Realizing One's Rights under the 1951 Convention 60 Years On: A Review of Practical Constraints on Accessing Protection in Europe.

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In this paper, the authors review some of the practical constraints preventing refugees accessing the rights specified in the 1951 Geneva Convention. The paper draws on the experiences of one European Union Member State, Greece, to illustrate those constraints. Although Greece itself is facing particular challenges in meeting its obligations to refugees under the Geneva Convention, challenges that are here acknowledged, these challenges nonetheless mean that in Europe, 60 years after the signing of the 1951 Convention, some refugees are unable to avail themselves of its protection.

Keywords: Greece, Dublin Regulation, EU Asylum Directives

Introduction

Every Member State (MS) of the European Union (EU) is a signatory of the Geneva Convention, and as such, has undertaken to recognize refugees and uphold their rights as specified in that Convention. Through Art. 1 (the refugee definition) and Art. 33 (the prohibition against *refoulement*) the 1951 Convention, in principle at least, provides access to asylum procedures for an unlimited number of applicants, whether they enter MS 'legally' or 'illegally'. European Treaties and Conventions have reinforced the commitment of MS to providing protection, in particular by guaranteeing a right to claim asylum and to have that claim considered under due process irrespective of whether the applicant entered the territory legally or not. Asylum seekers frequently enter the territory of the EU without documentation and in mixed flows, that is, together with others who are not seeking protection.

Discouraging undocumented migration is a key policy goal for the EU and its MS. MS also interpret and implement their international and European obligations in different ways, leading to differing outcomes for asylum seekers dependent on which MS considers their claim. This article will contend that these two factors may mean that some people in need of protection are (inadvertently or otherwise) rejected without their claim being fully heard (Sales 2005). There is thus a tension between human rights and international obligations on the one hand, and EU policy goals and MS practice on the other, resulting in challenges faced by individual asylum seekers, Member States such as Greece, and ultimately the frontier-free, humanitarian entity that the EU has tried to construct.

A single national case study approach will be used to assess the practical constraints on accessing the protection and rights guaranteed by the 1951 Convention, and EU law 60 years after its signing. We have chosen Greece for this case study because by 2009, 75 per cent of the detected undocumented border-crossings into the EU occurred on Greece's land borders (Frontex 2010a). While half of these crossings are made by Albanian seasonal workers (Frontex 2010a), the remaining 50 per cent include potential asylum seekers and actual refugees.[1] In addition, in recent years several MS have suspended returns to Greece under the Dublin Regulation because of doubts over the efficiency of Greece's asylum procedures. These doubts have been highlighted by a number of cases of the European Court of Human Rights (e.g. SD v. Greece (2009); AA v. Greece (2010); Rahimi v. Greece (2011); MSS v. Greece and Belgium (2011)). We draw on research carried out by the authors in Greece and France.[2]

Following a presentation of European and Greek asylum policy and legal contexts, the main part of this article will focus on some of the barriers to the fulfilment of rights which face refugees

seeking asylum in Europe. We concentrate on the constraints, potential and actual, faced by asylum seekers in Greece in achieving protection from *refoulement*, exercising their right to claim asylum and in being recognized as a refugee in the event that they meet the criteria of the 1951 Convention.

While acknowledging the particularities of the Greek situation, there is no intention to suggest that only Greece presents such difficulties. On the contrary, in spite of the particular economic, geographical and political challenges facing Greece, there have been and continue to be similar situations in other MS. In the late 1990s, and again in 2011 following arrivals from North Africa, Italy was the main entry point for undocumented migrants including asylum seekers. On both occasions, some of Italy's northern neighbours threatened to close their borders with Italy unless it controlled the movement of would-be asylum seekers entering its territory (Schuster 2003, 2005). Italy remains a cause for concern, as do some of the new MS, in particular Malta (Human Rights Watch 2009).

The domestic constraints—political, social and economic—faced by Greece will be evaluated, as will constraints on the national situation arising from EU policies of solidarity and migration control. We argue that the interaction of domestic and EU policies has resulted in a situation in which asylum seekers in Greece are effectively prevented from achieving their rights under the Geneva Convention.

The European Union Policy Context

The drive to create a Common European Asylum System was given impetus by events in Europe in the 1990s, which saw an important increase in the number of people seeking asylum in the EU (Schuster 2000). In the early 1990s most of those seeking asylum in the EU were from Southeastern Europe, and the overwhelming majority (75 per cent) of those were found in the newly re-unified Germany (Schuster 2003). As a result, Germany began to argue for a policy of 'burden-sharing', insisting that it was unfair that asylum seekers were transiting a number of MS where they could have sought protection before making their claim in Germany (Schuster 2003). The search for an equitable solution to the 'problem of burden-sharing' (Thielemann 2008) has shaped in significant ways the policy of the EU and its MS. The Dublin Convention, and its successor the Dublin Regulation, which makes the first EU MS entered responsible for examining the asylum claim (except in some very tightly specified circumstances), is the most important element of that solution and attempts to reconcile tensions at the heart of EU asylum and migration policy.

