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Crisis and the Greek Asylum System in the Framework of the EU-Turkey Agreement: Legal and Political Aspects

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ABSTRACT

Since the signing of the EU-Turkey Statement, there has been a significant reduction in the number of people unlawfully crossing European borders or losing their lives in the Aegean. Turkey plays a crucial and decisive role in addressing the refugee crisis in the Middle East and the Mediterranean region. At the same time, Greece is invited to carry out an unprecedented administrative, legislative and operational project that has not been undertaken so far. Furthermore, Greek authorities have to deal with a series of urgent needs (accommodation, nutrition, asylum procedures, health) or social integration processes (education, training, access to labour). This article focuses on the legal and political aspects in terms of Greek Asylum System as well as special attention is given to the EU-Turkey statement and how its implementation impacts on Greek-Turkish-EU relations. The author notes that this discussion cannot be taken place without taking into account the European institutional and political framework as well as the greatest economic-fiscal crisis faced both by EU and Greece.

Keywords: EU-Turkey Statement, Greek Asylum System, Syrian Refugee Crisis, Turkey

Kriz ve AB-Türkiye Anlaşması Çerçevesinde Yunan İltica Sistemi: Yasal ve Siyasal Bağlam

ÖZET

Avrupa'nın sınırlarını yasal olmayan yollardan geçen ya da Ege'de hayatını kaybeden insan sayısında, AB-Türkiye Anlaşması'nın imzalanması sonrasında ciddi oranda bir azalma olmuştur. Türkiye, Ortadoğu'da ve Akdeniz bölgesinde mülteci krizinin ele alınmasında çok önemli ve belirleyici bir rol oynamaktadır. Bu arada, Yunanistan'dan da o döneme kadar üstlendiğinin çok üstünde sorumluluk getiren idari, yasal ve uygulamaya yönelik boyutları içeren bir plan yürütmesi istenmiştir. Yunan otoriteleri, eş zamanlı olarak bir dizi acil ihtiyaç (barınma, beslenme, sığınma süreçleri, sağlık) ya da sosyal entegrasyon süreçleri (eğitim, mesleki eğitim, işgücüne erişim) ile de ilgilenmek zorunda kalmışlardır. Bu makale, hem Yunan İltica Sistemi çerçevesinde yasal ve siyasal bağlama hem de AB-Türkiye Anlaşmasına bağlamında tarafların beyanın uygulamasının Yunan-Türk-AB ilişkileri üzerindeki etkisine odaklanmaktadır. Yazar, bu tartışmanın hem Avrupa'nın kurumsal ve siyasal çerçevesinin hem de Avrupa ve Yunanistan'ı etkileyen en büyük ekonomik-mali krizin dikkate alınmadan gerçekleştirilemeyeceğini iddia etmektedir.

Anahtar Kelimeler: AB-Türkiye Beyanı, Yunan Sığınma Sistemi, Suriyeli Mülteci Krizi, Türkiye

Introduction: From the European Agenda on Migration to the EU-Turkey Refugee Deal

The Syrian refugee crisis seriously affects European societies, as well as the internal political situation in almost all member-states of the European Union, put to the test the Schengen Treaty and the Dublin rules, as well as highlights the limits and inadequacies, not only for the EU's foreign and security policy but for the national policies of the Member States as well.¹ The Syrian refugees flows is crucial, as "the European Union and Europe as a continent have not been called to face a refugee crisis of this size since the end of the World War II", as well as "this crisis brought to the forefront the limited mechanisms and responses in place to meet needs in place, the absence of a truly common European asylum space and the flaws of the Dublin Regulation".²

The European Agenda on Migration, which emerged following difficult and protracted negotiations among the Member States in May 2015, represented the EU's first attempt to tackle the plight of the thousands of refugees who risk their lives transiting war zones and attempting to cross the Mediterranean.³ The picture also includes the EU-Turkey Statement of 18 March 2016 to replace irregular migration with legal channels for resettling refugees within the European Union. Its provisions include:

