



UNHCR POSITION ON THE RETURN OF ASYLUM-SEEKERS TO GREECE UNDER THE “DUBLIN REGULATION”

This present Return Advisory complements and revises *The Return to Greece of Asylum-Seekers With "Interrupted" Claims* dated 9 July 2007, and supplements the information relating to Greece contained in *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, dated November 2007.

**United Nations High Commissioner for Refugees (UNHCR)
15 April 2008**

I Introduction

1. The “Dublin Regulation”¹ provides for a system of determining responsibility for examining, according to specific criteria, asylum claims lodged in the European Union. The Regulation aims at ensuring that each claim is fairly examined by one Member State to deter multiple applications and enhance efficiency.

2. UNHCR has in previous positions recalled that the credibility of such a system is contingent upon the existence of harmonized standards of protection among Member States of the European Union. In relation to the application of the Dublin Regulation to Greece, UNHCR continues to remain concerned that, while the Government of Greece has taken a number of steps to improve its asylum system and practice, a substantial number of asylum-seekers continue to face serious challenges in accessing and enjoying effective protection in line with international and European standards.

3. This note outlines UNHCR’s position relating to the application of the Dublin Regulation with regard to the return of asylum-seekers to Greece, based on an analysis of issues concerning procedural safeguards, access and quality of the asylum procedure, and conditions of reception in the country. The note complements and revises UNHCR’s position on *The Return to Greece of asylum-seekers with “interrupted claims”* from July 2007² and supplements the information relating to Greece contained in the UNHCR’s *Study of the Implementation of the Qualification Directive*.³

4. In summary, based on EU Member States’ obligation to ensure access to fair and effective asylum procedures, including in cases subject to the Dublin Regulation, UNHCR advises Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice. UNHCR recommends that Governments make use of Article 3 (2) of the Dublin Regulation, allowing States to examine an asylum application lodged even if such examination is not its responsibility under the criteria laid down in this Regulation.

5. UNHCR issues position papers and other guidance notes periodically, based on the Office’s supervisory responsibility under paragraph 8 of the Office’s Statute⁴ and

¹ European Union, *Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national*, Official Journal of the European Union L50/1 of 25 February 2003, (hereinafter the “Dublin Regulation”), available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3e5cf1c24>.

² UNHCR, *The return to Greece of asylum-seekers with “interrupted” claims*, 9 July 2007, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46b889b32>. The conclusions of the July 2007 paper addressed the access to asylum procedures for asylum-seekers with “interrupted” claims.

³ UNHCR, *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, November 2007, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=473050632>.

⁴ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628>.

Article 35 of the 1951 Convention relating to the Status of Refugees. In EU law UNHCR's supervisory responsibility is reflected, *inter alia*, in Declaration 17 of the Treaty of Amsterdam which requires consultations with UNHCR on matters relating to asylum.⁵

II. Access to the Asylum Procedure at the Airport and Central Asylum Department

6. Asylum-seekers returned to a State participating in the Dublin system, pursuant to Article 3(1) of the Dublin Regulation, should enjoy effective access to national asylum procedures and be readmitted, upon arrival, to a substantive refugee status determination. All "Dublin returnees" access the Greek national territory via Athens' airport. According to Greek legislation⁶ asylum-seekers, including "Dublin returnees", regardless of whether they are applying for asylum in Greece for the first time or whether an asylum procedure is already pending at first instance, should have access to an asylum interview at the airport. On the other hand, individuals whose asylum applications were rejected at first instance and who have not missed the deadline for appeal are directly referred to the Central Police Asylum Department, the responsible appeal body to register their appeal. The same applies to those cases pending on appeal. Greek legislation also foresees that all asylum-seekers with pending asylum claims should be issued with an identity card.

7. In practice, "Dublin returnees" encounter several obstacles in trying to lodge their claims upon arrival at Athens' airport. Due to the lack of sufficient asylum personnel to ensure the immediate identification, registration and processing of asylum applicants, "Dublin returnees", including vulnerable individuals, are automatically detained, before their status is clarified and a decision taken to either interview the applicant or refer him/her to the Central Asylum Department. Due to a lack of interpretation and legal services, asylum-seekers are often interviewed in a language they do not understand and without being counseled on their rights during the asylum process.

