

COMPLAINT

TO THE COMMISSION OF THE EUROPEAN COMMUNITIES CONCERNING FAILURE TO
COMPLY WITH COMMUNITY LAW

COMPLAINANTS:



FAILING MEMBER STATE:

GREECE

Amsterdam, 10 November 2009

This complaint is an initiative of the Dutch Council for Refugees and is also submitted on behalf of the Finnish Refugee Advice Centre, PRO ASYL and Refugee and Migrant Justice.

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SUMMARY

Introduction

Despite numerous appeals to Greece and to the European Commission, the Greek asylum system remains in a deplorable state. In this complaint we will demonstrate that, by failing to improve the appalling conditions for asylum seekers, Greece is blatantly violating the provisions of the EU asylum acquis, including some of the most fundamental principles upon which the EU is founded, such as the principle of non-refoulement, the right to asylum, and the right to human dignity. It is essential that Greece brings its law and practice into line with the EU asylum acquis. It is thus of the utmost importance that immediate action be taken by Greece as well as the European Commission to tackle the numerous problems that currently exist in Greece.

Access to the asylum procedure

The Greek authorities make it very difficult for asylum seekers to access asylum procedures. Several reports document illegal methods used by the Greek government to prevent irregular migrants (some of whom are asylum seekers) from entering Greek territory, for instance by immediately returning them to Turkey. In the process asylum seekers' lives are put at risk. When asylum seekers do make it to Greek territory, many of them are detained upon arrival. There appears to be a practice of discouraging people from applying for asylum. Furthermore, procedural requirements make it very difficult for asylum seekers to actually lodge an asylum application. Additionally, numerous eyewitnesses report that people waiting in queues to lodge a complaint are mistreated verbally and at times physically.

Procedural safeguards

Recently a new Presidential Decree has entered into force. However, the procedural measures that were supposed to be taken have not been implemented as envisioned. This shortcoming is highlighted by the fact that UNHCR Greece refused to participate in the advisory Refugee Committee that is tasked with conducting asylum interviews, citing concerns that the necessary procedural safeguards will not be met. At the moment, most first instance procedures that need to start with a personal interview seem to have been suspended. Before the entry into force of this Decree, the procedure was characterised by the use of unqualified staff, a shortage of interpreters, poor quality interviews (which focus on economic reasons for leaving one's country of origin rather than the substance of an asylum claim) and lack of legal aid. Moreover asylum decisions were not well reasoned. As a result of the continuous shortage of qualified staff, including interpreters, there are no signs that the quality of the interviews will improve under the new Decree. On the contrary, the planned decentralization is likely to result in a deterioration of the standard of first instance procedures. Finally, what is certainly a deterioration in the protection of asylum seekers is that the new Presidential Decree abolishes the possibility to have the merits of the asylum claim considered in appeal.

International protection: risk of refoulement

Asylum seekers run the risk of being subject to *refoulement* by the Greek authorities due to the insufficient examination and therewith unjust rejection of the asylum claim. In addition, alarming allegations have been made in several reports, such as from Human Rights Watch, about cases of *refoulement* pending ongoing asylum procedures (thus even before a decision has been made on the asylum application) and about cases of *refoulement* of people seeking protection before they even had a chance to file an asylum application. According to these reports Greece systematically and illegally deports irregular migrants, amongst them asylum seekers. In the process they are often ill treated by the Greek police and Border Guard. In Turkey they run the risk of ill treatment by Turkish police and deportation to their country of origin where they run the risk of persecution and treatment contrary to Article 3 of the European Convention of Human Rights.

Reception conditions

In Greece there is a serious shortage of reception facilities. Asylum seekers end up sleeping in the streets, parks and private lodgings that are in a deplorable state and overcrowded. It is difficult for asylum seekers to receive any other benefits, such as an allowance, medical care, and other material support. Also, due to the fact that a large number of asylum seekers is unable to apply for asylum, many people who should be recognized as being an asylum seekers are not and therefore fail to receive the reception facilities to which they would otherwise have the right.

Unaccompanied minors

No special care appropriate to the needs of unaccompanied minors is adequately provided for. Minors face the same difficulties adults encounter when trying to enter and apply for asylum in Greece. Unaccompanied minors are detained and end up on the streets. On top of that, they run the risk of being subjected to abuse by officials, being used for forced labour and falling into the hands of human traffickers. Clearly, the best interests of the child are not being sufficiently taken into account, as is required by the Convention on the Rights of the Child (CRC).

Detention

If intercepted when trying to reach Greek territory by boat and not pushed back immediately, irregular migrants – among whom are asylum seekers –, will be detained automatically. It is said that refugee applicants are being routinely detained. The detention facilities appear to be old warehouses and are divided into smaller rooms. Most facilities are overcrowded and sanitary conditions are deplorable. Proper medical care seems to be almost non-existent in the detention centres. In addition, there are numerous allegations of ill-treatment of irregular migrants (among whom asylum seekers) by law enforcement officials. Furthermore asylum seekers have little or no access to legal aid and lawyers are not always allowed entry into the detention facilities.

Dublin returnees

Asylum seekers returned to Greece from other Member States under the Dublin II Regulation face the same hardship as other asylum seekers in Greece. These difficulties have been addressed by the European Court of Human Rights as well as various national courts. Some national courts have prohibited transfers to Greece. In addition, a number of NGOs, including Human Rights Watch and ECRE as well as UNHCR, have called on Member States to halt transfers to Greece and to make use of the sovereignty clause of article 3, paragraph 2, Dublin II Regulation.

In conclusion

Greece is in blatant violation of the EU asylum acquis in relation to all aspects of the asylum procedure and the treatment of asylum seekers. We therefore urge the European Commission to commence an infringement procedure pursuant to Article 226 of the EC Treaty against Greece for non-compliance with its obligations as set out in the concerning Articles of the Reception, Qualification and Procedures Directives, as well as some of the main principles of the EU.

INTRODUCTION

In 2004, UNHCR published a report concluding that the asylum system in Greece was failing in many ways. These conclusions have since been supported by reports from Human Rights Watch, Amnesty International and other NGOs. Additionally, findings from visits to Greece by the European Parliament LIBE Committee Delegation, the Committee for the Prevention of Torture and the Council of Europe Commissioner for Human Rights corroborate previous allegations about the dire situation of asylum seekers in Greece.¹ These reports address the asylum procedure in itself, as well as the difficulties asylum seekers face with access the asylum procedure, with the conditions in detention facilities, with the shortage of reception facilities and generally speaking with the treatment of illegal immigrants – among whom are asylum seekers.

The deficiencies within Greece's asylum system have been addressed twice by the European Commission. On 19 April 2007, the European Commission concluded that Greece was in violation of Article 16 of the Reception Directive for not implementing the Reception Directive within the given timeframe (Case no. 2007/C/96/26). Presidential Decree 2007/220 finally transposed the Reception Directive in November 2007. Furthermore, in 2007 the European Commission started an infringement procedure against Greece for non-compliance with Article 3, paragraph 1, of the Dublin II Regulation. The case against Greece was referred to the European Court of Justice² despite Greece's indication that it had changed its practices. As a result of this referral, the Greek authorities amended the relevant asylum laws. In July 2008, with the aim of transposing Council Directive 2005/85/EC (Procedures Directive) and Council Directive 2004/83/EC (Qualification Directive), Presidential Decrees 90/2008 and 96/2008 amended Presidential Decree 61/1999. As a consequence, the European Commission halted the infringement procedure and gave Greece the opportunity to implement its laws. After the halt of the infringement procedure the Greek authorities amended Presidential Decree 90/2008 with Presidential Decree 81/2009.

Although Greece amended its Decrees, as Mr. Hammarberg, the Council of Europe Commissioner for Human Rights concluded from his visit from 8-10 December 2008, there is no evidence that positive developments relating to refugee protection have occurred since the implementation of Decrees 90/2008 and 96/2008.³ Serious questions have also been raised about whether the latest Decree 90/2008 did in fact satisfactorily transpose the Council Directives and therefore improve the asylum system.⁴ There are also clear indications that Presidential Decree 81/2009 will further deteriorate legal safeguards.⁵ The abolishment of the second instance appeal constitutes a particular concern, since it eradicates the possibility for legal remedies. Whether or not Greek law is in accordance with the EU asylum acquis, it is obvious that in practice no sufficient improvements have been made since the last infringement procedure. An evaluation of Greece's compliance with EU

¹ Report from the European Parliament LIBE Committee Delegation on the visit to Greece (Samos and Athens) on 14-15 June 2007, Brussels 17 July 2007; Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, Strasbourg, 19 February 2009; Report to the Government of Greece in the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 23 to 29 September 2009, Strasbourg, 30 June 2009.

² Referral to the European Court of Justice 31 March 2008, Case-130/08, PbE (2008) C128/25.

³ Hammarberg 2008.

⁴ See for instance PRO ASYL, "The situation in Greece is out of control. Research into the situation of asylum seekers in Greece," 2009, p. 6.

⁵ UNHCR Press Release, "The UN Refugee Agency expresses concern over proposed Presidential Decree on Asylum," 14 May 2009; Amnesty International Public Statement, "Greece: Proposed changes to asylum procedures flagrantly violate international law," 15 May 2009; "Public intervention of NGOs and other groups for refugees and migrants", Athens, 16 July 2009.

legislation therefore cannot stop at clarifying whether European directives have been integrated into Greek laws, but whether they are actually implemented and functional. As a country at the external border of the EU, Greece receives disproportionately large numbers of asylum seekers. Greece has proved unwilling or incapable of meeting its legal obligations towards these asylum seekers, leaving them homeless, destitute and vulnerable. Due to the inhumane and unbearable conditions in Greece many asylum seekers try to find their way to other European countries. Some do so after failed attempts to apply for, or receive, asylum in Greece, but many try to leave Greece immediately and are determined from the outset not to seek asylum in Greece, having already heard accounts of the hardship faced by asylum seekers in Greece, the unfair procedure and low recognition rates. Based on the Dublin II Regulation, however, these asylum seekers can be sent back to Greece because Greece is responsible for their asylum applications. Much debate has occurred throughout the European Union regarding the question of whether the returning country should make use of the “sovereignty clause” in Article 3, paragraph 2, of the Dublin II Regulation, and therefore take responsibility for the examination of the asylum application. Underlying arguments to this debate include the possibility that a returning country itself would violate the EU asylum acquis by returning asylum seekers to Greece, where their rights are not safeguarded. Several national courts of Member States have suspended Dublin II transfers to Greece. This practice shows that the problem goes beyond Greece’s border and is instead a problem involving all EU Member States.

In this complaint we will demonstrate that by failing to improve the deplorable situation of asylum seekers find themselves in, Greece is blatantly violating the provisions of the EU asylum acquis, including some of the most fundamental principles that the EU is founded on, including the principle of non-refoulement, the right to asylum, and the right to human dignity. The NGO complainants and those who have endorsed the complaint are aware of the fact that a new Greek government has recently been elected and that this new government has expressed its intention to improve the situation for asylum seekers in the country. However, there is an urgent need to move from expressions of good will into concrete action, since unbearable conditions prevail and a functioning system for the reception and protection of refugees remains absent. The number of irregular migrants and asylum seekers entering Greece is still very high. In addition, Greece has built up an enormous backlog of approximately 30.000 asylum applications. The continuing returns of asylum seekers from other member states to Greece, based on the Dublin II Regulation, aggravates the situation by imposing additional pressure on the already collapsed Greek asylum system. The situation in Greece is a European problem that needs addressing by the European Union in a constructive manner. For these reasons the above NGOs believe the European Commission should act immediately and press the new Greek government for immediate actions that lead to the fundamental reform of the Greek asylum system.

We urge the European Commission to create a dialogue with Greece on the violations of the EU asylum acquis and if necessary to bring a case before the European Court of Justice.

1. Access to the Asylum Procedure

1.1. The situation in Greece

1.1.1. Introduction

It is very difficult for asylum seekers to gain access to the Greek asylum procedure. Most asylum seekers attempt to reach Greek territory from Turkey, by heading for the Greek Islands (Lesvos, Chios, Samos, Leros) or for the Evros border area. In the attempt to combat unwanted migration into Greece, and therefore into EU territory, Greek authorities, prevent protection seekers from claiming their right to asylum. When Greek coast guard and police officials first apprehend migrants (amongst them asylum seekers) at the borders, they are often brutal and intimidating.⁶ The accounts of physical and verbal abuse upon entry are numerous.⁷ In addition to the difficulties asylum seekers face when trying to enter Greek territory, asylum seekers encounter significant problems in obtaining access to the asylum system once they are in Greece.

Account from a Somali asylum seeker⁸

“I fled from Somalia over land to Turkey. Our agent put us in small boat with around 20 people. After a couple of hours we arrived at the shore of an island. I don’t know which island it was. We walked for about four hours when we were caught by the Greek police and got arrested. The policemen searched us. The men in our group were beaten hard with the police bats. When we arrived at the police station (by foot as it was not far away), the policemen ordered us to sit down on the floor in a line. We had to sit and wait there for twelve whole hours, from ten in the morning to ten in the evening.”

1.1.2. Pushbacks and summary returns to Turkey

Reports contain evidence that the Greek authorities take illegal measures to try to prevent migrants from entering Greek territory. According to numerous reports, migrants regularly experience severe mistreatment at the hands of Greek authorities when trying to cross land or naval borders. Some migrants are caught in Greek territory and returned before travelling further inland, while others are detained for several days before being returned to Turkey.⁹ Since Summer 2009 there have also been numerous transfers from detention facilities all over Greece to the Evros border area, that have lead to concerns that they may have been carried out to facilitate expulsions to Turkey.¹⁰ Amongst the migrants are many people from conflict-torn countries, including Afghanistan, Iraq and Somalia, who are seeking protection.¹¹ This problematic situation is discussed more comprehensively in Chapter 3.¹²

1.1.3. Mine fields in the Evros border area

Arriving at the Evros border area entails a huge risk to life and safety, because of mine fields in the area. The latest report from the Council of Europe Commissioner for Human Rights

⁶ Human Rights Watch 2008, p. 32.

⁷ Human Rights Watch 2008, p. 32-47. See addendum II for accounts supporting this complaint.

⁸ See addendum II for the complete account under nr. 3.

⁹ Hammarberg 2009, p 5-7.; NOAS, NHC & AITIMA, “Out the back door, the Dublin II Regulation and illegal deportations from Greece”, October 2009, p. 26.

¹⁰ PRO ASYL and the Greek Council for Refugees.

¹¹ UNHCR News Stories, “UNHCR delegation visits detention centre on Greek island, urges closure”, 23 October 2009.

¹² Human Rights Watch, “Greece: unsafe and unwelcoming shores”, 12 October 2009, p. 1; NOAS, NHC & AITIMA 2009, p. 24.

states that between 1995 and 2007, 104 irregular migrants had been killed and another 187 severely injured in border minefields. In 2008, there were five registered amputee mine survivors – all of whom were foreign nationals – and four irregular migrants were killed.¹³

1.1.4. Discouraging applications for asylum

Many migrants who wish to seek asylum are detained upon arrival in Greece, without inquiry as to whether they seek international protection.¹⁴ While in detention, those seeking international protection are dissuaded from applying for asylum in various ways. The most common way is that guards inform detainees that people who apply for asylum are detained longer than those who do not.¹⁵ In a number of documented cases this has proven to be true. In the detention centre of Pagani on the island of Lesbos, Afghan asylum seekers have been detained for more than four months, while the average detention period is three months.¹⁶

When detainees do indicate their wish to apply for asylum, their requests are routinely ignored. The applications are only registered when the asylum seeker is assisted by a lawyer. However, even in cases where asylum seekers have legal representation, it is not guaranteed that the authorities initiate proper procedures. Police also tend to ignore requests for international protection expressed by migrants when they are arrested. A 20-year-old Iraqi man told the police that his life would be in danger when returned to Iraq. The police not only ignored his request for international protection but also slapped him and consequently deported him to Turkey.¹⁷

Account from a Somali asylum seeker¹⁸

“We told the Greek police officials that we were asylum seekers seeking protection and that we wanted to apply for asylum. It was almost impossible to communicate, and there were no interpreters. But finally we understood that the only response was that it was not possible to apply for asylum there, and that we would be detained for illegally entering the country.”

1.1.5. Procedural difficulties in applying for asylum

Numerous accounts claim that fingerprints and credentials (including country of origin, date of birth and names) are registered. However, on more than one occasion dates of birth and names have been written down incorrectly. For instance, an unaccompanied 15-year-old boy was registered as being 18 years old and a Palestinian was registered as coming from Afghanistan. There have also been cases in which wrong photographs were used.¹⁹ Moreover, despite the existence of the registration process, people seeking international protection are not then given an opportunity to file an application for asylum. Other opportunities to apply for asylum are few and accompanied with administrative difficulties.

