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REFUSAL OF INTERNATIONAL PROTECTION UNDER THE EU-TURKEY DEAL**

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1. Introduction

Turkey is currently hosting over 3,5 million refugees, which is currently the largest number of displaced persons hosted by one single country. The vast majority are Syrians, but also some thousands of Iraqis, Afghans, Iranians, Somalis and other nationalities. The European Union and its Member States have provided significant funding to the Turkish authorities under the Facility for Refugees in Turkey but, at the same time, on 18 March 2016 declared their will to return all those crossing irregularly from Turkey into the Greek islands, including asylum-seekers whose applications would be rejected as inadmissible by the Greek Authorities on the ground that Turkey qualifies as a 'safe third country' or 'first country of asylum'¹. The 'safe third country' mechanism is used by States in order to reject asylum applications as inadmissible and avoid examination on the merits, on the ground that applicants had the chance to apply for and, if found eligible, to be granted international protection in another country. This mechanism started being

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¹ Council of the EU, Press Release 144/16 18/03/2016, *EU-Turkey statement, 18 March 2016*, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (last visited 17.2.2018)

used as a burden - sharing and asylum - shopping preventive method by some European States in the 1990s², together with other deterrent measures such as carriers' sanctions, administrative detention and accelerated procedures³. However, the vast majority of refugees reside in neighbouring countries and according to the most recent data, 84% of the global refugee population is hosted by developing regions⁴. This number clearly demonstrates that the international community is far from fair allocation of responsibility in refugee protection. Thus, the use of 'safe third country' mechanisms also in the case of Turkey, which hosted the largest number of refugees worldwide for the third consecutive year, seems as an additional effort for shifting the burden towards the countries that generally host the vast majority of refugees rather than a tool of fair responsibility - sharing⁵.

Before any further examination of the 'safe country' mechanism and its implementation by the Greek authorities in the case of Turkey, some preliminary remarks regarding the situation of refugees in the latter would be essential. At present, they are not protected under the 1951 Convention relating to the Status of Refugees because Turkey has expressly declared a geographical limitation excluding non-Europeans from its provisions. Law on Foreigners and International Protection of 2013 provides a conditional refugee status in view of resettlement, but Syrian refugees cannot benefit from this provision because they fall into the scope of a temporary protection regulation for situations of mass influx, provided by the same Law. The overview of available sources regarding refugees' rights in Turkey reveals violations of the principle of non-refoulement, arbitrary detention, restrictions to freedom of movement, obstacles of access to social rights and lack of integration perspectives. Furthermore, while the Turkish asylum system is still in the process of being established, it has to deal with hundreds of thousands of asylum applications and there is already a very considerable backlog⁶. Regarding refugees from Syria, there are long delays in registering and receiving temporary – protection cards, which are required for children's enrollment in public schools and access to primary health care and the labour market. However, even those holding such cards end up working in the informal economy because of administrative obstacles in obtaining work permits, unwillingness of employers and misinformation, while school enrolment remains low.

This article aims to study the implementation of the EU-Turkey deal in the global context with a special focus on refusal of protection in Greece, based on a presumption of safety in Turkey. Part 2 examines the provisions of International Law regarding 'safe third country' practices, as well as those of the Asylum Procedures Directive, which is the only

² R. BYRNE, G. NOLL, J. VESTED-HANSEN, *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union*, The Hague, 2002.

³ J. MCADAM, *Forced migration, human rights and security*, Oxford, Portland (Or.), 2008, p. 137.

⁴ UN High Commissioner for Refugees (UNHCR), *Global Trends Forced Displacement in 2016*, 19 June 2017, available at <http://www.unhcr.org/globaltrends2016/> (last visited 17.2.2018). See also S. ZIMMERMANN, *Irregular Secondary Movements to Europe: Seeking Asylum beyond Refuge*, in *Jour. Refug. St.*, 2009, p. 74-96 (76).

⁵ UN High Commissioner for Refugees (UNHCR), *Global Trends*, cit. See in that respect J.-F. DURIEUX, *Protection - where - or when - first asylum, deflection policies and the significance of time opinion*, in *Int. Jour. Refug. Law*, 2009, p. 75-80 «If finding a consensual formula of responsibility-sharing is a challenge among states with comparable levels of resources and similar concerns - such as EU Member States, or Canada and the USA, it has to be 'mission impossible' at the global level».

⁶ Amnesty International, *Public Statement - Refugees at heightened risk of refoulement under Turkey's state of emergency*, 22 September 2017, available at <https://www.amnesty.org/en/documents/eur44/7157/2017/en/%20-/> (last visited 17.2.2018).

legally binding supranational text regulating the application of this concept. This article continues, in part 3, by summarizing the available information regarding refugees' rights in Turkey with special reference to the standards that should govern the collection and verification of information on 'safe third countries'. Part 4 discusses the applicable Greek legal framework and proceeds to a detailed analysis and critique of the examination of asylum applications under the 'safe third country' provisions following the EU – Turkey Deal. Finally, Part 5 draws some conclusions on the impact of the Deal within the broader context of externalization policies and discusses future developments regarding fair responsibility – sharing and prevention of human rights violations.

2. *The 'safe third country' mechanism*

2.1. *International law and practice*

International Refugee Law does not require asylum seekers to submit their application in the first country where protection may be granted⁷. As a result, the safe third country mechanism has no legal basis and the invocation of Article 31 (1) of the 1951 Geneva Convention Relating to the Status of Refugees in support of this concept seems unjustified. According to Article 31 «The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [...], enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.»⁸ Thus, it is clear that Article 31 does not intend to determine the responsible country for examining an asylum application but its only scope is the non-imposition of penalties for irregular entry of asylum seekers into the territory of a State. In this context, returning an asylum-seeker to a (really) safe country could not and should not be considered as penalty. It is clear, therefore, that Article 31 (1) regulates a different problem than the countries responsible for examining asylum applications and the Convention itself does not address this issue⁹.

The 'safe third country' mechanism was officially established by the Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities and the Resolution of the Council of the European Union on a harmonized approach to questions concerning host third countries (London Resolution)¹⁰. Since then, the

⁷ G. GOODWIN-GILL, J. MCADAM, *The refugee in International Law*, Oxford, 2007, p. 392.

⁸ See also ECRE, "*Safe Third Countries*": *Myths and Realities*, February 1995, par. 26-48, available at <http://www.unhcr.org/refworld/docid/403b5cbf4.html> (last visited 17.2.2018).

⁹ M. SYMES, P. JORRO, *Asylum law and practice*, London, 2007, p. 498. See also the opposite opinion in K. HAILBRONNER, *The Concept of 'Safe Country' and Expeditions Asylum Procedures: A Western European Perspective*, in *Int. Jour. Refug. Law*, 1993, p. 31-65.

¹⁰ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990 (97/C 254/01), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1997:254:FULL&from=EN> and Council of the European Union, Council Resolution of 30 November 1992 on a Harmonized Approach to Questions

Member States of the EU should examine whether such a country existed and return asylum seekers there, following an accelerated examination of their application. According to the London Resolution, which contains guiding principles concerning the application of the 'safe third country concept' and defines the procedures provided by the Dublin Convention, the countries where the applicant enjoys all the following guarantees are considered as safe third countries: his or her life or freedom is not threatened; he or she is not exposed to torture or inhuman and degrading treatment; he or she has already obtained the protection of that country or can obviously be admitted there; he or she enjoys effective protection from refoulement.

Following the adoption of the above texts in Europe, other developed countries attempted to follow this example. Australia in 1994 and Canada and the United States in 2002 introduced 'safe third country' measures. African countries such as Tanzania and South Africa, which hosted the largest number of refugees, also adopted this concept¹¹. Despite the developments at national and regional level in Europe, the attempts to regulate the 'safe third country' mechanism by international instruments have generally failed and the existing texts are not binding. However, some Conclusions of the Executive Committee of the UNHCR are particularly relevant because on the one hand emphasize the problem of irregular movements of asylum seekers, but on the other hand specify the circumstances under which such movements should be justified¹². Thus, they should be taken into consideration by the national authorities that implement safe third country provisions.

