

FENIX – HUMANITARIAN LEGAL AID



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Five years of the EU – Turkey Statement: Past, present and future.

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I. BEFORE THE STATEMENT

In 2015, almost one million people seeking international protection arrived in to Europe, a drastic increase on previous years. This was accompanied by a negative media narrative, focusing on images of large crowds of people moving through different Member States. This narrative ignored the wider context of these events, and had the effect of inflaming public opinion and exacerbating anti-migration and anti-asylum sentiment. Those arriving in Europe were framed as a threat to European values and a drain on the Union's resources, rather than human beings in need of asylum.

In response, on 13 May 2015, the European Commission presented a new Agenda for Migration and Asylum, including the "hotspot approach", which aimed to deal with the increase of arrivals to the European Union. As part of this agenda, EU Agencies such as the European Asylum Support Office (EASO), Frontex and Europol, would support the Member States at Europe's external borders with administrative procedures related to the reception and identification of asylum seekers.

The "hotspot approach" was presented as an instrument to: (i) facilitate the identification, registration and fingerprint of third-country nationals, (ii) channel those seeking asylum to the asylum procedure, and (iii) accelerate the implementation of relocation and return schemes. Thus, the "hotspots" were thought as reception and registration centers, where the administrative procedures would be conducted.

Five 'hotspots' or 'First Reception Centers' were established on the Greek islands of Lesbos, Chios, Samos, Leros, and Kos. The capacity planned for these centers was around 7,450 places¹, but the centers rapidly reached over capacity and asylum seekers were - and still are - forced to wait in inhumane conditions.

Rather than facilitating administrative procedures and transfers as intended, the hotspot policy has created substantial problems on the Greek islands. The increase in the number of arrivals has led to extreme overcrowding of the centers that were initially designed for a much smaller population. For the people residing in these centers, the consequences of this overcrowding are dire. It results in unsanitary living conditions and a drastic reduction in access to medical care. The lack of capacity was especially visible after a number of other Member States, including Hungary, Poland and Austria, closed their borders for people seeking asylum.²

¹ UNHCR [1-30 September 2016], *UNHCR Greece Factsheet*.

² Human Rights360 [12 November], *The implementation of the "Hotspot Approach" and the EU-Turkey Statement in Greece: A Crisis contained, but not over*, Available at: <https://www.humanrights360.org/the-implementation-of-the-hotspot-approach-and-the-eu-turkey-statement-in-greece-a-crisis-contained-but-not-over/> [Accessed on 11/3/2021].

II. THE EU-TURKEY STATEMENT

As the number of arrivals continued to increase and the political environment within and between Member States deteriorated, the states started to pressure Turkey to control the departures. On 8 March 2016, the Heads of State or Government of the Member States and the Turkish Prime Minister published a statement indicating that they were progressing with the implementation of the Joint Action Plan of 29 November 2015.³ On 16 March 2016, the Commission stated that “the return of all new irregular migrants and asylum seekers from Greece to Turkey [was] an essential component in breaking the pattern of refugees and migrants paying smugglers and risking their lives” and that, “given the extent of flows currently between Turkey and Greece, such arrangements should be considered as a temporary and extraordinary measure which is necessary to end the human suffering and restore public order...”.⁴

Finally on 18 March 2016, the EU-Turkey Statement was published on the Council’s website as a press release (Press release No 144/16), and it was presented as a continuation of the negotiations started in November 2015 between the ‘Members of the European Council’ and the Turkish counterpart, regarding the ‘migration crisis’.⁵

According to the statement, all migrants that arrive from Turkey to Greece and either don’t apply for international protection, or get their asylum application rejected as inadmissible or unfounded, shall be returned to Turkey.⁶ In exchange, for each Syrian national returned to Turkey from the Greek Islands, another Syrian would be resettled in the EU, taking into consideration the UN vulnerability criteria.⁷ Additionally, the Member States agreed: (i) to set up a voluntary humanitarian admission scheme, (ii) that the EU would initiate the process of visa liberalization for Turkish nationals, (iii) that the EU reconfirmed the commitment to the accession process of Turkey to the European Union, and (iv) that the EU would allocate six billion

³ “The Heads of State or Government agreed that bold moves were needed to close down people smuggling routes, to break the business model of the smugglers, to protect [the] external borders [of the European Union] and to end the migration crisis in Europe [They] warmly welcomed the additional proposals made today by [the Republic of] Turkey to address the migration issue. They agreed to work on the basis of the [following] principles: 1) to return all new irregular migrants crossing from Turkey into the Greek islands with the costs covered by the [European Union]; 2) to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the Member States [of the European Union], within the framework of the existing commitments [...]” CJEU, Available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=205744&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1> [Accessed on 11/3/2021], para 4.

⁴ Supra note 3, para 5 and 6.

⁵ European Council [18 March 2016], *EU-Turkey statement, 18 March 2016*, Press release No 144/16, Available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> [Accessed on 11/3/2021].

⁶ Supra note 5.

⁷ Supra note 5.

euros to facilitate the processing of asylum seekers, refugees and persons under temporary protection in Turkey.⁸

The legal basis for this Statement arises from the Asylum Procedure Directive, namely on the articles related to the “safe country” concept. Thus, this statement of cooperation is based on the assumption that Turkey is a safe country for forcibly displaced persons. However, this assumption has been systematically contested by different international organizations, such as Human Rights Watch⁹, Amnesty International¹⁰, Oxfam¹¹, Médecins sans Frontières¹², Refugee Support Aegean¹³, and the Greek Council for Refugees¹⁴. These critiques were further supported by a number of international scholars¹⁵, for reasons that will be discussed below.

⁸ Supra note 5.

