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The Impact of the EU-Turkey Statement on Protection and Reception: The Case of Greece

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October 2016

WORKING PAPER 15

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The Impact of the EU-Turkey Statement on Protection and Reception: The Case of Greece

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Turkey

Greece

Refugees

European Union

Abstract

The EU-Turkey Statement of 18 March has had significant repercussions for Greece, an already overburdened and capacity-lacking member state. The implementation of the Statement resulted in delays in both asylum processing and returns to Turkey. It also resulted in two separate asylum procedures for those on the mainland and in the islands, sub-standard conditions for those stranded on the islands and differentiated treatment of nationalities. The paper looks at the core of the Statement, the notion of “safe third country” but also protection and the challenge of implementation. The paper further discusses the legal changes and practical challenges of implementing the Statement not only about asylum but also reception capacity and standards.

Introduction

A record 1.3 million asylum applications were lodged with the EU member states, along with Switzerland and Norway, in 2015.¹ It is undoubtedly the largest influx in Europe since the end of WWII. The Arab Spring of 2011, the Syrian crisis and the broader instability in the Middle East (e.g., Iraq) but also the continuous insecurity in Afghanistan are some of the crucial “push” factors generating asylum-seeking flows.

Initially there was unwillingness among EU member states to respond with concrete measures to the increasing numbers on the Greek-Turkish maritime border. Then in a surprising move Germany announced it was suspending the Dublin rules for Syrians and forming a “coalition of the willing” with select member states to welcome the refugees for a few months. As Greece functioned like an open door to the rest of the EU and the western Balkans were transformed into a *de facto* humanitarian corridor, a well-disguised anger replaced acceptance. Anger over the failure of the Schengen/external borders balance, over Greece’s role as the “weak link” but also internally among the member states that opposed measures adopted at the EU Council meetings (namely relocation). And then came the bargaining, between the EU and Turkey. The EU-Turkey Statement² drastically altered the landscape for the EU, Turkey and the refugees themselves.

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¹ Pew Research Center, *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*, 2 August 2016, <http://pewrsr.ch/2asMQLh>.

² European Council, *EU-Turkey Statement*, 18 March 2016, <http://europa.eu/!Uv88TM>.

The 23 September progress report opens with an impressive statement: “The Commission’s progress reports on the implementation of the EU-Turkey Statement have charted a consistent trend, showing a steady delivery of results in the face of many challenges.”³ Is it indeed? The answer largely depends on how “results” are defined. The flow indeed reduced drastically and in this the deal has been successful. Nonetheless a heavy responsibility rests now on the shoulders of Greece. The EU-Turkey Statement in fact replicates a persistent malady in the EU migration and asylum system: the outsourcing of the responsibility and “burden” to the front-line states.

The present paper examines the impact of the EU-Turkey deal on Greece and specifically for those stranded on the islands of the Northern Aegean after 20 March 2016. To understand the challenge in place, the paper takes a step back and addresses first the question of burden sharing and the notion of protection. The second section looks at the concept of the “safe third country,” the bedrock of the EU-Turkey Statement. The third section addresses the practical challenges since 20 March, when the deal came into effect. Several issues are outlined: how the deal impacted the legal framework including determination procedure for those on the islands, how it created differentiation between nationalities, and how it lowered the standards of reception and the administrative capacity of the Greek asylum service.

1. Burden sharing and the notion of protection

The legal framework for awarding international protection in the EU (and the member states) draws first and foremost from the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention). Additional guidelines and standards exist, through the Common European Asylum System (CEAS). Deemed necessary to ensure asylum seekers receive the same treatment in all EU member states, the CEAS was meant to be a step towards harmonization of protection and the foundation for creating an EU asylum system.

Instead, what has emerged is a deficient mechanism that continues to place disproportionate burden on the external borders. If this crisis has taught us anything, is that there are not one but 28 asylum systems, 28 different understandings of what protection entails and 28 different capacities in place,⁴ and more importantly,

³ European Commission, *Third Report on the Progress made in the implementation of the EU-Turkey Statement* (COM/2016/634), 28 September 2016, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0634>. See also the related fact sheet: European Commission, *Managing the Refugee Crisis, EU-Turkey Statement. Progress Report September 2016*, 4 October 2016, http://europa.eu/rapid/press-release_MEMO-16-3218_en.htm.