All "irregular migrants" arriving in Greece from Turkey will, as from 20 March 2016, be returned to Turkey on the basis of a bilateral agreement between the two countries. All those who do not apply for asylum or whose requests are considered unfounded or inadmissible will be returned to Turkey. Greece and Turkey, assisted by EU institutions and agencies, will enter into any necessary bilateral agreements, including one on the permanent presence of Turkish officials on Greek islands and Greek officials in Turkey from 20 March onwards, in order to implement these agreements. For every Syrian returned to Turkey from the Greek islands, another Syrian will be settled in the EU. A mechanism will be set up to implement the "one for one" principle – in cooperation with the Commission, EU agencies, the UN High Commissioner for Refugees and the Member States – as from the first day that returns start. Priority for resettlement in the EU will be given to Syrians in Turkey rather than in Greece, and of these, priority will be given to migrants who have not previously entered or tried to enter the EU.⁴

There is no doubt that since the signing of the EU-Turkey statement, there has been a significant and steady reduction in the number of people unlawfully crossing European borders or losing their lives in the Aegean.⁵ The reality, however, is that "the implementation of the agreement that began on April 4 2016, faces serious problems for a number of legal, political and logistical

1 Christos Baxevanis, "EU Response to the Refugee Crisis: Too Little, Too Late, The Conservative", *A Periodical Publication by the Alliance of European Conservatives and Reformists*, Vol.1, No.1, 2016, p.37.

2 Angeliki Dimitriadi, "Europe's dubious response to the refugee crisis", *ELLAMEP Thesis*, September 2015, p.3, http://www.eliamep.gr/wp-content/uploads/2015/09/ELIAMEP-Thesis-1-2015_Ang.Dimitriadi.pdf (Accessed on 6 December 2017).

3 European Commission, "A European Agenda on Migration", *COM(2015) 240 final*, 13 May 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0240&from=EN> (Accessed on 6 December 2017).

4 European Council, "EU-Turkey Statement", 18 March 2016, <http://www.consilium.europa.eu/el/press/press-releases/2016/03/18-eu-turkey-statement/> (Accessed on 6 December 2017).

5 European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council: Fifth Report on the progress made in the implementation of the EU-Turkey Statement*, 6 September 2017, *COM(2017) 470 final*, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20170906_seventh_report_on_the_progress_in_the_implementation_of_the_eu-turkey_statement_en.pdf (Accessed on 6 December 2017).

reasons, as it is an agreement characterized as highly complex, extremely technical, and difficult with controversial legal points”.⁶ Additionally, even though the existing channels are now closed, there is always the danger of migration flows being re-routed: with the closing of the Western Balkans Route, the illegal networks of traffickers might seek an alternative route passing from Greece through Albania to EU, going back through South Italy and/or finally going from Turkey through the Black Sea to Bulgaria.

Last but not least, the failure of the EU to deal with the refugee crisis is deeply political and has to do with the fact that the European policy was developed within an environment of Islamophobic/Xenophobic speech totally connected with a suspicion and a fear of foreigners, especially Muslims. It is worth mentioning that in the European Council conclusions, February 2016, the term ‘refugee’ was replaced by that of ‘migrant’⁷ as well as in the EU-Turkey agreement, the term ‘refugee’ appears four times, while the term ‘migrant’ and ‘irregular migrant’ appear ten times.⁸ In other words, “at the heart of the EU-Turkey agreement is the goal to discourage irregular crossings by returning most of those who arrive on Greek islands to Turkey following a credible assessment of their asylum claims”.⁹ Therefore, EU adopt “a dangerous conflation of ‘security’ with ‘deterrence’ and with the ‘risk of terrorism’, a conflation which has direct negative consequences for the European *acquis* of rights protection and, of course, for those directly affected by European and national policies”.¹⁰

Refugee Crisis in Greece: The Greek Asylum System in the framework of the EU-Turkey agreement

The asylum procedure was, for many years, characterized by a lack of essential procedural guarantees.¹¹ Greek Law 3907/2011 ‘Establishment of Asylum Service and First Reception Service, the transposition of the 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals’, set up and staffed the new Asylum Service, the new

6 Baxevanis, “EU Response to the Refugee Crisis”, p.37.

7 European Council, *Conclusions on migration*, 18 February 2016, www.consilium.europa.eu/en/press/press-releases/2016/02/18-euco-conclusions-migration/ (Accessed on 6 December 2017).

8 European Council, *EU-Turkey Statement*.

9 European Stability Initiative, *Pangloss in Brussels How (not) to implement the Aegean Agreement*, 7 October 2016, p.8, www.esiweb.org/pdf/ESI%20-%20Pangloss%20in%20Brussels%20-%207%20October%202016.pdf (Accessed on 6 December 2017).

