

Mr. Dragutin Mate
Minister of the Interior
EU Presidency

Cc: Permanent Representatives of the EU Member States to the EU.

Brussels, 28 March 2008
Our Ref: b 761

Dear Mr. Mate,

Re: the Application of the Dublin II Regulation with regard to Greece

As you are aware, the Norwegian Immigration Appeals Board has recently decided to suspend transfers of asylum seekers under the Dublin II Regulation to Greece. In a press release the Board states that it takes this position "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"¹. It is Amnesty International's understanding that the Federal Office in Nuremberg, Germany decided in January 2008 to stop transferring unaccompanied minors to Greece under the provisions of the Dublin Regulation.

Amnesty International urges EU Member States to avoid transferring asylum seekers and other third country nationals to Greece under the Dublin II Regulation or any existing bilateral agreement. EU Member States should make use of Article 3.2 of the Dublin II Regulation allowing them to examine an asylum claim, "even if such examination is not its responsibility under the criteria laid down in this Regulation"².

Reports on the situation of asylum seekers and migrants in Greece

Amnesty International has repeatedly raised serious concerns with regard to the situation of asylum seekers, refugees and immigrants in Greece. In its report "*Out of the spotlight. The rights of foreigners and minorities are still a grey area*"³ Amnesty International documented the failure of the government to comply with human rights law and standards regarding access to the asylum procedure, the detention of migrants and the protection from discrimination and ill-treatment. Despite repeated calls from Amnesty International to take concrete measures to improve the conditions for asylum seekers and migrants, including to resolve the legal limbo in which they are left – without documents and without access to any social services - asylum seekers continue to find themselves in precarious situations. These concerns were again raised in a recent public statement on the situation of asylum seekers and migrants in Greece⁴.

The organization received very worrying reports about the lack of effective access to the asylum procedure after transfer to Greece and cases of arbitrary detention of asylum seekers before and during the examination of their asylum claim. Asylum interviews are reportedly often being conducted without an interpreter being present. One such incidence of this is clearly illustrated by the case of Mr. K.P., an Iranian asylum seeker who arrived in Germany via Greece. He was transferred to Greece on 23 January 2008 and was detained upon arrival at Athens Airport until 1 February 2008 without

¹ Norwegian Immigration Appeals Board, Press Release, 7 February 2008.

² In its evaluation of the Dublin Regulation, the European Commission explicitly stated that "the application of the sovereignty clause for humanitarian reasons should be encouraged". See COM(2007) 299 final, p. 7.

³ AI Index: EUR 25/005/2006.

⁴ Amnesty International, *Greece. No place for an asylum seeker*, 27 February 2008 (AI Index: EUR 25/002/2008)

being officially informed of the reasons of his detention. He reported that he was interviewed by policemen without an interpreter being present while it is very likely that this will be considered as the first interview in the first instance of the asylum procedure. It was only after intervention by a lawyer and a representative of the German non-governmental organization Pro Asyl with the Greek authorities that he was released from detention. According to the report made by PRO ASYL on the case of Mr. K.P. he was told to present himself to the Athens Aliens Department but only succeeded in having access to the building and being registered as an asylum seeker "without residence address" on 6 February, again with the support of his lawyer and the representative of Pro Asyl⁵. On Sunday 24 February 2008 representatives of Amnesty International sections from the Netherlands and Germany witnessed how a group of approximately 800 asylum seekers were waiting before the police station Petrou Rali in Athens in order to register their asylum application. Many among them did not get the opportunity to introduce an asylum claim as they were refused entry to the police building while others only managed to enter the building after paying money to mediators. Those refused entry were told to try again the following week.

In a letter to the Minister of Interior, the Mayor of Patras and the Police Inspector General of Southern Greece, sent on 7 February 2008, Amnesty International expressed its concern for the well-being of an estimated 2,500 persons, including unaccompanied minors, evicted from their makeshift homes in the port area of Patras. Most of the evicted persons are believed to be asylum seekers originating from Afghanistan. At the moment, Greece does not return refugees to Afghanistan and yet does not process their asylum application in a prompt, fair way, leaving them in limbo without legal status.

Furthermore there have been allegations of human rights violations that appear to have been perpetrated by members of the Greek coast guard in the Aegean Sea. Amnesty International representatives met and interviewed 13 individuals of Afghan nationality who stated that they had been prevented from accessing Greek land by sea and had instead been ill-treated by uniformed men whom they believe to be members of the Greek coast guard and pushed back into Turkish waters in boats that were not seaworthy⁶. The allegations are consistent with reports of violations received by Amnesty International during recent months, and with those publicized independently by Pro Asyl and the Group of Lawyers for the Rights of Refugees and Migrants in an October 2007 report⁷.

A report published on 8 February 2008 by the European Committee for the Prevention of Torture and Inhuman and Degrading Punishment confirms concerns raised by Amnesty International with regard to detention conditions of immigrant detainees. The report noted the "persistent failure by the Greek authorities to tackle the structural deficiencies ... in the establishments holding foreign nationals". The report also found that the conditions in border guard stations were "in general, unacceptable even for short periods". For example, "...the cells at Isaakio and Neo Himoni had poor access to natural light and ventilation, and the detainees were provided with dirty blankets and slept on filthy mattresses on the floor. The toilet facilities were dirty and, in some cases, out of order. At Neo Himoni, two of the three cells were permanently flooded due to a plumbing defect, yet detained persons were still held in these cells during times of overcrowding and forced to sleep on damp mattresses. Moreover detainees were still offered no outdoor exercise and the hygiene products provided were totally insufficient"⁸.