⁹ “The agreement rests on the flawed premise that Greece and the EU need not evaluate the individual protection needs of those arriving via the Aegean Sea on the grounds that Turkey is a “safe third country” or “safe first country of asylum.” This is not, however, the case.” Human Rights Watch [14 November 2016], *Q&A: Why the EU-Turkey Migration Deal is No Blueprint*, Available at: <https://www.hrw.org/news/2016/11/14/qa-why-eu-turkey-migration-deal-no-blueprint> [Accessed on 15/3/2021].

¹⁰ “However, the premise on which the deal was constructed – namely that Turkey is a safe place for refugees – was flawed. In the months following the deal, Greece’s asylum appeals committees ruled in many instances that Turkey does not provide effective protection for refugees.

Instead, all asylum applications had to be assessed in Greece and, refugees were corralled on the Greek islands in squalid and unsafe conditions.” Amnesty International [20 March 2017], *The EU-Turkey deal: Europe’s year of shame*, Available at: <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/> [Accessed on 15/3/2021].

¹¹ “The European Union’s deal with Turkey to control migration and return “irregular” migrants has led to policies and practices in Greece that are short-sighted, unsustainable, ineffective and dangerous, say Oxfam and 24 other NGOs ahead of the deal’s third anniversary.” Oxfam [13 March 2019], *Oxfam and allies blast the EU-Turkey deal on its third anniversary for leading to short-sighted and dangerous migration policies*, Available at: <https://www.oxfam.org/en/press-releases/oxfam-and-allies-blast-eu-turkey-deal-its-third-anniversary-leading-short-sighted> [Accessed on 15/3/2021].

¹² “Today, on the third anniversary of the signing of the EU-Turkey deal, Médecins Sans Frontières (MSF) calls on European leaders to take action to end the harmful policy of containment on the Greek island ‘hotspots’. [...] For the past three years, the EU-Turkey deal has trapped thousands of men, women and children in overcrowded, unsanitary, unsafe and degrading conditions with little access to basic health services, which has resulted in a deterioration of their health and well-being, and caused widespread misery.” MSF [18 March 2018], *EU-Turkey deal continues cycle of containment and despair*, Available at: <https://www.msf.org/eu-turkey-deal-continues-cycle-containment-and-despair-greece-refugees> [Accessed on 15/3/2021].

¹³ “Four years after the toxic EU-Turkey “deal” came into effect, the Eastern Aegean islands continue to experience its harmful consequences. Thousands of refugees and migrants continue to find themselves confined in horrible conditions in the five hotspots of Kos, Leros, Samos, Lesbos and Chios.” RSA [2020], *EU-Turkey Statement*, Available at: <https://rsaagean.org/en/eu-turkey-deal-2/> [Accessed on 15/3/2021].

¹⁴ ““The Statement was meant to be ‘a temporary and extraordinary measure...necessary to end the human suffering and restore public order’. Instead, two years later, it has become a phenomenon, whereby the human suffering it was meant to address is still present, with people confined on the islands,” said Vassilis Papadopoulos, Coordinator of the Legal Unit of the Greek Council for Refugees (GCR).” [6 March 2018], *Almost two years after EU-Turkey statement, people are still trapped on the islands*, Available at: <https://www.gcr.gr/en/component/k2/item/793-almost-two-years-after-eu-turkey-statement-people-are-still-trapped-on-the-islands> [Accessed on 15/3/2021].

¹⁵ See, for instance, Hemme Battjes (H. Battjes [2017], eds T.M.C. Asser Press, *Chapter 11. Territoriality and Asylum law: The Use of Territorial Jurisdiction to Circumvent Legal Obligations and Human Rights Law Responses. Netherlands Yearbook of International Law 2016*) ; Maarten den Heijer (M. Heijer, J. Rijpma & T. Spijkerboer [May/June 2016], pub CMLR, *COERCION, PROHIBITION, AND GREAT EXPECTATIONS: The continuing failure of the Common European Asylum System*), Jorrit Rijpma & Thomas Spijkerboer (M. Heijer, J. Rijpma & T. Spijkerboer

As the EU-Turkey Statement is based on the assumption that Turkey is a “safe country”, in the next sections we will look into the definitions of **first country of asylum** and **safe third country**, as stated in Articles 35(b) and 38 of the Asylum Procedure Directive¹⁶, and go over the law and practice of applying and receiving international and temporary protection in Turkey.

1. Turkey and the “safe country” concept

Article 35(b) establishes that a country can be considered a **first country of asylum** when, provided that the applicants are readmitted to the territory of that country: i) they have been recognized as refugees and can still avail of that protection, or ii) they would enjoy sufficient protection, including protection against refoulement.

On the other hand, according to Article 38, a Member State can apply the **safe third country** concept when the authorities considers that: (i) the life and liberty of the person seeking asylum are not threatened on the basis of race, religion, nationality, membership of a particular social group or political opinion, (ii) there is no risk of serious harm as defined in Directive 2011/95/EU, (iii) the principle of non-refoulement is respected, (iv) the prohibition of removal is respected, and, (v) the possibility to apply for refugee status and to receive protection in accordance to the Geneva Convention exist.¹⁷

In the following section, we will review the evolution of the legal framework in Turkey to assess if the standards provided by the Directive are met.

[May/June 2016], pub CMLR, *COERCION, PROHIBITION, AND GREAT EXPECTATIONS*: The continuing failure of the Common European Asylum System); O. Ulusoy (O. Ulusoy [29 March 2016], *Turkey as a Safe country?*), M. Ineli-Ciger & O. Uçusoy (M. Ineli-Ciger & O. Uçusoy [7 October 2020], *Why the EU-Turkey Statement should never serve as a blueprint*); S. Peers & E. Roman (S. Peers & E. Roman [5 February 2016], *The EU, Turkey and the Refugee Crisis: What could possibly go wrong?*); and V. Moreno-Lax & M. Giuffré (V. Moreno-Lax & M. Giuffré [31 July 2017], *The Rise of Consensual Containment: From ‘Contactless Control’ to ‘Contactless Responsibility’ for Forced Migration Flows*).