10 Hellenic League for Human Rights, *Supporting Evidence document on HLHR’s position on the refugee situation*, March 2017, p.11, http://www.hlhr.gr/wp-content/uploads/2017/03/HLHR_positions.3_2017.pdf (Accessed on 6 December 2017).

11 According to the United Nations High Commissioner for Refugees (Office in Greece), “The asylum procedure was, for many years, characterized by a lack of essential procedural guarantees, including a lack of qualified interpretation during interviews, poor quality of interviews and interview records and poor quality of decisions as well as an extremely low recognition rates (of close to zero percent at the first instance), despite the composition of asylum-seekers, including many from countries of origin, facing serious human rights situations or conflict. The second instance of the asylum-procedure (which is the final administrative decision-making instance, in the event of an appeal against the first instance decision) has been through successive changes and “adventures”, until it reached the configuration and regulation of today’s Appeals Committees. Another serious problem was the delay in examining asylum-claims and in reaching a final decision, which resulted in thousands of people living in a state of uncertainty for many years.” United Nations High Commissioner for Refugees- Office in Greece *Contribution to the dialogue on migration and asylum*, May 2012, p.3, https://www.unhcr.gr/fileadmin/Greece/News/2012/positions/2012_Migration___Asylum_EN.pdf, (Accessed on 6 December 2017).

Appeals Authority and the new First Reception Service. The Greek asylum procedure has undergone crucial reforms throughout 2016 by the adoption of the EU-Turkey statement and the adoption of Greek Law 4375/2016 adopted in April 2016.¹²

Greece is invited to carry out an unprecedented administrative, legislative and operational project that has not been undertaken so far. In other words, the implementation of the EU-Turkey Statement by the Greek side requires the mobilization of a huge bureaucratic mechanism (judges, police officers, case workers, interpreters). Furthermore, Greek authorities have to deal with a series of urgent needs (accommodation, nutrition, asylum procedures, health) or social integration processes (education, training, access to labour). Despite the fact the Greek Government has made some positive steps in improving the situation in the Aegean islands, the challenges with overcrowding and insecurity remain, not to mention that there are more than 50.000 people being stranded in Greece unable to continue their journey to Europe.

The launch of the EU-Turkey statement and the closure of the Western Balkan route also led to a significant increase of persons willing to apply for asylum who arrived in Greece after 20 March 2016 on the Eastern Aegean islands (Lesvos, Chios, Samos, Leros, Kos). This has led to significant pressure on the Asylum Service, exceeding its capacity and ability to register new asylum claims. In addition, the implementation of the EU-Turkey agreement created two different zones in Greece where asylum seekers face two different kinds of reality: either the return of any asylum seeker or migrant from Greece to Turkey, regulated by the EU-Turkey agreement, March 2016 or the possibility of relocation of asylum seekers from Greece to another EU member-state, including the already statutory right of family reunification.¹³

At the same time, there is no organized plan for the refugees and irregular migrants who are already within the Greek territory because of the border closures along the Western Balkan route that caused a bottleneck with more than 50.000 people being stranded in Greece unable to continue their journey to Europe. As the Greek Ombudsman mentions;

The lack of any central planning and coordination of the involved agencies and services, as well as the laxity in implementing the relevant provisions for addressing the situation, in combination with the failure to promptly and appropriately utilize European and domestic resources, are among the key reasons why the problem is created and persists.¹⁴

It has to be outlined at this point that still today, more than a year after the Statement, “there is still no integrated management plan, with a clear, stated and coherent narrative, with milestones and deliverables, targets and time frames of implementation that are complied with”.¹⁵

12 Greek Council for Refugees, Asylum Information Database (AIDA), *Country Report Greece*, March 2017, p.13, <http://www.asylumineurope.org/reports/country/greece> (Accessed on 6 December 2017).

13 European Council, Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, 22 September 2015, p.1-15, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN> (Accessed on 6 December 2017).

14 Greek Ombudsman, “Migration flows and refugee protection. Administrative challenges and human rights issues”, Special Report, 2017, p.41, www.synigoros.gr/resources/docs/greek_ombudsman_migrants_refugees_2017_en.pdf (Accessed on 6 December 2017).