¹³ Hammarberg 2009, p. 12.

¹⁴ More information about detention and the deplorable conditions in detention facilities is contained in Chapter 6 of this complaint.

¹⁵ Human Rights Watch, “Stuck in a revolving door, Iraqi and other asylum seekers and migrants at the Greece/Turkey entrance to the European Union”, November 2008, p. 86. According to the Greek Council for Refugees the most common situation was that asylum seekers were detained for 3 months, whereas detainees on islands such as Lesbos would normally be released in no more than 10-15 days if they did not ask for asylum.

¹⁶ PRO ASYL.

¹⁷ NOAS, NHC & AITIMA 2009, p. 28. See paragraph 3.1.4 for more information on *refoulement* by Turkey.

¹⁸ See addendum II for the complete account under nr. 1.

¹⁹ PRO ASYL.

According to the law, asylum applications can be lodged in Police Divisions and Detention Centres throughout Greece, including on the islands. In reality, however, very few asylum applications are lodged in detention centres. Only 6% of asylum claims were lodged outside Athens in 2007²⁰, even though most asylum seekers arrive through Greece's northern border region or via the Greek islands off the coast of Turkey.²¹ One of the main reasons for this is the previously mentioned practice of discouraging asylum claims.²² Additionally, there are few interpreters available to assist in filing a complaint and no information is provided by the Greek authorities about the asylum procedure.

The vast majority of asylum seekers are forced to travel to Athens to lodge an asylum application. In Athens asylum seekers only have the opportunity to apply for asylum once a week, on Saturdays, at the Attica Police Asylum Department. Starting on Friday afternoons about 2000 people queue up in order to gain access to the building, which opens its gates at 6 a.m. on Saturday. (This is because the Attica Police Asylum Department is a closed facility in which asylum seekers are only allowed entrance following official authorization). Most asylum seekers have to try to seek asylum for several weeks, and sometimes even months, before they are able to apply for asylum. Many never succeeded.²³

Once an asylum seeker has finally managed to enter the Police Department, s/he is given an appointment to officially lodge an application and register as an asylum seeker. At this point, the police make appointments for 30 asylum seekers each time.²⁴ The appointments are made for the following month. Before the implementation of the Presidential Decree 81/2009, 300 appointments were made per day and for the following week. With this new Decree there is therefore less opportunity to apply for asylum than before.²⁵

Accounts on information on the possibility to apply for asylum²⁶

"We were never informed about any possibility to apply for asylum, nor were we given any other kind of information. I never spoke to a lawyer, nor was there at any time an interpreter present."

"None of the Greek officials had at any time made clear that we could apply for asylum, so I thought this was not possible."

"We were never given the opportunity or were informed about any possibility to apply for asylum. They took our fingerprints when we arrived in prison. Nobody made clear what was going to happen to us, we got no information whatsoever. Nobody asked why we were in Greece. We never spoke to a lawyer, nor was there at any time an interpreter present."

1.2. Greece's failure to comply with EU Law

1.2.1. In general

²⁰ Applications at the border in 2008 (300 hundred out of 19884) constituted 1.5% of all applications lodged. The respective percentage for 2007 is 0.8 (201 out of 25.049); Ministry of the Interior.

²¹ Human Rights Watch, "No refuge: Migrants in Greece", 1 November 2009, p. 7.

²² Austrian Red Cross and Caritas Austria, "The situation of persons returned by Austria to Greece under de Dublin Regulation: report of a fact-finding mission to Greece", May 23rd – 28th 2009, p 22; Spyros Rizakos from NGO "AITIMA".

²³ Austrian Red Cross & Caritas Austria 2009, p. 8.

²⁴ The Greek Council for Refugees.

²⁵ NOAS, NHC & AITIMA 2009, p.16; confirmed by the Greek Council for Refugees.

²⁶ See addendum II for the complete account under nr. 2, 3 and 4.

Recital 8 of the preamble of the Procedures Directive holds that the Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In this regard the European Court of Justice has held that although the EU Charter is not legally binding, the Community legislature acknowledged its importance by stating in the preamble to a Directive that the Directive observes the principles in the Charter.²⁷ Given this fact, Article 18 of the EU Charter must also be taken into account.

In addition to Article 18, Article 6 of the EU Treaty is applicable as well. This Article refers to the European Convention of Human Rights and Fundamental Freedoms (ECHR). Article 3 of the ECHR prohibits torture and other inhuman or degrading treatment. The European Court of Human Rights (ECtHR) understands this prohibition on torture to implicitly entail the prohibition of refoulement. Therefore, no-one may be sent back to a country where s/he runs the risk of being subjected to a treatment in violation of Article 3 of the ECHR.

1.2.2. Violation of the concerning Articles

Asylum seekers encounter great difficulties in gaining access to the asylum procedure. Those who manage to gain access face great hardship in filing an application for asylum. Numerous eyewitnesses report that people waiting in queues are mistreated verbally and at times physically. Furthermore, the mechanism of queuing over and over again in order to make a claim for asylum constitutes degrading treatment as prohibited by article 3 of the ECHR.

The right to asylum guaranteed in Article 18 of the EU Charter is further specified in the Qualification Directive as well as in the Dublin II Regulation. Articles 13 and 18 of the Qualification Directive define who is protected by the right to asylum. Article 3, paragraph 1, of the Dublin II Regulation ensures that at least one of the EU member states examines an asylum application. Due to the above mentioned difficulties in gaining access to Greek territory and in registering an asylum application, many asylum applications are not examined. As a result it becomes excessively difficult for asylum seekers to make effective use of the right to asylum. Greek practice therefore clearly violates all four articles.

Greek authorities try to prevent immigrants, among whom are asylum seekers, from entering Greek territory and even discourage protection seekers from applying for asylum. Greece does not meet its obligation to enable each adult to lodge an asylum application on his own behalf nor does it meet the obligation to ensure that authorities likely to be approached by someone who wishes to make an application for asylum are able to advise that person how and where s/he may make such an application and/or may require these authorities to forward the application to the competent authority. Given these problems, Greece is in breach of Article 6, paragraph 2 and paragraph 5, of the Procedures Directive.

²⁷ European Court of Justice 27 June 2006 (European Parliament v. Council of the European Union), C-540/03.

2. Procedural Safeguards

2.1. The situation in Greece

2.1.1. Introduction

The Greek asylum procedure lacks fundamental procedural guarantees. We will set out the procedural flaws by describing the asylum procedure from start to end. Here, we wish to especially emphasise our particular concern about the fact that the recent Presidential Decree abolished the consideration of the merits of the claim upon appeal. As a consequence asylum seekers lack an effective remedy as required by article 13 ECHR and article 39 Procedures Directive.

2.1.2. Providing information

Asylum seekers in Greece are not usually informed about the asylum procedure at all, let alone in a language they understand.²⁸ A leaflet containing information about the asylum procedure has been developed in cooperation with UNHCR, however, this leaflet is handed out in only a small number of cases and is now out of date, following the enactment of Presidential Decrees 220/2007, 90/2008, 96/2008 and 81/2009.²⁹

2.1.3. Personal interview

In July 2009, Presidential Decree 81/2009 entered into force. This decree changes the Greek asylum procedure in a number of important ways, including the personal interview. Despite its entry into force, in practice this Decree has not yet been fully implemented. Few personal interviews have been conducted since it came into effect.³⁰ Instead, most interviews are postponed. How this backlog will be handled remains unclear, especially since there is a severe lack of qualified interpreters and specifically trained staff that could conduct interviews.

Given that it remains unclear how this new Decree will change the proceedings in Greece, we will first discuss the situation prior to July 2009 and then describe the situation as it should be under Decree 81/2009. In this context we will describe how the situation has not yet improved since the new Decree.

We express our concern that very few personal interviews are currently carried out, leaving most asylum seekers in limbo for an uncertain period of time.

The situation under Presidential Decree 90/2008 (old)

No confidentiality

The majority of asylum applications were (and also are under the new Decree) lodged in Athens. As is described in Chapter 1 of this complaint, asylum applications made in Athens could (and can) only be filed and examined at the Attica Police Asylum Department. As Human Rights Watch has reported, the interviews at the Attica Police Asylum Department took place in one overcrowded room without adequate space for privacy or time to elicit all relevant information relating to the asylum claim.³¹

²⁸ Hammarberg 2009, p. 7.

²⁹ Norwegian Organisation for Asylum Seekers (NOAS), the Norwegian Helsinki Committee (NHC) and the Greek Helsinki Monitor (GHM), "A gamble with the right to asylum in Europe: Greek asylum policy and the Dublin II Regulation", April 2008, p.17; Human Rights Watch 2008, p. 89.

³⁰ NOAS, NHC & AITIMA 2009, p.17.

³¹ Human Rights Watch 2008, p. 98.

Quality of the interviews

Interviewing officers were not able to effectively cope with the number of asylum seekers. In practice, each police officer conducted 12-15 interviews a day.³² This resulted in the interviews by necessity being very superficial. Asylum seekers were not given the opportunity to elaborate on their asylum account and thus could not substantiate their claims that they were in need of international protection.³³ Applicants were asked to answer standard and perfunctory questions posed by interviewing police officers, instead of more in-depth queries.³⁴

In addition, many of the questions were “closed questions”: “For what reason was it not possible for you to find work in your country? Did you try to move to another region of your country in order to work? Did you try to find work in any of the neighbouring countries? Have you been forced to abandon your country for reasons of quarrels/troubles with your relatives?” The interview did not reflect the reality that asylum seekers may have fled their country of origin on grounds relating to persecution or conflict according to the 1951 Convention relating to the Status of Refugees, The European Convention on Human Rights, and EU law.³⁵

At the end of the interview, police officers generated a standard form printout of the interview questions and answers, including the result of the interview, without ever conducting any research in relation to the situation in the asylum seeker’s country of origin, or even deliberating prior to assessing the asylum seeker’s claim, which was rejected in almost every case.³⁶

Unqualified staff

Under Presidential Decree 90/2008, all interviews were conducted by police officers. These police officers were not adequately trained to conduct interviews and deal with asylum seekers, nor did they have sufficient knowledge to conduct asylum interviews. In most if not all cases, police officers did not have country of origin information at their disposal.³⁷

The Council of Europe Commissioner for Human Rights recommended that the Greek authorities reinforce training of asylum staff.³⁸ In practice, no improvements have been made.

Shortage of interpreters

In Greece there was, and still is, a serious shortage of qualified interpreters. As described in the report of the Commissioner for Human Rights, this has been a problem in Greece since 2001.³⁹ The lack of interpreters resulted in asylum seekers being interviewed in a language different from their mother tongue.⁴⁰ Many interviews were conducted in bad English, as neither the police officer nor the asylum seeker spoke English at a sufficient level.⁴¹ When

³² This figure is based on observations from the Greek Council for Refugees of interviews, carried out on a weekly basis between late 2007 – early 2009. On a daily basis 5 or 6 police officers were conducting 65-75 interviews over a 4-5 hour period.

³³ NOAS, NHC & GHM 2008, p.19; Human Rights Watch November 2009, p. 17.

³⁴ UNHCR, “Asylum in the European Union: A study of the Implementation of the Qualification Directive”, November 2007, p. 13-14.

³⁵ Human Rights Watch 2008, p. 97.

³⁶ Observed by the Greek Council for Refugees.

³⁷ Austrian Red Cross & Caritas Austria 2009, p. 23; NOAS, NCH & AITIMA 2009, p. 21; the Greek Council for Refugees.

³⁸ Council of Europe Commissioner for Human Rights, 4 February 2009, recommendation 45, p. 16.

³⁹ Hammarberg 2009, p. 10.

⁴⁰ UNHCR, “UNHCR position on the return of Asylum seekers to Greece under the Dublin regulation”, 15 April 2008, p. 3.

⁴¹ NOAS, NHC & GHM 2008, p. 22.

the services of an interpreter were used, the interpreter sometimes conducted the interview instead of the responsible officer.⁴² It was not uncommon in such situations for the interpreter to urge the asylum seeker to say he or she left the country of origin for economic reasons.⁴³ Even more alarming, in many detention facilities co-detainees were employed instead of qualified interpreters, which raises doubts about the quality of the translation and further compromises confidentiality.⁴⁴

No report of the interview

Finally, a report of the interview was not automatically provided.⁴⁵ Because of the absence of such a report there was no way of telling what was said during the interview and whether the officer registered all that was said by the asylum seeker. The results of a study conducted by UNHCR show that many of the analyzed case files did not even contain the responses of the applicants to the standard questions described above.⁴⁶

The situation under Presidential Decree 81/2009 (new)

A committee for interviews

In July 2009, Presidential Decree 81/2009 entered into force. According to this Decree the interview will be carried out by an advisory Refugee Committee. This Committee should be composed of:

- A high ranking officer of the Greek police (chairperson)
- A high ranking officer or warrant officer of the Greek police(member)
- An official of the Aliens and Immigration Directorate of the respective region (member)
- A representative of UNHCR (member)

Soon after the publication of the Decree in the official gazette, UNHCR decided not to join the Committee.⁴⁷ In a press release of 14 May 2009 UNHCR had already expressed its concerns about the then still proposed Decree: “The decentralization of the decision-making authority to the Police Directors all over the country without the guarantee of an effective and substantial role of non-police bodies – as it is guaranteed in the existing Appeals' Board –, will compromise the fairness of the procedure and the uniform and coherent implementation of the 1951 Convention relating to the Status of Refugees and other relevant international and EU law.”⁴⁸

In addition to UNHCR, civil servants working for the Region have also systematically failed to show up for interviews to be conducted by the committees, which have consequently been postponed.⁴⁹ This means that in practice the Committee has not been able to operate as described above. As a result most interviews have been postponed for three months. Some interviews have however been carried out.⁵⁰

Instead of constituting an improvement to flawed asylum procedures, the new Decree actually negatively influences the quality of interviews. Personal interviews are now decentralised and spreads the job of interviewing asylum seekers to police directorates

⁴² Austrian Red Cross & Caritas Austria 2009, p. 23.

⁴³ Human Rights Watch 2008, p 99-100.

⁴⁴ Observed by PRO ASYL.

⁴⁵ NOAS, NHC & GHM 2008 p. 20.

⁴⁶ Human Rights Watch 2008, p. 98.

⁴⁷ UNHCR, “UNHCR will not participate in the new asylum procedure in Greece unless structural changes are made”, UNHCR Press Release, 17 July 2009.

⁴⁸ UNHCR Press Release 2009.

⁴⁹ NOAS, NHC & AITIMA 2009, p. 17.

⁵⁰ Spyros Rizakos from NGO “AITIMA”.

throughout the country. Police officers have a host of other duties and lack training in asylum law or in conducting interviews with fearful and traumatized asylum seekers.⁵¹

Shortage of interpreters

Under the new Decree there is still a severe shortage of interpreters. There are no signs that investments will be made to improve this situation. In fact the situation has deteriorated as the Police now require interpreters in all Divisions to work for the Committees.⁵²

Reports of the interview

Under Presidential Decree 90/2008 a copy of the report of the interview should be provided upon request by the asylum seeker. However, since very few interviews have been carried out, no cohesive conclusions can be drawn on whether or not these copies have been or will in fact be provided.

2.1.4. First instance decisions

The situation under Presidential Decree 90/2008 (old)

Pursuant to Presidential Decree 90/2008 decisions on an asylum application were taken by the Secretary-General of the Ministry of Interior. Decisions were based on the interview and the non-binding recommendation of the police officers conducting the interview. In the previous paragraphs we have already discussed the deficiencies in the way that interviews were carried out by these police officers. A recommendation cannot be given, and an asylum decision cannot be made on the basis of a badly conducted interview.

The content of the decision has often been subjected to criticism, which supports our claim that it is impossible to make a proper recommendation or decision based on flawed interviews. In 2007, UNHCR conducted a study on the implementation of the Qualification Directive (2004/83/EG).⁵³ Although the new Presidential Decree 81/2009 has entered into force and some decisions have been taken under this new law, the results of the UNHCR study are still relevant until at least July 2009, when the new Decree entered into force. Furthermore some of the decisions taken under the new Decree seem to be of equally bad quality to those taken under previous Decrees (see paragraph 2.1.4.2).

UNHCR studied 305 first instance decisions taken by the Ministry of Public Order (MPO). All 305 decisions – including applicants from refugee-producing countries such as 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. Furthermore, all decisions contained a standard paragraph stating that the applicant left his/her country to find a job and improve living conditions. The report by the Austrian Red Cross and Caritas Austria corroborates these findings. The UNHCR found that decisions were identical and personal circumstances were not considered.⁵⁴ In addition, country of origin information was usually not collected. In fact decisions were taken without valid information.⁵⁵

Finally, the asylum decision was written in Greek without the content of the decision being explained to the asylum seeker.