¹⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, *OJ L 180*.

¹⁷ Nevertheless, jurisprudence at European and national levels has considered that the Directive does not obligate that a country to be considered as safe country safe third needs to consagrate and guarantee all the rights established by the 1951 Refugee Convention. The Directive just implies an equivalent protection to the one established in the Convention. See for example Angeliki Tsiliou, pub *EU Immigration and Asylum Law and Policy, When Greek Judges decide whether Turkey is a Safe Third Country without caring too much for EU law*, Available at:

<https://eumigrationlawblog.eu/when-greek-judges-decide-whether-turkey-is-a-safe-third-country-without-caring-too-much-for-eu-law/> [Accessed on 4/3/2021].

The UNHCR does not have the same interpretation and considers that Article 38 of the Asylum Procedure Directive implies access to refugee status and all the rights established in the 1951 Refugee Convention, which contradicts the position currently adopted by different Courts. UNHCR [n.d.], *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country or asylum concept*, Available at: <https://www.unhcr.org/56f3ec5a9.pdf> [Accessed on 4/3/2021].

2. Background and evolution of the asylum legal framework in Turkey

Even though Turkey is a party to the 1951 Refugee Convention and its 1967 Protocol, the declaration to Article 1(B)1 adopting geographical limitations remains in force.¹⁸ In practice, this means that Turkey only considers those fleeing from European countries¹⁹ as eligible to receive refugee status. It is interesting to note that, in 1999, the European Commission considered this geographical limitation as “largely rendering the asylum machinery ineffective”.²⁰

Despite the geographical limitation, Turkey shall still respect the principle of non-refoulement, established in Article 33 of the 1951 Refugee Convention. This Article is binding regardless of the nationality of the person forcibly displaced. Additionally, Turkey is a Member State of the Council of Europe and a signatory of the European Convention of Human Rights (ECHR). Article 3 of the ECHR prohibits all forms of torture or inhuman or degrading treatment or punishment, which includes the right not to be returned to a country where one will face persecution.

In April 2013, the Turkish Government passed its first asylum law, the Law on Foreigners and International Protection²¹, implementing a dual structure for asylum applications: on the one side, those from ‘European countries of origin’ could apply for **refugee status**, while those coming from non-European countries could only apply for other types of international protection (**conditional refugee status, subsidiary protection**) and **temporary protection**.²²

Everyone who would traditionally fall under the definition of refugee but comes from a non-European country, is eligible to receive **conditional refugee status** under the Law on Foreigners and International Protection. In addition, those who are not eligible for refugee status or conditional refugee status, could be eligible for **subsidiary protection**.

¹⁸ “The following States adopted alternative (a), the geographical limitation: Congo, Madagascar, Monaco and Turkey. Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol. Madagascar and Monaco have not yet adhered to the Protocol.” UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and 1967 Protocol, Available at: <https://www.unhcr.org/4d934f5f9.pdf> [Accessed on 16/3/2021], p 5.

¹⁹ The Turkish Government considers the Council of Europe member states as ‘European countries of origin’ for the purpose of ‘geographical limitation. Refugee Rights Turkey [2019 Update], eds ECRE, *Country Report: Turkey*, Available at: https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_tr_2019update.pdf [Accessed on 2/3/2021].

²⁰ European Commission [13/10/1999], 1999 REGULAR REPORT FROM THE COMMISSION ON TURKEY’S PROGRESS TOWARDS ACCESSION, Available at: https://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf [Accessed on 2/3/2021], p 36.

²¹ UNHCR [n.d.], *Refugees and Asylum Seekers in Turkey*, Available at: <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey> [Accessed on: 2/3/2021].

²² The protections supra mentioned can be found on Articles 61, 62 and 91 of the *Law on Foreigners and International Protection*. ECRE [December 2015]. “Country Report: Turkey”, p 15.

The **temporary protection** regime was introduced in October 2014, and it is applied to third-country nationals who have been forced to leave their country and who have crossed the borders of Turkey in a mass influx situation.²³ This has been frequently applied to persons forcibly displaced from Syria.²⁴ It is not considered a type of international protection but a complementary measure to be applied in situations where individual assessments are not possible due to the large number of applicants.²⁵

Between 2018 and 2019 further changes were implemented in order to create a more centralized asylum system, also taking into account national security concerns.²⁶

In 2019, the government introduced several amendments to the *Law on Foreigners and International Protection*. Commendably, the amendment established the prohibition of removal during the appeal procedure and the prohibition of keeping unaccompanied minors in removal centers (Articles 82 and 83 of the *Law on Foreigners and International Protection*).²⁷ On a less positive note, some of the changes introduced are clearly detrimental to the rights of asylum seekers and others are considered to violate the Turkish Constitution and international legal standards²⁸. The reduction of the time-limits to appeal a decision from 15 days to seven days (Article 78), the exclusion of the majority of applicants from the General Health Insurance Scheme after one year of registration (Article 90), the expropriation of money belonging to those holding a removal decision (Article 83), represent a number of examples of such prejudicial changes.²⁹

In the next section, we will address the barriers and obstacles that have been reported in the effective access to the different types of protection.

3. Barriers and obstacles in accessing international and temporary protection

The enactment of the Law on Foreigners and International Protection is the first legislative attempt to establish an asylum procedure in Turkey. It introduced many changes in the processing of asylum applications, but effective access to international protection is not guaranteed in practice. Many organizations have

²³ This is proven by the fact that the Turkish Government opted to formalise the previous de facto temporary protection regime (into place since 2011) through an article in the Temporary Protection Regulation instead of issuing a new Presidency decision. Supra note 19, p 121.

²⁴ Supra note 19, p. 120 and 121.

²⁵ Articles 9 and 15, Temporary Protection Regulation. Supra note 19, p 120.

