



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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CommDH(2010)22

**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 2, of the European Convention on Human Rights

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

Introduction

1. On 3 May 2010, the European Court of Human Rights (hereinafter: 'the Court') invited the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') to intervene as a third-party in the Court's proceedings, and to submit written observations concerning the case of *M.S.S. v. Belgium and Greece* relating to the transfer of an asylum seeker from Belgium to Greece under Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national (hereinafter: 'the Dublin Regulation').
2. According to the Council of Europe Committee of Ministers' Resolution (99)50,¹ the Commissioner is mandated to foster the effective observance of human rights, to assist member states in the implementation of Council of Europe human rights instruments, in particular the European Convention on Human Rights (hereinafter: 'the Convention'), and to provide advice and information regarding the protection of human rights across the region.
3. The protection of the human rights of asylum seekers and refugees is a priority theme of the Commissioner's present work concerning all Council of Europe member states. The Commissioner has repeatedly stressed the importance of guaranteeing the individual right to seek and enjoy asylum and has addressed a number of relevant recommendations to member states.
4. The present written submission reiterates and updates the observations submitted to the Court on 11 March 2010 in relation to a group of cases lodged against the Netherlands and Greece. These observations are based on the Commissioner's visits to Greece from 8 to 10 December 2008² and from 8 to 10 February 2010, as well as on continuous country monitoring. During his visits the Commissioner held discussions with a number of state authorities and met with representatives of non-governmental, national and international organisations.
5. Section I of the present written submission deals with certain basic features of refugee protection in Greece; Section II focuses on major issues concerning asylum procedures and human rights safeguards; Section III deals with asylum seekers' reception and detention conditions, and is followed by the Commissioner's conclusions.

I. Observations on the current framework of refugee protection in Greece

6. The Commissioner is fully cognisant of the considerable, mixed migration (immigrants and asylum seekers) flow pressures that have been exerted on Greece, as is the case for other Mediterranean Council of Europe member states, for many years. The increase of irregular migration into Greece that has occurred particularly in the last five years has further strained this country's resources. Nonetheless, the complex international phenomenon of migration should be dealt with by Greece and all other Council of Europe member states concerned in a manner which is not only efficient but also effectively respectful of the Council of Europe human rights standards.

¹ Resolution (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² See subsequent report concerning the human rights of asylum seekers, CommDH(2009)6, 4 February 2009.

7. Greece received the seventh largest number of refugee applicants in the EU in 2009,³ with a total of 15 930 asylum applications lodged; there were 11 recognitions of Convention refugee status and 18 grants of humanitarian status or subsidiary protection. The Commissioner has noted with concern that in 2009 the recognition rate at first instance was 0,04% for Convention refugee status and 0,06% for the other two statuses. The pending applications at first instance in 2009 reached 3 122. As regards asylum appeals in 2009, there were 12 095 appeals, 25 recognitions of Convention refugee status and 11 grants of humanitarian or subsidiary protection. The respective recognition rates on appeal were 2,87% and 1,26%. On 31 March 2010 the Commissioner was informed by the Minister of Citizen Protection of the fact that the total of pending asylum claims in early February 2010 was as high as 44 560, and found this to be worrying.
8. The Commissioner noted that during the first ten months of 2009 Greece received 7 857 applications from other EU member states to receive back refugee applicants under the Dublin Regulation. Of these applications, 2 770 were accepted and 106 rejected. The final transfers to Greece during that period totalled 995.
9. During both his visits to Greece in December 2008 and February 2010, the Commissioner was the recipient of deep concerns expressed by, among others, the Greek National Commission for Human Rights, the Greek Ombudsman and the UNHCR Office in Greece with regard to the entry and access of asylum seekers to the asylum procedure in Greece. The Commissioner received reports indicating instances where the Police (in charge of the asylum procedures) even refused to receive asylum applications. Sometimes asylum seekers are reportedly also unwilling to claim asylum in Greece because of the aforementioned extremely low recognition rates and the prospect of having almost no chance to be recognised as a refugee at first instance.
10. In 2009, 78,87% of all asylum applications were lodged at the Central Police Asylum Department at Petrou Ralli Street. However, the Commissioner has been informed that the Department has only 11 qualified Asylum Officers. During his last visit in February 2010, the Commissioner was informed by the Director of the Department that asylum applications could only be registered on Saturdays and that the number of registered applications ranged from fifty to sixty per week. Applications on other days are received only if they concern exceptional humanitarian cases.
11. The staff members of that Department noted that the number of human resources currently allocated is too low to handle the asylum applications efficiently. The Commissioner was also informed that the competent first instance Advisory Refugee Committees, in charge of examining asylum applications, do not function properly due to the non-participation of members from the regional Department for Aliens and Immigration. Moreover, UNHCR has declined to participate in the current asylum procedure, even though the current law provides for its membership in the Advisory Refugee Committees (see Section II), noting that "the structural changes introduced by the new Presidential Decree 81/2009 do not sufficiently guarantee efficiency and fairness of the refugee status determination procedure in Greece as required by International and European legislation".⁴
12. In his 2009 report concerning the human rights of asylum seekers in Greece, the Commissioner noted with concern the serious public disorder that was created on 26 October 2008 and subsequently widely reported in the press, in front of the premises of the above Asylum Department where approximately 3 000 aliens were queuing in order to submit an asylum application. The public disorder led to police intervention, and the death of one and