EU asylum policy is characterized by a contradiction between commitments to providing protection and to controlling migration into the EU. Core texts such as the Treaty of Amsterdam, the Tampere Conclusions and more recently, the Lisbon Treaty, the Charter of Fundamental Rights (art. 19) and the asylum directives all contain reiterations of the commitment to respect the Geneva Convention and the right to seek asylum (Pirjola 2009; Teitgen-Colly 2006) while moving towards ever closer cooperation on securing the external boundaries of the EU. At the same time, the harmonization process initiated with the Maastricht Treaty was designed to discourage 'asylum shopping' by harmonizing the asylum policies and procedures of member states, so that no one MS would be more attractive than any other, and to ensure that MS met their obligation that anyone in need of protection could claim asylum. Though some might argue that it was also designed to raise standards across the EU (Teitgen-Colly 2006; Thielemann and El-Enany 2009), others were concerned that it would initiate a race to the bottom (e.g. Hatton 2005; Noll 2000). However, for a variety of reasons including colonial links and geopolitical concerns, bilateral agreements with non-EU states and jealously guarded sovereignty, EU efforts to harmonize policies have not been particularly successful, and there remains significant variation between MS (Pirjola 2009; UNHCR 2007; Vedsted-Hansen 2005), especially in relation to recognition rates (see below), thus encouraging refugees to move through the EU before making an asylum claim.

As Lutterbeck (2006) argues, the emphasis on controlling the borders of the EU led to the increasing militarization of migration control in the Mediterranean area, initially with the co-operation of the security forces of countries in the area. These efforts culminated in the establishment in 2004 of Frontex, a European agency charged with coordinating cooperation between MS in matters of border security (Leonard 2009). Increasingly, Frontex initiatives are expanding to other countries in Europe and beyond' (Frontex 2010a). The EU has also entered into agreements with states like Libya, supporting the militarization of their borders in an attempt to reduce pressure on the EU's external borders. Readmission agreements with third countries, both bilateral and at EU level, have become part of the externalization of asylum policies which aims at transferring the responsibility for migration control to countries outside the European Union (Guild *et al.* 2008; Hyndman and Mountz 2008). While a popular migration control tool for MS and the EU, readmission agreements are often imposed on the receiving country as a result of geo-political interests (Blitz 2009) and more importantly pose significant questions regarding the danger of chain *refoulements* of persons seeking protection (Billet 2010; Cassarino 2007). Inevitably, tighter border controls have serious implications for people seeking to access EU territory in order to claim asylum (Lutterbeck 2006). These problems are particularly relevant to the readmission agreement between Greece and Turkey, as will be discussed below.

Asylum Policy and Law in Greece

The effect of the policies outlined above on countries with EU external borders such as Greece has been significant. Greece has found itself under pressure to implement common EU standards of reception and procedures, while securing its frontiers against undocumented migrants, some of whom will be in need of protection, and to accept back from other MS asylum seekers returned on the basis of the Dublin Regulation (Mavrodi 2007; Papadimitriou and Papageorgiou 2005). Some of the most questionable Greek practices discussed in this paper, such as the prevention of access to the asylum procedure, have been attributed to the intense pressure on Greece resulting from its geopolitical position and membership of the EU (Mavrodi 2007; Papadimitriou and Papageorgiou 2005). In the following section, we outline the national context, showing how the current Greek system has been shaped by the EU context.

Although Greece was an early signatory of the Geneva Convention (1959) and the 1974 constitution included a clause protecting those fighting for freedom (Black 1994), it was only in the 1990s that it developed a legal framework for asylum (Karamanidou 2009: 72). The factors that led to this development were an increase in the number of asylum seekers, membership of the European Union and the end of UNHCR's policy of resettling refugees from Greece (Karamanidou 2009). In other words, Greece was shifting from being a transit country to a potential 'refuge'. In 1991, Law 1975 adopted the refugee definition contained in Art. 1 of the 1951 Convention and regulated the procedures for applying for and granting asylum, before it was replaced in 1996 by Law 2452, which was aligned to developing EU soft law (Karamanidou 2009: 73). This law and subsequent Presidential Decrees (PD 189/1998, 61/1999 and 266/1999) regulated the asylum procedure until 2008 and established a number of social provisions for asylum seekers. However, change accelerated from the early 2000s onwards as the number of asylum applications and of undocumented entrants increased sharply, and Greece replaced Italy as the most favoured entry point to the EU. The Dublin Regulation has been in place since 2003, the temporary protection directive was incorporated with PD 80/2006, the reception directive was incorporated with PD220/2007, while the Procedures and Qualifications directives were belatedly adopted in 2008 (PD 96/2008 and 90/2008). The following section outlines the asylum procedures followed for the greater part of the last decade and highlights the changes introduced by subsequent PDs.

Any alien requesting asylum, orally or in writing, was considered an asylum seeker (Art. 1.1, PD 61/1999) and the request for asylum could be made to any Greek authority at the border or

inland, but the actual submission of the claim was to take place at a police station (Art. 1.1, 1.2). At the same time, the applicant was to be informed in a language she understands of her rights and responsibilities (Art. 1.6). In terms of the first instance examination of claims, PD 61/1999 specified that asylum claims should be examined 'within three months from their submission' by specially trained police and civilian personnel of the police authorities (Art. 2.2). The police authorities designated as responsible for the examination of claims were 'sub-divisions [of Police Directorates] or Aliens Departments, Security Divisions of airports and Sub-divisions or Departments of Security of Police Directorates' (Art. 2.1). Interviews were to be conducted by police officers or civilian personnel with the assistance of an interpreter (Art. 2.3). The answers of the applicant were recorded 'in summary form' (Art. 2.6). At the end of the interview, the interviewing officer composed a report stating their opinion on the merit of the claim and on whether the claim should be decided by the accelerated procedure. The case file was then forwarded to the Ministry of Public Order and the decision on whether to grant asylum was made by the General Secretary of the Ministry of Public Order (Art. 3.1). Asylum seekers were also to be provided with an identity card, otherwise known as the 'pink card', by the authority examining the claim (Art. 2.7).