The Conclusion N°15 adopted in 1979 was the first text providing principles for the elaboration of common criteria for determining the responsible State for examining an asylum application¹³. In addition, it provided that «where a refugee who

Concerning Host Third Countries ("London Resolution"), available at <http://www.unhcr.org/refworld/docid/3f86c3094.html> (last visited 17.2.2018).

¹¹ For a detailed analysis see A.-G. HURWITZ, *The collective responsibility of states to protect refugees*, Oxford, 2009, p. 48-50.

¹² F. NICHOLSON, P. TWOMEY, *Refugee rights and realities: evolving international concepts and regimes*, Cambridge, 1999, p. 281.

¹³ UN High Commissioner for Refugees (UNHCR), *Refugees Without an Asylum Country No. 15 (XXX) - 1979*, 16 October 1979, available at <http://www.unhcr.org/refworld/docid/3ae68c46c.html> (last visited 17.2.2018). See in particular paragraph (h) thereof: «(h) An effort should be made to resolve the problem of identifying the country responsible for examining an asylum request by the adoption of common criteria. In elaborating such criteria the following principles should be observed: (i) The criteria should make it possible to identify in a positive manner the country which is responsible for examining an asylum request and to whose authorities the asylum-seeker should have the possibility of addressing himself; (ii) The criteria should be of such a character as to avoid possible disagreement between States as to which of them should be responsible for examining an asylum request and should take into account the duration and nature of any sojourn of the asylum-seeker in other countries; (iii) The intentions of the asylum-seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account; (iv) Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State. Where, however, it appears that a person, before requesting asylum, already has a connection or close links with another State, he may if it appears fair and reasonable be called upon first to request asylum from that State; (v) Reestablishment of criteria should be accompanied by arrangements for regular consultation between concerned Governments for dealing with cases for which no solution has been found and for consultation with the Office of the United Nations High Commissioner for Refugees as appropriate; (vi) Agreements providing for the return by States of persons who have entered their territory from another contracting State in an unlawful manner should be applied in respect of asylum-seekers with due regard to their special situation».

has already been granted asylum in one country requests asylum in another country on the ground that he has compelling reasons for leaving his present asylum country due to fear of persecution or because his physical safety or freedom are endangered, the authorities of the second country should give favourable consideration to his asylum request¹⁴». Some years later, in 1985, the Executive Committee noted with concern the growing phenomenon of refugees and asylum-seekers who, having found protection in one country move in an irregular manner to another country, expressed the hope that this problem could be mitigated through the adoption of global solutions in a spirit of international co-operation and burden - sharing and requested the High Commissioner to continue consultations with a view to reaching agreement on this matter¹⁵. The Committee recognized the following year that «the search for durable solutions includes the need to address the causes of movements of refugees and asylum-seekers from countries of origin and the causes of onward movements from countries of first asylum¹⁶». After reiterating its concern about the secondary movements of refugees for two consecutive years in 1987¹⁷ and 1988¹⁸, the Committee finally adopted in 1989 a Conclusion exclusively devoted to this phenomenon. The Committee noted in its Conclusion N° 58¹⁹ that its concern results from the destabilizing effect, which irregular movements of this kind had on structured international efforts to provide appropriate solutions for refugees and, made the following recommendations:

«e) Refugees and asylum-seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR [...].

f) Where refugees and asylum-seekers nevertheless move in an irregular manner from a country where they have already found protection, they may be returned to that country if i) they are protected there against refoulement and ii) they are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them [...].

g) It is recognized that there may be exceptional cases in which a refugee or asylum-seeker may justifiably claim that he has reason to fear persecution or that his physical

¹⁴ *Ibid.*, paragraph (k).

¹⁵ UN High Commissioner for Refugees (UNHCR), *General Conclusion on International Protection No. 36 (XXXVI)* - 1985, 18 October 1985, paragraph (j), available at <http://www.unhcr.org/refworld/docid/3ae68c5a44.html> (last visited 17.2.2018).

¹⁶ UN High Commissioner for Refugees (UNHCR), *General Conclusion on International Protection No. 41 (XXXVII)* - 1986, 13 October 1986, paragraph (e), available at <http://www.unhcr.org/refworld/docid/3ae68c4528.html> (last visited 17.2.2018).

¹⁷ UN High Commissioner for Refugees (UNHCR), *General Conclusion on International Protection No. 46 (XXXVIII)* - 1987, 12 October 1987, paragraph (i), available at <http://www.unhcr.org/refworld/docid/3ae68c445f.html> (last visited 17.2.2018).

¹⁸ UN High Commissioner for Refugees (UNHCR), *General Conclusion on International Protection No. 50 (XXXIX)* - 1988, 10 October 1988, paragraph (n), available at <http://www.unhcr.org/refworld/docid/3ae68c5a20.html> (last visited 17.2.2018).

¹⁹ UN High Commissioner for Refugees (UNHCR), *Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection* No. 58 (XL)* - 1989, 13 October 1989, No. 58 (XL) - 1989, available at <http://www.unhcr.org/refworld/docid/3ae68c4453.html> (last visited 17.2.2018).

safety or freedom are endangered in a country where he previously found protection. Such cases should be given favourable consideration by the authorities of the State where he requests asylum.»

2.2. *The Asylum Procedures Directive*

The first and currently the only legally binding supranational text regulating the application of the safe third country mechanism is the Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, as revised by the Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast). The recast Directive provides for four categories of safe countries. According to article 35 a country can be considered to be a ‘first country of asylum’ if the applicant has been recognised in that country as a refugee and can still avail himself/herself of that protection or otherwise enjoys sufficient protection, including benefiting from the principle of non-refoulement. Article 38 provides that the ‘safe third country’ concept may be applied for a country where the applicant will be treated in accordance with the following principles: (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) there is no risk of serious harm as defined in Directive 2011/95/EU; (c) the principle of non-refoulement in accordance with the Geneva Convention is respected; (d) 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 (e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention. Article 36 provides that a third country can be designated as a ‘safe country of origin’ if the applicant has the nationality of that country (or is a stateless person and was formerly habitually resident) and has not submitted any serious grounds for considering that country not to be a safe country of origin in his or her particular circumstances and qualification as a beneficiary of international protection. Finally, according to article 39, a third country can be considered as a ‘European safe third country’ if it has ratified and observes the provisions of the Geneva Convention without any geographical limitations, has in place an asylum procedure prescribed by law and has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies²⁰. While at first reading the provisions of the Asylum Procedures Directive seem to be in line with the Conclusions of the Executive Committee of the UNHCR, the broader context of its adoption and impact should be taken into consideration for a final appreciation.

Before any further analysis on the ‘safe third country’ concept provided by the Directive, it should be noted that following its adoption and until present, the Asylum Procedures Directive has been strongly criticised and described as the most problematic of all the texts of the Common European Asylum System with regard to

²⁰ See C. PHUONG, *Persecution by Third Parties and European Harmonization of Asylum Policies*, in *Georgetown Immigration Law Journal*, 2001-2002, p. 81-98.

the protection of asylum seekers' rights²¹. For instance, it could be noted that the applicants' links with the above - mentioned four categories of countries are not the only reasons why their asylum application may be considered inadmissible or unfounded according to its provisions. At the same time, the Directive has not been able to meet the requirements of harmonization of asylum procedures in the Member States. The Commission itself has acknowledged that «some of the Directive's optional provisions and derogation clauses have contributed to the proliferation of divergent arrangements across the EU, and that procedural guarantees vary considerably between Member States. This is notably the case with respect to the provisions on accelerated procedures, 'safe country of origin', 'safe third country', personal interviews, legal assistance, and access to an effective remedy.²²» However, the recast proposal had been the subject of a very long list of reservations by the Member States. Thus, the Commission adopted an amended proposal in order to bridge the gap between the positions of the Council and of the Parliament²³. The amended proposal, as well as the current text of the Directive, reflected the concerns of States regarding the 'imbalance' between the increase of procedural safeguards for asylum seekers and the reduced procedural tools for avoiding abuses of national asylum systems. As a result, much more emphasis has been placed on efficiency than on fairness of procedures and common standards are to the extent that could potentially deny access to protection²⁴.