²⁶ Supra note 19, p 14.

²⁷ Mülteci-Der [4 December 2019], *Joint Assessment: Proposed Amendments in the Law on International Protection of Turkey*, Available at: <http://www.multeci.org.tr/en/haberler/english-joint-assessment-proposed-amendments-in-the-law-on-foreigners-and-international-protection-of-turkey/#> [Accessed on: 3/3/2021].

²⁸ Supra note 27.

²⁹ Supra note 27.

reported issues with the registration of asylum applications, access to housing and healthcare for asylum seekers and beneficiaries of protection, arbitrary detention and ill-treatment in detention centers and deportations taking place without the opportunity to apply for asylum. These issues will now be considered in turn.

3.1. Obstacles in the access to registration

The effective access to registration of asylum applications and temporary protection has been questioned by a number of international bodies and organizations. For instance, the 2016 Report of the Council of Europe stated that after the Directorate General for Migration Management (DGMM) reached the number established *a priori* for registration of Syrian-nationals in each province, the DGMM offices either directly stop registering Syrians nationals, or the processing became severely delayed, forcing applicants to wait for up to one year for their first appointment.³⁰ In addition, in the cases of Syrian nationals, the DGMM offices only register for temporary protection those arriving directly from Syria.³¹ Syrian nationals coming from third countries are excluded from this regime, and they are also not registered as international protection applicants.

Further, In 2018, UNHCR relinquished responsibility for the registration of applicants for international protection in Turkey. This responsibility was transferred to the Province Directorate for Migration Management (PDMM). Following this transfer of responsibility, there have been further obstacles in accessing registration. These difficulties have been particularly stark in the case of Afghan nationals, as they are traditionally considered by the Turkish authorities as ‘irregular migrants’, rather than as legitimate seekers of international protection. In practice, when applicants approach one of the PDMM offices in one of 81 Turkish provinces, they are usually referred to another office in a ‘satellite city’.³² The applicants are then obliged to register at the office in the “satellite city” within 15 days; if they fail to do so within this timeframe, the application is considered withdrawn. The applicants do not receive any support with transportation.³³

Not only this, but reports have exposed the arbitrary tendencies of the officers at the PDMM offices, who often refuse to register applicants based on discriminatory reasons, such as country of origin, with the exception of particularly vulnerable cases. Afghan nationals are particularly affected by this practice. Thus, although according

³⁰ Council of Europe [10 August 2016], *Report of the fact-finding mission to Turkey*, Available at: https://www.asylumineurope.org/sites/default/files/resources/sg_inf201629_srsg_migration_refugees_fact-finding_mission_final_e.pdf [Accessed on 3/3/2020], p 8.

³¹ Zeynep Kivilcim [2016], *Lesbian, gay, bisexual and transsexual (LGBT) Syrian refugees in Turkey*, p 29.

³² Supra note 19, p 32.

³³ Supra note 19, p 32.

to the law non-Syrian nationals are eligible for international protection, in practice even the application is extremely difficult to access. At the same time, several concerns have been raised regarding the assessment of vulnerabilities, statements and evidence, and availability of interpreters, including by Administrative Courts in Turkey.³⁴

Finally, regarding the access to the registration for international protection during detention, detainees have reported that they had not been given information about their rights and guarantees, they did not have access to UNHCR for the registration for international protection or access to a lawyer during the time of the detention.³⁵

3.2. Living conditions: access to healthcare, accommodation and other services

Applicants for international protection and persons with status are generally required to arrange their own accommodation, without any financial assistance from the Turkish authorities.³⁶ In February 2020, there were 3,587,266 beneficiaries of temporary protection registered with the Turkish authorities, but only less than 2% were accommodated in temporary accommodation centers. As a consequence of the lack of transitional support, many applicants become homeless or forced into inhumane living conditions. This issue is particularly pertinent given that there is currently only one remaining Reception and Accommodation Centre open in Yozgat with just 100 places.³⁷ Regarding the access to healthcare under Turkey's General Health Insurance, it is provided only to applicants for international protection for a period of one year after the registration (Article 89(3)(a) of the Law on Foreigners and International Protection since 2019), and it also ceases after a first negative decision.³⁸

In February 2020, there were 3,587,266 beneficiaries of temporary protection registered with the Turkish authorities, but only less than 2% were accommodated in temporary accommodation centers. As a consequence, many face poor living conditions and incidents of discrimination.³⁹

3.3. Detention

For the detention of asylum seekers and beneficiaries of international protection to be considered lawful, it must be specifically prescribed by law, and it

³⁴ Supra note 19, p 15.

³⁵ Supra note 19, p. 10

³⁶ Supra note 19, p 16.

³⁷ Supra note 19, p 16.

³⁸ Supra note 19, p 16.

³⁹ Supra note 19, p 18

should be deemed necessary and proportionate to a legitimate aim. According to the Turkish law, non-Syrian nationals can be administratively detained in some circumstances, namely during the asylum claim assessment and while waiting for deportation.⁴⁰ For detention to not be considered arbitrary, it is also essential that the person deprived of liberty is informed of the reasons for the detention. However, reports have shown that in most cases, third-country nationals are not informed of the reasons for their detention.⁴¹

In December of 2015, shortly before the signing of the EU-Turkey Statement, Amnesty International published a report denouncing severe human rights violations in Turkey regarding detention conditions and deportations.⁴² According to this report, some of the detainees reported severe ill-treatment.