PD 96/2008 and 90/2008 implementing the Procedures and Qualification Directives made only minor changes to this procedure: the presence of an interpreter became compulsory and the final decision on a claim was transferred to the Division of Political Asylum and Refugees of the Aliens Division at Greek Police Headquarters. Applications submitted at the borders, ports or airports were examined, as in PD 61/1999, under the accelerated procedure (PD 96/2008 Art. 24). PD 90/2008 introduced requirements for the provision of legal reasoning for decisions (Art. 4). In terms of the second instance procedure, an appeal against a decision should be submitted within 30 days of the notification of the decision (PD66/1999 Art. 3.3; PD 90/2008, Art. 25). The same PD also gave decision-making powers to the new appeal committees which are based in the Ministry of the Interior. However, in the following year, PD 81/2009 introduced significant changes to the asylum procedure. It decentralized initial decision-making by transferring power to the directors of 53 Police Directorates across the country, established Advisory Refugee Committees responsible for conducting asylum interviews and submitting a report on the claim and, most significantly, it abolished the second instance procedure (PD 81/2009, Art. 3). These changes were seen as highly problematic by Greek NGOs, who claimed that the diffusion of decision making powers allowed divergence in the practices of police directorates, and that the abolition of the second instance procedure amounted to creating a lack of an effective remedy in the sense of article 39 of the procedures directive (Amnesty International *et al.* 2009a; NCHR 2009). Greek NGOs also argued in relation to the above changes that:

> not only do they not improve an already problematic situation, but they create more significant obstacles to ensuring a fair and efficient asylum procedure in contravention to the Community Directive 2005/85/EC (Amnesty International *et al.* 2009b: 2).

UNHCR withdrew its participation in the interviewing committees in protest (Amnesty International *et al.* 2009b).

Soon after it was elected in 2009, the left of centre PASOK government, responding to widespread criticisms, promised to reform the asylum system. In November 2010 it introduced an interim PD (114/2010) replacing PDs 90/2008 and PD 81/2009, and incorporating the Procedures Directive into Greek law. It reinstated the second instance procedure, established committees for examining appeals against first instance procedures, reduced the number of examining authorities to 14 and established a three-month time limit for the examination of applications for the accelerated procedure and a six-month limit for the normal procedure (Ministry for Citizen Protection 2010a).

A new asylum law (3907/2011) was passed in January 2011, introducing a radical reform of the asylum system. This provides for the establishment of an independent asylum system with regional offices,[3] mostly in border areas, and a first reception authority, responsible for the 'management' of migration into Greece and first reception centres in border areas. Financial and practical assistance has been promised by the European Commission to assist the Greek authorities with their reforms (Europa 2010). The law also incorporates the returns directive (*Government Gazette* 2011). While the new law does not yet reform the asylum procedure—this will be done by subsequent PDs—regional offices are designated as the examining authority, while first reception centres are responsible for identifying vulnerable individuals needing specialized treatment and 'screening' irregular entrants for the appropriate procedures (Art. 1 and 11). Reactions to the new law varied; UNHCR (2011a, 2011b) has welcomed the reforms as necessary and long overdue while remaining cautious regarding their future implementation, especially in relation to determining which migrants should be entitled to access the asylum procedure. The independence of the new asylum system has already come into question and concerns have been expressed regarding its implementation (Amnesty International 2011; Greek Council for Refugees (GCR) 2010a; National Commission for Human Rights (NCHR) 2010). At the time of writing, the new law has not been fully implemented, although first steps have been taken. For example, the Ministry has announced the designated locations for First Reception and Detention Centres, named the Directors for the Asylum Service and the First Reception Service, and hired psychologists, social workers and interpreters, some of whom have been already employed in detention centres in Evros (Ministry of Citizen Protection 2011a; Interview with senior police officer).

The main complication regarding the implementation of the new asylum system is the overlap with legal provisions controlling entry. The current Law 3386/2005 (similar to Law 2910/2001 before it) allows the arrest, detention and deportation of migrants entering Greece in an irregular manner. As illustrated below, the precedence of this law over asylum law has created significant obstacles to accessing asylum procedures (Greek Ombudsman 2007a; UNHCR 2009). This is likely to be true for Law 3907/2011, since migrants arrested for irregular entry will still be subjected to the provisions of Law 3386/2005 and excluded from the provisions of the Returns Directive (Amnesty International 2011; UNHCR 2011b). In addition, Greece signed a readmission agreement with Turkey in 2001, on the basis of which it can return irregular migrants to Turkey upon their arrest (Papadopoulou 2004; UNHCR 2009). The prioritization of laws controlling irregular migration should be seen as symptomatic of the pressure to control the external borders of the European Union, highlighted recently by the deployment of Frontex troops along the Greek–Turkish border and the government intention to build a fence along part of the border in order to prevent irregular entry (Frontex 2010b; Ministry of Citizen Protection 2011b).

In spite of weaknesses in the system, the provisions outlined above, incorporating the relevant EU directives and the Geneva Convention, should ensure that any individual entering the Greek territory is able to make a claim to refugee status, to have that claim examined and to enjoy the rights laid out in the Geneva Convention. In what follows we discuss practices that prevent asylum seekers from accessing these rights.

