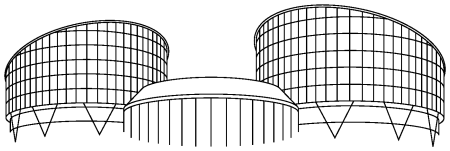

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAFAII v. AUSTRIA

(Application no. 44689/09)

JUDGMENT

STRASBOURG

7 May 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Safaii v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Paulo Pinto de Albuquerque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44689/09) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Afghan national, Mr Hanif Safaii ("the applicant"), on 10 August 2009.

2. The applicant was represented by Mr H. Pochieser, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry of European and International Affairs.

3. The applicant alleged, in particular, that his transfer to Greece had subjected him to treatment contrary to Article 3 of the Convention.

4. On 23 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Asylum proceedings in Austria and the transfer to Greece

5. The applicant was born in 1983. His address is unknown.

6. The applicant and his wife came to Austria in August 2008 and applied for asylum on 19 August 2008. They had travelled from

Afghanistan via Iran to Greece. When the applicant and his wife first arrived in Greece they lived in a camp. They subsequently lived with people traffickers for approximately three months, and then in public parks. The applicant claimed that he had queued to apply for asylum in Greece, but had been beaten by the police and driven away. He and his wife had no access to financial support and had had to live in the parks after their money had run out. After four failed attempts, the traffickers managed to take the applicant and his wife to Austria.

7. In his request for asylum in Austria the applicant claimed in substance to have had problems with the Taliban in Afghanistan. He submitted *inter alia* that eight years earlier the Taliban had kidnapped two of his brothers.

8. On 14 October 2008, the Federal Asylum Office East (*Bundesasylamt Erstaufnahmestelle Ost*) rejected the applicant's asylum application on the grounds that Greece was responsible for examining it, pursuant to section 5 of the 2005 Asylum Act (*Asylgesetz 2005*) in connection with Article 10 § 1 of Council Regulation (EC) No. 343/2003 ("Dublin II Regulation", hereinafter "the Dublin Regulation"), and ordered his expulsion to Greece. It found that the applicant was not facing any real risk of ill-treatment within the meaning of Article 3 of the Convention upon his return to Greece. The authority referred to a number of country reports, in particular those of the UNHCR of April 2008 and of the Swedish Migration Board. It acknowledged the ongoing criticism with regard to proceedings and treatment of asylum-seekers in Greece, but did not consider the applicant's story of his experiences in Greece credible. The Asylum Office noted the UNHCR's concern about the difficulties with which many asylum-seekers in Greece were confronted. This applied particularly to the facilities for asylum-seekers, access to asylum proceedings and the quality of the proceedings. On the other hand, the Asylum Office noted that Norway was the only country to have declared that it would no longer transfer asylum-seekers to Greece under the Dublin Regulation. The Asylum Office also mentioned a recent decision by the Aliens Litigation Council, according to which there was no reason to suspend further transfers to Greece. The Asylum Office quoted the UNHCR position paper, which welcomed Greece's reform attempts aimed at strengthening its asylum system. It further noted that a working group had been established, including members of the Greek authorities and the UNHCR, to tackle the "most burning" problems with the asylum system. Furthermore, the Asylum Office held that the relevant European directives were binding for Greece. Lastly, the Asylum Office referred to a fact-finding mission conducted by the Swedish Migration Board in April 2008 reacting to the harsh criticism voiced by various NGOs. The final report of that mission had concluded that there were no humanitarian or other reasons to refrain from returning asylum-seekers to Greece under the Dublin Regulation. In view of the fact that the asylum authorities of the other EU countries had not stopped transferring

asylum-seekers back to Greece, the Asylum Office concluded that it was not necessary to make use of the sovereignty clause in the present case. It further noted that people who had never before lodged an asylum application in Greece and had been transferred to Greece under the Dublin Regulation had full access to asylum proceedings.

