



# Games of Responsibility

*The Main Challenges that Asylum Seekers Face in Greece*

Radboud Universiteit



  
**VluchtelingenWerk  
Nederland**

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## Colophon

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# Preface

*Prof. dr. Ashley Terlouw*

At the moment of writing this preface to the report of Giota Theodoropoulou on the Greek asylum procedure, a record number of 75.000 migrants is staying in Greece. The reception centres are overcrowded, thousands of families with minor children are living in the streets or in self-built tents. It is clear that Greece is not able to fulfil its obligations under the Common European Asylum System and the EU Charter, the Refugee Convention and the European Convention of Human Rights. Asylum seekers in Greece are staying there under inhuman and degrading circumstances. This leads to the question whether this is solely the responsibility of Greece or if an obligation rests on the other EU Member States as well.

The situation is at least partly caused by EU Member States that in March 2016 closed a deal with Turkey in order to end irregular migration from Turkey to North-West Europe via the so-called Balkan route. According to this deal Turkey would take back migrants that had entered Greece in an irregular manner. In exchange for that Turkey would receive financial support for the reception of refugees, the visa requirements for Turkish citizens would be abolished and the accession negotiations between Turkey and the EU would be speeded up. Furthermore, a so-called one to one exchange was agreed upon. For each Syrian that would be returned from the Greek Islands to Turkey, another Syrian would be brought to the EU by Turkey. The legal status of this deal is unclear. According to the Court of Justice of the EU it is not an EU-agreement but an agreement of the Member States with Turkey, meaning that EU law is not applicable.

Greece is according to EU-law, especially Directive 2013/32/EU (on Asylum Procedures), obliged to process every asylum request, also requests from asylum seekers who travelled to Greece via Turkey. The Turkey deal is however based on the presumption that Turkey is a safe third country. Article 33, par. 2c Directive 2013/32/EU allows Member States to return asylum seekers to a safe third country without dealing with their asylum claims on the content. This is also implemented in Greek law. Consequently many asylum applications from asylum seekers who travelled via Turkey were declared inadmissible.

However, is Turkey really a safe third country and does it fulfil the requirements of Article 38 Directive 2013/32/EU? It is known that Turkey has returned many Syrian asylum seekers to Syria, without offering them the possibility to lodge an asylum request. Since the failed coup d'état the human rights situation in Turkey has deteriorated. Freedom of speech has been restricted and torture, cruel, inhuman and degrading treatment and punishment on a large scale were reported.

Moreover, Turkey would insufficiently protect particular social group like Alevites and Christians against discrimination and violence. Finally, Turkey has made a reservation to the Refugee Convention. Only people of European origin can be recognized as refugees by Turkey, meaning that for example Syrians, Afghans and Iranians cannot be recognized as such. Although Turkey offers some alternative temporary protection for those groups, this cannot be seen as protection as required by the Refugee Convention.

This report is, however, not about the situation in Turkey but about the situation for asylum seekers in Greece. Giota Theodoropoulou has researched both Greek and EU law and whether the situation of asylum seekers in Greece is in compliance with these legal requirements. After that she has interviewed many actors involved, both on EU, Greek and NGO level.

Her research shows that the Greek asylum procedure and reception are failing. In fact there is not one Greek asylum procedure but there are two. A fast-track-border procedure on the islands Lesbos, Kos, Leros, Samos, Chios and Rhodes (for all not vulnerable asylum seekers) and the 'normal' procedure on Evros and the Greek mainland. Lack of available legal aid is a problem for both types of procedures. The involvement of EASO in the Greek asylum procedure is questioned, among others by the European

Ombudsman, who on 5 July 2018 expressed serious concerns about 'the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted'. Detention of asylum seekers takes place based on their nationality and there is insufficient attention for the position of vulnerable groups, including children.

The research also gives a picture of failing responsibilities and lack of solidarity with Greece and with the asylum seekers fixed there. Greece is not able to fulfil its obligations under national European and international law. The EU is failing to help Greece and to take responsibility for resettlement as was promised, Turkey cannot really be trusted with asylum seekers, and NGO's, who as a consequence are burdened with de facto responsibility, can impossible sufficiently deal with the problems they are faced with.

I hope this report makes the reader aware of the obligations of the EU and of the importance that these obligations are more than just the law in the books and will result in law in action, especially where it concerns asylum seekers in Greece. I also hope that every actor involved will feel responsible to end the inhuman and degrading situation these asylum seekers find themselves in for too many years already.

# 1. Executive Summary

The aim of this research was to identify the main challenges that asylum seekers currently face in Greece, to provide suggestions for solutions and to indicate who is responsible for the implementation of these solutions. The research has a qualitative character and is based on legal and empirical data. The empirical research exists of interviews with selected professionals representing Greece, the EU and other Member States, as MEPs, representatives of the Greek Ministry of Migration, the First Reception Service and the Asylum Appeals Committees, UNHCR and NGOs.

On March 2016, the EU-Turkey Statement foresaw the return from Greece to Turkey of all newly arriving migrants. In the same year, Greece adopted a new law, Law 4375/2016, transposing the EU Asylum Procedures Directive. This law made it possible to restrict the geographical movement of asylum seekers within Greek territory and created a special asylum procedure, the 'fast track borders procedure'.

The newly created Asylum Service decided to oblige asylum seekers who arrive on the islands of Kos, Leros, Samos, Rhodos, Chios and Lesbos to remain there until a final asylum decision on their requests has been reached. The Asylum Service argued that this measure, known as 'geographical limitation', served public interest and was supposed to render the EU-Turkey Statement effective by facilitating returns.

As a result, since March 2016 thousands of migrants who arrived on the six islands of the Aegean were unable to move forward to the mainland. In 2018, another new Greek law, Law 4540/2018, entered into force, aimed at accelerating the processing of asylum claims examined under the fast track borders procedures for asylum seekers who were stuck on the islands. However, due to the large volume of asylum requests and the limited capacity of the authorities to deal with them, asylum seekers were kept in a limbo for several months and sometimes years, being subjected to harsh living conditions.

In order to render the examination more effective, EASO acquired a new role. Employees of this organisation started to participate in the examination of the asylum claims, conducting interviews at first instance, first on the islands and, as of 2018, on the mainland as well. This active involvement in a procedure that is the responsibility of the State was heavily criticised by NGOs and the academia. However, the EU Ombudsman endorsed EASO's opinion on this matter arguing that this organisation is only issuing opinions and, ultimately, it is up to the Greek officials to reach a decision on each asylum claim.

Furthermore, asylum seekers examined under the fast track borders procedure are not only geographically confined. In fact they are also disfavoured in comparison to asylum seekers who are examined under the regular procedure. This is the consequence of the fact that the Asylum Service with the help of EASO tends to apply the 'safe third country' concept described in the EU Asylum Procedures Directive only in the border procedures. As a result, asylum seekers examined on the six islands have to rebut the presumption that Turkey is a safe third country for them. Otherwise, their asylum claim will be considered inadmissible and they can effectively be returned to Turkey.

The implementation of this concept is not only discriminatory against asylum seekers whose claims are examined on the islands according to the fast-track borders procedures. The objection that asylum seekers can safely return to Turkey also only affects asylum seekers with specific nationalities. EASO tends to propose the safe return to Turkey of Syrians, Afghans and Iraqis whereas the Asylum Service tends to endorse

the safe third country concept only with regards to Syrians. The Greek Council of State ruled that Turkey can be considered safe regardless of the fact that Turkey does not fully implement the 1951 Geneva Convention as it made a reservation by the New York Protocol of 1967 with the Convention, which in fact means that the Convention is only considered applicable for asylum seekers fleeing from Europe

In order to avoid return to Turkey based on the safe third country concept, asylum seekers examined under the border procedures have had to prove themselves to be vulnerable. Vulnerable persons have access by law to special reception conditions. However, in the current state of affairs, vulnerability has acquired a new function. It has become the only available mechanism for asylum seekers to 'escape' the border procedures and to be examined under the regular asylum procedures, thus avoiding return to Turkey. As a matter of fact, the majority of asylum seekers examined under the border procedures have managed to be recognised as being vulnerable. Therefore, vulnerability is no longer an exceptional measure; it has become the norm. Nevertheless, due to a serious lack of doctors to assess persons claiming to be vulnerable and lack in accommodation on the mainland, vulnerable people have to remain on the islands for a very long time, living under harsh conditions.



In addition to other vulnerable persons, children are also exposed to serious risks due to their prolonged stay in the hotspots or in other designated areas that are not suitable for their well-being. Reported incidents of sexual exploitation of children have not yet resulted in any conviction, allegedly because victims are not provided with sufficient safeguards to follow through. Child abuse is a symptom of huge systemic deficiencies such as lack of adequate shelters, almost inexistent legal aid, lack of guardians, obstacles for family reunification, difficulties with age assessment, thus forcing many children to stay in the streets and do whatever it takes to survive. The Greek Ministry for Migration Policy made an official request to other Member States to accept the relocation of children, but this effort was met with resistance.

The situation is not only critical with regard to asylum seekers at the borders. Access to asylum on the mainland based on a pre-registration system through Skype has proven to be very problematic, whereas push-backs seem to continue.

The interviews in this research have provided explanations for all these challenges. They have suggested that the geographical limitation is based on Turkey's interpretation of the EU-Turkey Statement. More specifically, Turkey does not take back asylum seekers who are not on the islands. Interviewees suggested that the EU tolerates Turkey's approach. However, as it has been indicated, return based on the safe third country concept does not affect many asylum seekers. In practice, most of them are considered to be vulnerable. Some interviewees perceived vulnerability as the only means to decompress the islands. In other words, instead of it being a special protective mechanism, it has become a political tool to mitigate the severe consequences of the EU-Turkey Statement.

In addition, interviewees stressed that because it is hard to trace asylum seekers who have been rejected and because Turkey tends to find excuses so as not to take people back, the return numbers in practice are still very low. The interviewees proposed the following suggestions: the creation of legal pathways to Europe, a strict operating framework for EASO in Greece, the creation of a centralised EU asylum authority to deal with all asylum applications within the EU, better sharing of asylum seekers, better integration, strategic planning and the need to deal with the root causes of migration in a more comprehensive way. EASO insisted that they are not a decisive authority in Greece. However, the difference in perceptions between EASO seconded interviewees and the Asylum Service during the admissibility check implies the opposite. In fact the participation of EASO is beyond what is foreseen in its current mandate.

This research has shown that Greece is responsible to act to the needs of asylum seekers within its territory in a more effective way, mainly by increasing an adequate infrastructure and human resources so that the status of asylum seekers is cleared in a timely manner, without compromising the quality of the procedures. The EU is also responsible to support national policies that do not violate EU law and EU values, especially with regard to the right to seek asylum and the prohibition of (indirect) *refoulement*. In this regard, the EU should support the abolishment of geographical limitations, the equal treatment of asylum seekers irrespective of their origin and location, a more fair distribution of asylum seekers over the Member States and ensure that Dublin Regulation is applied without unnecessary impediments. NGOs have *de facto* undertaken a large responsibility in Greece but are only responsible within their respective mandates. Moreover, their activities should not be seen as an excuse for State actors to remain passive. On the contrary, they should take more seriously the responsibilities that the Refugee Convention, the EU Charter and the CEAS obliges them to.

## 2. Summary in Dutch (Samenvatting)

Het doel van dit onderzoek is om enerzijds de belangrijkste uitdagingen te identificeren voor asielzoekers die zich in Griekenland bevinden, oplossingen aan te dragen voor deze uitdagingen en te bepalen wie er verantwoordelijk is voor het implementeren van deze oplossingen. Het onderzoek heeft een kwalitatief karakter en is gebaseerd op juridische en empirische data. Het empirische deel van het onderzoek bestaat uit interviews met geselecteerde professionals die Griekenland, de EU en andere lidstaten vertegenwoordigen, zoals leden van het Europees Parlement, vertegenwoordigers van het Griekse ministerie van migratie, medewerkers van de Griekse asieldienst en de beroepscomités voor asielzaken, de VN vluchtelingenorganisatie UNHCR en verschillende maatschappelijke organisaties.

Met het sluiten van de EU-Turkije overeenkomst in maart 2016 werd voorzien in de terugkeer van alle nieuw aangenomen asielzoekers naar Turkije. In hetzelfde jaar introduceerde Griekenland een nieuwe wet die voorziet in de implementatie van de Europese Procedure Richtlijn. Deze wet introduceerde een geografische beperking voor asielzoekers en een speciale asielprocedure, de versnelde grensprocedure.

De recent opgerichte asieldienst besloot om asielzoekers die via de eilanden Kos, Leros, Samos, Rhodos, Chios en Lesbos Griekenland binnenkomen te verplichten op de betreffende eilanden te blijven totdat een definitieve beslissing op hun asielverzoeken is genomen. De asieldienst stelt dat deze maatregel, bekend als de 'geografische beperking', het publiek belang dient en voorziet in de effectieve implementatie van de EU-Turkije overeenkomst door terugkeer te faciliteren.

Als gevolg hiervan konden duizenden migranten die na maart 2016 op de zes Egeïsche eilanden aankwamen niet verder reizen. In 2018 werd een andere Griekse wet geïntroduceerd met als doel om de behandeling van asielaanvragen voor asielzoekers op de betreffende eilanden, die onder de grensprocedure vallen, te versnellen. Vanwege de grote hoeveelheid asielaanvragen en de beperkte capaciteit van de autoriteiten om deze te behandelen verblijven asielzoekers echter al maanden, soms zelfs jaren, in erbarmelijke leefomstandigheden op de Griekse eilanden.

Om de behandeling van asielaanvragen effectiever te maken, kreeg het Europees Asielagentschap EASO een nieuwe rol: medewerkers van de organisatie gingen deelnemen aan de behandeling van asielaanvragen door de asielverhoren af te nemen, eerst op de eilanden, later in 2018 ook op het vasteland. Deze actieve betrokkenheid bij de nationale Griekse procedure werd zwaar bekritiseerd door maatschappelijke organisaties en academici.

De Europese ombudsman onderschreef echter het standpunt van EASO in deze kwestie dat de organisatie slechts advies uitbrengt en dat de beslissingsbevoegdheid voor iedere asielaanvraag uiteindelijk bij de Griekse autoriteiten ligt.

Daarnaast hebben asielzoekers in de snelle grensprocedure niet alleen te maken met de geografische beperking. Ze worden ook benadeeld ten opzichte van asielzoekers die onder de reguliere procedure vallen. Dit komt doordat de asieldienst met steun van het EASO het veilig derde land concept dat in de Europese procedurerichtlijn verankerd is, slechts in de grensprocedure toepast. Asielzoekers die de procedure op de zes eilanden doorlopen, moeten daarom het vermoeden dat Turkije een veilig derde land is weerleggen. Als hen dat niet lukt, wordt hun asielaanvraag niet-ontvankelijk verklaard en kunnen ze worden teruggestuurd naar Turkije.

De implementatie van dit concept is niet alleen discriminerend rationae loci, het raakt ook alleen asielzoekers met specifieke nationaliteiten; EASO is geneigd om de veilige terugkeer naar Turkije van Syriërs, Afghanen en Irakezen voor te stellen, terwijl de asieldienst dit doorgaans alleen voor Syriërs onderschrijft. De Griekse Raad van State oordeelde dat Turkije als veilig beschouwd kan worden, ongeacht de beperkte implementatie van de Geneefse Conventie van 1951 door Turkije. Turkije heeft een voorbehoud gemaakt bij het Protocol van New York van 1967 bij het verdrag met als consequentie dat het zich alleen verplicht acht het verdrag na te leven als het gaat om asielzoekers die uit Europa zijn gevlucht.

Om terugkeer naar Turkije op basis van het veilig derde land concept te vermijden, moeten asielzoekers in de grensprocedure bewijzen dat ze kwetsbaar zijn. Kwetsbare personen hebben volgens de Griekse wet toegang tot speciale opvangvoorzieningen. In de huidige situatie heeft kwetsbaarheid echter een nieuwe functie gekregen. Het is het enige beschikbare mechanisme geworden voor asielzoekers om te ontsnappen aan de grensprocedures en om in de reguliere procedure terecht te komen en om terugkeer naar Turkije te voorkomen. De meerderheid van de asielzoekers van wie de aanvragen in de grensprocedure zijn behandeld, is als kwetsbaar erkend. Daarom is kwetsbaarheid niet langer een uitzonderlijke maatregel; het is de norm geworden. Niettemin moeten kwetsbare mensen, vanwege het grote tekort aan artsen om de kwetsbaarheidstoets uit te voeren en vanwege het gebrek aan opvangplekken op het vasteland, alsnog heel lang op de eilanden blijven.

Naast andere kwetsbare personen worden ook kinderen blootgesteld aan ernstige risico's als gevolg van hun langdurige verblijf in de hotspots of in andere aangewezen gebieden die niet geschikt zijn voor hun welzijn. Gemelde incidenten van seksuele uitbuiting van kinderen hebben nog niet geleid tot enige veroordeling, naar verluidt omdat er onvoldoende waarborgen zijn voor slachtoffers om daadwerkelijk een procedure te starten. Misbruik van kinderen is een symptoom van grote systematische tekortkomingen, zoals gebrek aan opvang, gebrek aan rechtsbijstand, gebrek aan voogden, obstakels voor gezinshereniging en problemen bij de leeftijdsanalyse. Hierdoor zijn veel kinderen gedwongen om op straat te leven en alles te doen wat nodig is om te overleven. Het Griekse Ministerie van Migratiebeleid deed een officieel verzoek aan andere lidstaten om de herplaatsing van kinderen te accepteren, maar dit stuitte op weerstand.

De situatie is niet alleen ernstig wat betreft asielzoekers in de lidstaten aan de grenzen. Toegang tot asiel op het vasteland gebaseerd op een pre-registratiesysteem via Skype blijkt zeer problematisch, terwijl *pushbacks* lijken te blijven bestaan.

De interviews in dit onderzoek hebben verklaringen gegeven voor al deze uitdagingen. Zij hebben gesuggereerd dat de geografische beperking gebaseerd is op de Turkse interpretatie van de EU-Turkije overeenkomst. Meer specifiek, Turkije neemt alleen asielzoekers terug vanaf de eilanden. Geïnterviewden suggereerden dat de EU de aanpak van Turkije tolereert. Zoals is aangegeven, heeft terugkeer op basis van het concept van een veilig derde land echter geen gevolgen voor veel asielzoekers. In de praktijk worden de meesten als kwetsbaar beschouwd. Door sommige geïnterviewden werd kwetsbaarheid gezien als het enige middel om de druk op de eilanden te verminderen. Met andere woorden, in plaats van dat het een speciaal beschermingsmechanisme is, is het een politiek instrument geworden om de ernstige gevolgen van de EU-Turkije overeenkomst te verzachten.

Bovendien benadrukten de geïnterviewden dat de terugkeercijfers nog steeds erg laag zijn. Dit komt doordat het moeilijk is om asielzoekers te vinden wiens asielverzoek is afgewezen en omdat Turkije geneigd is excuses te vinden om mensen niet terug te nemen. Sommige geïnterviewden stelden voor om te voorzien in legale routes naar Europa, evenals een strikt operationeel kader voor EASO in Griekenland en de oprichting van een gecentraliseerde Europese asieldienst, een eerlijker verdeling van asielzoekers, betere integratie, strategische planning en een betere aanpak van de fundamentele oorzaken van migratie. EASO beklemtoonde dat het geen doorslaggevende autoriteit in Griekenland is, maar het verschil in perceptie tussen de EASO medewerkers en de Griekse medewerkers van de asieldienst impliceert het tegenovergestelde: dat de invloed van EASO verder gaat dan haar huidige mandaat.

Uit dit onderzoek blijkt dat Griekenland verantwoordelijk is om op een effectievere manier te voorzien in de behoeften van asielzoekers die zich op haar grondgebied bevinden, met name door de infrastructuur en menselijke capaciteit te versterken, zodat asielaanvragen snel worden behandeld zonder dat dit de kwaliteit van de procedures ondermijnt. De EU is ook verantwoordelijk voor het ondersteunen van nationaal beleid zodat het in lijn is met Europees recht en Europese waarden, met name met betrekking tot het recht om asiel aan te vragen en bescherming tegen *refoulement*. In dit verband dient de EU de afschaffing van de geografische beperking te bevorderen, evenals de gelijke behandeling van asielzoekers ongeacht hun herkomst en locatie, en een eerlijker verdeling van asielzoekers. Ook dient de EU ervoor te zorgen dat de Dublinverordening zonder belemmeringen wordt toegepast. NGO's hebben *de facto* een grote verantwoordelijkheid op zich genomen in Griekenland. Maar zij kunnen alleen verantwoordelijk worden gehouden binnen hun respectievelijke mandaten. Bovendien mogen hun activiteiten niet worden gebruikt als excuus voor rijksambtenaren om passief te blijven. Integendeel, zij zouden de verantwoordelijkheden waar het Vluchtelingenverdrag, het EU Grondrechtenhandvest en het GEAS hen toe verplichten, serieuzer moeten nemen.

## 3. Introduction

Greece, situated at the crossroads of Europe, Asia and Africa, has always hosted a large number of migrants. After a sharp increase of arrivals in 2015, the EU Member States made a joint declaration to facilitate the return of refugees from Greece to Turkey (hereafter the EU-Turkey Statement). Moreover, the asylum system in Greece was reformed. This reform has affected the rights of asylum seekers in Greece considerably, more concretely their ability to move freely in the territory, their access to the asylum procedure and their main procedural rights. This research addresses the main challenges that asylum seekers currently face in Greece, who is responsible to provide solutions and which solutions can be proposed.

### The Legal Reform

Due to an increase in the number of arrivals in the years 2010-2011, pressure by organisations such as UNHCR to dissociate asylum from security concerns and the EU's incitement to deal with asylum in a harmonised and comprehensive manner, there was a legal reform transferring asylum from the Ministry of Public Order and Citizens' Protection to the newly established Asylum Service.<sup>1</sup> According to Law 4375/2016,<sup>2</sup> the Asylum Service has become responsible, inter alia, for the examination of asylum claims, family reunification, cooperation with the EU and international organisations on international protection. The Asylum Service comprises the central Asylum Service located in Athens, the Regional Asylum Offices (RAO), as well as independent Asylum Units (AUs) covering emergency situations all around Greece. The creation of the Asylum Service was a major step in the reform of the asylum system in Greece, in conformity with the Commission's action plan towards a Common European Asylum System (CEAS), stating that Member States should *ensure access for those in need of protection: asylum in the EU must remain accessible*.<sup>3</sup>

Article 4 Law 4375/2016 also establishes an Appeals Authority to deal with applications for international protection at second instance, as an independent service that is part of the Ministry of Interior.

Initially, the law required that members of the Appeals Committee should have a university degree in legal, political, humanitarian or social science and experience in international protection of human rights, international law or administrative law. However, Law 4399/2016 changed the composition of the appeals committees. This reform followed the EU-Turkey Statement.

### The EU-Turkey Statement

According to this Statement, Turkey would take back irregular migrants crossing into Greek islands as from the 20th of March 2016, and for every Syrian returned to Turkey from Greek islands another Syrian would be resettled from Turkey to the EU. The EU would accelerate visa liberalisation procedures and allocate considerable funds to Turkey for the benefit of the refugee community.<sup>4</sup>

The EU-Turkey Statement was based on the assumption that Turkey is a safe country for all persons seeking international protection. The concept of safe third country is described in the recast of Directive 2013/32/EU as a reason to refuse international protection to an applicant.<sup>5</sup> The concept of safe third country was also transposed into Greek law<sup>6</sup> referring to an EU as well as a national list of safe third countries.

Furthermore, in 2013 Greece adopted a new law on asylum<sup>7</sup> in accordance with the Directive 2011/95/EU that, in some cases, is more favourable than the standards set by the Directive.<sup>8</sup>

1 Law 3907/2011 'on the establishment of an Asylum Service and a First Reception Service', transposition into Greek legislation of Directive 2008/115/EC 'on common standards and procedures in Member States for returning illegally staying third country nationals' and other provisions, *Gazette* 7/A/26-01-2011.

2 Law 4375/2016 'Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for Reception, transposition of Directive 2013/32/EU of the European Parliament and of the Council 'on common procedures for granting and withdrawing international protection (recast)' (L 180/29.6.2013), provisions on employment of beneficiaries of international protection' and other provisions, *Gazette* 51/A/3-4-2016.

3 Brussels, 17.6.2008 COM (2008) 360 final Communication from the Commission to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions policy plan on asylum an integrated approach to protection across the EU.

4 EU-Turkey Statement, 18 March 2016, press release 144/16, 18/03/2016.

5 Article 33 par. 2 c Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

6 Article 57 Law 4375/2016.

7 Presidential Decree 141/2013 'on the transposition into the Greek legislation of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (L 337) on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast)', *Gazette* 226/A/21-10-2013.

8 For instance, it provides beneficiaries of subsidiary protection with a 3-year residence permit, instead of one year foreseen in the Directive.

Since the EU-Turkey Statement obliges the Greek authorities to return to Turkey persons coming to Greece after 20 March 2016 as soon as their application for international protection is concluded, a geographical limitation of movement was imposed to migrants arriving at 6 eastern Aegean islands.<sup>9</sup> As a result, Greece has a hybrid asylum system, leading to a differential treatment of asylum seekers depending on their point of entry.