3. *The situation of refugees' rights in Turkey*

²¹ See F. JULIEN-LAFERRIERE, H. LABAYLE, Ö. EDSTRÖM (eds.), *La politique européenne d'immigration et d'asile: bilan critique cinq ans après le traité d'Amsterdam - The European Immigration and Asylum Policy: Critical Assessment five years after the Amsterdam Treaty*, Bruxelles, 2005, p. 279; N. MOLE, *Le droit d'asile et la Convention européenne des droits de l'homme*, Strasbourg, 2008, p. 147. See also another point of view in M. RENEMAN, *EU asylum procedures and the right to an effective remedy*, Oxford and Portland, Oregon, 2014, pp. 382-395.

²² European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2005/85/EC of 1 December 2005 on Minimum standards on Procedures in Member States for granting and withdrawing refugee status, 8 September 2010, COM(2010) 465 final, p. 15, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0465&from=FR> (last visited 17.2.2018).

²³ European Commission, Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast), 1 June 2011, COM(2011) 319 final, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/pdf/1_act_part1_v121_319_en.pdf (last visited 17.2.2018). The European Parliament largely supported the text by reinforcing some procedural guarantees for asylum – seekers. See European Parliament legislative resolution of 6 April 2011 on the proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast), 6 April 2011, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0136+0+DOC+XML+V0//EN> (last visited 17.2.2018).

²⁴ A.-G. HURWITZ, *The collective responsibility*, cit., p. 51-52. See also C. COSTELLO, *The Asylum Procedures Directive and the proliferation of safe country practices: Deterrence, deflection and the dismantling of International Protection?*, in *Eur. Jour. Migr. Law*, 2005, pp. 35-69. For a comparative analysis on the implementation of the relevant provisions by the Member States see UN High Commissioner for Refugees (UNHCR), *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, pp. 279-379, available at <http://www.unhcr.org/refworld/docid/4c63e52d2.html> (last visited 17.2.2018).

3.1. *The standards for collecting and verifying information*

In the early 1990s, when Switzerland, closely followed by Belgium, started applying ‘safe country’ practices towards asylum applicants from Algeria, Angola, Bulgaria, Hungary, India, Poland, Czechoslovakia and Romania, Goodwin-Gill wrote that in refugee protection, what counts is risk. The existence of this risk for asylum-seekers, in case of return, is not only to be determined in a full due process hearing but also can also be established and refuted by other means. «Who then is to say that countries are safe? And by whose standards? Secret men in secret rooms reading secret memos? No.» According to Goodwin-Gill, international standards can and should govern the process. Just as in refugee status determination examination procedure, the core issue is information regarding countries and the key element for rational and defensible assessments of risk is the standards for collecting and verifying that information. As Goodwin-Gill concludes, «After all, there's no lack of information. The media report from mostly everywhere. Non-governmental organizations, like Amnesty International and the regional Watch Committees, actively monitor what goes on; the United Nations has its working groups and rapporteurs; even governments are doing their homework. [...] Whether the objective is to include or to exclude, the essentials of risk assessment remain the same. What counts in every case is the weight of the information. Provided it is available, verified and public, a coherent body of country of origin information will necessarily gain authority.²⁵»

With regard to examination of asylum applications by the Greek authorities after the EU – Turkey Deal, negative decisions refer to two letters of the Turkish Ambassador to the EU to the European Commission Director-General for Migration and Home Affairs, providing a general assurance that «citizens of the Syrian Arab Republic who irregularly crossed into the Aegean Islands via Turkey as of 20 March 2016 and being taken back to Turkey as of 4 April 2016 will be granted temporary protection status» and that «non-Syrians who seek international protection having irregularly crossed into the Aegean Islands via Turkey as of 20 March 2016 and being taken back to Turkey as of 4 April 2016 will be able to lodge an application for international protection». In addition, two letters of the European Commission Director-General for Migration and Home Affairs to the Greek Ministry of Interior and to the Greek Minister for Migration Policy outlining the Commission’s view that Turkey qualifies as a ‘safe third country’ and ‘first country of asylum’ are mentioned²⁶.

However, the content of the letters of the Turkish Ambassador is contradicted by the practice of the Turkish authorities, as evidenced by International Organizations’ and NGOs’ reports, which will be summarized below (3.2). Furthermore, his letters had been addressed prior to the attempted coup of July 2016. Thus, diplomatic assurances should not be taken for granted at present, due to prolonged state of emergency as well as the fact that Turkey has not yet received the rewards expected by the EU - Turkey Seal (e.g. visa exemption for Turkish citizens). Regarding the information provided by the European Commission Director-General for Migration and Home Affairs, except from the fact that this should not be considered as an objective source, as the Commission has an

²⁵ G. GOODWIN-GILL, *Safe Country? Says Who?*, in *Int. Jour. Refug. Law*, 1992, p. 248-250 (249).

²⁶ Available at <http://asylo.gov.gr/wp-content/uploads/2016/10/scan-file-mme.pdf> (last visited 17.2.2018).

institutional duty to support the implementation of the EU - Turkey Deal, it should also be noted that these letters only summarize the Turkish legislation without reference to the current practice of the authorities. In addition, one of the letters proceeds to an interpretation of EU Law despite the fact that the Court of Justice of the European Union, which is the only competent institution, has not yet interpreted those provisions²⁷. But most importantly, according to the European Court of Human Rights, the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection²⁸ and such assurances must be accompanied by a reliable monitoring mechanism, whose establishment and effective operation must be ensured by the authorities of the State where persons will be returned²⁹. Currently, as highlighted by a number of sources, including UNHCR, there is not any monitoring mechanism for returnees from the Greek islands. More precisely, UNHCR informed the Director of the Greek Asylum Service on 23 December 2016 that does not benefit from unhindered and predictable access to pre - removal centres in Turkey, needs to seek authorization to visit the centre at least five working days in advance, which in practice does not allow for timely monitoring of some individual cases and, does not systematically receive information on the legal status and location of individuals who have been readmitted from Greece³⁰.

3.2. Available and missing information

Information sources regarding refugees' rights in Turkey during the last two years include many International NGOs' reports (most of them issued by Amnesty International and Human Rights Watch)³¹ and several studies based on field, as well as desk research. Most of the NGOs' reports are available at www.refworld.org. Among other sources, we

²⁷ For instance the UN High Commissioner for Refugees highlights that “ transit alone is not a ‘sufficient’ connection or meaningful link ” (UNHCR, *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016, available at <http://www.refworld.org/docid/56f3ee3f4.html> (last visited 17.2.2018).

²⁸ European Court of Human Rights, *Saadi v. United Kingdom*, Application No 13229/03, 29/1/2008, par. 147.

²⁹ See for instance European Court of Human Rights, *Koktysh v. Ukraine*, Application No 43707/07, 10/12/2009, par. 63 και *Othman (Abu Qatada) v. United Kingdom*, Application No 8139/09, 17/1/2012 par. 196.

³⁰ Letter available at <http://www.statewatch.org/news/2017/jan/unhcr-letter-access-syrians-returned-turkey-to-greece-23-12-16.pdf> (last visited 17.2.2018).