9. The applicant lodged a complaint against that decision, referring again to the deficiencies of the Greek asylum system, the danger of *refoulement* to Afghanistan and the lack of subsistence for asylum-seekers.

10. On 11 November 2008, the Asylum Court (*Asylgerichtshof*) dismissed the applicant's complaint as unfounded. It found that an accumulation of proceedings under the sovereignty clause would endanger the "*effet utile*" principle of Community law. Furthermore, the Dublin Regulation was based on the assumption that all member States were safe countries and that a deportation to one of them could not constitute a human-rights violation. Therefore, arguments against such a deportation would need to be especially substantiated. Referring to the report of a mission of the Swedish Migration Board to Greece in April 2008 that showed that all twenty-six monitored cases had had access to Greek asylum proceedings, it found that there were no deficiencies in the conditions of access to asylum proceedings in Greece. With regard to the present case, the Greek authorities had already stated that the applicant would have access to asylum proceedings once he returned to Greece. Again referring to the mission report of the Swedish Migration Board, it found that the support of asylum-seekers in Greece was acceptable. Asylum-seekers were allowed to work in Greece. Lastly, there would be no risk of *refoulement*. In conclusion, the applicant would not be at real risk of treatment contrary to Article 3 on being returned to Greece.

11. On 30 January 2009, the Constitutional Court refused to deal with the applicant's complaint for lack of prospects of success.

12. That decision was served on the applicant's counsel on 11 February 2009.

13. The applicant's wife was expelled to Greece on 25 November 2008.

14. The applicant was expelled to Greece on 8 April 2009.

B. Further information about the applicant and his whereabouts.

15. At the Court's request, on 4 August 2011 the applicant's representative informed the Court of the exact date of the applicant's transfer to Greece, namely 8 April 2009. He stated that despite being his counsel, he had not received any further information about his client since then. In later submissions he stated that he could establish contact with the applicant, if necessary, via trustworthy persons the applicant still knew in Vienna. He did not, however, provide the applicant's current address to the Court.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL REPORTS

A. Relevant domestic and European law

1. Council Regulation (EC) No. 343/2003 (Dublin II Regulation)

16. For detailed information on proceedings under the Dublin Regulation, see *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, §§ 65-75, ECHR 2011).

2. 2005 Asylum Act

17. Section 5 of the 2005 Asylum Act provides that an asylum request must be rejected as inadmissible if, under treaty provisions or pursuant to the Dublin Regulation, another country has jurisdiction for examining the application for asylum or the application for international protection. When rendering the decision to reject, the authority must also specify which country has jurisdiction in the matter.

B. International documents describing the detention and reception conditions of asylum-seekers in Greece and the Greek asylum procedure

18. International documents describing the conditions of detention and reception of asylum-seekers and the asylum procedure in Greece are extensively summarised in the judgment in *M.S.S. v. Belgium and Greece* (cited above, §§ 159-95). In the paragraphs that follow, reference will be made to the documents cited therein.

19. A number of pertinent reports on the situation faced by asylum-seekers in Greece have been freely available from as early as 2005 onwards. For instance, the European Committee for the Prevention of Torture (CPT) published reports in December 2006 and February 2008 following visits to Greece, examining, *inter alia*, the detention conditions of foreigners in specific holding facilities (ibid., §§ 160 and 163-64).

20. In October 2007 the German NGO, Pro Asyl, published a report entitled “The Truth may be bitter but it must be told”, documenting serious human-rights abuses against refugees who had tried to reach Greece by sea. On 27 February 2008 Amnesty International published a report and recommendations entitled “Greece: no place for asylum-seekers” on the conditions of detention for asylum-seekers. In its “Amnesty International Report 2008 – Greece” of 28 May 2008, the NGO stated that “Greece [had] failed to provide asylum to the vast majority who [had] requested it. Migrants [had] suffered ill-treatment, and arbitrary and lengthy detention of asylum-seekers, including children, continued”.

