

**AMNESTY
INTERNATIONAL**



European Institutions Office

Mr. Melchior Wathelet

State Secretary in charge of Migration and Asylum Policy
Presidency of the Council of the European Union

Brussels, 4 November 2010

Our Ref: B1005

Dear State Secretary,

Subject: Justice and Home Affairs Council, 8 and 9 November 2010

The forthcoming Justice and Home Affairs Council meeting on 8 and 9 November is expected to discuss “migration flows and border control at the EU’s eastern and south-eastern borders”. This discussion is timely given the recent deployment by Frontex of a Rapid Border Intervention Team (RABIT) to the Greek-Turkish border and the continuing hardship faced by asylum-seekers and irregular migrants in Greece, which is also a consequence of the application of the Dublin Regulation. We take this opportunity to express our concerns about the RABIT operation which was deployed on 2 November and repeat our recommendations on the current negotiations revising Dublin II.

The deployment of a Rapid Border Intervention Team

Amnesty International wishes to stress that not all arrivals into the EU by undocumented individuals qualify as ‘illegal’ entries and there is a presumption that people crossing the border may need international protection, all the more so when so many of them come from countries such as Iraq, Somalia, and Afghanistan and are therefore *prima facie* eligible for international protection. So regardless of increasing pressure at the border, the Greek authorities must guarantee that asylum-seekers are not *refouled* at the border but provided instead with immediate help to tend to the most urgent humanitarian needs and allowed to apply for asylum. The same applies where relevant measures are being taken as part of the RABIT operations currently in place at the Greek-Turkish land border in the Orestiada region and neighbouring areas. Given that the primary purpose of the provision of EU assistance to Greece in the form of RABIT deployment is to deal with the current influx of migrants on its external border, Amnesty International is concerned that such assistance should not result in preventing access to international protection or contribute to other human rights violations.

We understand from public statements that all officers participating in this RABIT operation at every stage of the deployment are expected to observe fundamental human rights. However, it is unclear how this can be ensured in practice.

In particular, Amnesty International wishes to raise the following questions about the deployment of the first RABIT to the Greek-Turkish border:

- ❖ What training have guards received before deployment and what experience have they in identifying people who need international protection, or other vulnerable individuals?
- ❖ What expert support has the Agency received in planning the operation regarding protection-sensitive aspects, such as in expressing teams' tasks related to international protection issues, including *non-refoulement*?
- ❖ What measures have been taken to help Greece set up adequate reception facilities where people can be screened, their asylum requests handled and basic needs provided?
- ❖ What access to these facilities will be given to humanitarian agencies, including UNHCR, and what provisions will be made for legal assistance?
- ❖ How will effective and independent monitoring of this operation be ensured in practice?

These questions require a full and immediate response as they concern basic safeguards to ensure that access to asylum is preserved and the principle of *non-refoulement* strictly observed, as required by, *inter alia*, Articles 18 and 19 of the Charter of Fundamental Rights of the European Union. To prevent a violation of the principle of *non-refoulement*, a reliable assessment of the risk of indirect or 'chain *refoulement*' must also be undertaken, before migrants are removed to a third country, including pursuant to a readmission agreement. No one should be returned to a third country in the absence of guarantees that they will be admitted to that country; will enjoy effective protection against *refoulement*; will have the possibility to seek and (if necessary) enjoy asylum; and will be treated in accordance with accepted international standards.¹

As noted by UNHCR, "persons removed from Greece to Turkey are at risk of onward removal from Turkey, including to countries where they may face persecution or other forms of serious harm."² Cases documented by UNHCR include removal of asylum-seekers from Turkey to Afghanistan and Iraq. Amnesty International has similarly documented cases where undocumented migrants were expelled by Greece to Turkey where they faced a risk of chain *refoulement*.³

In view of the above, we warn that a response entirely focused on preventing 'irregular migrants' from entering the EU, such as the one at hand, without adequate measures in place to identify all people who need international protection and capable of addressing these protection needs, raises profound concerns. We wish to stress that any screening mechanisms set up as part of the operation must include not only interpreting services, but also adequate legal assistance to allow any alleged misidentification or other irregularity in the screening process to be remedied.