15 Ibid. p.9.

Asylum seekers arriving after 20 March 2016 are subjected to a fast-track border procedure which does not provide adequate safeguards. According to the L 4375/2016, which has been established this kind of procedure, the examination of the application for international protection at first and second instance should be completed within fourteen days.¹⁶ However, it is worth mentioning that Dublin family cases and vulnerable groups are excluded from the fast-track border procedure. In addition, the launch of the EU-Turkey Statement has a serious impact detention of asylum seekers. In detail, all newly arrived third-country nationals or stateless persons after 20 March 2016 are imposed on an obligation to remain on the Eastern Aegean islands, which on practice is a geographical restriction. Among the most crucial issues is the detention of families, small children and unaccompanied minors.

As far as the reception capacity and conditions of persons subjected to the EU-Turkey Statement remains inadequate and often below standard in the hot spots both in terms of material conditions and security (i.e. overcrowded hotspots, limited access to accommodation options and essential services such as health care, especially for unaccompanied children, people with disabilities or victims of sexual and gender-based violence, insufficient security, tensions between different nationalities).¹⁷

In this context, 19 organizations submitted a joint letter to Greek Prime Minister concerning the conditions for asylum seekers on the Aegean islands. The organizations points out that “Since the EU-Turkey Statement came into effect, the Greek islands of Lesbos, Chios, Samos, Kos and Leros have been transformed into places of indefinite confinement for asylum seekers. Thousands of women, men and children have been trapped on these islands in abysmal conditions and many lack access to adequate and timely asylum procedures and protection”, not to mention that “some who arrived on the islands in the early days of the EU-Turkey Statement have remained stuck there for 19 months”.¹⁸ Similarly, UNHCR, the UN Refugee Agency, is calling on Greek authorities to accelerate winter preparations in government-run sites on the Aegean Sea islands, where conditions are quickly deteriorating amid increased arrivals while harsh, rainy and cold weather is expected.¹⁹

Refugee crisis in Greece is totally connected with the relocation mechanism and especially the unwillingness of many member states to take refugees through the relocation program. The relocation of refugees in Europe is still voluntary and the decision of former Eastern States to close the Balkan route still stands. Resettlement needs relocation and that is not working at all: only a few hundred of refugees from Greece and Italy have been moved to other member states. A year after the entry into force of the relocation schemes, and although the necessary foundations for their implementation have been laid, progress remains disappointing. The fact that, according to the European Commission’s 14th progress report on relocation of asylum seekers within the EU, the total number of relocations stands at 24,676 (16,803 from Greece; 7,873 from Italy), is the most emblematic illustration of the situation.²⁰

16 Greek Council for Refugees, Asylum Information Database (AIDA), p.20.

17 United Nations High Commissioner for Refugees, 31 May 2017, Greece Factsheet, May 2017, p.2, <https://data2.unhcr.org/en/documents/download/58264> (Accessed on 6 December 2017).

18 Hellenic League for Human Rights, Joint letter of 19 organizations to Greek Prime Minister concerning the conditions for asylum seekers on the Aegean islands, 23 October 2017, p.1, <http://www.hlhr.gr/wp-content/uploads/2017/10/Joint-NGO-Letter-PM-Tsipras.-20171023.pdf> (Accessed on 6 December 2017).

19 United Nations High Commissioner for Refugees, *UNHCR calls for accelerated winter preparations on Greek Aegean islands*, 06 October 2017, <https://www.unhcr.gr/print/nea/artikel/4a76b11e8b1ebfa14c535d6ccb00143b/unhcr-calls-for-accelerated-winter-p.html> (Accessed on 6 December 2017).

20 European Commission - Press release, *14th progress report on relocation of asylum seekers within the EU and resettlement of refugees from outside the EU*, 26 July 2017, http://europa.eu/rapid/press-release_IP-17-2104_en.htm, (Accessed on 6 December 2017).