The situation under Presidential Decree 81/2009 (new)

⁵¹ Human Rights Watch November 2009, p. 17; NOAS, NHC & AITIMA 2009, p. 21.

⁵² Spyros Rizakos from NGO "AITIMA".

⁵³ UNHCR 2007.

⁵⁴ Austrian Red Cross & Caritas Austria 2009, p. 24 and 26.

⁵⁵ Austrian Red Cross & Caritas Austria 2009 p. 23.

According to Presidential Decree 81/2009 that entered into force in July 2009, the Determining authority or the Competent authority that makes decisions on asylum applications, is the Director of the Aliens' Directorates of Attica and Thessaloniki and the Directors of the Police Directorates, depending on where the application for international protection has been lodged. The decision on the application shall be taken in light of the non-binding recommendation of the Refugee Committee. The very small number of decisions taken under the new procedure does not permit a proper analysis of the quality of the decisions, however, it remains the case that the overwhelming majority of decisions are negative and provide insufficient reasoning for rejecting the credibility of asylum seekers' claims.⁵⁶

2.1.5. Lack of an effective remedy

The situation under Presidential Decree 90/2008 (old)

Under the old Decree asylum seekers were by law given the opportunity to appeal against a decision on their application. However, as a consequence of the fact that asylum seekers were not informed about the denial of their application as it was handed to them in Greek, asylum seekers were not aware of the content of the decision nor of the possibilities to challenge it. This resulted in a situation whereby many asylum seekers missed the deadline to appeal against the decision. This meant the end of their case, the closure of their file and possible deportation.⁵⁷

The situation under Presidential Decree 81/2009 (new)

Pursuant to Presidential Decree 81/2009 asylum seekers will no longer be able to have the rejection of their asylum application reviewed on its merits by a designated appeals board. After the decision to reject the asylum application there exists only the possibility to initiate a procedure before the Council of State. The Council of State will however only examine whether the decision has been made in accordance with the law. It is not able to review the decision on its merits.⁵⁸ This abolishment of the second instance procedure, is especially alarming, now that the asylum seekers as a result of the refusal of the UNHCR to participate in first instance decision making, are now exclusively left to the judgment of police officers, who have not received appropriate and sufficient training for this task.

2.1.6. Legal aid

Following the entry into force of Presidential Decree 81/2009, free legal aid will only be granted if a judge rules that the application for annulment is not manifestly unfounded and manifestly inadmissible.⁵⁹ There are few lawyers who offer free legal aid to asylum seekers. They are affiliated with NGOs, mainly in Athens, and assisted by volunteers. They are partly financed with means from the Greek authorities and partly through grants from the European Refugee Fund.⁶⁰ The small number of lawyers who can provide free assistance to asylum seekers leaves them exposed to high legal fees and exploitation by some lawyers who systematically operate in areas where asylum seekers are required to present themselves (e.g. the main asylum division police facility in Petrou Ralli Street) or where asylum seekers

⁵⁶ Spyros Rizakos from NGO "AITIMA"; the Greek Council for Refugees.

⁵⁷ Human Rights Watch 2008, p. 25-26.

⁵⁸ UNHCR Press Release, "The UN Refugee Agency expresses concern over proposed Presidential Decree on Asylum," 14 May 2009; Amnesty International Public Statement, "Greece: Proposed changes to asylum procedures flagrantly violate international law," 15 May 2009.

⁵⁹ Spyros Rizakos from NGO "AITIMA".

⁶⁰ NOAS, NHC & AITIMA 2009, p. 12.

are likely to be detained. The few lawyers that do provide legal aid do not have the time to represent all the cases of rejected asylum claims into the Council of State.

Asylum seekers are not consistently given any information about their right to legal assistance or about how aid can be obtained. Lawyers have to contact asylum seekers on their own initiative in order to advise and represent them, since there is no arrangement for authorities to assign a legal representative to an asylum seeker. Lawyers are often required to expend considerable effort ensuring that asylum seekers are granted fundamental rights, that should automatically be guaranteed by the state in accordance with EU law (e.g. access to the asylum procedure and provision of the asylum seekers' basic needs, such as housing). On top of all of this, lawyers complain of not having access to their clients' files.⁶¹

In its most recent report Human Rights Watch describes that even where local lawyers and the Greek Council for Refugees tried to intervene (the latter with the responsible Ministry), a group of 18 asylum seekers, including unaccompanied minors, were refused permission to lodge an asylum application and were deported to Turkey.⁶²

Finally, lawyers experience problems in being allowed access to all detention centres and can therefore not help asylum seekers with their asylum application. This issue will be further addressed in Chapter 6 on detention.⁶³

2.2. Greece's failure to comply with EU Law

2.2.1. The asylum procedure in first instance decisions

Asylum seekers in Greece are not able to present the grounds for their applications in a comprehensive manner. This is in blatant violation of articles 12 and 13 Procedures Directive. The personal interviews were inadequately conducted due to a number of procedural flaws described above. Because the new system has not been fully implemented the majority of asylum seekers have to wait for an uncertain period of time before being allowed to set out their reasons for seeking asylum through a personal interview. By not taking the personal circumstances of the individual or the situation in the country of origin into consideration Greece is violating article 4 of the Qualification Directive and article 8 of the Procedures Directive respectively. The asylum seeker is thus kept oblivious of the reasons as to why the application for international protection was denied. This is clearly in breach of articles 9 and 10 of the Procedures Directive.

2.2.2. Effective legal remedy

The lack of an independent review of the decision, both as to matters of fact and law, is clearly in breach of article 13 ECHR as well as article 39 of the Procedures Directive.

From the Court of Justice's judgment in the Graham Wilson case it may be derived that an appeal, which is limited to the review of the legality of a decision does not provide effective judicial protection.⁶⁴ In the aforementioned case the Court did not accept a national procedure in which a court or tribunal can only address questions of law, even if the facts are reviewed by two non-judicial bodies. The Court was asked by a national Court to interpret Article 9 of the "Directive to facilitate practice of the profession of lawyer on a permanent

⁶¹ Human Rights Watch 2008, p. 93; NOAS, NHC & AITIMA 2009, p. 12. For more information on reception conditions, see chapter 5 of this complaint.

⁶² Human Rights Watch 2009, p. 3.

⁶³ NOAS, NHC & AITIMA 2009, p. 12.

⁶⁴ European Court of Justice (grand chamber) 19 September 2006 (Graham Wilson), C-506/04, paragraph 60.

basis in a Member State other than that in which the qualification was obtained” (Directive 98/5), which requires a remedy before a court or tribunal in accordance with the provisions of domestic law. The Court held that this provision requires actual access within a reasonable period to a court or tribunal as defined by Community law, which is competent to give a ruling on both fact and law.

By not stating the reasons for rejecting the individual asylum application, Greece also breaches the right to an effective remedy. In this regard The Court of Justice has acknowledged that the right to effective judicial protection is closely linked to the obligation of the authorities to state reasons. The parties concerned can make genuine use of their right to a judicial remedy only, if they have precise knowledge of the content of and the reasons for the act in question, in this regard the rejection of the asylum application. In *UNECTEF v Heylens*⁶⁵ the Court of Justice considered that effective judicial review presupposes that the court to which the matter is referred may require the competent authorities to notify its reasons. Where it is a question of securing the effective protection of a fundamental right conferred by the EU Treaty on individuals, the Court of Justice has held that these individuals “must also be able to defend that right under the best possible conditions and have the possibility of deciding with a full knowledge of the relevant facts, whether there is any point in their applying to the courts. Consequently, in such circumstances the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request”.

2.2.3. Legal aid

In addition Greece does not ensure that asylum seekers are granted free legal aid following the rejection of the application, as is required by article 15, paragraph 2, of the Procedures Directive.

⁶⁵ European Court of Justice (grand chamber) 15 October 1987 (Heylens), C-222/86, paragraph 15.

3. International protection; risk of refoulement

3.1. Situation in Greece

3.1.1. Introduction

Asylum seekers run the risk of being subject to *refoulement* by the Greek authorities due to the insufficient examination and therewith unjust rejection of the asylum claim. In addition, alarming allegations have been made by several organisations, such as Human Rights Watch, about cases of *refoulement* pending ongoing asylum procedures (thus even before a decision has been made on the asylum application) and about cases of *refoulement* of people seeking protection before they even had a chance to file an asylum application.

3.1.2. Risk of refoulement before being able to apply for asylum

Pushbacks to Turkey

As has already been mentioned in Chapter 1, it is alleged that the Greek Coast Guard sustain a practice of pushing back migrants to the Turkish border, before they have been able to enter Greek territory or immediately upon their arrival in Greece. A practice is often described in which the Greek authorities bring migrants to the Evros river at nightfall and after the Greek officials see no sign of Turkish gendarmes on the other side of the river, the migrants are put on small boats and sent across.⁶⁶

As a result, those asylum seekers among the migrants pushed back, are prevented from entering the Greek asylum procedure. This means that protection seekers might be directly or indirectly subjected to *refoulement* without their asylum claim ever having been assessed. Accounts in many reports describe pushbacks of people from conflict-torn countries such as Iraq and Afghanistan who are more likely to be an asylum seeker. For instance, Human Rights Watch reports the pushback of a 28-year-old Iraqi from Baghdad who fled from Iraq after his brother, who worked as a translator for the Americans, was kidnapped and killed by the slitting of his throat.⁶⁷

In addition to the risk of pushing back possible asylum seekers, the manner in which these pushbacks take place is often life threatening and abusive in itself. Testimonies about Greek Coast Guard pushbacks vary in their details, but are consistent in describing how the actions of the Coast Guard put the lives of migrants in danger. Actions include puncturing inflatable boats, removing motors of boats, and taking away oars before putting migrant vessels back in the water, sometimes without providing life vests to the migrants.⁶⁸ Human Rights Watch reports the fate of a group of migrants who were pushed back into Turkish waters by Greek navy officials. Before putting the migrants on rubber boats to be sent off to Turkey, the Greek officials confiscated all their belongings. They gave the migrants life jackets and oars to row across to Turkey. However, the Greek officials punctured the rubber boat, which as a result could only stay afloat for an hour. Some migrants almost drowned, but were rescued just in time by the Turkish border guards. One migrant did drown before Turkish border guards were able to save him.⁶⁹

Illegal expulsions

⁶⁶ Human Rights Watch 2008, p. 38-39.

⁶⁷ Human Rights Watch 2008, p. 42. See more accounts in the Human Rights Watch report on pages 41-45.

⁶⁸ Human Rights Watch 2008, p. 41.

⁶⁹ Human Rights Watch 2008, p. 43-45.

In addition to pushing back migrants intercepted at sea, Greek authorities illegally deport migrants caught on Greek territory, none-withstanding their applications for international protection and their ongoing asylum cases.

Human Rights Watch found confirmation of the systematic nature of the summary expulsions from the Evros border area in the testimonies of 41 migrants – including asylum seekers – interviewed in Greece and Turkey for its 2008 report. Many of these individuals told Human Rights Watch of multiple entries into Greece and summary expulsions back to Turkey.⁷⁰ In 2008, Human Rights Watch described the Greek practice of illegal expulsions as follows: migrants make multiple attempts to enter Greece, are caught in Greek territory and returned (several or more times) before succeeding in getting in to Greece. When they reach Greek territory they are held for several days up to a week at a police station in a border town in dirty, overcrowded conditions, where detainees are often mistreated and sometimes beaten. Subsequently, they are trucked in groups of 50 to 100 people to the river at nightfall. If Greek police officials see no sign of Turkish gendarmes on the other side of the river, migrants are put on small boats in groups of 10 and sent across the river.⁷¹ In several cases, migrants have also been handed over to Turkish authorities directly: in a particular severe case, eighteen Kurdish asylum seekers were transferred from Crete to Northern Greece and then handed over to the Turkish police.⁷²

This practice applies to all irregular migrants, including asylum seekers. Human Rights Watch has reported that virtually no distinction is made by Greek coast guards between people seeking asylum and other migrants.⁷³ In addition, none of the reports by other organisations contain any accounts of a distinction being made. Moreover the accounts come from people originating from refugee producing countries including Afghanistan, Somalia and Sri Lanka.⁷⁴ In its latest report Human Rights Watch again interviewed a number of migrants deported to Turkey. Amongst them Human Rights Watch describes the fate of a 17-year-old unaccompanied Afghan boy who, along with 11 other people, was forcibly pushed across the river into Turkey by Greek police. From there Turkish authorities sent him back to Afghanistan. Considering his country of origin, it would not be a surprise that the Afghan boy was an asylum seeker. His own statements also point in that direction. Upon arrival in Turkey he asked the guards not to send him back to Afghanistan because he has problems there.⁷⁵ There have also been indications that certain Greek border guards are not familiar with the so-called ‘red card’, the document handed out to asylum seekers in ongoing proceedings.⁷⁶

Official deportations

Greece has carried out (and still carries out) official deportations to Turkey under the bilateral “readmission agreement” between the two countries. There is evidence that the readmission agreement is applied to other groups besides illegal migrants.⁷⁷ In 2007 a group of Iraqis was deported in this manner. Accounts of abusive treatment at the point of arrest by Turkish police and gendarmes are common (see 3.1.2).⁷⁸ Turkey subsequently deported some of

⁷⁰ Human Rights Watch 2008, p. 38.

⁷¹ Human Rights Watch 2008, p. 38-39.

⁷² See also paragraph 2.1.6. of this complaint. Human Rights Watch 2009, p. 3.

⁷³ Human Rights Watch 2008, p. 32. Human Rights Watch 2009, p. 7 and 9.

⁷⁴ Human Rights Watch 2009, p.1; NOAS, NHC & AITIMA, 2009, p. 26.

⁷⁵ Human Rights Watch 2009, p. 1-2.

⁷⁶ Observed by PRO ASYL; See more about the ‘red cards’ in Chapter 4 of this complaint.

⁷⁷ NOAS, NHC & AITIMA 2009, p. 33.

⁷⁸ Human Rights Watch 2008, p. 50.

the returnees to Iraq where they were jailed.⁷⁹ One Iraqi Kurd was also tortured upon return.⁸⁰

3.1.3. Risk of refoulement after having gained access to the asylum procedure

Despite beating the odds and successfully lodging an asylum application, asylum seekers still risk being subject to *refoulement*. This is due to the absence of a fair and effective asylum procedure as well as a complete disregard of the ongoing asylum proceedings.

Refoulement pending an asylum application

NOAS, NHC and AITIMA report that asylum seekers are deported during ongoing proceedings. The organisations report; “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.”⁸¹ The organisations describe the fate of two men who were lured away by undercover police and robbed of their belongings. The two men were then blindfolded and put in a small boat and deported to Turkey. The first of the two men was in possession of a ‘red card’⁸² that was valid at the moment of his deportation.⁸³ The second man had also renewed his red card a month before his deportation.⁸⁴ In Turkey they were detained in the overcrowded Edirne detention centre. Despite repeated requests they were not given the opportunity to lodge an asylum application. One of the men tried to escape and was severely beaten as a result.⁸⁵

Procedural flaws

Due to the procedural defaults described in Chapter 2, Greece does not meet the obligations it has under the Qualification Directive. For a detailed description of the practice in Greece we refer to the afore mentioned UNHCR study.⁸⁶ Below we only highlight the main conclusions of that study as regards to Greece, which were relevant until at least 30 July 2009. Since then, under the new Presidential Decree only very few asylum decisions have been taken.

Situation under Presidential Decree 90/2008 (old)

The UNHCR study into the implementation of the Qualification Directive paints a grim picture of the situation facing asylum seekers in Greece.

Because decisions were not sufficiently reasoned, UNHCR studied 305 case files to discern whether Greece had fully implemented the Qualification Directive. However, even the study of the files did not give sufficient information about Greek asylum Procedures?. As a result of the considerable deficiencies in the recording of decisions, interviews and the gathering of information the research was not able to utilize either decisions or case files in order to discern legal practice in Greece. For example, 294 of the first instance case files reviewed did not contain the responses of the applicants to standard questions posed by interviewing police officers. Only 11 files contained two to three brief lines stating facts. It was therefore

⁷⁹ Human Rights Watch 2008, p.36-38.

⁸⁰ Human Rights Watch 2008, p.37.

⁸¹ NOAS, NHC & AITIMA 2009, p. 25.

⁸² See more about the ‘red cards’ in Chapter 4.

⁸³ NOAS, NHC & AITIMA, 2009, p. 30.

⁸⁴ NOAS, NHC & AITIMA, 2009, p. 30.

