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Dublin II and Eurodac: examining the (un)intended(?) consequences

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Dublin II and Eurodac: examining the (un)intended(?) consequences

Abstract

Although the numbers of asylum seekers in Europe is decreasing, the asylum policy of most European Union member states (EU MS) continues to be driven by a fear of a potential increase. As a result, EU MS refuse to address the growing numbers of people caught between Eurodac and Dublin II. These includes the many thousands who transit Greece and Spain, where in theory they should claim asylum, but where in reality they have little chance of being able to make a claim, and almost no chance of having it examined properly, much less being actually granted asylum. This article argues that the concern of EU MS is actually to reduce the number of those able to apply for asylum to an absolute minimum, rather than ensuring access to this status to anyone who might need it. Focusing on the ‘waiting’ of young Afghan men in Paris, this article seeks to show the daily suffering inflicted in pursuit of this policy goal.

Keywords: EU asylum policy; Afghan asylum seekers; France; Greece

Introduction

This article offers a critique of EU asylum policy, framed around the experiences of a group of young men directly affected by this policy, and two key policy elements in particular: Dublin II, the regulation that assigns responsibility for the examination of an asylum claim, and Eurodac, the European database storing the fingerprints of asylum seekers. The implementation of this policy, and the way people try to negotiate it, are examined from the perspective of a small group of young Afghan men in Paris who are ‘sous Dublin’ – that is, young men the French state is seeking to return to another Member State (MS) using Dublin II. The article draws on the experience of the author working as a volunteer over a period of 18 months with a small local association, the *Collectif de soutien des exilés du 10ème*. The *Collectif* works with Afghans in the 10th arrondissement of Paris, trying to provide information and answer questions on the European regime.

The article is informed by direct conversations with the young men in English, French, Greek, Italian and very limited Dari, and by the summaries of the conversations with other volunteers posted online each evening.¹ Since June 2008, I have met and spoken with more than a hundred Afghan men, some only once, some on a weekly or monthly basis. I have also taken part in meetings with members of other associations (ATTAC, Emmaus, Les Enfants du Don Quichotte, Gisti)² as well as with representatives of the Mayor of the 10th arrondissement and of Paris, of local resident associations and members of political parties, including the Parti Communiste, the Parti Socialiste and the Greens. These were not interviews, did not form part of any formal study and are not referenced directly in the text, but participation in these different *fora* furnished a detailed picture of some of the conditions facing Afghans arriving in Paris and the challenges faced by those wishing to offer assistance to asylum seekers and migrants in general, and to Afghans in particular. An early draft of this article was posted online for members of the *Collectif* to read, and was translated into Dari and circulated to those Afghans who wished to read it. Some comments have been incorporated into the text, though very few were received.

The choice of Afghan men, of France and of Greece was driven by circumstance: I live in Paris and I chose to volunteer with a local group supporting migrants. It happened that the group they supported were Afghans, and within a very short time it became clear that it was the

time spent by this group in Greece, within the context of EU policy, that was causing them significant problems. Rather than being based on a research project, then, the article uses my observation of the impact of EU policy on these young men as an entry point to a critique of that policy. The critique of the French regime could be made of other EU MS, though it has its own particularities, and the same is true for Greece, which may be compared with Italy and Spain. So although neither France nor Greece should be understood as representative of asylum regimes in the EU, my own previous research experience, coupled with the views of Afghans who have experienced life in other EU states, indicates that many of the challenges referred to here find echoes elsewhere.

The focus on men is also driven by circumstance. The Afghans in the 10th arrondissement are overwhelmingly male. Their ages range from about 13 to 30, with occasionally an older man appearing.³ There are a number of possible explanations for this almost exclusive male presence, including the unlikelihood (but not impossibility) of a single woman being able or allowed to travel outside the community in Afghanistan, the multiple dangers *en route* and the speed with which single women, families and young children are found accommodation in Europe. Ahmad has noted in the context of Pakistani migration networks that ‘understanding masculinity and male agency is likely to be of considerable importance in making sense of why migration occurs (2008:127) and it certainly plays an important role in the reasons why these young men left their homes. But as a result of this prioritization of the needs of women and children, young *men*, traditionally privileged and protected by their gender and youth, are left marginalized and vulnerable (see Lloyd 2003). They are expected to fend for themselves in the public spaces they are obliged to appropriate in the absence of private spaces. And it is this group that the *Collectif* seeks to help.

The article begins with a brief overview of the EU asylum regime and the two elements that cause most difficulty to asylum seekers who arrive overland, namely Dublin II and Eurodac. It then looks closer at the situation in France and Greece in order to illustrate the daily suffering imposed by this regime which forces people to wait in limbo while decisions are made on whether and where their applications will be examined. The last section reflects briefly on what this treatment of a particular group tells us about the refugee situation in Europe more generally.

The EU Asylum Regime: Dublin II and Eurodac

The Member States (MS) of the EU have repeatedly reiterated their dedication to the practice of granting political asylum, which forms an essential part of the European identity (Schuster 2003). This regime has been subject to a sustained critique over the last decade (Samers 2004) as the commitment to protect is increasingly seen as an unwelcome burden, and EU documents routinely qualify this commitment with reference to the need to ‘prevent abuses of asylum applications which undermine the credibility of the system and place additional administrative and financial burden on MS’ (Europa 2007). Critics of the regime point to its inefficiency, its injustice (Vedsted-Hansen 2005) and the human costs involved (Schuster 2005a, Spijkerboer 2007), as well as the difficulties of overcoming individual MS (non)implementation of EU law to the detriment of many migrants, including those requiring protection in the form of asylum. However, the fact that asylum is sometimes granted, that the recognition rates in some countries (e.g. Finland, Norway and Sweden) are relatively high, that some do succeed in building a new life in Europe, sustains hope among the applicants and counteracts the negative experiences of the majority. That hope, and the lack of it in, for example, Afghanistan, persuades some to continue their struggle for recognition and residence in Europe.

