



Intervention by the Norwegian Helsinki Committee.

*“A gamble with the Right to Asylum in Europe” – The use of the Dublin II regulation in the Schengen area.*

Introduction:

The load of immigration to Europe is increasing and reflects the existence of wars, poverty and insecurity in parts of the world less fortunate than here in Europe. A better future in Europe has may seem like the only way out for people living under unbearable conditions in their own countries.

Part of these immigrants would use their right to apply for asylum. Member countries of the European Union, supported by Schengen countries like Norway, cooperates to make sure that the asylum seekers to Europe are given access to apply for asylum in only one of the EU member countries. The regulation also decides that, as a rule, asylum must be sought in the first country of arrival.

The regulation adopted by the European Union is called the Dublin II regulations.

*The premise of the Dublin II regulation is that the examination of whether an asylum seeker needs protection is approximately equal in all member states. European countries have an obligation to respect international refugee and*

*human rights law, emphasizing the Geneva Convention for Refugees and European Convention for Human Rights.*

*Unfortunately, this is not the current state of affairs. Asylum seekers in Europe may be, despite all good intentions, victims of the arbitrariness of practice resulting in arbitrariness of protection.*

Along the borders of Europe we are seeing thousands of prospective immigrants struggling to enter Europe in desperate hopes of finding a life in security and relative material safety. We all know that in addition to this voyage being extremely dangerous, a considerable potential for failure exists.

A discussion of the Dublin II regulation does not touch upon the fundamental question of access to the European territory:

*How can a refugee ask for asylum when coast guards along the European borders repel the desperate passengers of the boats? How does this tragedy reflect on Europe when our policy has created a market for cynical human smugglers to send women and children to their deaths in closed containers without air, food and water, - regardless of their status as migrants or refugees?*

From this perspective, we urge the European countries to put a system into place that ensures that those refugees arriving to European territory will get immediate and full access to the procedure for submitting an application, will be given the best possible legal security and humane reception conditions as required by the existing Directives, and finally, will receive guarantees that those applicants in need of legal protection will receive such protection regardless of the country responsible for processing their asylum application.

Our human rights organization, with extensive experience in giving assistance to asylum seekers, are of the opinion that European asylum policy in practice is in urgent need of reform.

## **I Practice in Greece**

Based on our experience with so-called “Dublin-cases” both in Norway and in Greece, three organizations, Greek Helsinki Monitor, the Norwegian Organisation for Asylum Seekers and the Norwegian Helsinki Committee decided to make a contribution by documenting some serious problems regarding the Greek asylum practice and the implementation of the Dublin II regulation in Greek context.

As we will show Greece is one example illustrating the weaknesses and failures of the Dublin II regulation, but we also want to underline that Greece is not the only example. However, Greece is far behind meeting its obligations, including the minimum standards established by EU directives. As a result of our research, the Norwegian Immigration authorities suspended the return of asylum seekers to Greece, making Norway the first country to make such a decision. The European Council on Refugees and Exiles (ECRE)<sup>1</sup> and Amnesty International<sup>2</sup> made appeals to the European states to stop transfers to Greece. In April we published our joint report titled: “*A gamble with the right to asylum in Europe – Greek asylum policy and the Dublin II Regulation*”<sup>3</sup>. These appeals were followed by the UNHCR’s report, which recommended that transfers to Greece should be stopped<sup>4</sup>. Our study documented how Greece fails the asylum seeker’s right to

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<sup>1</sup><http://www.ecre.org/files/ECRE%20Dublin%20Greece%20press%20release%20%20final.pdf>

<sup>2</sup><http://www.amnesty.org/en/library/asset/EUR25/002/2008/en/EUR250022008en.html>

<sup>3</sup>[http://noas.no/odp\\_admin/files/files/Greek%20asylum%20policy%20and%20the%20Dublin%20II%20Regulation.pdf](http://noas.no/odp_admin/files/files/Greek%20asylum%20policy%20and%20the%20Dublin%20II%20Regulation.pdf)

<sup>4</sup><http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=&docid=4805bde42>

protection on practically all accounts, and that European countries risk violating fundamental human rights by sending asylum seekers to Greece under the Dublin II regulation. We stress that we have found no indications that asylum seekers transferred from other Member Countries can expect to receive any better treatment in Greece than any other asylum seekers. The only difference is that they - as a rule - are likely to get access to a standard asylum procedure upon arrival at the airport in Athens, instead of lining up in the queues of central Athens.