8. "Dublin returnees" also face constraints⁷ at the time of referral from the airport to the Central Asylum Department.⁸ They are usually requested to present themselves to

⁵ Declaration 17 of the Treaty of Amsterdam (Official Journal C 340, 10 November 1997) provides that "Consultations shall be established with the United Nations High Commissioner for Refugees [...] on matters relating to asylum policy." See: <http://europa.eu.int/eur-lex/lex/en/treaties/dat/11997M/htm/11997M.html>.

⁶ Presidential Decree No. 61/1999, *Refugee Status Recognition Procedure, Revocation of the Recognition and Deportation of an Alien, Entry Permission for the Members of his Family and Mode of Cooperation with the United Nations High Commissioner for Refugees*, Official Gazette No. 63(A) 6 April 1999, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b4d830>.

⁷ Several reports have highlighted the problematic issues with regard to access to the asylum procedure in Greece in general, including TCf.; see Markus Sperl, *Fortress Europe and the Iraqi 'intruders': Iraqi Asylum-Seekers and the EU, 2003-2007*, UNHCR New Issues in Refugee Research, Research Paper No. 144, October 2007, available at: <http://www.unhcr.org/research/RESEARCH/470c9be92.pdf>.

the Department without any additional information on the status of their claims, the procedure to follow and relative deadlines. Particularly disadvantaged are those “Dublin returnees” who cannot provide an address upon arrival in Greece and whom the Greek authorities notify on the status of their asylum application through the “Notification of Persons of Unknown Residence Procedure”. The lack of an alternative notification mechanism results in returnees not being able to follow up on their appeal. Furthermore, access to the procedure is hampered by lack of personnel as asylum claims⁹ continue to exceed the current processing capacity.¹⁰ As a result, asylum-seekers, including “Dublin returnees”, experience long waiting periods and often have access to an asylum officer only after the deadline to lodge an appeal has elapsed or, in case they have been able to lodge an appeal, after the convocation date set by the Consultative Asylum Committee.¹¹ In this strained environment, the effective and timely processing of the asylum claims, appeal submissions and requests for identity documents of “Dublin returnees” is not guaranteed. In light of the above mentioned challenges, UNHCR is concerned that “Dublin returnees”, in particular the most vulnerable ones, may find themselves excluded from the asylum procedures.

9. Access to the asylum procedures continues to be problematic for “Dublin returnees” whose asylum claims are deemed to be “interrupted” as a result of having left Greece, without informing the authorities and before their claims had been decided or the result notified to them. This practice has been thoroughly documented in UNHCR’s July 2007 position on *The Return to Greece of asylum-seekers with “interrupted claims”*,¹² which indicates that the “interruption” of claims by the Greek authorities may act as a bar to effective access to an asylum procedure. While a number of positive changes in the practice have been noticed in 2007, the legal framework underpinning the practice of “interruption” continues to leave room for different interpretations and fails to guarantee that “Dublin returnees” with “interrupted claims” are granted access to the procedure. This situation calls into question whether “Dublin returnees” will have access to an effective remedy as foreseen by Article 13 of the European Convention on Human Rights,¹³ as well as Article 39 of the Asylum Procedures Directive.¹⁴ Of relevance is the decision taken by the European Commission on 31 January 2008 to

⁸ This Department receives 94 per cent of all asylum applications lodged in Greece, the rest are processed at the airport .

⁹ There were 25,113 new asylum claims in 2007.

¹⁰ Officers are currently available to decide asylum claims at the Central Police Asylum Department. Of these only 11 are qualified Asylum Officers. In contrast, in 2007, Germany had 160 adjudicators supported by approximately twice as many administrative support personnel for a more limited number of asylum applications (19,647).

¹¹ According to procedure in Greece, this six-member committee (Ministry of the Interior/Ministry of Foreign Affairs/UNHCR/Athens Bar) reviews the claim, conducts a second interview of the asylum-seeker and makes recommendations to the Vice Minister of the Interior who takes the final decision.

¹² See above, footnote 2.

¹³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3b04>.

¹⁴ European Union, *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, Official Journal of the European Union L 326/13 of 13 December 2005, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4394203c4>.

refer a case to the European Court of Justice against Greece for the infringement of the Dublin Regulation based on Greece's failure to enact legislative amendments to abolish the practice of "interruption".