The four building blocks of the EU asylum regime are the Reception Conditions Directive (*Directive 2003/9/EC*), the Asylum Procedures Directive (*Council Directive 2005/85/EC*), the Qualification Directive (*Directive 2004/83/EC*) and the Dublin Regulation (*Regulation (EC) 343/2003*), also known as Dublin II. To this may be added the Temporary Protection Directive (*Directive 2001/55/EC*) and the Eurodac Regulation (*Regulation No 2725/2000*). The *Temporary Protection Directive* lays down the minimum standards for giving temporary protection (TP) in the event of a mass influx of displaced persons. It is intended to ensure a fair distribution of costs and efforts between MS in receiving and providing for such refugees, though they are referred to as ‘displaced persons’ since they will not have to go through the asylum process. The *Reception Directive* should ensure that in all MS there are certain basic provisions made for the accommodation, health care, education, access to legal and other support of asylum seekers so that reception conditions in different MS should not act as deterrents or poles of attraction to asylum seekers. Whether this is in fact the case will be discussed in a later section of the article. The *Asylum Procedures Directive* guarantees that every

asylum applicant should have the opportunity of a personal interview, comprehensive information about the procedure at the start of the process, access to legal assistance and interpretation services and judicial oversight. It is intended to specify common criteria for (in)admissibility to asylum procedures and common lists of 'safe' countries of origin and 'safe' third countries. In practice, these common lists have not yet been achieved and substantial differences continue to exist among MS in relation to their procedures and admissibility to them.

The *Qualifications Directive* defines who qualifies for refugee status, and the minimum level of protection for those granted either refugee or subsidiary protection. Its primary goal was to harmonise definitions across the EU so that it is not easier to qualify in one country than in another. This directive should in theory reduce the disparities between MS in terms of recognition rates, so that it should not matter in which country an application is lodged. An individual should have the same chance of recognition anywhere in the EU, and that recognition should mean the same in each MS. However, as UNHCR figures and the discussion below make clear, there remain significant differences in rates of recognition and in asylum procedures across the EU. Taking recognition rates for Iraqi asylum applicants in 2007 as an example, 85% were granted status in Germany, 82 % in Sweden, 13% in the UK and 0% in Greece and Slovenia (Cimade 2008). Hardly surprising then, that Iraqis, in this case, having entered the EU, would prefer not to seek asylum in Greece, but to try and make their way to Germany or Sweden.

These directives are, at least *prima facie*, designed to ensure that all those applying for asylum in the EU MS are guaranteed certain basic conditions, protections and rights, so that the goal of reducing secondary movements is more implicit than explicit. However, the considerable differences between EU MS mean that people do try to make their way to countries in which they believe they stand a better chance of getting some kind of regular status and some assistance with accommodation etc., though often other factors, such as family or colonial links or language skills, are at least as important (Boyd 1989, Koser 1997, Gurak and Caces 1992), as will be confirmed from the case study below. Dublin II and Eurodac are intended to prevent asylum applicants testing their chances in different MS, or in the MS of their choice.

As early as 1985, the Parliamentary Assembly of the Council of Europe had recommended that the Committee of Ministers 'work out a viable common definition of the notion of "country of first asylum", with a view to resolving the tragic situation of refugees "in orbit"' (1985). The core principle of the original (and current) Dublin Convention is that an

application should be made in the MS that issued a visa, the MS that actually permitted entry (lawfully or otherwise) or, where none of these first two criteria apply, the state in which a claim is first made. The underlying principles of the Convention were that an asylum seeker should have no choice about where to make the application and that a claim could be made and examined once and once only (Papadimitriou 2005). Vedted-Hansen argues that the Dublin Convention thus presupposes that all EU MS will adhere to certain minimum conditions and standards in the treatment of asylum applicants and their claims, to avoid significant differences in treatment that would encourage secondary movements between states (2005, 370).

The inadequacies of the original Convention and the difficulties involved in persuading states briefly transited to accept returnees from MS where they had spent months and sometimes years led to a revision of the convention in 2003 *Regulation (EC) 343/2003*. The new criteria are as follows:

- A state in which the applicant has a family member (as defined in Article 2(i) of the Regulation) *who has refugee status or whose application for asylum is being examined*⁴; (emphasis added)
- A state which has provided the applicant with a residence permit or a visa or the border of which has been crossed illegally by the applicant;
- In case when the circumstances specified above do not take place, if the applicant enters the territory of a Member State in which the need for him/her to have a visa is waived, that state is responsible for examination of the application.
- In case none of the above criteria are applicable the first Member State with which the asylum application was lodged shall be responsible for examining it.

The changes are not significant, and continue to uphold the principle that asylum seekers should not expect to choose where to make their claims. To facilitate the implementation of Dublin II, that is the deportation of people from one MS to another, states need to identify their first point of entry. Eurodac is intended to facilitate just that. As it has become increasingly difficult and expensive for people from certain countries, such as Afghanistan and Iraq to fly directly to a northern MS (where they are more likely to have family members or links, given that Germany and the UK have the largest Afghan communities in the EU), many cross the eastern or southern borders into Poland, Spain, Italy and, especially in the case of Afghans,

Greece. Once picked up by the police in Greece or Italy, for example, they are fingerprinted and those fingerprints are entered into the central Eurodac database (those under 14 years old are exempt). The fingerprints of asylum applicants are kept in the system for ten years (unless they obtain citizenship of an MS), and those of foreign nationals arrested without valid papers when attempting to cross an external border of the EU are kept for two years from the date on which the fingerprints were taken. Anyone claiming asylum now may expect to have their fingerprints taken and compared with those in the Eurodac database⁵. If a match is found, an application will be made to return the applicant to that MS.

Between September 2003, when Dublin II came into effect and December 2005, approximately 11% of the total number of applications were examined under Dublin II, and only 2.8% actually returned – raising questions about cost and efficacy. Nonetheless, the 11% asylum applicants ‘under Dublin’ equalled 55,300 people – that is a high number of people in limbo (Cimade 2008, 36). It can take many months before a decision is reached, and during that time, asylum applicants are unable to take control of their lives, dependent on charity and isolated in a number of ways, some of which will be illustrated in the following sections.