³¹ See for instance Amnesty International, *A Blueprint for Despair: Human Rights Impact of the EU-Turkey Deal*, 14 February 2017, available at: <http://www.refworld.org/docid/58a30b0b4.html>; *Compassion of the many: Indifference of the few*, 21 November 2016, available at <http://www.refworld.org/docid/5832cbe94.html>; *No Safe Refuge: Asylum-seekers and Refugees Denied Effective Protection in Turkey*, 3 June 2016, available at <http://www.refworld.org/docid/575137984.html>; *Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal, 1 April 2016*, available at <http://www.refworld.org/docid/570210f94.html>; *Europe's Gatekeeper Unlawful Detention and Deportation of Refugees from Turkey, December 2015* available at <https://www.amnesty.org/en/documents/eur44/3022/2015/en/> (last visited 17.2.2018) and Human Rights Watch, *Turkey: Education Barriers for Asylum Seekers*, 31 May 2017, available at <http://www.refworld.org/docid/592e77804.html>; *EU: Don't Send Syrians Back to Turkey*, 20 June 2016, available at <http://www.refworld.org/docid/57679ac84.html>; *Turkey: Border Guards Kill and Injure Asylum Seekers*, 10 May 2016, available at <http://www.refworld.org/docid/57317edb4.html> (last visited 17.2.2018).

distinguish a study of the Overseas Development Institute commissioned by the German Federal Ministry for Economic Cooperation and Development and the Federal Enterprise for International Cooperation, based on interviews with Syrian refugees in Istanbul and a study of the Ankara-based Development Workshop funded by ECHO³². The overview of the sources shows that the new Turkish asylum system, while still in the process of being established, is already overcharged. The respect of the non-refoulement principle is not guaranteed, as there are well-documented cases of pushbacks at the border and expulsions to Syria disguised as ‘voluntary returns’. Long delays in registration and subsequent lack of documentation deprive refugees from access to basic social rights and expose them to risk of arrest and detention. At the same time, livelihood challenges are high. Illegal and low-paid work, coupled with the lack of support for housing are also the reason behind low school enrolment, child labour, begging and early marriages.

Regarding International Organizations, it is worth mentioning the report of the Special Representative of the Secretary General of the Council of Europe on migration and refugees, following his fact-finding mission to Turkey in May - June 2016, as well as the report of three members of the European Parliament who visited Turkey in May 2016³³. Both reports provide information regarding the treatment of refugees in Turkey, including the risks for those readmitted from Greece. The UN monitoring bodies have also addressed the problems related to their field of activity in documents issued between May and July 2016. The Committee Against Torture has expressed its concern for violations of the principle of non-refoulement in its Concluding observations on the fourth periodic reports of Turkey³⁴. The Economic and Social Council has recognized in its Country programme document that “ despite the generous and vigorous response of Turkey to the crisis, including through registration and health services, many Syrians under temporary protection are living in poverty and working informally ” and has also referred to child-labour³⁵. The Working Group on Enforced or Involuntary Disappearances has addressed

³² C. BELLAMY, S. HAYSON, C. WAKE, V. BARBELET, *The lives and livelihoods of Syrian refugees: A study of refugee perspectives and their institutional environment in Turkey and Jordan*, February 2017, available at <https://www.odi.org/publications/10736-lives-and-livelihoods-syrian-refugees> (last visited 17.2.2018) and Development Workshop, *Fertile Lands, Bitter Lives The Situation Aanalysis Report on Syrian Seasonal Agricultural Workers in the Adana Plain*, November 2016, available at http://www.academia.edu/30138048/Syrian_Agricultural_Workers_in_Turkey_Fertile_Lands_Bitter_Lives (last visited 17.2.2018).

³³ Council of the Europe, *Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees*, 30 May – 4 June 2016, 10 August 2016, SG/Inf(2016)29, available at <http://www.refworld.org/docid/58de48524.html> (last visited 17.2.2018) and Report from GUE/NGL Delegation to Turkey 2-4 May 2016, *What Merkel, Tusk and Timmermans should have seen during their visit to Turkey*, available at http://www.guengl.eu/uploads/news-documents/GUENGL_report_Situation_of_refugees_since_EU-Turkey_deal_2016.05.10.pdf (last visited 17.2.2018).

³⁴ UN Committee Against Torture (CAT), *Concluding observations on the fourth periodic reports of Turkey*, 2 June 2016, CAT/C/TUR/CO/4, available at <http://www.refworld.org/docid/57a98fe64.html> (last visited 17.2.2018).

³⁵ UN Economic and Social Council (ECOSOC), *Country programme document : Turkey*, 9 July 2016, E/ICEF/2015/P/L.19, available at <http://www.refworld.org/docid/573d68474.html> (last visited 17.2.2018).

in its report trafficking issues, especially for women and children refugees³⁶. Finally, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has provided details concerning refoulement, labour exploitation, detention, restrictions on freedom of movement and obstacles of access to social rights for refugees in its Concluding observations on the initial report of Turkey³⁷. The report of the European Commission Against Racism and Intolerance examines integration perspectives and raises, among others, the important pressure on the labour market and on the wages of Turkish citizens, which has led to social tensions, hate speech and discrimination against refugees³⁸.

The available information provided by international organizations, NGOs and researchers is too important to be ignored by the Greek authorities. Nevertheless, it should also be completed because its review reveals three serious gaps. The first is that research focuses mostly on Syrian refugees. For instance, the majority of documents published at Refworld during the last two years provide information on the situation of Syrian refugees, some of them include general considerations irrespectively of nationality and only one addresses exclusively the problems faced by non-Syrian refugees³⁹. The second is the limited number of fact-finding and field-visit based reports. The third and most important is that international organizations have not issued any report for over a year, most probably because the failed coup attempt of July 2016 has directed international community's attention on other issues. However, the effects of the Emergency Decree Laws adopted following the failed coup attempt are not irrelevant to refugee protection challenges and deserve further investigation.

More precisely, there is an urgent need to focus on access to effective judicial protection for refugees, as a legislative amendment allows deportation of asylum seekers, international protection applicants and refugees at any stage of their application if they are deemed as members of a terrorist organisation. According to Amnesty International, only a minority of people can appeal against deportation orders because they do not have access to lawyers and are not properly informed of their rights. Furthermore, even in cases in which an appeal to an administrative court is possible, the court may not be willing to consider the risk of refoulement on substantial grounds⁴⁰. Other problems since the coup

³⁶ UN Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey*, 27 July 2016, A/HRC/33/51/Add.1, available at <http://www.refworld.org/docid/57ceb0cc4.html> (last visited 17.2.2018).

³⁷ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Concluding observations on the initial report of Turkey*, 31 May 2016, CMW/C/TUR/CO/1, available at <http://www.refworld.org/docid/5863c1d04.html> (last visited 17.2.2018).

³⁸ Council of Europe, European Commission Against Racism and Intolerance (ECRI), *ECRI Report on Turkey (fifth monitoring cycle) : Adopted on 29 June 2016*, 4 October 2016, available at: <http://www.refworld.org/docid/5836d0ff7.html> (last visited 17.2.2018).

³⁹ Refugees International, *Except God, We Have No One: Lack of Durable Solutions for Non-Syrian Refugees in Turkey*, 7 February 2017, available at <http://www.refworld.org/docid/58a411854.html> (last visited 17.2.2018).