³ UNHCR, *Asylum Levels and Trends in Industrialized Countries, 2009*, 23 March 2010, available at: www.unhcr.org.

⁴ See press release of 17 July 2009, available at: http://hosting01.vivodinet.gr/unhcr/Press_Rel/09pr32en.pdf.

the injury of a number of other asylum seekers. During both his visits the Commissioner was informed that at weekends asylum seekers queue up en masse in front of the above Asylum Department waiting for a 'ticket' for an appointment in order to lodge an asylum application.

II. Major issues concerning the asylum procedure in Greece and human rights safeguards

Legal framework

13. The Commissioner is aware that in 2007 and 2008 there were certain positive developments in Greek refugee law: In November 2007 Presidential Decree 220 transposed Directive 2003/9/EC concerning the reception of asylum seekers. In July 2008 Presidential Decrees 90 and 96 amended Presidential Decree 61/1999 (the major piece of legislation regulating asylum procedures until then) and transposed respectively Directive 2005/85/EC concerning the asylum procedures and Directive 2004/83 concerning the qualification of refugee or subsidiary protection.
14. However, the Commissioner has noted with concern that on 30 June 2009 Presidential Decree 81/2009 concerning asylum was promulgated and had as an effect the lowering of international protection standards in Greece. The Commissioner has been particularly concerned about the abolition of the examination of the merits of asylum claims at second instance by the Appeals Committee and the transfer of the asylum decision-making responsibility at first instance to the Police Directors around Greece. This Decree created an Advisory Refugee Committee composed of two police officers (the most senior acting as President of the Committee), one staff member of the Department for Aliens and Immigration of the respective region and a UNHCR representative in each Police Directorate. A major issue of concern to the Commissioner has been the reported lack of sufficient initial and continuous training that should have been made available by the state to the members of these Committees. The first instance decisions can be appealed only on points of law, through an application for annulment, before the Supreme Administrative Court (Council of State) (see subsection below on remedies).
15. Following the parliamentary elections in Greece in October 2009, the new government established a Committee of Experts to provide advice on the reform of the Greek asylum system. This Committee, comprising experts from the Citizen Protection, Interior and Health Ministries, the UNHCR, the Greek Council for Refugees and the Ombudsman as well as academics, was mandated to propose amendments to the existing law and practice and suggestions with regard to the composition and operation of a new civil authority that would deal with asylum claims, staffed by civil servants, with no police force members as is the case today.
16. The Commissioner has been informed that the proposals of the above Committee were submitted to the Greek government on 22 December 2009. The Minister of Citizen Protection informed the Commissioner during their meeting in Athens on 10 February 2010 that a Bill was under preparation.

Legal aid for asylum seekers

17. The first comprehensive legal aid statute (Law 3226) in Greece was introduced in 2004. Legal aid under the above-mentioned Law has been provided for low income persons only with regard to civil and criminal cases. Administrative law proceedings were not covered even though the Council of State has recognised the right to legal assistance for persons without means in proceedings before it.

18. The Commissioner has noted with regret that Article 11, paragraph 1, of Presidential Decree 90/2008 that transposed Directive 2005/85/EC provides that asylum seekers have the right to consult legal or other counsel 'at their own expense'. Paragraph 2 of the same Article provides for legal aid only for the judicial review cases brought before the Council of State, on condition that the application for annulment before the Council of State is not 'manifestly inadmissible or manifestly unfounded'.
19. During both his visits to Greece the Commissioner has been informed by Greek refugee lawyers that the system of legal aid provided for by law does not function in practice. Several factors hinder access to lawyers providing free legal aid: lack of sufficient information to asylum seekers about possible legal counselling; only a few lawyers are registered in the legal aid list of the Bar Association, as there is an important delay in fee reimbursement, coupled with low fees; the procedure for benefiting from the legal aid scheme is complicated.