21. That and similar information was complemented by two UNHCR reports, the first of which was dated November 2007 and entitled "Asylum in the European Union. A study of the Implementation of the Qualification Directive". In its executive summary, the UNHCR observed that the Greek asylum system failed to grant asylum of any kind and rejected applications in a standardised format, without giving individual reasons, and identifying all of the 305 cases examined as concerning "economic migrants without protection needs". A review of the files was conducted by the authors of the study, who established that in 294 of the cases examined the files did not contain any of the asylum-seekers' answers to standard questions asked by the interviewing police officers. Furthermore, there was no information in the files regarding the asylum-seekers' fears of persecution, and in an overwhelming majority of the cases the interviewing police officer had registered the reasons for departure from the country of origin as "economic". The authors of the study concluded that in view of the insufficient documentation and reasoning, it was not possible to discern legal practice in Greece.

22. The UNHCR position paper of 15 April 2008 undeniably welcomed the steps taken by the Greek Government to strengthen its asylum system as required by international and European standards, just as the Austrian authorities had noted in their reasoning. However, it continued by stating:

> "26. In view of EU Member States' obligation to ensure access to fair and effective asylum procedures, including in cases subject to the Dublin Regulation, UNHCR advises Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice. UNHCR recommends that Governments make use of Article 3 (2) of the Dublin Regulation, allowing States to examine an asylum application lodged even if such examination is not its responsibility under the criteria laid down in this Regulation".

23. On 7 February 2008 Norway announced that it would be suspending all transfers of asylum-seekers to Greece. However, on 3 September 2008 the Norwegian Prime Minister told the media that Norway would no longer suspend transfers to Greece under the Dublin Regulation on a blanket basis, but rather that an individual assessment of each case would be carried out (reported in the article "Stuck in a Revolving Door" by Human Rights Watch, November 2008, page 25).

24. On 6 May 2008 the Swedish Migration Board published a report on a delegation's visit to Greece between 21 and 23 April 2008 (*Rapport från besök i Grekland den 21- 23 april 2008*). The report described the increasing challenges faced by the Greek asylum system because of the increasing number of cases it had had to deal with in recent years. It referred to problems with the provision of housing for asylum-seekers, and stated that more often than not they had to arrange housing for themselves. The report concluded by stating that the risk of *refoulement* was minimal. However, a particular problem had arisen in relation to unaccompanied

minors: there was a risk that such asylum-seekers would be placed in a reception unit in Amygdaleza, a closed facility. This was regarded as a radical measure, comparable to placing minors in custody. In the light of the report's conclusions, the director general's guidelines of 7 May 2008 (*Generaldirektörens riktlinjer avseende tillämpningen av Dublin-förordningen i förhållande till Grekland*) established that asylum proceedings in Greece were generally acceptable for adults, but that there were problems regarding the reception of unaccompanied minors in relation to the above-mentioned reception facility. The Migration Board therefore decided to maintain its suspension of transfers of unaccompanied minors to Greece.

25. On 2 April 2009 the UNHCR sent a letter to the Belgian Minister of Migration and Asylum Policy criticising the deficiencies in the asylum procedure and the conditions of reception of asylum-seekers in Greece and recommending the suspension of transfers to Greece. A copy was sent to the Aliens Office. The letter read as follows (extracts):

> "The UNHCR is aware that the Court, in its decision in K.R.S. v. the United Kingdom ... recently decided that the transfer of an asylum seeker to Greece did not present a risk of refoulement for the purposes of Article 3 of the Convention. However, the Court did not give judgment on compliance by Greece with its obligations under international law on refugees. In particular, the Court said nothing about whether the conditions of reception of asylum seekers were in conformity with regional and international standards of human rights protection, or whether asylum seekers had access to fair consideration of their asylum applications, or even whether refugees were effectively able to exercise their rights under the Geneva Convention. The UNHCR believes that this is still not the case."

