

***ECtHR Interim Measures (Rule 39) to stop Dublin transfers***

Recent weeks have seen an increase in the number of cases in which the European Court of Human Rights (ECtHR) has, under its **Rule 39**, instructed State governments **not to carry out Dublin transfers**. The Court has ordered particular transfers to Greece, Malta, and Italy halted, pending consideration of the would-be transferees’ complaints that transfer would risk violating their rights under the European Convention on Human Rights (ECHR), articles 3, 5, and 8. This summary provides an overview of these cases, attempting to identify what factors might lead the ECtHR to issue Rule 39 interim measures in response to future referrals.

The intention is to **provide support for further Rule 39 applications**, or for arguments to national courts or authorities that transfers should not be ordered in the first place (because the ECtHR would, if asked, stop them).

Two trends are visible: the Court has especially tended to issue interim measures where **particularly vulnerable asylum seekers** are concerned, or when the **would-be destination is Greece**. Of the cases surveyed, the Court denied interim measures in only few instance concerning transfers to Greece in the month of May. In the cases involving transfers to countries other than Greece, the applicants argued their circumstances made them particularly vulnerable to harm from potential rights violations.

The particular focus on Greece appears to be due in part to the availability of **detailed information about the conditions** facing asylum seekers there, a result of close scrutiny over the past years.

In total, the Court has instructed the Finnish and Dutch governments to halt about fifteen transfers to Greece, but has denied one such request for an Afghan male to be transferred from Finland.

**List of Rule 39 Requests (interim measures) - Transfers to Greece<sup>1</sup>**

From 14/05 to 31/12 2008	<b>Rule 39 granted</b>	<b>Rule 39 refused</b>
<b>U.K.</b>	83 (until September)	45 (from September on)
<b>Finland</b>	8	0
<b>Belgium</b>	2	1
<b>Italy</b>	1	0
<b>Austria</b>	0	1
<b>Total</b>	94	47

From 01/01 to 31/05 2009	<b>Rule 39 granted</b>	<b>Rule 39 refused</b>
<b>U.K.</b>	22	36
<b>Finland</b>	20	1
<b>Belgium</b>	15	7
<b>France</b>	1	1
<b>Total</b>	58 (46 of which were granted in May 2009)	45

<sup>1</sup> Information was provided for by the UNHCR office Stockholm.

In most cases, the **Court did not specify why** it ordered the halt of the transfer, but it is possible to draw reasonable inferences from the facts and arguments presented. In one case, the Court posed questions to the Greek government, giving a clear hint as to the nature of its most serious concerns about conditions in Greece. Three of the approximately fifteen applicants whose transfers from Finland and the Netherlands have been stopped are Somalis, and one is a former NATO interpreter from Afghanistan.<sup>2</sup>

### **Transfers to Greece**

Although the Court clearly has concerns about the wellbeing of asylum seekers if transferred to a number of EU Member States, its concerns about Greece seem clearest. The February 2009 report by Human Rights Commissioner Hammarberg reportedly carried considerable weight with the Court.<sup>3</sup> The Court's **recent judgment against Greece in S.D.**, for unlawful detention of a Turkish asylum applicant, should assist arguments against any Dublin returns to Greece, if there is a prospect of detention.<sup>4</sup>

The questions posed to the Greek government in one of the Dutch cases reinforce the impression of the Court's serious **concerns about detention**, making reference to the Hammarberg report, the February 2008 Torture Committee report, and the UNHCR position on returns to Greece of April 2008. The Court's questions also indicate possible concerns about a **risk of indirect refoulement**, and the **lack of practical access to an asylum procedure**. Such concerns are also referred to in *S.D.*, although they were not material to the actual judgment. In both instances, the applicant alleged that the Greek authorities had declined to allow the registration of an asylum claim, and in the Dutch case the applicant alleged she had subsequently been expelled to Somalia.