⁴ For a critical discussion on the deficiencies of the CEAS see Martin Wagner et al., *The Implementation of the Common*

28 member states affected differently (some not at all) by asylum-seeking flows.

Burden sharing was originally envisaged in the case of mass influx, through the Temporary Protection Directive.⁵ Article 25 of the Directive allows for the transfer of protection beneficiaries between member states on a voluntary and consensual basis. If the declared capacity of a member state is exceeded due to mass arrivals of asylum seekers, the Council can offer additional support including physical redistribution of asylum seekers. Yet the Temporary Protection Directive has never been activated even though it was designed specifically for “crises” like the one of 2015. The main obstacle has always been, ironically, the very solution it offers: burden sharing.

Instead, by late 2015 and despite repeated calls by the Commission, member states pursued unilateral policies from building fences to setting asylum caps, and limiting access to social benefits and assistance for asylum seekers in an effort to become unattractive destinations. Teetering between the legal but also ethical obligation of protection and the desire to deter, most of the solutions agreed in the end were anchored in the traditional approach of outsourcing the responsibility. Relocation is the exception, although in relation to Greece it can hardly be considered a success at this stage.⁶

Additionally, there are different approaches to protection and what it entails. Some member states early on linked international protection with integration, recognizing that recipients of asylum will require assistance for remaining and integrating in the respective societies. Accommodation, language training, employment, education for minors, and health care are all integral to the notion of support and yet outside the scope of the CEAS. Since in most member states support is offered to beneficiaries of international protection after they are awarded the status, the few that offer concrete assistance

European Asylum System, Brussels, European Parliament, May 2016, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2016\)556953](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2016)556953).

⁵ Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055>.

⁶ As of 27 October 2016, 4,988 asylum seekers had been relocated to other EU countries from Greece. The numbers have picked up in recent months although there are still 61,412 places pending. France has received the highest number (1,756). See Member States’ Support to Emergency Relocation Mechanism (as of 27 October 2016), available on the European Agenda on Migration webpage as the latest “State of Play-Relocation”: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/index_en.htm. See also European Commission, *Sixth Report on Relocation and Resettlement* (COM/2016/636), 28 September 2016, Annex 2, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0636>.

to asylum seekers tend to be the preferred choice of destination. Therefore, it is impossible to ignore the different economic standards between member states that critically affect capacity and ability to respond to emerging “crises.”

The aforementioned issues pose a dual challenge. On the one hand, they are significant “push” factors for secondary movement in the EU, and transform countries like Greece to a transit stop and countries like Sweden to a destination. On the other hand, they pose a challenge to the implementation of burden sharing mechanisms. So long as the standards and capabilities are significantly different between member states, any distributive mechanism will be problematic. Some states will be unable (and unwilling) to respond and asylum seekers will continue to undertake secondary movement to reach a better destination.

2. The EU-Turkey Statement and the “safe third country” notion

The EU-Turkey Statement requires significant commitments from Greece and Turkey.⁷ Greece, post 20 March, committed that it would seize transfers from the islands to the mainland.⁸ All migrants who arrived prior to 20 March were transferred to the mainland. Those who have arrived since 20 March remain in hotspots that transformed overnight into overcrowded detention facilities in poor condition.⁹ On 21 March 2016, one day after the EU-Turkey agreement came into force, the total number of stranded persons was 50,411. As of 27 October 2016, the figure is at 61,057.¹⁰ Of those, 15,715 are stranded on the islands of the Northern Aegean. All have arrived since the EU-Turkey Statement came into effect.

7 For an analysis of the deal see Laura Batalla Adam, “The Refugee Card in EU-Turkey Relations: A Necessary but Uncertain Deal”, in *Global Turkey in Europe Working Papers*, No. 14 (September 2016), <http://www.iai.it/en/node/6737>.

8 Criticism was levelled for allowing transfer from the islands to the mainland as it was seen as a pull factor. However, the criticism fails to understand the limited capacity of the islands and more importantly how migratory flows evolve over time.

9 The idea of the hotspots first appears in the European Agenda for Migration and is at best vague. Broadly, the hotspot appears as a one-stop shop service for arrivals, with nationality screening, fingerprinting, medical assistance and vulnerability assessment. In theory, those who apply for asylum should be transferred to appropriate facilities, unaccompanied minors separated, and those opting out of the asylum process should also be moved to different facilities to remain pending return. Absence of facilities for different groups, mean that everyone stays in the hotspots.

