examine the correctness of the first asylum decision.

In the decisions, the summary of the factual basis is generally no longer than two lines. The grounds for rejection are – regardless of the country of origin – always based on the same text modules.<sup>11</sup> The vast majority of asylum seekers receive a standardised rejection note. There can thus be no question of an individual examination of the asylum applications.

The Executive Summary of the UNHCR Study “Asylum in the European Union – a Study of the Implementation of the Qualification Directive“ reports on the quality of the written decisions in Greece: *“In Greece 305 first instance decisions taken by the Ministry for Public Order (MPO) were studied. All 305 decisions – relating to applicants from Sudan, Iraq, Afghanistan, Somalia and Sri Lanka – were negative. None of the decisions contained any reference to the facts and none contained any legal reasoning. All contained a standard paragraph stating that the applicant left his/her country to find a job and improve living conditions. A review of second instance decisions by the Ministry for Public Order found that the summary of the facts normally did not exceed two lines and the negative decision was stated in a few lines in standardised form. As a result, it was not only impossible to deduce the interpretation of the law applied by the Ministry of Public Order, but it was not possible to deduce, from the decisions alone, whether the law was applied at all. With the consent of the Ministry of Public Order the case files were therefore reviewed. 294 of the first instance case files reviewed did not contain the responses of the applicants to standard questions posed by interviewing police officers. No other information was contained in these files about the Applicant’s fear of persecution or serious harm. In the overwhelming majority of the reviewed case files the interviewing police officer registered the reasons for leaving the country of origin as ‘economic’. The second instance case files contained the recommendation of the Consultative Asylum Committee, but the recommendation usually consisted of two standardised sentences. Generally there was no further information relating to the facts or legal reasoning, and there no recorded minutes of the hearing before the committee.”*

No more devastating report can be given of an EU member state that has signed the Geneva Convention on the Status of Refugees and participated for years in the process of European harmonisation. What is written here means that Greece does not comply with the minimum requirements under the rule of law with respect to asylum seekers. The statements made by the asylum seeker are de facto ignored and leave no trace in the procedural files. Neither the first or second instance addresses the individual case of persecution.

<sup>9</sup> UNHCR, Asylum in the European Union, A Study of the Implementation of the Qualification Directive, November 2007, p. 31.

<sup>10</sup> Source: Statement by lawyer Eleni Spathana, member of the Athens chamber of lawyers and of the 6-person Appeals Board<sup>10</sup>, made to Karl Kopp on 4 February 2008.

<sup>11</sup> UNHCR, Asylum in the European Union, A Study of the Implementation of the Qualification Directive, November 2007, p. 32.

These flaws impact on the figures for recognition. In the last five years the number of asylum seekers in the EU has halved. Greece is one of the few EU states who can record a statistical rise. In 2006 the Greek authorities listed 12,270 requests for asylum. From 1 January 2007 to 1 July 2007 14,594 applications for asylum were registered in Greece.<sup>12</sup> The number of those granted refugee status there is practically zero: in 2004 0.3% of all asylum seekers received refugee status. If we include forms of humanitarian protection the figure was 0.9%. At the time that was the lowest recognition share in the EU-15 (i.e. member states before enlargement in 2004). In 2005 the protection share – refugee status plus other forms of protection – rose minimally to a total of 1.9 % (39 persons)<sup>13</sup>, whereas in 2006 it fell again to 1.2%<sup>14</sup> - not a single Iraqi was recognised as a refugee in that year. From January to July 2007 13,445 asylum applications were negative (including 2,649 from Iraq, 685 from Afghanistan, 545 from Syria, 222 from Iran, 77 from Somalia, and 75 from Sudan). Until and including August 2007, 16 persons received refugee status, and 11 persons humanitarian status.<sup>15</sup>

#### **4. EU asylum directives not implemented**

Contrary to the assumption of the Federal Ministry of the Interior<sup>16</sup> asylum seekers are not treated in compliance with European law. Greece has not yet transposed the asylum directives into national law. Neither the directive on reception conditions nor the directives on preconditions for recognition or the asylum procedure have been transposed into Greek law.

Greece was sentenced by the European Court of Justice in Luxemburg for its non-transposition of the Reception Directive.<sup>17</sup> But even if a law were passed to transpose the directives, greatest caution would be necessary. After all, the EU directives can be used directly in Greece, even if they have not been formerly transposed. However, they are not respected in practice.

There is little hope of the EU Reception Directive being implemented soon. Indeed, for the foreseeable future, fulfilling European obligations will come not be possible for lack of resources. In order to implement the Reception Directive there will need to be a great increase in accommodation facilities. That will probably take quite a considerable time.

#### **5. Reception conditions in Greece are a disaster**

Greece possesses no adequate reception system. The Greek reception system currently provides only 740 places to stay in the whole country.<sup>18</sup> A comparison of the numbers of asylum seekers (over 23,000 applications for asylum in 2007) and the numbers of accommodation places shows the shortfall. That means that after being returned under Dublin II asylum seekers remain homeless and without resources.

Most existing accommodation centres do not even meet minimum standards according to UNHCR Greece. The UNHCR criticises that access to medical care and school education

<sup>12</sup> UNHCR Greece: Reply of 14 September 2007 to an inquiry from the Group of Lawyers for the Rights of Refugees and Migrants.

<sup>13</sup> Press release of UNHCR Greece of 16 February 2006, and ECRE Country Report 2005 Greece.

<sup>14</sup> UNHCR Greece, information paper of June 2007.

<sup>15</sup> UNHCR Greece: Reply of 14 September 2007 to an inquiry from the Group of Lawyers for the Rights of Refugees and Migrants.