A recent report from the European Parliament's Civil Liberties Committee on the situation of asylum seekers and irregular migrants in Greece equally raised serious concerns *inter alia* with regard to detention conditions as well as the lack of lawyers, interpreters, medical staff, social workers, psychologists; the extremely low protection figures as well as the huge backlog of unprocessed asylum appeals⁹.

⁵ See Pro Asyl, Background: K.P. – Escape from Iran via Greece to Germany, Frankfurt, 8th February 2008.

⁶ Amnesty International, *Greece. Alleged violations at sea must be investigated*, 5 February 2008 (AI Index EUR 25/001/2008).

⁷ "The truth may be bitter but it must be told: The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard", October 2007.

⁸ See Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007 (CPT), Strasbourg, 8 February 2008 and Response of the Government of Greece to the CPT Report, Strasbourg, 8 February 2008.

⁹ See European Parliament, Report from the LIBE Committee Delegation on the Visit to Greece (Samos and Athens), 17 July 2007 (PE 392.010v03-00). A recent UNHCR study on the implementation of the Qualification Directive even mentions a zero

Legal proceedings against Greece for not respecting the EC asylum acquis

On 31 January 2008 the European Commission started an infringement procedure against Greece before the Court of Justice under Article 226 EC Treaty for not respecting the Dublin II Regulation¹⁰. It is Amnesty International's understanding that the main reason for bringing the matter before the Court of Justice is the lack of legal guarantees for a substantive examination of the asylum claim after transfer to Greece.

In addition, in a judgment of 19 April 2007 the European Court of Justice found that Greece has failed to implement timely Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers¹¹. The Directive includes standards with regard to material reception conditions as well as specific safeguards with regard to certain vulnerable groups such as unaccompanied minors. The Directive requires Member States to ensure a standard of living adequate for the health of applicants for asylum and capable of ensuring their subsistence. In November 2007 Greece communicated its transposition measures to the Commission which is still in the process of examining whether these measures correctly transpose the Directive, including the provisions on material reception conditions. However, it should be noted that most recently European Commissioner Mr. Frattini expressed his concern in the European Parliament with regard to alleged ill-treatment of immigrants and asylum seekers in detention centres in Greece and stated that the Commission is currently studying the report prepared by the organisation Pro Asyl concerning the situation of refugees in the Aegean Sea and the practices of the Greek coastguard and will carefully examine possible steps to be taken in respect of the findings of the research¹². In a report evaluating the application of Council Directive 2003/9/EC, the Commission highlighted the issue of poor reception conditions and the absence of mechanisms to identify vulnerable asylum seekers with special needs *inter alia* in Greece¹³.

The Dublin system is based on the assumption that asylum systems in EU Member States offer a comparable level of protection to asylum seekers and that it is therefore justified to transfer asylum seekers from one Member State to another in order to examine their need for protection. The example of Greece shows that this is not the case today¹⁴. As mentioned above, two states party to the Dublin system have already decided to suspend transfers because of the lack of guarantees with regard to the treatment of asylum seekers in Greece. At the same time, the Commission as guardian of the Treaty clearly considers that Greece is not complying with its obligations under EC law as it has now lodged a complaint against this Member State before the European Court of Justice (ECJ). If such a procedure does not impose an obligation as such on Member States to suspend transfers of asylum seekers to Greece as long as the ECJ has not issued its final judgment, it can not be ignored either when transfers to Greece are considered. Amnesty International reminds States that according to the preamble to the Dublin II Regulation, the Dublin system should make it possible to determine rapidly the Member State responsible, *so as to ensure effective access to the procedures for determining refugee status*.

States should apply the sovereignty clause in order to ensure access to a fair asylum procedure

As mentioned above, the Commission has started an infringement procedure while recent reports indicate the highly problematic conditions for asylum seekers in Greece, the existence of obstacles in

percent recognition rate at first instance for Iraqi asylum seekers in Greece. See UNHCR, *Asylum in the European Union. A study of the implementation of the Qualification Directive*, Brussels, November 2007, p. 13.

¹⁰ Published at http://ec.europa.eu/community_law/eulaw/decisions/dec_08_01_31.htm

¹¹ Case C-72/06, *Commission v. Greece*, 19 April 2007.

¹² See European Parliament, E-5599/07EN, Answer given by Mr. Frattini on written question by Dimitrios Papadimoulis to the Commission, 31 January 2008.

¹³ COM(2007)745 final.

¹⁴ Amnesty International reminds states that in the *TI* case, the European Court of Human Rights held that "the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention. Nor can the United Kingdom rely automatically in that context on the arrangements made in the Dublin Convention concerning the attribution of responsibility between European countries for deciding asylum claims". See *TI v UK*, ECHR, application no. 43844/98, 7 March 2000.

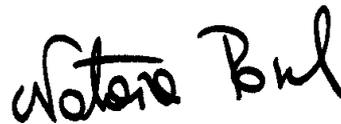
practice to access the asylum procedure in Greece as well as the serious risks for asylum seekers of being exposed to human rights violations. As a result, in current circumstances transferring asylum seekers to Greece in application of the Dublin Regulation risks being incompatible with Community law as well as with Member States' obligations under international human rights law.

Therefore, Amnesty International urges you to make use of the sovereignty clause in Article 3.2 of the Dublin Regulation and to avoid transferring asylum seekers to Greece until access to a fair asylum procedure and adequate reception conditions in compliance with international human rights law and standards as well as EU law is guaranteed.

Yours sincerely,



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