⁴⁰ Amnesty International, *Public Statement*, cit. See A. FRANCIS, *Bringing protection home: Healing the schism between international obligations and national safeguards created by extraterritorial processing*, in *Int. Jour. Refug. Law*, 2008, p. 273-313 (280) «In safe third country cases, an asylum seeker should be able to pursue remedies against the third country in the third country's courts for any failure by the third country to satisfy its obligations under the Refugee Convention. States who transfer an asylum seeker to a third country must therefore be satisfied that in practice the asylum seeker has access to the courts under article 16(1) of the Refugee Convention in order

attempt include non-issuance of documentation and obstacles to education, linked with the dismissal of approximately 30,000 teachers suspected of affiliation with FETÖ/PDY or the PKK. In addition, the current political climate has a negative impact on integration efforts. For instance, the government's plan to provide citizenship and residency to 300,000 skilled Syrian refugees provoked public controversy and drew criticism from the parties of the opposition.

4. *The Greek asylum procedures after the EU - Turkey Deal*

4.1. *Legal framework and practice*

The Greek legislation had already transposed the provisions regarding the 'safe third countries' and the 'first country of asylum' since the adoption of the Asylum Procedures Directive 2005/85⁴¹ but until the EU – Turkey Deal those provisions had never been applied in practice⁴². According to the Law 4375/2016, which transposed the recast Directive and came into force as soon as the EU - Turkey Deal had been announced, both concepts are provided as grounds for inadmissibility of asylum applications⁴³. Article 55 of Law 4375/2016 provides that a country shall be considered to be a first country of asylum when applicants have been recognised as refugees and can still avail themselves of that protection or enjoy other effective protection in that country, including benefiting from the principle of non-refoulement, provided that they will be re-admitted to that country. Article 56 of Law 4375/2016 provides that a country shall be considered as a safe third country when six criteria are fulfilled regarding the specific country. More precisely, the applicant's life and liberty are not threatened there for reasons of race, religion, nationality, membership of a particular social group or political opinion and does not exist any risk of suffering serious harm⁴⁴. Furthermore, the third country respects the principle of non-

to challenge, for instance, the legality of his or her asylum determination. Article 16(1), when read with article 14(1) of the ICCPR, requires not only access, but also access to an effective means to vindicate rights that overcomes any jurisdictional barriers to the courts deciding a matter.»

⁴¹ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁴² See Asylum Information Database, *Country Report: Greece, 2016 update*, March 2017, available at <http://www.asylumineurope.org/reports/country/greece>, p. 76 (last visited 17.2.2018) and UNHCR, *Improving Asylum Procedures*, cit.: «All interviewees participating in this research concurred that Greece does not have a list of nationally designated safe third countries. However, according to the Head of the Asylum and Refugees Department in the Aliens' Directorate of the Greek Police Headquarters, there is case-by-case consideration of the safety of relevant third countries, on the basis of precise and up-to-date information as to the general situation prevailing in the countries through which applicants have transited. However it is unclear if and how the safe third country concept is applied in practice, and the decisions audited by UNHCR lacked any specific legal reasoning which would allow identification of the application of the concept.»

⁴³ Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC [Greece], 3 April 2016, available at <http://www.refworld.org/docid/573ad4cb4.html> (last visited 17.2.2018).

⁴⁴ In accordance with Article 15 of Presidential Decree 141/2013, serious harm consists of: (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (transposition of Article 15 of the Directive

refoulement in accordance with the 1951 Convention relating to the Status of Refugees and prohibits the removal of an applicant to a country where there is a risk of being subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law. In addition, in the third country must exist the possibility to apply for refugee status and, if recognized as a refugee, to receive protection in accordance with the 1951 Convention. The last criterion imposes the existence of a connection between the third country and the applicant, under which it would be reasonable to go there. While this legislative framework is a simple transposition of the above-discussed provisions of the Asylum Procedures Directive into national law, it is worth studying its implementation by the Greek authorities regarding the examination of the applicable criteria as well as the administrative procedures.

As of February 2018, inadmissibility decisions at first instance are issued only to Syrian asylum applicants. Those belonging to vulnerable groups or requesting to be reunited with family members in another EU Member State according to the Dublin Regulation are exempted. Inadmissibility decisions take into consideration the Turkish legislation and the correspondence of the European Commission with the Greek and the Turkish authorities (see details for this correspondence in Part 3.1 above), in order to conclude that Turkey is a safe country for asylum applicants in view of return⁴⁵. Whereas the Regional Asylum Offices on the islands initially dismissed most applications as inadmissible⁴⁶, 390 out of 407 second-instance decisions issued by the Appeals Committees in 2016 rebutted the safety presumption⁴⁷. The reasoning of the first second-instance decision issued by the Appeals Committees on 17 May 2016 is very characteristic on this matter and reflects the position adopted by the Committees in almost all cases of Syrian applicant whose applications had been found inadmissible by the Regional Asylum Offices on the islands. After taking into consideration NGO reports denouncing refusals of entry at the Syrian-Turkish border with use of violence and systematic and massive pushbacks from Turkey to Syria, the Committee concluded that there was serious a risk of violation of *non-refoulement* in case of return to Turkey and that the Turkish temporary protection regulation for Syrians does not constitute protection in accordance with the 1951 Refugee Convention, as required by the Asylum Procedures Directive and respective national legislation, mostly because of restrictions imposed on freedom of movement, naturalization and employment⁴⁸. In June 2016 the composition of the Appeals Committees was modified⁴⁹ and according to the legislative amendment, two members of the Committees are administrative judges and one member is designated by the UNHCR (the previous

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.

⁴⁵ Asylum Information Database, *Country Report: Greece*, cit., p. 78 (last visited 17.2.2018).

⁴⁶ Ibid. p. 79

⁴⁷ European Commission, *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement*, 8 December 2016, p. 6, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/europeanagendamigration/proposalimplementationpackage/docs/20161208/4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en.pdf, (last visited 17.2.2018).

⁴⁸ *Decision 05/133782*, 17 May 2016, available (in Greek) at <http://www.asylumlawdatabase.eu/en/content/greece-appeals-committee-pd-1142010-decision-05133782-17-may-2016>, (last visited 17.2.2018).

⁴⁹ Law 4399/2016, G.G. 117/A/22-6-2016.

composition consisted of a public officer and two members designated by the UNHCR and the National Commission for Human Rights respectively). As of March 2017, 21 decisions of the new Committees had confirmed the first-instance decisions considering Turkey as a first country of asylum and/ or safe third country⁵⁰.

On 22 September 2017, the Council of State delivered two decisions regarding the application of the ‘safe third country’ for Turkey in the case of two Syrian refugees, whose appeals had been rejected by the Committees⁵¹. It is worth noting that in the first decision (2347/2017), the Council of State found that the applicant’s life or freedom would not be threatened for reasons related to his Syrian origin despite the fact that he had been arrested, placed under detention, tortured and pushed-back to Syria three times during his attempt to enter Turkey, because after his fourth entry he stayed in the country for almost six weeks without facing any problem with the authorities. The Council of State took also into consideration that Turkey hosts a large number of Syrian refugees, as well as the information provided in the letters of the Permanent Representative of Turkey to the EU (see details for this correspondence in Part 3.1 above), in order to dismiss the applicant’s argument that Turkey does not respect the principle of *non-refoulement* in practice. Thus, the Court found that the protection provided by the Turkish temporary protection regulation applicable to Syrian refugees was in accordance with the 1951 Geneva Convention. It is also worth noting that although twelve judges considered necessary to refer a question to the Court of Justice of the European Union for a preliminary ruling on the interpretation of the ‘safe third country’ concept provided for in article 38 of the Asylum Procedures Directive, the majority of the Plenary (thirteen judges) decided the opposite.

Law 4375/2016 also introduced a special border procedure, which is currently used for the implementation of the EU - Turkey Deal regarding examination of asylum applications submitted on the Greek islands. This accelerated procedure is foreseen by Article 60 paragraph 4 of Law 4375/2016 and provides for examination with fewer guarantees for applicants⁵². According to Article 60 paragraph 4, this procedure can be exceptionally applied in the case where third-country nationals or stateless persons arrive in large numbers and apply for international protection at the border or at airport and port transit zones or while remaining in Reception and Identification Centres (RIC) and following a relevant Joint Decision by the Minister of Interior and Administrative Reconstruction and the Minister of National Defence. The main features of the special border procedure are that instead of Asylum Service staff, registration of asylum applications, notification of decisions and other procedural documents, as well as the

⁵⁰ Asylum Information Database, *Country Report: Greece*, cit., p. 80.