The statistics published by Greek authorities show that of approximately 25 000 applications for asylum made in 2007, a mere eight were granted asylum in first instance. Among European countries, Greece decidedly has the lowest percentage of granted asylum. Even after appeal, 98% of all applicants were refused protection. These figures demonstrate a profound lack of political will to grant anybody a legal right to stay in Greece. How else can we explain why the application of a fifteen-year-old torture victim from Eritrea, examined through the accelerated procedure, was found *manifestly unfounded*?

When a refugee arrives in Greece, access to the process of making an application for protection is cumbersome at best. One of our sources, an experienced Greek asylum lawyer, claimed that “ - *in Greece, everybody is considered an illegal immigrant*”. Immigrants receive sparse and unsystematic information about their rights. Keeping asylum seekers in police custody is a common practice, and we were told several stories of asylum seekers being abused while detained by the police. These reports of ill-treatment are too numerous to be ignored, and Greek authorities’ position that these incidents are unacceptable and punishable under law should not be enough to assure us.

Due to the procedure set in place for making applications, all asylum seekers, including unaccompanied minors, families with small children as well as victims of torture, risk waiting for weeks to even get an *appointment*

in order to apply for asylum. In the meantime, they are without rights, without medical assistance, and without food and shelter.

Regarding the process of lodging an application, some key facts and figures contribute to illustrating the lack of legal protection for asylum seekers in Greece:

The asylum interview is fundamental in the asylum process. Therefore it is vital that the interview is carried out in an appropriate fashion, so that the grounds for applying for asylum appear as clearly as possible. In Athens, where the vast majority of the asylum interviews take place, twelve policemen are responsible for conducting approximately two hundred interviews per day, throughout the five day work week. A common Greek asylum interview lasts less than five minutes, enough only to write down basic personal information and often without assistance from an interpreter. No asylum seekers are granted a right to legal assistance and only a handful of lawyers are providing free legal advice to this group. In practice, many asylum seekers are encouraged to declare that the reasons for arriving in Greece were largely economical, thus excluding them from protection in accordance with the Refugee Convention. This means that the information upon which the decision is made, in both the first instance and during the appeals procedure, is extremely slim and often misleading.

Although we realise that not all applications for asylum are genuine, neither those made in Greece nor those made in other European countries, by studying these facts it is reasonable to assume that many real refugees end up without ever having their asylum status considered appropriately. The Dublin II regulation makes it impossible to re-apply elsewhere in Europe, making this issue a common European responsibility.

Greece does not have an active return policy, however, examples show that this does not constitute a guarantee that *refoulement* may not happen. We must also bear in mind that in Greece, legitimate refugees who have been

ultimately denied protection, remain in Greece as paperless immigrants without any rights. We cannot accept that this is the same as protection, even though technically it is indeed *non-refoulement*. But is this a level of protection Europe is satisfied with – and is it in compliance with international laws for the protection of refugees?

We continue to urge all European countries to suspend the transfer of asylum seekers to Greece until it can demonstrate compliance with EU regulations and international standards. Unfortunately, the reluctance to follow the example of Norway in addressing the Greek problem is both reflective of European Member Countries' lack of political will as well as the weakness of the Dublin II system.

## **II Making a European asylum policy work.**

The example of Greece demonstrates that there is much to want from a common European asylum policy safeguarding the rights of refugees on the European territory. At best, the Dublin II regulation could work as a system for determining which Member State is responsible for handling an asylum case. ECRE has pointed to a number of areas in which the original intention of the Dublin II Regulation has failed, and we support these conclusions.

There are a number of ways in which a new solution may be implemented to improve the legal security of asylum seekers to European territory.

As an immediate precaution, it is necessary that Schengen Member States suspend transfers to countries that do not guarantee an effective access to an asylum procedure. Moreover, the Sovereignty and Humanitarian clauses of the Dublin II regulation must be applied more widely, for instance in order to ensure that the rights and interests of children, families and vulnerable groups are upheld.

We remind OSCE Member States of the Point VII - the obligation to respect fundamental Human Rights as well as point X of the Helsinki Final Act (Decalgoue):

**“The participating States will fulfil in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties. In exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law; “**

Over time, the Dublin-system must be reformed and possibly even replaced. A reformed system must provide a collective decision-making process, after which all transfers to non-compliant countries would be suspended. This is both a moral and a legal duty of Europe as a whole.

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