Moreover, Greece allowed the European Asylum Support Office ('hereafter EASO'), which initially provided operational and technical support, to conduct asylum interviews.<sup>10</sup> This has been heavily criticised by organisations stating that this is against the EU Regulation 439/2010, not allowing the Agency to decide on individual asylum claims.<sup>11</sup>

### Vulnerability Assessment

Furthermore, 'vulnerability' is recognised by law<sup>12</sup> as a factor that requires special treatment of the persons concerned, regarding their reception and detention conditions. The law enlists certain categories of people such as separated minors, people with special needs and mental disorders, victims of torture etc. Persons found to be vulnerable may exit the fast-track border procedures and enter the regular asylum procedure. Initially, vulnerability was also a factor that allowed asylum seekers to leave the islands despite the general geographical restriction of movement.<sup>13</sup> Vulnerability has been used by the Greek administration as an argument to support the lawfulness of the geographical limitation.<sup>14</sup>

The active role of EASO in the admissibility assessment has allegedly made it more difficult for many applicants to prove that their return to Turkey is unsafe. They are forced to prove themselves extremely vulnerable in order to have their asylum claims examined on the merits.

Although vulnerability allows some asylum seekers to leave the islands and travel to Athens, they still remain in a precarious situation. This is due to the large number of asylum seekers waiting for their case to be examined and the inability of the central Asylum Service to examine their applications in a reasonable time. Having escaped the islands, asylum seekers who are not eligible for a shelter have to cover housing and living expenses on their own.

In addition, although there is no legal provision for the profiling of asylum seekers, in practice asylum seekers with specific nationalities such as Pakistanis and Moroccans are considered to have a low asylum recognition rate and, as a result, they are often transferred to pre-removal centres soon after their arrest.

### Protection of Minors

Regarding minors, Article 10 Law 4540/2018 (incorporating Article 11 Directive 2013/33/EU into Greek law) suggests the avoidance of detention of minors and allows detention only as a last resort and for the sole reason of their safe referral to a suitable shelter. However, in practice, unaccompanied and separated children still reside in safe zones of hotspots, and many of them are homeless in Athens.

Although children have access to asylum and have the right to free legal assistance if their guardian is not a lawyer, different procedures are followed in Greece in different areas regarding age assessment.

Moreover, due to a strict interpretation of the Dublin III deadline for the submission of a transfer request to another Member State<sup>15</sup> many children are deprived of their right to get asylum in another Member State where they have family links.

### Access to Asylum

Finally, because of the large number of pending asylum cases, the registration and examination rate is still very low. Asylum seekers in Greece remain in uncertainty for very long periods.<sup>16</sup> At the same time, organisations accuse the authorities of engaging in push-backs that prevent access to international protection. Based on the above-mentioned considerations, this research will focus on the following key areas of concern regarding the challenges that persons in need of international protection face in Greece:

- The challenges that Law 4540/2018 creates for asylum seekers in Greece.
- The impact of the geographical limitation on the examination of asylum claims.
- How the 'safe third country' concept applies in the Greek asylum system.
- The impact of the vulnerability assessment in asylum procedures.
- EASO participation in the asylum procedures.
- The de facto profiling of asylum seekers based on their nationality.
- The impact of current age assessment methods and Dublin transfers to the right of children to seek asylum.
- Access to asylum in the mainland and at the borders.

### Methodology

The aim of this research is to identify the core challenges that asylum seekers face nowadays in Greece, whether this is in conformity with the CEAS, who may have responsibility for any shortcomings and to investigate which solutions are proposed by people working at organisations that protect the rights of refugees.

Part I of this research is based on desk research of the Greek legislation, Greek and EU jurisprudence, reports of international and human rights organisations and academic Articles. Part II is based on interviews with representatives of the Greek administration, parliamentarians, the EU and prominent organisations.

This research is conducted in the context of the Common European Asylum System and, more concretely, of the Recast Procedures Directive,<sup>17</sup> Directive 2011/95/EU<sup>18</sup> and Directive 2013/33/EU.<sup>19</sup> It is also based on the provisions of the 1951 Geneva Convention on the Status of Refugees.<sup>20</sup> With regard to the Greek legal context, it is based on the amended Law 4375/2016<sup>21</sup> transposing Directive 2013/32/EU and Law 4540/2018 on the transposition of the recast Directive 2013/33/EU.

For the purpose of this research, the term 'refugee' refers to a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 Directive 2011/95/EU does not apply.<sup>22</sup> The term 'asylum seeker' is synonymous to the term asylum applicant meaning a third-country national or a stateless person who has made or wants to make an application for international protection in respect of which a final decision has not yet been taken.<sup>23</sup>

The term 'minor' refers to a third-country national or stateless person below the age of 18 years.<sup>24</sup>

The term 'migrant' refers to a third country national who is not an asylum seeker or a refugee, falling out of the scope of Directive 2011/95/EU, meaning a person not granted refugee status or subsidiary protection who has not made an asylum application nor is willing to do so.

9 Article 41 Law 4375/2016 gives the authority to the Director of the Asylum Service to place restrictions to the movement of asylum seekers in Greece. See also: Decision 10464/2017 of the Director of the Asylum Service on restriction of movement of applicants for international protection, *Gazette* B/1977/07.06.2017 and Decision 8269/2018 of the Director of the Asylum Service on restriction of movement of applicants for international protection.

10 Article 86 par. 13 Law 4399/2016 mentioning that the authorities may allow the EASO staff to conduct asylum interviews. See also Article 3 Decision no. 13257/2016 describing the skills that EASO staff must have in order to participate in the asylum examination procedure.

11 ΕΣΠ, Παρατηρήσεις του ΕΣΠ πάνω στο νομοσχέδιο για τη διαδικασία εξέτασης αιτημάτων διεθνούς προστασίας, το οποίο συζητείται σήμερα στη Βουλή, see: [www.immigration.gr/2018/05/blog-post\\_15.html](http://www.immigration.gr/2018/05/blog-post_15.html).

12 Law 4540/2018 on the transposition of the Directive 2013/33/EU.

13 Article 14 par. 2 Law 4375/2016 states that the Director of the Reception and Identification Centre (RIC) may decide to transfer vulnerable people to the mainland to continue the registration and identification process.

14 Interview of the Director can be found here: [refugeeobservatory.aegean.gr/en/interview-ex-director-greek-asylum-service](http://refugeeobservatory.aegean.gr/en/interview-ex-director-greek-asylum-service)

15 Article 21 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

16 According to the statistics of the Asylum Service, 5.091 cases are pending at first instance as of 07/09/2018. Statistical Data of the Greek Asylum Service (from 7.6.2013 to 31.08.2018).



EASO is the European Asylum Support Office established for the implementation of the CEAS, to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems.<sup>25</sup> The term 'vulnerable persons' in this research refers to the categories of persons mentioned in Article 21 Directive 2013/33/EU.<sup>26</sup>

The term 'safe third country' refers to the concept described in Articles 36–39 of Directive 2013/32/EU. Finally, 'CEAS' refers to the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. This entails that the principle of *non-refoulement* will be respected, ensuring that nobody is sent back to a country where he has well-founded fear to be persecuted. It also aims at the establishment of common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Union rules leading to a common asylum procedure in the Union.<sup>27</sup>

25 Article 1 Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

26 This list includes minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

27 See par. 2–4 of the preamble Directive 2013/32/EU.

## 4. Part I: Legal framework

### Introduction

The first part of this research is mainly based on Greek legislative reforms after the EU-Turkey Statement. Before the endorsement of this Statement, asylum procedures in Greece were based on Presidential Decree 141/2013, transposing Directive 2011/95/EU<sup>28</sup> and Law 3907/2011 creating the Asylum Service and the First Reception Service in Greece. Directive 2013/32/EU had not yet been transposed into Greek legislation. The legal framework before 2016 did not foresee any restriction of movement for asylum seekers within the Greek territory. It did not contain any reference to the special treatment of vulnerable persons either. Furthermore, the safe third country concept had not been introduced. Any returns of asylum seekers to third transit countries (Turkey) were taking place according to the Protocol of Readmission signed between Greece and Turkey.<sup>29</sup>

As will be analysed further in this part, despite the fact that this Joint Statement is not officially recognised as anything more than a political declaration, it has become the source of serious changes in the treatment of asylum seekers in Greece. These changes aim at accelerating the asylum determination procedures and facilitating the returns to Turkey of these categories of asylum seekers included in the Statement.

One of the main changes was the restriction of movement of asylum seekers who enter Greece from the sea borders and arrive in islands of the Eastern Aegean Sea. As will be explained, this geographical limitation has not only affected the reception of asylum seekers. It has also created a distinct asylum examination procedure, known as 'fast track border procedure'. Under this procedure, Syrian applicants are most likely to have their claims rejected as inadmissible, because Turkey is considered to be a safe country for them, unless they prove that they are vulnerable. Moreover, nationalities that have a low recognition rate face a greater risk of detention. The EASO participation in the asylum examination procedure was meant to help speed up the process. This newly acquired role has challenged the traditional State owned responsibility to decide on asylum requests.

28 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

29 Protocol of Readmission signed between Greece and Turkey on 09/01/2001 and ratified with Law 3073/2002.

Furthermore, after the closure of the Balkan route in 2016, asylum seekers have been confined in a limbo situation in Greece. Since they are unable to leave, more and more people choose to apply for asylum. As a result, the GAS has a considerable backlog, therefore asylum examination can be considerably delayed. Access to asylum is also hampered by the alleged continuation of pushbacks at the land borders with Turkey. Finally, unaccompanied and separated children are also facing serious difficulties since many of them are homeless or remain in places of high risk. The limited reception capacity in combination with the tendency of other EU Member States to deny Dublin transfers has exposed them to exploitation.

Part I will use the CEAS as a context for analysing how the above-mentioned factors affect the rights of asylum seekers in Greece, and whether this is in respect of the relevant EU legislation.

#### I. The Challenges that Law 4540/2018 Brings to Asylum Seekers in Greece

On May 2018, Greece adopted a new law<sup>30</sup> transposing Directive 2013/33/EU and, at the same time, partially reforming the asylum procedures and the rights of asylum seekers in Greece as<sup>31</sup> they had been set in Law 4375/2016<sup>32</sup> they had been set in Law 4375/2016. The main challenges that the new law specifically brings to asylum seekers, irrespective of the geographical area where they lodge their asylum application, are listed below.

30 Law 4540/2018, Adaptation of Greek legislation to the provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on the requirements for the reception of applicants for international protection (recast, L 180/96 / 29.6.2013) and other Amendments to Law 4251/2014 (A '80) adapting Greek legislation to Directive 2014/66 / EU of 15 May 2014 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, reform of asylum procedures and other provisions, *Gazette A 91 / 22-05-2018*.

31 Law 4375/2016, 'Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for Reception, transposition of Directive 2013/32/EU of the European Parliament and of the Council 'on common procedures for granting and withdrawing international protection (recast)' (L 180/29.6.2013), provisions 'on employment of beneficiaries of international protection' and other provisions. *Gazette 51/A/3-4-2016*, amended by: Law 4399/2016, *Gazette 117/A/22-6-2016*, amended by: Law 4461/2017, *Gazette 38/A/28-3-2017*, amended by: Law 4485/2017, *Gazette 114/A/4-8-2017*.

32 This law mainly aims at reforming the reception of asylum seekers in Greece and the enjoyment of rights such as education and access to work, including the treatment of unaccompanied children and minors. Reception aspects are not examined in this research.



1. First of all, the new law provides a definition of asylum seekers that limits their scope of protection. More concretely, Article 34 of the previous Law 4375/2016 stated that an asylum seeker is a person who declares either orally or in writing to any authority at the entry points of Greece or in the mainland that he/she asks for asylum or subsidiary protection or not to be deported to a country where he/she has a fear of persecution according to the 1951 Geneva Convention; he/she is also a person that has applied for asylum in another Member State and is transferred to Greece according to the Dublin Regulation. Nevertheless, Article 2 par. b Law 4540/2018 is a mere translation of the text of Directive 2013/33/EU according to which an asylum seeker is somebody who has already submitted an asylum application while a final decision is pending. This definition, although it is in conformity with the Directive, excludes a large number of persons who did not have the opportunity to register and submit a formal asylum claim because of the delays in the registration and pre-registration procedure and excludes them from the enjoyment of the rights accorded to an asylum seeker.<sup>33</sup>
2. Article 7 Law 4540/2018 states that the Director of the Asylum Service, by means of a general decision, may place restrictions to the free movement of asylum seekers in Greece, thus assigning them to stay in a specific geographic area. This practice has already been followed before the adoption of the new law,<sup>34</sup> creating what is nowadays called 'geographical limitation'. The new law reaffirms this practice. This provision affects the examination of asylum claims in the designated geographical areas as it will be further explained in the chapter concerning the geographical limitation.
3. Article 23 par. 1 Law 4540/2018 mentions that victims of torture, rape or other serious acts of violence can only be certified by a public hospital, military hospital or by public doctors. This provision is stricter than the provision of Directive 2013/33/EU, which states 'Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment... in particular access to appropriate medical and psychological treatment and care'<sup>35</sup> without limiting this to public health institutions. Certification of torture, rape or serious acts of violence plays a crucial role in the examination of the asylum claim and the granting of international protection. Greece has ratified the UN Convention on Torture.<sup>36</sup>

Since in Greece there is no public service specialised in certifying torture, this provision makes it harder for these vulnerable groups to enjoy more favourable reception conditions<sup>37</sup> and use this vulnerability in their asylum claim.

4. Article 28 par. 20 Law 4540/2018 modifies the modalities for the delivery of appeals decisions to asylum seekers adding the possibility to upload the decision to a webpage. Directive 2013/32/EU does not describe the modalities for the delivery of a decision to the applicant or his/her counsellor, though it requires that:

*'they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).'*<sup>38</sup>

This provision does not exclude the possibility for notifying the applicant via internet. However, the language of the Directive implies that it is necessary for each applicant to be able to understand the content and the consequences of the decision, as well as the legal remedies at his/her disposal. Otherwise, the right to be informed and the right to seek asylum would be devoid of meaning. If the applicant cannot or does not know how to use the internet, he will lose the possibility to learn the decision to his asylum claim and make use of a legal remedy. By analogy, if the Directive wants to guarantee the proper information of the applicant through language, this would also require information by a means that is accessible to the applicant. The provision of the Greek law does not guarantee that the person will actually be informed of the content of this decision.<sup>39</sup>

5. Article 28 par. 5 Law 4540/2018 defines what is a final asylum decision without giving it a suspensive effect against deportation. More concretely, this Article replaces Article 34 par. e Law 4365/2017 which defined a final decision as 'a decision upon which a foreigner or stateless person is recognised as a refugee or beneficiary of subsidiary protection and that cannot be challenged by the appeal of article 64' meaning an appeal at the Council of State. With the new law, a final decision is 'a decision upon which a foreigner or stateless person is recognised or not as a refugee or beneficiary of subsidiary protection, issued after the appeal of second instance, or a decision that cannot be appealed because the deadline has expired. Against a final decision there can only be an appeal at the Council of State.'

<sup>37</sup> Article 20 Law 4540/2018.

<sup>38</sup> Article 12 par.1 e Directive 2013/32/EU.

<sup>39</sup> M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, par. 290 on the prerequisites for a legal remedy.

This means that a decision by the appeals committees of second instance (or having lost the deadline to submit such an appeal) is currently a final decision allowing the deportation of the applicant, something that was formerly possible after the decision of the Council of State. It is doubtful if this reform is in conformity with the jurisprudence of the European Court of Human Rights (ECtHR).<sup>40</sup>

6. Law 4540/2018 reduces deadlines that are of utmost importance to asylum seekers, thus limiting their right to an effective protection. For instance, if the first instance decision is not delivered to the applicant for any reason, he used to have a 60 days deadline to file an appeal counting from the expiry of his asylum ID card or, if this expires before the issuing of the decision, from the date of the decision. With the new law, he only has 30 days. Moreover, the deadline for delivering a first instance asylum decision in the fast-track procedure is now 30 days (instead of 3 months).

The new provisions provide for an acceleration of the examination procedures at the borders that is sometimes beneficial for asylum seekers because from the administration's point of view it speeds up the clarification of his/her status. In other cases, due to time pressure, it makes it very difficult for the asylum seeker to prepare and claim his/her rights.

According to Directive 2013/32/EU, the authorities should reach a decision at first instance within 4 weeks.<sup>41</sup> The legal reform in Greece followed this guideline. However, the same Article of the Directive obliges the authorities to allow the applicant to enter mainland if such a deadline has not been respected. In Greece, applicants remain in the islands where a geographical limitation applies much longer than this period. In addition, taking into account the lack of capacity of the relevant examining authorities, there are doubts as to the fair and efficient examination of asylum claims.<sup>42</sup>

7. Law 4540/2018 allows the Asylum Service, in cases of emergency to use Greek speaking EASO staff in the registration of asylum seekers and 'in any other administrative act that has to do with the examination of requests of international protection'.<sup>43</sup> This means that EASO staff cannot only participate in the examination of asylum claims at the fast track border procedures, as it happened until now, but they can also participate in the regular asylum procedures anywhere in the country.

<sup>40</sup> Ibid.

<sup>41</sup> Article 43 par. 2 Directive 2013/32/EU.

<sup>42</sup> See also the reaction of the Commissioner of the Council of Europe towards France for reducing the deadline for submitting asylum applications to 90 days. Given the many obstacles faced by asylum seekers when they arrive in the country, this deadline may be difficult to comply with. He also considers that the processing under an accelerated procedure of asylum applications filed after the expiry of the proposed deadline will not take into account the vulnerability of asylum seekers and the complexity of their cases. Letter: The Commissioner is concerned by certain provisions of the draft law on immigration and asylum in France, 12/03/2018.

<sup>43</sup> Article 28 par. 7 Law 4540/2018.

This provision, as it will be further explained in chapter V, is not foreseen in the Statute of the organisation<sup>44</sup> and challenges State sovereignty in respect to the assessment of individual asylum applications.

8. Law 4540/2018 lowers the procedural standards for the selection of the Director of the Asylum Service. More concretely, according to the previous law, he was selected by a tripartite committee comprising a representative of the Greek Ombudsman, a representative of the Greek Supreme Council for Civil Personnel Selection (ASEP) and one University Professor, all of them proposed by UNHCR. With the new law, he/she is selected directly by the Minister of Migration. Taking into account the importance of this authority for the asylum policies in Greece, this legal reform casts doubts on the transparency of the selection procedure.

Although the afore-mentioned concerns have also been raised before the adoption of this law by the National Commission for Human Rights,<sup>45</sup> they have not been taken into account by the legislator, thus compromising the protection of asylum seekers in Greece. A detailed analysis of the main current challenges that asylum seekers face in Greece follows in the next chapters of Part I.

## II. The Impact of Geographical Limitatio on the Examination of Asylum Claims

### The Geographical Limitation in the Framework of the EU-Turkey Statement

On March 2016, the Council of the European Union announced that

*'All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey... All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order.'*

<sup>44</sup> Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, Article 2(6) states: 'The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection'.

<sup>45</sup> ΕΕΔΑ, Παρατηρήσεις στο σχέδιο νόμου του Υπουργείου Μεταναστευτικής Πολιτικής 'Προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/33/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 26ης Ιουνίου 2013, σχετικά με τις απαιτήσεις για την υποδοχή των αιτούντων διεθνή προστασία (αναδιατύπωση, L 180/96/29.6.2013) και άλλες διατάξεις – Τροποποίηση του ν. 4251/2014 (Α' 80) για την προσαρμογή της ελληνικής νομοθεσίας στην Οδηγία 2014/66/ΕΕ της 15ης Μαΐου 2014 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου σχετικά με τις προϋποθέσεις εισόδου και διαμονής υπηκόων τρίτων χωρών στο πλαίσιο ενδοεταίρικης μετάθεσης – Τροποποίηση διαδικασιών ασύλου και άλλες διατάξεις', 07/05/2018.

*Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Directive 2013/32/EU, in cooperation with UNHCR.*<sup>46</sup>

In this context, an Afghan who was going to be returned to Turkey brought actions to the Court of Justice of the European Union (CJEU) claiming that this so-called Statement is in fact an international agreement. Although some scholars support this opinion,<sup>47</sup> the Court declared that it lacks jurisdiction to hear and determine the actions because *'neither the European Council nor any other institution of the EU decided to conclude an agreement with the Turkish Government on the subject of the migration crisis'*.<sup>48</sup> In this way, the CJEU denied any EU legal responsibility regarding the implementation of this measure.

Despite the fact that this Statement has direct consequences for the legal status and treatment of asylum seekers who come from Turkey to Europe, it was officially acknowledged by the EU that it is only a political statement between the Heads of State of Member States. According to the Court, the EU-Turkey Statement, as published by means of Press Release No. 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union. It is a declaration of the Heads of State of the EU and their Turkish counterparts.<sup>49</sup> Nevertheless, the EU monitors closely the implementation of this Statement.<sup>50</sup>

Although the nature of the Statement is contested, Greece nonetheless decided to restrict the movement of asylum seekers that would arrive from Turkey after the 20<sup>th</sup> of March 2016 by means of a general decision of the Director of the Asylum Service. Based on the provision of Article 41 par.1 Law 4375/2016 that allows the Director of the Asylum Service to restrict the movement of persons in some geographic areas,<sup>51</sup> Ms. Stavropoulou, former Director of the Asylum Service ordered the RAO of Kos, Leros, Samos, Lesbos, Chios and Rhodes to mention on the asylum ID cards of persons coming to Greece after the 20<sup>th</sup> of March 2016 that they have to remain in those areas.

46 EU-Turkey statement, 18 March 2016, press release 144/16, 18/03/2016.

47 Maarten den Heijer & Thomas Spijkerboer, 'Is the EU-Turkey refugee and migration deal a treaty?', EU Law Analysis, 7 April 2016. The authors suggest that the EU cannot invoke non-compliance with its own internal procedural rules in order not to be legally bound by a treaty, based on Article 46 VCL. They also claim that such a declaration does not only repeat pre-existing obligations but creates new ones stretching from the quotas in returns and resettlement of Syrian refugees to financial aid and technical support.

48 General Court of the European Union, Press Release No. 19/17, Luxembourg, 28 February 2017.

49 CJEU, Case T193/16, Order of the General Court (First Chamber, Extended Composition), 28 February 2017.

50 EU Commission, *Seventh Report on the Progress made in the implementation of the EU-Turkey Statement*, Brussels, 6.9.2017; EU Commission, press release, 'The European Agenda on Migration: EU needs to sustain progress made over the past 4 years', 06/03/2019, COM(2017) 470 final

51 The same provision lies in Directive 2013/33/EU, Article 7 par.1.

It was added that this restriction would not change even if the examination of their asylum case would be referred to an asylum service in the mainland.<sup>52</sup>

This decision did not make any explicit reference to the EU-Turkey Statement or to the principle of proportionality. In this decision, the Greek administration avoided to make reference or to acknowledge responsibility for the implementation of the EU-Turkey Statement.

The Greek Council for Refugees and the Bar Associations of Lesbos, Chios, Samos and Kos lodged an appeal at the Council of State against this decision. The Council of State accepted the appeal and stressed that although a restriction of movement is not illegal, the respective decision was not well reasoned by the administration because it does not mention how it serves public interest, it leads to an uneven distribution of asylum seekers in Greece and places an excessive burden on some islands.<sup>53</sup>

However, after the annulment from the Council of State of that respective decision, the new Director of the Asylum Service, Mr. Karavias, issued a 2nd decision<sup>54</sup> that justifies the need for a geographical restriction of movement. This decision explicitly mentions the EU-Turkey Statement, reasons of public interest and the need for a more efficient migration policy in Greece. More concretely, the decision states that this measure is supposed to contribute to a faster and more efficient supervision of the requests for international protection, the administration of asylum seekers in the Greek territory and the realisation of the EU-Turkey Statement. It is also stated that this is a temporary measure that does not violate the right to private life, nor access to the rights for asylum seekers as prescribed in the Greek, European and international law. In this way, Greece assumes part of the responsibility for the implementation of the EU-Turkey Statement.

On the 5th of October 2018, the Director of the Asylum Service issued a 3rd decision that prolongs the geographical limitation.<sup>55</sup> The new decision justifies this restriction of movement by referring to the general interest and migration policies and more concretely, the fast and efficient monitoring of asylum claims, the administration of asylum seekers found on/at Greek territory, and the implementation of the EU-Turkey Statement.

52 Decision 10464/2017 of the Director of the Asylum Service on restriction of movement of applicants for international protection, Gazette B/1977/07.06.2017 and Decision 8269/2018 of the Director of the Asylum Service on restriction of movement of applicants for international protection.

53 Council of State, Decision 805/2018.

54 Decision 8269 of 20/04/2018.

55 Decision of the Director of the Asylum Service no. 18984 of 05/10/2018, Asylum Service Director Decision 18984, Gov. *Gazette* B 4427/05.10.2018.

This decision repeats the conditions for the restriction of movement of asylum seekers as described in Directive 2013/33/EU:

2. *Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.*
3. *Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.*
4. *Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.*<sup>56</sup>

The decision stresses the need to respect the principle of proportionality and to issue individual decisions based on this general decision. The decision excludes from this limitation vulnerable persons and those waiting to be transferred to another Member State according to the Dublin Regulation.

The restriction of movement is linked to the hotspot policy in Europe. Despite the severe criticism on the reception conditions, the ECtHR was reluctant to find violations. The Court of Strasbourg was called to decide on the case of three Afghans who were detained in Vial hotspot in Chios, in 2016.<sup>57</sup> Initially the applicants were detained on the basis of fear of absconding. Then the centre became semi-open. The applicants complained that their detention was arbitrary, violating the right to liberty (Article 5 ECHR) and protection against torture (Article 3 ECHR). The Court found no violations of the respective Articles, arguing that the reception conditions in the hotspots in Greece may be problematic, since there is a lack of doctors, lawyers, water and food of good quality, yet the refugee crisis that Greece had to face somehow justified these deficiencies, which are by no means equal to torture or degrading treatment.