### **Transfers of particularly vulnerable asylum seekers to Italy and Malta**

In addition to transfers destined for Greece, the Court issued interim measures **halting transfers from Finland to Italy and Malta** (one each), but denied two other requests for pending transfers to Italy. In the successful requests to stop transfers to Italy and Malta, both applicants were demonstrably at greater risk of harm **due to vulnerable personal circumstances**. Both were women, the former a minor, and the latter with a 5-month-old child. Evidence was presented questioning the Italian authorities' age determination, and outlining injuries and trauma sustained during a prior period of homelessness in Italy. The remaining two cases, in which the request to halt transfer was denied, concerned adult males. The court's approach would seem to suggest that evidence of individual risk / vulnerability is required to supplement evidence concerning the general country situation.

### **Conclusions**

There are a number of conclusions to be drawn and possible action points to take forward concerning these developments.

1. Help facilitate the identification and lodging of Article 39 applications to prevent Dublin transfers in other appropriate cases.
2. Ensure information gathering to apply to other problematic countries at the level of scrutiny which has been effective in Greece.
3. Make reference to recent litigation in advocacy efforts promoting reform of Dublin.

<sup>2</sup> Information about the countries of origin of the other applicants is not currently available.

<sup>3</sup> See Annex 2 for a list of documents with links.

<sup>4</sup> See ECRE Weekly Bulletin, June 19, 2009. The Court found Greece had violated article 5 ECHR through arbitrary detention and lack of legal remedy, and article 3 in that the conditions of detention amounted to degrading treatment. Conditions specifically referred to included the lack of opportunity for outdoor exercise, inadequate bedding and hygiene products, and lack of access to a telephone.  
[http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_19\\_June\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_19_June_2009.pdf)

4. Share information on recent developments concerning Rule 39 cases through the use of ECRE Members area.

We would ask our member agencies to provide us with further information on these developments. For general information about this or to get in contact with National Coordinators of ECRE's legal network (ELENA) please contact Jan Brulc at [jbrulc@ecre.org](mailto:jbrulc@ecre.org)

You can post information concerning the Rule 39 decisions directly through the ECRE Members Area in the ECRAN Forum (<http://members.ecre.org/forums/ecran-discussion-forum>).

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**The following annexes provide information in support of these possible actions:**

1. How to submit a request for interim measure pursuant to Rule 39
2. List of reports documenting the conditions in Greece, Italy and Malta
3. ECRE documents on the Dublin Regulation

## Annex 1

### HOW TO SUBMIT A REQUEST FOR INTERIM MEASURE PURSUANT TO RULE 39

#### ECtHR Rule 39 of the Rules of Court<sup>5</sup>

If the Court is reliably informed that a violation is about to take place, it can direct the state concerned to take interim measures to prevent the violation occurring. Interim measures are temporary actions to be taken before the Court's formal examination of a case is completed. For example, the Court can direct a state not to send a person to another country where they might be at risk of torture or another violation of the Convention.

**The Requests for interim measures** should be submitted using the following documents: **Authority to ECtHR** and **Application to ECtHR**.<sup>6</sup>

Applicants or their legal representatives, who make a request for an interim measure pursuant to Rule 39 of the Rules of Court, should comply with the requirements set out below. Failure to do so may mean that the Court will not be in a position to examine such requests properly and in good time.

#### I. Requests to be made by facsimile, e-mail or courier

Requests for interim measures under Rule 39 in urgent cases, particularly in extradition or deportation cases, should be sent by facsimile<sup>7</sup> or e-mail<sup>8</sup> or by courier<sup>9</sup>.

The request should, where possible, be in one of the official languages of the Contracting Parties. All requests should bear the following title which should be written in bold on the face of the request: **"Rule 39 - Urgent"**

Requests by facsimile or e-mail should be sent during working hours (4) unless this is absolutely unavoidable. If sent by e-mail, a hard copy of the request should also be sent at the same time. Such requests should not be sent by ordinary post since there is a risk that they will not arrive at the Court in time to permit a proper examination.