Due to the amendments introduced in 2016 to the Law on Foreigners and International Protection, international protection applicants and beneficiaries of international and protection can effectively be deported to their countries of origin under vague and indefinite grounds, which jeopardize the life and safety of applicants and beneficiaries.⁴³ For example, Article 54(2) establishes that a deportation decision can be issued at any time during the procedures due to: (i) suspicions of being leaders, members or supporters of a terrorist organization or a benefit-oriented criminal group, (ii) suspicions of being threat to public order or health, and, (iii) suspicions of being associated with terrorist organizations as defined by international institutions and organizations.⁴⁴

3.4. Deportations

In 2018, the Turkish authorities verified an increase in the number of arrivals of Afghan nationals at the land border with Iran; the highest number since such statistics have been recorded.⁴⁵ Correspondingly, the number of restrictive measures, arbitrary detentions and deportations have also risen accordingly.⁴⁶ This was

⁴⁰ Amnesty International [December 2015], *Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, Available at: <https://www.amnesty.org/download/Documents/EUR4430222015ENGLISH.pdf> [Accessed on 10/3/2021], p 3-5.

⁴¹ Supra note 46, p 3-5.

⁴² Supra note 46, p 6.

⁴³ Supra note 19, p 26; Amnesty International [22 September 2017], *Refugees at Heightened Risk of Refoulement under Turkey's State of Emergency*, Available at: <https://www.amnesty.org/en/documents/eur44/7157/2017/en/> [Accessed on 8/3/2021]; United States Department of State [3 March 2017], *2016 Country Reports on Human Rights Practices - Turkey*, Available at: <https://www.refworld.org/docid/58ec89b3a.html> [Accessed on 8/3/2021]; Margarite Zoetewij [9 May 2018], *The State of Emergency, Non-Refoulement and the Turkish Constitutional Court, Verfassungsblog on matters constitutional*, Available at: <https://verfassungsblog.de/the-state-of-emergency-non-refoulement-and-the-turkish-constitutional-court/> [Accessed on 8/3/2021].

⁴⁴ *Law on Foreigners and International Protection*. was amended in 2016 by e Article 36 of the Emergency Decree 676. Such a rule was consolidated in 2018 by Law No. 7070.

⁴⁵ Supra note 19, p 25.

⁴⁶ Supra note 19, p 25.

especially pronounced in the case of single Afghan men, after they had been administratively detained. This is particularly egregious given that, after the deportation decision, that person cannot apply for international protection.⁴⁷

On a different note, the Turkish authorities reported that over 315,000 Syrian nationals voluntarily returned to Syria. However, many Syrian nationals supported by several NGO reports, argued that they were intimidated, threatened and beaten to sign the voluntary return request.⁴⁸ Additionally, a group of lawyers in Antaya reported a significant increase (20-30%) in litigation and deportations after July 2019.⁴⁹ After July 2019, the number of Syrian nationals who were not registered and were being detained also increased.⁵⁰

At last, Turkey pushed for the creation of a demilitarized 'safe zone' through an incursion into North-eastern Syria in October 2019. According to Amnesty International, the 'safe zone' policy needs to be comprehended in the context of the Turkish government's aim to relocate the 3.6 million Syrian nationals there, or at least a part of them.⁵¹

There have clearly been positive developments in the Turkish domestic legal framework in line with the international standards of international protection. That said, as a result of the maintenance of the geographical limitation, the arbitrary discretion applied in practice by the PDMM offices in the registration of international and temporary protection applications, the reported practice of arbitrary detention and deportations, and lack of access to housing and medical care, it cannot be concluded that Turkey is a safe third

⁴⁷ Supra note 19, p 25. "In a recent television appearance, the Turkish Interior Minister, Suleyman Soyly, said that 15,000 Afghans have been sent back home from Turkey [...], there is no doubt that in April and May of 2018, thousands of Afghan migrants were sent back on charter flights from Turkey to Kabul. This is the Turkish government's response after a 400 per cent increase in arrivals of Afghan migrants to Turkey during the first quarter of 2018." Afghan Analysts Network [21 June 2018], *Mass Deportations of Afghans from Turkey: Thousands of migrants sent back in a deportation drive*, Available at: <https://www.afghanistan-analysts.org/en/reports/migration/mass-deportations-of-afghans-from-turkey/> [Accessed on 8/3/2021].

⁴⁸ Supra note 19, p 123 and 124.

⁴⁹ Supra note 19, p 14, 123 and 124. Refugee Rights Turkey [2018 update], eds ECRE, *Country Report: Turkey*, Available at: https://asylumineurope.org/wp-content/uploads/2019/04/report-download_aida_tr_2018update.pdf [Accessed on 3/3/2021].

⁵⁰ Supra note 19, p 14, 123 and 124. ECRE [30 August 2019], *Turkey: Mass Detention Following Istanbul Push for Return of Refugees to "Satellite Cities"*, Available at: <https://www.ecre.org/turkey-mass-detention-following-istanbul-push-for-return-of-refugees-to-satellite-cities/> [Accessed on 3/3/2021]. Shawn Carrié and Asmaa Al-Omar [23 August 2019], *The Guardian, 'It's not legal': UN stands by as Turkey departs vulnerable Syrians*, Available at: <https://www.theguardian.com/global-development/2019/aug/23/its-not-legal-un-stands-by-as-turkey-deports-vulnerable-syrians> [Accessed on 3/3/2021].

⁵¹ Amnesty International [2019], *SENT TO A WAR ZONE: TURKEY'S ILLEGAL DEPORTATIONS OF SYRIAN REFUGEES*, Available at: <https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf> [Accessed on 8/3/2021] p 6.

country according to the standards laid down in Articles 35 and 38 of the Asylum Procedure Directive.

III. IMPLICATIONS OF THE EU-TURKEY STATEMENT ON THE EASTERN AEGEAN ISLANDS

As discussed above, the EU-Turkey Statement was presented by the Member States and European institutions as an ‘extraordinary’ and ‘emergency’ measure to ‘end the human suffering and restore public order’.⁵² The experience of the last five years has shown, however, that it set in motion the implementation of unsustainable, ineffective and illegal policies, laws and practices.