⁵¹ Council of State, *Decisions 2347/2017 and 2348/2018*. *Decision 2347/2017*, available (in Greek) at http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/%CE%9F%CE%9B%20%CE%A3%CE%A4%CE%95%202347_2017%20D.%CE%9C..pdf, (last visited 17.2.2018).

⁵² See OHCHR, *UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece*, 17 May 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E#sthash.UtAn6Vjd.dpuf> (last visited 17.2.2018): “ The fast-track procedure under derogation provisions in Law 4375/2016 does not provide adequate safeguards. ” and the statement of the Director of the Asylum Service some days before the publication of Law 4375/2016 “ Insufferable pressure is being put on us to reduce our standards and minimise the guarantees of the asylum process... to change our laws, to change our standards to the lowest possible under the EU [Asylum Procedures] directive. ” IRIN, *Greek asylum system reaches breaking point*, 31 March 2016, available at <https://www.irinnews.org/news/2016/03/31/greek-asylum-system-reaches-breaking-point> (last visited 17.2.2018).

receipt of appeals, may be conducted by staff of the Hellenic Police or the Armed Forces and the interview may also be conducted by personnel deployed by the European Asylum Support Office (EASO) instead of the Greek Asylum Service's staff. According to Article 60 paragraph 4, the asylum procedure must be concluded in a very short time period not exceeding two weeks. Thus, the time given to applicants in order to exercise their right to sufficiently prepare and consult a legal or other counsellor who shall assist them during the procedure is limited to one day. Decisions must be issued, at the latest, the day following the conduct of the interview and must be notified, at the latest, the day following their issuance. The deadline for submitting an appeal against a negative decision is five days from the notification of this decision (the same deadline is of 30 days in regular procedures). When an appeal is lodged, its examination is carried out no earlier than two days and no later than three days after submission, which means that appellants must submit any supplementary evidence or a written submission the day after the notification of the first instance negative decision. If the Appeals Authority decides to conduct an oral hearing, the appellants are invited before the Appeals Committee one day before the examination and they can be given one day to submit supplementary evidence or a written submission. Decisions on appeals must be issued, at the latest, two days following the day of the appeal examination or the deposit of submissions and must be notified, at the latest, the day following their issuance.

It is obvious that the very short time limits provided by article 60 paragraph 4 of Law 4375/2016 risk to deprive asylum-seekers of their right to an effective remedy. The UN Committee against Torture and the Human Rights Committee have stressed that because of the short time limits in accelerated asylum procedures the principle of non-refoulement provided for in articles 3 of the Convention Against Torture and 7 of the International Covenant on Civil and Political Rights could be violated⁵³. According to the European Court of Human Rights, in refugee status determination procedures «it may be difficult, if

⁵³ UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture : Belgium*, 19 January 2009, CAT/C/BEL/CO/2, available at <http://www.refworld.org/docid/49d480aa2.html>; *UN Committee against Torture: Conclusions and Recommendations, Finland*, 21 June 2005, CAT/C/CR/34/FIN, available at <http://www.refworld.org/docid/42cd73424.html>; *Consideration of reports submitted by States parties under article 19 of the Convention - Finland*, 29 June 2011, CAT/C/FIN/CO/5-6, available at <http://www.refworld.org/docid/4ef048ff2.html>; *Consideration of reports submitted by States parties under article 19 of the Convention - France*, 20 May 2010, CAT/C/FRA/CO/4-6, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FFRA%2FCO%2F4-6&Lang=en; *Conclusions and recommendations of the Committee against Torture : Latvia*, 19 February 2008, CAT/C/LVA/CO/2, available at <http://www.refworld.org/docid/47c6749e2.html>; *Concluding observations on the combined 5th and 6th periodic reports of the Netherlands, adopted by the Committee at its 50th session, 6-31 May 2013 : Committee Against Torture*, 20 June 2013, CAT/C/NLD/CO/5-6, available at <http://www.refworld.org/docid/51dff1c84.html> and *Consideration of reports submitted by States parties under article 19 of the Convention - the Netherlands*, 3 August 2007, CAT/C/NET/CO/4, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FNET%2FCO%2F4&Lang=en (last visited 17.2.2018). UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : France*, 31 July 2008, CCPR/C/FRA/CO/4, available at <http://www.refworld.org/docid/48c50ebe2.html>; *UN Human Rights Committee: Concluding Observations: Latvia*, 1 December 2003, CCPR/CO/79/LVA, available at <http://www.refworld.org/docid/3fdc68164.html> and *Concluding observations of the Human Rights Committee : Netherlands*, 25 August 2009, CCPR/C/NLD/CO/4, available at <http://www.refworld.org/docid/4aa7aa642.html> (last visited 17.2.2018).

not impossible, for the person concerned to supply evidence within a short time» and «time-limits should not be so short, or applied so inflexibly, as to deny an applicant for recognition of refugee status a realistic opportunity to prove his or her claim»⁵⁴. In a case against France, the Court found that the speed of the accelerated border procedure was one of the main reasons that resulted in violation of article 13 of the Convention (right to an effective remedy), as the applicant had insufficient opportunity to substantiate his claim of a risk of refoulement⁵⁵. The Court of Justice of the European Union has also stated that the time limit for lodging appeals against negative asylum decisions must be sufficient in practical terms in order to enable applicants to prepare and bring an effective action⁵⁶. In another case concerning accelerated procedures provided for in the Asylum Procedures Directive, the Court ruled that applicants «must enjoy a sufficient period of time within which to gather and present the necessary material in support of their application, thus allowing the determining authority to carry out a fair and comprehensive examination of those applications and to ensure that the applicants are not exposed to any dangers in their country of origin»⁵⁷.

4.2. *Compatibility with International and EU Law*

The Council of Europe was the first international organization that reacted as soon as the EU-Turkey Deal was announced. In its Resolution 2109 (2016) ‘*The situation of refugees and migrants under the EU–Turkey Agreement of 18 March 2016*’⁵⁸, the Parliamentary Assembly considered that the Deal raised several serious human rights issues relating to both its substance and its implementation. More precisely, the Assembly highlighted that returns of asylum seekers to Turkey as a ‘safe third country’ are contrary to European Union and/or international law because Turkey does not provide them with protection in accordance with the 1951 Convention relating to the Status of Refugees, non-Syrians do not have effective access to the asylum procedure and there have been reports of onward refoulement of both Syrians and non-Syrians. Thus, the Assembly recommended to Greece, as an implementing party of the EU–Turkey Deal and, to the European Union, as a provider of operational assistance to the Greek authorities, to refrain from involuntary returns of asylum seekers to Turkey under Article 38 of the Asylum Procedures Directive. Furthermore, the Assembly recommended to Turkey to withdraw its geographical

⁵⁴ European Court of Human Rights, *Babaddar v. Netherlands*, Application No 25894/94, 19/2/1998, par. 63. See also *Jabari v. Turkey*, Application No. 40035/98, 11/7/2000, par. 40.

⁵⁵ European Court of Human Rights, *I.M. v France*, Application No 9152/09, 2/5/2012.

⁵⁶ Judgment of the Court of Justice of 28 July 2011, Case C-69/10, *Brahim Samba Dionf v. Ministre du Travail, de l’Emploi et de l’Immigration*, par. 66.