10 The figures fluctuate daily depending on arrivals and returns. See Greek Coordination Body for the Refugee Crisis Management, *Summary Statement of Refugee Flows in Greece*, available at <http://media.gov.gr/index.php/στηρεσιες/προσφυγικό-ζήτημα>. See also UNHCR, *Greece Sites*, 27 October 2016, <http://data.unhcr.org/mediterranean/download.php?id=2121>.

Though clearly the deal would like to see everyone returned to Turkey, collective expulsions are prohibited by European and international law. The statement thus prescribes individual assessment of all asylum applications and return only of those whose application is deemed inadmissible and/or unfounded or who opted out of the asylum process.

Turkey in return must accept everyone that Greece returns, enforcing fully for the first time since 2002 the bilateral Readmission Agreement with Greece. Turkey further agrees to prevent new routes from opening up in exchange for a 3 billion euro assistance package (Facility for Refugees) intended for improvement of the living conditions of Syrians, another 3 billion by 2018, and the much-sought-after acceleration of visa liberalization.

The EU commitment essentially boils down to allocating the funds, and a resettlement mechanism for 18,000 Syrians¹¹ through the 1:1 scheme.¹² Instead, Turkey maintains an overwhelming number of Syrian refugees and Greece undertakes the responsibility for processing asylum claims, and returns.

There are many criticisms one can level at the EU-Turkey Statement, starting with its dubious legal status.¹³ The deal has had significant repercussions for Greece, an already overburdened and capacity-lacking member state, starting with the creation of two separate asylum procedures and changes in the legal framework. The regular procedure is applied for those on the mainland and outside the scope of the deal. A separate procedure is currently in place for those on the islands,¹⁴ in order to implement the deal and particularly the returns.

The crux of the agreement is returns to Turkey and while this is a clear process for those opting out of asylum, it is complex for asylum seekers. Legal basis for these returns is found in the EU’s recast Asylum Procedures Directive (APD),¹⁵ and specifically in the concept of “first country of asylum” and the concept of “safe third country” through an admissibility procedure.

11 The Syrian resettlement scheme draws from the commitments made by EU member states under the 22 July 2015 Joint EU Resettlement Scheme. From this commitment, 18,000 resettlement places still remain.

12 For every Syrian returned a Syrian is relocated, until the remaining 18,000 places of resettlement are filled.

13 Steve Peers, “The Draft EU/Turkey Deal on Migration and Refugees: Is It Legal?”, in *EU Law Analysis Blog*, 16 March 2016, <http://eulawanalysis.blogspot.gr/2016/03/the-draft-euturkey-deal-on-migration.html>.

14 The present paper does not discuss the regular procedure on the mainland.

15 Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0032>.

According to UNHCR, the “first country of asylum” concept is to be applied in cases where a person has already, in a previous state, found international protection, that is once again accessible and effective for the individual concerned.¹⁶ The “safe third country” concept is to be applied in cases where a person could, in a previous state, have applied for international protection, but has not done so, or where protection was sought but the status was not determined.¹⁷ Protection in both cases is defined as equivalent with the 1951 Convention related to the Status of Refugees, and its 1967 Protocol. In the EU law, both notions are defined in APD¹⁸ and both require individual assessment and procedural safeguards in place including the right to appeal.

Greece had not transposed the recast APD at the time of the EU-Turkey Statement. Thus, neither concept was inscribed in Greek law although both were implied. The government quickly introduced a new law before Parliament on 30 March, transposing the APD but also covering legally the operation of the hotspots. The bill addresses the reception of refugees, including their stay in detention facilities from the time of entry to the country, the upgrading of the First Reception Service into a General Secretariat, changes in the Appeals Service, the strengthening of institutions of local government to address the exceptional reception needs, and the hosting of third country nationals.