On the other hand, the judgment of the Court of Justice of the European Union in Joined Cases C-643/15 and C-647/15 ‘Slovakia and Hungary v Council’ on 6 September 2017 is a positive development. The Court dismisses the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers, observing that “that the small number of relocations so far carried out under the contested decision can be explained by a series of factors [...] including, in particular, the lack of cooperation on the part of certain Member States”.²¹ Similarly, Advocate General Bot proposing that the Court should dismiss the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers, points out that the unwillingness of certain Member States to take refugees “is contrary to the obligation concerning solidarity and the fair sharing of burdens, to which the Member States are subject in the area of asylum policy”.²² It has to be outlined at this point that EU Commission took forward the infringement procedures against the Czech Republic, Hungary and Poland for non-compliance with their legal obligations on relocation.²³

Last but not least, this situation, in combination with the economic/fiscal crisis, which Greece is experiencing today, leads to an increase of marginalization and destitution for large numbers of third country nationals, while it creates social tensions, as well as a climate of growing discontent with the presence of foreigners in general.²⁴ However, according to the Greek Ombudsman, the signs were evident long ago, and the time was adequate for formulating an integrated and cohesive plan for managing the population flows from third countries, however “The initial unwillingness to recognize the issue and to take even the most elementary measures to prepare for a more effective management, gave its place to a diffuse confusion when the time came to react; a complete, although unjustified, surprise, when the flows became more intense and dense during 2015”.²⁵

Refugee Crisis in Turkey: The Turkish Asylum System in the framework of the EU-Turkey Agreement

Since 2011, Turkey has been hosting the highest number of refugees from Syria. At the time of writing Turkey hosts 3,359,915 registered refugees. At the same time, Lebanon, a country with a population of around 4.8 million, is hosting 1,001,051 registered refugees. Jordan has the third largest number of refugees from Syria (655,588), whilst according to the latest official figures, Iraq and Egypt are hosting 246,592 and 126,027 registered refugees respectively.²⁶

21 Court of Justice of the European Union *PRESS RELEASE No 91/17*, Luxembourg, 6 September 2017, Judgment in Joined Cases C-643/15 and C-647/15 Slovakia and Hungary v Council, p.2, <http://www.statewatch.org/news/2017/sep/eu-cjeu-hungary-slovakia-refugee-relocations-prel.pdf>, (Accessed on 6 December 2017).

22 Court of Justice of the European Union, *PRESS RELEASE No 88/17*, Luxembourg, 26 July 2017, Advocate General’s Opinion in Cases C-643/15 and C-647/15 Slovakia and Hungary v Council, p.3, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-07/cp170088en.pdf>, (Accessed on 6 December 2017).

23 European Commission - *Press release, Relocation: Commission moves to next stage in infringement procedures against the Czech Republic, Hungary and Poland*, 26 July 2017, http://europa.eu/rapid/press-release_IP-17-2103_en.htm (Accessed on 6 December 2017).

24 Christos Baxevanis and Maria Papadaki, “EU Asylum Policies & the Greek Presidency: an EU Opportunity”, *Etudes Helleniques/Centre for Hellenic Studies and Research*, Canada, Vol.22, No.1, 2014, p.109.

25 Greek Ombudsman, “Migration flows and refugee protection”, p.9.

26 United Nations High Commissioner for Refugees, *Syria Regional Refugee Response - Inter-agency Information Sharing Portal*, <http://data.unhcr.org/syrianrefugees/regional.php> (Accessed on 7 December 2017).

It is recognised that Turkey plays the most crucial and decisive role in addressing the refugee crisis in the Middle East and the Mediterranean region. Turkey found itself ‘hosting’ three million people who, at the risk of their lives, had passed through war zones and - again at the risk of their lives - attempted and continue to attempt to cross Europe’s border irregularly into Greece. As the first country of reception, Turkey has played and continues to play a crucial role in the refugee crisis. At the same time, despite the positive steps taken by the Turkish authorities in order to introduce and implement a fair and efficient asylum system, concerns are raised on whether Turkey can be considered as a safe third country, not to mention reception conditions in Turkey, access to employment, healthcare, education and accommodation.²⁷

Turkey has ratified the Geneva Convention on Refugees and its 1967 Protocol, but retains a geographical reservation regarding non-European asylum seekers. In practice, it only recognizes refugees from Europe or countries that are members of the Council of Europe.²⁸ In April 2014, Turkey passed a new Law on Foreigners and International Protection. The law provides for four types of protected status in the country: a) ‘refugee status’ for recognized refugees under the Geneva Convention who are citizens of one of the 47 Member States of the Council of Europe; b) ‘conditional refugee status’ for recognized non-European refugees; c) ‘subsidiary protection’, which can be granted to European and non-European citizens who do not meet the criteria of the Geneva Convention in order to be recognized as refugees but, if returned to their country of origin, would be at risk of the death penalty, torture or other inhuman or degrading treatment, or of suffering harm as a result of armed conflict in their country; and d) ‘temporary protection’ granted in the event of mass influxes.²⁹