56 Article 7 par.2-4 Directive 2013/33/EU.

57 ECtHR, J.R. et autres c. Grèce – 22696/16, Arrêt 25.1.2018.

## Geographical Limitation and the Right to International Protection

If the objective of the geographical limitation was to facilitate returns to Turkey, then the goal has proved to be far-fetched. Only 1.843 persons have been returned from April 2016 until the end of March 2019 under the EU-Turkey Statement.<sup>58</sup> Bearing in mind that only in 2017 the sea arrivals from Turkey to Greece were 29.718,<sup>59</sup> the return number is extremely low.

Moreover, the geographical limitation created two asylum procedures; the fast-track border procedure applicable on the islands of Lesbos, Kos, Leros, Samos, Chios and Rhodes for all non-vulnerable asylum seekers who have to remain there and the regular procedure applicable to asylum seekers present in the rest of the country.

More concretely, asylum seekers who arrive at the islands of Lesbos, Chios, Samos, Leros, Rhodes and Kos are examined according to a fast-track borders procedure<sup>60</sup> as described in Article 60 par. 4 of Law 4375/2016. On the contrary, persons in need of international protection who arrive in Evros<sup>61</sup> go through the regular asylum procedure and, although they have to apply for asylum in the regional asylum office of Evros, they do not have a restriction of movement. As a result, in Greece there are *de jure* and *de facto* double standards regarding the treatment of persons in need of international protection based on their point of entry. The fast-track border procedure is described in Article 60 par. 4 of Law 4375/2016 which introduces shorter deadlines throughout the asylum examination process. For instance, the fast-track applicant has one day to prepare before the asylum interview (it is 7 days for the rest of the applicants), 15 days to lodge an appeal if the first instance decision has not been delivered (the normal deadline is 30 days), 2 days for the appeals authority to reach a decision after the examination of the file, one day for the applicant to submit a note relevant to the examination of his appeal. The first instance asylum decision must be delivered the day after the interview.

As it has already been mentioned, Directive 2013/32/EU allows for border procedures to set a deadline of 4 weeks for completion of an asylum examination, on the condition that if this fails, the person must be allowed to enter the mainland.<sup>62</sup> This is not the case for applicants under the fast-track border procedures. In addition, fast-track border procedures in conjunction with the geographical limitation make it hard for asylum seekers to meet the deadlines and prepare themselves for the examination of their case.

58 [data2.unhcr.org/en/documents/download/68670](https://data2.unhcr.org/en/documents/download/68670).

59 [data2.unhcr.org/en/situations/mediterranean/location/5179](https://data2.unhcr.org/en/situations/mediterranean/location/5179).

60 Decision of the Ministers of Interior and Defence no. 13257/2016 specifying the areas where the borders procedure is applied.

61 Migrants still cross the Evros border in big numbers. According to UNHCR, on July 2018, 2.550 migrants arrived by sea and another 1.500 by land. See: UNHCR Factsheet, 1-31 July 2018, [reliefweb.int/report/greece/unhcr-greece-factsheet-july-2018](https://reliefweb.int/report/greece/unhcr-greece-factsheet-july-2018)

62 Article 43 par. 2 Directive 2013/32/EU.

Furthermore, although Evros and Crete are also border areas of Greece, the afore-mentioned procedure is not applicable. As a result, applicants who enter Evros and Crete are examined under the regular procedure and they have no restriction of movement. This means that under Article 60 par. 2 of Law 4375/2016, they may leave the border reception facility and travel to the mainland if 28 days have passed from the day of the submission of their asylum application and a decision has not been issued. In any case, this is not the only negative impact on the examination of asylum claims under the fast-track border procedure. Except for Directive 2013/33/EU at the overcrowded islands of the Aegean and the extremely limited legal aid,<sup>63</sup> the safe third country concept leads to the inadmissibility of asylum claims mainly affecting Syrians. Moreover, EASO has been criticised for participating in the asylum examination process in the fast-track border procedure. Finally, the only way for such an applicant to go to the regular procedure that offers more rights and guarantees is to prove that he/she is vulnerable. An analysis of these factors follows suit.

### III. The 'Safe Third Country' Concept in the Greek Asylum System

#### The Safe Third Country Concept in EU and Greek Legislation

According to Article 39 Directive 2013/32/EU

*'Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant ... shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant is seeking to enter or has entered illegally into its territory from a safe third country ...'*

The Directive sets out a list of criteria to determine whether a non-EU country is safe; whether the country has ratified and observes the provisions of the Geneva Convention without any geographical limitations;<sup>64</sup> whether it has in place an asylum procedure prescribed by law; whether it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies.

63 On January 2018 there was only one registered lawyer to provide free legal aid to the thousands of migrants in Lesbos, one in Chios, one in Rhodes, one in Kos and none in Samos, Leros and Crete. See Decision 2848 of 29/01/2018 for the distribution of registered lawyers to the registry of the Asylum Service.

64 However, the Commission has stated in a communication of 2016 that *'the Commission underlines that the concept of safe third country as defined in the Asylum Procedures Directive 39 requires that the possibility exists to receive protection in accordance with the Geneva Convention, but does not require that the safe third country has ratified that Convention without geographical reservation'*. See: *European Commission, Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, Brussels, 10.2.2016, COM (2016) 85 final.

Article 38 prescribes that Member States can apply this concept only if they are satisfied that the country respects the following conditions:

- life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- there is no risk of serious harm as defined in Directive 2011/95/EU;
- the principle of *non-refoulement* in accordance with the Geneva Convention is respected;
- the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
- the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

Law 4375/2016 (transposing these Articles into Greek legislation) mentions that a country is safe *for an individual* if:

- his/her life and freedom are not in danger because of his/her race, ethnicity, belonging to a specific social group or because of his/her political beliefs;
- the country respects the principle of *non-refoulement* according to the Geneva Convention;
- there is no risk of serious harm according to the definition of serious harm in the subsidiary protection norms;
- the specific country forbids the removal of the person to another country where he/she risks to be subjected to torture or inhuman or degrading treatment, as defined in international law;
- the person can seek refugee status and receive protection according to the 1951 Geneva Convention;
- the person has a link to the specific country and therefore it would be reasonable for him/her to go to this country.

If a country is deemed safe for an applicant, his/her asylum application is considered inadmissible, according to Article 54 par. d of the same law. This law refers to a national list of safe countries that until today has not been created.

#### How the Safe Third Country Concept is Applied in Greece

Since there is no list of safe third countries in Greece, the safe third country concept applies on a case-by-case basis or depending on the specificities of the geographical area of Greece where each person is examined. This concept was not applied in Greece before the adoption of the EU-Turkey Statement. Therefore, this research will only assess how this concept is applied in the context of the EU Turkey Statement.

As it has already been mentioned, the concept is mostly applied in the context of the Fast-Track Border Procedure under Article 60 par. 4 Law 4375/2016 on 6 eastern Aegean islands for those arrived after 20 March 2016 who are subject to the EU-Turkey Statement. It has particularly affected asylum seekers with nationalities with a high recognition rate over 25%, thereby including Syrians, Afghans and Iraqis. Consequently, the admissibility rate for these nationalities has dropped considerably.<sup>65</sup> Taking into account that the State funded lawyers in the eastern Aegean islands are very few,<sup>66</sup> the lack in legal aid is making it difficult for applicants to challenge the presumption of Turkey being a safe third country. In addition, due to the fact that Greece does not require for a country to be safe, that is has fully implemented the 1951 Geneva Convention without any restrictions, asylum seekers in Greece risk to be deported to Turkey with less guarantees than those described in the current EU legislation. This risk exists for persons who apply for asylum at the islands.

Moreover, although Greek law demands a thorough check of whether a third country can be safe for an applicant, in 2016 Greece decided to replace the independent committees of the Appeals Authority with new ones. According to the new law,<sup>67</sup> the independent appeals committees consist of three members; two of them being judges of the regular Greek administrative courts, selected by their own respective service, taking into account their experience in refugee law, whereas the third member is selected by UNHCR. However, it is doubtful if these committees are truly independent, taking into account that the majority of their members are no longer independent experts but judges.

Although the participation of judges is not supposed to have a negative effect on the right to seek asylum, in practice, as it will be explained further on, the new appeals committees tend to recognise fewer Syrians as refugees.

The new Law 4540/2018 maintains the status of the appeals committees adding the possibility of the replacement of their members if there are delays in the delivery of decisions<sup>68</sup> and makes it mandatory for the appeals committees, if they accept an appeal, to examine the case in substance instead of referring it back to the first instance.<sup>69</sup> Considering the low recognition rates of the second degree, this provision reduces the possibility of receiving international protection.

65 Greek Council for Refugees, Asylum Information Database (AIDA), Safe third country, Greece, Athens: GCR 2017. This report mentions that in 2017, 71.4% of the applications for asylum of Syrian nationals have been considered inadmissible under the third safe country concept.

66 From 31/09/2017 to 31/12/2017 there was one lawyer per island, see: <https://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/fast-track-border-procedure-eastern-aegean>.

67 Article 86 Law 4399/2016, Gazette 117/A/22-6-2016.

68 Article 28 par. 3 Law 4540/2018.

69 Article 28 par. 16 Law 4540/2018. With the exception of appeals on decisions of interruption of the examination of the case.

The impact of this reform on the examination of asylum in Greece has been tremendous; the percentages of international protection at second instance have dropped significantly and they are much lower than those of first instance. More specifically, according to the statistics of the Asylum Service for the year 2018, out of 2.8921 applications, 7.705 were given refugee status and 1.540 subsidiary protection. Taking into account applications that were found inadmissible, there is a 40,59% of recognition rate for the year 2018 at first instance.<sup>70</sup>

However, in the same year, until the 3<sup>rd</sup> of June 2018, the new appeals committees had a 2,98% recognition rate (refugee status and subsidiary protection). Regarding the appeals submitted in the mainland, they rejected 2.210 out of 3.180 appeals and regarding the islands, they rejected 203 out of 978 appeals, in the same period.<sup>71</sup>

Many organisations have criticised this amendment.<sup>72</sup> The Greek Council for Refugees (GCR) and two Syrians whose cases have been dismissed based on the argument that Turkey is a safe country for them, appealed to the Council of State. In these appeals, GCR requested the annulment of the decrees that ordered the participation of judges in the new committees in replacement of the committees of the Presidential Decree 114/2010 and it challenged the safety of Turkey. GCR argued that the participation of judges in administrative organs that examine the international protection of aliens is against constitutional and EU law. It argued that this newly formed organ is not comparable to administrative organs of other Member States where the judges work exclusively, to avoid any conflict of interests. If the organ is not truly independent, there does not exist an effective remedy concerning the examination of asylum claims.

On 15 February 2017, the Greek Council of the State issued a decision that referred these appeals to the plenary, whilst nonetheless stating that Turkey is a safe country for these applicants; it is not necessary for Turkey to have ratified the Geneva Convention. According to the Court, what is important is that Turkey grants the same level of international protection as the one afforded by the Geneva Convention.<sup>73</sup>

70 See [tinyurl.com/gas-statistics2018](http://tinyurl.com/gas-statistics2018)

71 The program of legal aid of GCR at second instance, June 2016–August 2018.

72 See UNHCR *supra*.

73 Council of State, decision 447/2017 of 15/02/2017.



The Court indeed argued that the EU legislation does not require such a ratification, although Directive 2013/32/EU makes explicit reference to the need for ratification without any geographical limitations:

'A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

- (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;
- (b) it has in place an asylum procedure prescribed by law; and
- (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies.'<sup>74</sup>

The Court also finds that the new appeals committees are lawful because the judges are selected by the Commissioner of administrative courts of Greece.

The plenary session of the Council of State issued two decisions that reject these actions.<sup>75</sup> Decision 2348/2017 mentions, *inter alia*, that:

- 1) The appointment of judges in administrative committees that provide justice is not against the Constitution. Their appointment by the Commissioner of administrative courts as prescribed by the Constitution is a guarantee of their legal and functional independence.
- 2) The appeals committees were not obliged under Greek law to invite the appellant to an interview about his case. They have the discretionary power to decide whether an oral examination is necessary. For this the Court interprets Articles 47 and 48 of the Charter on Fundamental Rights, and finds that an appeals authority may reject a case without conducting a personal interview if there are sufficient facts on this case and if the person had the opportunity to present his arguments orally at first instance.
- 3) The Court finds that the guarantees of Article 38 Law 4375/2016 on what makes a third country safe are fulfilled in this respective case. The Court mentions that in 2016 Greece and Turkey activated a common action plan concerning aid to Syrian beneficiaries of international protection and migration management. In this context, it was agreed that migrants who come to the EU through Turkey and who either do not apply for asylum or whose applications are rejected as inadmissible or on merits, would be returned to Turkey. The Court states that according to Directive 2013/32/EU, if a country has not ratified the Geneva Convention or imposes geographical restrictions, this is not a sufficient reason to consider the country as unsafe. A 'protection in accordance with the Geneva Convention' as

prescribed in the Directive, does not exclude the possibility for Turkey to impose restrictions of movement, residence and work for non-Turkish citizens. Turkey is not obliged to treat them as it treats Turkish nationals.

- 4) The appellant during the asylum examination cannot successfully provide arguments that are irrelevant to the recognition of refugee status or subsidiary protection. The Court considers that the claim of the appellant that Turkey does not respect the principle of *non-refoulement* regarding Syrians is therefore irrelevant and the appeals committee had good/sufficient reasons to reject this argument.
- 5) The Court decided that there is no need to request from the CJEU a preliminary ruling (although 12 judges stated that there is ambiguity regarding the implementation of Article 28 Directive 2013/32/EU).

Following this decision, an appeal was lodged to the ECtHR by a Syrian of Armenian origin concerning his asylum procedure in Greece and the decision to return him to Turkey on the grounds of safe third country. According to the applicant '*a full, Convention-compliant assessment must be carried out, with the required "anxious scrutiny", to determine whether Turkey can be considered as systemically or systematically a safe third country*'<sup>76</sup>... a return that exposes applicants to the risk of *refoulement*, and deprives them of rights guaranteed by international law, including the Refugee Convention in particular, clearly violates these principles, regardless of whether the third country is listed as a "safe third country" or not.'<sup>77</sup>

On 18 May 2017, the ECtHR communicated to the Greek government *inter alia* the procedural obstacles faced. The case has been prioritised by the Court under Rule 41 of the Rules of the Court. A decision is pending. Vulnerability is a factor that influences the safe third country concept and not only allows applicants to be examined according to the regular procedure, but also, to rebut the assumption that Turkey is a safe country for the person in question.

<sup>76</sup> Such assessment must entail: (i) an analysis and assessment of reports of international and civil society organisations on that country, including whether such organisations, in turn, are able to carry out independent human rights monitoring activities, including the situation of returnees, in that country; and (ii) an assessment of the ability to credibly monitor the relevant human rights situation in a country under a state of emergency. In addition, in relation to each individual, there must be a detailed and individualised assessment of whether Turkey will be safe for the particular asylum seeker.

<sup>77</sup> ECtHR, J.B v. Greece, Application No. 54796/16.

## IV. The Impact of Vulnerability Assessment in Asylum Procedures

### Vulnerability in EU Law and Greek Legislation

Article 21 Directive 2013/33/EU requires Member States to take into special account the situation of vulnerable persons when they implement the Directive. It provides a non-exhaustive list of vulnerable persons including

*'...minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation...'*

Article 14 par. 8 Law 4375/2016 adds to this list persons suffering from post-traumatic stress disorder, survivors of shipwrecks, relatives of victims of shipwrecks and victims of human trafficking, thus enlarging the scope of protection. The same Article requires that the Director of the Hellenic Centre for Disease Control and Prevention (HCDCP) refers such persons to the most appropriate social protection unit.

However, Article 20 par. 1 Law 4540/2018 transposing Directive 2013/33/EU provides another, non-exhaustive list of vulnerabilities including minors (unaccompanied or not), separated minors, persons with special needs or mental disorders, suffering incurable or very serious disease, elders, pregnant or pre-natal women, victims of torture, victims of rape or any other form of serious psychological, physical or sexual violence or exploitation, victims of genital mutilation and victims of trafficking. Although victims of shipwreck and persons suffering post-traumatic stress are not included in this list, the authorities are allowed to broaden the scope of protection by adding new categories.<sup>78</sup>

Vulnerability assessment takes place during the reception and identification procedures<sup>79</sup> irrespective of the evaluation of the need for international protection. As a result, the authority that is responsible in Greece to provide a vulnerability assessment is the Service for the Reception and Identification that belongs to the Ministry of Interior.

<sup>78</sup> The Article provides a list of vulnerabilities using the words 'such as'.

<sup>79</sup> Article 9 Law 4375/2016.

Special reception conditions are offered to vulnerable people from the moment of the submission of the asylum application and their recognition as vulnerable, except for minors where it applies from the moment of the identification. Article 20 par. 3 Law 4540/2018 states that

*'the special conditions of asylum seekers, even if they become apparent in a later stage of the examination process, they are taken into consideration throughout the whole procedure and their state evolution is being followed systematically'*.

Article 28 par. 10 of Law 4540/2018 added a new paragraph to Law 4375/2016 allowing the authorities that receive asylum applications and decide upon them, especially RAO or independent AUs, to refer asylum seekers to the HCDCP in order to assess the vulnerability. As soon as the medical and psychological assessment is concluded, the HCDCP issues an opinion that is forwarded to the Director of the Asylum Service and of the Reception and Identification Centre. This provision opens the way for the evaluation of vulnerability during the asylum procedures as well. However, in practice the HCDCP is operational in the six above-mentioned islands but not in Athens.

### The Meaning of Vulnerability for Asylum Seekers Examined under the Border Procedures

Vulnerability has proved to be a crucial factor not only with regard to the enjoyment of better reception conditions but also with regard to the examination of the asylum case. More concretely, Article 60 par. 4(f) Law 4375/2016 states that persons belonging to vulnerable groups are excluded from the fast-track border procedures described in the same Article. As a result, vulnerable people, although they find themselves on/at the islands where there is a geographical limitation of movement and the asylum examination is accelerated, they go through the regular asylum process, thus benefiting from less strict deadlines for the submission of applications, appeals and interviews. It is estimated that 2.961 applicants were exempt from the fast-track procedures on these grounds in 2016 (13.404 asylum applications were submitted in the 6 eastern Aegean islands during the same year) and 5.665 in the first semester of 2017.<sup>80</sup>

More so, vulnerability is taken into account by the examining authorities, rebutting the presumption that Turkey is a safe country for the specific applicant. Since the asylum authorities should take into account vulnerability at any stage of the examination procedure that this becomes apparent, there are two possibilities for the assessment of vulnerability.

<sup>80</sup> [www.immigration.gr/2017/10/blog-post\\_3.html](http://www.immigration.gr/2017/10/blog-post_3.html).



One during the reception and identification dealt by the reception and identification authorities and another one that, although it is not prescribed by law, may take place during the asylum examination, initiated by the asylum authority. Since their electronic databases are not connected, there are significant delays in the recognition of vulnerable people.<sup>81</sup>

What does this mean in practice? In many cases, first asylum decisions under the fast-track border procedures are decisions of inadmissibility based on the safe third country concept. If vulnerability becomes known after the asylum examination at first instance and the delivery of the asylum decision, the asylum authorities tend to withdraw the first asylum decision and replace it with a new one that takes into account vulnerability. However, if an appeal has already been submitted, the appeals authority has to accept the appeal and invite the applicant for an interview for the first time directly at second instance.<sup>82</sup>

However, several organisations report that vulnerable persons are not treated accordingly in Athens. More concretely, it is reported that due to the large number of persons who try to register at the central Asylum Service, vulnerable people have to queue for hours outside the entrance. Moreover, although there is a special asylum office in Athens for vulnerable people, it is reported that this is not widely known to the applicants, it is hard to have access to it without the intervention of a lawyer or an NGO and there is no transportation for persons with special needs.<sup>83</sup>

Vulnerability, if seen in the general context of geographical limitation, is of immense value, allowing the person to be examined in the same way that he/she would be examined if such a limitation did not exist, without the fast-track asylum procedures and without the argument of rejection due to the existence of a safe third country. Asylum examination in the fast-track border procedures means the issuing of several identical asylum decisions that reject the request without deciding on the merits.<sup>84</sup> As a result, it becomes obvious that 'vulnerability' is an exceptional system that *de facto* replaces the traditional protection mechanisms for persons seeking international protection in Greece.

Although in the past persons could move freely and decide where to lodge their asylum application, for persons arriving at the six eastern Aegean islands this is no longer possible unless they are considered to be vulnerable. However, the treatment of vulnerable people is also affected by the fact that more often than not it is EASO that conducts the asylum interviews at the islands. EASO not only participates in the Greek asylum procedures taking place at the eastern islands, but it also conducts vulnerability assessments,<sup>85</sup> thus making it hard for applicants to rebut the safe third country presumption in these geographical areas. In Evros, the tendency is not to invoke the safe third country concept in most asylum cases.

Consequently, it is important to examine the role of the EASO in the Greek asylum procedures and its responsibility.

## V. EASO Participation in Asylum Procedures

### EASO Mandate in Greece

The mandate of the European Asylum Support Office is described in Regulation no. 439 of 19 May 2010 establishing a European Asylum Support Office. More concretely, EASO was established in order to promote a Common European Asylum System. It is explicitly stated that it provides support for Member States subject to particular pressure.<sup>86</sup> In this sense, it is entitled to facilitate an initial analysis of asylum applications under examination by the competent national authorities and to deploy asylum support teams. The asylum support teams provide expertise in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases within the framework of the actions to support Member States.

The same Regulation clarifies that the Executive Director of the EASO decides the deployment of experts. Regarding the civil liability of these officers, the Regulation mentions that the host Member State shall be liable in accordance with its national law for any damage caused by them during their operations, except for cases of gross negligence or wilful misconduct.<sup>87</sup>

At the beginning of the migration crisis, EASO and Greece signed an operational action plan.<sup>88</sup> This plan foresees the deployment of asylum support teams in Greece. EASO has built up a significant presence on the ground in Greece, working with Asylum Support Teams supported by interpreters in the hotspots of Lesbos, Chios, Samos, Leros and Kos. On the mainland, EASO is present in several locations, the RAO in Alimos, Attika, Piraeus, Thessaloniki, Alexandroupoli, Fylakio and Corinth, as well as over 30 reception sites throughout mainland Greece. There is also an EASO Operational Office in Athens. The main area of focus has been the identification, categorization and referral of vulnerable persons. In this operational plan it is mentioned that

*'In view of the changed operational environment, due to the completion of the relocation programme and the challenging needs on the ground, the Greek authorities have requested EASO to foresee a shift in the operational focus on mainland Greece, from supporting relocation to support to the regular asylum procedure.'*

However, in this operational plan it is stressed that it is the staff of the Greek regional asylum offices (RAO) and the autonomous AUs who receive, examine and adjudicate at first instance applications for international protection. Regarding fast-track border procedures, the action plan mentions that the regional asylum offices of Greece remain responsible for handling individual cases. However, in order to further the implementation of the EU-Turkey Statement and in line with the conclusions of the JHA Council meetings of 9-10 June 2016, support from EASO is offered to the Greek authorities for processing applications of international protection on the Greek islands.<sup>89</sup>

As a consequence, joint processing of asylum claims has being undertaken in accordance with Law 4375/2016, in particular Article 60 par. 4, b. This Article prescribes that when it comes to the interview of asylum seekers during the examination of the asylum claims at the borders, the Asylum Service may be assisted by EASO staff.

The new Law 4540/2018 expanded the possibilities for the participation of EASO in the examination of asylum claims by prescribing that

*'if there is an emergency, the Asylum Service may be assisted by Greek speaking EASO staff for the registration of requests for international protection, for cases of article 60 para. 4, b and for any other administrative act related to the examination of requests for international protection'.<sup>90</sup>*

The latest provision allows EASO to participate in the asylum examination procedures all over Greece and not only on the islands.

### EASO and Responsibility

Do the newly acquired EASO competences, supported by the Greek law and the operational action plan, also imply a shift in responsibilities? As from 2016, EASO has been conducting asylum interviews and vulnerability assessments, as well as best interest assessments for unaccompanied minors at the islands where there is a fast-track procedure. EASO officers first conduct the interviews, which are then signed by representatives of the Greek regional asylum offices. Despite this practice, it is not officially acknowledged that EASO bears responsibility for the examination of these claims. On the contrary, responsibility still lies with the Greek authorities.

The EASO unwillingness to assume responsibility derives first of all from the statute of the Agency mentioning that

*'The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.<sup>91</sup>*

Furthermore, migration and asylum are fields where the EU has a shared competence with Member States, as described in Article 4 TFEU. When exercising such a shared competence, it are therefore the principles of proportionality and subsidiarity that need to be respected, meaning that the EU should act only in so far as the objectives of the proposed action cannot be sufficiently achieved by Member States and the content of the action shall not exceed what is necessary to achieve this objective. In order for a shared EU competence to become exclusive, the internal rules that serve as the foundation for external activity should have evolved to common rules, which, with regard to asylum, is far from the being the case. Readmission is the only external competence on migration explicitly transferred to the EU under title V of the Treaty. Therefore, the EU does not have an exclusive competence on migration. This competence still primarily lies with the Member States.

<sup>90</sup> Article 28 par. 7 Law 4540/2018.

<sup>91</sup> Article 2 par. 6 of the establishing regulation.

<sup>81</sup> See p. 5 par. 5 of the report of the National Commission for Human Rights, *supra*.