Accessing Greek Territory

Most undocumented migrants enter Greece overland through Turkey[4] either by crossing the river Evros, or by crossing the Aegean to one of the Greek islands along the Greek–Turkish maritime border (Pro Asyl 2007; Triandafyllidou and Maroufof 2008). At this stage, the first obstacle asylum seekers face is accessing Greek territory: the next obstacle is access to the asylum procedure. Forced expulsions across the Evros river and Coast Guard practices of puncturing or shooting at dinghies so as to prevent their entry into Greek waters have been extensively documented (Amnesty International 2010a; Hammarberg 2008; Human Rights Watch 2008; NOAS *et al.* 2008; 2010;

NCHR 2008a, 2008b; UNHCR 2009). Even if successful in accessing Greek territory, migrants, including those seeking asylum, are likely to be arrested, detained and forcibly deported by the Greek security forces (Amnesty International 2010a; Greek Ombudsman 2007a; Hammarberg 2008; NOAS *et al.* 2008; UNHCR 2009). This was illustrated by a number of young male Afghans interviewed by Schuster in 2009 in Paris who had made it through Greece after a number of attempts, and described being picked up by the Greek police and taken to cells where they would be held until they could be collectively expelled back across the Evros (Schuster 2011a; 2011b), without being allowed to claim asylum. The Greek 'commandos', as the Afghans called them, would herd them after dark into a boat 10 at a time and take them across the river where they would be forced out of the boat at gunpoint and forced to wade ashore on the Turkish side of the river. Similar accounts are repeated in a number of reports by NGOs (Amnesty International 2010b; NOAS *et al.* 2008; Pro Asyl 2007).

From the perspective of the state, such practices preventing entry to Greece are part of guarding the European border from irregular entry (NCHR 2008a). However, they are in direct contravention of the Geneva Convention, and an effective bar to accessing the asylum procedure (Greek Ombudsman 2007a; Hammarberg 2008; UNHCR 2009). In that sense, these expulsions constitute *refoulement* and contravene Art. 33 of the Geneva Convention (Badar 2004; Hammarberg 2009) which prohibits *refoulement* and the imposition of

> penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (Art. 31).

These two articles should ensure that those entering in such mixed flows are able to remain in a state's territory until their claim is made and decided.

The danger of *refoulement* becomes clearer if we consider that refugees attempting to enter Greece might be returned to Turkey, which has not adopted the 1967 Protocol broadening the 1951 Convention to cover people from places other than Europe (Amnesty International 2010a; UNHCR 2011c). Reports by NGOs recorded concerns over the chain *refoulement* of asylum seekers returned to Turkey, as there have been instances when they have been in turn *refouled* to neighbouring countries such as Iran and Iraq (Amnesty International 2010a; NOAS *et al.* 2008, 2010; UNHCR 2009). While it is of course conceivable that not all migrants forcibly returned to Turkey would meet the definition of refugee contained in Art. 1 of the 1951 Convention, this case and others like it demonstrate that it is possible that some refugees will be *refouled* from Greece to territories where their lives and liberty are endangered.

Accessing the Asylum System

Related to concerns about physically entering the territory are concerns about being able to enter the asylum system. The number of applications lodged at borders has been very low: reports estimate that less than 5 per cent of total applications lodged are lodged at the border (Greek Ombudsman 2007b, 2007c; NOAS *et al.* 2008). A report by the European Agency for Human Rights (2011) mentions that only 80 applications were submitted in the Evros region in 2010 (out of 10,273 for that year), while information obtained by the authors from a senior police officer in Evros gives an even lower number of 69 applications. However, in the first six months of 2011 the Police Directorate of Alexandroupoli had already received 131 applications.

The persistently low applications at the borders might be attributed to several factors. The emphasis on preventing irregular entry means the Greek authorities at the borders have been reluctant to accept applications for asylum from those who enter without documents (Greek

Ombudsman 2007a, Hammarberg 2008; NOAS *et al.* 2008, 2010; NCHR 2008a; UNHCR 2009). In addition, according to NGOs providing legal advice (Greek Ombudsman, AITIMA, in personal telephone interviews, London November 2010), following the introduction of Advisory Refugee Committees by PD 81/2009, police departments became reluctant to receive applications because of the logistical difficulties in convening committees for the examination of claims. Other explanations include the limited access to legal assistance services and information on the asylum procedure (UNHCR 2011c), and the long detention periods imposed on asylum seekers in inadequate facilities (interviews with AITIMA and senior police officer; European Agency for Human Rights 2011; NCHR 2008a). Lack of dedicated police personnel (Greek Ombudsman 2011a) in conjunction with increased numbers of migrants crossing the Greek borders, especially in Evros, may also have contributed to the low number of applications lodged.

Lodging an application inland is equally problematic. Ninety to 95 per cent of asylum applications are submitted at the Central Police Asylum Department (Petrou Ralli) in Athens (Amnesty International 2010a; Hammarberg 2008; NOAS *et al.* 2008; UNHCR 2009). The lack of organization and personnel in that department has resulted in long queues and considerable delays in lodging applications and obtaining the 'pink card' (Greek Ombudsman 2007a; GCR 2010b; NOAS *et al.* 2008, 2010). After the introduction of Presidential Decree 81/2009, the department accepted 200 claims a week (NOAS *et al.* 2010). However, in interviews referred to above, the respondents indicated that the number of claims submitted at Petrou Ralli fell to 20 per week in 2010 (see also Amnesty International 2010a; NOAS *et al.* 2010; UNHCR 2009). Recent statements by NGOs indicate that problems with accessing the procedure remain, with only 40 applications being accepted weekly and severe delays in the examination of applications (Greek Ombudsman 2011b; ARSIS *et al.* 2011).

