



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate B : Immigration, Asylum and Borders
the director

Brussels, 01 AVR. 2008
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Mr Chris Nash
Head of Policy and Advocacy, ECRE
103 Worship street,
London, EC2A 2DF
United Kingdom
E-mail: CNash@ecre.org

Dear Mr Nash,

Thank you for your letter of 26 February 2008 in which you express concerns about Greece's compliance with its obligations under Community law on asylum and in particular with the Regulation establishing the criteria and mechanisms for determining which Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national (hereafter the Dublin Regulation).

In your letter you ask for information on the reasons for the infringement procedure against Greece for not complying with the Dublin Regulation and the precise nature of the problems identified in Greece. You also attached the report/case study by Pro Asyl which refers in particular to the case of an Iranian asylum-seeker transferred back from Germany to Greece under the Dublin Regulation and who has allegedly been ill-treated by the Greek authorities, which the Commission will carefully consider.

As you rightly mention in your letter, the Commission has decided on 31 January 2008 to take legal action against Greece for not complying with the Dublin Regulation, by referring the case to the European Court of Justice. According to the Greek legislation, unauthorised departure of an asylum applicant from his/her place of residence amounts to a withdrawal of his/her asylum application and discontinuation of the asylum procedure. This appears to be against the provisions of the Dublin Regulation, namely of its Article 3(1), which places an obligation on the responsible Member State to effectively examine the applications concerned in the case of Dublin transfers.

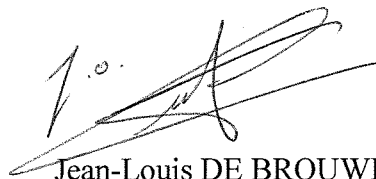
The Greek authorities acknowledged the fact that their legislation is incompatible with the Dublin Regulation and indicated a change in the practice of the administrative authorities, stating that, since April 2006, asylum applications from third-country nationals falling within the scope of the Dublin Regulation have been examined on their substance. However, in the absence of any clear indications allowing to conclude that Greece will correct the legal situation in the foreseeable future and based on the settled case-law of the Court of Justice, according to which,

as long as changes in practice are not yet set in law, the infringement continues to persist, the Commission decided to refer the case to the Court of Justice.

The Commission would like however to highlight that it is only the Court of Justice that can establish that a Member State has failed to fulfil an obligation under the European Community Treaty. Therefore, the mere fact of opening an infringement procedure cannot in itself provide a reason to justify the partial suspension of the application of a Community instrument. Member States may, however, upon their own initiative, decide to apply the sovereignty clause in Article 3(2) of the Dublin Regulation to examine an application for asylum lodged with them by a third-country national even if such examination is not their responsibility under the criteria laid down in the Regulation.

I would finally like to inform you that the Commission is in the process of seeking clarification from the Greek authorities on a number of issues referred to in the Pro Asyl report of October 2007, concerning the general situation of third-country nationals seeking international protection in Greece. If needed, the Commission will proceed with the necessary/relevant procedural steps in accordance with the power conferred on it by the Treaty establishing the European Community in order to ensure that Greece complies with its obligations under the EU asylum acquis.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. L. DE BROUWER', with a large, sweeping flourish extending to the right.

Jean-Louis DE BROUWER