The bill introduced into Greek law the criteria outlined in the Directive regarding the determination of “safe third country,” that must be cumulatively met:

1. life and liberty are not threatened on account of race, religion, nationality, membership in a particular social group, or political opinion;
2. there is no risk of serious harm as defined in Directive 2011/95/EU;
3. the country respects the principle of non-refoulement in accordance with the Geneva Convention;
4. the prohibition of removal, in violation of the right of freedom from torture and cruel inhumane or degrading treatment as laid down in international law, is respected;
5. the possibility exists to request refugee status, and to receive protection in accordance with the Geneva Convention.¹⁹

¹⁶ See also UNHCR, *Summary Conclusions on the Concept of “Effective Protection” in the Context of Secondary Movements of Refugees and Asylum-Seekers* (Lisbon Expert Roundtable, 9-10 December 2002), February 2003, <http://www.unhcr.org/3e5f323d7>.

¹⁷ 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, <http://www.unhcr.org/56f3ec5a9>.

¹⁸ Article 35 of the APD addresses the first country of asylum, while Article 38 defines the criteria for a safe third country.

¹⁹ From discussions with Committee members, this is the clause

Recital 44 of the APD further introduces the requirement for a “sufficient” connection to the third country to be examined, including the admittance to the territory of the country concerned as well as how reasonable it is for the applicant to go to that country and apply for asylum there.

The question of whether Turkey is a safe third country is a particularly complex one. Due to the “geographical limitation” that Turkey maintains towards the 1951 Convention, a non-European cannot request nor be given Convention refugee status in Turkey. The Law on Foreigners and International Protection (LFIP)²⁰ offers the “conditional refugee” and “subsidiary protection” status to non-Syrians, in line with international protection standards. Syrians fall under the Temporary Protection Regime (TRP).²¹ However, beyond the legal framework, there are questions of access and implementation.

To support the Statement, the European Commission released a Communication addressing the concept of safe third country as defined in the APD, clarifying it “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.”²² In other words, it is sufficient to offer standards of protection similar to those of the Geneva Convention.

Amnesty International (AI) is one of the many organizations to criticize the prospect of returns to Turkey,²³ arguing insufficient protection for refugees. AI estimated that roughly 3 million asylum seekers and refugees in Turkey are being left to meet their own shelter needs as best they can.²⁴ This contrasts with the notion of protection per UNHCR guidelines that include access to adequate living standards, work, education and health care and access to a secure legal status.²⁵ Though the above are available to the Syrians at least under the TRP status, they remain inaccessible to non-Syrians and in fact there is too little information as regards the status and living conditions

where appeals often find in favour of the applicant.

²⁰ Law No. 6458 of 4 April 2013 (Official Gazette No. 28615 of 11 April 2013), http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf.

²¹ Temporary Protection Regulation (Official Gazette No. 29153 of 22 October 2014), http://www.goc.gov.tr/files/_dokuman28.pdf.

²² European Commission, *On the State of Play of Implementation of the Priority Actions under the European Agenda on Migration* (2016/COM/85), 10 February 2016, p. 18, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0085>.

²³ Amnesty International, *No Safe Refuge. Asylum-Seekers and Refugees Denied Effective Protection in Turkey*, June 2016, <https://www.amnesty.org/en/documents/eur44/3825/2016/en>.

²⁴ *Ibid.*, p. 24.

²⁵ UNHCR, *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Turkey...*, cit., p. 3.

of returnees,²⁶ although reports speak of expulsions from Turkey for Syrians²⁷ and non-Syrians.²⁸

The Commission's Communication further noted that

as regards the question whether there is a connection with the third country in question, and whether it is therefore reasonable for the applicant to go to that country, it can also be taken into account whether the applicant has transited through the safe third country in question, or whether the third country is geographically close to the country of origin of the applicant.²⁹

Making things perhaps more complex, UNHCR does not consider transit alone as a "sufficient" connection or meaningful link, unless there is a formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards.³⁰ This means that often at first instance the claims are rejected as inadmissible (and thus, abiding by the political decision) and are reversed on appeal with the Committees applying strictly the criteria and legal framework.

Therefore it all comes down to interpretation of the Statement, of the individual cases, and of the safe third country notion. The result is often different from what the Commission and indeed the Greek government might have been hoping for. There is continuous pressure on a political level to increase the returns to Turkey and find the applications as inadmissible. On the other hand, individual processing requires each time a balancing act between interpreting the notion of the safe third country and applying it to the applicant; often with the opposite results to what was expected.

26 Available reports focus more on those in border areas or in airports and transit zones. See Human Rights Watch, *Turkey: Open Borders to Syrians Fleeing ISIS*, 14 April 2016, <https://www.hrw.org/node/288869>; Amnesty International, *Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal*, 1 April 2016, <https://www.amnesty.org/en/latest/news/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal>.