If the Court has not responded to an urgent request under Rule 39 within the anticipated period of time, applicants or their representatives should follow up with a telephone call to the Registry during working hours.<sup>10</sup>

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<sup>5</sup> Rules of Court

<http://www.echr.coe.int/NR/rdonlyres/D1EB31A8-4194-436E-987E-65AC8864BE4F/0/RulesOfCourt.pdf>

<sup>6</sup> The documents can be found here.

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Application+pack/> Please note that the authority to ECtHR (last page), must be signed by deportee.

<sup>7</sup> Rule 39 applications to ECtHR Fax: +33 3 8841 27 30

<sup>8</sup> To the e-mail address of a member of the Registry after having first made contact with that person by telephone. Telephone and facsimile numbers can be found on the Court's website ([www.echr.coe.int](http://www.echr.coe.int)).

<sup>9</sup> Postal address: European Court of Human Rights, Council of Europe, 67075 Strasbourg-Cedex, France

<sup>10</sup> To check that it has been received ring: +33 3 8841 2218

## **II. Making requests in good time**

Requests for interim measures should normally be received as soon as possible after the final domestic decision has been taken to enable the Court and its Registry to have sufficient time to examine the matter.

However, in extradition or deportation cases, where immediate steps may be taken to enforce removal soon after the final domestic decision has been given, it is advisable to make submissions and submit any relevant material concerning the request before the final decision is given.

Applicants and their representatives should be aware that it may not be possible to examine in a timely and proper manner requests which are sent at the last moment.

## **III. Accompanying information**

It is essential that requests be accompanied by all necessary supporting documents, in particular relevant domestic court, tribunal or other decisions together with any other material which is considered to substantiate the applicants allegations.

Where the case is already pending before the Court, reference should be made to the application number allocated to it.

In cases concerning extradition or deportation, details should be provided of the expected date and time of the removal, the applicant's address or place of detention and his or her official case-reference number.

## Annex 2

### LIST OF REPORTS DOCUMENTING THE CONDITIONS IN GREECE, ITALY AND MALTA

#### GREECE

Report by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to Greece, 8-10 December 2008

<http://members.ecre.org/files/com.instranet.pdf>

Report from the LIBE Committee Delegation on the Visit to Greece (Samos and Athens), EU Parliament, July 2007

<http://www.europarl.europa.eu/document/activities/cont/200801/20080104ATT17402/20080104ATT17402EN.pdf>

Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, February 2008

<http://www.cpt.coe.int/documents/grc/2008-03-inf-eng.pdf>

S.D. v. Greece, Application No. 53541/07, Judgment of 11 June 2009, ECtHR

<http://cmiskp.echr.coe.int/tkp197/view.asp?>

[action=html&documentId=851178&portal=hbkm&source=externalbydocnumber&table=F69A27F8D8FB86142BF01C1166DEA398649](http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851178&portal=hbkm&source=externalbydocnumber&table=F69A27F8D8FB86142BF01C1166DEA398649)

UNHCR Position On The Return Of Asylum-Seekers To Greece Under The "Dublin Regulation", UNHCR, April 2008

<http://members.ecre.org/files/482199802.pdf>

"The situation in Greece is out of control", ProAsyl, October 2008

[http://www.proasyl.de/fileadmin/proasyl/fm\\_redakteure/Asyl\\_in\\_Europa/Griechenland/Out\\_of\\_control\\_Eng\\_END.pdf](http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Asyl_in_Europa/Griechenland/Out_of_control_Eng_END.pdf)

Risk of refoulement of asylum seekers in Greece - March 2009, Greek Council for Refugees (Alexia Vassiliou / Melia Pouri)

<http://members.ecre.org/files/refoulementECRE02.doc>

The Dublin Dilemma in Greece – "Burden shifting" and putting asylum seekers at risk, Greek Refugee Council - Alexia Vassiliou, February 2009

[http://members.ecre.org/files/DublinSituationNote\\_0.pdf](http://members.ecre.org/files/DublinSituationNote_0.pdf)

Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union, HRW, November 2008

<http://members.ecre.org/files/HRW%20Stuck%20in%20a%20Revolving%20Door.pdf>

Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece, HRW, December 2008

[http://members.ecre.org/files/greece1208web\\_HRW.pdf](http://members.ecre.org/files/greece1208web_HRW.pdf)

The truth might be bitter, but it must be told - The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard, ProAsyl, October 2007

[http://members.ecre.org/files/ProAsyl\\_Greece.pdf](http://members.ecre.org/files/ProAsyl_Greece.pdf)

A gamble with the right to asylum in Europe - Greek asylum policy and the Dublin II Regulation, NOAS & Norwegian Helsinki Committee & Greek Helsinki Monitor, April 2008

[http://members.ecre.org/files/NOAS\\_gamble\\_with\\_asylum.pdf](http://members.ecre.org/files/NOAS_gamble_with_asylum.pdf)

#### **ITALY**

Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009

[https://wcd.coe.int/com.instranet.InstraServlet?](https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1202908&SecMode=1&DocId=1389782&Usage=2)

[Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1202908&SecMode=1&DocId=1389782&Usage=2](https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1202908&SecMode=1&DocId=1389782&Usage=2)

Memorandum by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008

[https://wcd.coe.int/com.instranet.InstraServlet?](https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1198747&SecMode=1&DocId=1314508&Usage=2)

[Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1198747&SecMode=1&DocId=1314508&Usage=2](https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1198747&SecMode=1&DocId=1314508&Usage=2)

Report from the Committee on Civil Liberties delegation on the visit to the Temporary Holding Centre (THC) in Lampedusa (IT), EU Parliament, September 2005

<http://www.europarl.europa.eu/document/activities/cont/200801/20080104ATT17410/20080104ATT17410EN.pdf>

#### **MALTA**

Report by the LIBE Committee delegation on its visit to the administrative detention centres in Malta, EU Parliament, March 2006

<http://www.europarl.europa.eu/document/activities/cont/200801/20080104ATT17406/20080104ATT17406EN.pdf>

Not Criminals - MSF exposes conditions for undocumented migrants and asylum seekers in Maltese detention centres, Médecins Sans Frontières (MSF), April 2009

[http://www.msf.org/source/countries/europe/malta/2009/2009\\_04\\_report\\_Malta.pdf](http://www.msf.org/source/countries/europe/malta/2009/2009_04_report_Malta.pdf)

### Annex 3

#### ECRE DOCUMENTS ON THE DUBLIN REGULATION

Comments on the European Commission Proposal to recast the Dublin Regulation, ECRE, April 2009, [http://www.ecre.org/resources/policy\\_papers/1342](http://www.ecre.org/resources/policy_papers/1342)

Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered, ECRE, March 2008 [http://www.ecre.org/resources/policy\\_papers/1058](http://www.ecre.org/resources/policy_papers/1058)

Responsibility Sharing: Reforming the Dublin System, ECRE (Internal document), May 2009 [http://members.ecre.org/files/ECRE\\_Advocacy\\_Brief\\_Dublin\\_2009.pdf](http://members.ecre.org/files/ECRE_Advocacy_Brief_Dublin_2009.pdf)

The Dublin Regulation: Twenty Voices - Twenty Reasons for Change, ECRE, March 2007 [http://www.ecre.org/resources/ECRE\\_actions/798](http://www.ecre.org/resources/ECRE_actions/798)

Report on the Application of the Dublin II Regulation in Europe, ECRE, March 2006 [http://www.ecre.org/resources/Policy\\_papers/355](http://www.ecre.org/resources/Policy_papers/355)

**For more information regarding ECRE's position on the Dublin Regulation go to:**  
[http://www.ecre.org/topics/asylum\\_in\\_EU/determining\\_responsibility](http://www.ecre.org/topics/asylum_in_EU/determining_responsibility)

**Also check the ECRE Members Area for the latest recognition statistics for 2008:**  
[http://members.ecre.org/comms\\_media/statistics](http://members.ecre.org/comms_media/statistics)