Interpretation for asylum seekers

20. Whilst Presidential Decree 81/2009 provides for an interview to be carried out by the first instance Advisory Refugee Committee and for the selection of an interpreter able to ensure appropriate communication in a language understood by the refugee applicant, during both his visits the Commissioner has noted with grave concern the chronic problem of lack of sufficient interpretation in the Greek asylum system. Already in 2001 the Greek National Commission for Human Rights (NCHR) had stressed that the lack of official interpreters in asylum procedures violated the elementary procedural principles of the rule of law and fundamental principles of international human rights law.⁵ Seven years later grave concerns were again expressed on the same issue by the NCHR, a sign of a lack of any real progress in this area.⁶ Of particular concern is the reported lack of qualified interpreters in the regional Police Directorates, now wholly in charge of the first instance asylum procedures, where co-detainees or other migrants are used by the Police for interpretation when asylum applications are lodged.
21. The Commissioner notes that on 10 August 2009 the Greek Ombudsman issued an Opinion concerning issues of lawful notification of first instance asylum decisions and appeals, highlighting the practice of unlawful notification of negative asylum decisions due to insufficient interpretation or inappropriate methods of informing the refugee applicants about the appeal procedure upon notification.⁷ The Greek Ombudsman recommended that the Greek authorities, *inter alia*, include in the first instance decisions a text in the most common languages of the asylum seekers informing the latter of the asylum procedure, including appeal deadlines and NGOs that may provide aid.

Asylum seekers' access to domestic and international remedies

22. The Commissioner recalls his Recommendation concerning *the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders*, where he stresses the need for the right of judicial remedy within the meaning of Article 13 of the Convention not only to be guaranteed in law but also to be granted *in practice* when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the Convention.⁸

⁵ Greek National Commission for Human Rights, 'Proposals for the promotion of a modern, efficient framework of refugee protection in Greece', 8 June 2001, in Greek, section 9, available at: <http://www.nchr.gr>.

⁶ Greek National Commission for Human Rights, 'Comments of the NCHR on the asylum procedure and the application of relevant legislation', 17 January 2008, in Greek, section 2, available at: <http://www.nchr.gr>.

⁷ Prot. No 5733.2.5/07, available in Greek at <http://www.synigoros.gr>.

⁸ CommDH(2001)19, 19 September 2001, paragraph 11.

23. Until the promulgation of Presidential Decree 81/2009, first instance decisions taken by the Greek Police could be appealed before an Appeals Committee. The Appeals Committee is now abolished and the only remedy available to asylum seekers against a negative decision is the application for annulment before the Council of State, which is competent for judicial review of administrative decisions.
24. The Council of State offers safeguards of independence and impartiality as an *ultimum remedium* in the asylum process. However, given the well-known, chronic problem of excessively lengthy proceedings in Greek administrative courts, especially before the Council of State,⁹ it is not possible to consider this remedy as effective in the context of refugee protection, which by definition requires prompt decision-making by all competent authorities. The average length of proceedings before the Council of State is currently reported to be five and a half years, while interim measure decisions are reported to be rendered in a period ranging from 10 days to 4 months. Moreover, the Council of State is only allowed to examine appeals on points of law and cannot review the merits of the case, in particular the existence of a risk of persecution in the country of origin.
25. The Commissioner also notes that the lodging of an application for annulment does not automatically suspend the deportation order delivered following a negative asylum decision. The appellant needs to request the suspension of that order separately until the Council of State delivers a judgment on the application for annulment.
26. In view of the above, the Commissioner is worried that asylum seekers in Greece face a serious, real risk of being deprived of their right to an effective remedy in respect of the violations of the Convention of which they allege to be victims, which is guaranteed under Article 13 of the Convention and Article 39 of the Directive 2005/85/EC. The notion of an effective remedy under Article 13 requires a scope of review conducted by a domestic court able to address the key elements of whether there has been a violation of the Convention.¹⁰
27. As regards access to the European Court of Human Rights, although this is guaranteed in principle for every individual within Greece's jurisdiction, lodging an application before the Court appears to be very difficult in practice. The same applies for requests made under Rule 39 of the Rules of the Court (interim measures): the number of such requests introduced from and against Greece seems to be quite low compared to other state parties,¹¹ and can be linked to difficulties, described in other parts of the present written submission, in accessing interpretation services and lawyers, in particular for people in detention, and to the lack of proper legal information available in general.