26. It concluded:

> "For the above reasons the UNHCR maintains its assessment of the Greek asylum system and the recommendations formulated in its position of April 2008, namely that Governments should refrain from transferring asylum seekers to Greece and take responsibility for examining the corresponding asylum applications themselves, in keeping with Article 3 § 2 of the Dublin Regulation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that his transfer to Greece had subjected him to treatment contrary to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

28. The Court notes that the applicant also relied on Articles 2 and 8 of the Convention, but without substantiating those complaints. The Court considers it appropriate to examine the applicant's complaint under Article 3 alone.

A. Admissibility

29. The Government firstly contended that as the applicant's whereabouts were unknown, his application should be struck out of the Court's list of cases pursuant to Article 37 § 1 (a) or (c) of the Convention. Secondly, the Government argued that the applicant's counsel himself had mentioned that he had had no further contact with the applicant since his transfer to Greece on 8 April 2009. The Government pointed out that despite that fact, the power of attorney was dated 10 August 2009. The Government therefore raised the question whether it was still justified to pursue the examination of the present application.

30. The applicant's representative stated in turn that the acts of the Austrian authorities had gravely violated the applicant's human rights, which was why it was necessary to continue the examination of his complaint. He claimed that he could establish the applicant's whereabouts via his acquaintances who lived in Austria. If the application were struck out of the Court's list of cases, the applicant would remain extensively harmed by the acts of the Austrian authorities.

31. As regards the discrepancy between his statements concerning the loss of contact with the applicant after his transfer to Greece in April 2009 and the date of the power of attorney of 10 August 2009, the applicant's counsel explained that the applicant had signed a blanket power of attorney on 21 January 2009 in case he decided to lodge a complaint with the Court. On 17 February 2009 the applicant had instructed his counsel to lodge the complaint with the Court. Once the complaint had been prepared by his office and was ready to be sent to the Court, the power of attorney which the applicant had signed was filled out and that date, namely 10 August 2009, was inserted. The applicant's counsel enclosed notes of the meetings with the applicant of 21 January and 17 February 2009.

32. The Court has previously found it essential for representatives to demonstrate that they have received specific and explicit instructions, within the meaning of Article 34 of the Convention, from the alleged victims on whose behalf they purport to act (see *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011).

33. In the case of *Ebrahami v. Austria* ((dec.), no. 15974/11, 1 October 2013) the same counsel as in the present case did not submit any power of attorney to the Court at all. Since the applicant's whereabouts were unknown, he had never contacted the Court directly in the course of the proceedings and there was no indication in the file that the applicant wished

to initiate proceedings before the Court, the Court concluded that the case should be rejected for want of an "applicant" as incompatible *ratione personae*.

34. In the present case, however, a signed power of attorney was submitted to the Court together with the duly signed application form. Moreover, the applicant's counsel gave sufficient reasons to explain why the date on the power of attorney was later than the date of the applicant's expulsion. From the notes submitted to the Court it is clear that the applicant explicitly instructed his counsel to lodge a complaint with the Court, and the power of attorney had been signed by the applicant well before he was transferred to Greece. Therefore the Court observes that there is enough evidence to assume that the applicant indeed intended to lodge a complaint with the Court.

35. As regards the applicant's current whereabouts and his alleged loss of contact with his representative and therefore with the Court, it is noted that this would have resulted from his being transferred to Greece in April 2009 − it must therefore be considered a direct consequence of the State's actions (see *Diallo v. the Czech Republic*, no. 20493/07, § 44, 23 June 2011).

36. In these circumstances, the Court rejects the Government's contention that the application should be struck out of the Court's list of cases pursuant to Article 37 § 1 (a) of the Convention. It is satisfied that the applicant wishes to pursue the present application, despite his transfer to Greece. Furthermore, the Court has no reason to strike the case out under Article 37 § 1 (c). It further notes that the complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. The applicant argued that the domestic authorities should have been alarmed by the reports on the situation for asylum-seekers in Greece and should have refrained from transferring him there. He claimed that the Austrian authorities had known of the inhuman conditions in Greece but had transferred him there regardless of that information.