The Syrians who arrived en masse were originally granted ‘visitor’ (*misafir*) status, and then temporary protection, though without the right to submit a claim for refugee status. The aim of this provision is for them to stay in Turkey only while the war lasts in Syria, and subsequently return there when conditions improve. Nationals of other countries (non Syrians) may apply for asylum on an individual basis and are then processed in a parallel procedure under the new Law on Foreigners and International Protection which entered into force in April 2014. Under this procedure, applicants are sent to both the Directorate General of Migration Management (DGMM), which conducts the status determination procedure, and to UNHCR, which carries out a parallel status determination procedure and makes recommendations regarding relocation. Its decisions do not have legal force, however, but they are taken into account in the DGMM’s assessment. It is thus clear that Turkish legislation in this field provides for different standards of protection and procedural rules for Syrians and nationals of other third countries, thereby introducing disparities in both access to, and the terms of, protection.

27 Dutch Council for Refugees and European Council on Refugees and Exiles, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016, <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf> (Accessed on 7 December 2017).

28 European Economic and Social Committee, EESC fact-finding missions on the situation of refugees, as seen by civil society organizations, Mission Report – Turkey, 09-11/03/2016, p.6, http://www.eesc.europa.eu/resources/docs/eesc-fact-finding-missions-refugees_turkey_en.pdf (Accessed on 6 December 2017).

29 Republic of Turkey Ministry of Interior, Directorate General of Migration Management, Law on Foreigners and International Protection, April 2014, http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf (Accessed on 6 December 2017).

There are also shortcomings as regards access to work and basic services, such as health and welfare, education and, more generally, integration into society.³⁰ Although Turkey recognised the right of Syrians to work as of January 2016, in practice very few of them have received work permits, with most of them consequently engaging in undeclared work.³¹ It should be added to the foregoing that beneficiaries of international protection are explicitly and categorically excluded from the possibility of long-term integration in Turkey (Article 25 of the Law on Foreigners and International Protection), and the free movement of refugees is restricted under Article 26 of the same law. Clearly, therefore, protection granted to people applying for international protection in Turkey falls below the legal guarantees and rights enjoyed by those recognised as refugees under the Geneva Convention, such as the right to move within the territory of the contracting state (Article 26 of the 1951 Convention), the right to naturalisation (Article 34 of the 1951 Convention) and the right to work (Articles 17, 18 and 19 of the 1951 Convention).

Furthermore, questions arise as to the classification of Turkey as a “safe third country”³² regarding respect for the principle of non-refoulement enshrined in Article 33(1) of the Geneva Convention, Article 3 of the European Convention on Human Rights (ECHR) and Article 3(2)

30 EESC fact-finding missions on the situation of refugees, as seen by civil society organizations, p.4.

31 Meltem Ineli-Ciger, “Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey”, *Oxford Monitor of Forced Migration*, Vol.4, No.2, 2014, p.28-36.

32 The concepts of ‘safe country of origin’, ‘safe third country’ and ‘first country of asylum’ are set out in Directive 2013/32/EU on common procedures for granting and withdrawing international protection, which lays down common procedural standards and guarantees for those seeking international protection in the EU Member States. More specifically, the Directive provides for four categories of safe country. These are first country of asylum (Article 35), safe third country (Article 38), safe countries of origin (Article 37) and European safe third country (Article 39). A joint reading of Directive 2013/32/EU’s Article 39 on European safe third countries and Article 35 on the first country of asylum reveals a greater and a lesser status of international protection, with the safe third country regime under Article 38 lying in between. Article 39 provides the highest level of protection, referring to countries that have ratified the Geneva Convention without geographical limitations, offers the maximum protection provided by the Convention, implements Article 36 of the Convention in full, and the relevant country is subject to the Convention’s control mechanisms. Article 35 of the Directive, in stark contrast, is limited to providing protection to refugees or other sufficient protection, focusing on application of the principle of non-refoulement. According to Article 38 of Directive 2013/32/EU, a country is considered to be a safe third country for a particular applicant if it complies overall with the following criteria: (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) the country in question respects the principle of non-refoulement in accordance with the Geneva Convention; (c) there is no risk of serious harm to the applicant; (d) the country prohibits the removal of a person to a country where they would be at risk of torture or cruel, inhuman or degrading treatment as laid down in international law; (e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention; and (f) the applicant has a connection with the third country concerned on the basis of which it would be reasonable for that person to go to that country. Consequently, in the event that the competent authorities judge that a country, such as Turkey, constitutes a first country of asylum or a safe third country for an applicant, they issue a decision rejecting the application for international protection as inadmissible, without examining the substance. The principle of non-refoulement is the cornerstone of the system of international refugee protection and is enshrined in Article 33(1) of the 1951 Geneva Convention. The United Nations High Commissioner for Refugees (UNHCR) has observed that this article introduces a central principle into the Convention, one that has now entered into customary international law and is thus binding on all States of the international community irrespective of whether or not they have ratified the Geneva Convention. Thus anyone who is a refugee under the 1951 Convention, or who meets the criteria of the definition of refugee set out in Article 1(a)(2) of the 1951 Convention, even though their status as a refugee may not have not been officially recognised, is covered by the protection afforded under Article 33(1). This is of particular importance for asylum seekers, as it is possible that they may be refugees and should therefore not be removed or expelled from the country of asylum until a final decision on their status has been taken.