1. *Suspension of the right to apply for asylum*

In response to the lack of European support to the creation of a “safe zone” in the North-West of Syria launched in October 2019, the Turkish authorities “opened” the borders and supported the crossing of thousands of persons to Greece, both by sea and land. The increased number of arrivals led to the increase of violence against asylum seekers, refugees, humanitarian workers and the locals that supported refugees. On 2 March 2020, the Greek Government announced the suspension of the right to request asylum in Greece for one month, in open violation to national and international law.⁵³ More than 2.000 persons who had just arrived in the first days of March were held in unsanitary conditions on the islands and then transferred to two facilities on the mainland, Malakassa and Serres.⁵⁴

⁵² European Council [18 March 2016], *EU-Turkey statement, 18 March 2016*, Press release No 144/16, Available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> [Accessed on 11/3/2021]

⁵³ The Guardian [1 March 2020], *Clashes as thousands gather at Turkish border to enter Greece*, Available at: <https://www.theguardian.com/world/2020/mar/01/thousands-gather-at-turkish-border-to-cross-into-greece> [Accessed on 12/3/2021]; The Guardian [2 March 2020], *‘Just run’: on the Turkey-Greece border as refugees try to break through*, Available at: <https://www.theguardian.com/world/2020/mar/02/just-run-on-the-turkey-greece-border-as-refugees-try-to-break-through> [Accessed on 12/3/2021]; The Guardian [2 March 2020], *Child dies off Lesbos in first fatality since Turkey opened border*, Available at: <https://www.theguardian.com/world/2020/mar/02/child-dies-as-boat-carrying-migrants-capsizes-off-lesbos> [Accessed on 12/3/2021]; The Guardian [2 March 2020], *Erdogan puts EU’s failure to agree a common migration policy in spotlight*, Available at: <https://www.theguardian.com/world/2020/mar/02/four-years-after-turkey-deal-eu-no-closer-to-new-asylum-system> [Accessed on: 12/3/2021]; The Guardian [12 March 2020], *Greece warned by EU it must uphold the right to asylum*, Available at: <https://www.theguardian.com/world/2020/mar/12/greece-warned-by-eu-it-must-uphold-the-right-to-asylum> [Accessed on 12/3/2021]; UNHCR [2 March 2020], UNHCR deplores attacks against humanitarian on Greek islands, appeals for calm, Available at: <https://www.unhcr.org/cy/2020/03/02/unhcr-deplores-attacks-against-humanitarians-on-greek-islands-appeals-for-calm/> [Accessed on 12/3/2021].

⁵⁴ Human Rights Watch [5 June 2020], *Greece Restarts Suspended Asylum Procedure*, Available at: <https://www.hrw.org/news/2020/06/05/greece-restarts-suspended-asylum-procedure> [Accessed on 16/3/2021].

2. Geographical Restriction and reception conditions

One of the policies implemented as a direct consequence of the EU-Turkey statement in the context of the Greek hotspots is the imposition of a geographical restriction on the third-country nationals arriving to the Greek islands. Such applicants are therefore confined to the territory of the island on which they arrived.

This geographical restriction (γεωγραφικός περιορισμός) is imposed (1) by the police and by the (2) asylum authorities⁵⁵:

1. Upon arrival, the police issue an automatic deportation/readmission order and a detention order in view of the deportation/readmission. These orders are followed by an automatic postponement of the deportation/readmission and detention decisions until the issuance of a second instance negative decision on the asylum application. In addition, the decision establishes that the third-country national is not permitted to leave the island. All decisions - automatic deportation, postponement of deportation and geographical restriction - are made without taking into consideration the desire to apply for asylum (declared upon arrival), and without an individual assessment of the merits of each case.

2. The geographical restriction is imposed automatically as soon as the third-country national lodges the asylum application before the Regional Asylum Office. However, each asylum seeker shall have an individualized decision.

According to the geographical restriction regime, every applicant for international protection is subjected to a movement restriction within the island on which they entered Greek territory. Such imposition shall be lifted by a decision of the Director of the Reception and Identification Centre for (i) unaccompanied minors, (ii) persons subject to Articles 8 to 11 of the Dublin III Regulation, after the Take Charge request has been accepted by the competent authorities of the requested Member State, (iii) persons whose applications can be considered to be well founded, and (iv) persons belonging to vulnerable groups or in need of special reception conditions, when it is not possible to provide them with appropriate support in the island.⁵⁶ In such cases, the applicants would be referred to the Regular Procedure on the mainland.

The decision to impose a geographical restriction has no effective remedy, considering that it is not credible that the asylum applicants will be able to lodge an appeal in accordance with the Code of Administrative Acts without access to legal aid.

⁵⁵ See Decision no 13411/19.6.2019 of the Minister of Migration (ΦΕΚ Β 2399/19.6.2019) and Decision no 1140/20-12-2019 of the Minister of Public Order (ΦΕΚ 4736/20-12-2019).

⁵⁶ See Article 67 of the International Protection Act; Decision no 13411/19.6.2019 of the Minister of Migration (ΦΕΚ Β 2399/19.6.2019) and Decision no 1140/20-12-2019 of the Minister of Public Order (ΦΕΚ 4736/20-12-2019).

The problems imposed by the geographical restriction, direct consequence of the EU-Turkey Statement, have led to the entrapment of thousands of people in the Aegean Greek Islands, for extensive periods of time in overcrowded camps⁵⁷ and have resulted in degrading living conditions without access to sufficient and adequate sanitary facilities, housing, or medical care. Such conditions and concerns were voiced by many national, European and international organizations.⁵⁸

Last year, residents of the Aegean islands protested in response to the announcements of the construction of closed centers for migrants and refugees.⁵⁹ On 20 November 2019, after the total destruction of Moria Refugee Camp on Lesbos, the new Greek government presented the full plan to build five closed centers on the five Aegean islands.⁶⁰ Residents of the islands and their local politicians, but also several non-governmental organizations criticized the plan.⁶¹

⁵⁷ For example, in February 2020, there were living in Moria Camp more than 18.000 people, which was built for 2.200. UNHCR [21 February 2021], *Vulnerable asylum-seekers struggle to access medical care on overcrowded Greek islands*, Available at: <https://www.unhcr.org/news/stories/2020/2/5e4fc07b4/vulnerable-asylum-seekers-struggle-access-medical-care-overcrowded-greek.html> [Accessed on 12/3/2021].