Asylum Policy and Practice in EU MS

While there is a single EU legal framework governing the granting of asylum, and while Geddes (2009) is correct to point out that a discussion of EU policy cannot be reduced to a discussion of its MS, equally, there is not in reality a single EU policy. There are so many national derogations from EU law and it is applied in so many ways that to understand its impact one must look at what is happening on the ground, in the individual MS. There is agreement around certain broad principles, but policy is shaped and implemented at national level, and practice varies widely across the Union. The very different treatment of refugees by different MS (e.g. Adan and Aitseguer, Shah and Islam⁶ – see Noll 2001) means that those seeking protection stand a much better chance of finding it some countries rather than others.

France⁷

Like most European states, France is a signatory to the 1951 Geneva convention relating to the status of refugees (the Convention), has ratified the European Convention on Human Rights and

Fundamental Freedoms, and has national legislation in place guaranteeing asylum to those in need⁸. In 2008, France received the most number of asylum applications in the EU (42, 599, just ahead of the UK with 41,215 (OFPRA 2008)). However, also like most EU countries, France is anxious to keep the number of asylum seekers for which it is responsible to a minimum, and so seeks to prevent their arrival through the use of airport liaison officials and by the imposition of carriers' liability – fining carriers who transport those with no or inadequate documents. A system of transit visas has also been put in place, strengthened by the presence of frontier police who accompany nationals of certain countries (Afghanistan, Angola, Democratic Republic of Congo, Sri Lanka etc) through the airport to dissuade them from trying to make an asylum claim while in transit (Bosquet 2006). The impact of such measures on the number of people who have been able to claim asylum in France can clearly be seen in Figure 1, which shows a steady decline from 52,204 first applications in 2004 to less than half that by the end of 2007, although there was an increase again in 2008.

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[Insert Figure 1 here]

When people do manage to enter France, the state seeks to ascertain which countries an asylum seeker has passed through, and whether it can return that person to another European country without having to take responsibility for examining the substance of the claim. In 2006, France applied to return 2,647 people to other countries (all MS) using Dublin II, succeeding in 849 cases (32%). However, France accepted a similar number from other states (Cimade 2008), which means an expensive and onerous procedure had little overall impact on the 'burden' borne by France, but considerable impact on individuals who would have been unable to access support, may have been taken away from friends or family, had to wait months before being allowed to make a claim, and may also have detained awaiting transfer.

Before being able to apply for asylum, an applicant must request a temporary residence permit from the Prefecture. Immediately on requesting this permit, and before a claim is made, a search of the database will be made, and if a match is found, an application will be made to the MS where the fingerprints were taken to return the person under the Dublin Regulation and they will not be issued the temporary (usually one month renewable) permit⁹. While awaiting an

answer from the other MS, the applicant is not entitled to any support other than urgent medical treatment. During this period, the individual is obliged to return regularly to the Prefecture. If the other state refuses the transfer request, the person is issued a temporary permit and allowed to depose an asylum claim. If the other state agrees to the transfer request, the applicant may be detained to await the issuance of the necessary *laissez-passez* and to facilitate the transfer. According to Cimade (2008, 14) this occurs in 86% of cases and the transfer occurs extremely rapidly – often within 48 hours. It is possible to appeal against a decision to transfer, but the appeal has no suspensive effect, and there are very few successful appeals (see ECRE 2008, 41).

France receives regular requests from the UK to take back those who have crossed (or attempted to cross) the Channel. Where the transfer is agreed, whether the individual has already lodged a claim in France, or does so on return, the claim will be examined in an accelerated procedure (*procedure prioritaire*). They will not have access to accommodation or support, aside from emergency medical treatment. Dublin II contains a humanitarian clause allowing MS to choose to take responsibility for claimants with extended family in France, or in the event of illness etc. This is rarely applied and individuals are never informed of this possibility by the state (though they may be by lawyers or NGOs). Dublin II has time limits that mean when a requesting MS has not been able to return an applicant within six months, it must take responsibility for examining the claim. On the whole, it seems that this does happen, although the author notes an increasing number of people present in France for more than six months who have not yet been allowed to make a claim. In some cases this is because France insists on a waiting period of two months in the event of a non-response before taking that as a positive decision, and starts the six months then. GISTI, a legal advice NGO, is seeking test cases of those, who have waited six months, are then re-subjected to a Dublin procedure.

Greece

Despite a doubling of the number of applications here from 12, 267 in 2006 to 26,735 in 2007, due perhaps to tighter controls in the western Mediterranean, followed by a dip to 20,000 in 2008 (OFPRA 2008), these numbers are very low compared to other MS given that Greece is one of the first EU states reached by many potential asylum seekers. In 2008, UNHCR published a report noting that the credibility of the system provided by Dublin rests on the existence of ‘harmonized standards of protection’, but that nonetheless in Greece ‘a substantial number of

asylum-seekers continue to face serious challenges in accessing and enjoying effective protection in line with international and European standards' (2008b, 1), accounting for the low numbers. In spite of the low numbers and the countries of origin of the asylum seekers, in 2007, the percentage granted asylum at first instance was 0.04%, increasing to 2.0% on appeal (UNHCR 2008b). The key areas of concern in Greece are the lack of access to the asylum process, the inadequacies of that process, the risks of refoulement to Turkey, the widespread use of detention and detention conditions, the absence of any support and harassment by the police.

People arriving across the border from Turkey (the last **mined** border in Europe) risk being pushed back without being registered, never mind allowed access to the asylum system (Human Rights Watch 2008). The accusation by HRW (2008) that the police detain unregistered migrants in the border regions before secretly forcing them back across the Evros river that forms the border with Turkey, or push their boats back into Turkish waters, is borne out by the testimonies of Afghans in Paris. Until 2002, Greece found it difficult to return migrants, including potential asylum seekers, officially to Turkey, but that year the two countries signed an Accord that made returns much easier.

Others note that on arrival migrants picked up by the police may be arrested, detained and fingerprinted but not informed of their right to claim asylum. Even where people are allowed to make a claim and are issued with a 'red card', this seems to offer no material benefits in terms of accommodation or allowances, and no protection from police harassment, with the result that some, having spent prolonged periods in Greece, decide to move further north and west. However, if someone, having made a claim in Greece, travels on to another EU and is then returned back to Greece in line with Dublin II, their claim is treated as abandoned or "interrupted" (HRW 2008, Papadimitirou 2005, UNHCR 2008b) – that is, they are denied access to an asylum procedure after their return. Given that no other EU MS will examine that claim substantively, this would effectively mean that they have been deprived of the right to have their claim examined (Cimade 2008). When another MS requests the transfer of an asylum claimant back to Greece, and Greece accepts responsibility, the Greek authorities issue an interruption decision before the person arrives so that on arrival they can be detained prior to expulsion, ie without the examination of their claim having been completed (ECRE 2006, UNHCR 2008b).