Asylum seekers (that is, those who have declared their intention of making a claim to asylum) returned to Greece under the Dublin Regulation also face difficulties in registering their asylum claims, and if they do so, there is a strong probability their applications will not be substantively examined (Amnesty International 2010a; GCR 2010b; NOAS *et al.* 2010). In the past, an asylum application could be deemed 'withdrawn' when the applicant changed his or her residence without informing the authorities, which was often the case with Dublin II returnees as between lodging an application and being returned to Greece a year or more could elapse (Amnesty International 2005; NOAS *et al.* 2008; Papadimitriou and Papageorgiou 2005; UNHCR 2008). While this practice appears to have stopped in recent years, difficulties in accessing the procedure and having an application examined remain (AITIMA 2010; Amnesty International 2010a; GCR 2010b; NOAS *et al.* 2010). For example, the Greek Council for Refugees (2010b) has also noted that Dublin II returnees are not admitted at Petrou Ralli unless they have a notice or support from an NGO.

According to Greek asylum law, once an individual has made a claim to asylum, he or she has the right to remain in the country where the claim has been lodged until a decision has been made. Yet, although official deportations either from the border areas or inland are rarely effected (interview with Administrative Court of Alexandroupolis; Human Rights Watch 2008) there is evidence that asylum seekers who have already lodged an application, including unaccompanied minors, have been returned to Turkey, possibly under the readmission agreement between the two countries (Amnesty International 2010a; Greek Ombudsman 2007a; Hammarberg 2008; NOAS *et al.* 2010). Deporting individuals who are in the process *directly* contravenes Art. 33 of the Convention as well as Greek asylum law, as highlighted in the European Court of Human Rights judgment S.D. *v* Greece (ECHR 2009).

Problems with the System

There are a number of problems with the system, including impartiality, the inadequacy of substantive interviews, training, appeals and judicial reviews, and some of the consequences for asylum seekers, including the near impossibility of being recognized as a refugee. Some of these problems are addressed in a new 2011 law; however, whether the implementation of this law will resolve the difficulties remains to be seen.

A first significant weakness of the Greek asylum system is the way the police and the responsible ministry have been assigned an exclusive central role in the asylum procedure. The Greek police are involved in the implementation of migration control policies, such as the arrest of migrants entering irregularly, and their detention and deportation, at the same time as being responsible for accepting and deciding on asylum claims. This renders them both 'protectors and prosecutors' of potential asylum seekers (NOAS *et al.* 2010: 22; Amnesty International 2010a; NCHR 2009; Papadimitriou and Papageorgiou 2005). The composition of the appeals committees has also undermined their independence and impartiality, as the majority of members represent ministries[5] and the police (Hammarberg 2008; NOAS *et al.* 2008; UNHCR 2008). For Skordas and Sitaropoulos (2004), the organization of the Greek asylum system has been in

> [...] sharp contrast to international human rights and refugee law, as well as the fundamental principle of objectivity and impartiality that should characterize all aspects of the asylum process (2004: 40).

Law 3907/2011 (art.1) establishes an independent asylum authority, but this will remain under the aegis of the Ministry for Citizen Protection, and personnel selected by this ministry are still heavily represented in committees examining and deciding on applications (GCR 2010a; NCHR 2010). Early efforts to partly implement the new law have been characterized by the same bias. A regional asylum committee has been established in Orestiada to examine claims independently from the police departments which receive them; however, the authority appears to be composed of police rather than civilian personnel (interviews with police officers in Evros).

A second area of concern in the asylum system relates to the quality of the examination of claims and decision-making, which, in Greece, has been widely criticized on a number of grounds, including the conduct of the interview, the lack of training of personnel and the communication of decisions to applicants (Amnesty International 2010a; GCR 2010b; Hammarberg 2008; Greek Ombudsman 2007a; NOAS *et al.* 2008). Applicants have rarely been given the opportunity to explain their reasons for seeking asylum in a comprehensive and coherent manner (Amnesty International 2010a; NOAS *et al.* 2010; UNHCR 2009). The interviews tend to be short, to focus on the manner of entry rather than grounds for fearing persecution (NOAS *et al.* 2008; UNHCR 2009) and interviewee responses are frequently not recorded in case files (NCHR 2008a; UNHCR 2007). Conditions in the country of origin are often not examined or taken into account (NCHR 2008a; NOAS *et al.* 2008). The decision at the end of the interview is usually a negative one, stating that the applicant is an economic migrant and that the application should be examined under the accelerated procedure (NCHR 2008a; NOAS *et al.* 2008, 2010). In both first and second instance procedures, references to facts pertaining to individual cases, legal reasoning or detailed reasons for the refusal of an application are rarely provided, and standardized responses are used instead (Hammarberg 2008; UNHCR 2007, 2009). In addition, the quality of decisions on appeals was compromised by the high workloads of the committees, which did not allow the appeals to be examined in anything but the most cursory fashion (NCHR 2008a; NOAS *et al.* 2008, 2010). The decentralization of decision-making authority to 53 police directorates (PD 81/2009), designed to reduce the pressure on the centre, actually exacerbated these issues as divergences in the practices of police directorates undermine the uniform implementation of Greek asylum law and the Geneva Convention (Amnesty International *et al.* 2009a; NCHR 2009; UNHCR 2009).

Thirdly, provision for judicial review has always been limited, with the Council of the State (the Supreme Court of Greece) only deciding on administrative aspects and compliance with the law. It cannot order the re-examination of an application and cannot decide on the substance of an application (Amnesty International 2009a; NCHR 2009; Skordas and Sitaropoulos 2004; UNHCR 2009).