<sup>82</sup> As it has been explained before, with the new law of 2018 the appeals committees can no longer refer the case back to first instance if they accept the appeal. They would have to examine the case on the substance. If the first asylum decision was inadmissibility of the claim, this means that no interview was taken at first instance. The appeals authorities would thus need to interview the appellant on the merits of the case for the first and last time.

<sup>83</sup> AITHMA, Stin anamoni, Aithountes asilo stin Ellada, Opseis tis diadikasias asilou, report, April 2017.

<sup>84</sup> See p. 4 of par. 3 of the report of the National Committee for Human Rights, cited in footnote 30.

<sup>85</sup> EASO Operating plan agreed by EASO and Greece, Valetta Harbour and Athens, 13/12/2017, Measure ELAS 1: Support for the implementation of the EU-Turkey statement on the Greek islands.

<sup>86</sup> Article 8 Regulation no.439/2010 states: *'The Support Office shall coordinate and support common action assisting asylum and reception systems of Member States subject to particular pressure which places exceptionally heavy and urgent demands on their reception facilities and asylum systems.'*

<sup>87</sup> Article 21 Regulation no. 439/2010.

<sup>88</sup> EASO Operating plan agreed by EASO and Greece, Valetta Harbour and Athens, 13/12/2017.

<sup>89</sup> As a result, EASO specialist support is being provided for the asylum procedures on the five hotspot islands (Lesbos, Chios, Samos, Leros and Kos). Procedures and workflows have been put in place in order to ensure cooperation with the Greek authorities and appropriate processing of applications for international protection, including applications of vulnerable persons and of persons with special needs.

The participation of EASO in asylum interviews has raised complaints, accusing the agency of misconduct and of the dismissal of asylum claims on admissibility grounds without proper reasoning. Although Greek asylum directors remain responsible for the examination of the claims and they sign the interviews and decisions, the fact is that these interviews have been conducted not by the signatories but by EASO officers. This raised liability and transparency concerns.

The European Ombudsman opened an inquiry to find out 1) if EASO is acting beyond its mandate under EU law by effectively deciding on the admissibility of applications for international protection in the context of the 'admissibility interviews' it carries out; 2) when conducting interviews in the hotspots on the Greek islands, EASO, if it fails to comply with the provisions on 'the right to be heard' in the Charter of Fundamental Rights (Article 41), as well as EASO's own guidelines.

According to the complainant,<sup>92</sup> EASO's Concluding Remarks, drafted after admissibility interviews, look like decisions, rather than recommendations to the authority responsible. Moreover, since there is no representative of the relevant Greek asylum authority (GAS) present during interviews, and the transcripts of interviews exist in English only, the concluding remarks appear to have greater importance than what was envisaged in the applicable provisions.

EASO justified the absence of Greek asylum officers during interviews by referring to 'time and effort efficiencies'.<sup>93</sup> It added that Greek officers have never found that because the interview transcript and the opinion prepared by EASO experts are drafted in English this constitutes an obstacle to take decisions on admissibility. EASO insisted that, by assisting the Greek officers in examining the admissibility of an application or the assessment of protection needs of an applicant, EASO experts provide technical and operational support to the Greek Asylum Service (GAS). That support is limited to providing an opinion which could facilitate the analysis of the asylum application under examination, as envisaged in Article 10 of EASO's founding Regulation, but which is not binding on Greek officers, since the decision to grant or refuse international protection falls within the sole authority of the Member State. According to EASO, the (non-binding) reasoned opinion of the EASO expert highlights the relevant factors to support the Greek decision-makers. The Ombudsman<sup>94</sup> acknowledged that EASO is being encouraged politically to act in a way which is, arguably, not in line with its existing statutory role and that there are genuine concerns about the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted.

Nevertheless, it found that ultimate legal responsibility for decisions on individual asylum applications rests with the Greek authorities. Greek authorities must, once they have seen the interview transcript, determine whether there were shortcomings in the interview which require that it be repeated; or it is open to them to disagree with the EASO expert's opinion and consider the application admissible.

Moreover, it added that under Greek law, if a claim is considered inadmissible, the applicant can appeal this decision to the relevant Appeals Committees. Finally, the Ombudsman noted that it is likely that EASO's founding Regulation will be amended in the near future to provide explicitly for the type of activity in which EASO is currently engaged, thus resolving the issue of EASO possibly operating beyond its statutory brief. After the decision of the EU Ombudsman there has been no further development on this issue. The Commission has already made a proposal<sup>95</sup> to replace EASO by a new agency, the European Union Agency for Asylum. In this proposal, the new agency has more autonomy to act in cases of disproportionate pressure on a Member State. The provision of Article 2 par. 6 of the current regulation stressing that EASO has no power to take decisions on individual asylum applications is deleted in the new text.

As it becomes obvious, the legal reforms are expected to justify and expand the participation of EASO in asylum examination, challenging State sovereignty.

The expansion of the role of EASO is expected to bring serious changes in the way asylum applications are dealt with everywhere in Greece. Taking into account that EASO usually suggests the inadmissibility of asylum claims of Syrians, Iraqis and other high refugee profile nationalities, this practice will probably also take place in the rest of the Greek territory, including Athens. The negative effect of this practice on the rights of refugees has already been analysed in the chapters about geographical limitation and safe third country.

As we have seen, the role of EASO raises concerns on the fairness of the asylum examination. In the next paragraph, we will see that the profiling of asylum seekers based on their country of origin creates a prejudice and makes access to asylum for many persons very difficult.

## VI. De Facto Profiling of Asylum Seekers Based on their Nationality

### The Detention of Asylum Seekers

Article 8 Directive 2013/33/EU emphasises that

*'Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with 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 (1).'*

Detention must be necessary and only apply if less coercive alternative measures cannot be applied effectively.

This Article enlists the legitimate grounds for the detention of asylum seekers. These grounds are 1) in order to determine or verify his or her identity or nationality, 2) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant, 3) in order to decide, in the context of a procedure, on the applicant's right to enter the territory, 4) when he or she is detained subject to a return procedure, 5) when protection of national security or public order so requires, 6) in accordance with the Dublin Regulation.

Law 4307/2016 stresses that a person who asks for international protection cannot be detained only for this reason, or because he/she entered the country irregularly, or because he/she resides in the country without residence permit.<sup>96</sup> The law specifies that a person who submits an asylum application whilst being in detention may remain in detention if this is necessary in order to determine or verify his or her identity or nationality; in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant; when protection of national security or public order so requires; in accordance with the Dublin Regulation.

These requirements correspond with the categories enlisted in the Directive. The Greek law adds one more category; if the person had already access to the asylum procedures and there are legitimate reasons to believe that he/she is submitting an asylum application in order to delay or prevent a return decision and on the condition that such a decision can be implemented.

The same law specifies that detention of asylum seekers for reasons of public order supposing that there is a fear of absconding before a Dublin transfer takes place, cannot exceed 3 months. For all the other categories, detention cannot exceed the period foreseen in Law 3907/2011, which mentions a maximum of 18 months of detention.

In addition, the same Article makes it mandatory for the Police Directors to forward their decision of detention to the president of the administrative court of first instance of the geographical area where the person is detained. The president has to decide on the legality of the detention or of its prolongation and the asylum seeker must be heard by the judge.

### Pilot Project

The tendency of the police to detain almost immediately persons who have expressed their desire to ask for asylum whilst being free because they have a specific profile contradicts the general provision of the law stating that persons who apply for asylum when they are free should not be detained. It also constitutes discrimination and differential treatment based on nationality and/or the person's individual status.

This practice is commonly referred to in Greece as 'pilot project'.<sup>97</sup> The EU-Turkey Statement and the need to return to Turkey large numbers of persons and stop irregular migration inspired this pilot project. In fact, this practice takes place in Lesbos in order to facilitate the readmission to Turkey of newly arrived persons belonging to particular nationalities with low recognition rates. These persons are immediately placed in detention upon arrival and after the conclusion of their registration and identification process. They remain in closed centres, like prisons, known as pre-removal centres, during the entire asylum procedure. These centres are used for the detention of persons who are waiting for deportation. While the project initially focused on nationals of Pakistan, Bangladesh, Egypt, Tunisia, Algeria and Morocco, the list of countries was expanded to 28 in March 2017 and the pilot project was rebranded as 'low-profile scheme'.

As a result, these persons go through a very quick identification and registration process at the Reception and Identification Service (RIS) of Lesbos and then they are transferred to detention, whereas persons having other nationalities spend more time at the RIS without being detained and therefore can benefit from a thorough and detailed analysis of their vulnerability. They can also receive proper information regarding their right to seek asylum and regarding the examination procedure of their case. They have better access to legal aid.

<sup>92</sup> European Ombudsman, Decision – case 735/2017/MDC – opened on Thursday, 13 July 2017 – Decision on Thursday, 5 July 2018.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010, COM/2016/0271 final – 2016/0131 (COD).

<sup>96</sup> Article 46 Law 4375/2016.

<sup>97</sup> Greek Council for Refugees, AIDA, Country report Greece, update 2018, p. 33.

The detention of persons having the nationality of countries of low recognition rates is a sign that it is very unlikely for these persons to be granted international protection, since they are already detained with persons awaiting deportation. Therefore, although the person can ask for asylum and is indeed guided to all the steps of the procedure, there is a negative prejudice already against him/her that he is not entitled to receive it. Although recognition rates are based on the statistics of the Asylum Service, they create 2 categories of asylum seekers; those detained for reasons of public order because of their nationality and those who are not. Moreover, since November 2017, a 'pilot' practice of detention of a number of Syrian nationals upon arrival, despite their explicit wish to apply for asylum and without being subjected to reception and identification procedures as provided by the law, has started on Lesbos and Chios, subject to available detention capacity. In addition, according to the practice, applicants on the islands whose asylum application are rejected at second instance under the Fast-Track Border Procedure are immediately detained upon notification of the second instance negative decision.<sup>98</sup>

The detention of asylum seekers based on their nationality has even more severe consequences when it comes to the case of unaccompanied minors with wrong age assessments. Children are considered to be vulnerable *ex officio*. However, due to the problematic nature of age assessments in Greece, some teenagers may face expulsion to Turkey. In addition, because of a strict interpretation of the deadline for family re-unification provided in the Dublin Regulation, they very often miss the opportunity to get refugee status in another Member State where they have family members.

## VII. The Challenges for Unaccompanied Children Seeking Asylum

### Protection of Unaccompanied Children in Greek Legislation

According to Article 45 Law 4375/2016, when an unaccompanied minor submits an application for asylum, the authorities have to nominate a legal guardian to represent the minor during the asylum process and to guarantee the efficient legal support and legal representation of the child. The guardian is invited to and can participate in the asylum interview. These provisions are in conformity with the provisions of Article 25 Directive 2013/32/EU.

Moreover, Article 21 Law 4540/2018 stresses that the best interest of the child<sup>99</sup> should be the main focus of the authorities when they apply the new law on reception to minors. Article 22 states that the RIS is responsible for unaccompanied children in the RIC (Reception and Identification Centre)s and for this reason it facilitates through the Public Prosecutor the appointment of the child's guardianship to an adult member of his/her family. If such a family member is not available, the authority responsible for the child is the National Centre for Social Solidarity (NCSS, in Greek EKKA). NCSS is an authority of the Ministry of Labour responsible *inter alia*, for the provision of shelter to minors and most importantly for the nomination through the Public Prosecutor of a legal guardian.<sup>100</sup>

Article 10 Law 4540/2018 stresses that minors can be detained only as a last resort, taking into account their best interest and only if other alternative and less restrictive measures cannot apply. Their detention is for the purpose of their removal to a shelter and cannot exceed 45 days. However, there is no time limit for minors who are under protective custody in safe zones or elsewhere, since protective custody is not considered to be detention.<sup>101</sup> Apart from these two categories of unaccompanied children who are either detained or guarded until they can be transferred to a shelter, there is a 3<sup>rd</sup> category of persons who have declared to be minors and whose age has been contested. These children may face return to Turkey and are deprived of the special treatment that the law grants to children in respect of their reception modalities and the examination of their asylum.

### Age Assessment

According to Directive 2013/33/EU:

*'Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.'*

<sup>99</sup> Article 21 mentions that in order to assess the child's best interest the authorities should focus on the possibility for family re-unification, the quality of life and social development, security and protection issues, risk of smuggling and the views of the minor depending on his/her age and maturity.

<sup>100</sup> The new Law 4554/2018 reforms the system of guardianship, thus creating a pool of legal guardians who will be persons remunerated by the State with a background in social work or psychology. They will represent the child and will be monitored by a council that belongs to the NCSS.

<sup>101</sup> Article 118 Presidential Decree 141/1991 mentions that minors can be placed under protective custody but this is not considered to be an arrest.

*'Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.'*

Article 45 Law 4375/2016 states that if there is a doubt regarding the age of the child during the asylum procedure, the authorities can refer them to the procedures of age assessment which are set in the Common Ministerial Decision 1982/2016. During this process there must be a legal guardian to represent the child, the child must be fully informed and consent (if it has the right age). If after the age assessment it is still doubtful if the person is a minor, then he/she must be considered to be a minor.<sup>102</sup> Apart from the age assessment that takes place during the asylum examination, Article 14, par. 9 of the same law stresses that if at any stage of the reception and identification there are doubts regarding the child's real age, the Director of the RIS requests an age assessment and the child is considered to be a child during the whole process.<sup>103</sup> At the reception and identification stage, the competent authorities should provide an age assessment and if there is a legitimate doubt, the evaluation is made by the HCDCP. This centre is present in the reception centres of the 6 islands where the geographical limitation applies but not in the mainland. This means that age assessment modalities are different from one place to another.

The Greek age assessment system both during asylum and upon registration provides 3 steps of evaluation. First of all there is an examination by a podiatrist of the child's general characteristics. If this fails, there is a psychological assessment and if this also fails the child is referred to a public hospital. This evaluation is sent to the Director of the HCDCP that issues an opinion. During these steps, there are procedural guarantees regarding the right to information, equal treatment and presumption in favour of the child.

In the asylum process, the same procedure is followed, giving priority first to a general examination by a doctor, then a psychological assessment and finally clinical tests based on X-rays.

The above-mentioned procedures have proved to be problematic in practice. More specifically, according to a report of the Doctors of the World<sup>104</sup> medical examinations and psychological examinations are of relative credibility.

<sup>102</sup> Article 45 par. 5 Law 4375/2016.

<sup>103</sup> This age assessment takes place according to Decision 92490/2013 of the Minister of Health.

<sup>104</sup> S. Poularakis, *Age assessment of unaccompanied minors, thoughts and concerns*, Athens: MdM Greece, August 2016.

The assessment based on body features may be false because it does not take into account the socio-economical background of the child, the influence of diseases and ethnic origin. Depending on culture and ethnic origin, the likelihood of a subjective psychological evaluation may increase. Doctors of the World find that because of the large numbers of arrivals at the Greek islands and the inadequacy in numbers and expertise of the staff that is responsible to do the age assessment, and the lack of time, age assessments are inefficient and may prove to be to the detriment of the child.

Furthermore, as it has already been mentioned, it seems that practice varies depending on each geographical area and each RIC. According to a report of the Greek section of DCI,<sup>105</sup> in Lesbos, age assessment relies on a psychological examination and possibly a medical one. Children are first interviewed by the HCDCP and if they are found to be minors, in practice, sometimes these opinions are challenged by the Service for Reception and Identification, referring them to public hospitals for further examination. In many of these cases, they have been found to be adults. NGOs question this practice, implying that there may be a link with the lack of adequate shelters for children in Greece and the need to limit the number of children so that underage newcomers can also be protected. In addition, children tend to be in detention until the age assessment is finalised.

However, in Evros the HCDCP was not operational until August of 2018 and as a result the Prosecutor used to refer children immediately to the public hospital for X-rays. There was no psychological examination whatsoever. The absence of these examinations leads to the unequal treatment of children.

### Family Reunification under the Dublin Regulation

Children who arrive in Athens and want to be reunited with their family members residing legally in another Member State often do not have this opportunity. Article 21 par.1 Dublin III Regulation (No. 604/2013) foresees that

*'Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.'*<sup>106</sup>

<sup>105</sup> Defence for Children International, Greek section, *DCI Report of the mission to Lesbos and Evros*, Athens: DCI, July 2018.

<sup>106</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

<sup>98</sup> *Ibid.*



According to this regulation, Greece would need to make a request to another Member State to take charge of a child within 3 months from the moment the child applies for asylum. However, some Member States including Germany consider that the starting point of this deadline is not the moment when the child submits the application for asylum but the moment when he/she declares at the borders and upon arrest that he/she wishes to apply for asylum. Often, children who are caught at the borders are not aware of this possibility or are not aware of the presence of their family members in another Member State. When they are informed about it and make the request through the Greek authorities, they are told that they have missed the deadline. This legal interpretation is based on a decision of the CJEU<sup>107</sup> concerning the case of an Eritrean who was facing return to Italy, the country of his first entry to Europe. According to the claimant, Germany made a transfer request to Italy after the 3 months deadline imposed by the Dublin Regulation. According to the Court,

‘Article 20(2) of Regulation No 604/2013 must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority’.

Based on this ruling, some Member States refuse to take charge of the child because they consider that the application for asylum was lodged way before the child’s registration, at the moment when the Asylum Service received a notification of the police regarding the wish of a child to submit an application for asylum.

### Homelessness and Access to International Protection

Children who manage to be recognised as such but have not been transferred to another EU State are in a limbo situation. They find it hard to apply for asylum and to follow through. Why is that? First of all, the majority of children who arrive in Greece are homeless. In July 2018, it was estimated that there were 3.510 unaccompanied children in Greece, without including unregistered children.<sup>108</sup> The number of available places in shelters all over Greece is 1.191 while there were 2.485 children on the waiting list for a shelter, during the same month. Children out of shelter may either stay in prolonged detention or protective custody but the majority live in the streets of Athens.<sup>109</sup>

107 C-670/16, *Tsegezab Mengesteab v. Bundesrepublik Deutschland*, Judgment of the Court (Grand Chamber) of 26 July 2017.

108 EKKA, national centre for social solidarity, *Situation update: unaccompanied children in Greece*, 15/07/2018.

109 *Ibid.*

According to UNHCR, children are exposed to on-going protection risks, including sexual exploitation and abuse, due to insufficient security, sub-standard and overcrowded reception sites, lack of specific services and insufficient access to formal or non-formal education, and lengthy asylum procedures for reuniting families, which also severely impacts their psychosocial well-being. The national capacity for accommodating unaccompanied and separated children is still far from meeting the needs – roughly, half of the approximately 2.100 unaccompanied and separated children in Greece currently do not receive adequate or appropriate care.<sup>110</sup>

The lack of adequate shelters all over Greece and the incapacity of the National Centre for Social Solidarity to hire a sufficient number of legal guardians have a negative effect not only on the well-being of the child but also on the possibility to apply for international protection and receive adequate legal representation. This representation is necessary for them to access the Asylum Service and exercise their basic rights such as family reunification. According to a member of the asylum appeals committees, most minors are not represented at the examination of their asylum claim.<sup>111</sup>

The difficult access to the asylum procedures is not only limited to children. As it has been discussed before, the Asylum Service continues to receive an increasing number of asylum applications while it lacks adequate staff to face this challenge. At the same time, the overall tendency is to limit the number of asylum seekers in Greece, supported by an increase of the number of push-backs from Greece to Turkey that prohibit access to asylum and put the individuals in great risk for their lives and physical integrity.

## VIII. Limited Access to Asylum to the Mainland and at the Borders

### Limited Access to the Mainland

According to the statistics of the Asylum Service, the number of asylum applications in Greece since 2013 has been continuously rising. In 2017, Greece received 8.5% of the total number of applications submitted in the EU, while it was the country with the largest number of asylum seekers per capita among EU Member States.<sup>112</sup> In 2017 the situation was no better: 58.661 persons applied for asylum and by the end of the year, 36.340 applications were still pending.<sup>113</sup> About half of these applications were lodged in the mainland. There has also been a substantial increase in applications from Turkish nationals (1.827 in 2017 compared to 189 in 2016).

110 UNHCR Recommendations for Greece in 2017.

111 Interview of a member of the Greek asylum appeals committees. See Part II.

112 Asylum Service, *The work of the Asylum Service in 2017*, Athens: AIDA, 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

113 Asylum Service, *Asylum Statistics*, Athens: AIDA, December 2017; information provided on 15 February 2018.

Only in 2018, 54.968 persons applied for asylum (until October), which equals an 11,9% increase since 2017. From 2017 to 2018 there has been an increase in asylum applications up to 14.2%.<sup>114</sup> Attiki is the second region in Greece with the largest number of asylum applications, after Lesbos.<sup>115</sup> There are 62.418 asylum applications still pending at first instance.<sup>116</sup> According to UNHCR, at the end of October 2018 there were 67.100 refugees and migrants in Greece, 17.900 in the islands and 49.200 in the mainland. In March 2019 there were 76.000 refugees and migrants in Greece.<sup>117</sup> From June 2016 to October 2018, 37.700 persons were transferred from the islands to the mainland,<sup>118</sup> but this has not solved the problem. The examination of asylum applications in the mainland is delayed. This delay renders access to asylum inefficient. It deprives asylum seekers of the possibility to be registered in due time and hampers the enjoyment of basic rights such as application for family reunification, access to education, access to work, health coverage and many more. Moreover, as it will be explained further, the large number of applications has a negative effect on the quality of the asylum procedures. For all those applicants, there are only 13 lawyers paid by the State to represent them at second instance.<sup>119</sup> All those thousands of applicants, whose cases are pending at first instance, can only rely on NGOs and volunteers for their representation.

In addition, most of its operating procedures are not accessible to the public. More concretely, as it appears on the website of the Asylum Service,<sup>120</sup> from the moment of the creation of the Asylum Service until today, only one circular has been issued and it concerns the revocation of refugee status because of the commission of a crime.<sup>121</sup> A circular is according to the Greek legislation an administrative act that can be challenged in court. Greek lawyers have criticised this lack in transparency, claiming that as public authority the Asylum Service cannot operate and take decisions by relying mainly on standard operating procedures (SOPs), which remain secret to the public and therefore create ambiguity.<sup>122</sup>

114 Asylum Service Statistics from 07/06/2013 to 31/03/2019.

115 In 2018, 6.699 new asylum applications were submitted in Athens, 1.625 in Pireus and 2.137 in Alimos (all of them to be found in central Greece, Athens and nearby municipalities). See: [asylo.gov.gr/wp-content/uploads/2018/11/Greek\\_Asylum\\_Service\\_Statistical\\_Data\\_GR.pdf](http://asylo.gov.gr/wp-content/uploads/2018/11/Greek_Asylum_Service_Statistical_Data_GR.pdf).

116 [asylo.gov.gr/wp-content/uploads/2019/04/Greek\\_Asylum\\_Service\\_data\\_March2019\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2019/04/Greek_Asylum_Service_data_March2019_gr.pdf).

117 UNHCR, *Factsheet Greece*, Geneva: UNHCR, March 2019.

118 UNHCR, *Factsheet Greece*, Geneva: UNHCR, 1-31 October 2018.

119 Decision 15044 of the Asylum Service, 26/07/2018

120 [asylo.gov.gr/?page\\_id=141](http://asylo.gov.gr/?page_id=141).

121 [asylo.gov.gr/wpcontent/uploads/2018/01/pdf](http://asylo.gov.gr/wpcontent/uploads/2018/01/pdf).

122 E. Poularakis, *Internal guidelines (SOPs) and asylum, transparency or administration à la carte?*, [www.immigration.gr/2017/05/sops-la-carte.html](http://www.immigration.gr/2017/05/sops-la-carte.html)

### Pre-registration of Asylum Claims

In order to deal with a huge number of asylum applications that started increasing dramatically since 2016, the Greek authorities decided to pre-register persons who wanted to seek asylum. What exactly is pre-registration?

Pre-registration is based on Article 36 Law 4375/2016:

*‘1. a. Each alien or stateless person has the right to apply for international protection. The application is submitted to the Receiving Authorities immediately who have to fully register it. 1b. If, for whatever reason, it is not possible to complete the registration, in accordance with point (a), following a decision by its Director Asylum Service, the Receiving Authorities may do so at the latest within three (3) working days after the submission of the application, by simply registering the minimum necessary data and then complete the registration as soon as possible and as a matter of priority. c. an application for international protection shall be deemed to have been lodged from the date of its full and complete registration in accordance with subparagraph (a) from which the relevant time limits for its examination start, in accordance with Article 51 herein.’*

These provisions transpose Article 6 Directive 2013/32/EU that stipulates inter alia:

*‘When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made... Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible... Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.’*

As it becomes obvious, pre-registration was not included in the Directive. It allows applicants to launch the procedure without being able to enjoy the rights linked with this procedure.

Applications for international protection are received and registered by the Regional Asylum Offices (RAO) and Asylum Units (AUs) and Mobile AUs, depending on their local jurisdiction. For third-country nationals willing to apply for asylum while in detention or under reception and identification procedures, the detention authority or Registration and Identification Centre registers the intention of the person on an electronic network connected with the Asylum Service, no later than within 6 working days.



In order for the application to be fully registered, the detainee is transferred to the competent Regional Asylum Office or AU.

The time limits of 3 or 6 working days respectively for the basic registration of the application may be extended to 10 working days in cases where a large number of applications are submitted simultaneously and render registration particularly difficult. No time limit is set by law for lodging an asylum application. However, Article 42 Law 4375/2016, which transposes Article 13 Directive 2013/32/EU that refers to applicants' obligations, provides in paragraph 1a that applicants are required to appear before competent authorities in person, without delay, in order to submit their application for international protection. Applications must be submitted in person, except under *force majeure* conditions.