27 Mülteci-Der, *Observations on Refugee Situation in Turkey*, 22 April 2016, <http://www.multeci.org.tr/haberdetay.aspx?id=141>.

28 Amnesty International, *Turkey 'Safe Country' Sham Revealed as Dozens of Afghans Forcibly Returned Hours after EU Refugee Deal*, 23 March 2016, <https://www.amnesty.org/en/press-releases/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned>.

29 European Commission, *On the State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, cit., p. 18.

30 UNHCR, *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Turkey...*, cit., p. 6.

3. The implementation challenges of the EU-Turkey statement

To understand the impact of the deal, it is important to note that the Asylum Service and especially the Appeals Service had been facing problems for a while. Operational since late 2013, both were a product of the Greek Action Plan on Migration and Asylum (2010, renewed annually) along with the First Reception Service (FRS),³¹ and all three faced significant problems early on.

Amidst the worst economic crisis of recent years, none of the services could hire personnel. Only existing civil servants could request a transfer, and few chose to do so. For the FRS, interpreters, psychologists, medical staff, all had to be subcontracted through NGOs, thereby making the service dependent on external resources. The FRS opened the first reception centre in Evros in late 2013. By that point irregular flows had shifted to the islands where most of the old detention and reception facilities had shut down during the shift to the land border (2010-2013). In September 2015, the Appeals Committees ceased their operation since the office term of the members had expired and no new members had been appointed by the Minister.³² The cited reason was delays in processing funds. With no appeals examined, 1,797 cases were pending when the Committees resumed operation in August 2016.

Thus the asylum and reception system in 2015 was still being developed and was ill-prepared to address both the volume of arrivals and the overnight transformation of Greece, despite the fact that only 13,197 asylum applications were recorded last year.³³

The EU-Turkey deal drastically impacted on the ability of the Asylum Service to perform and placed an additional burden on an already bureaucratic and slow system. The closure of the Western Balkan route and the EU-Turkey Statement transformed Greece overnight from transit to the final destination. Asylum seekers were left with no option but to apply for protection in Greece. The immediate impact of the Statement is on the Asylum Service (first instance and appeals), the relatively slow pace of returns, and of course the reception system.

31 The FRS was meant to offer reception to asylum seekers. In reality, it acts as a first point of contact for all arrivals.

32 Lydia Bolani, Eda Gemi and Dimitris Skleparis, "Refugee Crisis and Asylum Policies in Greece and Italy", in Musa Shteivi (ed.), "Migrants and Refugees: Impact and Future Policies. Case studies of Jordan, Lebanon, Turkey and Greece", in *EuroMeSCo Joint Policy Studies*, No. 4 (September 2016), p. 94, http://www.euromesco.net/index.php?option=com_content&view=article&id=2248.

33 Greek Ministry of Interior, *Asylum Service Statistical Data 2015*, http://asylo.gov.gr/en/?page_id=370.

3.1 Determination procedure and returns

On the islands, from 20 March until 12 October 2016, 6,190 asylum applications were lodged, with 3,869 interviews conducted.³⁴ Many have been unable to submit an asylum application, likely due to staff shortages and limited understanding of how asylum works. Others are unwilling to apply, either hoping for a change in policy or opting to return and seek alternative entry to the EU.

Asylum claims are registered either by personnel of the Asylum Service, police officers, or the European Asylum Support Office (EASO), whereas assessment of claims is done only by the Asylum Service and EASO.³⁵ However, as recently noted by a joint statement of NGOs, the First Reception Service registered arrivals by nationality, and not by date of arrival and vulnerability. This means that the Syrians are prioritized by virtue of nationality, while Afghans and other nationalities that might have arrived months ago are still waiting to be registered.³⁶

The (in)admissibility assessment takes place (thus far) only for the Syrians. If the claim is inadmissible, the assumption is that they can apply for asylum in Turkey on return. If admissible, the asylum is processed on eligibility.

The Asylum Service/EASO has issued inadmissibility decisions for 937 Syrian applicants, in many cases on the basis that they had remained in Turkey for a couple of months prior to arrival to Greece and were thus safe to return and launch an asylum application there. At the same time, more than 1,000 Syrian applicants have been referred to regular procedure (admissible claim) due to vulnerability reasons or family reunification (Dublin Regulation).