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In February 2008, in recognition of the appalling detention conditions and the lack of juridical guarantees for those seeking asylum, Norway suspended removals to Greece and this seemed to offer hope to those that managed to travel through Germany and Denmark to reach Norway. On the basis of the testimonies of those who pass through Greece (see below), Norway's action, commended by Amnesty International (2008), seemed justified. However, in July 2008, this decision was partly reversed and Norway decided to resume returning adults to Greece, though on a case by case basis, and began to discuss tightening its procedures to deal with the increasing numbers. This decision was confirmed by the Norwegian Immigration Appeals Board on May 7th, 2009 (IAB 2009). Grounds for the decision included the 'resourcefulness of the 'appellants', the decision of other Nordic countries to return, and the decision of the European Court of Human Rights, 'where it was decided that return to Greece in accordance with the Dublin II Regulation is not a violation of the European Convention of Human Rights, article 3'. These were held to outweigh the concerns voiced by UNHCR, by the European Council and the IAB members themselves.

In this case, the clear and documented failure of a MS to adhere to any of the minimum standards they have signed up to with the European framework and the grave consequences for those affected by these systemic failures are of little or no concern to MS primarily preoccupied with reducing (certainly not sharing) the 'asylum burden'.

Negotiating the European Asylum Regime: An Illustration

What of the individuals trying to negotiate this system? Since 2003, shortly after the closure of the camp at Sangatte, a small group of Parisians from different walks of life visit the places where the Afghans¹⁰ gather to eat – usually Salvation Army food distribution points¹¹. The role of the volunteers of the *Collectif* is to provide practical information to these young men on a range of topics: seeking asylum in France; their rights to accommodation, where to get medical treatment, French lessons, legal advice; recognition rates across the EU; and asylum systems in other MS. Just as important is monitoring what is happening to the Afghans, so that political pressure can be brought to bear to redress some of the abuses suffered (including unaccompanied children as young as 12 left to sleep on the streets, police harassment, and negligence by the

responsible authorities). Working with this group has provided concrete examples of how the European asylum system does and not work for a group of people coming from a situation of generalised violence and individual persecution. By detailing some of the reasons why these young men fail to behave in the manner expected (ie., to claim asylum in the first safe third country they find) this article seeks to demonstrate that Dublin II and Eurodac cannot achieve their putative goals (of distributing the asylum ‘burden’ more equitably) but cause enormous suffering and damage to those seeking protection, safety and a future in Europe.

The population of Afghans in Paris is a shifting one, changing every day as people arrive and depart. Some have just completed for the first time the long journey from Afghanistan via Iran, Turkey, Greece and Italy. Others are making a second journey from Afghanistan, having made it to an EU country, and having been through an asylum process in another EU MS but been deported back to Afghanistan. Still others are returning to Paris, having been deported to Greece, or occasionally Italy, their first point of entry to the EU under the rules of the Dublin Convention, which assigns responsibility for examining an asylum claim to a particular state. Some have been returned to France from Germany or from the UK, and of these, some are determined to return to the UK (even some who have previously been deported from the UK to Afghanistan), others now want to try somewhere else. Still others are in the French asylum system, and are entitled to accommodation, but in the absence of sufficient places in hostels or B&Bs are given 10€ per day by the state to cover their accommodation and other needs, allowing the French state to insist it is meeting its obligations under the *Reception Directive* (see above).

A testament to the complexity of European asylum regimes is the lack of understanding displayed by most of the Afghans about how the system works – even when they have already been through that system. Every evening when the volunteers arrive to answer questions, the significance of having had their fingerprints taken recurs. One Afghan who had applied for asylum in the UK, and had his case rejected, was in Paris having returned from Afghanistan, trying to decide where to go next, unable to believe that his fingerprints would follow him wherever he went in Europe. Most find it difficult to distinguish between the different statuses and papers required, confusing a passport with refugee status with compassionate or humanitarian leave to remain. The different documents they are given are rarely – contrary to European guidelines – translated into a language they understand. The organizations are

overstretched and few have the time or the language skills to explain to Afghans what the different pieces of paper mean. The strangeness of this system and the difficulties in orientating oneself is inevitably compounded by language difficulties.

There is enormous frustration among this group, who find it impossible to understand why they are trapped in countries that do not want them, but prevented from trying their luck elsewhere. Some of these young men have worked and contributed to their families since they were as young as nine years old. They are used to having a role, to taking responsibility for themselves and their families. Among the exiles are traders, teachers, students, soldiers, welders, tailors, mechanics, laborers, farmers and chefs. All are desperate to work and or study, all resent this period of enforced idleness, their dependence on handouts and being grouped together with those who cannot fend for themselves. They may still be needed at 'home' (though life there is continuing without them), but here in Europe they are treated as a burden, something that, once it can no longer be ignored, should be disposed of as quickly as possible. As one of the exiles pointed out to me, this was not what they expected of Europe, cradle of human rights. They expected to be treated with respect, as human beings, with the right to make choices and decisions, not to be turned into 'ping pong balls'.

On the other hand, EU MS expect them to cross the external borders of the EU furnished with authoritative documentary evidence of their ages, of where they have lived, of the persecutions that they have suffered, to make themselves known to the authorities, to wait patiently, surviving without recourse to public funds, without being visible, to accept whatever decision is made about their future and to go where they are told, including back to Afghanistan. They are emphatically not expected to make choices or decisions, but instead to present themselves as passive victims, grateful for being whatever minimal tolerance they are shown. These expectations are so far removed from the realities of these young men that they find them intolerable and unacceptable. The following section, based on conversations over the last year explains why these Afghans travel onwards from their 'first safe country of arrival' contrary to the intentions by the architects of Dublin II and Eurodac.