<sup>16</sup> BT Drs. 16/7216. p. 14 (record of parliamentary question-time).

<sup>17</sup> Judgment of 19 April 2007, case C-72/06.

<sup>18</sup> UNHCR Greece information paper of June 2007.

is not adequate. In addition, no precautions are taken for those with special needs. No special provision is made for victims of torture, unaccompanied minors, pregnant women or persons with disabilities.<sup>19</sup>

The consequences of the lack of accommodation and social provision are obvious: asylum seekers often remain homeless even while their procedure is taking place. If an asylum seeker is not accommodated in a reception centre he or she receives no financial or social support in Greece. In Greece asylum seekers are allowed to work after three months<sup>20</sup> - but only if they have an asylum seeker card, a tax number and a place of abode.

Even those with special needs are forced to manage on their own or to hope for private assistance. In November 2007 a single mother from Afghanistan deported with her three children from France had to live for months in a park, without a roof over her head or any material assistance.<sup>21</sup>

## **6. Way of dealing with unaccompanied minor refugees is against human rights**

At present there are about 85 accommodation places for unaccompanied minor refugees available in the whole country<sup>22</sup>. In Athens there are officially ten places suitable for children. These few places are only granted to children and young people after they have applied for asylum – if at all. The competent Health Ministry intends to raise the reception capacities to 100 places. Establishing a person's age is not regulated under Greek law. The authorities do not attempt to do so. Sometimes police officers do not accept a person's statement of age. On the basis of the law that young people can only enter the labour market from the age of 18, it often happens that much younger boys give this as their age. Nor are the rights of minors guaranteed in terms of procedural law. The law provides that the "Prosecutor for minors" represents the interests of children in the asylum procedure. In practice this representation does not happen. These and other deficiencies regarding the reception of refugee children have constantly been pointed out by the Greek ombudsman in the last few years.<sup>23</sup> Mostly the Prosecutor hears nothing about the presence of a child. Even if this information were available, the authorities do not see themselves as in a position to intervene for lack of staff. The obstacle for many minors (as for adults) is gaining access to the asylum procedure in the first place. On the example of the Mitilini detention centre, the ombudsman points out that refugee children are not given any information about their rights and cannot use the services of an interpreter. Legal representation is generally not requested. The dismissal papers with the requirement that they leave the country within 30 days are given to children in the same way as to adults. In the view of the ombudsman, each child needs a guardian and a place to stay in a centre suitable for children.<sup>24</sup>

<sup>19</sup> UNHCR Greece, press release of 16.02.06.

<sup>20</sup> ECRE, The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?, p. 14.

<sup>21</sup> Source: report by lawyer Marianna Tzeferakou, Athens.

<sup>22</sup> See UNHCR Greece information paper of June 2007.

<sup>23</sup> Ombudsman, Conclusions on the situation of unaccompanied minors, see UNHCR Greece information paper of June 2007.

<sup>24</sup> Ombudsmann, Conclusions on the situation of unaccompanied minors in Pagani-Mitilini of December 2006, Report on the administrative detention and deportation of minors, October 2005 – [www.synigoros.gr](http://www.synigoros.gr)

This way of dealing with minor refugees disregards the welfare of the child and constitutes a violation of EU standards and the UN Convention on the Rights of the Child.

## 7. Germany's human rights obligations

In its decisions, Germany must measure the consequences of deportation to Greece against the standard of human rights. Withdrawing to the formal position of not being responsible is inadmissible from a human rights angle. This was already stated by the European Court for Human Rights (ECtHR) in 2000. Despite the system allocating EU competence, there is a link to the human rights commitments derived from Art. 3 ECHR.

In Case T.I. versus the United Kingdom<sup>25</sup> the ECtHR stated that in applying the Dublin Convention a refugee must not be deported to another contracting state without examination of the relevance of Art. 3 ECHR. The Court expressly stated the ECHR States Party are not relieved of their Art. 3 obligations when they create international institutions and conventions to promote intergovernmental cooperation in the field of asylum and refugee law. This would be incompatible with the purpose and aim of the convention, according to the ECtHR.

In view of the Greek conditions, Norway stopped transfers to Greece under the Dublin II regulation from 7 February 2008.<sup>26</sup>

Already there are court decisions from other EU states that have declared the returning of refugees to Greece under Dublin II to be inadmissible.<sup>27</sup> The highest British court decided in August 2007 that applying Dublin II in the UK to a threatened return to Greece is in contravention of the obligation arising from Art. 3 ECHR to substantively examine the possible consequences of deportation.<sup>28</sup> The Belgian appeal court prohibited the return of an Iraqi to Greece, stating that the applicant would there be exposed to the risk of "serious, irreparable harm", stemming from Greece's neglect to protect Iraqi asylum seekers adequately.<sup>29</sup> A similar decision was taken by the court of first instance in Brussels in revoking the deportation of an Afghan family to Greece. The Belgian supreme court prohibited the return of two Turkish nationals to Greece in August 2006.

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<sup>25</sup> European Court of Human Rights Third Section Decision as to the Admissibility of Application 43844/98 (2000) 12 IJRL 244-267.

<sup>26</sup> Decision of Utlendingsnemnda (of the Norwegian first instance court) of 7.2.08, press release at [www.une.no](http://www.une.no).

<sup>27</sup> Decision of Queen's Bench Division, Javad Nasserri v Home Office (2007), EWHC 1548; Belgian appeal court, ref. no. 2769, 19.10.07.

<sup>28</sup> Decision of Queen's Bench Division, Javad Nasserri v Home Office (2007), EWHC 1548.

<sup>29</sup> Belgian appeal court, ref. no. 2769, 19.10.07.