10. In order to support the Government of Greece in addressing the above mentioned challenges, UNHCR has maintained an open dialogue with the Government at the Ministerial level and has provided recommendations, in particular through the Informal Working Group on Asylum Issues. Nonetheless, UNHCR observes that the current situation at the airport and at the Central Police Asylum Department continues to negatively affect asylum-seekers' unhindered access to asylum procedures. UNHCR urges Greece to establish and apply fair and efficient asylum procedures so as to identify promptly those in need of international protection. This will avoid protracted periods of uncertainty for asylum-seekers and discourage misuse of the asylum system. Furthermore, UNHCR notes, in line with its Guidelines on Standards Relating to the Detention of Asylum Seekers,¹⁵ that measures of administrative detention for asylum seekers should be provided for by law, and be used only as an exceptional measure and with proper justification. Furthermore, the detention of asylum-seekers should not be automatic and unduly prolonged.

III. Quality of Refugee Status Determination Procedures

11. In 2007, Greece registered 25,113 new asylum claims, eight were granted refugee status, corresponding to a recognition rate of 0,04 per cent at first instance, while refugee status was granted on appeal in 138 cases corresponding to a recognition rate of 2,05 per cent.¹⁶ Compared to other EU Member States with similar numbers of asylum applications, recognition rates remain disturbingly low.¹⁷

12. A study carried out by UNHCR in 2007 on the implementation of the Qualification Directive¹⁸ in selected EU Member States¹⁹ has shed light on some of the challenges currently faced by the Greek asylum system. It found that all 305 first instance decisions taken between October 2006 and April 2007 by the Ministry of Public Order, – relating to applicants from Afghanistan, Iraq, Somalia, Sri Lanka and Sudan – were negative. None of the decisions contained any reference to the facts or

¹⁵ UNHCR, *UNHCR's Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*, 26 February 1999, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3c2b3f844>.

¹⁶ Another 23 persons have been granted "humanitarian status" and 52 persons had their humanitarian status renewed during the same period.

¹⁷ In 2007, the United Kingdom has received 27.905 applications and recognized 30 per cent at first instance and 24 per cent on appeal; Sweden received 36,370 new applications and recognized 56 per cent at first instance and 14 per cent on appeal. Germany has received 19.164 first instance applications in 2007 and recognized 20 per cent in first instance and 94 per cent of renewed applications.

¹⁸ European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, Official Journal of the European Union L 304/12 of 30 September 2004, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4157e75e4>.

¹⁹ See above, footnote 3.

provided any legal reasoning. All featured a standard paragraph stating that the applicant left his/her country in order to seek employment and more generally to seek improved living conditions. With the consent of the Ministry of Public Order, the case files were reviewed. 294 (out of 305) first instance case files reviewed did not contain the responses of the applicants to standard questions reportedly posed by interviewing police officers. No other information was provided in these files regarding the applicants' claims. In the overwhelming majority of the reviewed case files, the interviewing police officer registered the reasons for departure from the country of origin as "economic".²⁰

13. Especially instructive of the deficiencies of the first instance asylum procedure, which have, according to UNHCR's observations, continued beyond the period of the study, is the situation of Iraqi asylum-seekers. 5,474 Iraqis lodged an asylum application in 2007. During the same year, none were granted refugee status or subsidiary protection at first instance, 3,948 applications were rejected at first instance while the rest remained pending for review by the end of 2007. This situation raises concerns that a lack of information on the procedure and of interpreters has contributed to a situation whereby a significant number of Iraqi asylum-seekers are effectively unable to appeal negative decisions.²¹

14. A review of second instance decisions carried out through the aforementioned study identified equally disturbing trends. The study found that the summary of the facts in the decisions normally did not exceed two lines, and negative decisions were stated in a few lines in standardized format only. As a result, it was not possible to ascertain the interpretation of the law applied by the appeal body or for that matter to deduce, from the decisions taken, whether the law was applied at all. The second instance case files contained the recommendation of the Consultative Asylum Committee but the recommendation usually consisted of only two standardized sentences. Generally, there was no further information available in these files relating to the facts or legal reasoning, and there were no recorded minutes of the hearing before the Committee. As a result, the research was not able to discern legal practice in Greece.²²

15. The large backlog of asylum claims within the Greek asylum system and the long waiting periods before asylum-seekers can expect to have their cases adjudicated is also of concern. By the end of 2007, 19,015 appeals were pending convocation to the Consultative Asylum Committee.²³ Waiting periods vary from two months to four years depending on the nationality and the individual circumstances of the case. UNHCR has no information on how Greece intends to reduce the waiting period while upgrading its procedural standards.