Why not claim asylum in Greece or Italy?

Yunnan and *angusht* are words that crop up again and again in conversation with the Afghans. They are the Dari words for Greece and for fingers. Almost all the exiles have come through

Greece, and many have had their fingerprints taken there, and so once they come to the attention of the authorities anywhere else in the EU, if their fingerprints are found in the Eurodac database, it is to Greece that they will be returned – whether or not they have applied, or been allowed to apply, for asylum in Greece. Despite a doubling of the number of asylum applications in Greece from 12, 267 in 2006 to 26,735 in 2007 (OFPRA 2008), these numbers are very low compared to other MS given that Greece the first EU state reached by many potential asylum seekers, especially those coming from Afghanistan.

There are multiple reasons for the low numbers of applicants. The most worrying is the illegal expulsion of migrants, including asylum seekers, to Turkey. In June and July, Afghans in Paris told of being arrested on crossing the border between the two countries and thrown in jail near Alexandropoli, near the Turkish border, echoing similar stories gathered by Yaghmaian (2005). After 20 days, when about 100 men had been detained, Greek ‘commandos’ came and moved them onto a boat on a river (the Evros). On the Turkish side, they were forced off the boats at gunpoint, before it turned round and headed back to Greece. Sara Prestianni¹², an Italian photojournalist working with NGOs and campaign groups on this subject, confirmed the stories told in Paris and added that before being returned Turkey the Afghans were stripped of anything that might betray their presence in Greece – including clothes with Greek labels or markings.

The Afghans in Paris tell of daily harassment by the Greek police: one had been picked up and put in cells three times in ten days; another aged 14 had been kept in a cell for three days, and imprisonment for three months is not uncommon. Two of the Afghans in July 2009 reported having spent three months in a prison near Alexandropouli without having been allowed out of their cell once – a cell they shared with 13 others. Almost all told of physical beatings – some retaining the scars. However, it is not merely the physical abuse that persuades the Afghans to move deeper into Europe. Of those who make it deeper into Greece and who manage to stay on, most do not enjoy any kind of status. If picked up by the police, they may be detained for varying periods of time, and will be told to leave the country on release.

The picture that emerges of the Afghans’ experience in Greece is complicated. Many of the Afghans had found work in Greece, managed to save enough to continue their journey and some had established warm relations with their employers, including one, who said that he missed his employer who had treated him like a son. Others told of young Greek men and

women who would visit the squatter camps in Patras and speak to them and try to assist in any way they could, one visiting a police station to argue for the release of an Afghan minor. Some have said they would have been happy to stay in Greece where they had work, learnt the language, experienced some integration, made some friends, but that the absence of papers, security, the possibility of travel, of access to regular employment or welfare rights, of protection from arbitrary arrest, and harassment by police wore them down and encouraged them to move on.

Most of the Afghans seem to have mixed motives for moving on – negative experiences in Greece plus stories from contacts further afield, from contacts in other EU MS that promise things will be better. A significant number know, or know of, members of their extended families or friends around Europe who have received papers and who are working. In some cases, they are expected and encouraged to come join them. For whatever reason, the continuation of the journey often leads through Italy. The port of Patras on the west coast of Greece was until very recently an important staging post for those heading to Italy, with between 2,000-3,000 Afghans camped in squalid squatters camps. In early summer 2009 these were again destroyed by the police in preparation for a concerted effort to reduce the numbers of undocumented migrants in Greece, which, according to Jacques Barrot, the EU Commission for Justice and Home Affairs ‘risks being submerged by the flow of migrants’. According to Prestianni, who last visited the camps in July 2009, the police now descend on a weekly basis, sometimes with dogs, rounding up the migrants and deporting them in batches of 100. Only since the beginning of July have the Greek police begun to separate out and allow to stay minors and those with evidence of asylum claims. The pressure to leave Greece is growing.

Of those who make it across the Adriatic Sea, some are intercepted and returned to Greece. Others are found in Italy and if they can be identified – e.g. through Eurodac – as having transited Greece will be returned there. Some of those in Paris say that they have been waived through – the Italian authorities have little desire to detain them. Others do seek asylum in Italy, and again some are recognised. In the summer of 2009, 10-12 young Afghan men arrived in Paris having spent 1-5 years in Italy. All had either refugee status or subsidiary protection. They had left Italy because of the racism – they are frequently mistaken for Rom, perhaps the most victimized population in Europe – and share their experience of violence at the hands of fascists, racist and police, and because of difficulty finding work. None had thought to apply through

legal channels for permission to change residence. Those I spoke could see that it was anyone's business where in Europe they lived or worked – they were not looking for any support. Others, the majority, are rejected but in most cases they will not be returned but left to live as *clandestini*.

Of course, it is not only negative experiences in first countries that cause people to continue their journeys. Among those who arrive in Greece or Italy are those whose final destination would always have been further North. Some are drawn by family members in Britain, Germany, Sweden or Norway. Dublin II allows for family reunion, but this is only if immediate family members and only for those who already have status as either a refugee or asylum applicant. Sometimes it is family members back home who dictate the destination. This is particularly the case for minors, who call home at regular intervals. Others are drawn onwards by phone calls from friends, sometimes made on the journey, who tell of better conditions.

Why not claim asylum in France?

Among the Afghans in Paris, I have met a few – a very few – who have chosen positively to apply for asylum there. Usually they are those who have worked as translators for the French forces in Afghanistan.¹³ According to many of those Afghans in Paris, it is the long delays in processing their claims, the refusal of the state to issue papers that would allow them to work or to support them during the asylum process that pushes them to continue their journey. This is compounded by the sense of frustration – many are not allowed to claim asylum in France because of Dublin II, but neither are they allowed to claim asylum anywhere else. In addition, while the French state refuses to take responsibility for them, it refuses allow these young men to take responsibility for themselves, to find work and accommodation. Reluctant to take responsibility for examining the asylum claims of those waiting in Paris, the French state is particularly reluctant to take responsibility for providing, or allowing NGOs to provide, more than the scarcely adequate assistance currently available because of its experience in Calais with the Red Cross shelter at Sangatte¹⁴. Local politicians are concerned that if more support is offered, this will encourage more people to come, and to stay for longer periods. Destitution and distress have become weapons in the battle to deter new arrivals and encourage others to return (Schuster 2005a).