of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment.³³ Aside from the fact that Turkey has a history of pushing back non-European asylum seekers, recent reports by international human rights organisations refer to instances of entry being denied and of collective push-backs into Syrian territory.³⁴ Significantly, only one day after signing the agreement, Amnesty International reported yet another occurrence of mass repatriation of Afghan refugees to Kabul.³⁵ Similarly, a resolution adopted by the Parliamentary Assembly of the Council of Europe on 20 April 2016 stated, amongst other things, that returns of both Syrians and nationals of other countries to Turkey are contrary to EU and international law³⁶. It is therefore evident that there are insufficient guarantees to ensure compliance with the principle of non-refoulement in practice.³⁷

On the other hand, the European Commission claims that Turkey is a safe country, arguing that “the concept of safe third country as defined in the Asylum Procedures Directive 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”.³⁸ Similarly, the Council of State, which is the Supreme Administrative Court of Greece, ruled that Turkey is in fact a safe country (decisions 2347 and 2348/2017), as the guarantees provided by Turkish authorities are sufficient enough to legally cover the return of third-country nationals from Greece to Turkey.

Conclusion and Recommendations: The Day after Crisis

There is no doubt that the refugee crisis in Europe is a small part of a wider crisis resulting from multilateral armed conflicts and indiscriminate violence in the Middle East (among other places).³⁹ Therefore, as long as war and instability in neighbouring regions, climate change and economic underdevelopment continue, as much as the number of refugees and immigrants increase.

Greek authorities, the competent Ministries in particular, should immediately deal with a series of urgent needs (accommodation, nutrition, asylum procedures, health) or social integration processes (education, training, access to labour, a minimum income to recognized refugees, the integration of

33 EESC fact-finding missions on the situation of refugees, as seen by civil society organizations, p.5.

34 Human Rights Watch, *Turkey: Syrians Pushed back at the Border*, 23 November 2015, <https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border> (Accessed on 6 December 2017).

35 Orçun Ulusoy, “Turkey as a Safe Third Country?”, 29 March 2016, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third> (Accessed on 6 December 2017); Emanuela Roman *et al.*, *Why Turkey is Not a “Safe Country”*, February 2016, <http://www.statewatch.org/analyses/no-283-why-turkey-is-not-a-safe-country.pdf> (Accessed on 6 December 2017).

36 Council of Europe: Parliamentary Assembly, *The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016*, 20 April 2016, Doc. 14028, <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=22738&lang=en>, (Accessed on 6 December 2017).

37 Lisa Reppeli, “Turkey’s track record with the European Court of Human Rights”, *Turkish Review*, 1 January 2015, <http://archive.is/XmdO5> (Accessed on 6 December 2017).

38 European Commission, “Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration”, 10.2.2016, COM (2016) 85 final, p.18, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf, 10 February 2016, (Accessed on 6 December 2017).

