

The Dublin Dilemma – “Burden shifting” and putting asylum seekers at risk

Over the past 12 months there has been a lot of interest in, and discussion about, the situation facing asylum seekers in Greece. In many cases this interest was triggered by protests raised by asylum seekers in other European countries facing the prospect of being returned to Greece under the Dublin II Regulation. Appeals were made by individuals and NGOs in countries including Norway, Sweden, Germany and the Netherlands and, as a result, numerous returns were suspended. In its Position Paper¹ in April 2008, the UNHCR advised *“Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice. UNHCR recommends that Governments make use of Article 3 (2) of the Dublin Regulation, allowing States to examine an asylum application lodged even if such examination is not its responsibility under the criteria laid down in this Regulation.”*

In arriving at this recommendation UNHCR cited (i) problems at the airport (including lack of sufficient asylum personnel, lack of interpretation and legal services and lack of information on the status of asylum-seekers claims, the procedure and deadlines), (ii) the quality of Refugee Status Determination procedures, and (iii) the shortcomings of the reception conditions in Greece. At the date of writing this paper², UNHCR's position remains in force and, it is submitted herein, that the grounds of the position paper have not changed.

Problems at the airport

Asylum seekers returned to Greece under the Dublin II Regulation will normally³ be admitted into the asylum procedure.

In the case of persons who had previously sought asylum in Greece, this means that they will receive an asylum seeker's card without being interviewed. In the event that a decision has been made in relation to their asylum claim (which in almost all cases is a rejection decision), they will not receive their card at the airport but will be told to proceed to the Asylum Division of the Aliens' Directorate on Petrou Ralli Street to receive further information in relation to their asylum claim and to declare their home address.

Persons who had not previously applied for asylum in Greece will be interviewed at the airport immediately following arrival. Reports from all Dublin returnees indicate that the interview is carried out without the presence of an interpreter. The “interview” usually lasts 5 minutes and, in most cases, the only question asked –in English- is why the applicant came to Greece.

No explanation is given to the asylum seekers regarding the procedure or their rights / obligations and the only information provided is a single page listing names and addresses of NGOs and the address of the Asylum Division where they should go to declare an address. Although almost all Dublin returnees are homeless and most have no friends or relatives in Greece, no information is provided to them about finding accommodation. Returnees are not even informed that the obligation to

¹ UNHCR Position on the Return of Asylum-Seekers to Greece under the “Dublin Regulation” – United Nations High Commissioner for Refugees, 15 April 2008

² 15 February 2009

³ Asylum seekers who had applied for asylum in Greece before going to another European country and whose claims were finally rejected will not be readmitted into the asylum procedure

declare an address to the Police Asylum Division at Petrou Ralli includes an obligation to notify the police that they are homeless. Indeed the declaration of homelessness is a necessary step without which the Ministry of Interior will not notify the Ministry of Health to seek to find accommodation for the asylum seekers.

Once returnees are released from initial detention at the airport (i.e. after a period of 3 days usually) they are left to their own devices completely. If they do manage to find their way to the Asylum Division at Petrou Ralli they are usually not allowed access because of the large number of people waiting outside the Petrou Ralli premises every day. It is therefore often necessary for NGOs to intervene to arrange access to the Asylum Division.

The implications of the problematic situation, particularly the lack of interpreters and failure to provide information can be very severe and seriously prejudice asylum seekers' chances of effectively pursuing their asylum claims. In particular:

- The failure to inform asylum seekers of the procedure puts them at risk of non-compliance with requirements (e.g. the obligation always to notify an address and each change of address thereafter), and could result in their asylum claim being "interrupted" (i.e. terminated). Alternatively, the failure to inform asylum seekers of the content of rejection decisions (which are only in Greek) and the time limit for an appeal, results in many asylum seekers failing to exercise their right to appeal in time and effectively being excluded from the asylum procedure on a technicality, without ever having been given an opportunity to understand what they were obliged to do.
- The failure to provide interpreters exacerbates the problem of the lack of information provided to asylum seekers, since they cannot communicate with the authorities at the airport to obtain information which is necessary following their release (e.g. directions to Petrou Ralli, information about accommodation etc). As a result, Dublin returnees often spend several days in the streets, sleeping in parks, while trying to find out what to do next. Often the more vulnerable cases, families and unaccompanied minors, fall victim to exploitation, often being forced to borrow money to pay for a place to stay.
- The "interview" which is carried out at the airport and which forms the basis of the asylum seekers' claim fails to meet the most fundamental standards of Refugee Status Determination procedure. Without an interpreter the asylum seeker does not have a real opportunity to explain the reasons why he/she has a well-founded fear of persecution and very often does not even realize that this is what he/she is being asked to do. Often the only question asked is "why did you come to Greece". Some asylum seekers have reported being confused when asked this question, believing that they are being asked to state why they came back to Greece from the other European country.