⁸⁵ NOAS, NHC & AITIMA, 2009, p. 31

⁸⁶ UNHCR 2007.

impossible to verify from the case files whether Greek legislation was being applied at all, let alone whether practice complied with the provisions of the Qualification Directive.⁸⁷

The files contained no information regarding the applicant's fear of persecution or serious harm, nor any other relevant information. Although in some cases the applicants belonged to ethnic groups who had experienced severe persecution as meant by the 1951 Refugee Convention, or were from regions experiencing violence and human rights violations, none were found to be in need of international protection. In the overwhelming majority of the reviewed case files, the interviewing police officer instead registered that the reasons for departure from the country of origin were economic.⁸⁸

The consequence of the procedural deficiencies together with the lack of willingness to offer protection resulted in almost non-existent recognition rates. In 2007, the recognition rate in first instance decisions was 0,04%.⁸⁹ In the first eight months of 2008, the recognition rate in first instance decisions was only 0,03%.⁹⁰ This is extremely low compared to other EU member states. In the second quarter of 2008, Greece had made 5,265 decisions in the first instance 5,210 of which were negative.⁹¹

Situation under Presidential Decree 81/2009 (new)

As indicated above, very few decisions have to date been taken under Presidential Decree 81/2009. Accordingly, no reliable conclusions can be made on the quality of these decisions. It must however be noted that almost all these decisions were negative.⁹²

3.1.4. Refoulement by Turkey

Asylum seekers deported to Turkey are, as described above, often detained upon arrival and have little chance to lodge an asylum application. In addition accounts of abusive treatment at the point of arrest by Turkish police are common.⁹³ Moreover, Turkish authorities detain Iraqis who have been deported or summarily expelled from Greece until they gather a sufficient number to fill a bus. They are subsequently deported to Iraq across its south-eastern land border.⁹⁴ Thus, migrants seeking asylum who were expelled or pushed back by Greece, run the risk of being refouled by the Turkish authorities.

In October 2009, the Human Rights Commissioner of the Council of Europe, Thomas Hammarberg, published his report on the human rights of asylum seekers and refugees in Turkey following a visit to Turkey in June 2009.⁹⁵ Hammarberg regrets lacunas in effective access to asylum procedures and recommends the implementation of a system for a better identification of asylum seekers among mixed migrant flows. The Commissioner deplored insufficient or irregular access to the asylum procedures in places of detention, at airports and land borders. An increase in forced returns in 2008 was noted in the border region to

⁸⁷ UNHCR 2007, P. 33.

⁸⁸ UNHCR 2007, P. 33.

⁸⁹ UNHCR, "UNHCR position on the return of asylum seekers to Greece under the Dublin regulation", April 2008, p. 4.

⁹⁰ Hammarberg 2009, p. 5.

⁹¹ Eurostat, 39/2009, Asylum applicants and decisions on asylum applications in Q2 2009, Table 7: First instance decisions by outcome, 2nd quarter 2009 (rounded figures) http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-09-039/EN/KS-QA-09-039-EN.PDF.

⁹² Spyros Rizakos from NGO "AITIMA".

⁹³ Human Rights Watch 2008, p. 48.

⁹⁴ Human Rights Watch 2008, p. 36-38 & 61-62.

⁹⁵ Council of Europe Commissioner for Human Rights, "Report on Human Rights of asylum seekers and refugees in Turkey", 1 October 2009.

Iraq and Iran. In his report, Hammarberg urges Turkish authorities to respect the principle of non-refoulement. A concrete example of refoulement is the following: UNHCR reported that on 23 April 2008 Turkey deported 60 people from various nationalities to Iraq, who had been caught at the Greek border, by forcing them across the fast flowing river that separates the two countries. According to witnesses interviewed by UNHCR four persons, including a refugee (recognised by UNHCR) from Iran, were swept away by the strong river current and drowned. These asylum seekers were deported despite a number of UNHCR communications to the Turkish authorities that it was unsafe to deport them.⁹⁶

In *Abdolkhani and Karimnia v. Turkey*⁹⁷ the European Court of Human Rights also established a case of arbitrary denial of access to asylum procedure in Turkey. In addition it also made a number of conclusions, which are valid and relevant beyond the facts of this particular case. Among other things, the judgment establishes that:

- All immigration related detention in Turkey for the purpose of removal is arbitrary, as the domestic law provision used to justify the practice is not up to the standards required by Art 5(1) ECHR
- Turkey's immigration authorities and the national judiciary fail to provide the procedural guarantees against arbitrariness required by Article 5(2) and 5(4) ECHR
- In cases involving a risk of being sent back to persecution (i.e. treatment contrary to Article 3 ECHR), the Turkish judiciary is not capable of providing an "effective remedy" within the meaning of Article 13 of ECHR.

From an interview ECRE held with Oktay Durukan from the Helsinki Citizens' Assembly (HCA) in Istanbul, Turkey it becomes apparent that irregular migrants, including asylum seekers who are illegally deported from Greece face *refoulement* in Turkey.⁹⁸ Durukan: "If you are caught before you had a chance to approach the UNHCR and enter the asylum system, the authorities will deny you access to the asylum procedure. They will simply refuse to process your asylum request. Following a brief criminal procedure for illegal entry or attempted exit, you will find yourself locked up for deportation without being given an opportunity to argue your claims to be at risk of persecution."

3.2. Greece's failure to comply with EU Law

3.2.1. In general

Article 19, paragraph 2, of the EU Charter holds that no one may be removed, expelled or extradited to a State where there is a serious risk that s/he would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. As a result of the failing asylum system and the lack of proper examinations of asylum claims, asylum seekers run the risk of being refouled. Therefore, Greece acts in violation of Article 33 of the 1951 Refugee Convention and Article 3 of the ECHR. In its *Elgafaji* judgement, the Court of Justice held that the fundamental right guaranteed under article 3 of the ECHR forms part of the general principles of Community law.⁹⁹

In addition, the continuous allegations that Greece systematically returns asylum seekers to Turkey and thereby puts asylum seekers at risk of both direct and indirect refoulement raise tremendous concerns. It has been documented that migrants have been arrested and

⁹⁶ UNHCR, "UNHCR Deplores Refugee Expulsion by Turkey which Resulted in Four Deaths," UNHCR Press Release, April 25, 2008.

⁹⁷ ECtHR 22 September 2009, (*Abdolkhani and Karimnia v. Turkey*), no. 30471/08.

⁹⁸ ECRE interview: Helsinki Citizens' Assembly, October 2009.

http://www.ecre.org/files/ECRE_INTERVIEW_Helsinki_citizens_Assembly_9_October2009.pdf

⁹⁹ European Court of Justice 17 February 2009 (*Elgafaji v. Staatssecretaris van Justitie*) C-465/07, para. 28.

mistreated upon return to Turkey. Furthermore, Turkey allegedly deported a number of asylum seekers back to Iraq, causing the death of a migrant at least on one occasion. Additionally, it has been reported that upon arrival in Iraq at least one man has been tortured. In its T.I judgement the ECtHR has held that the indirect removal to an intermediary country, does not absolve the removing state from its responsibility to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the ECHR.¹⁰⁰ The Court has recently reinforced its T.I. judgement in S.D. v United Kingdom.¹⁰¹

3.2.2. Violation of the specific provisions

The extremely low recognition rate, together with the lack of procedural safeguards described in Chapter 2, in the context of a majority of asylum seekers in Greece originating from war stricken countries result in Greece violating the right to asylum guaranteed by Article 18 of the EU Charter. In addition, strongly indicates that Greece is structurally violating Articles 13, 15 and 18 of the Qualification Directive.

Expulsion while an individual is waiting for a personal interview with a pending asylum procedure is contrary to Article 7, paragraph 1, of the Procedures Directive.

¹⁰⁰ ECtHR 7 March 2000 (T.I. v United Kingdom), no. 43844/98

¹⁰¹ ECtHR 11 June 2009 (S.D. v United Kingdom), no. 5354107.

4. Reception Conditions

4.1. The situation in Greece

4.1.1. Introduction

In November 2007, Presidential Decree 220 transposed the Reception Directive. According to this Decree, the state is required to ensure that asylum seekers are provided with accommodation and a daily allowance sufficient to cover their needs.¹⁰² In practice, however, reception facilities do not suffice in quantity or in quality. Additionally, there is no legal remedy for asylum seekers who are not accommodated or who do not otherwise receive government support.¹⁰³

As a consequence of the fact that so few asylum seekers are able to access the asylum procedure, most people who should be recognized as asylum seekers and should therefore receive reception facilities, end up living on the streets. In any event, the available places are grossly insufficient to accommodate even the registered asylum seekers. The conditions in which they live are inhuman and degrading and in addition they are often mistreated by locals as well as police officials.

In this chapter we will address the reception facilities and the situation of people who should be recognized as asylum seekers and receive reception facilities.

4.1.2. Accommodation

When asylum applications are actually received by the Greek authorities, asylum seekers are rarely offered housing, food, financial benefits or any other material support. As is described in Chapter 1, asylum seekers who have filed their applications are sent off to come back at a later stage for their interview. Greek law prescribes that a 'red card', which states the status of the asylum seeker and gives them the right to work and medical care, will be provided. However, since the entry into force of the latest Presidential Decree 81/2009 it is unclear whether or not these cards are in fact handed out.¹⁰⁴

More than half of the reception facilities are run by Greek NGOs, such as the Red Cross, Arsis, Social Solidarity, and much is funded by the European Refugee Fund.¹⁰⁵ In total, there are about 850 places available, while the total number of asylum applications in Greece in 2008 alone was 19884. At the same time there is a backlog of open asylum procedures of about 30,000.¹⁰⁶ As a result many asylum seekers find themselves in parks, derelict buildings, in city squares and public gardens. Only few (fewer than 5%) receive accommodation by the Greek government, often after a waiting period of several months. Some find their way to private lodgings, such as the so-called "Afghani hotels", but they are usually completely full (up to three families, including children, live in one room).¹⁰⁷

Arrests and evictions during police operations

One of the other forms of shelter asylum seekers resort to as a result of the lack of reception facilities, was an informal settlement in Patras. This settlement had been occupied by migrants as well as asylum seekers (whether or not they had been successful in gaining

¹⁰² PRO ASYL 2008, p. 7.

¹⁰³ Austrian Red Cross & Caritas Austria 2009, p. 11.

¹⁰⁴ Spyros Rizakos from NGO "AITIMA".

¹⁰⁵ The Greek Council for Refugees.

¹⁰⁶ Austrian Red Cross & Caritas Austria 2009, p. 9; Hammarberg 2009, p. 8; between 2004 and 2007 asylum applications ranged from 4469 to 25113; Human Rights Watch November 2009, p.17.

¹⁰⁷ PRO ASYL 2008, p. 7.

access to the asylum procedure). Many of those staying at the Patra camp were of Afghani origin and many were unaccompanied minors.¹⁰⁸

In the past six months the Greek authorities have started operations throughout the country in which they arrest, detain and deport irregular migrants, including asylum seekers, back to their countries of origin. Against this backdrop the police in Patras have carried out similar operations, ending up in the eviction of a hundred people from their make-shift homes on 12 July 2009, from the campsite in Patras, which was subsequently demolished. No official notice had been given prior to the eviction and many people lost their belongings due to the demolition of their houses and a fire that broke out during the demolition. As a result, about a hundred people became homeless and are now living in fields close to Patras without shelter or access to water, sanitation or medical assistance. Among this group is a small number of unaccompanied minors.¹⁰⁹ Until the spring of 2009, around 2000 people lived in the settlement, but the number of occupants was reduced to about 500 at the time of the evictions, due to police operations and to people moving to other parts of the country to find work.¹¹⁰

Simultaneously, a large number of police operations were launched all over Greece, particularly in Athens, targeting abandoned buildings inhabited by migrants. Following this series of evictions and arrests, detention facilities in Athens and mainland Greece were completely overcrowded. This led to a steep rise of transfers to the Evros region, aggravating the already deplorable conditions in detention centres there, and creating a risk that the transferred migrants would be illegally deported to Turkey.¹¹¹

Life on the streets

On numerous occasions NGOs have heard statements from asylum seekers that they were forced to live in the streets in Greece. Not only is the humiliation they felt often described, but also encounters of xenophobic behaviour from Greek citizens as well as law enforcement officials.¹¹² In a telling case, Afghan families staying at Agios Panteleimonas Square in Athens were, in the summer of 2009, violently driven away by vigilant groups with clear extreme right political backgrounds. In the process violent encounters between rightists, refugees and their supporters came to a head. Also in the summer of 2009, rightist militias besieged a former court building inhabited by migrants. Again, violent conflicts occurred, and many persons were injured in the process. Apart from this disturbing violence, unaccompanied minors and women living on the streets, are vulnerable, and often fall victim to trafficking, sexual harassment and other criminal offences.¹¹³

Accounts life on the streets¹¹⁴

“My sons left the apartment and were arrested 3 or 4 times. Each time they were arrested they did not come home for at least a week and I didn’t know where they were. My youngest son was arrested with force and beaten by the police. When he came home he had the policeman’s hand imprinted on the side of his face and he had headaches for a week.”

¹⁰⁸ Hammarberg, p. 8; the report draws attention to the alarming situation of the illegal settlements of migrants in Patras. The majority of the migrants supposedly is of Iraqi and Afghan nationality, including asylum seekers and minors. The report shows a number of 3000 people living in the settlement.

¹⁰⁹ Amnesty International, “Greece: Amnesty International condemns forced evictions in Patras”, 16 July 2009; Human Rights Watch November 2009, p.13.

¹¹⁰ Spyros Rizakos from NGO “AITIMA”.

¹¹¹ Observed by PRO ASYL.

¹¹² See the addendum to this complaint for examples of asylum seekers’ accounts.

¹¹³ Observed by PRO ASYL.

¹¹⁴ See addendum for the complete account under nr. 2 and 7.

“We slept in a park but were constantly chased away. Some police officers approached us and threw water at us. After a few days in the park a group of man approached us. They yelled: “black, black”. The other men of my group walked away but I did not. They came to me and mistreated me. My arm hurt badly. It was broken.”

4.1.3. Other reception facilities

There are insufficient funds made available by the Greek authorities to provide a daily allowance for all asylum seekers.¹¹⁵ In reception centres, basic needs seem to be covered. However, for those who are not accommodated (about 95% of the asylum seeking population) no material support is provided at all.¹¹⁶

Greek law provides for access to health care for asylum seekers. Receiving health care in practice, however, can prove difficult. Some asylum seekers claim to have been refused treatment by hospital staff. Other asylum seekers avoid seeking health care for fear of being arrested.¹¹⁷

Account from an asylum seeker who was refused medical care¹¹⁸

“I walked to a hospital and wanted to ask a doctor for help. I was however immediately turned away. They did not want to help me and told me I smelled. Which according to the man was true. I had not been able to have a wash for 20 days and my clothes were dirty. I did not receive any medical care until I arrived in the Netherlands.”

4.2. Greece's failure to comply with EU Law

4.2.1. In general – human dignity and the right to asylum

Recital 5 of the Preamble to the Reception Directive states that the Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union. In particular, the Reception Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the EU Charter. Article 1 of the EU Charter proscribes that human dignity is inviolable. It must be respected and protected. Article 18 of the EU Charter provides for the right to asylum.

Although the EU Charter is not a legally binding instrument, by referring to the Charter in recital 8 of the Directive, the European Community acknowledged its importance. As the European Court of Justice sets out in the case of *European Parliament v Council of the European Union*,¹¹⁹ the principal aim of the Charter, as is apparent from its preamble, is to reaffirm “rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the ECHR, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court ... and of the European Court of Human Rights.”

4.2.2. Violation of the concerning Articles

In relation to the situation in Greece, it cannot be maintained that human dignity is respected and protected. By allowing the situation to develop where thousands of asylum seekers are living in the streets, with no access to water or sanitation, or in squalid private lodgings with

¹¹⁵ PRO ASYL 2008, p. 7.

¹¹⁶ Austrian Red Cross & Caritas Austria 2009, p. 10.

¹¹⁷ Austrian Red Cross & Caritas Austria 2009, p. 11.

¹¹⁸ See addendum II for the complete account under nr. 7.

¹¹⁹ European Court of Justice 27 June 2006 (Case C-540/03), paragraph 38.

hardly any privacy, and by the demolition of improvised housing in which people lose their belongings as a means of clearing campsites, the Greek authorities have clearly not taken human dignity into account and are therefore in violation of Article 1 of the EU Charter. The provisions laid down in the Reception Directive are based on these principles. The disrespect of human dignity can only result in violations of the provisions laid down in the Reception Directive.

The difficulties, as well as the fact that they do not receive any information about the benefits and obligations relating to reception conditions, or on legal assistance, is in violation of Articles 5 (paragraph 1 and 2). The delay in providing documentation after asylum seekers have expressed their desire to seek asylum is a violation of the 3 day-term that is provided for in Article 6 (paragraph 1 and 4) of the Reception Directive.

Furthermore, most asylum seekers are not provided with housing and end up on the streets and living in deplorable conditions. They are not given any material support. The Greek government is not able to ensure a standard of living adequate for the health of applicants and their subsistence. This is in violation of Article 13 of the Reception Directive.

