

PRO ASYL / Refugee Support Aegean (RSA)¹

Refugees trapped in a buffer zone One year since the EU-Turkey Statement

**Policy Note and chronology of events
17 March 2017**

The EU-Turkey statement (“EU-Turkey deal”) that came into force on March 20th 2016 has transformed the socio-political dynamics characterizing the so-called refugee crisis narrative as well as the function of the EU-hotspots on the Greek islands. It produced a new status quo regarding developments of refugee and migration diplomacy in the region and beyond, as well as on the ground.

The EU-Turkey deal had direct and substantial repercussions on about 14,000 refugees that have become its subjects in March. Refugee Support Aegean (RSA)¹ members have for months monitored developments on the islands of Lesbos, Chios, Leros, Kos and Samos. The deal has turned the Greek islands into a buffer zone where refugees in limbo are struggling to survive amidst the deterioration of living conditions. Serious malfunction and instrumentalization of asylum procedures based on political considerations leave the most vulnerable of them exposed to acute weather conditions, exploitation, violence and severe abuse.

Lives have been lost in the EU-hotspots due to political imperatives and no one took responsibility for these deaths. Meanwhile local societies on the islands have been used so far as European “Nauru islands” with the tensions between locals and refugees escalating over the last few months and increasing xenophobia and racism among the locals.

1 Refugee Support Aegean (RSA) is a non-profit organisation in support of refugees. The RSA team in Athens, on Lesbos and Chios monitors human rights violations and offers legal aid and social support for asylum seekers and refugees. RSA is the implementing partner of the Foundation PRO ASYL project RSPA (Refugee Support Program Aegean).

European Mantra: Turkey is a "safe third country"

The deal predicted the return of Syrian and other refugees that arrived on the Greek islands post March 20th to Turkey based on two legal possibilities that can be used for declaring asylum applications inadmissible:

- 1) First country of asylum (Article 35 of the Asylum Procedures Directive): where the person has already been recognized as a refugee in that country or otherwise enjoys sufficient protection there
- 2) Safe third country (Article 38 of the Asylum Procedures Directive): where the person has not already received protection in the third country but the third country can guarantee effective access to protection to the readmitted person.

It also predicted a big resettlement program for Syrian refugees to Europe directly from Turkey and a lucrative aid package paid to Turkey through financing of UN agencies and INGOs' projects.

The European Commission, the Greek and the German government have heavily supported the claim that Turkey is a "safe third country". After a first short reaction at the announcement of the deal the UN's refugee agency (UNHCR) has publicly pursued a neutral stance. UNHCR has increasingly communicated to authorities its inability to monitor what happens to deported refugees and migrants in Turkey.

Other UN and Council of Europe reports have provided serious evidence against the claim that "Turkey is a safe third country". The issue is still today contested at Greece's highest court pending a decision soon. The legal team of Refugee Support Aegean (RSA) represents one of the two Syrians concerned. The decision of the Council of State regarding the constitutionality of the new committees and consequently whether their decisions to allow deportation to Turkey will hold or not, is crucial for the protection of refugees in Europe and the future of the dirty EU-Turkey Deal.

The EU-Turkey deal as a "blue print"

On a political level the EU-Turkey deal has been the product of a laborious diplomatic brinkmanship among various European member states and Turkey that has lasted since October 2015 and up to a few days before the implementation of the deal on March 20th 2016. One year onwards the political toxicity produced by the deal has had damaging effects on the rule of law and demise of asylum rights, as well as the wider geopolitical balance in the region.

The diplomatic process between November 2015 and March 2016 contain a strong financial element in terms of humanitarian aid offered to Turkey as a trade-off for accepting returns from the Aegean Islands. Financing will be facilitated through the 'Turkish Facility'. This initially predicts the allocation of €3 billion through UN agencies and various other INGOs. When these

resources are about to be used in full, the EU will mobilize additional funding for the Facility up to an additional €3 billion till the end of 2018; The intense bargaining around economic sizes has led to the commodification of refugee and migration diplomacy that could produce serious repercussions internationally. Consequences already echoed in Kenya's threatening to close the biggest refugee camp in the world. Since then European officials have often called the EU-Turkey deal a "blue print" based on which they plan to push ahead agreements with Northern African countries in their effort to externalize border control and cut the central Mediterranean route towards Europe.

Ignoring human rights violations in Turkey

The impact of this diplomatic process on the internal political situation in Turkey is of crucial importance. The decision of Chancellor Merkel to directly become involved in the process and visit President Erdogan has inflated the political capital extracted from the process by the latter. The six months of this diplomatic brinkmanship between EU and Turkey overlaps with the demise of political opposition in Turkey, the consolidation of restriction of press freedom, civic leadership and a tragic end to the peace process with the Kurdish minority in Turkey. The EU has shown controversial restraint regarding numerous human rights violations in order not to jeopardize "the deal". Critical pressure has become more vocal among EU officials and European leaders after the failed coup attempt last July 2016 but without ever risking compromising the EU-Turkey deal. The latest deterioration of EU Member States' relationship to Turkey does not also seem to affect their inclination to keep backing the cynical deal.

Legal repercussions: Cracking down on the rule of law

The implementation of the deal has been the reason for abrupt and irregular interventions of executive power in an attempt to control independent authorities and judicial freedoms concerned with the implementation of asylum rights in Greece. Misconduct of European asylum officials and implementation of arbitrary methods regarding asylum procedures have been denounced regularly by human rights organizations.