¹ The prohibition of indirect or "chain *refoulement*" has been recognized by the European Court of Human Rights in its decision in *T.I. v. the United Kingdom*, 7 March 2000, and reiterated in the *Abdolkhani and Karimnia v Turkey* judgment of 22 September 2009.

² Observations on Greece as a country of asylum, Office of the United Nations High Commissioner for Refugees (UNHCR), December 2009, p.5.

³ The Dublin II Trap: Transfers of Asylum-seekers to Greece, AI Index: EUR 25/001/2010.

Amnesty International has recently revealed irregularities in determining the nationality of asylum-seekers and irregular migrants, including by experts deployed by member states in the framework of Frontex-coordinated joint operations in Greece.⁴ We repeat our recommendation that the legal framework of cooperation between the Greek authorities and Frontex must be clarified so that any decisions which are taken and which determine the further treatment of irregular migrants can be reviewed. It must always be clear to the individuals who come into contact with the RABIT, that team members are acting under the instruction of the Greek authorities, who remain responsible for any decisions taken (refusal of entry, determination of nationality, removal etc).

Reform of the Dublin system

Amnesty International highlights the paradox that, while in the context of the RABIT deployment member states have sent staff and assets to Greece in a show of solidarity with that country, they have been maintaining pressure on the Greek system by transferring asylum seekers there under the Dublin II Regulation. We welcome recent developments where several member states have temporarily suspended returns to Greece, albeit they have come much too late for many vulnerable individuals. These developments are in any event the result of ongoing Court actions, including those before the European Court of Human Rights which must decide on the compatibility of transfers to Greece under the Dublin Regulation with the European Convention on Human Rights,⁵ and the Court of Justice of the European Union further to referral of questions by domestic courts in the UK and Ireland.⁶

The difficulties in accessing refugee protection in Greece, and the conditions faced by migrants and refugees have been widely documented, including by Amnesty International. While we support Greece's recent efforts to reform its asylum system, until safeguards are in place and asylum-seekers have effective access to protection, all transfers to Greece must be halted and asylum claims determined by the other member states themselves, in applying the sovereignty clause under Article 3 (2) of the Dublin Regulation.

However, Amnesty International believes that in conjunction with supporting measures which seek to build asylum capacity in member states, a wholesale revision of the Dublin system is urgently required. So long as it is based on a false premise that there are equal standards of protection across Europe, the system is inherently dysfunctional and unfair to asylum-seekers. As a first step, EU member states must engage constructively in recasting the Dublin Regulation as proposed by the Commission, which strengthens asylum-seekers' protection, particularly by ensuring effective remedies against transfers and establishing a mechanism to suspend transfers of asylum-seekers to countries which cannot guarantee full and fair examination of their claims or proper reception standards.

Further, we call on EU member states to engage in reforming the Dublin system so as to achieve more equitable responsibility-sharing among member states, taking account of actual protection standards in member states, and considering asylum seekers' personal preferences, community ties and other factors which link them to a given EU country.

⁴ Greece: Irregular Migrants and Asylum-seekers Routinely Detained in Substandard Conditions, AI Index: EUR 25/002/2010.

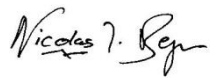
⁵ *M.S.S. v Belgium and Greece* (Application No. 30696/09).

⁶ The referral from the Court of Appeal (England and Wales), made on 18 August 2010, is listed as Case C-411/10.

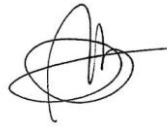
We believe that EU member states should help Greece respond to the challenges posed by this humanitarian crisis by taking measures which accord with fundamental rights and the principles which are the cornerstone of refugee protection, namely humanitarianism and responsibility-sharing.

We look forward to receiving your reply and to continuing our dialogue on these issues.

Yours sincerely,



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