Greece does not take the personal situation of the asylum seeker into account. In failing to do so, Greece does not address the problems an asylum seeker might cope with and therewith violates Article 20 of the Reception Directive.

Additionally, the lack of a legal remedy to challenge decisions regarding reception facilities violates Article 21 of the Reception Directive.

The lack of reception facilities diminishes the chances of making proper use of the procedural safeguards and makes it more difficult to undertake the activities needed to substantiate one's claim. Thus, violation of provisions concerning reception facilities might indirectly undermine the right to asylum as provided for in Article 18 of the EU Charter.

Finally, as a result of not being able to gain access to the asylum procedure, people who should be recognized as asylum seekers do not fall under the scope of the Reception Directive and thus do not have access to the facilities that they should be allowed access to.

5. Unaccompanied minors

5.1. The situation in Greece

5.1.1. Unaccompanied minors in general

The Greek Coast Guard reported that in 2008, 2648 unaccompanied minors arrived in Greece. It is believed, however, that many more have entered the country. Hardly any special care is available for unaccompanied minors and they mostly end up receiving the same treatment and difficulties (including pushbacks to Turkey) as adults do.¹²⁰

Greece only provides 240 places for housing.¹²¹ According to a report by the Austrian Red Cross and Caritas Austria¹²², neither age-adequate care nor education appears to exist. Moreover, recent information from Human Rights Watch shows that, due to an enormous lack of reception capacity, unaccompanied minors are being detained upon arrival.¹²³ Other minors end up living on the streets. Additionally, unaccompanied minors experience police and border guard violence, labour exploitation and run the risk of ending up in the hands of human traffickers.¹²⁴

5.1.2. Unaccompanied minors in detention

When paying a visit to the Pagani detention centre in Lesbos in August 2009, the UNCHR witnessed 200 unaccompanied minors (mostly from Afghanistan, which is a refugee producing country) being detained in the facility. Doctors Without Borders even speak of more than 220 unaccompanied minors being detained in two cells. At the time of the visit by Doctors Without Borders, about a hundred unaccompanied minors were on a hunger strike demanding the improvement of the conditions and their immediate release. Many of them had already been detained for almost two months.¹²⁵

The hunger strike ended when some were in fact released and transferred to the hospitality centre for unaccompanied minors in Agiassos.¹²⁶ Despite these transfers and some improvements being made, the situation of unaccompanied minors is still unacceptable. The Greek Ministry of Health and Social Solidarity has taken measures to transfer the minors from Pagani to special reception facilities. Also, the government has made efforts to increase the numbers of places for children at specialized, open centres. However, the needs are by no means met and children remain in detention for long periods of time.¹²⁷

Account from an asylum seeker about the treatment of minors¹²⁸

“There was no fresh air in the room itself. A lot of the people were locked in for 3 months and went insane. Especially the unaccompanied minors in the room were already locked for three months or more. At days they released families and adults but not the minors.”

5.1.3. Homeless unaccompanied minors

¹²⁰ See for example: Human Rights Watch 2009, p. 1.

¹²¹ The Greek Council for Refugees.

¹²² Austrian Red Cross & Caritas Austria 2009, p. 10.

¹²³ HRW 2009.

¹²⁴ HRW November 2009 p. 13.

¹²⁵ Doctors without Borders 2009; <http://lesvos09.antira.info/2009/08/hunger-strike-at-pagani-detention-centre/>.

¹²⁶ Doctors without borders 2009.

¹²⁷ UNHCR Briefing 28 August 2009.

¹²⁸ See addendum II for the complete account under nr. 5.

Despite the efforts of providing accommodation for unaccompanied minors, different reports show that unaccompanied minors are also living on the streets and in settlements such as in Patras.¹²⁹

Karl Kopp, from the German NGO PRO ASYL, witnessed minors from Afghanistan prostituting themselves on the streets.¹³⁰

5.1.4. Lack of representation

Although under Presidential Decree 220/2007 the Greek state has the responsibility of ensuring that unaccompanied minors have the necessary representation, that is not the case for the vast majority of minors. Apart from the fact that many minors are not even registered or are detained, the Prosecutors who are responsible for the legal guardianship of minors, rarely take up this task. In practice, only the minors who are sent to some reception centre get some form of representation.¹³¹

5.2. Greece's failure to comply with EU Law

5.2.1. In general

Recital 5 of the preamble of the Reception Directive declares that this Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Therefore, Article 6 of the EU Treaty must also be taken into account.

Article 6 of the EU Treaty refers to the European Convention of Human Rights and Fundamental Freedoms and to the fundamental rights as they result from the constitutional traditions common to the Member States, as general principles of Community law. The European Court of Justice has pointed out that the Convention on the Rights of the Child is one of the international instruments for the protection of human rights of which it takes account in applying the general principles of Community law.¹³²

Although the EU Charter is not a legally binding instrument, by referring to the Charter in recital 8 of the Reception Directive the European Community acknowledged its importance. As the European Court of Justice sets out in the case of *European Parliament v Council of the European Union*,¹³³ the principal aim of the Charter, as is apparent from its preamble, is to reaffirm "rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the ECHR, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court ... and of the European Court of Human Rights."

It follows from the previous paragraph that Member States (i.e. Greece) are not only bound by the provisions as laid down in the EU Directives but also by the principles – insofar as they are relevant to unaccompanied minors – recognized in the EU Treaty, the EU Charter and the Convention for the Rights of the Child.

¹²⁹ See par. 4.1.2. of this complaint.

¹³⁰ PRO ASYL 2009, p. 8.

¹³¹ Study about the treatment of unaccompanied minors applying for asylum in Greece, p. 5-58; http://hosting01.vivodinet.gr/unhcr/UAM_english.pdf.

¹³² European Court of Justice 27 June 2006 (*European Parliament v Council of the European Union*) Case C-540/03, par. 37.

¹³³ European Court of Justice 27 June 2006 (*European Parliament v Council of the European Union*) Case C-540/03, par. 38.

5.2.2. Violation of the concerning Articles

As no age-adequate care or education for minors appears to exist, Greece is in violation of Article 10 of the Reception Directive.

The overall situation as described above clearly violates Article 13 and Articles 17-19 of the Reception Directive according to which Member States have to take into account the specific situation of persons with special needs, including unaccompanied minors. Reception of groups with special needs should be specifically designed to meet these needs.

There are no signs indicating that any measures are being taken with regards to assisting or representing unaccompanied minors in the procedure or with regards to any procedural aspects for that matter. Therewith, Greece violates Article 17 Procedures Directive.

It is clear from the above that the best interest of the child is not being considered. The most striking examples in support of this claim are that children are being detained in deplorable conditions, that children are living on the streets and in some cases even resolve to prostitution. Thus, Greece is in violation of Article 6, paragraph 2, EU Treaty and Article 24 EU Charter. Finally, Greece should take into account the principles as laid down in the Convention of the Rights of the Child of which it is a signatory.

6. Detention

6.1. The situation in Greece

6.1.1. Grounds for detention and legal remedy (procedural aspects)

Recently, a new Law¹³⁴ was passed that enables the Greek authorities to detain undocumented migrants for a period of six months. This period can be extended up to a year (thus adding up to a total of 18 months) if the authorities consider that migrants fail to cooperate, or documents necessary for their repatriation are missing.¹³⁵

If intercepted when trying to reach Greek territory by boat and not pushed back immediately, illegal migrants – among whom are asylum seekers –, will be detained automatically. It is also said that refugee applicants are being routinely detained.¹³⁶ It appears that asylum seekers are being discouraged from applying for asylum in various ways, such as by threatening that they will be detained longer than those who do not apply for asylum.¹³⁷

When an asylum seeker is detained, he/she can resort to a legal remedy called ‘antirissis’, which means ‘objection’. This objection is filed with the Administrative Court. However, the Court will only assess whether the detainee should be released. It does not examine whether the initial incarceration and the duration of the detention was lawful.

The legal ground of administrative detention is an expulsion order which can be challenged before Administrative and Judicial authorities. One can appeal both against the detention and expulsion order. That means that the detention can be recalled while deportation is still pending. In case the administrative authorities reject the objections against the detention or the appeal against the expulsion order, the detainee may lodge objections against the detention or appeal against expulsion order before the Administrative Court. The judge may give suspensive effect to the application.¹³⁸

6.1.2. Lack of legal aid

As is described in paragraph 2.1.6 of this complaint, asylum seekers have little or no access to free legal aid. The system simply does not cover the needs of all asylum seekers with regards to legal assistance.¹³⁹ This includes asylum seekers (or migrants who wish to apply for asylum) that are detained.

What makes this situation even more pressing is that lawyers are not always given access to the detention facilities. Human Rights Watch reports that apart from sporadic visits by a lawyer from the Greek Council for Refugees operating as a border monitor for UNHCR, few if any lawyers or organizations offer pro-bono legal aid in Greece’s northern regions. Athens-based pro-bono lawyers are refused access to the detainees unless they provide their names and sometimes even an additional permit from the central police. Furthermore, conversations between lawyers and detainees are rarely confidential and are often disrupted by police officers.¹⁴⁰

¹³⁴ Law 3772/2009, article 48, paragraph 3, 10 July 2009.

¹³⁵ <http://www.ipsnews.net/news.asp?idnews=47329>

¹³⁶ Hammarberg 2009, p. 6.

¹³⁷ Human Rights Watch 2008, p. 86.

¹³⁸ EctHR 11 June 2009 (S.D. v Greece), Appl. No. 53541/07); the Greek Council for Refugees.

¹³⁹ Spyros Rizakos from NGO “AITIMA”.

¹⁴⁰ Human Rights Watch 2009, p. 2; NOAS, NHC & AITIMA 2009, p. 11.

6.1.2. *The conditions in detention facilities*

In general

The detention facilities are located in the Evros border area, on some of the Greek islands (Lesvos, Samos, Chios) and at or near the airports. In the Evros region, migrants – some of whom are asylum seekers – are being detained in police stations and large detention facilities. In principle, within a few days after apprehension, these migrants are transferred from a police border guard station to a police holding facility or to a special facility for irregular migrants (among whom are asylum seekers, but this distinction is not being made).¹⁴¹ The detention facilities appear to be old warehouses divided into smaller rooms. On the islands the detention facilities are also being described as old warehouses that are converted into jails.¹⁴² In general, reports claim these facilities are not equipped for accommodating people.¹⁴³ There is a small holding area in the international departures section of the Eleftherios Venizelos airport that is comprised of a few cells where detainees are usually held for not more than a few days and there is a jail near the airport of Elliniko at the south of Athens where migrants are held longer.¹⁴⁴ Also, there are some larger detention centres in Attica/Athens (Elliniko, Aspropyrgos, Petrou Ralli, Athens Airport) and smaller facilities (police stations) in several towns all over Greece.¹⁴⁵ The conditions in some facilities are considered better than in others. However, the description of the conditions as set out below seems to apply to most of the detention facilities.

Detention centres are overcrowded

Due to the extensive influx of irregular migrants – some of whom are asylum seekers – in Greece, all detention facilities are operating at full capacity and in many cases hold far more detainees than the given capacity. Following the European elections in June 2009, the Greek government, in an attempt to crackdown on immigrants, started arresting illegal migrants and thereby increasing the burden on detention centres.¹⁴⁶ It is said that in 2008, 146,000 irregular migrants were arrested.¹⁴⁷ This capacity problem results in migrants and asylum seekers either being detained in police or border guard stations for weeks or months or in overcrowded conditions in the centres, which creates an unsafe and unhygienic environment.

At the end of August 2009, UNHCR paid a visit to the Pagani detention centre in Lesvos, Greece. In its briefing on this visit UNHCR reports being shocked at the conditions in the detention centre and found them to be unacceptable. According to the UNHCR briefing, the centre has a capacity of 250-300 people, but more than 850 people were detained, including 200 unaccompanied children. One room housed 150 women and 50 babies, many suffering from illness. During a visit in September 2009, Doctors Without Borders witnessed even more than 900 people being detained in the Pagani centre. In one cell of about 200 square metres they found more than 200 women and children.¹⁴⁸ During UNHCR's most recent visit to the Pagani centre in October 2009 it appeared that no improvements had been made.¹⁴⁹

¹⁴¹ CPT Report 2009, p. 20.

¹⁴² Human Rights Watch 2008 p. 68-78.

¹⁴³ Doctors without Borders 2009.

¹⁴⁴ Human Rights Watch 2008, p. 79.

¹⁴⁵ Spyros Rizakos from NGO "AITIMA".

¹⁴⁶ Apostolis Fotiadis, "Greece: new laws being rushed against migrants", Inter Press Service News Agency, 23 June 2009. The article claims that the right-wing government uses these measures to win back the far right-wing vote.

¹⁴⁷ Trouw, "Griekenland kan immigratie niet alleen aan; Immigratie Chaos troef bij opvang illegalen", 10 september 2009.

¹⁴⁸ Doctors without Borders 2009.

¹⁴⁹ UNHCR News Story 2009.

Males and females are detained separately but this automatically means that families are also separated. One young Afghan woman was however detained together with her husband and other men, which she said was stressful and intimidating.¹⁵⁰

Sanitary conditions are deplorable

Several reports and briefings on visits to Greek detention centres express the concern about the unsanitary conditions. The aforementioned UNHCR briefing claims that the illnesses the women and babies in the Pagani centre were suffering from i[llnesses?] related to the cramped and unsanitary conditions.

To move around in the overcrowded cells, one has to walk over the dirty mattresses. These are the same mattresses people use to sleep on. Usually there are not enough mattresses for everybody. Many detainees complain about the filthy blankets and mattresses which are often infested with fleas. Other complaints involve skin parasites and the many insects crawling in the rooms.¹⁵¹

In each of the seven cells in Pagani, including the cell with women and children, Doctors Without Borders counted only two toilets and showers to be used by the 100-250 people detained there.¹⁵² Sanitation facilities are usually described as very dirty and are sometimes not even functioning. In mid October 2008, 600 people detained at Pagani detention centre suffered poisoning because dilapidated drinking water pipes were contaminated.¹⁵³

Account from a woman from Afghanistan¹⁵⁴

“We got food once a day. One time everybody was sick because of the food. The queue for the toilet was too long and many soiled themselves. After that the guards said we just became sick from the food and we did not get any food for 3 days. We hardly had any contact with people outside the room and at no point were we able to communicate with anyone from the prison. When the guards brought us food they wore protective gloves and mouth covers.”

Lack of medical care

Proper medical care seems to be almost non-existent in the detention centres. Doctors Without Borders reported that even though many of the children were sick, their mothers complained they had not seen a doctor in days. There is even an account of a 13-year-old boy who was extremely ill and in desperate need of medical care, but was not given any attention by the authorities. It was only when a group of protesters outside of the detention centre called an ambulance that the boy was transported to the hospital.¹⁵⁵

In the Pagani centre Doctors Without Borders observed the presence of pregnant women, some of them almost due to give birth. There is a documented case of a girl that was born in the Pagani centre in the summer of 2009. Her mother was brought to the local hospital for two days in order to give birth and then immediately returned.¹⁵⁶

¹⁵⁰ Human Rights Watch November 2009, p. 20.

¹⁵¹ Human Rights Watch 2009 p. 76-81.

¹⁵² Doctors without Borders 2009.

¹⁵³ PRO ASYL 2008, p. 9.

¹⁵⁴ See addendum for the complete account under nr. 2.

¹⁵⁵ During protests near de Pagani centre, protesters managed to give a camera to some detainees who then filmed the conditions in which they were staying. The following link shows the film they made and gives a clear picture of the over crowdedness and the unhygienic situation in the Pagani detention centre: <http://lesvos09.antira.info/2009/08/voices-from-the-inside-of-pagani-detention-centre/>

¹⁵⁶ Documented by PRO ASYL.

Abuses by law enforcement officials

In addition, there are allegations of ill-treatment of irregular migrants by law enforcement officials. The allegations that were received by the CPT during its visit in September 2008, consisted mainly of slaps, kicks and verbal insults. Often, the allegations appeared to relate to situations where the migrant had not understood a staff instruction due to language barriers.¹⁵⁷ The CPT also received allegations of retaliatory measures, such as border guards and police officers entering the cells wielding their truncheons after detainees had continued to complain about their situation. The observations from Human Rights Watch and the accounts given to us are consistent with these allegations.¹⁵⁸ Currently, there is an investigation concerning a case of police violence against a 17-year-old detainee at the Pagani detention centre. The Ecumenical Programme for Refugees of the Greek-Orthodox Church has collected and documented more than 40 eye-witness accounts detailing how the 17-year-old received beatings until he lost consciousness.¹⁵⁹

Accounts from asylum seeking about the treatment in detention¹⁶⁰

“During my detention, I was beaten and abused by the guards. They grabbed me by my throat. Often, I got beaten up by my fellow detainees, while the guards were watching, laughing and encouraging them.” (...) “A few weeks after my release I was arrested again quite forcibly. The police beat me, grabbed my throat and told me that I was a criminal, a drugs dealer. I spend three weeks in prison, where I was mistreated by the guards and other prisoners.”

