

Athens, 19th November 2004

Dear colleagues,

The Legal Assistance Unit of the Greek Council for Refugees would like to share with you the following developments on the Greek authorities' practice concerning asylum seekers who are transferred to Greece from other EU countries under art. 13 of Council Regulation 343/2003 (the "Dublin II Regulation").

Art. 13 of the Dublin II Regulation provides that "Where no Member State responsible for examining the application for asylum can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for asylum was lodged shall be responsible for examining it."

After the full implementation of the Eurodac database by the member states, an important increase in the number of asylum seekers transferred to Greece under art. 13 has occurred. If there was no decision on their applications issued while they were away, it would be expected that, in order for the asylum seeker to have his asylum application assessed in substance by one member state, the Greek authorities would examine their applications in substance upon return of the asylum seekers to Greece. However, instead of doing so, the competent Greek authorities interrupt the examination of the asylum application of such asylum seekers, justifying their decision on the unauthorised departure of the asylum seeker from Greece.

Indeed, art. 2 par. 8 of Presidential Decree 61/99 provides that "During the entire examining procedure, the asylum seeker is obliged to stay at the place of his residence which has been stated by him or assigned to him. In case of arbitrary departure, the procedure for the examination of his asylum claim is interrupted following relevant decision issued by the Secretary General of the Ministry of Public Order, which is notified to the asylum seeker, considered as a person "of unknown residence". If, within reasonable time, which in any case cannot exceed the limit of three (3) months from the date of issuance of the relevant decision, the asylum seeker reappears before the Authorities and submits official documentation proving that the absence was

due to “force majeure”, the above mentioned decision is revoked and the asylum claim is examined on its merits” (the full text of the decree can be found at UNHCR’s website, www.unhcr.ch). When a foreigner applies for asylum in Greece and afterwards leaves the country and applies for asylum in another European country, his departure is obviously arbitrary. Therefore, when the Greek authorities are informed that a particular asylum seeker has applied for asylum in another EU country, being at the same time requested to take back that asylum seeker, they will, on the one hand, accept to take back the asylum seeker, but on the other hand an interruption decision will be issued soon after by the Secretary General of the Ministry of Public Order.

The consequences of this practice are the following: if the interruption decision is issued before the arrival of the asylum seeker in Greece, a deportation order will be issued immediately after the asylum seeker’s arrival in Greece, and the asylum seeker may even be detained in view of his deportation. At any case, the asylum seeker will have to leave Greece on his own or escorted. If now the interruption decision is issued after the arrival of the asylum seeker in Greece, the asylum seeker will stay in Greece for a small period of time with the status of asylum seeker, but after the issuance of the deportation order he will be also exposed to arrest and / or deportation.

The only way for the asylum seeker to react against this situation would be to lodge an appeal against the interruption decision. However, this appeal will only be accepted if the asylum seeker can prove that his departure was due to circumstances of “force majeure”. According to the interpretation of the Greek administration, “force majeure” covers only situations where serious health problems, hospitalizations or impossibility to be at home due, for instance, to bad weather conditions can be proven, which are certainly not the reason why most asylum seeker leave Greece to other EU countries.

This practice of the Greek authorities has started since January 2004 and is still valid. We find particularly alarming the fact that the interruption of the examination of the asylum application as practiced by the Greek authorities leads to the impossibility for the asylum seeker to see his claim examined in substance in any EU country. The Legal Unit of the Greek Council for Refugees has prepared and lodged appeals against some interruption decision, supporting that the attitude of the Greek authorities

doesn't respect the letter and the spirit of the Dublin II Regulation, but the first appeals that we have made have been rejected.

The reason why we wanted to share with you this information is that we have noticed that the asylum seekers who are transferred to Greece under art. 13 of the Dublin II Regulation are not aware of the fact that the examination of their asylum application will not resume after their arrival in Greece. Moreover, we believe that the Greek authorities, when they inform the EU country concerned that they accept to take charge of the asylum seeker under art. 13 and art. 16.1.a, they do not let them in the same time know that the examination of the asylum application will be interrupted because of his arbitrary departure from Greece. Therefore we believe that the asylum seekers who receive the decision of the EU country to transfer them to Greece under art.13 and 16.1.a should be aware of this situation, since this information could be useful for them if they wish to lodge an appeal under art. 19 of the Dublin II Regulation (or the relevant national legislation) against the decision of their transfer to Greece.

We would like to ask you to share this information with asylum seekers, legal aid services or asylum lawyers dealing with such cases in your countries. Moreover, we would be very interested in receiving any comments you may have on this situation, and also to know if such practice is enforced in your own countries.

Do not hesitate to contact us if you need any further information on this issue.

Yours Sincerely,

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