39 Sotiris Serbos and Christos Baxevanis, “Aligning Europe: The Syrian Refugee Crisis and the Geopolitics of the Region”, *International Relations and Diplomacy*, Vol.4, No.6, June 2016, p.390-406.

children in education structures). Furthermore, as coordination gaps and overlaps remain, Greece, especially the Ministry of Migration Policy, should take all necessary measures so as to strengthen coordination among government agencies, local authorities and NGOs.⁴⁰

Turkey should remove the geographical reservation on non-European asylum seekers and the distinction between Syrian and non-Syrian asylum seekers, in order to adopt a uniform system for granting international protection to asylum seekers in line with international and European standards. Furthermore, there is a need to be improved reception conditions in Turkey as well as policies for the social and economic integration of recognised refugees, particularly as regards access to employment, healthcare, education and accommodation. Special attention should be paid to the protection of unaccompanied minors and children, particularly in terms of access to education and protection against forced labour and forced marriage. It is also suggested a serious, independent monitoring and surveillance mechanism to be set up in respect of the EU-Turkey Statement on refugees in order to monitor – in cooperation with the Turkish authorities, international NGOs and specialized humanitarian organizations – to check both sides' implementation of and compliance with the terms agreed, pursuant to international and European law.⁴¹

The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit. For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity. The challenge this poses is to find a way of responding to this problem as a united and integrated Europe. The EU migration and asylum policy should have a medium-long term vision as well as a holistic and comprehensive approach grounded on the principles of responsibility and solidarity.⁴²

Furthermore, EU should adopt a development-oriented approach to refugees. The EU would support this approach by: 1) addressing the socio-economic impacts of large-scale displacement, and tailoring development interventions to address them; 2) providing innovative funding modalities, such as the Emergency Trust Fund for Africa and the Facility for Refugees in Turkey, which expand livelihood and education opportunities; 3) investing in solutions that reduce potential for dangerous, irregular onward movement, such as through the EU Regional Development and Protection Programmes; 4) delivering both humanitarian aid and development cooperation with a refugee focus from the onset of a crisis; 5) developing its strategic model based on cooperation and positive conditionality, capable of promoting human rights, rule of law, economic development and democratization in third countries, in a democratic and diplomatic way. Without doubt, EU needs a fair asylum system which provides orderly and safe path ways to EU continent as well as deals with uncontrolled and irregular flows. It has to be outlined at this point that third country nationals could

40 Hellenic League for Human Rights, *Supporting Evidence Document*, p.1-15.

41 EESC fact-finding missions on the situation of refugees, as seen by civil society organizations, p.3-4; European Parliament, *Turkey: Labour Market Integration and Social Inclusion of Refugees*, 15 September 2016, p.6-7, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/S95328/IPOL_STU\(2016\)S95328_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/S95328/IPOL_STU(2016)S95328_EN.pdf) (Accessed on 6 December 2017).

42 European Commission, *Communication from the Commission to the European Parliament and the Council Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, COM(2016) 197 final, 6 April 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:S2016DC0197&from=en>, (Accessed on 6 December 2017).

contribute to the European Union's demographic challenges and economic development.⁴³ All in all, EU should not wait for the next crisis to equip itself with greater external policy resources. European citizens "will shift away from the current feeling of disaffection and commit to the Union only if the EU changes course and positions itself."⁴⁴

43 According to the European Commission, "The EU faces medium and long-term economic and demographic challenges. The population of Europe is ageing and growing at only around 0.2% per annum, which is significantly below the replacement level. It is estimated that Europe will lose some 30 million people of working age by 2050 and unless something is done quickly, the dependency ratios in most EU Member States will continue to increase rapidly, productivity will decline, companies will close down and the costs of maintaining services, particularly for the ageing population, will increase significantly. Through collective and organized action based on solidarity, the EU can transform the current situation into an opportunity to reverse the current demographic trend and its socio-economic effects". European Commission, Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration', (COM(2015) 240 final), 24 February 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015AE4319&from=EN> (Accessed 6 on December 2017), par-4. In this context, migration flows could contribute to domestic labour markets in several ways: "a) they can fill gaps in low and high-skilled occupations, b) they address labour market imbalances, c) they contribute more in taxes/social benefits than they receive, and d) they spur innovation, and eventually economic growth". European Parliament, Briefing July 2015, *Third-country migration and European labour markets Integrating foreigners*, p.6, http://www.eesc.europa.eu/resources/docs/european-parliament_third-country-migration-and-european-labour-markets---integrating-foreigners-briefing-july-2015.pdf (Accessed on 6 December 2017).

44 European Economic and Social Committee, REX/463, *Opinion: The new EU strategy on foreign and security policy*, 28 April 2016, p.2, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016IE1061&from=EN> (Accessed on 6 December 2017).