⁵⁸ See Medecins Sans Frontieres [17 September 2018], *Moria is in a state of emergency*, Available at: <https://www.msf.org/moria-state-emergency> [Accessed on 12/3/2021]; Human Rights Watch [2020], *Greece Events of 2019 - Part of the EU Charter*, Available at: <https://www.hrw.org/world-report/2020/country-chapters/greece#> [Accessed on 12/3/2021]; Greek Council for Refugees [30/11/2020], *pub AIDA, Conditions in Reception Facilities Greece*, Available at: <https://asylumineurope.org/reports/country/greece/reception-conditions/housing/conditions-reception-facilities/> [Accessed on 12/3/2021]; Greek National Commission for Human Rights [6 September 2019], *Announcement The GNCHR on the unsettling situation in the Eastern Aegean islands and the recent asylum developments*, Available at: http://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR%20Announcement%20on%20Asylum%20Developments.pdf [Accessed on 12/3/2021]; Commissioner for Human Rights of the Council of Europe [31/10/2019], *Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities*, Available at: <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities> [Accessed on 12/3/2021]; Refugee Support Aegean [18 September 2020], *Refugees on the Aegean islands: At the mercy of the pandemic*, Available at: <https://rsaegaeon.org/en/refugees-on-the-aegean-islands-at-the-mercy-of-the-pandemic/> [Accessed on 12/3/2021]; Refugee Support Aegean [21 April 2020], *Evacuation of overcrowded island camps a legal imperative*, Available at: <https://rsaegaeon.org/en/evacuation-of-overcrowded-island-camps-a-legal-imperative/> [Accessed on 12/3/2020].

⁵⁹ efsyn [9 July 2019], *Σχεδιάζουν κλειστά κέντρα κράτησης*, Available at: https://www.efsyn.gr/ellada/dikaionomata/203013_shediazoyn-kleista-kentra-kratisis [Accessed on 12/3/2021]; Skai [9 November 2019], *Συγκέντρωση στη Λέρο ενάντια στη μεταφορά μεταναστών – Πάνε τελικά στην Κω*, Available on: <https://www.skai.gr/news/greece/sygentrosi-sti-lero-enantia-sti-metafora-metanaston-pane-telika-stin-ko> [Accessed on 12/3/2021]; Greek Reporter [1 November 2019], *Greek Islanders Threaten to Block Migrant Ship From Docking*, Available at: <https://greekreporter.com/2019/11/01/greek-islanders-threaten-to-block-migrant-ship-from-docking/> [Accessed on 12/3/2021]; Greek Reporter [2 November 2019], *Kos Residents Prevent 75 Migrants from Disembarking on Island*, Available at: <https://greekreporter.com/2019/11/02/kos-residents-prevent-75-migrants-from-disembarking-on-island/> [Accessed on 12/3/2021]; Infomigrants [4 November 2019], *Anti-migrant protests in northern Greece*, Available at: <https://www.infomigrants.net/en/post/20582/anti-migrant-protests-in-northern-greece> [Accessed on 12/3/2021].

⁶⁰ Keep talking Greece, [21 November 2019], *Will Greece set up pre-departure centers on uninhabited islands?*, Available at: <https://www.keeptalkinggreece.com/2019/11/21/greece-migrants-centers-uninhabited-islands-levitha/> [Accessed on 12/1/2021].

⁶¹ Keep Talking Greece [21 November 2019], *Samos, Chios and Leros up in arms over pre-departure centers capacity*, Available at: <https://www.keeptalkinggreece.com/2019/11/21/samos-chios-leros-oppose->

After the fire that burnt Moria to the ground, the Commissioner for Home Affairs, Ylva Johansson, affirmed that “conditions in Moria, both before and after the fire, were unacceptable. Men, women and children living in overcrowded camps with poor sanitation and little access to health care. [...] It is not good enough to say never again, we need action and all Member States must play their part.”. The President of the Commission, Ursula von der Leyen, also stated that “Moria is a stark reminder of the need to find sustainable solutions on migration”. Notwithstanding the strength of these statements and the promise of establishing a taskforce to improve the conditions for asylum seekers in Lesbos, painfully little has changed. Besides the reduction of the number of asylum seekers residing on the islands (which is strongly related to the decrease in the number of arrivals during the COVID-19 pandemic and pushbacks)⁶², the conditions continue to be concerning.⁶³

3. Border Procedure

The Border Procedure is another policy arising from the EU-Turkey statement. Every asylum seeker arriving to the Greek islands is subjected to the Border Procedure, with the exception of unaccompanied children whose asylum application will be examined under the Regular Procedure (Article 90(4) of the Law No 4636/2019, also

[predeparture-centers/](#) [Accessed on 12/3/2021]; Keep Talking Greece, Mayors of 5 Aegean Islands Jointly reject “Pre-departure Migrants Centers”, Available at: <https://www.keeptalkinggreece.com/2019/11/28/mayors-aegean-islands-reject-mitsotakis-plans/> [Accessed on 12/3/2021]; The Guardian [26 February 2020], Greeks clash again with riot police over new migrant camps, Available at: <https://www.theguardian.com/world/2020/feb/26/greeks-clash-again-with-riot-police-over-new-migrant-camps> [Accessed on 2/3/2021].