Comment [tl4]: Please check if this edited sentence is correct. The sense was changed by your edit – hopefully this makes more sense now

Afghans arriving in Paris for the first time are shocked by reception conditions of the other Afghans in Paris, and often decide within days to continue their journey, unable to believe that they would be unable to find asylum in other EU MS. Most apply because they have not been able to pursue their journeys because of Dublin II and Eurodac. France's inhospitality to Afghans is evident to the new arrivals, who are shocked and disheartened to find friends and fellow Afghans sleeping in parks, under canal bridges and in the streets, suffering from lice and scabies, or accommodated with alcoholics and drug addicts in emergency hostels that resemble Bedlam. Young Afghans in Paris can spend many months outdoors. The winter of 2008/9 saw temperatures drop to -10C, to which the City of Paris's response was the provision for minors of 25 beds in a hall. Each night there were approximately 60 Afghans, many without blankets or sleeping bags, who were forced to walk all night, afraid that the cold would kill them if they lay down. Those left outside include many who have applied for asylum, so that there is little incentive for new arrivals to follow suit. However, it is not just the lack of accommodation that pushes people to try elsewhere. Among the other push factors are the lack of training opportunities, the lack of work permits and a growing anger and bitterness at their treatment.

In these circumstances, the UK takes on a mythical status. Having experienced difficulties in each country along their route, the Afghans continue their journey, hoping the next place will be better. Those who have families in the UK tell of successful businesses and educational opportunities and believe they will be among the lucky ones. Those who are in Paris having been returned from the UK, or having been returned by the UK to Greece or Afghanistan, still speak of better treatment in the UK. In part, this is because the Afghans compare British police favourably to French, Italian and Greek police, in part it is because they were accommodated until they were deported and so were not left to sleep in the streets. Among the Paris Afghans are those who understand that they have no hope of asylum in the UK, and that they risk deportation to Afghanistan, but they make the calculation that at least in the UK they will be able to find work (even if it is in the underground economy) and support from their community.

Conclusion – What do Dublin II and Eurodac reveal about Europe today?

The refusal of the MS of the EU to take collective responsibility for the asylum seekers arriving on the territory of the Union leaves those MS who are the primary first entry points with a particularly heavy responsibility, one that they are clearly failing to meet. The shortcomings of the Greek system are recognised by those MS who do not return children or families to Greece, but no one is willing to take responsibility for young men. Dublin II allows MS that are not first entry states to ignore their moral and legal responsibilities towards a significant number of asylum seekers. Eurodac and the Dublin Convention combined mean that many of those Afghans in Paris stand little or no chance of making a claim and being accepted anywhere in Europe. This does not mean that they will be returned to France – in fact only a small number are – but that their chances of making a claim for asylum in France (or Britain, or Germany or Austria) are limited. According to Jean Pierre Allaux of GISTI (*Groupe d'Information et de Soutien aux Immigrés*) about 50% of the Afghans will eventually be allowed to claim asylum.¹⁵ Less than half of these will be granted refugee or humanitarian status (OFPRA 2009) – but very few will be returned to Afghanistan. Instead they will swell the ranks of the *Sans Papiers*.

In *The Exclusive Society*, Jock Young describes the 'bulimic' character of Modern society, building on Levi-Strauss' discussion of '*anthropomy* (from the Greek *émeîn*, to vomit)...which consists in ejecting dangerous individuals from the social body and keeping them temporarily or permanently in isolation' (in Young 1999, 56). Young describes the advanced industrial world as one that devours masses of people, assimilating them into the social body (1999, 82) and certainly every year the MS of the European Union suck in migrants from around the world, nourishing itself with their youth, their labour, their cultures. Many, perhaps the majority, of the intake will succeed, will build lives and families. These migrants are drawn in by the demand for labour, but also by the promise of freedom rights and security. They are drawn from former colonies, neighbouring states and countries such as Afghanistan and Iraq, where EU MS are allegedly building democracy, spreading liberal values, trumpeting the importance of human rights, all of which will lead to a prosperous and peaceful future.

However, MS are required to perform a delicate balancing act – needing to remain powerful and wealthy – and hence attractive, but also in control – capable of managing the flows so that only the nourishing and useful migrants are permitted to enter and stay. EU MS are therefore required to maintain a system that, following an initiation into the irrational and

incompetent ‘due process’ of the asylum system, eject the unwanted, dangerous excess from the social body, isolating them on the margins of societies, in the nooks and crannies of our cities, or in camps on the edges of towns, or in prison-like detention centres, before forcibly expelled from the territories of the Union.

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My sincere thanks are due to my colleagues, Leah Bassel, Alice Bloch, Milena Chimienti and John Solomos and to the anonymous reviewers and the editors for their clear and constructive feedback and for their patience. The flaws in the article remain my own, but it is much better for their input. My thanks also to Abdullah, Asef, Fahim, Issa, Istatullah, Karbuli, Khan, Mahmud and Najman for their contributions.

Notes on Contributor

Liza Schuster is a Reader in the Department of Sociology at City University, London. Her work includes a focus on domestic and European asylum policy (especially deportation and detention), migration and racism, and migration and rights. Much of this research is comparative in nature looking at Britain, France, Germany and Italy. Currently, she is preparing a project focusing on “The Impact of deportation”. This research explores the impact of deportation on those deported, their families and communities, and the states that deport and receive them. It involves collaboration with the Refugee Legal Project (Kampala). The initial stage, which sees the strengthening of links between the three institutions, and training of researchers in Kampala is funded by a British Academy grant. She is preparing a funding application for a longitudinal study of deportation from the UK to Uganda and hopes subsequently to broaden it to include deportation from France and to Afghanistan, DRC and Pakistan.

Comment [t15]: Please insert a 150-word paragraph about yourself.

¹ The author is preparing another article discussing the challenges and ethics of this kind of action research.

² ATTAC is the Association for the Taxation of Financial Transactions for the benefit of Citizens. Emmaus and Les Enfants du Don Quichotte are homeless charities, while GISTI is a group offering legal advice to migrants.