Fourth, access to legal aid has been problematic. As in all EU MS, negotiating the asylum system requires legal support, but neither Greek law nor the Procedures Directive allows for free legal assistance until the judicial review stage; until then, asylum seekers (and irregular migrants) can obtain legal aid 'at their own expense' (PD 96/2008; Amnesty International 2010a, 2010b; Hammarberg 2008). While private lawyers working on asylum cases are rare and financially beyond the reach of asylum seekers (Amnesty International 2010a, 2010b; Hammarberg 2008; NOAS *et al.* 2008; Pro Asyl 2007), free legal assistance is provided by Greek NGOs. For example, in the area of Evros, a team of lawyers from the Greek Council of Refugees visits detention centres on a daily basis to provide legal information and assistance with applications (interviews in Evros). Funding for such schemes is sometimes provided by the EU and the European Refugee Fund, but is subject to being discontinued and to delays (Amnesty International 2010a, 2010b; European Agency for Human Rights 2011; NOAS *et al.* 2008). Even so, overall the provision for legal assistance is deemed inadequate (Amnesty International 2010a; European Agency for Human Rights 2011; UNHCR 2011c). NGOs have extensively documented the routine denial of access to lawyers and NGOs wishing to visit places of detention (Amnesty International 2010b; NOAS *et al.* 2008; Pro Asyl 2007). The Greek government have in the past justified this practice on the grounds of public order (Greek Ombudsman 2007b, 2007c).

Similarly, the implementation of the asylum procedure is compromised by the lack of professionally trained interpreters in asylum interviews, in appeals, in detention centres and in police stations (Amnesty International 2010b; Hammarberg 2008; Pro Asyl 2007; NCHR 2008a; UNHCR 2009). Because of the lack of interpreters, asylum interviews have often been conducted without them and in English, a language in which neither interviewing officers nor asylum seekers may be competent (AITIMA 2010; Amnesty International 2010a). Concerns have also been raised repeatedly over the role and conduct of interpreters. In detention centres, detainees have sometimes acted as interpreters, a situation which, according to Pro Asyl, 'gives rise to mistrust and fear' (2007: 20). Interpreters have been directly employed by the police, raising questions about their impartiality, and there have been reports that they have on occasion actually conducted the asylum interviews (GCR 2010b; NOAS *et al.* 2008). According to the provisions of the new asylum law, interpreters are likely to be hired externally rather than directly employed by the future Asylum Service, but the details will not be clarified before the full implementation of the law.

The lack of interpreters is compounded by the lack of information available to asylum seekers in languages they understand. While, for example, UNHCR has produced a leaflet for asylum seekers, this does not seem to have been widely distributed by the Greek authorities (NOAS *et al.* 2008). Amnesty International (2010a, 2010b) has reported that the information available is often insufficient and out of date (also GCR 2010b).

Recognition Rates

The consequences of the inadequacies of the Greek asylum system can be seen most clearly in the low refugee recognition rates in Greece (Table 1). Recognition rates have been low for Afghani, Iraqi and Somali nationals, groups whose claims for refugee status or subsidiary protection are clearly seen in the higher recognition rates found in other MS. A rise in Greek recognition rates in 2010 (Table 2) could suggest improvements in the examination of claims and decision making although firm conclusions cannot be drawn yet on whether this signifies a radical change in the Greek asylum system.

Table 1 and Table 2 here

The low recognition rates in Greece become more obvious in comparison to other MS (Table 3). In 2009, Greece had the lowest recognition rate among all MS of the European Union, including countries with high numbers of entrants because of their location at the borders of the EU, such as Italy, Malta and Spain.

Table 3 here

A similar picture emerges if we look at the recognition rates among Afghani, Iraqi and Somali nationals (Table 3). Even with the increased rates of 2010, the overall recognition rate lags behind those of all other MS for which comparable data were available, with the exception of the Hungarian recognition rate for Afghans in 2010, at 5 per cent—three points lower than Greece. It is clear that even MS with low refugee recognition rates—for example Bulgaria and Cyprus in the case of Iraqi applicants—compensate for this by granting of some form of subsidiary or humanitarian status. However, in Greece the actual number of people protected in this manner is also low.

Analysis

While not claiming that the Greek case is unique, it is an example of how domestic social and political arrangements and national approaches to European policies have interacted to produce a state of affairs that is highly problematic for refugee protection. Greece has been extensively criticized for the inadequacies of its asylum system. The asylum system as established by successive PDs since the 1990s has had several weaknesses, such as the lack of independent and impartial structures due to the over-involvement of the Greek police and ministries of public order, and the weak provisions for legal aid. In terms of legal arrangements, the overlap between laws regulating irregular migration and asylum laws has allowed the erosion of the right to access the asylum procedure and of the protection from *refoulement*. Nevertheless, despite these weaknesses, the legal frameworks over the last 15 years formally commit the state to minimum standards of protection.