Protection of asylum seekers from *refoulement*

28. During both his visits the Commissioner was informed by migrants he met and by Greek refugee lawyers about instances of non registration by the Police of asylum claims and of instances of *refoulement*, especially from Greece to Turkey. Such forced returns have occasionally taken place before the migrants were able to apply for asylum, but also concern 'pink card' holders registered as asylum seekers in Greece. Characteristically, during the Commissioner's discussions with migrant detainees at the Feres border guard station in

⁹ See, *inter alia*, Council of Europe Committee of Ministers' Interim Resolution CM/ResDH(2007)74 concerning excessively lengthy proceedings in administrative and other courts and lack of an effective domestic remedy and *Manios* group of cases, pending before the Committee of Ministers for supervision of execution, http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

¹⁰ *Smith and Grady v. the United Kingdom*, judgment of 27 September 1999, *Hatton and Others v. the United Kingdom* (Grand Chamber), judgment of 8 July 2003.

¹¹ In 2008, 11 requests were introduced (5 were out of scope, 0 granted, 6 refused); in 2009 12 requests were made (5 were out of scope, 1 granted, 6 refused).

December 2008, one of them reported that of the group of 65 persons who were arrested in 2008, having crossed the Evros river, 50 of them were 'immediately deported'.

29. Another particularly disturbing case, noted in the Commissioner's 2009 report on Greece, has been the reported expulsion in March 2007 from Greece to Turkey through the Evros River of an Iranian irregular entrant who attempted to reach her refugee husband in Greece with her 6-year old child who suffered from heart problems. Reportedly she was later recognised as a refugee by UNHCR in Turkey and family reunification subsequently occurred in Greece.
30. In this context, it is noted that despite the Commissioner's recommendations, Greece has not as yet acceded to the 1963 Protocol No. 4 to the European Convention on Human Rights which, *inter alia*, proscribes the collective expulsion of aliens, while Turkey still adheres to the geographical limitation of the 1951 UN Refugee Convention, thus excluding from refugee status persons coming from outside of Europe.
31. During his visit to Greece in February 2010 the Commissioner was informed of and concerned at another reported case of *refoulement* concerning a group of 43 Kurds who had arrived at the town of Chania, Crete on 18 July 2009; 17 of them applied for refugee status. According to NGO reports, on 27 July 2009 they were all transferred to the aliens' detention centre of Venna (North East Greece) from where they were subsequently expelled to Turkey. A series of other collective expulsions of migrant groups, ranging from 30 to 120 persons, to Turkey (through the land border of the Evros department) from various eastern Aegean islands were reported by Greek refugee lawyers to have occurred in July and August 2009. The Commissioner was informed by Greek refugee lawyers of more similar collective expulsions that have reportedly occurred in December 2009, January and February 2010.
32. The Commissioner underlines that such practices are not compatible with member states' obligations recalled by the Committee of Ministers Twenty Guidelines on Forced Returns (especially Guideline 3 - prohibition of collective expulsion) and with the states' fundamental obligation under the Convention not to return a person to a country where they would face a real risk of being subjected to treatment contrary to Article 3, or even Article 2. The Commissioner is concerned that asylum seekers returning to Greece by virtue of the Dublin Regulation may face such risks, jeopardising the enjoyment by them of their human rights enshrined in the Convention.

III. Asylum seekers' reception and detention conditions

Asylum seekers' accommodation

33. In February 2010 the Commissioner was informed that there were eleven reception centres for asylum seekers, including asylum seeking minors, in Greece with a total capacity of 741 persons. All of them are managed by non-governmental organisations and financially supported (partly or wholly) by the state.
34. Given the fact that asylum applications between 2005 and 2009 ranged from 9 050 to 25 113 per year, the Commissioner considers that the above reception capacity is far from satisfactory. The Commissioner regrets to note that such a serious deficiency in the asylum seekers' reception capacity harshens even further the lives of thousands of asylum seekers and their families, children in particular. It also raises serious issues with regard to the protection of, *inter alia*, their right to social and medical assistance and their right to benefit from social welfare services, as provided for notably by the European Social Charter (ratified by Greece), and the 'Refugee Reception Directive' (2003/9/EC, transposed by Presidential Decree 220/2007). In fact, many asylum seekers are detained in aliens' detention centres often in substandard conditions, or simply live out in the open (see subsection below on asylum seekers' detention).