²⁰ See above, footnote 3, pages 13-14.

²¹ A recent decision of Belgium's appeal body (No. 2,769, dated 19 October 2007) halted the return of an Iraqi national to Greece, stating that he risked "grave, irreparable harm", owing to Greece's failure to protect Iraqi asylum-seekers effectively. There have been similar decisions by the Court of First Instance in Brussels on 18 December 2007, ordering the Belgian authorities to refrain from returning an Afghan family to Greece. The Belgian Conseil d'Etat has also prohibited the transfer to Greece of two Turkish nationals in August 2006.

²² See above, footnote 3, pages 13 and 33.

²³ Currently the Consultative Asylum Committee convenes twice a week and examines approximately 75 appeals per session.

16. UNHCR's advisory role in the Consultative Asylum Committee has provided an opportunity to advise the Government of Greece on ways to strengthen the appeals procedure. Recommendations have included the need to review the composition of the Asylum Committee to ensure its independence from the first instance, the need to strengthen the role of the Committee including by entrusting it with decision-making power, and finally the need to increase its flexibility to allow for a more effective processing of the large backlog of cases. Apart from the conferral on the Consultative Committee of decision-making power which has already been foreseen in the draft Presidential Decree on Asylum Procedures, the other two recommendations are, to UNHCR's knowledge, still under the consideration of the Greek Government.

17. In light of the above, UNHCR remains concerned that as a result of structural shortcomings in the Greek asylum procedure, asylum-seekers continue to remain effectively in limbo, unable to exercise their rights, for prolonged periods of time. UNHCR further notes that the procedure does not guarantee a fair evaluation of asylum claims at first and second instances. Finally, essential procedural safeguards are not guaranteed throughout the refugee status determination process to the detriment of asylum-seekers who often lack the most basic entitlements, such as interpreters and legal aid to ensure that their claims receive adequate scrutiny from the asylum authorities. UNHCR calls upon the Government of Greece to promptly review its asylum procedure at first and second instances and in so doing take in due consideration UNHCR's advice.

IV. Reception Conditions

18. It is essential to enable asylum-seekers to sustain themselves during the asylum process, not only out of respect for their rights, but also to ensure a fair and effective asylum procedure. The Reception Conditions Directive²⁴ requires Member States to ensure a standard of living adequate to meet the health needs of applicants and capable of ensuring their subsistence.

19. On 13 November 2007, Greece adopted a Presidential Decree transposing the provisions of the Reception Conditions Directive.²⁵ According to this Decree, the State should provide shelter to asylum-seekers and a daily allowance sufficient to meet their basic needs. While the Decree provides in law for higher standards of reception than those previously available to asylum-seekers, its implementation continues to present serious flaws.²⁶

²⁴ European Union, *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, Official Journal of the European Union L 31/18 of 6 February 2003, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ddcfda14> (hereinafter the "Reception Conditions Directive").

²⁵ Presidential Decree 220/2007, Official Gazette No. A' 251/13.11.2007.

²⁶ Greece's delay in transposing the Reception Conditions Directive has in April 2007 been subject to criticism in a judgment of the European Court of Justice, *Commission of the European Communities v. Hellenic Republic*, C-72/06, European Court of Justice (Fifth Chamber), 19 April 2007, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=472051192>.

20. Accommodation for asylum-seekers remains a major source of concern in Greece,²⁷ including those who are returned under the Dublin Regulation. At the end of 2007, ten reception centers administered by the State and by non-governmental organizations (NGOs) existed in Greece with an overall capacity of 770 places. With three facilities being exclusively offered to unaccompanied minors, the overall reception capacity for families, single women or men remains extremely limited. This situation is compounded by the fact that daily allowances, pending the issuance of a ministerial decision, are not being granted. Access to employment is available only if it is demonstrated that Greek citizens, EU nationals, recognized refugees or aliens of Greek origin have not demonstrated interest for the post offered.²⁸

21. Problematic reception conditions for unaccompanied minors, in particular access to health, education and welfare during the course of the asylum procedures, have also come to the attention of UNHCR. The Office welcomes the adoption by the Greek authorities of higher standards of protection than those contained in the Reception Conditions Directive with regard to the guardianship provisions, notably the extension of these provisions to unaccompanied minors who have not yet lodged an asylum claim.²⁹ Serious concerns arise, however, from the fact that Prosecutors General, despite being designated by law as the temporary guardians of asylum-seeking minors, have rarely intervened in respect of issues linked to welfare or reception arrangements. This raises serious questions regarding the fulfillment of obligations to ensure that minors are represented by guardians under Article 19 of the Reception Conditions Directive and raises questions about whether the best interest of the child is treated as a “primary consideration” as required by Article 3 of the Convention on the Rights of the Child³⁰ and Article 18 (1) of the Reception Conditions Directive.³¹