⁶² “By the end of 2019, more than 38,000 asylum seekers were being forced to live in severely challenging conditions in the ‘hotspot’ island camps, which at the time had a nominal capacity of 6,178 places.⁸¹ Yet even in 2020, amid a large reduction in sea arrivals (9,687 by the end of 2020, as opposed to 59,726 by end of 2019)⁸² and a welcome increase in transfers to the mainland (33,617 in 2020 as opposed to 21,504 in 2019),⁸³ conditions remained dire. By year’s end, 17,005 asylum seekers and refugees remained on the Eastern Aegean islands, the majority of whom (14,265) were still living in hotspot camps.” Oxfam & GCR [February 2021], *Tipping the Scales The role of responsibility-and solidarity-sharing in the situation on the Greek islands*, Available at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621158/bp-responsibility-sharing-greece-asylum-150221-en.pdf;jsessionid=2CD726F3CBF6241B10972971A74EAC18?sequence=1> [Accessed on 13/3/2021], p 14.

⁶³ RSA [1 December 2020], *Moria 2.0: Trapped refugees at the mercy of winter*, Available at: <https://rsaegrean.org/en/moria-2-0-trapped-refugees-at-the-mercy-of-winter/> [Accessed on 13/3/2021]; Oxfam & GCR [February 2021], *Tipping the Scales The role of responsibility-and solidarity-sharing in the situation on the Greek islands*, Available at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621158/bp-responsibility-sharing-greece-asylum-150221-en.pdf;jsessionid=2CD726F3CBF6241B10972971A74EAC18?sequence=1> [Accessed on 13/3/2021], p 14; Oxfam & GCR [15 February 2021], *Lesbos Bulletin Update on the EU response in Lesbos, by the Greek Council for Refugees & Oxfam*, Available at: <https://oxfam.app.box.com/v/FebruaryLesbosBulletin> [Accessed on 13/3/2021]; Human Rights Watch [17 February 2021], *Greece: Government Downplays Lead Risk at Migrant Camp, Results Highlight Urgent Need for Further Testing, Safety Measures*, Available at: <https://www.hrw.org/news/2021/02/17/greece-government-downplays-lead-risk-migrant-camp> [Accessed on 13/3/2021].

called “International Protection Act” or IPA).⁶⁴ This procedure is characterised by accelerated deadlines (Article 90(2) IPA), aiming to quickly identify those who are “asylum seekers” from those who are migrants in an “irregular situation”. The reasoning behind this accelerated procedure is that it would facilitate a faster return to Turkey or to the countries of origin.

The aforementioned expedited deadlines have not only been very difficult to comply with given the high numbers of arrivals between 2016 and 2020, but have also contributed to the obstacles in accessing information and legal aid. Obtaining legal aid is crucial for applicants, and directly impacts the likelihood of obtaining a positive outcome in any given asylum application.

There are further implications specifically for Syrian nationals arriving on the Greek islands. By virtue of the EU-Turkey statement and the assumption that Turkey is a safe third country, Syrian nationals are subjected to an accelerated procedure to assess the admissibility of their application before they are able to have the merits of their asylum claim considered (Article 83(9) IPA). This assessment focuses on events that occurred in third countries to determine if that third country is a safe place for the third-country national. If this is found to be the case, the applicant shall be returned to that country without an assessment of their claim for asylum, and notwithstanding any particular vulnerability they may have. Turkey is considered a safe country for Syrian nationals and consequently, their asylum application is only considered in terms of admissibility on the Greek Islands.

In March 2020, the Turkish authorities suspended returns due to the Covid-19 pandemic. Until now, the readmissions have not resumed, putting thousands of Syrian nationals in a legal limbo; they have a readmission decision based on the rejection of their asylum claim as inadmissible, but they cannot return to Turkey. They are also in an irregular situation in Greece, and the financial support they are provided with in Greece ends after a second instance rejection.⁶⁵ In January 2021, the Greek Ministry for Migration and Asylum requested that Turkey readmit 1450 asylum seekers, of which 955 reside on the Aegean Islands.⁶⁶ Turkey immediately refused to accept the returns.⁶⁷ Nevertheless, at the end of January 2021, Turkey accepted to readmit the 1450 people after a meeting between European Commission Vice President Margaritis

⁶⁴ Instead of the compulsory six months to examine an application (Article 83(3) of the Law No 4636/2019), the authorities shall examine within 28 days (Article 90(2) of the Law No 4636/2019).

⁶⁵ European Commission [6 October 2020], Turkey 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf [Accessed on 13/3/2021], p 48.

⁶⁶ euobserver [19 January 2021], *Turkey snubs Greece on migrant returnees*, Available at: <https://euobserver.com/migration/150640> [Accessed on 14/3/2021].

⁶⁷ Supra note 72

Schoinas and the Turkish Foreign Minister Mevlüt Çavuşoğlu.⁶⁸ The readmissions have still not taken place.

IV. FINAL REMARKS

The EU-Turkey Statement has been in force for five years now, resulting in inhumane and degrading conditions for asylum seekers while they wait for a decision on their asylum applications. This has led to the confoundment of a humanitarian crisis on European territory that has already been ongoing for 5 years. Instead of protecting those in need of international protection, the European Union and its Member States are confining them to dreadful conditions and procedures that, due to the unacceptably short timeframes, restrict their opportunities to access information and legal assistance.

The conditions in the Greek hotspots put the lives of asylum seekers in danger, inflicting further trauma on those who seek Europe's protection against the torture, abuse, persecution and violence they escaped from and experienced both in their countries of origin and during their journeys.

The future should not see Europe embracing and supporting a deal that has failed, but implementing an asylum framework that is based upon the protection of people in need of asylum and on solidarity between Member States.



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⁶⁸ stonisi [23 January 2021], *Turkey says "yes" to immigrant returns*, Available at: <https://www.stonisi.gr/post/14486/nai-stis-epistrofes-metanastwn-leei-h-toyrkia> [14/3/2021].