35. On 8 February 2010 the Commissioner visited the town of Patras, one of the major irregular exit points of migrants, including asylum seekers, from Greece to other EU member states. For approximately ten years, and until July 2009, a number of migrants - the majority reportedly of Iraqi and Afghan nationality, including asylum seekers and minors - had lived in an unauthorised settlement in Patras. According to the UNHCR Office in Greece, an estimated 3 000 persons lived in that settlement in conditions that have been described by that Office as 'unacceptable from the points of view of living and hygiene standards'. During his meeting with the Commissioner in December 2008, the former Minister of Interior Prof. Pavlopoulos conceded that the situation was serious and informed the Commissioner that efforts were made by state authorities to provide the migrants of the settlement with basic welfare and medical services. The Commissioner was also informed then of a plan to create an irregular migrants detention centre of with a capacity of 1 000 persons at Drepano-Rio, near Patras. To his regret, the Commissioner noted during his visit to Patras in February 2010 that no such centre had been established.
36. In fact, after the dismantling by the authorities of the unauthorised settlement in July 2009, the migrants, including asylum seekers, scattered around the town of Patras, including the nearby area of Ayias, where some have since camped under the trees of a private olive grove. This area was squatted mainly by approximately 300 Hazara Afghans. In addition, approximately 200 Pashtun Afghans, Somalis, Sudanese, North Africans and migrants from the Middle East were reportedly squatting in the open air, in construction sites or in disused train carriages in Patras. The Police authorities in Patras informed the Commissioner that approximately 70% of the Afghans are registered asylum seekers and holders of the relevant 'pink cards'.
37. On 8 February 2010 the Commissioner visited the olive grove in Ayias and met with a group of three male Afghans, approximately 20 years of age, who had still remained under an olive tree covered by cardboard and plastic sheets to be protected from the heavy rain. The Commissioner was informed that the olive grove had been raided by the police the previous week and many of the squatters had abandoned the field. The three Afghans who talked with the Commissioner had been in Greece for an average of two years and expressed their fear of being subjected to violence if returned to their country of origin. They claimed that they received no state aid. Food was allegedly provided only by members of the local civil society and medical care was available by the local Red Cross in the town of Patras. The Commissioner noted in particular the three Afghans' fear of contact with police authorities and the coast guard, a fact that made them avoid contacts with the Red Cross in the town even if they were in need of basic medical aid.

Asylum seekers' detention

38. In his 2009 report on Greece, the Commissioner noted that refugee applicants were being routinely detained in detention centres for three months (the maximum period provided for by Greek law at that time for irregular entrants subject to deportation). By Law 3772/2009 the maximum period for the detention of migrants in view of deportation became six months. A further extension of detention for 12 months is also possible under the same Law if the migrants do not cooperate with the authorities or there is a delay in the provision of the necessary documents by the authorities of the migrants' country of origin. During the Commissioner's visit in February 2010, legal practitioners informed the former that they had observed an increase in the actual average duration of detention in the period following the introduction of the above Law.
39. The Commissioner is concerned by the above legislative change, given the very high annual numbers of irregular migrants (including traffickers) who are apprehended and detained by police and coast guard forces in Greece every year. From 2006 to 2009 these numbers ranged from 95 239 to 146 337. In this regard, the Commissioner has noted a number of

recent judgments delivered by the Court concerning the detention of migrants in Greece, notably in police stations, and violations of Article 3 or Article 5 of the Convention.¹²