⁵⁷ Judgment of the Court of Justice of 31 January 2013, Case C-175/11 *HID and BA v Refugee Applications Commissioner and Others*, par. 75. For a detailed analysis see M. RENEMAN, *Speedy Asylum Procedures in the EU: Striking a Fair Balance Between the Need to Process Asylum Cases Efficiently and the Asylum Applicant’s EU Right to an Effective Remedy*, in *Int. Jour. Refug. Law*, 2014, p. 717-748.

⁵⁸ Council of Europe, Parliamentary Assembly, *Resolution 2109 (2016) The situation of refugees and migrants under the EU–Turkey Agreement of 18 March 2016 Resolution 2109 (2016)*, 20 April 2016, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22738&lang=en> (last visited 17.2.2018). See also Doc. 14028, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Tineke Strik, available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=22612&lang=en> (last visited 17.2.2018).

limitation to the Geneva Convention and recognize the status and fully respect the rights of refugees under the Convention.

The position of the Parliamentary Assembly of the Council of Europe together with available information regarding the situation of refugees in Turkey, reflect the most important reasons why the latter should not be considered as a safe third country for refugees or even as a first country of asylum for Syrian refugees who have been granted temporary protection under the relevant regulation. Although some criteria provided by article 38 of the Asylum Procedures Directive, such as the risk of serious harm or the existence of a ‘connection’ between the applicant and Turkey on the basis of which it would be reasonable for that person to go there, can be individually examined for every asylum-seeker, this is not the case for some others. For instance, the non-respect of the principle of non-refoulement affects the total of asylum-seekers and the current form of available protection for Syrian refugees, the temporary protection, is not in accordance with the Geneva Convention.

Regarding the principle of non-refoulement, it should be noted that its violation includes measures such as expulsion and deportation orders against refugees, return of refugees to countries of origin or unsafe third countries, electrified fences to prevent entry, non-admission of stowaway asylum-seekers and push-offs of boat arrivals or interdictions on the high seas⁵⁹. According to the report of the Special Representative of the Secretary General of the Council of Europe on migration and refugees following his mission to Turkey⁶⁰, all the evidence pointed to the fact that the border between Turkey and Syria had been closed⁶¹. The Special Representative was also confronted with allegations that Syrians apprehended inside Turkey risked being returned to Syria and even some of the authorities he met, referred to the fact that undesirable Syrians are taken to the border. Regarding Syrians readmitted from Greece, the report mentions that they were de facto detained at Düziçi camp. By the time of the Special Representative’s visit, the 12 Syrians who had been returned from Greece under the EU - Turkey Deal to that date had either been released or had voluntarily returned to Syria. However, the same report states that non-Syrian detainees consistently complained that they were under pressure to sign for voluntary return either because the authorities refused to register their claims for ‘international protection’ or because they preferred to return to their countries than long-term detention. In some cases, detainees had been forced to sign documents that they did not understand having been told by the authorities that their signatures were necessary for accommodation and food provision⁶². The UN monitoring bodies also denounce violations of the principle of non-refoulement. The Committee Against Torture expressed its concern for reported cases of expulsion, return or deportation regarding hundreds of Syrian refugees since mid-January 2016 and 30 Afghan asylum seekers were reportedly returned to Afghanistan in March 2016 without

⁵⁹ UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement, November 1997, available at <http://www.refworld.org/docid/438c6d972.html> (last visited 17.2.2018) and Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, available at <http://www.refworld.org/docid/45f17a1a4.html> (last visited 17.2.2018).

⁶⁰ Council of the Europe, *Report of the fact-finding mission to Turkey*, cit.

⁶¹ C. BELLAMY, S. HAYSON, C. WAKE, V. BARBELET, *The lives and livelihoods*, cit. “At the time of writing, the border between Turkey and Syria is also effectively closed to refugees”.

⁶² See p. 27-30 Council of the Europe, *Report of the fact-finding mission to Turkey*, cit.

being granted access to asylum procedures. The Committee was further concerned by an incident where the Armed Forces opened fire on people trying to cross Turkey's southern border in April 2016, although Turkey claimed that the 18 persons killed were 'PKK terrorists' trying to reach Syria. Regarding the EU - Turkey Deal, the Committee expressed its concern for the lack of assurances that applications for asylum would be individually examined and that asylum-seekers would be protected from refoulement and collective return, stressing that readmission agreements signed by Turkey with other States reinforced its concern⁶³. Finally, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed its concern regarding visa requirements for Syrians arriving by air and the construction of a concrete wall to seal the land border with Syria, allegations that border guards had at times been using live ammunition to prevent crossing of the border and the lack of information on investigations into those allegations. The Committee also highlighted the facts that since mid-January 2016 the authorities had reportedly expelled several thousand of Syrians including families and unaccompanied children, most of whom undocumented, as well as undocumented Afghan and Iraqi nationals, that coercion may have been used for 'voluntary' returns and the lack of information and data on expulsions. According to the Committee, collective expulsions might increase as a result of the EU – Turkey Deal⁶⁴.

Regarding the form of protection, the relevant provision of the Asylum Procedures Directive (*the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention*) requires both ratification of the Convention and/or the 1967 Protocol, as well as implementation in practice, according to the UNHCR⁶⁵. This interpretation excludes a priori the fulfilment of the Directive's criterion, because of Turkey's geographical limitation to the Convention for non-European nationals. In case of different interpretation of this provision, it should be taken into consideration that the State Parties to the Geneva Convention must assure refugees the widest possible exercise of the fundamental rights and freedoms provided by the Convention⁶⁶. In this respect, both Turkish law and practice do not commensurate with the range of rights and the level of protection accorded by the Geneva Convention regarding Syrian refugees⁶⁷. The 'temporary protection' regime is a discretionary measure deployed in situations of mass influx of refugees, which excludes individual examination of asylum applications. The Board of Ministers has the authority to declare a temporary protection regime, order spatial limitations on temporary protection measures, suspend them for a specific period or indefinitely and decide the termination of the regime without any individual assessment. Furthermore, temporary protection beneficiaries are explicitly barred

⁶³ UN Committee Against Torture (CAT), *Concluding observations*, cit.

⁶⁴ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Concluding observations*, cit.

⁶⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004)*, 10 February 2005, p. 36, available at <http://www.refworld.org/docid/42492b302.html> (last visited 17.2.2018).

⁶⁶ Preamble of the Convention par. 2.

⁶⁷ Asylum Information Database, *Country Report: Turkey*, December 2015, p. 107-136, available at <http://www.asylumineurope.org/reports/country/turkey> (last visited 17.2.2018). See also J. HATHAWAY, *The rights of refugees under International Law*, Cambridge, 2005, p. 267: «there can be no presumption that the existence of a 'mass influx' of refugees necessarily grants states the authority provisionally to suspend rights».

from submitting a separate application for international protection status and are deprived of their right for long-term integration, because the duration of the temporary protection regime is not taken into consideration when applying for citizenship⁶⁸. In addition, Syrian refugees in Turkey do not enjoy freedom of movement, as provided by the Geneva Convention⁶⁹. Finally, it should be noted that the Geneva Convention treats socioeconomic rights as duties of result, equal to civil and political rights. Thus, they cannot be avoided because of limited resources of the State Parties⁷⁰.