“When anyone tried to communicate with the guards they were shouted at, kicked or hit. We were shocked because we hear that women were treated with more respect in Europe than in Afghanistan. The guards were equally aggressive towards men and women. There was no possibility to file a complaint. There was no one we could talk to, there were only guards. There was no interpreter.”

6.2. Greece's failure to comply with EU law

6.2.1. In general

Recital 8 of the preamble of the Procedures Directive declares that this Directive respects the fundamental rights and observes the principles recognised in particular by the EU Charter. Therefore, Article 6 of the EU Treaty and Article 8 and 47 of the EU Charter must also be taken into account.

Article 6 refers to the European Convention of Human Rights and Fundamental Freedoms. With regards to detention, the detention conditions and the legal remedy against it, Articles 3, 5 and 13 of the ECHR apply. Article 3 of the ECHR prohibits torture and other inhuman or degrading treatment. The European Court of Human Rights (ECtHR) understands this prohibition of torture to implicitly entail the prohibition of refoulement. Therefore, no-one may be sent back to a country where he runs the risk of being subjected to a treatment in violation of Article 3 of the ECHR. Article 5 of the ECHR deals with detention and article 13 of the ECHR with the right to an effective remedy.

Although the EU Charter is not a legally binding instrument, by referring to the Charter in recital 8 of the Directive the European Community acknowledged its importance. As the European Court of Justice sets out in the case of *European Parliament v Council of the*

¹⁵⁷ CPT Report 2009, p. 12.

¹⁵⁸ Human Rights Watch 2009, p. 69-78. See addendum II for individual accounts.

¹⁵⁹ Observed by PRO ASYL.

¹⁶⁰ See addendum II for the complete accounts under nr. 1 and 4.

European Union,¹⁶¹ the principal aim of the Charter, as is apparent from its preamble, is to reaffirm “rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the ECHR, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court ... and of the European Court of Human Rights.”

It follows from the previous paragraph that Member States (i.e. Greece) are not only bound by the provisions as laid down in the EU Directives but also by the principles – insofar as they are relevant to detention – recognized in the EU Treaty, the EU Charter and the European Convention of Human Rights.

6.2.2. Violation of the specific provisions

In the above paragraphs, we have set out evidence that the Greek authorities arrest and detain irregular migrants, some of whom are asylum seekers. The automatic detention of asylum seekers is in violation of Article 7, paragraph 1, of the Reception Directive as asylum seekers are allowed to move freely within the territory. The sole purpose of this detention is to prevent them from entering the country. Additionally, it appears that whilst in detention asylum seekers are being dissuaded from applying for asylum. This practice is in violation of Article 18 of the Procedures Directive and Article 18 of the EU Charter.

Furthermore, in the objection procedure, the court does not assess the lawfulness and the duration of the detention and legal remedies may turn out to be lengthy. As a result, the right to an effective legal remedy is violated. As a result of this, Greece is in violation of Article 18 of the Procedures Directive, Article 47 of the EU Charter, as well as Article 5, paragraph 4, of the ECHR and Article 13 of the ECHR.

The unhygienic conditions, the over crowdedness and the regimes in the detention facilities as described above can amount to a situation of inhuman or degrading treatment. The abuses by the law enforcement officials can even amount to ill-treatment. This is a violation of Article 3 of the ECHR.

S.D. v Greece Violations held by the European Court of Human Rights

In its judgement given on 11 June 2009 in the case of S.D. v Greece (appl. No. 53541/07) the European Court of Human Rights held that the conditions of the applicant’s detention were unacceptable. S.D. complained that, while he already was in bad health, he was detained for two months, without being allowed to leave his cell, without being allowed to make phone calls and without having access to blankets, clean sheets, or sufficient hygiene products. The Court considered that the applicant’s allegations were corroborated by several reports of international institutions, including Human Rights Watch and UNHCR. The Court found the conditions in the detention centre where S.D. was held, as described by the Committee for the Prevention of Torture, to be unacceptable. The Court concluded that the detention conditions combined with the length of time during which S.D. had been detained, while being an asylum seeker, amounted to a degrading treatment in violation of article 3 of the ECHR.

¹⁶¹ European Court of Justice 27 June 2006 (Case C-540/03), par. 38.

7. Dublin Returnees

7.1. Introduction

Dublin returnees are immediately detained upon arrival at the Athens International Airport. Human Rights Watch reported that returnees consistently comment on the rough, intimidating and insulting reception by Greek police from the moment they step off the plane.¹⁶² At the airport the returnees are registered and are handed a note stating they have applied for asylum and are then sent to the Attica Asylum Police Department, where an appointment will be made for an interview for a date in three months time.¹⁶³ As reported in the October 2009 Human Rights Watch report the arbitrary arrest of migrants is a common occurrence, and Dublin returnees run the same risk as first arrivals.¹⁶⁴ The note handed to Dublin returnees should offer the same protection against deportation as the 'red card'. As has been described in chapter 3, red card holders, however, also face deportation.

As has been illustrated in the chapters above, Greece lacks a fair and effective asylum procedure and adequate reception facilities. As a result, the right to asylum is ineffective and asylum seekers run the risk of ill-treatment and indirect *refoulement* in Greece. Such risks equally apply to Dublin returnees.¹⁶⁵ Dublin returnees are currently kept in limbo about their asylum application for a long period of time. In the meantime, most of them do not receive any reception facilities and end up having to live on the streets under inhuman and degrading circumstances.

7.2. Court Decisions

The European Court of Human Rights as well as various national courts of the Member States have addressed the above-mentioned difficulties.

7.2.1. The ECtHR

The European Court of Human Rights has indicated numerous interim measures against, among other States, the Netherlands, Finland, The United Kingdom, France and Belgium prohibiting returns to Greece.

In a number of these interim measures questions have been posed by the ECtHR about the treatment of asylum seekers upon their return to Greece. The Greek government was requested to inform the Court if, and if so, when, where and in what manner, the applicant would be enabled to lodge an asylum application on Greek territory. The Greek government was consequently asked in what manner a claim that the applicant's direct or indirect removal to his country of origin would be in breach of Article 3 of the ECHR, would be examined by the Greek authorities. The Court's questions indicate concerns about a risk of indirect *refoulement* by Greece, and the lack of real access to an asylum procedure. In addition, questions have been formulated on detention conditions, in particular whether the Greek authorities can guarantee that a possible detention will be in conformity with article 3 of the ECHR, which indicates a risk of direct *refoulement* to Greece.¹⁶⁶

¹⁶² Human Rights Watch 2008, p 114.

¹⁶³ Spyros Rizakos from NGO "AITIMA".

¹⁶⁴ NOAS, NHC & AITIMA, p. 8.

¹⁶⁵ NOAS, NHC & AITIMA, p. 8; Austrian Red Cross 2009, p. 10,-13-14.

¹⁶⁶ ECHR, X v the Netherlands and Greece, 23 June 2009, 32256/09; ECHR, X v the Netherlands and Greece, 25 June 2009, 32729/09. See ECHR, X v the Netherlands, 7 October 2009, 53451/09 for a recent interim measure.

7.2.2. National Courts

As indicated above various national courts have concluded that the Member State concerned had to refrain from transferring asylum seekers to Greece. Below we will give a few examples of the reasoning behind such decisions.

Germany

In Germany more than 70 Court decisions were made regarding Dublin transfers to Greece. In more than half of the cases, courts stopped the transfers as a provisional measure. In several cases however courts made final decisions with the conclusion that the transfer to Greece is unlawful and that Germany is obliged to make use of the sovereignty clause under Article 3, paragraph 2, of the Dublin II Regulation.

The decision of the Verwaltungsgericht Frankfurt am Main can be cited as an example. On 8 July 2009, the Verwaltungsgericht Frankfurt am Main held that according to the preamble of the Dublin II Regulation the goal of Article 3, paragraph 2, of this Regulation is to ensure the right to asylum guaranteed by Article 18 of the EU Charter. The Court consequently held that when deciding upon the application of Article 3, paragraph 2, of the Dublin II Regulation, EU Directives on asylum should be considered. The Verwaltungsgericht, taking into account the reports from UNHCR and PRO ASYL, considered that claims regarding the lack of reception facilities, access to employment, the lengthy procedures, lack of judicial information and a lack of legal aid in Greece were credible. It concluded that Greece was violating core articles of the Reception Directive as well as the Procedures Directive and ordered the national authorities to prevent the concerned asylum seeker from the removal to Greece.¹⁶⁷ In a different decision of another chamber of the Verwaltungsgericht Frankfurt am Main the German authorities were ordered to suspend the removal of the asylum seeker concerned, because it had serious concerns as to whether Greece would abide by its international obligations.¹⁶⁸

The Federal Constitutional Court of Germany (Bundesverfassungsgericht) will clarify whether it is lawful to transfer asylum seekers to Greece. There are several cases pending at the Federal Constitutional Court. The Court suspended the removal of an asylum seeker to Greece as a interim measure for the first time on 8 September 2009. In this interim decision it took into consideration the fact that the asylum seeker claimed, on the basis of sources that the court took seriously, that in practice he would not be able to register as an asylum seeker in Greece and that he would possibly be forced to live on the streets. The Bundesverfassungsgericht held that in view of this they could not be certain that the complainant could be contacted if returned to Greece when the Court was in a position deal with the merits of his application. The Bundesverfassungsgericht concluded that this outweighed the disadvantages of ordering interim relief partly because the EU obligations of the authorities were at stake. In this regard the Bundesverfassungsgericht attached importance to the fact that EU law, in Article 19, paragraph 2 and Article 20, paragraph 1 under e, of the Dublin II Regulation, offers the possibility for the Court to provide protection against a transfer through the use of interim relief.¹⁶⁹

France

On 5 October 2009 the President of the Administrative Court Paris, in a case involving an Afghan asylum seeker, took into consideration the implicit acceptance by Greece of the Dublin claim, the Hammarberg report, the CPT report and the case of S.D. v The United

¹⁶⁷ Verwaltungsgericht Frankfurt am Main, 8 July, 2009, 7 K 4376/07.F.A

¹⁶⁸ Verwaltungsgericht Frankfurt am Main, 8 July, 2009, 12 L 1684/09.F.A

¹⁶⁹ Bundesverfassungsgericht, 8 September, 2009, 2 BvQ 56/09

Kingdom. The court held that in view of this evidence the refusal by the *Préfet de Police* to make use of the sovereignty clause in Article 3, paragraph 2, Dublin II Regulation and to send Mr. X back to Greece was a clear breach of the fundamental right to asylum. The Court found that the fact that Greece was one of the oldest Member States of the European Union, had ratified most of the European and international conventions on human rights and the fact that the claimant may not be able to prove that he had been personally mistreated in Greece, did not affect their findings. The Court concluded that as a consequence, the implementation of the decision in which the *Préfet de Police* had refused to admit Mr. X in France and had decided to send him back to Greece should be suspended and that the *Préfet de Police* should take charge of his asylum request.¹⁷⁰ On November 6, the highest administrative court in France (Conseil d'Etat) cancelled the decision of the Administrative Court of Paris to suspend the transfer of asylum seekers to Greece.

The Netherlands

The District Court in Zwolle, in the case of a Somali asylum seeker, took into consideration the questions that had been posed by the ECtHR to Greece. These questions concerned, inter alia, the Greek asylum procedure, the detention conditions and the opportunity (or lack thereof) to communicate with the ECtHR. The District Court assumed that the President of the ECtHR therewith referred to the principles set out in *K.R.S v United Kingdom*. In assuming the Court had considered the questions asked by the ECtHR to Greece in the interim measure dated January 22, 2009 (no. 44989/08). The Court concluded that the Secretary of State had to reconsider her decision to reject the asylum application on the grounds that Greece was responsible for the examination of the application.¹⁷¹

Account from an Iraqi family returned to Greece¹⁷²

In the case of an Iraqi family the Dutch regional court approved the transfer only after the Greek authorities had guaranteed the continuation of medical care of the father. However, he received no medical care whatsoever in Greece. Instead the family was detained upon arrival. The father was subsequently removed to a psychiatric hospital where he was chained to a bed.

United Kingdom

In the United Kingdom challenges to Dublin removals to Greece are being stayed pending the resolution of the lead case. The lead case (*Saeedi* CO/8660/2009) will consider conditions in Greece and their compatibility with Article 3 of the ECHR and EU law, risk of refoulement (including constructive refoulement), and whether claimants will have effective access to remedies in Greece, both domestic and in Strasbourg. The substantive hearing in the *Saeedi* case will take place in January 2010.

7.3. Positions on removals to Greece

Concerns about Dublin transfers to Greece have also been expressed by, amongst others, UNHCR, Human Rights Watch and ECRE.

7.3.1. UNHCR

In view of EU Member States' obligation to ensure access to fair and effective asylum procedures, including in cases subject to the Dublin II Regulation, UNHCR advises

¹⁷⁰ President of the Paris Administrative Court 5 October 2009, no. 915828/9/1.

¹⁷¹ District Court Zwolle 30 September 2009, AWB 09/9200.

¹⁷² See addendum II for the complete account under nr. 13.

governments to refrain from returning asylum seekers to Greece under the Dublin II Regulation. UNHCR recommends governments to make use of Article 3, paragraph 2, of the Regulation.¹⁷³

7.3.2. Human Rights Watch

Human Rights Watch has recommended that EU Member States, with regards to their own non-refoulement obligations, suspend transfers of asylum seekers back to Greece, and instead opt to examine their asylum applications themselves. The organisation further recommended the Member States only resume such transfers only when Greece shows that it has met EU standards in relation to the conditions of detention, police conduct, access to asylum and other forms of protection, the fair exercise of asylum procedures, and when Greece has stopped its practice of forcibly returning non-nationals who would thereby face persecution, torture, or inhuman and degrading treatment in Turkey or in their countries of origin.¹⁷⁴

7.3.3. ECRE

In April 2008, ECRE called on all Member States to utilise the sovereignty clause under Article 3, paragraph 2, of the Dublin II Regulation to prevent the transfer of any asylum seeker to Greece until it is certain that Greece is complying with its obligations under EU and international law. ECRE did so following reports by, among others, the European Parliament's Civil Liberties Committee, the CPT, Pro Asyl and Amnesty international.¹⁷⁵

7.4 Conclusion

Asylum seekers transferred to Greece risk treatment contrary to Article 3 of the ECHR . In addition, Greece is systematically violating the basic rights of asylum seekers guaranteed by EU law. Dublin returnees fall victim to the absence of a fair and effective asylum procedure and to the lack of reception facilities in a manner similar to first arrivals.

Our complaint is therefore not solely directed against the treatment of initial asylum applicants by the Greek authorities but also, because of the seriousness of the non-compliance, against the treatment of asylum seekers returned under the Dublin Convention.

¹⁷³ UNHCR 2008, p. 8.

¹⁷⁴ HRW 2008, p. 6-7.

¹⁷⁵ ECRE, Call for suspension of Dublin transfers to Greece, 3 April 2008.

CONCLUSION

The Greek authorities systematically fail to protect those who are in need of international protection. Asylum seekers are routinely detained and often ill-treated. Access to the asylum procedure is made tremendously difficult. Even when asylum seekers manage to have their claims processed, the procedures themselves are not in compliance with EU Law. In addition, asylum seekers are rarely provided with shelter, food, financial or other material support from the Greek government. The special needs of asylum seekers are not taken into account, let alone those of vulnerable groups such as unaccompanied minors. This is abundantly clear from the various NGO reports, case law and the personal accounts included in this complaint. Although access to the asylum procedure is easier for Dublin returnees, the treatment they face is similar to that faced by initial asylum applicants.

Greece is therefore in clear violation of the EU asylum acquis (the Reception Directive, the Procedures Directive, the Qualification Directive, the Dublin II Regulation) including some of the most fundamental principles upon which the EU is founded such as the principle of *non-refoulement*, the right to asylum, and the right to human dignity.

Despite the fact that the European Commission addressed the deficiencies in Greece's asylum system on several occasions, no improvements have been made. It is imperative that immediate action be taken to fundamentally reform the Greek asylum system and bring it in accordance with the EU asylum acquis. We therefore urge the European Commission to commence the infringement procedure pursuant to Article 226 EC Treaty against Greece for non-compliance with its obligations as set out in the concerning Articles of the Reception Directive, the Qualification Directive, the Procedures Directive and the Dublin II Regulation.

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ADDENDUM I – EU PROVISIONS VIOLATED

CHAPTER 1: ACCESS TO THE ASYLUM PROCEDURE

Article 18 EU Charter

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 6, paragraph 2, EU Treaty

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Article 6, paragraph 2 Procedures Directive

Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.