### Skype Pre-registration

In order to make a personal request to submit an asylum application at the RAO, persons are requested to contact the Asylum Service via Skype. For those languages that a Skype line is available, an appointment through Skype should be fixed before the person in question can present him- or herself before the Asylum Service in order to lodge an application. However, although the use of Skype is almost the only way to access the asylum procedure, it proves to be ineffective and it virtually deprives persons of their right to ask for asylum.

As a matter of fact, NGOs report that many people try unsuccessfully for three and four months to make an appointment via Skype.<sup>123</sup>

At the same time, in his recent *Annual Report for 2016*, the Greek Ombudsman states:

*'The Ombudsman has previously (Annual Report 2015, p. 37) made extensive reference to access problems only through Skype, where this practice is considered as a restrictive system that appears to be at odds with the principle, universal, continuous and unhindered access to the asylum procedure. Therefore, this problem intensifies in 2016 and the Ombudsman receives many reports for inaccessibility despite repeated attempts to connect to Athens and Thessaloniki.'*<sup>124</sup>

In June 2016, the Greek authorities in cooperation with UNHCR and EASO proceeded with the pre-recording process of about 49.000 refugees that were in the mainland. The completion of the procedure was announced on 1/8/2016. It was expected that in April 2017 pre-recording would have been completed.

However, until the end of March 2017 it was not completed. The choice of the pre-registration process resulted in a further delay of ten months for the initiation of the asylum procedure (since it starts with full registration), the processing of requests of relocation and family reunification. For people who already arrived in Greece by January 2016 it could take up to eleven months to submit an application for family reunification on the basis of the Dublin III Regulation. People were forced to stay in Greece, separated from their family members, in particularly precarious conditions.<sup>125</sup>

UNHCR has also criticised the long delays in the asylum examination procedures in Greece. UNHCR found that six months after their arrival, many asylum seekers are still waiting for the full registration and processing of their asylum claims. Discriminatory practices, which delay the registration of claims of some nationalities (such as Afghans and Iraqis), are not in line with EU and Greek standards. UNHCR estimates that on the mainland, first instance decisions for those pre-registered during the summer of 2016 will take approximately two years. It stresses that the lack of capacity to fully process asylum claims within a reasonable timeframe needs to be addressed urgently, as this directly contributes to the significant tensions in many of the asylum seeker sites, it generates onward movement.<sup>126</sup>

According to the Greek Council for Refugees, the system for granting appointments for registration of asylum applications through Skype, inaugurated in 2014, did not solve the problem and thus access to the asylum procedure has remained one of the persistent major issues of concern for the Greek asylum system, considering especially that the number of people wishing to apply for asylum on the mainland remained high.<sup>127</sup>

The delays in the procedures are mainly due to the lack of staff of the Asylum Service and the precarious working conditions of many of the officials. More concretely, the number of employees of the Asylum Service at the end of 2017 decreased from 654 staff members in January 2017 – 275 permanent staff and 379 on a fixed-term contract – to 515 active staff members in December 2017. This included 264 staff members with a permanent status and 251 staff members on fixed-term contracts.<sup>128</sup>

The short-term working status of almost half of the total number of the employees of the Asylum Service staff, coupled with the precarious working environment for employees, can create problems in the operation of the Asylum Service.

125 AITIMA 2017.

126 UNHCR Bureau for Europe, *Recommendations for Greece in 2017*, Geneva: UNHCR, February 2017.

127 Greek Council for Refugees, AIDA, *Registration of the asylum application – Greece*, Athens: GCR 2016.

128 Information provided by the Asylum Service, 15 February 2018

For example, on 1 and 2 November 2017, the Asylum Service fixed-term employees went on a 48-hour nationwide strike due to payment delays and the termination of about 100 fixed-term contracts at the end of 2017. In addition, between 5 and 21 March 2018, fixed-term staff have stopped providing their services as they have remained unpaid for a period exceeding three months.<sup>129</sup> Consequently, as a number of RAO such as Lesbos and Samos are mainly staffed with fixed-term employees, they have temporary halted their operation.

As a result, it can be concluded that access to asylum in the mainland is a difficult task that takes too much time. Asylum seekers do not receive any financial aid in Greece and, on top of that, they are forced to remain in Greece for prolonged periods without being able to exercise their rights that are conditioned upon asylum application. However, access to asylum is also hampered because of the alleged numerous push-backs at the borders, thus raising concerns about *refoulement* to Turkey.

### Push-backs and Non-refoulement

According to Article 33 par.1 1951 Geneva Convention

*'No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'*<sup>130</sup>

This provision constitutes one of the basic Articles of the 1951 Convention, to which no reservations are permitted. It is also an obligation under the 1967 Protocol by virtue of Article I (1) of that instrument. Unlike various other provisions in the Convention, its application is not dependent on the lawful residence of a refugee in the territory of a Contracting State.

The principle of *non-refoulement* is also acknowledged by the EU. Back in 1999 at the Tampere meeting of the European Council it was mentioned that CEAS means respecting *non-refoulement* and ensuring that nobody is sent back to persecution. *Non-refoulement* is mentioned in Directive 2013/32/EU, with respect to the third safe country concept and as a safeguard during extraditions and deportations. It is also mentioned in Article 21 Directive 2011/95/EU with the exception of a refugee being considered as a danger in a Member State or having been convicted of a serious crime.

129 The Press Project, 'Ξεκίνησαν επίσημα οι εργαζόμενοι της Υπηρεσίας Ασύλου', 7 March 2018, available in Greek at: [bit.ly/2ldZyZR](http://bit.ly/2ldZyZR).

130 The only exception being a refugee for whom there are reasonable grounds for regarding him as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Furthermore, Article 8 par. 1 Directive 2013/32/EU stresses

*'Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so.'*

According to this provision, if a person crosses the borders and expresses his/her wish to apply for international protection, he/she should be given instructions on how to do this in a language that he/she understands. The same Article guarantees access to organisations providing advice and counselling that can be limited but it cannot be severely restricted or made impossible.

There is no provision directly obliging Member States to accept asylum applications and no subsequent right of a person to ask for asylum in a specific State. There is, though, an indirect incitement to the authorities to take into account the willingness to apply for asylum of a person that has just crossed the borders and to facilitate access to the asylum procedures by providing relevant information and access to counselling. Although there is no duty to accept the person to the territory, the above-mentioned provisions would be devoid of meaning if Member States could remove a third-country national without giving them the possibility to launch such an application.

Respect for *non-refoulement* was also mentioned in the EU-Turkey Statement, thus obliging the Greek authorities to examine the individual asylum application before returning a person to Turkey. As a matter of fact, Turkey cannot be considered safe for an applicant if there is evidence that the person will risk to be refouled in this respective country.

Respect for *non-refoulement* and access to asylum are also reiterated in Greek legislation. Article 36 Law 4375/2016 transposing Articles 6 and 7 Directive 2013/32/EU is even more favourable for asylum seekers than the provisions of Directive. It states that *'every alien or stateless person has the right to submit a request for international protection'*. The Article entitled 'access to the procedure' further mentions how this request can be lawfully submitted. The right of the person to make such a request is recognised, whereas in the EU Directive there is no such explicit provision.

123 Report of AITIMA, *Asylum Seekers On Hold. Aspects of the asylum procedure in Greece*, Athens: AITIMA 2017.

124 The Greek Ombudsman, *Annual Report 2016*, Athens: The Greek Ombudsman 2017.

In *Sharifi v. Italy*,<sup>131</sup> the ECtHR ruled that non-admission of aliens at the borders could equal to *refoulement*. The Court found that by expelling the applicants to Greece, a country that lacked the means of a proper examination of the asylum claims, Italy ran the risk of indirectly refouling the applicants to Afghanistan. Interception at Adriatic ports by Italian authorities had taken place in the past and in the present case the applicants upon arrival to Italy were immediately sent back to Greece, denying them the possibility of applying for asylum and their procedural and material rights. The fact that the applicants were not yet present in the territory of Greece, nor properly admitted to the Italian territory was irrelevant for the implementation of *non-refoulement*.

In *Hirsi Jamaa and others v. Italy*,<sup>132</sup> the ECtHR ruled that it is not decisive whether expulsions started in the territory of a State party. The Court found that territorial applicability should be the norm. Nevertheless, if a Contracting State has, exceptionally, exercised its jurisdiction outside its national territory, it does not see any obstacle to accepting that the exercise of extraterritorial jurisdiction by that State took the form of collective expulsion. Although the right to request asylum is recognised in Greek law, and protection from *non-refoulement* is mentioned when the authorities want to return a person to a first country of asylum or to a third safe country, there have been continuous allegations of massive push-backs from Greece to Turkey in the last couple of years. This phenomenon has been reported by several NGOs and UNHCR.

More concretely, in 2017 the Hellenic League for Human Rights issued a press release claiming that the unofficial *refoulement* from Greece to Turkey of persons who are possibly entitled to international protection seems to be conducted in concert with Turkish authorities. The Hellenic League presented the case of a Turkish national, Murat Çapan, who was expelled to Turkey. Murat Çapan was a journalist for the magazine *Nokta*. He was prosecuted and finally sentenced *in absentia* to 22,5 years in prison for participation in a terrorist group and attempting to overthrow the constitution. He crossed the river Evros to the Greek side at 06:00 in the morning on May 24th, 2017, along with two of his friends. They reached Didymoteicho where they were arrested by police and asked to apply for asylum. They were told they would be transferred to the UNHCR and were put in a white unmarked van. The van met with another car and they were taken to a field. A group of five masked gunmen, dressed in camo, led them to the river without saying a single word. The Turkish nationals saw that there was an inflatable boat waiting there and they repeated their demand to apply for asylum.

Their hands were tied and they were all put on the boat which crossed to the opposite shore with two of the masked gunmen, near an outpost of the Turkish army, where they were abandoned. After a while, they were found by Turkish police officers. Murat Çapan is already in prison, with everything this entails. The family is likewise in detention.<sup>133</sup>

The unlawful returns to Turkey have been criticised by NGOs and prominent representatives of international organisations. Nils Muiznieks, the Council of Europe's former commissioner for human rights, called for an immediate probe. Muiznieks said:

*'No doubt Greece has been under immense migratory pressure in recent years and the help received from other EU member states has been far from effective in alleviating both this pressure and the suffering of refugees in the country.'*  
*'However, even in particularly challenging situations, states cannot resort to practices – such as collective expulsions – which are not in compliance with the European Convention on Human Rights and the non-refoulement principle enshrined in the UN Refugee Convention,' he added.*<sup>134</sup>

On the 9<sup>th</sup> of June 2017, the Greek Ombudsman decided to investigate ex officio whether Turkish nationals seeking international protection have been expelled to Turkey and what was the involvement of the Greek police, the Asylum Service and the RIS.<sup>135</sup>

Moreover, in 2018 the Greek Council for Refugees published a report<sup>136</sup> describing cases of push-backs that involved victims of torture, pregnant women, recognised refugees of other Member States as well as persons who had already applied for asylum. It states that after crossing the borders of Evros river, people are arrested on Greek land, detained and led to the borders escorted by the police, where they are returned to Turkey. Testimonies refer to arbitrary arrests in detention centres under deplorable conditions, violence, and their subsequent transport to the river bank, crammed into small vans, from where they cross the river on overcrowded boats to the other side, risking their lives one more time.

According to GCR, third country nationals who enter the country irregularly, who sometimes even have legal residence documents, report that, when arrested, they are transferred in vans, which usually look like police vehicles, to detention centres.

133 Hellenic League for Human Rights, Coordinated refoulements to Turkey?, Immigration-Asylum press releases, Athens, 29/05/2017.

134 [www.ekathimerini.com/219016/article/ekathimerini/news/top-human-rights-official-concerned-over-alleged-pushback-operations](http://www.ekathimerini.com/219016/article/ekathimerini/news/top-human-rights-official-concerned-over-alleged-pushback-operations)

135 Greek Ombudsman, Decision of investigation, protocol number 105, Athens 09/06/2017.

136 GCR, Reports and testimony of systematic pushbacks in Evros, Athens: GCR, February 2018.

As soon as they are arrested, all of their personal belongings (mobile phones, money, identity cards, legal residence documents) are removed and never returned to them. The people that arrest, guard and oversee the expulsion process from Greece to Turkey sometimes wear Greek police uniforms, at other times they wear camouflage that resembles military uniforms, on some other occasions, they are dressed in black clothes, and at times they cover their faces. People stay in these sites for a few hours or, less often, a few days, in the evening they board vans and are driven to Evros, where other armed men await, put them on boats and lead them to Turkey. During this process, victims report violence.

These incidents have happened, according to the reports, to people that have entered the country and have been returned to Turkey without being documented, without being officially arrested and allowed to seek international protection. In addition, these kinds of incidents have also happened to people who have already applied for asylum in Greece or have been granted international protection in another European country. The above-mentioned allegations raise concerns with regard to Article 3 ECHR regarding the prohibition of torture and humiliating or degrading treatment and the *non-refoulement* provisions mentioned before.

The EU external borders are managed jointly by Frontex and the Member State involved. Although the responsibility of Greek border guards for push-backs is not contested, it is worth examining if Frontex also be held accountable for push-backs in Evros. The establishment of such responsibility is dependent on the possibility for the EU to be responsible for human rights violations taking place by agents working for its agencies and operating in the territory of Member States, as well as outside EU territory.

### Frontex Responsibility for Push-backs in Evros

Frontex is involved in identifying and defining the objectives of border surveillance operations, defining the execution of joint operations (Operational Plans) and Joint Returns Operations, as well as their implementation. Although the reformed Frontex mandate provides that the agency can 'initiate' or 'coordinate' an operation, there is no text defining the responsibility of the agency in cases of irregularities or human rights violations.<sup>137</sup> The Code of Conduct provides in Article 7 that participants are primarily and individually responsible for their actions in their work;<sup>138</sup> the liability of the agency as a body is not mentioned.

137 FIDH, Migreurop, EMHRN, *Frontex between Greece and Turkey, At the border of denial*, Paris, May 2014.

138 FRONTEX, Code of conduct for all persons participating in Frontex activities, Warsaw: Frontex 2011.

Moreover, the Regulation<sup>139</sup> establishing the agency provides that 'the Protocol on the privileges and immunities of the European Communities shall apply to the agency'.

The Frontex Fundamental Rights Strategy, adopted in March 2011, states, in paragraph 13, that although Member States remain primarily responsible for the actions of participating officers, this does not relieve Frontex of its responsibilities as the coordinator. According to some scholars,<sup>140</sup> the EU could be held responsible for the actions of the agency pursuant to Article 340 TFEU:

*'In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.'*

However, in November 2013, the European Union Ombudsperson recommended that Frontex set up an internal complaint mechanism for violations of human rights for which the agency and its officers are responsible. Frontex rejected this recommendation, with the argument that 'individual incidents are the responsibility of the *respective Member State*'.<sup>141</sup>

139 Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

140 Y. Pascouau & P. Schumacher, Frontex and the respect of fundamental rights: from better protection to full responsibility, EPC Policy Brief 03/06/2014, Brussels: European Policy Centre 2014. The authors invoke the provision of monitoring for all incidents occurring in joint operations and the possibility for the Frontex Executive Director to suspend or terminate, in whole or in part, joint operations if they consider that violations of fundamental rights or international protection obligations in the course of joint operation are of a serious nature or are likely to persist as an indication of a subsequent responsibility.

141 Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex, 12/11/2013. As regards the issue of a complaints mechanism for persons affected by fundamental rights violations, Frontex pointed at the possibility for third parties to report possible violations. It also emphasised that it would deal with any complaint about fundamental rights violations and that it would give 'appropriate consideration' to such complaints. At the same time, Frontex highlighted that it has no authority to decide on individual cases, since these fall within the competence of the Member States concerned.

The newly established European Border and Coast Guard disposes of more operational powers and in cases of emergency it can directly intervene and take over:

*'Where control of the external border is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area, either because a Member State does not take the necessary measures in line with a vulnerability assessment or because a Member State facing specific and disproportionate challenges at the external borders has not requested sufficient support from the Agency or is not implementing such support'.<sup>142</sup>*

However, its officers still enjoy immunity and the possibility to submit an individual complaint for human rights violations is examined internally without touching upon the accountability of the agency.<sup>143</sup>

In conclusion, it seems that an increase in EU competencies regarding the external border management is not followed by a parallel increase in accountability. Access to asylum is being restricted without this being officially acknowledged by the State or by the EU, therefore without endorsing the complaints and without assuming any accountability for the alleged violations.

## IX. Conclusions Part I

As it becomes apparent, the EU-Turkey Statement has considerably marked the protection of asylum seekers in Greece. Since 2016, several legal reforms took place so as to reduce the number of persons entering the EU territory and to facilitate their return to Turkey. These reforms include an increase of asylum claims found to be inadmissible based on the safe third country concept. Although there is no national list of safe third countries mentioning Turkey and despite the fact that this concept has mostly been used on the islands, it has nonetheless caused the dismissal of many claims of international protection and the subsequent reform of the status of the appeals committees supports this as well.

The Council of State failed to acknowledge that according to EU law a country cannot be deemed safe if it applies the 1951 Geneva Convention with restrictions, as Turkey does.

Moreover, the geographical limitation is a restriction of movement permissible under EU law and Greek law. However, taking into account the relatively high numbers of arrivals on the islands concerned, the lack of free legal aid, the strict deadlines imposed during the asylum procedure and the deplorable living conditions, this measure renders the legal and physical protection of these asylum seekers very difficult. If seen in comparison with the absence of such limitation at the Evros border, it also leads to differential treatment of asylum seekers.

Vulnerability assessment was presented as a magical solution that would still allow some asylum seekers to escape this limitation. It was also presented as such by the authorities in order to render the limitation lawful. However, it dehumanises asylum seekers having to prove themselves as weak and as needy as possible in order to be allowed to enter the mainland. The dehumanisation of asylum seekers is based on the fact that they are subjected to extremely harsh reception conditions on the islands for a very long time, often years, and the only possibility they have to escape this reality is to prove that they are vulnerable. Having to prove oneself vulnerable in order to be able to escape a very miserable life at the hotspots is against human dignity.

The EASO participation in the Greek asylum procedures has rapidly expanded, challenging State sovereignty in dealing with individual asylum cases. It also casts doubts as to the lawfulness of the interviews that have been conducted without the presence of Greek asylum officers who sign the respective decisions. Moreover, the detention of asylum seekers based on their nationality is not prescribed by law but it nonetheless happens. The *de facto* incapacity of these persons to effectively go through their asylum claims leads to their unequal treatment.

Unaccompanied children face serious problems with regard to their right to be transferred to another EU Member State where they have close relatives, following the Dublin Regulation. A strict interpretation of the Regulation's provisions and deadlines leads to the rejection of their claim, in spite of them being unable to respect the deadline due to lack of information. In addition, since there is no standard procedure regarding age assessment and without always acting according to the presumption in favour of the child, many children are subject to wrong age assessment and face deportation.

Finally, migrant organisations report continuous push-backs from Greece to Turkey, especially at the northern border with Evros. This practice takes place under the radar. It creates risks for the life and physical integrity of the persons involved and it is a *de facto* refusal to provide access to international protection to those who have entered EU territory. The authorities have denied responsibility and Frontex has done the same relying mainly on its operational and coordinating statute. These allegations have not yet been adequately investigated or brought to justice.

To conclude, the EU-Turkey Statement was introduced as a soft law document, a political declaration of the EU Heads of State for which the EU has refused to assume any legal responsibility. It has nonetheless produced severe consequences to the rights of asylum seekers in Greece, affecting disproportionately applicants from countries of high rate refugee recognition and new applicants arriving on the islands where the geographical limitation applies. Greece has officially acknowledged the implementation of this Statement, through its decision to impose the geographical limitation and through setting up the pilot project. The EU has refused to do the same. However, the active participation of EASO in the asylum examination procedures and the close monitoring of this measure is a sign of the opposite. That makes the EU also responsible.

The second part of this research will be based on interviews with prominent officials of EASO, the Greek State, MEPs and organisations that deal with migration and asylum. The outcome of these interviews will verify if the present conclusions correspond to the migration reality.

<sup>142</sup> Regulation (EU) 2016/1624 of the European Parliament and the Council of 14 September 2015 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, Article 28 of the Preamble.

<sup>143</sup> F. Ferraro & E. De Capitani, *'The new European Border and Coast Guard: yet another "half way" EU reform?'*, Berlin-Heidelberg: Springer, 17(3) ERA Forum 2016, p. 385-398. The writers argue that the regulation fails to define the grounds for fair responsibility sharing. Moreover, although the regulation states that European integrated border management is a responsibility of the EU institutions, the Agency is mandated to establish an operational and technical strategy for the European integrated border management, something that is not in compliance with the Treaties. The writers express their concern with regard to the Council and Parliament charged with deciding in cases of emergencies (a procedure according to which Member States are going to vote) instead of opting for more communitarianism.



## 5. Part II: Interviews

### Introduction/Methodology

The second part of this research will present the interviews that have been conducted in the period from February to April 2019. This part is a qualitative research. For the purpose of this research, we chose thirteen interviewees who represent 1) the Greek administration, 2) the EU and Greek Parliament, 3) international and non-governmental organisations that support asylum seekers in Greece, 4) the Dutch Embassy. They were chosen based on their active role regarding asylum and migration, as well as their knowledge of the current asylum challenges in Greece. Moreover, in order to make this research more diverse and more balanced, we chose interviewees who represent Greece, the Netherlands and the EU. All interviewees are high-ranking professionals, who have a broader understanding of the challenges for asylum seekers in Greece. Regarding the administration, we chose persons representing the First Reception Service, the Ministry for Migration Policy, the Asylum Appeals Committees. The Greek Asylum Service was invited to participate but declined. These interviewees cover the main stages of asylum procedures in Greece.

We included Greek and Dutch MEPs of the EU Parliament actively pursuing political debates on migration as well as national MEPs in order to include the opinions of representatives of the people. We chose EASO in order to better understand its role in Greek asylum procedures. Finally we included organisations that play an important role concerning the protection of refugees in Greece, such as UNHCR, and NGOs such as the Greek Council for Refugees. The interviewees were presented with the topics analysed in Part I, and were asked to express their views freely on any of these topics, as well as to introduce new topics that have not been initially envisaged.<sup>144</sup> They were then asked to reply to the general questions: what are the main challenges for asylum seekers in Greece, which solutions do you see and who can provide these solutions. They were encouraged to propose short-term and long-term solutions that would benefit asylum seekers and to specify if these solutions should be sought on a national or an EU level. The transcripts of the interviews were sent to the interviewees, who were invited to suggest changes. Some interviewees indeed provided considerable changes, which were subsequently taken over in this research paper.

The majority of the interviews were conducted in person, in English and in Greek language. This presents the main messages of each interviewee with regard to the general questions.

#### I. Interview with Mr. Constantinos Papadimitriou, Secretary General of the Greek Ministry for Migration Policy

Mr. Papadimitriou acknowledged the delays in the examination of the status of asylum seekers in Greece and their long stay at the islands as one main challenge. He identified different reasons behind this phenomenon.

First of all, he mentioned that as a Ministry they have to follow the regulations of the EU regarding procurement and supplies and that these procedures are lengthy and bureaucratic, whereas migration needs immediate action and flexibility. From 2021 to 2027 the EU budget for migration increases, therefore a better strategy is needed so that the services can become more efficient.

He admitted that public administration in Greece should be modernised and that more staff is needed. The existing staff of the Ministry of Migration only covers 30% of the necessary posts, therefore the imminent employment of 133 persons by the Asylum Service and 50 persons by the Ministry, together with the clearance of costs to providers, will allow them to accelerate procedures. He specified that although it was difficult for the Ministry to employ more civil servants, due to the financial agreements with the creditors, they managed to find the budget to add 200 employees in the asylum sector and 50 permanent, to the Asylum Service previously counting 650 employees.

He added that the payment of the staff mobile AUs should also be accelerated in order for them to become operational. At the same time, the Ministry had a hard time finding medical staff for the islands. They decided to give extra incentives to doctors, such as double salary and the possibility to cover with this work their mandatory training, in order to persuade them to work for HCDCP at the islands.

Regarding vulnerability assessments, Mr. Papadimitriou found that the large number of persons considered vulnerable makes the geographical limitation less valid. However, the EU is not insisting on this; what they do insist on is the need to increase the returns of rejected asylum seekers to Turkey. He explained that returns are delayed because it is often difficult to find those who have been rejected and because Turkey often finds reasons so as not to accept returnees.

He gave the example of a number of persons who are in the process of being returned, and Turkey, based on some problem, for instance in the spelling of a name, rejecting the whole list of persons who are already on the route. Mr. Papadimitriou clarified that the Prime Minister, the Minister for Migration and the Minister of External Affairs are trying to solve this problem through diplomacy.

The creation of an observatory for migration flows to the EU, based in Greece and funded by Norway was presented by Mr. Papadimitriou as a long-term solution that will allow them to plan 1 or 2 years in advance and therefore, be better prepared to face all kinds of migration challenges. This means that they would be ready to deal with them in terms of infrastructure. Concerning the challenges for unaccompanied minors in Greece, Mr. Papadimitriou stated that Greece has made a request for their relocation to other EU Member States but for the moment only Portugal has replied positively, whereas Hungary has already denied.