5. Conclusion

For many years now, the EU Member States have applied non-entry and non-admission mechanisms. Therefore, refusal of protection on the ground that asylum-seekers could be protected elsewhere, is not a new challenge within the broader context of the EU externalization policy. However, refusal of protection on the ground that Turkey should be considered as a safe third country or first country of asylum is currently an enormous challenge in terms of fair responsibility – sharing and respect of human rights and the rule of law in the post - coup attempt era. From a legal perspective, the EU–Turkey Deal should not be overestimated. The tools for rejecting applications as inadmissible and returning asylum-seekers to Turkey existed before this declaration of political will, which took the form of a simple press release on 18 March 2016. The Greek legislation had already transposed the ‘safe country’ mechanism provided by the Asylum Procedures Directive since 2008 and a Readmission Protocol between Turkey and Greece existed since

⁶⁸ See articles 1, 3, 9, 10, 16, 26 of the Temporary Protection Regulation, available at http://www.goc.gov.tr/files/_dokuman28.pdf (last visited 17.2.2018). See for instance C. BELLAMY, S. HAYSOM, C. WAKE, V. BARBELET, *The lives and livelihoods*, cit., p. 5 «Turkey has also adapted its labour laws to offer work permits to Syrian refugees, and has announced plans to provide citizenship and residency (‘Turquoise Cards’) to 300,000 skilled Syrians. However, the criteria, procedures and implementation timeline for citizenship are all unknown, and the move has caused significant controversy, both with other political parties and with the wider public, the majority of whom appear to believe that the influx of refugees has led to job losses among Turkish citizens and pushed down wages [...] With the recent coup attempt and state of emergency, the situation is unlikely to become clear in the near future.» and p. 40 «relations between Syrian refugees and the host community on the whole appear to be deteriorating».

⁶⁹ International Crisis Group (ICG), *Turkey's Refugee Crisis: The Politics of Permanence*, 30 November 2016, Europe Report N° 241, available at <http://www.refworld.org/docid/583ee6014.html> (last visited 17.2.2018) «Turkish authorities say the need to regulate Syrian refugees’ mobility is a direct outcome of recent terrorist attacks by suicide bombers [...] this measure also helps stem the flow of refugees toward Turkey’s western border and prevent irregular crossings [...] such mobility restrictions also pave the way for less desirable mobility methods such as human smuggling.» and Human Rights Watch, *EU: Don't Send Syrians Back to Turkey*, 20 June 2016, available at <http://www.refworld.org/docid/57679ac84.html> (last visited 17.2.2018) «Syrian refugees, even those registered under temporary protection, also face restrictions on their movement across Turkey. [...] In August 2015, the government issued written instructions to provincial authorities, ordering measures to limit and control the movement of Syrians inside the country. Enforcement was initially ad hoc, but has since become more widespread, and temporary protection beneficiaries are now required to obtain permission from local migration authorities to leave the province where they are living [...]».

⁷⁰ J. HATHAWAY, *The rights of refugees*, cit. p. 123.

2001⁷¹. However, the EU – Turkey Deal changed within one day the field of refugee protection in Greece with thousands of asylum -seekers first detained and then stranded on the Greek islands. Furthermore, violations of asylum-seekers' rights following refusal of protection in Greece and subsequent forced return to Turkey, including violations of the principle of non-refoulement by the latter, are a major source of concern.

Despite the EU political pressure for the implementation of the Deal, the General Court of the European Union declared that the EU-Turkey statement, as published by means of press release, could not be regarded as a measure adopted by the European Council or by any other institution, body, office or agency of the European Union⁷². Thus, it is clear that Greece could not evade its responsibility for violations of asylum applicants' rights in case of forced returns to Turkey by relying on the implementation of the Deal, or even on the interpretation of the two secondary EU Law concepts (safe third country and first country of asylum). Following refusal of international protection and subsequent forced returns, Greece will be accountable for human rights violations that would eventually take place not only in Turkey, but also in the final destination countries in case of violation of the principle of non-refoulement by Turkey⁷³. In any case, regardless of whether Turkey should be considered as first country of asylum and /or safe third country in accordance with the Asylum Procedures Directive, the Greek authorities have the obligation to take into consideration all the available sources providing information on the consequences of forced returns, especially those regarding the automatic detention and detention conditions, the risk of refoulement including expulsions to Syria disguised as voluntary returns and the obstacles of access to effective judicial protection after the failed coup attempt⁷⁴. In addition, they should not underestimate the long delays in registration of applications and subsequent lack of documentation, depriving refugees from access to basic social rights and exposing them to risk of arrest and detention, as well as their livelihood problems⁷⁵.

⁷¹ Bilateral Readmission Protocol signed in Athens on 8 November 2001 and ratified by Law 3030/2002, available at <https://nomoi.info/%CE%A6%CE%95%CE%9A-%CE%91-163-2002-%CF%83%CE%B5%CE%BB-1.html> and Presidential Decree 90/2008 transposing Council Directive 2005/85/EC from December 1, 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, available (in Greek) at <http://www.unhcr.gr/prostasia/nomiki-prostasia/o-nomos-stin-ellada/nomothesia-gia-to-asylo.html> (last visited 17.2.2018).

⁷² «or as revealing the existence of such a measure that corresponds to the contested measure», General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 *NF, NG and NM v. European Council*, Order of 28 February 2017, available at <http://curia.europa.eu/juris/documents.jsf?num=T-192/16>; <http://curia.europa.eu/juris/documents.jsf?num=T-193/16> and <http://curia.europa.eu/juris/documents.jsf?num=T-257/16> (last visited 17.2.2018).

⁷³ See S. LEGOMSKY, *Secondary refugee movements and the return of asylum seekers to third countries: The meaning of effective protection*, in *Int. Jour. Refug. Law*, 2003, p. 567-677 (620-621); M. GIUFFRÈ, *State Responsibility Beyond Borders: What Legal Basis for Italy's Push-backs to Libya?*, in *Int. Jour. Refug. Law*, 2012, p. 692-734 (725, 730-731) and C. COSTELLO, *The Asylum Procedures Directive*, cit. p. 47.

⁷⁴ See for instance UN Committee Against Torture (CAT), *Concluding observations on the fourth periodic reports of Turkey*, cit.; Report from GUE/NGL Delegation to Turkey cit.; Amnesty International, *Public Statement*, cit. and O. ULUSOY, H. BATTJES, *Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement*, VU Migration Law Series, 2017, available at <https://research.vu.nl/en/publications/situation-of-readmitted-migrants-and-refugees-from-greece-to-turk> (last visited 17.2.2018).

⁷⁵ See for instance UN Economic and Social Council (ECOSOC), *Country programme document*, cit.; UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Facts, in the case of the EU -Turkey Deal, show that the international community is still far from fair responsibility - sharing for addressing global forced displacement, despite the recent commitments of the 2016 New York Declaration for Refugees and Migrants⁷⁶. Financial support without effective capacity – building, coupled with low numbers of places for resettlement and persistence on forced returns of the negligible number of refugees who have survived the perilous journey to Greece, compared to the number of those hosted by the neighbouring country, lead to the conclusion that the international community has not yet succeeded to leave behind the burden - shifting policies. While strong political will is necessary for long-term global solutions, International Law prevents individual human rights violations in the current context of externalization of asylum policies. The issue of human rights violations following refusal of protection in Greece will not remain within the Greek jurisdictional borders. There is already a relevant pending case before the European Court of Human Rights⁷⁷ and it is also possible to be referred to the Court of Justice of the European Union despite the initial refusal of the Council of State⁷⁸. Until then, International Organizations could at least engage more actively in preventing violations of refugees' rights with fact – finding visits, close monitoring and reports.

(CMW), *Concluding observations*; C. BELLAMY, S. HAYSOM, C. WAKE & V. BARBELET, *The lives and livelihoods of Syrian refugees* and Development Workshop, *Fertile Lands, Bitter Lives*, cit. (last visited 17.2.2018).

⁷⁶ UN General Assembly, *New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at <http://www.refworld.org/docid/57ceb74a4.html> (last visited 17.2.2018).

⁷⁷ *J.B. v. Greece*, Application No 54796/16.

⁷⁸ P. BIONDI, *Why the Greek Council of State Decision Won't Pave the Way for Forcible Returns*, in *Bosphorus Migration Studies*, 2017, available at <http://bmigration.com/safe-third-country-greece/> (last visited 17.2.2018).