40. In December 2008 the Commissioner visited the two separate warehouse-type detention rooms of the Feres border guard station, which date from 2000. There were 45 young, male, irregular migrants in detention, most of them Iraqis. The Commissioner noted with concern that there was no telephone available inside the detention area at Feres, while inmates complained that they hardly ever left their detention rooms. They were in fact crammed in the rooms, sleeping and stepping upon mattresses that had been placed on the floor and on a cement platform, one next to the other. In the bathrooms the conditions were squalid. Some detainees had obvious skin rashes on their arms and one with bare feet complained that the authorities did not provide him with shoes and clean clothes.
41. The Commissioner is particularly worried by information indicating that asylum seekers are detained in Athens airport (Eleftherios Venizelos) in degrading conditions, occasionally for periods exceeding forty days. Médecins Sans Frontières, Greece have noted that, on the day of their visit to the above airport on 30 April 2010, there were approximately 300 detainees, including 21 children aged 3-12, three infants and two pregnant women, in 9 cells with a capacity of three persons each. In the three rooms aimed for families, with a capacity of 8 to 12 persons, there were reportedly 155 persons detained, without ventilation and with only three toilets and showers.¹³
42. During the visit to Patras in February 2010, the coast guard authorities informed the Commissioner that a month earlier they had stopped using a couple of containers in the area of the port of Patras for the detention of irregular migrants, acknowledging their inappropriateness. The Commissioner had earlier been informed of cases of migrants with psoriasis held in those containers.
43. During the same visit, the Commissioner was also informed of degrading conditions of detention of migrants (including asylum seekers) at the centre of Pagani, on the island of Lesbos, which was operational until late 2009. After its visit there on 22 October 2009, UNHCR Greece reported that more than 700 men, women and children were accommodated there even though no appropriate infrastructures were in place. It was reported that in a cell there were approximately 200 women and children with only two toilets and one shower.¹⁴ On 10 February 2010, the Commissioner was informed by the Minister of Citizen Protection that this centre was finally closed.
44. Another centre used for the detention of migrants (including asylum seekers) of particular concern to the Commissioner is that in Venna (North East Greece), which is based in an old agricultural warehouse. In a visit report published on 3 January 2010 by the Greek League for Human Rights¹⁵ it was noted that the above centre consisted of six cells, each housing 15-25 persons, without heating, with doorless toilets/showers inside each cell. In the same report it is noted that there was no cleaning service in the centre and that both the detainees and the policemen reported the abundance therein of mice and cockroaches. In one of the cells, visited in late November 2009 by the delegation of the Greek League for Human Rights, there were detainees with clear signs of psoriasis on their bodies.

¹² *Kaja v. Greece*, judgment of 27 July 2006, *Mohd v. Greece*, judgment of 27 April 2006, *John v. Greece*, judgment of 10 May 2007, *S.D. v. Greece*, judgment of 11 June 2009, *Tabesh v. Greece*, judgment of 26 November 2009.

¹³ Press release of 11 May 2010, in Greek, available at:

http://www.msf.gr/index.php?option=com_content&task=view&id=2283&Itemid=235.

¹⁴ Press release of 23 October 2009, in Greek, available at: <http://www.unhcr.gr>.

¹⁵ In Greek, available at: <http://www.hlhr.gr>, pp. 8-11.

45. During his last visit to Greece the Commissioner was informed that on 3 February, the week before his arrival, there had been an uprising of migrant detainees at the above detention centre. The detainees reportedly protested about the material conditions of their detention and lack of proper medical care.
46. It was reported to the Commissioner that on 5 February 2010 the Misdemeanours Court of Rodopi tried and convicted 42 of the migrant detainees, originating mainly from Iraq, Afghanistan, Pakistan and Bangladesh, on charges of contempt of Authority and damage to property, and ordered their deportation. Greek lawyers following the case reported to the Commissioner that legal counsellors could not contact the migrant detainees before, during or after the above trial.

Conclusions

47. In conclusion, the Commissioner considers that current asylum law and practice in Greece are not in compliance with international and European human rights standards. In particular:
- access to refugee protection remains highly problematic, notably due to the non-functioning of the first instance Advisory Refugee Committees, lack of proper information on asylum procedures and legal aid that should be available to potential or actual asylum seekers, widely reported instances of *refoulement* or non-registration of asylum claims;
 - the quality of asylum decisions at first instance is inadequate, notably because of structural deficiencies and lack of procedural safeguards, in particular concerning the provision of legal aid and interpretation;
 - existing domestic remedy against negative asylum applications is not effective;
 - asylum seekers, including persons transferred under the Dublin Regulation, face extremely harsh living conditions in Greece.
48. Since the beginning of his mandate, the Commissioner has been following developments relating to migration, and especially asylum, in Greece. The Commissioner is pleased to note the new Greek government's decision and willingness, shown to him during his visit in February 2010, to overhaul the refugee protection system and overcome its current serious, chronic and structural deficiencies.
49. The Commissioner fully supports these efforts and has urged the Greek authorities to proceed and engage with determination and commitment in the necessary legislative and administrative changes that would bring the Greek asylum system in line with international and European human rights standards.