³ During the period under consideration, a handful of families arrived, some with babes in arms, others with toddlers or young children. Usually they move on very quickly either into accommodation provided by government sponsored agencies or onto countries where they have family or friends, or hope to be granted asylum. Although one family including three children, the youngest of whom was five years old, spent more than a week in the park.

⁴ A ‘family’ must have already existed in the country of origin, and consists of applicant, spouse and minor children.

⁵ Information is emerging that MS are beginning to use the Schengen Information System too.

⁶ These were cases of individuals who had travelled through Germany and France respectively, but who were not returned from the UK under the Dublin Convention because it was recognised that the different asylum practice in those countries would not have protected them.

⁷The information in this section is taken from Cimade 2008, ECRE 2006 and a training session with GISTI in June 2009.

⁸ Asylum seekers can use the national law to demand temporary admission until such time as their claim has been examined (Décision n° 93-325 DC du 13 août 1993 rendue par le Conseil constitutionnel à propos de la Loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France).

⁹ Originally, Dublin II conflicted with the French constitution, which guaranteed the right to claim asylum. Since then, the constitution was modified in 1993 (Bosquet 2006: 9).

¹⁰ Although the volunteers refer to this group as the 'Exilés', they tend to refer to themselves as Afghans, and so this is the term used here.

¹¹ More on the work of the collective can be found at <http://www.exiles10.org/> I am a member of the collective, but the other members know that I am also a researcher writing on asylum and migration policy and practice.

¹² Interviewed in Paris, 11 July 2009.

¹³ I would note here that it is possible that my 'sample' is skewed, and that others have claimed asylum, are not on the streets, and do not meet the volunteers of the Collective. However, the argument here is not that no-one is allowed to claim asylum in France, but rather that too many suffer destitution and neglect as a result of the implementation of Dublin II.

¹⁴ Sangatte has become something of a bogeyman – an article in *L'Express* (7/8/2008) on the park and the Afghans opened with the line 'Sangatte in the heart of Paris...'.
¹⁵ Training session with GISTI, June 2009.

References

- Ahmad, Nobi Ali. 2008. The romantic appeal of illegal immigration: gender, masculinity and human smuggling from Pakistan. In *Illegal Migration and Gender in Global and Historical Perspective*, ed. Schrover, M., Leun, J., Lucassen, L. & Quispel, C. Amsterdam: IMISCOE/Amsterdam University Press.
- Amnesty International. 2008. *Amnesty International Report 2008: State of the World's Human Rights* available at <http://thereport.amnesty.org/eng/regions/europe-and-central-asia/greece>.
- Anderson, Bridget. & Rogaly, Ben. 2005. Forced labour and migration to the UK. Study prepared by COMPAS in collaboration with the Trades Union Congress.
- BAPSA. 2008. *La BAPSA aux services des Sans Abris* available at <http://www.prefecture-police-paris.interieur.gouv.fr/documentation/article/2008/bapsa.htm>.
- Bauman, Zygmunt. 2004. *Wasted Lives: Modernity and its Outcasts*. Oxford: Blackwell.
- Böcker, Anita and Havinga, Tetty. 1998. *Asylum Migration to the European Union: Patterns of Origin and Destination*, Luxembourg: Office for Official Publications of the European Communities.
- . 1999. Country of asylum by choice or by chance: asylum seekers in Belgium, the Netherlands and the UK. *Journal of Ethnic and Migration Studies*, 25, no. 1: 43-61.
- Bosquet, Elsa. 2006. Le droit d'asile en France: politique et réalité. *New Issues in Refugee Research* 138 Geneva: UNHCR.
- Boyd, Monica. 1989. Family and personal networks in international migration: recent developments and new agendas *International Migration Review* 233: 638-672.
- Cimade. 2008. *Le gens du Dublin II: parcours juridiques de demandeurs d'asile soumis à une réadmission selon le règlement Dublin II*. <http://www.cimade.org/assets/0000/1266/dublin2.pdf>.
- Council of Europe. 1985. Recommendation 1016 on living and working conditions of refugees and asylum seekers. Available at <http://assembly.coe.int/documents/AdoptedText/TA85/ERec1016.htm>.
- Council of Europe. 2008. Press release re: European Pact on Immigration and Asylum. Available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/jha/102007.pdf.
- Commission des Communautés Européennes. 1999. *Conseil Européen – Tampere: conclusions de la présidence* SI 1999. 800. Bruxelles.
- ECRE. 2006. *Report on the application of the Dublin II regulation in Europe* Brussels: Europe Council on Refugees and Exiles, available at <http://www.ecre.org/files/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf>.
- Europa. 2007. Transposition of the Procedures Directive. Press Release, accessed at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/538&format=HTML&aged=1&language=EN&guiLanguage=en>.
- European Commission. 2007. *Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system* {SEC2007. 742}. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0299:EN:NOT>.
- Gurak, Douglas, T. and Caces, F. 1992. Migration networks and the shaping of migration systems. In *International Migration Systems; a Global Approach* ed. Kritz, Lim and Zlotnik, Oxford: Clarendon Press
- Human Rights Watch. 2008. *Stuck in a revolving door: Iraqis and other asylum seekers and migrants at the Greece/Turkey entrance to the European Union*. Available at: http://www.hrw.org/sites/default/files/reports/greeceturkey1108web_0.pdf.
- IAB 2009. *Press Release: Conditional returns to Greece*. Norwegian Immigration Appeals Board. Available at <http://feed.ne.cision.com/wpyfs/00/00/00/00/00/0E/CA/2C/wkr0003.pdf>
- Koser, Khalid. 1997. Social networks and the asylum cycle: the case of Iranians in the Netherlands. *International Migration Review* 313: 591-611