Quality of Refugee Status Determination procedures

The description of the situation in UNHCR position paper still applies with regard to the quality of the first-instance asylum procedure. In the case the Dublin returnees, as described above, the situation is worse, since the procedure at the airport is carried out without any interpreters present.

Whilst there is hope that the second-instance stage of the procedure will be improved following transposition of the Procedures Directive by Presidential Decree 90/2008 (which was enacted in July 2008), improvements remain to be seen, since the newly

empowered Appeals' Board only started its operations at the end of November 2008. However, the important point to note is that the severe shortcomings in the first-instance procedure referred to herein (lack of interpreters, failure to inform persons of the procedure and their rights, failure to conduct a proper interview at the airport) often prejudice the asylum seekers' claim to such an extent that they may not even reach the second-instance. This may happen, for example, if the asylum seeker does not understand the contents of a rejection decision or the need to lodge an appeal within a certain deadline. Such cases occur very frequently as a result of the lack of interpreters and failure to inform asylum seekers. In 2008 GCR filed 198 out-of-time appeals for such cases, all of which involved persons who had not realized the meaning of the rejection decisions in time to lodge their appeal. The above figure would have been much larger but was limited, initially, because of lack of funds and, subsequently, because the authorities refused to accept service of appeals out of time unless they were served personally by asylum seekers, who would then be arrested and detained for a period of up to three months.

Shortcomings of reception conditions

There are currently fewer than 700 places in camps or other forms of accommodation for asylum seekers. Of these places approximately 180 are reserved for unaccompanied minors or families. The figure is lower than the figure of 770 referred to in UNHCR's position paper, because one facility closed since the date of the position paper. There were over 19,000 new asylum applications filed in Greece last year, the majority of whom were in need of accommodation. It is, therefore, easy to see that only a very small percentage of asylum seekers have a chance of receiving accommodation.

Dublin returnees have equally few chances of being granted accommodation, since they do not receive any priority over other asylum seekers. As a result, most Dublin returnees are forced to remain homeless for lengthy periods of time. Regrettably this situation also affects unaccompanied minors and families with small children, since places in camps cannot be found immediately even following the intervention of NGOs. It should be noted that the social service of GCR has a list of about 70 families who are homeless and waiting for accommodation. The average waiting time is about 2 months, with some families waiting for as long as 6 months.

Information provided to fact-finding missions from other countries - Conclusions

The Legal Assistance Unit of the Greek Council of Refugees has been approached on numerous occasions by NGOs in other European states in order to provide information regarding the conditions faced by asylum seekers in Greece, in support of applications made by asylum seekers challenging decisions ordering their return to Greece under the Dublin II Regulation.

In November 2008 the foregoing information was provided to representatives from the German Federal Office for Migration and Refugees in a meeting during their visit to Athens. Particular emphasis was given to the risk of "indirect refoulement", i.e. the risk that the legal pitfalls and failure to adhere to proper procedure can result in asylum seekers losing their status (being unfairly rejected and denied the right of appeal) and therefore becoming subject to return to their country as failed asylum seekers. In addition, however, representatives from GCR provided many examples of the problems and risks faced by Dublin returnees, which are summarized earlier in this note.

The undersigned was therefore disappointed to note several misdescriptions of the situation in a translation of a report by the Federal Office to the Administrative Tribunal of Frankfurt am Main dated 05.01.2009. In particular the suggestions (a) that most asylum seekers have relatives in Greece, and (b) that asylum seekers have "a choice" to visit the Petrou Ralli asylum department to lodge claims on weekends (when, in fact, it is the only time they are allowed to do so), are simply incorrect and not supported by any evidence. In relation to these and numerous other points, the report appears to accept a hypothetical description of how the system *should* work as an accurate portrayal of how the situation *actually* is, despite accounts to the contrary from NGOs, the UNHCR and countless testimonies of asylum seekers. This is regrettable and does no justice to the plight of literally thousands of asylum seekers whose rights under international Conventions are at serious risk as a result of the current situation.

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