38. The Government stated that both the Asylum Office and the Asylum Court had extensively considered the issues of reception, adequate accommodation and care for asylum-seekers in Greece in general, and for the present applicant in particular, and had come to the conclusion that a transfer would not violate the Convention. In their judgment they relied on the opinion of the European Commission and the report by the Swedish Migration Board of 2008. Neither the Asylum Office nor the Asylum Court could therefore be blamed, since they did not know and need not have

known about the actual circumstances for asylum-seekers in Greece on the basis of the information available to the Austrian authorities when taking their decisions. Furthermore, the Government referred to the Court's decision in *K.R.S. v. the United Kingdom* ((dec), no. 32733/08, 2 December 2008).

1. General principles

39. The Court has previously found that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Court also notes that a right to political asylum is not contained in either the Convention or its Protocols (see *Vilvarajah and Others*, cited above, § 102, and *Ahmed v. Austria*, 17 December 1996, § 38, *Reports* 1996-VI).

40. However, deportation, extradition or any other measure to remove an alien may give rise to an issue under Article 3, and hence engage the responsibility of the Contracting State under the Convention, where substantial grounds have been shown for believing that the person in question, if removed, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to remove the individual to that country (see *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91, Series A no. 161; *Vilvarajah and Others*, cited above, § 103; *Ahmed*, cited above, § 39; *H.L.R. v. France*, 29 April 1997, § 34, *Reports* 1997-III; *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, 11 January 2007; and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 114, ECHR 2012).

41. In the specific context of the application of the Dublin Regulation, the Court has found previously that indirect removal – in other words, removal to an intermediary country that is also a Contracting State – leaves the responsibility of the transferring State intact. That State is required, in accordance with the Court's well-established case-law, not to transfer a person where substantial grounds have been shown for believing that the person in question, if transferred, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. Furthermore, the Court has held that where States cooperate in an area where there might be implications for the protection of fundamental rights, it would be incompatible with the purpose and object of the Convention if they were absolved of all responsibility *vis-à-vis* the Convention in the area concerned (see, among other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 67, ECHR 1999-I). In applying the Dublin Regulation,

therefore, States must make sure that the intermediary country's asylum procedure affords sufficient guarantees to avoid an asylum-seeker being removed, directly or indirectly, to his country of origin without any evaluation of the risks he faces from the standpoint of Article 3 of the Convention (see *T.I. v. the United Kingdom* (dec.), no. 43844/98, ECHR 2000-III, and *K.R.S. v. the United Kingdom*, cited above, both summarised in *M.S.S. v. Belgium and Greece*, cited above, § 342).

42. As regards the material date, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion (see *Saadi v. Italy* [GC], no. 37201/06, § 133, ECHR 2008).

43. On 2 December 2008 the Court adopted the judgment of *K.R.S v. the United Kingdom* (cited above) in which it found no violation for the transfer of an Iranian national to Greece, as it was presumed that Greece would comply with its obligations in respect of returnees, including the applicant.

44. In *M.S.S. v. Belgium and Greece* the Court found that the Belgian authorities knew or ought to have known that the applicant, an Afghan asylum-seeker transferred from Belgium to Greece on 15 June 2009, had no guarantee that his asylum application would be properly examined by the Greek authorities. By transferring him to Greece they had knowingly exposed him to conditions of detention and living conditions in Greece that amounted to degrading treatment (cited above, §§ 358 and 367). The relevant parameters to establish whether the Belgian authorities knew or ought to have known that the applicant would face treatment contrary to Article 3 of the Convention following transfer to Greece were explained as follows (ibid., §§ 346-52):