Mr. Papadimitriou insisted that in terms of responsibility, migration is a European issue and that the EU should have one common policy. He welcomed the support of EASO but criticised the differences in salaries, compared to the Greek staff. He found that reliance on non-EU countries should not be expected to solve the problem, referring to the refusal of these countries to create hotspots in their territories according to the latest proposal of the EU Council. He found platforms and the blocking of sea routes to be inhuman. He proposed more solidarity in the EU and the need for criteria in order for asylum seekers to be distributed where they can be well integrated. Nevertheless, he estimated 73.000 refugees to be in Greece as of today. Taking into account the 15% increase of migration flows this year and the closure of the Balkan borders, he admitted that it is highly likely that a large number of people will remain in Greece. Therefore, a detailed national system of integration is highly needed.

Finally, he emphasized that if the EU does not take concrete steps on a political and technocratic level to tackle the real root causes of migration, such as climate change and wars, no other long-term solution will be able to solve the problem.

#### II. Interview with Ms. Manon Albert, Dutch Embassy in Greece

Ms. Albert covers migration at the Dutch Embassy in Athens, working for the Ministry of Foreign Affairs of the Netherlands. She explained that she visited the hotspots in Greece and was alarmed by the bad reception conditions in Moria, the tension between different groups/nationalities, the bad smell, the overcrowded hotspot of Samos with hundreds of people still living in tents all over the place.

She visited the pre-removal centre in Fylakio, where migrants (even families with children) were kept together in large prison cells. On the other hand, she also mentioned there are some relatively well-functioning reception facilities like Elaionas in Athens.

Ms. Albert found that asylum seekers would not be blocked in the islands for so long if the asylum procedures and returns to Turkey were faster and more efficient. Concerning the vulnerability assessment, she believes that the way it is functioning now (almost everyone is declared vulnerable) undermines the EU-Turkey Statement. The criteria used by the Hellenic Centre for Disease Control and Prevention (KEELPNO) and EASO are very broad and the long stay at the islands renders people vulnerable eventually. The assessment takes too long because there is a shortage of doctors on the islands. She stated that something should be done to make the procedure better (more credible) because this is also at the expense of people who are really vulnerable.

When asked if there is a lack of lawyers to assist asylum seekers in Greece, Ms. Albert felt there are more urgent needs and gaps to fill. Furthermore she expressed concerns that certain lawyers from NGOs actually hamper the system by advising asylum seekers how to be considered vulnerable or encourage them to appeal over and over again even when they do not stand a chance.

As a solution to this challenge, Ms. Albert proposed to focus on returns to Turkey, not only of Syrians but also other nationalities who would be safe (or even better off) in Turkey. This way, it would be possible to break the smugglers networks. However, in her view if we allow the present situation where arrivals have increased and returns continue to be low, migrants – and more importantly: smugglers – will not be discouraged since they know that sooner or later they will be able to arrive in Athens and from there to try to find ways to continue their journey to western Europe.

In order to achieve this goal, Ms. Albert suggested that the asylum service should make quicker procedures to determine who has a right to stay and who does not. They need a greater capacity and more staff. EASO can help but they need to have permanent Greek staff, no quick fix. Concerning the quality of asylum examination, it is difficult to judge from her position. Based on stories from EASO experts she could imagine that the procedures are less thorough than they are for example in the Netherlands. Concerning unaccompanied minors, she found that they should not be in the RIC's on the islands and not be used as a means of deterrence policy. At the same time, the EU should avoid any policies that will promote the phenomena of using an 'anchor child': families sending a child on a dangerous journey to Europe in order to get a status through family re-unification.

144 See Annex I.



When it comes to responsibility, Ms. Albert found that Greece sees itself as a transit country and tends to frame this as a European problem. The only durable solution is when Greece takes responsibility for the situation and creates humane reception conditions, quicker asylum procedures, effective returns and inclusion through integration. With the support of the EU, of course. Some progress has been made in these areas, but there is still a lot that needs to be done and that needs to be improved. A strong Common European Asylum System is desirable and something we should continue to strive for, but it is not likely to be achieved in the near future, she concluded.

### III. Interview with Mr. Georgios Pallis, Greek MEP

Mr. Pallis is an MEP of Syria party, coming from Lesbos. He first mentioned that right after the EU-Turkey Statement, all migrants in Greece started applying for asylum. Arrivals decreased after this Statement and the closure of the Eidomeni border. This dramatically increased the number of asylum seekers who had to remain in Greece.

Mr. Pallis found that asylum examination is nowadays faster but it takes a while for decisions to be issued. Two years after the Statement, refugees of low recognition rate who have been unduly delayed are now examined at a much faster pace. However, due to the fact that these persons have already waited on the islands for such a long time (1-2 years), they should at least be given a humanitarian status.

Concerning vulnerability, Mr. Pallis explained that it has become a machinery, since vulnerable people are more than the non-vulnerable. He accepted the fact that it has become a tool, but given the EU pressure to keep the hotspot policy and the geographical limitation, he found no other better solution. With regard to the quality of the asylum examination, Mr. Pallis found that interviewers from northern Europe, with the exception of Scandinavians, tend to be stricter, whereas Portuguese and Spanish case workers tend to follow the average recognition rates. There are not enough interpreters because the Greek State always gives a smaller wage than NGOs.

When it comes to the change of the legal status of the asylum appeals committees, he was against it and believes that we need a second level of independent experts and judges only at a final stage. He mentioned that the previous Minister for Migration tried to promote the principle that 'if you make an appeal, you will go back to Turkey', but he was a fierce opponent of this idea. Mr. Pallis claimed that EASO is taking very long when it comes to the support of asylum examination. He specified that only half of the staff from that was initially promised came to Greece and that most of them are Greek contractual agents.

Permanent staff is needed. He also proposed the employment in the EU of case workers who are well-integrated and educated migrants themselves, and therefore, they can better understand other cultures and assess these claims.

As a long-term solution, Mr. Pallis proposed a central administration of asylum by the EU, with the possibility to conduct remote interviews by a central authority and their subsequent distribution over Member States according to their capacity for integration. However, he highlighted that this should happen when there is a change in policy from fortress Europe to an open borders policy. He was against the creation of platforms of disembarkation and suggested giving refugees the possibility to apply for international protection in embassies and other designated areas abroad and then to travel legally to Europe in order to be examined. On the short-term, he supported inter-cultural mediation so as to avoid fights in the hotspots, family violence and disrespect for women's rights. He underlined the need to prioritise the examination of asylum seekers who have been involved in criminal activities, in order not to upset too much the local population.

### IV. Interview with Ms. Judith Sargentini, Dutch MEP, EU Parliament.

Ms. Sargentini first observed that there is an unwillingness to solve the migration problem both in Greece and in the other EU Member States. The latter demonstrate their unwillingness by not supporting relocation of asylum seekers. However, Greece is not willing to find the solution because if the situation improves, the authorities are afraid this would be a pull factor and they surely do not want to receive more people. At the same time, Turkey only takes people back from the islands and not the mainland. She found that there is no political will to solve the problem.

Ms. Sargentini added that asylum procedures take too long in Greece for two reasons: because of lack of capacity and because they try to prevent more people from coming. In times of economic crisis, why would someone prioritise migration, she wondered. Concerning the cooperation of the Greek officials with EASO, Ms. Sargentini noted that EASO is an EU Agency, therefore they have different visions. They try to clean up the situation in Greece, sometimes using unorthodox methods. Concerning the proposed change of EASO's mandate in order to become more operational in Member States, Ms. Sargentini doubts if there will be a consensus in the EU to support this change. Asked if she supports the idea of EASO taking over asylum in Member States, she replied that there are pros and cons, and that this depends on the standards that will be set.

Regarding unaccompanied minors, she emphasized that the situation is inhuman and that they should not be allowed in the camps; they should all have their own guardian.

Moreover, Ms. Sargentini found that vulnerability assessments in Greece take too long and as a result, vulnerable people have to remain for prolonged periods on the islands. She stressed that other Member States actually like it that asylum seekers have to remain confined in the Greek islands.

Concerning the EU Turkey Statement, she noted that since, legally speaking, this is not an EU agreement, it is not negotiable by the EU, therefore not tangible. However, it is indeed illegal, out of democratic scrutiny and not respecting the principle of *non-refoulement*. She explained that returns from Greece to Turkey take place under the bilateral readmission agreement and not the EU-Turkey Statement. Nowadays, accession of Turkey to the EU has frozen, but the economic support to Turkey for refugees will indeed continue. Ms. Sargentini stressed that although the Statement helped in decreasing the number of arrivals through Greece, the decisive factor was the closure of the Balkan route. However, people are still arriving.

In addition, Ms. Sargentini clarified that Turkey may be a safe third country for Greece but this is not a European policy; there is no EU list of safe third countries that includes Turkey. In any case, there should always be an individual assessment of each case.

In terms of long-term solutions, Ms. Sargentini supported the creation of legal pathways for refugees to enter the EU and the possibility to provide refugees with humanitarian visas. Asylum seekers who have to wait for too long to receive a decision, should be given refugee status. Third countries do not have an interest as such to assume responsibility for refugees and become the trash bag of Europe, she noted.

### V. Interview with Ms. Alexandra Tzanedaki, First Reception Service in Moria, Child Protection

Alexandra Tzanedaki is working for the First Reception Service, child protection unit, inside the safe zone for unaccompanied minors in Moria. Her testimony focuses on family reunification, registration, asylum examination, child abuse and exploitation.

First of all, she stressed that family reunifications according to the Dublin Regulation are very difficult. Children need to provide all the documents and proof within very strict deadlines and they have to make their claim to Germany within 3 months counting from the moment they arrive on the island.<sup>145</sup> Receiving States tend to find excuses to reject these claims because for instance there is a small misspelling in the name of the applicant. Children find it extremely hard to collect all the required documents and to go through the DNA tests that many countries require.

<sup>145</sup> For the rest of the Member States, 3 months delay starts from the moment the children apply for asylum.

They lack proper information regarding Dublin transfers. They may stand a chance if they are supported by a guardian/lawyer. The procedure is very lengthy taking 1-2 years and a follow-up is often missing. Ms. Tzanedaki also stressed the importance of registration.

Frontex is the first to register newcomers. Most often, the First Reception Service asks children to verify if their personal data are correct, following the pre-registration of Frontex. However, sometimes children complained that Frontex has discouraged them from providing data that are essential for their protection, such as their age, nationality etc. Although children may indeed be accompanied by a guardian during their registration, this is not feasible in the case of massive arrivals. Registration is very important because if a child changes something during the asylum examination, this may be used against him, rejecting the child as ineligible.

In general, there is a lack of legal assistance in Moria. There are only a few NGOs who provide legal aid, such as European Lawyers, Danish Refugee Council, GCR, but no State funded lawyers. As a matter of fact, Alexandra estimates that only 10% of the asylum seekers have access to a lawyer in Moria. This means that only children under 15 years of age are represented by a guardian, whereas children over 15 will not have a guardian or a lawyer to represent them at the asylum examination. The majority of unaccompanied minors are above 15, as a result, only 1/3 of children have a legal representation. In addition, due to a lack of HCDCP doctors, children have to wait for months for their examinations to be evaluated by doctors in Athens, and as a consequence, their asylum examination is also pending.

She added that there are considerable delays in the asylum interviews. EASO case workers tend to schedule interviews for 2020, although children are examined much faster. Many asylum seekers go to the interviews without any preparation. Rejected asylum seekers are informed that if they make an appeal they will lose the right for voluntary repatriation with IOM. Voluntary repatriation means that the person will not be able to come back to Greece for the next 3 years. Alexandra gave the example of an Afghan who has been in Moria for 3,5 years waiting for the appeals decision. Asylum decisions are often handed over to the Director of the camp and then posted on a wall. As a consequence, some people have lost their right to appeal due to lack of proper information.

Moreover, Alexandra Tzanedaki highlighted that although there have been official complaints to the Public Prosecutor regarding children's prostitution and a file has been opened, the alleged perpetrators have not been convicted.

Alexandra speculates that perhaps this is because victims are reluctant to go through the criminal proceedings until the end, since, first of all, 'survival sex' is for them the only way to meet their basic needs and secondly, because they feel unprotected legally and physically. There is also the tendency not to upset the local society. In addition, children have been forced to steal and to sell drugs in order to avoid been beaten. The prolonged stay on the island leads children to misery. She also mentioned that there have been incidents of children being exposed to sexual abuse, especially when their caretakers are queuing for breakfast. She noted that people have to wait for 3-4 hours to be served, therefore they tend to make a line at 2 a.m. in order to get breakfast and right after they have to queue again for lunch. In the meantime, their children are exposed to all kinds of dangers.

As short-term solutions, Ms. Tzanedaki suggested that asylum procedures have to be simplified so that people know if they can stay or not and not to wait for long periods in this 'prison surrounded by water'. Dublin procedures have to be faster and rejections should be legitimate and not arbitrary. There is a need for more guardians, lawyers and doctors. Children should not be kept in Moria at all. They should be hosted in another shelter far away from the camp. For the long term, the EU should create a permanent mechanism for the immediate relocation of children in Member States where they have family who can support them. Finally, Alexandra mentioned that we need a long-term strategic plan for the integration of refugees, and referred to the fact that recognised refugees lose their home and allowance 6 months after the recognition. Having no work to sustain themselves they will have no other solution but to become criminals, she concluded.

## VI. Interview with Mr. Spyros Apergis, Independent appeals committees

Spyros Apergis was, at the time of this interview, a member of an independent appeals committee, proposed by UNHCR according to law.

According to Mr. Apergis, the EU-Turkey Joint Statement does not have a legal status in any Member State. Yet, a decision of the director of the Asylum Service, which establishes the geographical limitation for refugees arriving at the islands of the east Aegean Sea, presented this Statement as serving public interest. He further explained that the alleged reason why in 2018 the government decided to change the composition of the appeals committees is because the previous committees used to issue positive decisions regarding Syrians, which was not the purpose of the EU Turkey Joint Statement.

The purpose of the safe third country concept as it has been evoked ever since by the Greek administration was the implementation of the EU-Turkey Joint Statement and the rejection of asylum claims of Syrians who come to Greek islands, as inadmissible .

In particular, he stressed that following the negative decisions of the Greek Council of State on the appeals of asylum seekers who challenged the EU-Turkey Statement, the Independent Appeals Committees have been rejecting the appeals of Syrians coming from the islands in the majority of cases. There are some Syrians who were exempted: those considered to be vulnerable according to law and the relevant procedures. He added that although legal aid at second instance is mandatory, not all of them have legal aid in practice. There are not enough lawyers to cover this need. As a result, some appeals committees postpone the examination of the case if there is no lawyer, but if they get back to this case and there still is no lawyer available, there is a problem.

Mr. Apergis criticised the fact that decisions at second instance are delayed; it takes them, at an average, 5 to 6 months to issue a decision for a case coming from the islands and more time if it is a case of the mainland. More committees are needed because the workload is huge, with more adequate and permanent staff, supporting the Committees. He further added that often the quality of the interviews at first instance is low, especially those from certain islands of the east Aegean sea and a second interview is much needed. It is at the discretion of the appeals committees to decide whether to invite the applicant again but in most cases, this does not happen.

Some first instance interviews are bad for numerous reasons, namely because they are not trained suitably, they make questions without following up in certain critical questions, they mention that a fact was not proven without having asked about it, they misuse the credibility criteria of UNHCR, while EASO tends to lead the applicants during the admissibility assessment that takes place at the islands. Moreover, EASO usually issues negative opinions and considers Iraqis and Afghans as inadmissible, based on the safe third country concept. Regarding vulnerability assessment, Mr. Apergis found that it is used, in fact, as a political tool, allowing the authorities to reduce the burden of the overburdened islands. Therefore, the number of vulnerable people follows the necessity to transfer the same amount of persons to the mainland.

Mr. Apergis criticised the unofficial access of applicants to the Asylum Service through Skype, as a precondition to their official registration, since this method does not provide a legal permit of stay until the official registration, and, therefore, there is no security against arrest and deportation.

Concerning unaccompanied minors, Mr. Apergis found that there are not enough guardians and as a result most minors are not represented by them in asylum proceedings. Since they are often homeless, residing in parks, police stations or so-called safe zones, they have limited possibility to have just and effective access to the asylum process.

As short-term solutions, he found that: infrastructure on the islands has to be improved, the first reception service and the asylum service need to hire more permanent and suitably trained staff, the geographical limitation needs to be abolished, the army should no longer be responsible for the administration of many camps, the civil Service of the Reception and the Identification, a service of the Ministry of the Migration Policy, should undertake entirely the administration of the camps and asylum seekers should be hosted in apartments in the cities.

As long-term solutions, he suggests replacing the EU-Turkey Statement with a mechanism for the analogous distribution of refugees in Europe, and the creation of hotspots in third countries where, according to a pre-screening, persons in need of international protection would be able to obtain a visa to come to Europe and apply for asylum. In this case, trafficking will no longer be needed as a solution for travelling refugees to Europe and deaths at the Mediterranean Sea will eventually be considerably reduced.

## VII. Interview with Mr. Kostas Chrysogonos, Greek MEP, EU Parliament

Mr. Chrysogonos found that reality is extremely harsh for refugees arriving in Europe. The political crisis in the Middle East and the economic crisis in Europe and most of all in Greece have created an environment that is not suitable for the reception of these persons. Refugees are suffering because of lack of infrastructure, lack of funding and the difficulty of EU Member States to find consensus. As a result, we have refugee camps that do not offer a dignified stay, criminal groups operating in these camps, a rise in contagious diseases. Greece and Italy have been affected most by this crisis. These countries' inadequate response at an administrative level has raised criticism from other EU Member States, which however are not willing to share the burden.

The EU is currently focused on limiting migration flows by cooperating with third countries that do not have a humanistic approach on migration. On the contrary, they use migration to blackmail the EU in order to have financial benefits. As a matter of fact, Turkey is threatening to open the borders and flood Europe with refugees, in order to receive funding.

With regard to solutions, Mr. Chrysogonos stressed that in times of economic crisis, when the EU coherence is tested, at a political level we need more solidarity and prioritisation of human rights and human lives. At an economic level, we need to release the appropriate funds in order to create shelters of good quality, provide sufficient medical aid and food. At a practical level, we have to be flexible in decision-making, in order to provide true assistance to refugees. In any case, we have to resist populism and opportunism and plan for the future because this issue will persist.

## VIII. Interview with Mr. Dimitrios Pagidas, EASO, Head of Sector Operations in Greece

First of all, Mr. Dimitrios Pagidas presented the role of EASO in Greece. He explained that since 2016, EASO assumed an operational role, initially with the Relocation program and after the EU-Turkey Statement; they participate in border procedures according to the provisions of the law. As of 2018 and following the amendment of the law, they are also conducting asylum interviews in the mainland (regular procedure). In the same context, they are currently launching a pilot project in Lesbos, interviewing asylum seekers of the regular procedure, in order to unburden the case workers of the Greek Authorities involved in borders procedures.

Moreover, EASO has employed, through service providers, the majority of the registration staff. They have been trained and then seconded to the Greek authorities. EASO also provides interpretation in missing languages. Member State experts provide info sessions before registration but this system will be replaced by the employment of regular staff.

Asylum interviews are conducted by foreign experts or Greek people who have been duly trained. In the islands, almost all interviews are conducted by EASO. They use English as working language in order to provide quality assurance. In fact, there is one team leader for 4-5 case workers, co-signing the opinions and they often send to HQ 30-40 cases in order to monitor if there are any new trends. Mr. Pagidas specified that EASO case workers use the interview template of the Asylum Service and that they only draft opinions. Decisions are drafted/taken by the Greek Authorities. The staff seconded at the Asylum Service are Greek speaking.

With regard to vulnerability, Mr. Pagidas stated that although the number looks big it corresponds to reality because if one person is considered vulnerable, the whole family would follow. In addition, prolonged stay at the islands could contribute to vulnerabilities. He explained that there are different categories of vulnerability, according to the law, all exempted from the border procedure (thus the implementation of the EU-Turkey Statement).

Whenever vulnerability is evoked during the asylum examination, EASO forwards the person to KEELPNO and the Asylum Service. However, since there are not enough doctors, vulnerability assessment is delayed. Even the last call for doctors was not successful. Finally, transfers of vulnerable people are also taking time, because there are not enough places in the mainland to receive them. Although 15.000 new places were created, arrivals were up to 30.000, he stated.

Mr. Pagidas also referred to press statements implying that EASO considers Turkey to be a safe third country and firmly denied such an allegation. He stressed that EASO does not decide if Turkey is a safe country for asylum seekers. EASO is only interviewing asylum seekers and handing their opinions, including country of origin information, to the Greek authorities to decide. He further explained that the Asylum Service tends to accept their opinions on eligibility (decision on the merits) but sometimes they do not accept their opinion on admissibility. More specifically, Greece considers that only Syrians may be safe in Turkey because they are given a temporary status, whereas nationalities such as Iraqis and Afghans are considered not safe because they only have 'access' to the procedures and no further protection guarantee. He also referred to the long delays in the examination of appeals, since the appeals committees adjourn only twice per month and the judges who participate are not working full time on asylum cases. EASO, for reasons of impartiality, is only seconding staff to the Appeals Authority that are directly commissioned by the Authority without EASO playing a role or controlling the staff. They hope that the increase of the number of the committees from 12 to 20 is going to help.

Mr. Pagidas added that although it is easy to measure the backlog at the borders, it is practically more difficult in the mainland, since it highly depends on access to registration. The registration system works through Skype, where specific hours for each nationality/ethnic group to make their request are announced. Mr. Pagidas did not make any assessment as to the efficiency of this pre-registration procedure.

## IX. Interview with Ms. Kostadinka Kuneva, Greek MEP, EU Parliament

Ms. Kuneva first emphasized the importance to improve the living conditions of people before they come to Europe. She suggested that we need to invest in economic development, peace and protection against climate change. She mentioned that there are 800.000 people in northern Syria, close to the borders with Turkey, and that we could support in rebuilding their lives instead of acting retroactively.

She also highlighted the need to increase the numbers under the EU resettlement scheme, so that people can come to Europe legally without depending on smugglers. She added that their lives could improve only if they would be distributed by analogy in all Member States and that it is time for the Commission to take measures against countries that do not respect this.

Regarding the geographical limitation, Ms. Kuneva mentioned that unfortunately the EU Commission has completely endorsed Turkey's interpretation on the EU-Turkey Statement. More concretely, the Greek government has repeatedly asked Turkey and the EU to allow them to transfer asylum seekers to the mainland, where there are more human and technical resources but Turkey was against that option, insisting that all those who arrive on the Greek islands should stay there during the examination of their asylum claim. The Commission has accepted Turkey's position although Greece has made several requests asking help to change this pattern. As a result, reception and identification centres are overcrowded and there are huge delays in the examination of asylum claims.

Concerning the safe third country, Ms. Kuneva mentioned that the implementation of this concept should guarantee the individual character of the asylum examination. In any case, we need to create a European list of safe third countries. Although the Commission and Parliament have supported this idea, Member States blocked this decision at a Council level. In the same sense, there should also be common vulnerability criteria in all Member States in order to avoid asylum shopping.

Ms. Kuneva believes that EASO's participation is indispensable because migration is a European issue and not only a national one. Although during the refugee crisis the number of asylum case workers increased, it is still not enough to proceed timely with the examination of all the claims. Since 2015, the Commission promised to send many experts to Greece to do the asylum interviews. It was observed that those who were proposed to come and help Greece were often not approved by EASO because they lacked the necessary skills. Yet, this has created tensions with other Member States claiming that they send officers that Greece rejects. A central examination of asylum by European organs would solve the problem.

Ms. Kuneva also referred to the EU Council Conclusions of 2015<sup>146</sup> offering the possibility to examine asylum claims at the borders and transit zones of other Member States and not only at the EU external borders, something that has never applied.

146 [tinyurl.com/councilconclusionsonmeasures](http://tinyurl.com/councilconclusionsonmeasures).

As for the protection of unaccompanied minors, Greece together with UNICEF set as a prerequisite for shelters not to host more than 30 children. However, the 300 places that were initially available could not cover the 3.700 children that are currently in Greece. Greece managed to create more than 2.000 places in shelters and safe zones but, taking into account that 200 children arrive every month, it becomes obvious that there will never be enough space. The Greek government is constantly asking from Member States to take unaccompanied minors, additional to the numbers of relocation.

Concerning the delays in the examination of asylum claims, Ms. Kuneva mentioned that Greece has tripled the case workers at the Asylum Service but still, as long as it is the first reception State responsible to examine all the cases, there will always be too many claims. Ms. Kuneva also stressed that some NGOs give hope to asylum seekers who do not fulfil the criteria to be recognised as refugees, encouraging them to make an appeal. This is to the detriment of people who are truly in need of protection. Finally, Ms. Kuneva mentioned Article 80 TFEU that states:

*'The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.'*

She expressed her disappointment because, as she said, she submitted a question to the Commission regarding the implementation of this Article in the context of asylum and migration, but she did not receive any answer.

## X. Interview with Ms. Emmanouella Tsapouli, UNHCR

Ms. Emmanouella Tsapouli first stressed that the Greek Asylum Service is responsible for asylum procedures in Greece. EASO has been supporting the authorities by conducting asylum interviews first at the borders procedures and nowadays also in the regular procedures. In Lesbos they interview vulnerable asylum seekers of the regular procedure. She emphasised that due to the great volume of applications, their support is really needed but the Asylum Service should establish a clear framework of operations, setting explicit conditions and obligations for EASO to fulfil as long as they participate in asylum examination.

Concerning the difficulty in accessing asylum in the mainland, Ms. Tsapouli mentioned that the current Skype system is problematic and needs to be replaced by a more technologically advanced system, as in the Netherlands.

More offices and staff are also needed. There is a special registration office for vulnerable people in Frourarheio but this does not guarantee their fast access to asylum. Almost 80% of the asylum seekers of the islands are considered vulnerable. These persons used to be transferred in Athens but are nowadays examined at the islands under the regular procedure because the mainland is also overburdened and their transfer would further delay the procedures since their interview would have to be rescheduled.