The extensive problems of the Greek asylum system have largely to do with how it is implemented. In part, some of these problems could be attributed to factors such as the attitudes of the police towards migrants—which according to recent research tends to be negative—and that the police lack both training and expertise (see for example Tsoukala 2005; Antonopoulos *et al.* 2008). According to the police officers interviewed for this research, the capacity of the Greek police to deal with matters related to the asylum system is undermined by a variety of factors, such as the lack of training and specialization, the multiplicity of tasks they are asked to perform—which pertain to migration and asylum as well as other ordinary police duties—and, as is often the case in the area of Evros, the difficult working conditions in the border detention centres. At the same time, many of the issues discussed in this article are linked to the administrative capacity of the public sector, especially in relation to the organization of the asylum system. Public administration in Greece has been marked by high levels of centralization, clientelist relations between the government and the civil service and inefficiency (Featherstone 2005; Sotiropoulos 2004). It is not surprising that the asylum system has reflected these shortcomings, but as Tsibiridou (2004) has noted, the inability to create procedural frameworks based on law has had adverse effects on the rights of migrants. For the same reasons, while the new asylum system has the potential to correct these shortcomings, it remains to be seen to what extent it will be affected by the deep-rooted problems of Greek administration—an issue raised by Greek NGOs, and highlighted by the current

financial crisis in Greece. Funding from the European Union, as promised by the Home Affairs Commissioner, will be crucial in that respect, but administrative organization and capacity has also affected the extent to which European funds have been absorbed, as a recent report by the European Agency for Human Rights has noted (2011).

Resources are clearly vital for the improvement of the system (creating clean, humane and safe places of detention, providing interpreters and legal aid, for example). However, a more fundamental issue is whether there is the political will to make radical changes and respect the rights of asylum seekers. The actions and discourse of the current government seem to indicate that it is willing to transform the asylum system into one that could potentially afford greater respect for Convention and human rights standards. However, the rhetoric is not very different from that of previous administrations. Claiming to respect the Convention and human rights has been a standard practice of legitimation in Greek political discourse, even if the reality has not supported such claims[6] (Karamanidou 2009). The current government will also have to contend with negative reactions, especially at the local level, to First Reception centres (I Gnomi 2011; Methorios 2011).

The same question of political will could be raised in relation to the policies of the European Union. While burden-sharing has been an aim of the EU policies, its application has been largely problematic. The difficulties faced by Greece are partly due to high pressures by migratory movements and the lack of efficient responsibility-sharing mechanisms. The Dublin Convention and Dublin Regulation have exacerbated the pressures on an already inadequate asylum system. It is very tempting to represent the various suspensions of Dublin returns to Greece as a 'punishment' for not coming up to standards of refugee protection. However, it should be highlighted that the current government requested the suspension of the Dublin Regulation and recently even welcomed the suspension of returns by Germany as recognition of the pressures faced by Greece (Ministry of Citizen Protection 2010b, 2011c). The response to Greece's request for assistance in controlling its border with Turkey followed much more promptly, with the deployment of a 175-person strong multinational rapid border intervention team (RABIT) under the EU border agency Frontex at the Greek–Turkish border. While an example of burden-sharing, this highlights that prioritizing migration control and a security framework over protecting refugee rights is a policy choice of the EU (Carrera and Guild 2011). Although the European Agency for Human Rights notes indications that the number of migrants being 'pushed back' to Turkey has declined since the deployment of the RABIT operation, it also notes that 'there are no clear instructions or rules of engagement within the Hellenic police in dealing with migrants who have just crossed the border' (2011: 21), and as a result, the fundamental rights of migrants, including refugees, cannot be guaranteed.

The Greek case also highlights the difficulties of ensuring minimum standards of protection across MS. On the one hand, it illustrates the possibility that national frameworks can diverge from EU standards of protection; the abolition of the second instance procedure by PD81/2009 is an example of this. On the other hand, it shows that even when EU frameworks have been adopted their implementation can fall short of minimum standards: for example, problems of lack of legal reasoning in asylum decisions persisted after the implementation of the Procedures and Qualifications directives.

Finally, with regard to the tensions between controlling entry and refugee protection, it could be argued that one of the reasons behind practices running counter to Convention and human rights is the emphasis placed on preventing irregular entry to the European Union, a goal shared by both Greek and EU asylum policies. In the Greek case, the prioritization of migration control frameworks such as Law 3386/2005 and the readmission agreement with Turkey have a negative impact on access to refugee protection. The compatibility of border control practices with the principle of non-*refoulement*, as Carrera and Guild (2011) have argued, is a serious issue in the Greek case.

Conclusion

There are broad lessons to be learnt from the Greek experience. The Achilles heel of Europe shifts around its frontiers. For a number of years the key gateway was Italy and then Spain. Already more people are moving through Eastern European countries such as Bulgaria and Hungary, and once again Italy is moving to the forefront of receiving countries as the Arab Spring sends people northwards across the Mediterranean. So long as migrants could pass more or less unimpeded through these countries and choose where to make their claims, on the basis of rational choices such as support networks, language skills and labour demand, these gateway states did not have an asylum or a migration problem. The key destination countries also shift and change. In the early 1990s it was Germany, later France and the UK. Although these countries have managed to reduce the number of asylum applications they register, it has been at great cost to individuals who, impeded in their attempts to seek asylum, are treated as irregular migrants; forced to wait many months, often on the streets of cities like Athens, while MS decide which state should examine their claim (Schuster 2011a, 2011b). The cost for a state such as Greece is also great, in terms of resources, reputation, and public order. The cost to the EU as a whole reflects this, as the very systems of harmonization, and indeed the idea of a frontier-free and humanitarian Europe, are put fully to the test. And, 60 years after the signing of the 1951 Convention, one must ask what the cost is for the refugee regime writ large.