> "346. The Court disagrees with the Belgian Government's argument that, because he failed to voice them at his interview, the Aliens Office had not been aware of the applicant's fears in the event of his transfer back to Greece at the time when it issued the order for him to leave the country.
>
> 347. The Court observes first of all that numerous reports and materials have been added to the information available to it when it adopted its *K.R.S.* decision in 2008. These reports and materials, based on field surveys, all agree as to the practical difficulties involved in the application of the Dublin system in Greece, the deficiencies of the asylum procedure and the practice of direct or indirect *refoulement* on an individual or a collective basis.
>
> 348. The authors of these documents are the UNHCR and the Council of Europe Commissioner for Human Rights, international non-governmental organisations like Amnesty International, Human Rights Watch, Pro-Asyl and the European Council on Refugees and Exiles, and non-governmental organisations present in Greece such as Greek Helsinki Monitor and the Greek National Commission for Human Rights (see paragraph 160 above). The Court observes that such documents have been published at regular intervals since 2006 and with greater frequency in 2008 and 2009, and that most of them had already been published when the expulsion order against the applicant was issued.

349. The Court also attaches critical importance to the letter sent by the UNHCR in April 2009 to the Belgian Minister in charge of immigration. The letter, which states that a copy was also being sent to the Aliens Office, contained an unequivocal plea for the suspension of transfers to Greece (see paragraphs 194 and 195 above).

350. Added to this is the fact that since December 2008 the European asylum system itself has entered a reform phase and that, in the light of the lessons learnt from the application of the texts adopted during the first phase, the European Commission has made proposals aimed at substantially strengthening the protection of the fundamental rights of asylum seekers and implementing a temporary suspension of transfers under the Dublin Regulation to avoid asylum seekers being sent back to Member States unable to offer them a sufficient level of protection of their fundamental rights (see paragraphs 77-79 above).

351. Furthermore, the Court notes that the procedure followed by the Aliens Office in application of the Dublin Regulation left no possibility for the applicant to state the reasons militating against his transfer to Greece. The form the Aliens Office filled in contains no section for such comments (see paragraph 130 above).

352. In these conditions the Court considers that the general situation was known to the Belgian authorities and that the applicant should not be expected to bear the entire burden of proof. On the contrary, it considers it established that in spite of the few examples of application of the sovereignty clause produced by the Government, which, incidentally, do not concern Greece, the Aliens Office systematically applied the Dublin Regulation to transfer people to Greece without so much as considering the possibility of making an exception."

2. Application of those principles to the present case

45. The main issue of the present application is whether the Austrian authorities knew or should have known that the applicant's transfer to Greece on 8 April 2009 would violate Article 3 of the Convention, in that the deficiencies in the detention and reception conditions for asylum-seekers and the shortcomings of the Greek asylum procedure reached the threshold of ill-treatment required by that provision (as concerns the Court's assessment of the situation in Greece in relation to Article 3, see *M.S.S. v. Belgium and Greece*, cited above, in particular §§ 224-33, 254-63 and 294-322).

46. The Court firstly turns to the reporting available at the time of the decision-making process and the actual transfer of the applicant to Greece. The Court has acknowledged the existence of a wide range of reports from various sources appearing at regular intervals since 2006 and more frequently in 2008 (see *M.S.S. v. Belgium and Greece* and paragraph 33 above), in particular those published by the UNHCR in late 2007 and early 2008 and by the CPT on the detention conditions in Greece. From those reports it appears that the overall situation for asylum-seekers in Greece at the relevant time was volatile and rapidly developing. While the information at issue undeniably drew an increasingly alarming picture of the conditions of access to asylum proceedings in Greece and the living and detention conditions of asylum-seekers there, there were, at the time, also conflicting

signals, such as the report of a fact-finding mission conducted by the Swedish authorities and the departure of the Norwegian authorities from their decision to suspend transfers to Greece. The Court therefore concludes that, at the relevant time, the information available to the Austrian authorities was ample, but also partly conflicting in its recommendations and results. Furthermore, while the UNHCR position paper of 15 April 2008 unequivocally recommended that governments refrain from returning asylum-seekers to Greece until further notice, it again undeniably welcomed the steps taken by the Greek Government to strengthen its asylum system. Those reports, which come from different backgrounds, be it governmental or non-governmental organisations, show that there were concerns about the situation for asylum-seekers in Greece. However, the Court points out that the information was not coherent and open for the exercise of particular discretion.