There are undoubtedly staff shortages, and the need to prioritize the applications on the islands is straining the limited resources available. The number of EASO case workers (interviews) supporting the asylum processes at the hotspots is 30 persons. The Asylum Service would benefit from at least 70 additional experts to process claims at first instance. But member states remain unwilling to commit the required personnel despite repeated calls by EASO.

³⁴ Data provided by the Greek Asylum Service on request, October 2016. Recorded expressions of intention to apply are estimated to cover the overwhelming number of migrants on the islands.

³⁵ If the application is processed by an EASO officer, he/she submits the admissibility/inadmissibility assessment to the Asylum Service, which in turn issues the decision.

³⁶ Solidarity Now, *More Than Six Months Stranded - What Now?*, October 2016, p. 9, http://www.solidaritynow.org/grafeio-tupou_en/news_en.html?id=192.

For all other nationalities, an eligibility assessment takes place at first instance. The unstated assumption is that Turkey's legal framework does not offer sufficient protection for the non-Syrians. All applicants, independent of nationality, have the right to appeal the decision, although there seems to be little information on the asylum process. Lawyers are few and mostly provided by the NGOs.

Then there is the Appeals Service. A new Appeal Authority and new Appeal Committees have been set up in recent months, to replace the previous structure, designed to examine the appeals lodged since 20 July against the first instance decisions of the Greek Asylum Service.³⁷ Each new Appeal Committee has three members: two judges of the Administrative Court and one member suggested by UNHCR or the National Committee for Human Rights. The move is a step towards ensuring further implementation of the deal. The previous Committees, comprised mostly of human rights lawyers and civil servants, found overwhelmingly in favour of the applicants as regards the admissibility claim. By contrast, the judges are expected to apply a narrow interpretation of protection and deem Turkey a safe third country for many cases.

A total of 1,804 persons have been returned to Turkey thus far, 668 of them through the EU-Turkey Statement.³⁸ They were mostly Afghans, Iranians, Pakistanis, Algerians and other nationalities, some having opted out of the asylum procedure and others having their application rejected on appeal. No Syrian has yet to be returned, including the recent case of the gay Syrian applicant found inadmissible on appeal.

The problem for those who truly seek safety lies in the interpretation of the notion of protection and safe third country. In the absence of a list of safe third countries inscribed in the Greek legislation and/or EU legislation, decisions will be based on presumptions and assumptions regarding the existing legal framework and its implementation. It is left up to the Greek Asylum and Appeals services to untangle the knot. The reality is that EU member states have yet to recognize Turkey as a safe third country. This poses an additional challenge for Greece. Moving ahead with returns and rejecting claims at large as inadmissible, sets a dangerous precedent and likely opens the decisions to litigation. Aware of the significance of the decisions, both asylum and appeals tread slowly and carefully.

³⁷ European Commission, *Third Report on the Progress made in the implementation of the EU-Turkey Statement*, cit., p. 5.

³⁸ Returns are also taking place in the framework of the bilateral Greece-Turkey readmission agreement, and through the voluntary return programme of IOM. Figures are subject to change as returns continue.

3.2 Reception conditions: lowering of standards

The impact of the Statement however is not limited to asylum, but also to reception, an equally crucial and more immediate issue.

During 2015, arrivals were free upon registration to depart for Athens, enabling a constant flow of arrivals but also departures. The EU-Turkey Statement was meant to end movement within Greece but simultaneously to reduce the migrant population on the islands through returns.

In an effort to ensure that migrants would not abscond, the law prescribed “detention” for 25 days in the hotspots.³⁹ At the time of writing, for the overwhelming number, the 25-day limit has expired. They thus have the right of movement but are restricted from leaving the island unless their application is accepted. With no available accommodation, or services on offer, most end up returning in the evening to sleep in the hotspots. On some islands, like Chios, the hotspot capacity was limited to begin with. As a result, 1,080 persons on the islands are staying in *ad hoc* facilities rather than organized spaces.