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1. Many of these latter only ever intend to transit Greece (Schuster 2011a, 2011b; also Papadopoulou 2004, 2007), but there are others who continue their journey because of the difficulties they face in making an asylum claim or in being recognized as a refugee in Greece, or because of their mistreatment by the Greek authorities (Schuster 2011b; NOAS *et al.* 2008; Papadopoulou 2004). We note that people are refugees prior to acquiring the status of asylum seeker, and prior to recognition as a refugee by a state.
2. Karamanidou has recently completed a study of asylum in Greece and Ireland, and conducted extensive legal documentary research, supplemented by interviews with key stakeholders in Athens and the Evros region in November 2010 and July 2011. Schuster has been working with Afghan asylum seekers and refugees in Paris since June 2008, most of whom had travelled through Greece, and who had experienced being deported to and from Greece. The preferred legal term is removal, with the term deportation normally reserved for historical events and the expulsion of foreign criminals. However, we are using it here to describe the expulsion from a MS territory of those not allowed to claim asylum or not allowed to pursue their claim with legally prescribed support.
3. In a separate development, the local government system was also reformed in 2010; regional asylum offices correspond to the new level of regional administration introduced by the local governance law. Some of the responsibilities regarding reception previously belonging to prefectures are transferred to regional authorities.
4. Excluding Albanian nationals, who can be classified as labour migrants.
5. Appeals Committees have included representatives of the Ministry of Public Order and the Ministry of Foreign Affairs (PD 60/1999; the Ministry of Interior and the Ministry of Foreign Affairs (PD 90/2008); the Ministry of Interior, Decentralisation and e-Government and the Minisrty of Justice, Transparency and Human Rights (PD 114/2010 (Government Gazette 1999; 2008; 2010).
6~~5~~. For example, the previous New Democracy administration has often stated that it respects human rights and Convention rights (Ministry of the Interior 2008) in order to respond to criticisms by MS and NGOs, while at the same time taking measures such as abolishing the appeals procedure.

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Table 1

Recognition Rates in Greece

Year	Level of procedure	Applications	Convention status	Humanitarian status	Rejections	Applications/ appeals examined	Convention recognition rates	Humanitarian status recognition rates
2006	First Instance	12,267	5		10,414	10,419	0.05%	
	Second Instance	5,247	59	63		2,837	2.08%	2.22%
2007	First Instance	25,113	8		20,684	20,692	0.04%	
	Second Instance	17,072	132	23		6,448	2.05%	0.35%
2008	First Instance	19,884	14		22,188	29,573	0.05%	
	Second Instance	13,368	344	21		3,342	10.29%	0.63%
2009	First instance	15,928	11	19	14,190	29,501	0.04%	0.06%
	Second Instance	12,095	25	11		870	2.87%	1.26%

2010	First Instance	10,273	60	35	3,348	3,453	1.73%	1.01%
	Second Instance	1,648	35	0		41	85.3%[1]	0%

Source: UNHCR Greece 2010.
1. This high percentage, according to the UNHCR office in Greece, is due to the 'extremely low number of cases examined at second instance in 2010, which concerned serious cases of refugees in crisis' (UNHCR 2010).

Table 2

Recognition Rates (%) of Selected Nationalities in Greece

	2008			2009			2010		
	Afghans	Iraqis	Somalis	Afghans	Iraqis	Somalis	Afghans	Iraqis	Somalis
Applications	2,287	1,760	149	1,510	886	140	525	342	141
Refugee Status	*	*	0	2	8	0	9	12	2
Other Protection	0	0	0	0	0	0	7	*	0
Convention %	0.2	0.1	0	0	0	0	4	8	6
Total Recognition	0.2	0.1	0	0	0	0	10	13	13

Source *UNHCR Statistical Yearbook* 2008; 2009; 2010.
* indicates between 1 and 4 applications in the UNHCR statistics. The exact numbers were not yet available in the Hellenic Police statistics.

Table 3

Comparative Recognition Rates (%) in 27 MS

			2009						2010					
MS	Total* Con	Total**	Afghanistan		Iraq		Somalia		Afghanistan		Iraq		Somalia	
			Con	Tot	Con	Tot	Con	Tot	Con	Tot	Con	Tot	Con	Tot
Austria	17.7	26.0	34	36	49	80	57	77	26	57	24	69	60	87
Belgium	22.4	29.0	29	48	38	75	20	37			33	79	25	50
Bulgaria	6.0	41.3			5	67					0	49	4	33
Cyprus	53.3	53.3			1	93					0	66		
Czech Republic	14.9	20.4												
Denmark	22.2	44.1	2	54	19	46	3	58	2	41	6	24		
Estonia	4.8	9.5												
Finland	6.4	77.8	7	75	7	89	0	96	8	56	8	70	1	88
France	11.1	14.5	33	37	79	82	40	79	31	34	73	74	38	69
Germany	36.5	42.9	67	11	75	77	70	93	12	47	5	57	75	91
Greece	0.1	0.3	0	0	0	0	0	0	4	8	8	10	6	13
Hungary	9.7	22.4							3	5				
Ireland	3.6	3.6					14	14						
Italy	10.1	43.5	25	87	84	88	10	95	24	91	32	79		
Latvia	18.5	40.7												
Lithuania	7.6	29.2												
Luxembourg	29.5	30.5												
Malta	0.8	65.5					0	92						
Netherlands	4.2	48.3	3	33	5	42	2	65	3	35	6	54	2	65
Poland	2.0	38.3												
Portugal	3.0	52.0												
Romania	7.7	10.6							11	31				
Slovakia	3.2	25.5												
Slovenia	14.4	18.9												
Spain	4.0	7.6					0	7						
Sweden	7.5	37.0	13	73	8	26	11	85	11	72	34	54	9	93
UK	19.3	29.0	8	51	9	21	44	51	9	36	9	19	45	55

Source: Compiled from UNHCR Statistical Reports 2009 and 2010.
Blank cells indicate fewer than 100 applicants from named source countries.
*Total given Convention Status
** Total given protection