In general terms, access to asylum highly depends on the availability of interpreters for the applicant's language. In Evros many people go unregistered.

With regard to the quality of the asylum interviews, Ms. Tsapouli noted that as the Asylum Service expanded its capacity, the quality of the interviews lowered. Cases are difficult, time is pressing and training is still missing. The authorities find it hard to meet local needs. EASO's interviews on admissibility tend to be problematic, missing documentation.

The concept of safe third country applies only at the border procedures and concerns refugees of a recognition rate above 25%. The Asylum Service considers only Syrians to be inadmissible. However, this does not concern more than 2.000 persons, since most of them are found to be vulnerable or Dublin cases. In any case, Greece should have asked the CJEU for a preliminary ruling. Asylum seekers of a recognition rate below 25% may also be returned to Turkey if they are considered not vulnerable.

Moreover, UNHCR believes that there should be a permanent relocation system to balance the situation. This was a system proved to be beneficial but Member States refused to support it. In accordance with Council Decisions 2015/1523 and 2015/1601 the relocation scheme was officially ceased at the end of September 2017, but the Relocation Unit continued operations on pending cases until the end of 2017. At the same time, family reunifications through the Dublin Regulation should be facilitated. Right now, Member States tend to dismiss requests easily because deadlines are too strict. This affects children disproportionately, as they lack proper and timely information about their right, they are hard to locate and they cannot provide the required documents within the time limits.

Finally, Ms. Tsapouli noted that Law 4540/2018 is restricting certain procedural rights, such as the right to appeal at the borders, the possibility of expulsion in case of an abusive subsequent asylum application, overdue asylum applications requiring documentation and interruptions of asylum claims.



## XI. Interview with Mr. Vassilis Papadopoulos, Greek Council for Refugees, Director of the legal service

Mr. Vassilis Papadopoulos first mentioned that many asylum seekers go unregistered in Evros because of administrative reasons or lack of interpretation. Often, when a pre-removal centre is full of people, the authorities release them without registration. Turkey does not accept the return of asylum seekers from Evros or the mainland. They only take people back from the islands, implementing the EU-Turkey Statement. In Evros, the Greek-Turkish protocol of readmission is applicable but not applied in reality.

Furthermore, he stressed that safe third country is a concept that is used only at the border procedures and in small numbers; in reality, most applicants at the islands are considered to be vulnerable, therefore they are returned to Turkey based on the safe third country concept. However, the concept is very risky because the authorities can apply it broadly if they wish. If this happens, the consequences for asylum seekers will be tremendous.

EASO is doing an unofficial vulnerability assessment when it examines admissibility. Admissibility examination only takes place at the islands and not in the mainland. The Asylum Service accepts inadmissibility only for Syrians, although EASO suggests other nationalities as well. Assessments are forwarded from EASO to HCDCP and then to the Asylum Service which decides to lift the geographical limitation. If this limitation is not respected by the applicant, the person is forcibly returned to the borders and the examination of his asylum application is terminated. The geographical limitation does not rely on specific criteria and there is no time limit or any legal means to challenge the decision. Regarding the pilot project, leading to detention of asylum seekers of specific nationalities, Mr. Papadopoulos specified that although it is problematic in theory, in reality it does not affect many persons because of lack of capacity; pre-removal centres are already overcrowded.

Concerning Dublin transfers, Mr. Papadopoulos explained that there is an erroneous calculation of the 3-month deadline from the moment of the arrest at the borders. While in other Member States asylum applications are registered already upon arrest, therefore the Dublin deadline begins at this stage, in Greece the Asylum Service is notified about new arrivals but the registration takes place much later. In order to solve this problem, he mentioned the need to reform Law 3386/2005 regarding responsibility for border arrests. More concretely, we need a legal reform that will allow the Asylum Service to take responsibility for each person from the moment they are arrested at the borders and express the will to apply for asylum. This way, the deadline for submission of a Dublin transfer could possibly start from the moment of the arrest.

Regarding age assessment, he admitted that there are many minors kept together with adults and vice versa. He explained that there is no NGO to assist the person, the first reception service tends to accept the pre-registration of Frontex, which looks at the child's papers, expresses an oral opinion on their validity and hands them over to HCDCP. There is no written procedure.

He further added that the cessation of relocation created several problems in the mainland. Shelters are overcrowded. In the absence of an integration strategy, recognised refugees cannot find a job and therefore they continue to occupy places in the shelters for asylum seekers. Push-backs continue irrespective of the existence of legal documents. Mr. Papadopoulos suggested investing in the integration of recognised refugees and in the monitoring of push-backs.

## XII. Interview with Ms. Konstantina Tsekeri, Defence for Children International, Greek section

Ms. Tsekeri mentioned that children are too dependent on their smugglers. As a result, they prefer to travel illegally and are reluctant to initiate asylum procedures. In order to solve this problem, she suggested better information at the entry points and the possibility for them to apply for asylum in embassies in their country or origin.

In addition, there is no guardianship system in Greece. Greece announced the employment of only 20 guardians. For the time being, NGOs partially cover this need. However, NGOs are understaffed and even if a guardian is appointed, there is no monitoring of their work. As a result, she tends to observe several mistakes concerning the representation of children at the asylum procedures. More concretely, guardians do not provide sufficient information and preparation to the children about the asylum procedure. There is no proper psychological and social support for these children either. She gave the example of severely traumatised children who have not been assessed for torture. Ms. Tsekeri added that some children from 15 to 18 years old have wrong age assessment. However, they are not delivered this decision and as a result, they have no legal remedy against it. In Moria, some children with wrong assessment are detained with adults in order to be returned to Turkey.

In Greece there are 3.800 unaccompanied minors. Most of them are homeless because there are not enough shelters. The authorities try to choose the most vulnerable amongst vulnerable children in order to provide them with shelter. These children are exposed to sexual exploitation and labour exploitation. Some children are staying with adults who offer them roof and food in exchange for sex.

In addition, 'protective custody' means that many children have to reside in hospitals or police stations because there is no alternative than homelessness.

Greece does not have a holistic approach regarding asylum seekers in Greece. This issue is treated in an arbitrary manner, as a response to a crisis and not a long-term investment. Greece has received considerable funds that could have been used more effectively. However, even the best system would never be enough. The EU should promote a sharing of responsibilities through relocation. According to Ms. Tsekeri, Greece does not advocate enough this need for sharing responsibilities.

## XIII. Interview with Ms. Anastasia Christodouloupoulou, Vice-president of the Greek Parliament

Ms. Christodouloupoulou was a vice-Minister for Migration at the outbreak of the refugee crisis back in 2015. She mentioned that the Global Compact on Refugees<sup>147</sup> stresses the need for all countries to find a commonly accepted solution for refugees. However, as she commented, it is not legally binding. As a result, it cannot coerce States to share the responsibilities. She regretted the Commission's inability to pressure Member States to accept relocation, which was legally binding. She further commented that if relocation and resettlement are voluntary and temporary measures, they could not be successful.

Ms. Christodouloupoulou stressed that because of the Dublin Regulation and the EU-Turkey Statement, thousands of asylum seekers are trapped in Greece against their will. No matter how much solidarity society has shown, and how much the State has tried to improve the reception centres, there are still inadequacies. However, since refugee recognition rates are quite high, we are mostly talking about a reception problem. The provision of reception spaces has proven to be challenging, because, as she mentioned, many Mayors were against it and also because EU funds were not available for persons who did not want to apply for asylum in Greece.

She further mentioned that due to the legally ambiguous EU-Turkey Statement, newcomers in Greece would lose their refugee rights. It paved the way for the return of those who did not want to apply for asylum.

Ms. Christidouloupoulou explained that the Asylum Service is still understaffed to meet the challenge and that there is a need for a procedure for faster transfer of vulnerable asylum seekers to the mainland.

<sup>147</sup> UN High Commissioner for Refugees (UNHCR), *Towards a global compact on refugees: a roadmap*, Geneva: UNHCR, 4 April 2017.

Finally, she commented on the reform of the CEAS, that the Commission's proposals are unfortunately still supporting the Dublin Regulation, although it proved to be ineffective for asylum seekers. The proposals are strict, since they expand the possibilities for administrative detention, they render ineffective the right to an appeal, they punish asylum seekers who change countries, and they make safe third country a mandatory concept, something that is against the Geneva Convention. She concluded that we need to safeguard the European *acquis*, by promoting human rights and refugee rights according to international law.

## Conclusion Part II

As it appears from the interviews, all interviewees have agreed that the situation for asylum seekers in Greece is critical. Taking for granted that more and more people will remain stuck in Greece in the coming years, they all concluded that the procedures have to become fast and efficient. They all stressed the need to make a long-term planning and pay more attention to integration. Moreover, they all agreed on the need to better protect children. Some suggested removing them from the hotspots, or relocating them to other Member States.

However, these interviews also highlight some major differences. First of all, there is a difference in perspective between Greek administration/politicians and non-Greek interviewees/the EU (Dutch Embassy, EASO, Dutch MEP). From the Greek point of view, asylum should be regarded as a European issue that demands a European solution. These interviewees suggested that the Greek efforts will never be enough if there is no change in European politics. More concretely, they have provided various ideas: a reform of the Dublin Regulation to include a permanent relocation mechanism, a request from the EU to support the abolishment of the geographical limitation, the creation of a centralized European system to deal with asylum applications. The common denominator is the need for the EU to take more responsibility on asylum in Greece and not to consider this as a strictly national issue. They all highlighted the importance for the EU to deal with the root causes of migration, instead of searching for temporary solutions.

The interviewees who do not represent the Greek State had a different approach. They emphasized the need for Greece to take more responsibility and act more efficiently, implying or directly stating that it is Greece that is primarily responsible for all these people. This responsibility has been described as the need for fast decision-making procedures and the return of those who do not qualify for international protection (Dutch Embassy), or as the need to improve capacities and infrastructure with more long-term planning.

This difference in perception is indicative of the Greek effort to show that asylum is a European issue and of the negation of other Member States and the EU to adhere to this vision. The solutions that have been proposed also follow this suggested pattern of responsibilities.

The international organisations and NGO's have not taken any position regarding responsibility. They focused on more technical aspects of the asylum procedures in Greece.

The Dutch Embassy was the only entity suggesting that a better implementation of the EU-Turkey Statement will reduce arrivals in Greece. The rest of the interviewees either did not react to this or expressed their doubts as to the efficiency of this Statement to limit new arrivals.

*Regarding the geographical limitation*, some new elements were added. Ms. Kuneva, the Greek member of the European Parliament, suggested that this limitation is based on Turkey's interpretation of the EU-Turkey Statement, supported by the EU. The Dutch Embassy stressed that the low number of returns jeopardise the Statement. Asylum seekers would not have to wait as long on the hotspots if Greece would examine their claims faster.

The Greek Ministry for Migration explained that this low number of returns is due to the unwillingness of Turkey to take back asylum seekers and second that it is hard for the Greek authorities to trace rejected asylum seekers in order to actually return them to Turkey. In any case, the impossibility of asylum seekers to leave the islands was criticised by Ms. Sargentini, Dutch MEP, claiming that it stems from Greece's intention to discourage new arrivals and the EU's unwillingness to share the burden.

This geographical limitation is prolonged, as stated by Ms. Tzanedaki, because of the delays in the examination of asylum claims. The Director of the legal service of GCR noted that the lack of doctors and lawyers delays the asylum procedures in the hotspots. Mr. Apergis, member of an Asylum Appeals Committee added that the Appeals Committees are also taking too much time. This was confirmed by EASO. Mr. Pallis, Greek MEP and Mr. Papadimitriou from the Ministry for Migration did not see any alternative to the geographical limitation. From the Greek perspective, this measure can change only if the EU would change its policies and rely on relocation.

*Regarding the safe third country concept*, the interview with the UNHCR representative confirmed that it is only applied to Syrian asylum seekers in the border procedures. UNHCR explained that for other, non-Syrian, nationalities with a high recognition rate such as Iraqis and Afghans, the Asylum Service does not declare their application inadmissible, although EASO case workers seem to propose the opposite in their opinion.

As EASO explained, Greece does not qualify Turkey as safe for these nationalities, because unlike Syrians who are granted temporary protection in Turkey, other nationalities getting protection is more difficult. This answer implied that unlike Greece, EASO is satisfied with the protection that Turkey offers to non-Syrians.

The Vice-President of the Greek Parliament criticised the third safe country concept, stressing that it is not in conformity with the Geneva Convention of 1951 and international human rights law. Mr. Papadopoulos expressed his concerns that if the authorities apply this notion broadly in the future, it will have severe consequences for the right to seek asylum. UNHCR held a more moderate result-based approach; since in practice the majority of applicants avoid their return to Turkey because they are considered vulnerable or waiting for a Dublin transfer, UNHCR is not deeply concerned about the implementation of this concept. To conclude, this concept was not praised by any interviewee, although some, as previously noted, have tried to downsize its effects.

*Concerning vulnerability assessments*, interviewees have highlighted that this evaluation has acquired a different purpose than the one that was initially envisaged; instead of selecting the asylum seekers who need special care, it has rather become a political tool, a 'safety mechanism' that allows the authorities to transfer a number of applicants from the islands to the mainland, thus bypassing the geographical limitation. This has a negative impact on persons who are truly vulnerable, according to the Dutch Embassy. Moreover, the interviewees emphasised the incapacity of the authorities to conclude such assessments in a timely manner, something that contributes to the prolonged stay of applicants on the islands. This assessment was presented by Greek MEPs as the only possible solution as long as the geographical limitation is maintained.

*With regard to the role of EASO*, all interviewees consider it necessary for the Agency to participate actively in the Greek asylum procedures. The reason behind this opinion is the limited capacity of Greece to deal effectively with such a large volume of applications in a timely manner. UNHCR stressed however that it is important for Greece to regulate the participation of EASO, by introducing safeguards and delimitations. This 'conditional acceptance' of EASO is supposed to guarantee that the Agency will not become a deciding authority, thereby allowing Greece to have the last say on asylum applications. As an example of such a condition, Mr. Pallis urged for the opinions of EASO to be issued in Greek.

EASO itself underlined its subordinate role to the Greek authorities, highlighting that the case workers are deployed to the Asylum Service, they use the Service's template and they only issue opinions.

They explained that opinions are in English so as to allow EASO's internal monitoring. At the same time, EASO refuses the allegation that it takes position on the safety of Turkey. However, the disagreement of EASO deployed case workers with Greek asylum officers on the admissibility of certain nationalities due to safe third country considerations is a sign that perhaps the Agency does not take a decision on the safety of Turkey but in some cases, it highly suggests Turkey being a safe third country.

Moreover, the expansion of EASO's role to regular procedures may lead to the expansion of this concept to cases on the mainland. *Concerning the protection of child asylum seekers*, all interviewees who expressed themselves on this topic were in favour of their removal from the hotspots. Some interviewees like Ms. Tzanedaki proposed the creation of more suitable shelters outside the camps, whereas the Ministry for Migration went further, suggesting their immediate relocation to other Member States.

Defence for Children International and Spyros Apergis of the Asylum Appeals Committees criticised the lack of State guardians and lawyers to represent these children in the asylum procedures. Their placement under protective custody and their homelessness were presented as factors that lead to their abuse and exploitation. Ms. Tzanedaki linked child prostitution with the need to survive and urged the authorities to protect children from any sort of abuse.

GCR stressed that there are no legal remedies to challenge age assessments. In addition, due to a strict application of deadlines by receiving States, many children lose their right to family reunification under the Dublin Regulation. The latter was confirmed by UNHCR. The interviews show a great deficiency in child protection in Greece, for which Greece needs to invest in infrastructure and human resources while in the meantime their transfer to other States under the Dublin Regulation or relocation schemes should be promoted.

*Regarding the quality of asylum procedures in Greece*, it was suggested that despite the progress asylum examination is still lengthy. The member of the Asylum Appeals Committees admitted that it takes too much time for them to reach a decision. He explained how the need to speed up asylum examination at first instance has downgraded the quality of these interviews. The need for improvement was also stressed by UNHCR.

These interviews have also revealed the general lack of legal aid in Greece, something that also has grave consequences for the legal representation of minors in asylum procedures. NGOs try to fill the gap, but as it has been noted by the Dutch Embassy and a Greek MEP, they sometimes lead applicants, by telling them what to say.

Moreover, the lack of human resources and infrastructure on the islands was presented by EASO as a main challenge that delays all the procedures. On the mainland, the authorities provide pre-registration through Skype in order to facilitate access to the asylum procedure but this system was found unworkable. More concretely, Mr. Apergis suggested that it does not adequately safeguard applicants against deportation. UNHCR also emphasized that we need a more technologically advanced, more inclusive system. Finally, Ms. Tzanedaki presented the tragic situation for many applicants in Lesbos who have to wait for years for a final decision. She expressed the need for a fast decision on their status and for greater support for their registration and submission of appeals by state guardians and lawyers. For all those applicants who have had to wait for years in order to get a decision, Mr. Pallis and Ms. Sargentini suggested granting humanitarian or even refugee status.

# 6. Part III: Conclusions

## Conclusions

As mentioned in the introduction, the aim of this research is to identify the core challenges that asylum seekers face nowadays in Greece; whether their reception and the way their asylum claims are dealt with are in conformity with the CEAS; who are responsible for any shortcomings; and finally, to report solutions proposed by organisations, politicians and authorities dealing with migration in Greece. In this third part we will draw the main conclusions on these topics of interest.

### I. Asylum Procedures

In the first Part, two different asylum procedures have been identified: the regular procedure that takes place on the mainland and the border procedure at the islands. Both procedures are quite lengthy. The border procedure is applied in cases of applicants subject to the EU-Turkey Statement, i.e. applicants who have arrived on the Greek Eastern Aegean islands after 20 March 2016 and have lodged applications with the RAO of Lesbos, Chios, Samos, Leros and Rhodes, and the AU of Kos. On the contrary, applications lodged with the Asylum Unit of Fylakio by persons remaining in the RIC of Fylakio in Evros are not examined under the fast-track border procedure. In 2018 the total number of applications lodged before the RAO of Lesbos, Samos, Chios, Leros and Rhodes and the AU of Kos was 30.943. This represented 42,9% of the total number of applications lodged in Greece that year. The border procedure is relatively faster but not fast enough and they lead to the risk of return to Turkey for applicants of certain nationalities, while their asylum claims are not properly dealt with. The safe third country concept is invoked at first and second instance decisions in certain cases. In the regular procedure this concept is not applied as such, but applicants still have to wait years for a final decision to be made.

The pre-registration system through Skype was presented by some organisations as inaccessible and ineffective. There are very few State lawyers available, thus rendering legal aid ineffective. As discussed in the interviews, Greece has made a considerable effort to accelerate the asylum procedures, especially at the borders. This, according to UNHCR, has happened to the detriment of the procedural rights and guarantees required according to Directive 2013/32/EU. Although the examination at first instance under the border procedure has somehow become faster, it seems that the new appeals committees are taking a lot of time. As a result, asylum seekers have to wait for years at the hotspots in order to receive a final asylum decision.

This long period of uncertainty leads to excessive distress. It is required by Directive 2013/32/EU that people should be informed as soon as possible if they are entitled to stay. Some interviewees suggested that these people who have waited for years in the hotspots should be granted refugee status or humanitarian status without going through the asylum procedure.

The reform of the asylum appeals committees presented in Part I was criticised by some interviewees, including a member of such committees, as unlawful. The interviews confirmed that this reform served the EU-Turkey Joint Statement and led to the rejection of many applications of Syrians in this respect. Moreover, the Skype appointment system for registration of the asylum application was criticised as ineffective and interviewees proposed its replacement with a technologically more advanced system that would not deprive asylum seekers of their access to the procedure.

Different opinions were expressed during the interviews regarding legal aid. Most of the interviewees mentioned the absence of State funded lawyers, especially at the borders, which is a violation of the right to have free legal representation during court procedures as laid down in Articles 19 and 20 Directive 2013/32/EU. NGOs try to cover some of the cases, but they are understaffed. As a result, most of the available lawyers choose to defend children under the age of 15. Therefore, children from 15 to 18 and adults are often not legally represented. The Dutch Embassy however believed the opposite to be true; that there are in fact too many NGO lawyers and that they guide asylum seekers on what to say. They would provide asylum seekers with false hope. This was also criticised by a Greek MEP as unethical and unfair. We observed that as a result there is indeed a gap in legal representation, partially covered by NGOs. The latter sometimes seem to provide services in order to allow as many applicants to remain in Greece as possible.

As it has already been discussed, the existence of two procedures, the fast-track border procedure and regular procedure lead to unequal treatment of asylum seekers. This is fuelled by the presence of case workers seconded by EASO, the *modus operandi* of which is allegedly not fully adapted to the Asylum Service guidelines. Interviews showed that not only there are two asylum procedures by law, but also that the treatment of asylum seekers is very differentiated, not only in terms of deadlines and modalities but more so in substance.

Vulnerability is the main factor that dictates who can have a decision on the merits at the border, while this is not the case on the mainland.

Concerning the quality of first instance interviews, a member of the Asylum Appeals Committees found that decisions at first instance are often of low quality. Other interviewees referred to the high recognition rate in Greece as a sign of tolerance and hospitality. The respondent from the Dutch Embassy was of the opinion that the low number of returns undermines the EU-Turkey Statement. These considerations indicate that although Greece takes responsibility for the implementation of a Statement promoting returns, in reality most asylum seekers are able to stay. Asylum applications by Syrians examined according to the fast-track border procedure are probably rejected as inadmissible, unless they are considered to be vulnerable. Those who reached the mainland do not run the same risk and will receive a refugee status. Those applicants of whom the applications have been rejected need to choose between voluntary repatriation with IOM or making use of the right to appeal. As a consequence, applicants are discouraged to appeal against the first instance decision. Moreover, we saw in Part I that the pilot project may lead to discrimination of asylum seekers based on their nationality. The police detains almost immediately persons who have expressed their desire to ask for asylum because they have a specific profile resulting in differential treatment based on nationality and/or the person's individual status. In practice, it is not commonly applied because of lack of space in detention centres. However, if the situation changes, the application of this measure will have major consequences on the rights of asylum seekers who will be detained.

The lack of infrastructure and human resources was presented by several interviewees as a major reason for the delays in examination of the asylum procedure. It was suggested that Greece should make full use of the EU funds to create long-term solutions. To conclude, it seems to be difficult to strike a balance between efficiency and quality of the asylum procedure. This research has shown that asylum procedures in Greece are still inadequate and inefficient. It is time for the authorities to strike a fair balance of the two and deploy all technical means, extra training of employees, and additional staff in order to decide quickly and fairly on asylum applications. In addition, asylum procedures should guarantee the equal treatment of asylum seekers in Greece. Persons having the same nationality should not be treated differently depending on where they apply for asylum.

According to Article 8 Directive 2013/32/EU asylum seekers need to get access to legal information and counselling upon arrival in the language they understand in accordance with their needs for special procedural guarantees.

Access to free legal assistance and independent interpreters is required by Article 19 and 20 Asylum Procedures Directive and key to ensure the right to seek asylum and to apply for asylum, especially for those channelled directly into fast-track procedures and pre-removal centres.

Moreover, the pre-registration system should be replaced with a technologically more advanced system that provides access timely and indiscriminately. In order to fulfil the requirements of the CEAS, the authorities should develop a truly impartial and independent asylum examination at second instance, with fulltime experts that would reach decisions in a timely manner and not circumvent to political pressure. In addition, there is a need for more Greek lawyers to make sure every asylum seeker can make use of legal aid. As it has also been highlighted in the interviews, it is necessary to clear the status of people who have been waiting for a long time without delay and to provide full access to asylum. In order to be able to detect problems with access, push-back practises should be properly investigated.

### I . The Geographical Limitation

As pointed out in Part I, the geographical limitation was introduced to implement the EU-Turkey Statement by means of administrative decisions of the Asylum Service. The Greek Asylum Service has endorsed the measure as serving public interest. The adoption of this measure has caused the overcrowding of Eastern Aegean islands and the reception of thousands of asylum seekers in dire conditions. Moreover, this limitation in conjunction with Law 4375 of 2016 has created a separate border procedure only on six islands of the Aegean. In part I, we concluded that with the adoption of the geographical limitation, Greece assumed responsibility for the implementation of the EU-Turkey Statement.

However, the interviews have challenged this assumption. Greek politicians explained that it is in fact Turkey that has imposed this measure, tolerated by the EU Commission. According to Greek MEPs, the Greek government has asked the EU Commission to intervene in favour of the abolishment of this measure, but with no result. The refusal of Turkey to take back rejected asylum seekers from the mainland and Evros supports this view.

Returns to Turkey are very limited. As a result, asylum seekers are not discouraged from coming to the EU through Greece. As we already saw in Part I, only 1.690 persons have been returned from April 2016 until the end of August 2018 under the EU-Turkey Statement. The Greek administration explained the low return numbers, suggesting that Turkey often finds excuses so as not to take asylum seekers back and that this is something the Greek government tries to solve at a high diplomatic level. They also added that it is difficult to locate rejected asylum seekers who hide in order to avoid their subsequent deportation.



The bad reception conditions on the islands were also described by a Dutch EU MEP as a consequence of the unwillingness and incapacity of Greece to provide long-term sustainable solutions. This was presented as something that was to be expected because the refusal of EU Member States to support relocation left Greece with no other option but to refuse to invest in terms of infrastructure and human resources, as a means of deterrence to new arrivals.