47. That assessment of developing yet conflicting information was further reflected in the Court's decision in the case of *K.R.S. v. the United Kingdom* of December 2008 (cited above), in which it confirmed the presumption that Greece would abide by its obligations under the relevant EU Directives to adhere to minimum standards in asylum procedure and provide minimum standards for the reception of asylum-seekers. The Court also emphasised in that decision that an applicant could, if necessary, turn to the Court and lodge an application or request under Rule 39 of the Rules of Court against Greece. That decision was issued on 2 December 2008, shortly before the Constitutional Court in the present case decided, on 30 January 2009, not to deal with the applicant's complaint. The removal of the applicant to Greece on 8 April 2009 also occurred after the Court's decision had been adopted and therefore was not in contrast with the Court's case-law at the time.

48. The Court also notes that, at the time of the proceedings in respect of the applicant in Austria and of his transfer to Greece, none of the member States of the European Union had decided to impose a blanket suspension on the transfer of all asylum-seekers, not just the vulnerable, to Greece. Norway, the only country to have done so in February 2008, reverted to examining such requests on a case-by-case basis in September 2008. Furthermore, at the relevant time the UNHCR had not addressed a letter to the Austrian authorities unequivocally asking them to refrain from transferring asylum-seekers to Greece, as it had done with Belgium in April 2009. Even though the UNHCR sent the letter to Belgium on 2 April 2009, there is no indication that the Austrian authorities had any knowledge of that letter when the applicant was removed to Greece. In the *M.S.S.* judgment the Court attached critical importance to that letter when establishing Belgium's awareness of the seriousness of the deficiencies in Greece (see paragraph 33 above).

49. Lastly, and again in relation to the criteria established in *M.S.S. v. Belgium and Greece* (cited above, § 351), the Court observes that the applicant had access to two levels of asylum proceedings, in which his claims in respect of Greece were examined in substance and sufficient reasoning was provided as to why the Austrian authorities had concluded that the applicant's transfer to Greece in spring 2009 was acceptable.

50. Consequently, while the Court considers it established that in spring 2009 the Austrian authorities would have been aware of the serious deficiencies in the Greek asylum procedure and the living and detention conditions for asylum-seekers, it does not find it established that, all circumstances considered, the Austrian authorities ought to have known that those deficiencies had reached the threshold required by Article 3 (see also the case of *Sharifi v. Austria*, no. 60104/08, § 38, 5 December 2013).

51. It follows that the applicant's transfer to Greece in April 2009 under the Dublin Regulation did not violate Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

52. The applicant complained of a violation of Article 13 in conjunction with Article 3 of the Convention. Firstly he complained of lack of access to the Administrative Court and secondly that the asylum authorities had wrongly assessed the evidence.

Admissibility

53. The Court notes that the applicant had access to proceedings before the Asylum Court and, subsequently, the Constitutional Court. The Court has found before that Article 13 guarantees the availability of a remedy at national level to enforce Convention rights and freedoms, which allows the competent domestic authorities to deal with the substance of the complaint and to grant appropriate relief. However, Article 13 does not require any particular form of remedy (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 122, Series A no. 215). Consequently, Article 13 does not oblige the member State to allow access to the Administrative Court in the present case. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

54. The further complaints lodged by the applicant under Article 13 in conjunction with Article 3 regarding wrong assessment of evidence by the asylum authorities and lack of an oral hearing before the Asylum Court fall under Article 6 of the Convention. In accordance with the Court's case-law (see *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, ECHR 31 May 2001, and, *mutatis mutandis, Maaouia v. France* [GC],

no. 39652/98, § 40, ECHR 2000-X), it follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 3 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 7 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President