The hotspots have a total capacity of 7,450 and at present are “hosting” double those figures.⁴⁰ Lesbos alone hosts over 6,053 people and has a capacity of only 3,500.⁴¹ Riots are repeatedly taking place largely due to frustration,⁴² and particularly by non-Syrians who fear being returned to Turkey and/or are waiting for months for their asylum application to come through. Security is also lacking.⁴³ Although there is presence of police officers in all the camps and the hotspots, they rarely intervene in inter-ethnic incidents.

Unfit for long-term stay, in most cases tents have been set up around the existing infrastructures as an emergency accommodation measure. With winter fast approaching, UNHCR has called for the immediate transfer of unaccompanied and separated children to the mainland, shorter waiting periods for asylum claims, particularly on the islands, faster registration and processing of cases for all nationalities and speedier return of those who are not in need of international protection. All the above

³⁹ This was deemed necessary to implement the returns to Turkey (fear of absconding).

⁴⁰ See *Hotspot State of Play (Last updated on 21 October 2016)*, available on the European Agenda on Migration webpage as the latest “State of Play-Hotspots”: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/index_en.htm.

⁴¹ Greek Coordination Body for the Refugee Crisis Management, *Summary Statement of Refugee Flows in Greece*, cit.

⁴² UNHCR, *Fire at Reception Site on Lesbos Island, Greece*, 20 September 2016, <http://www.unhcr.org/57e0fbfc4>.

⁴³ Human Rights Watch, *Greece: Refugee “Hotspots” Unsafe, Unsanitary*, 19 May 2016, <https://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary>.

require trained and experienced personnel, as well as infrastructure in place.

Concluding thoughts

The EU-Turkey Statement revealed a multitude of problems both as regards the asylum system in the EU, but also the level of willingness of member states to share the “burden” and the responsibility, the latter falling squarely on Greece.

This paper sought to discuss the specific challenges that have arisen as a result of the EU-Turkey deal, focusing on the islands and the management of the migrant population in the Northern Aegean. This is only part of the story.

More than 40,000 migrants are stranded on the mainland, in camps across Greece and often in substandard conditions. Limited access to asylum has resulted in a pre-registration programme coordinated by UNCHR and assisted by EASO, to register and identify potential asylum seekers who will at some point be invited to apply for asylum. The lack of capacity is thus not solely a product of the deal nor limited to the islands. It is also a product of the financial crisis, Greek inexperience, mismanagement (or lack of management) by the Greek Ministry of Migration as well as limited assistance by member states in sending EASO experts, but also in relocating refugees from the mainland.

The practical challenges are endless. The camps are not ready for the coming winter. Subsistence is proving to be a continuous challenge, with meals arriving in bad condition, often uneatable and in many cases poorly prepared. Access to health care is not possible for many, either due to the remote location of the camps or to the limited capacity of the Greek healthcare system. Unaccompanied minors remain in the hotspots with no places available on the mainland to host them. Children will need to go to school and local societies are already objecting to the pilot schemes set up on the mainland. Tourism in 2016 had dropped 80 percent on some islands such as Lesbos.⁴⁴ Amidst the economic crisis, it is a loss the Greek economy cannot afford and is aggravating relations between locals and migrants.

Access to legal assistance is also proving crucial. The information packages available in many languages are written in complex legal language that is often impossible to understand. Those undergoing admissibility review have little knowledge or understanding of the process and its significance. On appeal the Greek law prescribes legal aid. Nonetheless, the absence of available lawyers

⁴⁴ Liz Alderman, “Greek Villagers Rescued Migrants. Now They Are the Ones Suffering”, in *The New York Times*, 17 August 2016, <http://nyti.ms/2bxKzdG>.

on the islands and in the north means many have to go through appeals unaided.

The delays in the asylum and appeals service have impacted the functioning of the hotspots, affecting returns but also relocation since for the latter to happen a determination procedure is required. A perfect circle has formed, where asylum, reception, returns and relocation are intrinsically linked and delays on one side impact all.

The EU-Turkey deal has resulted in differentiated treatment of nationalities, and different standards in place. It has also raised critical questions. Is it sufficient to presume one will have access to a protection framework in the third country or do we need to have proof? Is it sufficient to have a legal framework on paper or does that also need to be implemented with concrete results?

The EU-Turkey Statement is a political decision and the legal framework surrounding it does little to support it but much to negate it. While Greece is being asked to balance the two, in a manner that is speedy but respectful to international law, winter is coming for thousands stranded at the margins of Europe.

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