However, in Part I we saw that the border procedures on the islands are introducing stricter deadlines for the examination of asylum claims, in an attempt to accelerate the process. The interviews have shown that these reforms have not been successful in these terms. Asylum seekers are still forced to remain on the islands for an excessive amount of time. Final asylum decisions are delayed. Vulnerability assessments are also delayed due to limited human resources. The Minister of Migration acknowledged the need to upgrade the services. He stated that the bureaucratic EU procurement decisions lack flexibility, therefore it is hard to respond to all the needs in a timely manner.

Greek politicians and representatives of the Ministry of Migration pointed at the need to deal with the root causes of migration, and a central EU governance system for asylum, where European organs would decide on all applications in Europe and provide an analogous distribution according to the capacity for integration in each Member State. Some interviewees suggested an open border policy, with the possibility to apply for asylum at the embassies of third countries, the creation of legal pathways and humanitarian visas.

For asylum seekers who have to wait very long for their case to be assessed, the Dutch MEP suggested granting them refugee status, as it has also been proposed in the Netherlands by her political party: the Green Party. A Greek MEP had a similar view. Such proposals are based on the conviction that refugees should not pay for the State's inability to examine their case in a timely manner.

In conclusion, it seems that the geographical limitation is a system imposed not only by Greece, but by the EU and Turkey as well. The reference to the EU-Turkey Statement in the administrative decisions of the Asylum Service, ordering the geographical limitation leads to the assumption that Greece has full responsibility for this measure. Yet, the interviews show something else; that the Greek authorities were pressured to adopt this measure to facilitate the implementation of the EU-Turkey Statement. If not, this Statement would collapse and there would be no returns of asylum seekers to Turkey.

Greece technically imposed this measure by means of an administrative decision of the Director of the Asylum Service, but behind this decision lies the refusal of Turkey to receive asylum seekers from the mainland and the fact that the EU is tolerating this refusal. This observation leads us to two conclusions: 1) Greece wants an adequate implementation of the Joint Statement (some returns have to take place), 2) the geographical limitation is allegedly indirectly supported by the EU.

In practice however, the number of returns to Turkey is still low. This proves that the geographical limitation is not only unlawful but also inefficient. If return to Turkey is not guaranteed, what is the purpose of this measure? It seems that the only purpose truly served is the restriction of movement of thousands of asylum seekers on the islands, depriving them of the possibility of any secondary movement. Therefore, the EU and Greece need to abolish the geographical limitation. The excessive use of declaring asylum seekers vulnerable proves that this limitation has become redundant. It is time to create a reception system on the mainland that meets basic human standards where (truly) vulnerable people will be supported in the best possible way.

From the above, it seems that the EU-Turkey Statement has not managed to achieve its goal, namely the return of asylum seekers to Turkey. More so, it has caused the prolonged stay of asylum seekers on six islands of the Aegean Sea where the conditions of living are inhumane. Therefore we conclude that the EU-Turkey Statement is not only inefficient in this regard, but also leads to human rights violations.

Channelling of asylum applicants into different procedures must never hinder access to the asylum procedure. Greek authorities' immediate channelling of certain profiles into fast-track procedures, which are aimed at ensuring swift return of third-country nationals, who are not entitled to protection in the EU, poses a threat to these persons' access to the asylum procedure.

## II . Turkey as a Safe Third Country

In Part I we saw that the safe third country concept was included in Greek legislation to transpose Directive 2013/32/EU. The Greek law does not require for a country to be regarded as safe to have fully ratified the Geneva Convention of 1951. This conclusion, which was also highlighted by the Greek Council of State, is contrary to the current provisions of the EU legislation. The safe third country concept has been applied unequally, in terms of geographic location and nationality, affecting mostly Syrians who arrive on the islands.

In the absence of an EU list or a national list of safe third countries, the recognition of Turkey as a safe third country was presented by interviewees as a national decision, deriving from the EU-Turkey Statement. So far, this concept has only been used for asylum seekers in the border procedure during the admissibility check. These checks are conducted by case workers seconded by EASO to the Asylum Service. In the border procedures, an admissibility check takes place during the asylum application, something that does not happen in regular procedures.

Moreover, as it has been explained by interviewees including EASO, although case workers are seconded by the Asylum Service, they sometimes have a different view regarding asylum seekers of high recognition rate who are not Syrians. More concretely, they tend to regard Iraqis and Afghans as inadmissible, whereas the Greek officers who sign the final decision tend to disagree, arguing that Turkey is not a safe country for them since asylum seekers with these nationalities only have access to protection procedures in Turkey and will not receive a temporary status. EASO clarified that it does not decide on the safety of Turkey. The decision has to be taken by the Greek State. EASO only conducts the interview, provides information and issues an opinion. However, Greek officers who take the final decision have to rely on interviews that have been conducted out of their sphere of influence. For this reason, it is not unrealistic to consider that their decisions are strongly influenced by the interview process that they were not able to control.

The country of origin of the applicant plays a key role with regard to the admissibility of asylum applications. More specifically, as it has already been stated, case workers deployed by EASO seem to have a different opinion than the Greek Asylum Service concerning the admissibility of applications of Iraqis and Afghans. EASO claims that they do not decide on asylum, they only issue an opinion. However, two main considerations can be made: 1) although EASO officially does not decide on the question if there is a safe third country for the asylum seeker, it prepares the legal ground for such a decision to a large extent, 2) apart from the fact that EASO case workers keep a different approach regarding some nationalities, they do not have any other information as to the criteria that EASO and the Asylum Service rely upon in order to assess asylum applications. As mentioned in Part I, the decision-making criteria as standard operating procedures are blurred and inaccessible to the public. Therefore the transparency of the procedures must be questioned.

The absence of objective, publicly available criteria to decide on the safety of Turkey has negative consequences on the right of asylum seekers to be heard in quasi-judicial proceedings that define their right to stay.

Although Directive 2013/32/EU does not require the integration of such criteria into a legal document, it does require, as we have seen in Part I, that the decisions should respect some specific requirements, based on international law and human rights. If such criteria are not publicly available, this gives room to arbitrariness. The arbitrariness of the decisions was confirmed by the interviews showing that the concept applies unequally to Syrians.

The safe third country concept was presented by Greek MEPs as contrary to the right to seek asylum as laid down in the Geneva Convention, because it introduces an absolute assumption of safety that is extremely hard for refugees to rebut. In reality, it seems that it does not currently affect many asylum seekers because, as stated by some interviewees, most of them are considered vulnerable and therefore are exempted from the possibility to be returned to Turkey. Yet, according to the Dutch Embassy, vulnerability criteria are too broad, thus leaving a large margin of appreciation to the Greek authorities.

In conclusion, although the Greek law provides specific safeguards for a country to be considered safe, in Greece the safe third country concept leads to different treatment of asylum seekers, depending on their geographical location and the asylum procedure. As a result, a Syrian in Athens will have much more chances to receive international protection than a Syrian of the same background in Lesbos. There is no credible explanation as to why Syrians with the same asylum claim, background and fear of persecution will be treated differently in Athens than in Lesbos, since the legal requirements are supposed to be the same. Furthermore, EASO has denied any responsibility for the decision if the safe third country concept applies to each applicant and Greece does not decide on the basis of specific, objective and publicly accessible criteria. The safe third country concept is vague and applied in an almost arbitrary way. The differences between admissibility opinions of EASO and the final decisions of Asylum Service officers support this allegation.

Moreover, the lack of sufficient lawyers on the islands makes it even harder for asylum seekers to rebut the safe third country presumption. In order to rebut this presumption they have to rely on their personal circumstances, their vulnerability. Decisions rejecting the asylum application on the basis of a 'safe third country' exception are largely limited to repeating the provisions of Directive 2013/32/EU and Greek law, without fully assessing individual circumstances. This differs from the possibility of rebuttal of the safety of a third country and possibly – in the end – of the *non-refoulement* principle (Art. 33 RC, Art. 3 ECHR, Art. 4 EU-Charter).

Instead of considering Turkey to be a safe third country, all asylum seekers should have the possibility to present their claim and have it assessed according to Directive 2011/95/EU and the Geneva Convention without having to prove themselves vulnerable to escape return to Turkey.

#### IV. Vulnerability

In Part I, we found vulnerability to be based on the Greek and EU legislation as a legitimate reason for special reception conditions of vulnerable applicants. In the Greek context, we saw that the role of vulnerability has expanded. Vulnerability became the only argument for Syrians examined under the borders procedures to challenge the dismissal of their request for international protection as inadmissible. It constitutes the only argument against the safety of Turkey. Moreover, from an exceptional measure of emergency, assessing asylum seekers as vulnerable became the norm.

As EASO explained, there are some vulnerability criteria leading to the non-return of asylum seekers to Turkey. EASO stated that although the numbers of vulnerable people are high, they correspond to reality because they extend to the whole family of the vulnerable person and because the prolonged stay in deplorable conditions on the islands makes people vulnerable by default. The Ministry of Migration confirmed this statement. According to UNHCR, since most applicants are vulnerable, only 2.000 Syrians are currently expected to be returned. The Dutch Embassy had a different view suggesting that vulnerability criteria are not well-defined. They proposed the adoption of a stricter approach in order to safeguard the validity of vulnerability assessment. The EU Commission has not taken a position on this issue, but they do insist on increasing the return rate, as was stated by the Greek Ministry for Migration Policy.

As explained in Part I, the Greek law excludes vulnerable asylum seekers from the border procedures. Therefore, the exemption from the border procedures of Syrians/applicants on the islands based on vulnerability is lawful. However, as the interviews have shown, their vulnerability is not really an exception, it has become the norm. This is a sign that vulnerability serves another purpose than what was intended by the law. Indeed, vulnerability was described by interviewees as a political tool, the only way to reduce the burden of the islands.

Furthermore, since many persons are in need of a vulnerability assessment and there is a lack of doctors, the recognition of vulnerability is delayed. Also, there are delays in the transfer of vulnerable asylum seekers to the mainland due to limited reception capacities on the mainland. As a result, many vulnerable asylum seekers are nowadays examined on the islands and living under harsh conditions.

Interviewees did not suggest any particular solution regarding vulnerability, apart from making sure that more doctors are available on the islands. The issue was linked to the geographical limitation and the absence of any alternative.

If vulnerability was conceived as a mechanism to reduce the burden of the islands, the goal is far-fetched because most vulnerable people still have to remain on the islands. Their transfer to Athens is extremely delayed. Then, the only advantage of this concept is the possibility for vulnerable people to avoid their return to Turkey. This option forces asylum seekers to prove or create their precarious state. As it was acknowledged by interviewees, some NGOs tend to advise applicants what to say in order to be considered vulnerable. This is a sign that the mechanism may not be what it claims to be: an emergency exit for those who desperately need help. It is a sign that this is the only way for people to have their claim considered in a timely and dignified manner.

It is doubtful whether the means justify the end. The fact that, as interviewees have stated, vulnerability is also a result of prolonged stay at the hotspots, means that there is a vicious circle of having to wait in order to prove vulnerability, and becoming vulnerable because of the long waiting periods. Nevertheless, this unattractive situation may discourage more asylum seekers from travelling to Greece.

Claiming vulnerability seems to be the only option for some asylum seekers to avoid being returned to Turkey. Nevertheless, a claim based on vulnerability will only be successful if asylum seekers can rely on personal factors such as illnesses. As a result, the Greek procedure moves away from the criteria for international protection as described in Directive 2011/95/EU and towards a more 'philanthropic' approach, not referring to a specific legal basis. However, one could state that not offering sufficient protection to vulnerable people could in the end amount to inhuman treatment, as provided in Article 3 ECHR. In conclusion, it seems that vulnerability will continue to be broadly used in the border procedures, as long as these procedures continue to exist. Vulnerability assessment will therefore not be used as a protection mechanism for applicants who require special care, but instead remain a mechanism for the gradual evacuation of the islands.

Vulnerable asylum seekers must be identified and be provided with access to the asylum procedures in accordance with their special needs as prescribed in Directive 2013/33/EU and Directive 2013/32/EU.

#### V. The Role of EASO

As we have seen in Part I, after the EU-Turkey Statement EASO has acquired a much more active role in supporting the Greek authorities with the processing of asylum claims. Greek law enables the Agency to participate not only in the border procedure but also in the regular asylum procedure. Although the mandate of EASO is described in the Regulation, the Agency does not support such a role in the national asylum procedures; the EU Ombudsman and the Agency insisted that they only help the Greek authorities. They do not decide on asylum claims. The research interviews were amongst others aimed at clarifying how interviewees regard the role of EASO.

The participation of EASO in the Greek asylum procedures was seen by most interviewees as necessary, taking into account the understaffed Greek services and the lack of capacity. UNHCR stressed that the EU definitely needs a framework for this participation. The authorities have to clarify under which conditions EASO can operate, and what the Agency can and cannot do. It was also suggested by MEPs that EASO should hire permanent Greek speaking staff and that the salaries should somehow be balanced to those employed by the Greek State. This condition would be in accordance with Law 4540/2018 that allows only Greek speaking EASO staff to participate in the asylum procedures.

EASO views its role as supportive to the Greek State which is ultimately the deciding authority. In this way, EASO maintains its subordinate role in accordance with EU Regulation 439/2010. In order to better illustrate this consideration, EASO emphasised that the case workers who are chosen and paid by them are seconded to the Greek Asylum Service which provides for the interview template and signs the final decision. Nevertheless, the fact that these case workers tend to suggest the rejection of asylum claims based on admissibility considerations for specific nationalities but the Asylum Service refuses to endorse their suggestion is a sign that these case workers are not entirely following the guidelines of the Asylum Service. It is a sign of their concomitant dependence on EASO.

Until now, EASO conducted interviews in the border procedures, performing an admissibility check. It remains to be seen how this work model will expand to the rest of the country. Some interviewees suggested that migration is a European issue and not a strictly national one. They propose for EASO to take over the asylum process on behalf of all Member States and to distribute asylum seekers over Member States accordingly. However, politicians suggested that this is far from a realistic option for the near future. Interviewees expressed their doubts that there will be a reform of the EASO Regulation presented in Part I.

Therefore, the expanding competences of the Agency are not expected to be legitimised by a concomitant change of its legal status. However, this reform was invoked by the EU Ombudsman as one of the arguments that supports the activity of EASO in Greece.

We can conclude that all parties support EASO's role under certain conditions, although EASO's responsibilities *vis-à-vis* refugees in Greece are somehow unclear. It seems that EASO's role is indispensable but it needs to be better regulated and that the conditions have to be made clear and in accordance with the CEAS. Such conditions would increase transparency in decision-making and the establishment of a clear and publicly available set of rules, as standard operating procedures, that define the role and responsibilities of each party.

The European Ombudsman has warned that in light of the Statement of the European Council of 23 April 2015 (EASO teams in frontline Member States may participate in joint processing of asylum applications, including registration and finger-printing), EASO is being encouraged politically to act in a way which is, arguably, not in line with its existing statutory role. However, for the European Ombudsman EASO's expanded role was justified since it is the Greek Asylum Service that takes the final decision on asylum claims.

The proposed amendment of the EASO Regulation that has already been described in Part I, will allow the Agency to conduct asylum interviews if Member States are not able to respond adequately. However, as interviewees have indicated, such amendment is most likely not going to be introduced.

#### VI. Child Protection

In Part I, we saw that Greece adopted a new law on guardianship. This law requires that all unaccompanied migrant children are provided with a State guardian to represent them in the asylum procedures, to facilitate family reunification and to make sure the child would have an adequate home and access to basic rights. We also saw that age assessment is not executed in a unified way in Greece. In addition, due to a strict interpretation of Dublin deadlines, many children lose the possibility to be reunited with family Members abroad. It was also mentioned that there are limited places in shelters. As a consequence many children remain homeless or stay in protected custody. Unregistered and homeless children do not have any guardian and lack proper guidance to follow the asylum procedures. The interviews confirmed these allegations and added some other important considerations, stating that for these children the risk of abuse is very high.

As stated by NGOs and First reception Service staff, unaccompanied or separated children run a high risk of abuse both on the islands and on the mainland. There are numerous cases known of children who are sexually abused or who choose to become sex workers in order to receive protection and money to survive. These children are also forced to commit crimes. The incidents of sexual exploitation of minors, as they have been investigated by the Greek authorities, seem to lead to no convictions. This allegedly happens because there is no safety mechanism to protect migrant children who are victims in criminal proceedings. Their prolonged stay in camps such as Moria or in the streets makes them extremely vulnerable.

Moreover, as stated by the DCI and Spyros Apergis from the Asylum Appeals Committees, the guardianship system that the State is currently elaborating is inadequate. More State guardians are needed as well as a strong monitoring mechanism to make sure that these guardians act in the child's best interest.

As a solution, the Dutch Embassy suggested not to keep children in protective custody or in Moria; Ms. Tzanedaki from the Reception and Identification Authority suggested to create more shelters providing proper psychological and social support outside of Moria. The Ministry of Migration requested other Member States for relocation of children with very few results. Relocation of children is not specifically addressed by means of national or EU law. The EU would need to enforce this mechanism either depending on the current inoperable relocation scheme<sup>148</sup> or by creating a new one. The creation of additional shelters requires political will and additional investment at a national level. Furthermore, the RIS claimed that Dublin transfers are very problematic because of the deadlines and the very high conditions that receiving Member States demand in order to reject children. It also proposed that age assessment should be conducted in a way that allows it to be legally challenged. These allegations show that the legal interpretation of the relevant Articles of the Dublin Regulation stated in Part I have indeed serious consequences for the right of children to family reunification. Greece would need to better implement the Dublin Regulation in order to make Dublin transfers more effective and to harmonise age assessment methods, whilst providing a legal remedy.

Regarding child exploitation, the lack of adequate shelters and sufficient guardians makes children extremely vulnerable. The creation of shelters away from the hotspots was proposed as a short-term solution. The relocation of children to other EU Member States was suggested by the Ministry for Migration Policy as a long-term solution. In any case, children should be protected from sexual and physical abuse, legally and physically.

For this reason, the authorities should prioritise the child's best interests, making sure that all children are hosted in adequate shelters, that they all have a guardian and that such conditions are created that no abuse can take place. Until this becomes reality, the adoption of a new law protecting abused children who seek justice is of the utmost importance. Under Greek law, any authority detecting the entry of an unaccompanied or separated child to the Greek territory shall take appropriate measures (e.g. informing the General Directorate of Social Solidarity which is responsible for further initiating and monitoring the procedure of appointing a guardian to the child and ensuring that his or her best interests are met at all times). In practice the system of guardianship is not functioning. This infringes the Convention on the Rights of the Child.

## VII. Who Bears Responsibility?

One of the main purposes of this research was to identify who is responsible for the challenges that asylum seekers face nowadays in Greece, and consequently, who can provide solutions. As explained below, responsibility is not reserved for one actor. On the contrary, it is shared amongst all the stakeholders included in this research, to the extent that they are allowed to act within their own sphere of competences. It is therefore important that the EU, the Greek State and organisations that protect refugees take responsibility within their mandate. The EU has to fully implement the CEAS and – out of the principle of solidarity – assist Greece.

Also policies and initiatives need to allow asylum seekers:

- to move freely (so abolish the geographical limitation),
- to have full access to asylum procedures without discrimination and without the presumptions of the safe third country,
- to be physically protected according to their own personal needs,
- to have a fair and efficient examination of their asylum claim in a timely manner,
- to have access to a legal remedy.

In Part I, we saw Greece adopting decisions as being responsible for the implementation of the EU-Turkey Statement. At the same time, EASO refused to take the same responsibility, by invoking its subordinate role. It has also become apparent that although Greece made considerable efforts to increase the capacity of the relevant services, the procedures are still inadequate to face the enormous amount of applications and to provide protection to all unaccompanied children.

However, as can be concluded from the interviews, since 2016 Greece somehow felt obliged to adopt a series of legislative measures in order to secure the EU-Turkey Statement, without the real willingness to do so. Greek MEPs suggested that Greece was not in favour of the geographical limitation at the hotspots, but that the EU did not support them in changing this scheme.

Therefore, Greece indirectly claimed that the EU is also responsible for the current situation. The decline of relocation was also presented as a refusal of responsibility sharing by other Member States. From the above, it can be concluded that Greece assumes to have an undesirable responsibility.

Almost all interviewees from the political sphere of Greece stated that asylum is a European issue and that it should be treated accordingly. More concretely, they found the Dublin Regulation is unfair, placing an incredible burden on Member States at the EU's external borders. Because of this regulation, no matter how much the services are improved, the number of asylum seekers in these Member States will always be quite high. The numbers of arrivals in 2018 are already higher than those of the previous year. From the Greek perspective, the EU should force Member States to accept relocation and to make this a permanent system of burden sharing, in accordance with the principle of solidarity. In addition, the granting or refusing asylum should be decided upon by the EU and not by Member States.

EASO and the Dutch Embassy had a different view, insisting that the Greek State is ultimately responsible for asylum seekers present on its territory. This organisation repeated that Greece should avoid treating asylum as a temporary phenomenon and make reception and integration a top priority, supported by long-term planning.

This research suggests that in the current legal system, Greece is responsible to provide immediate solutions for the asylum seekers and refugees who are in its territory. This responsibility demands an even greater capacity and infrastructure, more efficient services, less reliance on NGOs to provide basic services such as interpretation and guardianship, long-term strategic planning and fast, high quality of decision-making for asylum claims, effective protection of children, indiscriminate treatment of asylum seekers, easy access to the procedures. These improvements rely on an optimal use of EU funds and technical assistance.

Although Greece is responsible for the final decisions regarding asylum seekers, these decisions indeed depend on the continuous financial and technical support from the EU. This support should be seen in the general context of external relations with third countries such as Turkey, migration management and border control. Even if the EU is not the main actor in the Greek state of affairs, it indirectly shapes its asylum policies. In this regard, it shares a responsibility to support policies that are in conformity with EU law; so respect and promote fundamental rights and values, as they have also been enshrined in the Refugee Convention, the EU Charter and the ECHR. Policies that do not respect human dignity, equality, efficient access to justice and the rule of law should not be supported.

If the EU does not adopt and impose a permanent system of relocation for a fairer distribution of asylum seekers over Member States and insist on the closure of borders, prolonged isolation in the hotspots, limited Dublin transfers and no relocation, it is highly unlikely that the situation for asylum seekers in Greece will considerably improve, no matter how much national services may become more efficient.

Finally, because of the limited capacity of Greece to have a comprehensive response to the refugee crisis, NGOs have taken up a large part of responsibilities and competences that belong to the State. These are, *inter alia*, interpretation, healthcare, legal assistance. As a consequence of their extended involvement in asylum and migration, NGOs become *de facto* responsible within their own mandate to safeguard the rights of asylum seekers in Greece without discrimination. Because of their active role in migration, NGOs should be able to communicate to the State and the EU any systemic deficiencies that render inefficient the protection of asylum seekers in Greece. For this purpose, they should by all means be encouraged to provide feedback. Their monitoring should not have a negative impact on the sustainability of their activities.

In conclusion, this research has shown that there is a joint responsibility *vis-à-vis* asylum seekers in Greece. This responsibility demands a change in the current policies in order to make them more efficient and most importantly, more respectful of the fundamental rights of asylum seekers. In this regard, all actors involved should work together on the basis of a clear and transparent operation plan that respects human dignity.

<sup>148</sup> Council Decisions (EU) 2015/1523 and 2015/1601.



## 7. List of Abbreviations

|                      |   |
|----------------------|---|
| AU                   | Asylum Unit   |
| AUs                  | Asylum Units  |
| Art.                 | Article   |
| ASEP                 | Greek Supreme Council for Civil Personnel Selection   |
| CEAS                 | Common European Asylum System   |
| CJEU                 | Court of Justice of the European Union  |
| DCI                  | Defence for Children International  |
| Directive 2011/95/EU | Directive of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted |
| Directive 2013/33/EU | Directive of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection  |
| Directive 2013/32/EU | Directive of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection   |
| EASO                 | European Asylum Support Office  |
| ECHR                 | European Convention on Human Rights and Fundamental Freedoms  |
| ECtHR                | European Court of Human Rights  |
| GAS                  | Greek Asylum Service  |
| GCR                  | Greek Council for Refugees  |
| HCDCP                | Hellenic Centre for Disease Control and Prevention  |
| IOM                  | International Organization for Migration  |
| JHA Council          | Justice and Home Affairs Council  |
| MEP                  | Member of the European Parliament   |
| NGO                  | Non-Governmental Organisation   |
| NHRC                 | National Human Rights Committee   |
| NCSS                 | National Centre for Social Solidarity   |
| Par.                 | Paragraph   |
| RAO                  | Greek Regional Asylum Offices   |
| RIC                  | Reception and Identification Centre   |
| RIS                  | Reception and Identification Service  |
| TFEU                 | Treaty on the Functioning of the European Union   |
| UNHCR                | United Nations High Commissioner for Refugees   |

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- Konstantina Tsekeri, Head of Defence for Children International in Greece.
- Alexandra Tzenedaki, representative of the First Reception Service in Moria.

# Annex I

## Research for the Dutch Refugee Council

### The main challenges that asylum seekers face in Greece

#### Games of responsibility

#### List of topics for the interviews

1. The impact of the geographical limitation on the examination of asylum claims
2. How the “safe third country” concept applies in the Greek asylum system
3. The impact of the vulnerability assessment in asylum procedures
4. EASO participation in the asylum procedures
5. The de facto profiling of asylum seekers based on their nationality
6. The negative impact of current age assessment methods and Dublin transfers to the right of children to seek asylum
7. Limited access to asylum in the mainland and at the borders
8. The main challenges that asylum seekers face in Greece
9. Who is responsible to provide solutions on a national/European Level?
10. Which short-term and long-term solutions do you see?





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