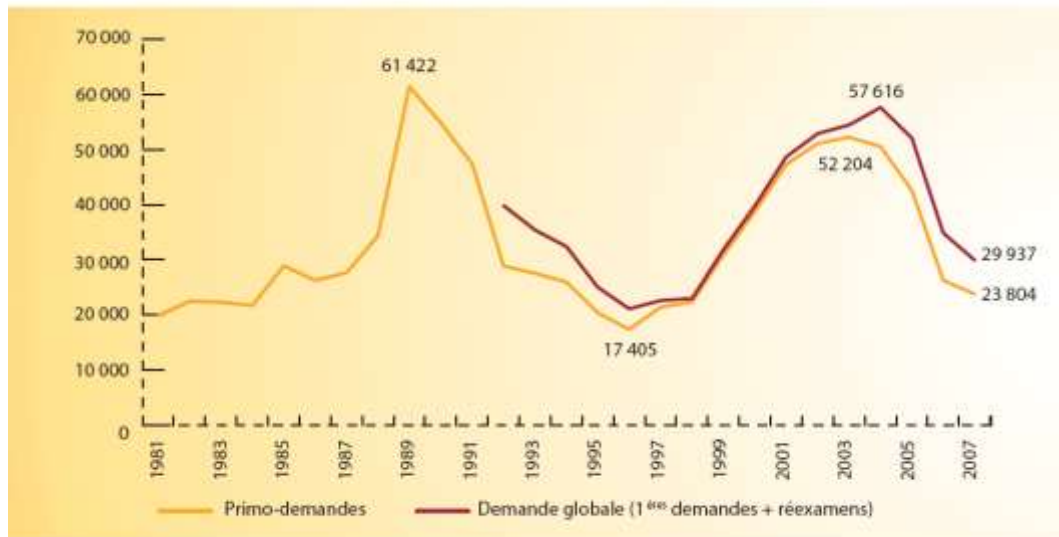
Comment [t16]: Please review the reference list again to ensure that it is complete and conforms to GPC's latest house style.

- Lloyd, Cathie. 2003. Anti-racism, racism and asylum-seekers in France. *Patterns of Prejudice* 37, no. 3: 323-339.
- Morrison, John. 1998. *The Cost of Survival: the trafficking of refugees to the UK*. London: The Refugee Council,.
- Noll, Gregor. 2001. Formalism vs. empiricism: some reflections on the Dublin convention on the occasion of recent European case law. *Nordic Journal of International Law* 70, no.1 : 161-182.
- OFPPA 2008. *Rapport 2007* Paris, Office Français de Protection des Réfugiés et Apatrides. Available at http://www.ofpra.gouv.fr/documents/Rapport_OFPPA_2007_BD.pdf.
- OFPPA 2008. *Rapport d'Activité 2008* Office Français des Protection des Réfugiés et Apatrides available at http://www.ofpra.gouv.fr/documents/Rapport_OFPPA_2008_BD.pdf.
- ONU 2008. *Consideration of reports submitted by States parties under article 40 of the Covenant [on Civil and Political Rights] : concluding observations of the Human Rights Committee : France* CCPR/C/FRA/CO/4. Available at <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1H1Y0P3325887.48320&profile=bibga&uri=full=3100001~!868168~!2&ri=1&aspect=alpha&menu=search&source=~!horizon#focus>.
- Papadimitriou, Panayiotis. N. and Papageorgiou, Ioannis, F. 2005. The new 'Dubliners': implementation of European Council regulation 343/2003 Dublin-II by the Greek authorities. *Journal of Refugee Studies*, 18, no.3: 299-318.
- Reyneri, Emilio. 2003. Illegal Immigration and the underground economy. Paper presented to conference entitled *The challenges of migration and integration in the European Union and Australia*, 18-20 February 2003, University of Sydney National Europe. Paper No.66.
- Robinson, Vaughn. and Segrott, Jeremy. 2002. *Understanding the decision-making of asylum-seekers* Home Office Research Study, no.243. Available at <http://www.homeoffice.gov.uk/rds/pdfs2/hors243.pdf>.
- Samers, Michael. 2004. The 'Underground Economy', immigration and economic development in the European Union: an agnostic-skeptic perspective. *International Journal of Economic Development* 6, no.2: 199-269
- 2003. Emerging geopolitics of illegal immigration in the European Union. *European Journal of Migration and Law* 6, no.1, 27-45
- Schuster, Liza. 2005. The Realities of a New Asylum Paradigm. COMPAS Working Papers series, WP-05-20
- 2005a. A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe. *Social Policy and Administration* 39, no.6: 606-621
- 2003. *The uses and abuses of political asylum in Britain and Germany* London: Frank Cass.
- Senovilla Hernandez, Daniel. 2008. La migration des mineurs non-accompagnés en Europe : Dossier. *e-migrinter* 2 : 2008 available at <http://www.Afghans10.org/spip.php?article1094>.
- Spijkerboer, Thomas. 2007. The Human Costs of Border Control. *European Journal of Migration and Law* 9, no. 2: 127-139.
- Thielemann, Eiko. 2008. The Future of the Common European Asylum System: In need of a more comprehensive Burden-Sharing Approach *Swedish Institute for European Policy Studies*, Issue 1-2008
- Thielemann, Eiko. 2004. Why asylum policy harmonisation undermines refugee burden-sharing. *European Journal of Migration and Law* 6, no.1: 47-65.
- UNHCR 2008. *Building a Europe of asylum: UNHCR's recommendations to France for its European Union Presidency* July - December 2008. 9 June 2008. Online. UNHCR Refworld. Available at: <http://www.unhcr.org/refworld/docid/484e71812.html> [accessed 7 August 2008]
- UNHCR 2008a. *UNHCR statement subsidiary protection under the EC Qualification Directive for people threatened by indiscriminate violence* January 2008. Available at *UNHCR_Statement_on_Article_15c._QD[1].pdf*.

- UNHCR 2008b. *UNHCR Position on the Return of Asylum Seekers to Greece under the "Dublin Regulation"* available at <http://www.unhcr.org/refworld/docid/4805bde42.html>.
- Vedsted-Hansen, Jens. 2005. Common EU standards on asylum: optional harmonisation and exclusive procedures. *European Journal of Migration and Law* 7, no.4: 369-376.
- Young, Jock. 1999. *The Exclusive Society: Social Exclusion, crime and Difference in Late Modernity*. London: Sage

List of Figure

Figure 1: Number asylum applications in France excluding accompanied minors



Comment [tl7]: Please translate the key of the graph (i.e. primo-demandes, demande globale) etc into English.

Source: http://www.ofpra.gouv.fr/documents/Rapport_OFPRA_2007_BD.