22. UNHCR remains concerned about the extremely limited reception facilities for asylum-seekers as this situation is seriously compromising the full implementation of the Presidential Decree on the Reception Conditions and urges the Government of Greece to promptly issue the awaited ministerial decision that should establish the criteria for the provision of a daily financial allowance. Furthermore, UNHCR calls

²⁷ Norway has recently suspended transfers to Greece under the Dublin Regulation based on a decision of the Immigration Appeal Board of 7 February 2008: “On the basis of the latest information about the possible violations of the rights of asylum seekers in Greece, and on the basis of the need for more information about the conditions of the asylum seekers in this country.”

²⁸ Article 4, paragraph 1 (c) of the *Presidential Decree No. 189/1998, Conditions and Procedures for the Grant of a Work Permit or Any Other Assistance for Occupational Rehabilitation to Refugees Recognised by the State, to Asylum Seekers and to Temporary Residents on Humanitarian Grounds*, Official Gazette A’140 on 25 June 1998, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b4e64>.

²⁹ Circular of the Ministry of Interior, Ref. No. 5401/1-261100/23.2.2008.

³⁰ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available on Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b38f0>.

³¹ Germany has suspended all transfers of unaccompanied minors to Greece (an exception applies for family reunion), cf. Letter of the Federal Police to the District Court in Frankfurt dated 29 January 2008. The German Government Officials have also indicated that Germany will favorably consider the possibility of using the sovereignty clause when examining cases involving Greece, thus taking charge of cases which would otherwise have to return to Greece.

upon the Government of Greece to ensure that the situation of children is given primary consideration and that the current reception conditions for unaccompanied minors are urgently reviewed.

V. Conclusion

23. UNHCR welcomes steps taken by the Government of Greece to strengthen its asylum system as required by international and European standards. Positive steps include the transposition of the Temporary Protection and the Reception Conditions Directives into national law, the publication of an information leaflet for asylum-seekers in various languages, the establishment of a country-of-origin information unit and the ongoing commitment to continue an open dialogue with UNHCR within the framework of an informal Working Group on Asylum Issues. UNHCR encourages the Government of Greece to continue efforts to ensure that asylum-seekers, including individuals returned under the Dublin Regulation, can enjoy full and effective access to protection.

24. Nonetheless, this note highlights a number of challenges in respect of access to and the quality of the Greek asylum procedure. Furthermore, reception conditions continue to fall short of international and European standards. As a result asylum-seekers, including “Dublin returnees”, continue to face undue hardships in having their claims heard and adequately adjudicated. UNHCR is concerned that all these factors taken together may give a rise to the risk of *refoulement*.

25. Strengthening the Greek asylum system so as to ensure consistency with international standards and the EU asylum *acquis* is the primary responsibility of the Greek Government. However, as a matter of solidarity and responsibility sharing, and in order to ensure a fair and effective application of the Dublin Regulation, it is nonetheless an issue concerning all EU Member States, if a Member State is facing considerable challenges in complying with the relevant standards. UNHCR thus encourages Governments and the European Commission to reinforce their support to Greece in addressing the existing structural and qualitative shortcomings of its asylum system and practice. Tools available include bilateral partnership or twinning arrangements, increased EU funding for asylum-related projects in Greece and specific responsibility sharing arrangements in view of the particular situation Greece is currently facing.

26. In view of EU Member States’ obligation to ensure access to fair and effective asylum procedures, including in cases subject to the Dublin Regulation, UNHCR advises Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice. UNHCR recommends that Governments make use of Article 3 (2) of the Dublin Regulation, allowing States to examine an asylum application lodged even if such examination is not its responsibility under the criteria laid down in this Regulation.

27. UNHCR will review the present position in view of further progress made by the Government of Greece in enhancing its asylum system. The Office remains committed to continue supporting the Government of Greece in strengthening its asylum system to

a level reflecting the relevant international standards, the EU asylum *acquis* and good practice.

UNHCR
15 April 2008