Article 6, paragraph 5, Procedures Directive

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

Article 13 Qualification Directive

Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.

Article 18 Qualification Directive

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

Article 3, paragraph 1, Dublin II Regulation

Member States shall examine the application of any third country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II indicate is responsible.

CHAPTER 2 : PROCEDURAL SAFEGUARDS

Article 8 Procedures Directive

(...)

2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:

(a) applications are examined and decisions are taken individually, objectively and impartially;

(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law

(...)

Article 9, paragraph 2, Procedures Directive

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC.

2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Article 10 Procedures Directive

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

(a) They shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11;

(b) They shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 12 and 13 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

(...)

(e) They shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 9(2).

Article 12 Procedures Directive

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.

Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3). (...)

Article 13 Procedures Directive

(...)

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

(a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so; and
(b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate.
(...)

Article 14 Procedures Directive

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC
2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.
(...)

Article 15 Procedures Directive

1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.
2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

Article 39 Procedures Directive

1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:
(a) a decision taken on their application for asylum, including a decision.
(...).

Article 4, paragraph 3, Qualification Directive

The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(...)

CHAPTER 3 : INTERNATIONAL PROTECTION/REFOULEMENT

Article 13 Qualification Directive

Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.

Article 18 Qualification Directive

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

Article 15 Qualification Directive

Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 7 para 1 Procedures Directive

Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

CHAPTER 4 : RECEPTION CONDITIONS

Article 5 Reception Directive

1. Member States shall inform asylum seekers within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions. Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organizations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member State shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants may reasonably be supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6 Reception Directive

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory while his or her application is pending or being examined.

(...)

4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorized to remain in the territory of the Member State concerned or at the border thereof.

Article 13 Reception Directive

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.

2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.

Article 20 Reception Directive

Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts.

Article 21 Reception Directive

1. Member States shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted.

2. Procedures for access to legal assistance in such cases shall be laid down in national law.

Article 1 EU Charter

Human dignity is inviolable. It must be respected and protected.

Article 18 EU Charter

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28

July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

CHAPTER 5 : UNACCOMPANIED MINORS

Article 10 Reception Directive

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

(...)

2. Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system.

Article 13 Reception Directive

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.

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

Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.

(...).

Article 17 Reception Directive

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

(...).

Article 18 Reception Directive

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.

2. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counseling is provided when needed.

Article 19 Reception Directive

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined, be placed:

(a) with adult relatives;

(b) with a foster-family;

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

4. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

Article 17 Procedures Directive

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:

(a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

(...)

6. The best interests of the child shall be a primary consideration for Member States when implementing this Article.

Article 6, paragraph 2, EU Treaty

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Article 24 EU Charter

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

CHAPTER 6 : DETENTION

Article 18 Procedures Directive

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

Article 7, paragraph 1, Reception Directive

Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

Article 6, paragraph 2, EU Treaty

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Article 18 EU Charter

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 47 EU Charter

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

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

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

ADDENDUM II – INDIVIDUAL ACCOUNTS

Over the last months the Dutch Council for Refugees has interviewed clients that have entered Europe through Greece, have stayed in Greece in 2009 and recently travelled through to the Netherlands. Most of them are now awaiting their return to Greece based on the Dublin II Regulation. In this addendum accounts of these clients about their experiences in Greece are reported. These accounts corroborate this complaint on the various aspects as set out in the different chapters. These accounts are anonymised for the purpose of this complaint, but the credentials are known to the Dutch Council for Refugees.

1. Young man from Somalia

Nationality: Somali

Age: 24

Arrival in Greece

The first time I arrived in Greece was in November 2005. I fled from Somalia over land to Turkey. Together with a group of around 25 persons, we left Turkey in a small rubber boat. After a couple of hours the motor stopped working. We were floating around when we were picked up by the Greek coastal border patrol. They handcuffed us and brought us to a detention centre on Chios where our fingerprints were taken.

The Asylum Procedure

We told the Greek police officials that we were asylum seekers seeking protection and that we wanted to apply for asylum. It was almost impossible to communicate, and there were no interpreters. But finally we understood that the only response was that it was not possible to apply for asylum there, and that we would be detained for illegally entering the country.

Detention

I spent three months in that detention centre. Together with 15 boys/young men, I was locked up in a small room. Most of them were around the age of sixteen, but some of them were as young as thirteen or fourteen. It was very dirty, with some old mattresses lying on the floor. We got food only once a day. Twice a day, the guards let us outside to use the toilet: every morning and every evening they took us in groups of five, once a week we were allowed to use the shower. If we told them during the day that we had to use the toilet, the guards laughed at us and told us to use a bottle. We were never allowed to go outside, other than for sanitary purposes. There was no medical attention at all. When someone got really sick, the guard gave him one pill, never more than one. And we didn't even know what kind of medicine it was, we just had to assume that it was some kind of painkiller.

During my detention, I was beaten and abused by the guards. They grabbed me by my throat. Often, I got beaten up by my fellow detainees, while the guards were watching, laughing and encouraging them.

After three months, I was released from the detention centre and received a letter stating that I had to leave the country within 30 days. Together with some other people I took the boat to Athens, where I lived on the streets. After one month I got arrested in Athens. Again the Greek authorities took my fingerprints and I was sent to a detention centre. Here, it was even worse than on Chios. There were 30 men sharing a very dirty cell. There were not enough mattresses, only one toilet and one shower which was always cold. I was beaten and abused by the other prisoners. The guards did nothing about the situation, they did nothing except for laughing. Depending on the severity of my injuries due to the beatings, I got a sticking plaster or a band-aid. I never saw a doctor.

A few weeks after my release I was arrested again quite forcibly. The police beat me, grabbed my throat and told me that I was a criminal, a drug dealer. I spend three weeks in

prison, where I was mistreated by the guards and other prisoners. After this time I have been subsequently arrested for two or three weeks. Each time, I spend around three weeks in prison. I never saw a lawyer or an interpreter and I was never brought before a court.

Departure from Greece

Finally at the beginning of 2009 a travel agent brought me to Vienna. Upon my arrival there, I first heard about the Dublin Regulation and the fact that Greece was responsible for my asylum claim. In March 2008 I was sent back to Greece, where I was immediately detained again for more than two weeks, followed by two other detention periods of three weeks and four weeks. All this time, I have not been able to file an asylum application anywhere. Therefore in 2009, I took a flight to France (through a travel agent) and subsequently a train to the Netherlands.

2. Woman from Afghanistan

Nationality: Afghan

Age: 40

My youngest son had previously been in Greece when he was 13 or 14 years old. He was severely beaten by the police. He then fled to Germany where he was sent back to Greece, from where he fled back to Afghanistan.

Arrival in Greece

I fled from Afghanistan through Iran and went by boat from Turkey to Greece after Ramadan in 2008. There were 18 other people in the boat and at night we lost our way and were found by a police boat. They arrested us with force and brought us to Mytilini-island. If anybody tried to say something the police hit us.

Detention

When we arrived at the island, the women and men were separated. I was brought to a big room, where there were 400 women and lots of young children. Children up to the age of 13 or 14 years old stayed with their mothers, but boys over that age went to a room with the other men. There weren't enough mattresses for everyone. The children slept on the mattresses with their mothers. There was only one toilet and one shower, which was enclosed but built into the room. The floor in the room was wet because of water from the shower.

We were given food once a day. One time everybody was sick because of the food. The queue for the toilet was too long and many of the detainees wet themselves. The guards blamed the food for making us sick and we did not get any food for 3 days. We hardly had any contact with people outside the room and at no point were we able to communicate with anyone from the prison. When the guards brought us food they wore protective gloves and mouth covers.

One day there were strange people asking questions through an opening from outside the room. We thought they might be from an international organization, but we did not know. They asked if any of us were sick.

The asylum procedure

After ten days we were taken to an office, where they took our photos and fingerprints. The guards who handled us were wearing gloves and mouth covers. Then we received a piece of paper and were brought to a harbour. From there we had to buy a ticket to get to Athens by boat. The ticket cost us 50 euros, which we gave to the police who bought the ticket for us.

We were never informed about claiming asylum, nor were we given any other kind of information. I never spoke to a lawyer, nor was there at any time an interpreter present.

Reception facilities

At arrival in Athens we walked until we found the city centre. We came across other Afghans, but they couldn't tell us where we could find shelter. There were many asylum seekers without a place to stay. I stayed in Athens for 10 months with my sons, who were then 17 and 19 years old. We lived in a small apartment.

Arrest and ill-treatment by the police

My sons left the apartment and were arrested 3 or 4 times. Each time they were arrested they did not come home for at least a week and I didn't know where they were. My youngest son was arrested with force and beaten by the police. When he came home he had the policeman's hand imprinted on the side of his face and he had headaches for a week.

Departure from Greece

From Athens my sons and I took a 4-hour flight to a country in Europe from where it took us 5 hours by train to get to the application centre.

I would rather return to Afghanistan than be sent back to Greece.

3. Young woman from Somali

Nationality: Somali

Age: 24

Arrival in Greece

I arrived in Greece at the end of March 2009. I fled from Somalia over land to Turkey. Our agent put us in small boat with around 20 people. After a couple of hours we arrived at the shore of an island. I don't know which island this was. We walked for about four hours when we were caught by the Greek police and got arrested. The policemen searched us. The men in our group were beaten hard with the police bats. When we arrived at the police station (by foot as it was not far away), the policemen ordered us to sit down on the floor in a line. We had to sit and wait there for twelve hours, from ten in the morning to ten in the evening.

The Asylum Procedure

In the meantime, the policemen didn't ask us any questions. But in any event, we would not have been able to understand the police as there were no interpreters present. Finally our fingerprints were taken and our names were written down. None of the Greek officials had at any time made clear that we could apply for asylum, so I thought that this was not possible in Greece.

Detention

At night we were brought to a detention centre. Upon arrival one of the younger men from the group who spoke some English said that we were being detained because we had committed a crime as we entered the country illegally. In the detention centre, men and women were separated. The women were all locked up in the same room. We were not allowed to go outside, except once a day for the room to be cleaned. There was no medical assistance available. Food was handed out only once a day: rice, meat and bread. The guards told us that it was up to us to divide our meals during the days. But this was impossible: after a while the food which we kept for later, was getting cold and inedible.

Reception facilities

After three days I was released from the detention centre together with the rest of my group. We were brought to the harbour by car and received a letter stating that we had to leave to

country within 30 days. Then they left us there. Shortly, a man came to us saying that if we would give him money, he would arrange boat tickets to Athens. We gave him money, not knowing what else to do. We never saw him again. That night we slept outside on the street. The next day, we bought tickets to another island, and from there we took a boat to Athens. As we had no place to go, we were forced to sleep outside on the streets of Athens. Often we were being harassed by drunks and other people passing by. The churches provided us with some food.

Departure from Greece

At the end of May 2009, an agent arranged a flight to Amsterdam Schiphol airport.

4. Young couple from Afghanistan

Nationality: Afghan

Age: 25 and 21

Arrival in Greece

We entered Greece twice. The first time we arrived in Greece was about 5 or 6 months ago. It was by boat from Turkey. We left at night with about 30 people in a rubber boat and were in the water for six hours when we were found by Greek police and taken ashore. We were taken to prison and our names and fingerprints were taken.

The Asylum Procedure

We were never given the opportunity or were informed about the opportunity to apply for asylum. They took our fingerprints when we arrived in prison. Nobody made clear what was going to happen to us. We were not given any information whatsoever. Nobody asked why we were in Greece. We never spoke to a lawyer, nor was there at any time an interpreter present.

Detention

There were about 100 people in the room we had to stay in. There was a terrible smell, no fresh air. The detainees had lice. There weren't enough mattresses for everyone and the mattresses were mouldy. There was no privacy. We slept very close to each other, practically in the same bed as strangers. A lot of people were ill or became ill. There was no medical help while we were there. There was 1 toilet and 1 shower in the room. We got food once a day. We only had tap water to drink and if we wanted tea we just drank hot water from the shower with teabags that were given to us.

When anyone tried to communicate with the guards they were shouted at, kicked or hit. We were shocked because we heard that women were treated with more respect in Europe than in Afghanistan. The guards were equally aggressive towards men and women. There was no possibility to file a complaint. There was no one whom we could talk with, there were only guards. There was no interpreter. We were kept in prison for about 6 days.

Refoulement

On release we were given a piece of paper, but we didn't know what it said. We are illiterate. When we left the prison we went to the harbour. Police stopped us but we didn't understand what they were saying. They started using force and hitting us. We showed them our piece of paper. They indicated we should buy a ticket and get a boat. We bought a ticket and got on a boat. However, the journey across the water was only around 150 metres. We found out from someone else we had been sent back to Turkey.

Departure from Greece

After 3 or 4 days we found an agent. We stayed in a house for 2 or 3 months before we left for Greece again. From Greece we travelled to the Netherlands.

5. Young men from Afghanistan

Nationality: Afghan

Age: 23

Arrival in Greece

I arrived in Greece in the end of June 2009. I fled from Afghanistan to Karachi in Pakistan. It was my intention to fly from Karachi or otherwise from Turkey to a safe European country. This was agreed with my agent. Instead, the agent dropped me with a group of around sixty people in 3 rubber boats in the sea at night. The water kept running over the sides into the boats. With a lot of effort we managed to stop the boats from sinking and arrived at the shore of Mytilini-island. My bags with all my documents and possessions, were lost in the water. When we arrived the group went into different directions. I walked with 17 or 18 people until we found a road. Here we stopped and were found by policemen. They gestured to us to wait. After two hours they came back with a bus and we were transported to a police station.

The asylum procedure

At the station they took our fingerprints. I could not understand what the policemen were saying but I gave my name. We could not understand each other and there were no interpreters. The policemen locked us in a camp.

Detention

The camp where I was detained was made up of different barracks. I was locked in a room with about 60 other men. We only had one toilet and one shower. Every other day we were let outside in a closed yard to get some air. But this only happened if the guards felt like it. There was no fresh air in the room itself. A lot of the people had been locked up for 3 months and had become mentally disturbed. In particular there were unaccompanied minors in the room who had already been locked up for three months or more. On some days they released families and adults but not the minors. The minors became angry and broke the glass of the windows. There were bars in front of the glass. Mostly we got food twice a day. It was never sufficient. Sometimes a bus with livestock came by. Those with money could buy some food or cigarettes by reaching through the bars. We made tea with the teabags we were given and warm water from the shower. There was no medical assistance. One boy was sick in bed for a week and no one even checked up on him. There were not enough mattresses. The mattresses were extremely dirty. The guards never really entered the room.

The police cell I was locked up in after my arrest at the airport was very small with 15 men in it. It was impossible for people to lie or sit down at the same time. We had to take turns. We were only allowed to go to the toilet twice a day. At 1 p.m. we were given lunch. At 3 p.m. we were allowed to use the toilet. At 9 p.m. we were given food again and at 11 p.m. we were allowed to use the toilet. There was no water in the cell. We could drink water when we were in the toilet and could fill a plastic bottle of water to take back into the cell. There were only men in my cell. The men were all asylum seekers. The women were held somewhere downstairs. After nine days I was released. I think the 8 days detention might be part of my sentence but I am not sure. There was no one we could communicate with during the detention. There was no medical assistance.

Arrest and ill treatment by police

After about two weeks I was released and received a paper that stated I had to leave the country within 30 days. By bus I was brought with a group to the harbour. There we had to purchase our own ticket to take a boat to Athens. The journey took about 13,14 hours. During the passage I called the agent with my mobile phone. The agent picked me up in Athens and brought me to a hotel. He arranged a flight for me. At the airport I got stopped by the police. They saw my ID-card was fake. The police asked me questions but I could not understand what they were saying. They took all my possessions. They gave them back after

a while and brought me to the police station. At the station they took my possessions again. I had put my mobile phone in my underwear.

The policemen searched me and I had to take off all my clothes. When they found the phone they smashed it to the ground and started cursing at me in Greek. The four of them started to beat me. Afterwards I was brought to the small police cell that I described above.

Public Hearing

The next day I was brought to court. I waited in court from 8 a.m. until 6 p.m. but the hearing did not take place because there was no interpreter. The next day there was an interpreter. I was brought in front of the court with a lot of other people. We were a mixture of asylum seekers and criminals. The asylum seekers were of different nationalities. There were about 10 rows with 10 offenders on each row. Each offender was handcuffed to another and there was a guard for every two offenders. The interpreters were translating for different people at the same time. The judge took 2 to 3 minutes for every case. The judge gave me a fine of 87 euros and warned me that the punishment would be more severe if I was caught again in Greece after the expiry of my 30-day limit. I agreed because I wanted to be released. However, even though I agreed, I was taken back to the police cell.

Departure from Greece

After my release I got in contact with my agent again. The second time I managed to fly to I think what was Germany. By car I was brought to Eindhoven where I arrived 17 August 2009. My stay in Greece was between 45 and 50 days.

6. Young men from Afghanistan

Nationality: Afghan

Age: 25

Arrival in Greece

I fled Afghanistan because I feared for my life. In July 2008 I entered Greece by boat and stayed there for 11 months. I left Turkey by rubber boat with about 26 people. The agent send us onto the sea in the dark and said to row in the direction of the light. After 3 or 4 hours rowing we arrived in Samos. We were exhausted and sat down on a bench. A man saw us and I believe he called the police because in a short while the police arrived and took us to the police station. We were imprisoned for 2 or 3 days at the police station without food. One person could understand a bit of English and found out we were in Greece.

The Asylum Procedure

The policemen did not explain anything and were very rude and angry. They did not ask for documents. By their gestures I guessed that they wanted to know how we got there and who helped us. The policemen took our photo and fingerprints. I was never questioned or interviewed during my stay in Greece. There was never an interpreter. Every time I got arrested my fingerprints were taken and I received a new paper that stated I had to leave the country within 30 days. The fourth time the police took my fingerprints the officers told me I had to stay longer because it was the fourth time. I was not released for 3 months.

Reception facilities

When I was released I was given a piece of paper. I could not understand it at first. I thought perhaps that it was helpful or what we need to be given asylum. It was only until later during my stay that I found out that this was a notification to leave Greece within 30 days. On the street we ran into a few policemen and showed them the paper. They gestured us to buy a ticket and take the boat. We bought a ticket and were forced into the boat. I was sitting on the roof with others because there was no place anywhere else. The boat journey took about 17 or 18 hours and was very tough. It was hard to balance on the roof. We got cold and wet.

The boat took us to Athens. From there we walked about 3 or 4 hours to get to the city centre.

In Athens I had no money to travel further and leave the country. Once I was able to travel to the border. At the border I showed the paper I had been given to the authorities. They made it clear that they needed other forms and would not let me cross.

Like many other asylum seekers I lived on the street. There were no other options. Sometimes I got food from Afghans or other people. There was a church that handed out food occasionally but you first had to convert to Christianity. When you are hungry it does not matter anymore if you are Muslim or Christian, so I converted.

Detention

During my 11 months stay in Greece I have been imprisoned 4 times for in total about 5 months. The police mostly took us by surprise while we were asleep. They knew in which surroundings we were sleeping. We slept in parks or under bridges. The policemen used force to wake us up. They shouted, cursed, kicked and hit us. When your paper was not valid anymore because the 30 day limit had passed you were taken to the police station. We were hit and kicked the entire journey to the station. I do not see a difference between Greece and Afghanistan. The authorities cannot be trusted.

The cell was about 25 square metres for 30,40 men. In the cell not only asylum seekers were being held but also other prisoners. We were held between criminals, drug addicts and thieves. Every time people were released from prison they were ill because of the bad conditions of detention. There was no medical care for us during or after detention. If someone asked for painkillers or aspirin the policemen became violent. There was one shower and one toilet in the cell for all of us. Everywhere was vermin. People got lice. Once a day we received some food, a sandwich with something but the food was never sufficient. We were hungry.

I was taken to different stations depending on the part of the city in which I had been arrested. I have been imprisoned at different police stations but in every station the circumstances were equally bad. The policemen were offensive, aggressive and violent.

Departure from Greece

After 11 months I managed to leave Greece. For a long time I observed the trucks who left Athens by boat. A man from Pakistan and I climbed under a truck and held on between the axles of the wheels. This is how we could enter the boat and travel along to leave Greece. After 3 or 4 hours we arrived in another country. I believe that this was France or Italy. The man from Pakistan called an uncle from the Netherlands who picked us up and took me to Ter Apel where I applied for asylum. I would rather go back to Afghanistan than be sent back to Greece.

7. Somali man

Nationality: Somali

Age: 26

Arrival in Greece

I arrived in Greece on 28 February 2009. I took the plane from Somalia to Djibouti. From there I flew to an unknown Arabic country. I walked for two days after which I took a boat to Greece. There were 30 people on board of the boat. Upon arrival my fingerprints and photo were taken. I was detained upon arrival. There were no Greek officials. We were not able to ask any questions.

Asylum procedure

I did not get the chance to apply for asylum. At no point was I asked any questions.

Reception conditions

After we were released from detention I walked to a city with some other people. We arrived at some kind of church. There were a lot of refugees. We did not receive any help and were instead sent away. We slept in a park but were constantly chased. Some police officers approached us and threw water at us. After a few days in the park a group of men approached us. They yelled: "black, black". The other men of my group walked away but I did not. They came to me and attacked me. As a result of that attack, my arm was broken.

I walked to a hospital and wanted to ask a doctor for help. I was however immediately turned away. They did not want to help me and told me that I smelled. This was true because I had not been able to wash for 20 days and my clothes were dirty. I was not given any medical care until I arrived in the Netherlands.

Detention

We were given no food or drinks for two whole days. After two days I fell sick, but there was no doctor. We were completely left to our fate. There were no beds. We got a piece of cardboard on which we had to sleep, and there was no shower. There was something that resembled a toilet, but there was no water. There were a lot of people. Under such conditions it was very dirty. There was no police. After 20 days a policeman arrived who told us we would be released under the condition that we leave the country immediately. He told us that if we did not leave we would be detained indefinitely.

During detention I was kicked and slapped by policemen. Other detainees were also frequently mistreated. When I tried to ask something the policemen became angry. This happened to the other detainees as well. Everybody was beaten. There was no help and there was no opportunity to lodge a complaint. On the day that the policeman came to tell us we could leave, there was one person that could understand what was being said and he translated it for the rest of the group.

Departure from Greece

I managed to find another Somali man whom I knew. In the past the man had promised to help me get to Europe. He promised to help me then and arranged a travel document and a plane ticket. We travelled to the Netherlands by plane. On 28 April 2009 I arrived at Schiphol airport.

8. Man from Somalia

Nationality: Somali
Age:35

Arrival in Greece

I arrived in Greece on 31 October 2008. My family and I paid 6000 dollars for the travel from Turkey to Greece. We travelled on a small rubber boat with 20 other people. The crossing was very dangerous. When the Greek coast guard arrived, the human trafficker left us alone in the boat. That is when the trouble started. It was in the middle of the night and it was extremely cold. We were kept in the port from 5 a.m. until 5 p.m. We were without blankets, food or water. We were not allowed to go to the toilet.

Our fingerprints were taken but the Greek authorities did not inform us on what was happening. I was separated from my wife and children and we were all detained.

Detention

The detention facility was no bigger than two offices in which 150 people were detained. There was only one toilet. It was dirty. The Greek authorities stayed away. As a result we did not know what was going to happen to us. We received some food. In the morning and in the afternoon a van delivered some food. But this was far too little. Fights broke out regularly over the food. We also got very little to drink. There was a possibility to buy drinks, but this was very expensive.

My daughter was very ill but there was no medical care. My wife does not speak English and therefore she could not ask for help for our daughter. Eventually our daughter was brought to a hospital. She was admitted in the hospital for nine days. But I was not allowed to visit her.

Only people with money were able to buy themselves out. I was able to afford the crossing to Athens and was therefore released from jail. The fee was 18 euros for a child and 36 euros for an adult. I gave two Greek women money to buy boat tickets for us.

Access to asylum procedure

In Athens I tried to apply for asylum at the Attica Police Department for three days in a row. But I was sent away with force by the Greek police each time. The police mistreated those who did not leave immediately.

Reception facilities

In Athens we lived in one space with 30 other people. We paid 1500 euro for two months. Our room was in the cellar and was extremely dirty. The total lack of air and hygiene was unbearable, especially because my wife and children stayed inside the whole time. I had to go outside to buy food and medicines. On one occasion the police arrested me. I was forced to undress on the street. I was handcuffed and was taken to the police station. What happened to me there was too humiliating to talk about. I am unable to recount what happened to me there.

Departure from Greece

I could no longer bear the inhuman living conditions in Athens and therefore I paid a human trafficker to arrange travel to the Netherlands. I had worked in Saudi Arabia for five years and had money saved up. I paid the smuggler 8.800 euros.

My stay in Greece has traumatised me. The idea of having to return to that country scares me. In Greece I was treated inhumanly by the authorities. Asylum seekers have no rights whatsoever in Greece.

9. Afghan unaccompanied minor

Nationality: Afghan

Age: 16

Arrival in Greece

In October 2008 I arrived in Greece from Turkey, by rubber boat. At the island where we arrived, we were brought to a prison-like building with big rooms. We got a paper which told us to leave the country within one month. The authorities led us to Athens, where we were put on the streets.

Access to asylum procedure

We were never given the opportunity to apply for asylum. But, after the way in which we were treated we did not want to do so anymore. Fellow countrymen told us that it was almost impossible to apply for asylum in Athens. Nobody told us what was going to happen to us. We were often pushed around.

Reception facilities

After we arrived in Athens, we were left on the street. We searched for shelter in a church, but we had no money to pay for the stay. Finally we stayed in some kind of barn and had to search for food in garbage bins. We were arrested by police a couple of times. At those times we received another piece of paper telling us to leave Greece within a month.

Detention

There were about 150 people in 1 room with only 50 beds. Our family (mother, father and 4 children), were put in different rooms: my mother with other women, my father with other men and the children with other children. We did not see each other for ten days. Food was shoved under the doors; there were no further services. Every day people were taken to be sent away. There were no translators and the authorities were not friendly. After ten days, it was our turn. We were taken to Athens and left on the streets. It was a nightmare. My mother has heart problems and she needed medical help but we never received any aid.

Departure from Greece

4 July 2009

10. Man from Somalia

Nationality: Somali, Reer Hamar tribe

Age: Unknown

Arrival in Greece

I arrived in Greece on 25 November 2007. I arrived by boat with 22 other refugees. We were picked up by the Greek Coast Guard and detained for ten days on a small Greek island. I don't know the island's name. I got released after ten days with a letter that said that I had to be out of the country within a month.

Asylum Procedure

I was never informed about my right to apply for asylum and was not given any other kind of information about my rights. They did take my fingerprints but I don't know what happened with my fingerprints and I didn't get a chance to apply for asylum.

Reception facilities

Because I was not able to claim asylum, I was not given any assistance to which I am told I was entitled and instead, had to live on the streets.

I stayed in Greece for about 1 and a half years. I was not provided with any shelter. I lived on the streets and slept in a garden. I don't know the name of this garden. I stayed mainly in the areas of Balatiy Kumodoyo and Ministivaki. I got my food out of a rubbish bin near a restaurant.

I suffered from police violence. On one occasion the police woke me up in the middle of the night. They hit me a couple of times and forced me to move from where I was sleeping.

Another time the police asked me to open a bag I carried with me. I refused because I was afraid they would take the food that was in the bag. The police then forced me to hand over the bag, ripped the bag apart and sent me away.

Because of my bad experiences with the Greek authorities, I was too afraid to report this crime to the authorities. I couldn't trust the Greek authorities to protect me and not to force me to leave the country.

With financial help of other Somalis I got documents and flew to the Netherlands where I arrived on the 5th of July, 2009.

Departure from Greece

I left Greece on 5 July 2009.

11. Man from Somalia

Nationality: Somali

Age: Unknown

Arrival in Greece

I arrived in Greece on 21 April 2009 by boat from Turkey. The boat sank and the Greek Coast Guard picked us up.

Asylum Procedure

There was no place or opportunity to apply for asylum. The police knew that we were refugees and that we wanted to apply for asylum but there is no place in Greece, like the application centre in the Netherlands, where we could go to and apply for asylum.

Reception facilities

I wasn't offered any shelter nor did I receive any reception facilities and was never given any possibility to apply for asylum.

When I was picked up by the Coast Guard they took me to a police station where they took my fingerprints. After that they released me with a letter in English that said that I had to be out of the country within a month. They then took me to a boat to Athens where I stayed in a house with many other Somali people. We stayed inside as much as possible because it wasn't safe to be out on the streets. Some people who lived in the house had been sent back from Sweden to Greece and were illegal again in Greece.

Detention

After a month I went outside to make a telephone call to someone, when the police arrested me. They kicked and beat me on the street, handcuffed me and took me to a prison together with 30 other persons. They detained me for 7 days. It was impossible to apply for asylum. Eventually I got a new paper, after that I left Greece by myself.

Departure from Greece

I left Greece on 30 June 2009.

12. Asylum seeker from Guinea

Nationality: Guinean

Age: unknown

Arrival in Greece

I travelled with a rubber boat from Turkey to an island. A Somali man told me it was called Samos. He was the only one who spoke Pular. I am illiterate. A Nigerian man had arranged the trip although he did not accompany us on the boat.

When I arrived, on the 15th of August 2008, the Greek police came. I know they were the police, because of their uniforms and because they told the Somali man in English they were police. Everybody on the boat got a paper that told us to leave the country within one month. The police led us to a boat to Athens.

The Asylum Procedure

The police never helped us or offered asylum. My fingerprints were taken twice. The first time was when I arrived in Samos the second time when I was arrested and detained for three months. At no point was I given access to an interpreter in Greece.

Reception facilities

When we arrived in Athens, I travelled to Plaza Amerikis with some Somali and Arabs. All foreigners go there. There are lots of drug addicts there. Everybody was picked up by someone, except me and my Somali friend. We searched for other Somali and Guinease and we found another Somali man. This man wanted to help my Somali friend but not me. I slept on the bench at Plaza Amerikis. My Somali friend brought me food. I lived on Plaza Amerikis for 5 months. Nobody offered any help, except for the church at Plaza Omonia. I could get food at the church. I stayed at Plaza Amerikis, because that was the safest place for asylum seekers. Police did not show up there. My Somali friend found work. When I was in line for food at Omonia, I broke my arm. It was always pushing and arguing in line to be able to get the hold on some food. My arm was put in a plaster cast.

Detention

During, the 5 months I was living on the streets in Athens I was arrested by police 3 times because my 30-day paper expired. I was held in the police cell for two weeks in total. I received food twice a day at 9.00 a.m. and at 11 p.m. although there was never enough. After 5 months, I was caught by the police again. This time, they brought me to a bigger jail because I had still not left the country. I was detained for 3 months. In jail, I had to clean the toilets every 3 days. At these times I was beaten up, because in the toilets there were no cameras. They put a cigarette out on my arm, beat me, kicked me and finally they broke my arm again (this interviewee's kidneys are being examined and the doctor has found several stitches on his body). They said they beat me because I had not cleaned the toilets properly. This means I was beaten every three days. They brought me from jail to the hospital. I stayed there for two weeks. I was given a bed and my arm got better. Nobody ever offered any further help or asked me anything. I noticed that I was the only one who had to drink water from the tap, while everybody else got water from bottles.

Departure from Greece

After I was dismissed from the hospital I lived on the streets for about one month. I lived on the streets until I met a Dutch man who offered me work and shelter. I spent one week in a hotel with this man. I was sexually abused by this man. I had no place to escape to. The man threatened to hand me over to the Greek police. In the beginning of June this man took me to the Netherlands by plane and held me hostage in a house. He and a friend of him abused me sexually. After two days I managed to escape and applied for asylum at the application centre for asylum seekers.

13. Family from Iraq; Transfer from the Netherlands to Greece¹⁷⁶

Transfer to Greece

The family was transferred to Greece on 1 October 2009. The Dutch regional court approved the transfer only the Greek authorities had guaranteed the continuation of medical care.

Detention

After arrival in Greece the family was immediately detained. The mother and children were detained for six days. The father was beaten by a police officer when he insisted on smoking a cigarette. During their detention they heard several people screaming after a police officer/guard beat them with a bat.

¹⁷⁶ The family's lawyer in the Netherlands.

In the detention facility there were only families and single women. There were 20 people in total. The facility was extremely dirty and insects bit the children.

One night, at 2.00 am the father was taken to a psychiatric hospital he was chained to his bed with hands and legs. He asked them to release him but he did not understand what the guards replied. Later, through the aid of an interpreter, he understood he was being chained because he was crazy.

The next morning he was taken to a room with people with mental health problems. These people behaved aggressively and unpredictably. He told a doctor that he was not crazy and that he wanted to leave the hospital. The doctor released him after which the father went to find his wife and children who had been released from detention.

Reception Conditions

After their release from detention the mother and children were told to go to Petrou Ralli to lodge an asylum application. After three days they went to Petrou Ralli and received a red card.

The first night they stayed in a hotel for which they had to pay 60 Euros. They met an Iraqi man whom they asked for help. Someone from the Iraqi community gave them some money and found them a small apartment, that they could rent.

Medical care

The father suffers from breathing difficulties for which he received medical care in the Netherlands. There are medical reports that confirm these medical problems. In the Netherlands he attempted to commit suicide, which shocked his wife and children. However, he received no medical care whatsoever in Greece. During his stay in Greece he still used the medicine he had received in the Netherlands.