The most characteristic case is the legislative amendment produced by the Greek government in **June 2016, abolishing the Asylum Appeal Committees** when it became apparent that its members resisted political pressures to produce decisions that did not jeopardize Turkey's status as a "safe third country". Instrumentalization of institutions by EU and national authorities during this process has harmed and marginalized basic democratic principles regarding judicial and administrative independence as well as the practice and protection of fundamental rights and it has produced an unwanted heritage to follow the EU far beyond the lifespan of the EU-Turkey deal itself.

March 20th was an important date in marking the rights (or their demise) of refugees in Europe. A new category of refugees was created from those “who arrived after March 20th” and are confronted with the rejection of their right to flee conflict and danger. The common announcement of the EU and Turkey (EU-Turkey statement), concerning the new readmission agreement, is not a legally binding document whatsoever and it does not create an argument in favour of Turkey being a safe third country by itself. Consideration of the EU-Turkey statement by the General Court of the European Union based in Luxembourg at the beginning of the month has accentuated confusion regarding accountability and political ownership of the deal. The court found the deal a product of the initiative of EU heads of states but not of any EU institution thus refusing to examine the case in its essence, although the European Commission is the basic political and economic promoter of the initiative. This has been received by civil society as another demonstration of how the erosion of rule of law and denial of accountability continue to worsen during the EU-Turkey deal’s lifespan.

Still it is the Greek authorities who have to show in each case that the readmission of refugees to Turkey is orderly and according to international binding standards. Legally the readmission of refugees to Turkey can be carried out following the issuance of a readmission decision by the Greek police authorities according to the national law on returns and according to the Readmission Agreement between Greece and Turkey, which has come into effect in 2002. Although neither the joint declaration between the EU and Turkey nor any other European or Greek legally binding document characterized Turkey as a “safe third country”, the authorities proceeded with legislative changes and practices with the aim to readmit refugees, in particular Syrian refugees, to Turkey.

European Asylum authorities have deployed experts which effectively have overtaken the first instance of admissibility examination for protection seekers. In practice their decisions are often identical in content without significant individual examination of each case and are interpreted as politically motivated.

After serious allegations for political intervention in the work of the Appeal Committees, charged with examining the second instance examination for admissibility, the Alternate Minister for Migration reformed the committees in a way that clearly has compromised their independence. Last week the Greek Minister of Migration admitted a second legislative intervention will be necessary to secure the viability of the deal by offering the European Asylum Support Office (EASO) the right to examine and propose second instance decisions, a move set to hamper further the independence of proceedings.

It is of particular interest and importance that so far decisions upholding inadmissibility, on administrative and judicial levels, do so mostly based on assurances provided by the Turkish government to the European Commission and on correspondence provided to national authorities (the Greek Asylum Service and officials serving under the Alternate Minister for Migration) by the European Commission and the UNHCR.

Other crucial evidence from international organizations submitted before them has been ignored in most cases.

Chronology of Events

16th October 2015

Inauguration of first Greek “hotspot” on the island of Lesbos

11th February 2016

NATO starts border patrols in the Aegean.

8th March 2016

The Western Balkan Route that previously funnelled refugees from Greece to Germany and other countries in Central Europe gets closed.

18th March 2016

The EU-Turkey Statement is announced.

20th March 2016

Start of the implementation of the EU-Turkey Statement.

3rd April 2016

Greece votes for a new law on the creation of the new Reception and Identification Service, restructuring of the Asylum Service, the creation of an Appeals Authority, and the creation of new Regional Asylum Offices.

4th April 2016

First returns of 202 people mostly from Pakistan and Afghanistan from Greece to Turkey under the EU-Turkey Statement: Reportedly, a dozen of the returnees were potential asylum seekers.

7th April 2016

The Turkish government amended the Temporary Protection Regulation for Syrian nationals who irregularly travel to Europe and are returned to Turkey from the Greek islands, regarding access to temporary protection status.

27th April 2016

Turkey amended labour legislation to grant those holding subsidiary protection work permits.

17th May 2016

The first decision issued by the Appeal Committees overturning the first instance rejection decision, considering Turkey as a non-safe country for Syrians.

24th/25th May 2016

Police raids and evacuation of the camp at Idomeni

2nd June 2016

The first two known Syrian refugees having their cases for asylum in Greece rejected by the Appeal Committees are arrested and detained in Lesbos since the controversial deal came into force.

8th June 2016

The Greek Asylum Service started pre-registration for applications for international protection, supported by UNHCR and EASO.

9th June 2016

The Council urged Greece's government to explain to the country's judges that Turkey is safe for Syrians and to review the composition and role of the Appeal Committees since people from civil societies are not neutral.

24th June 2016

Presidential Decree 114/2010 is amended and "New Independent" Asylum Appeal Committees are created reversing the two-to-one balance of independent and government-appointed members on each panel in favour of the latter that in fact will start to systematically reject refugees' claims for admissibility and asylum throughout the year in an attempt to speed up deportations.

15th July 2016

A coup d'état was attempted in Turkey. Parts of the EU-Turkey migration deal have effectively been suspended due to the withdrawal of Turkish liaison officers from Greek islands.

21st July 2016

The Secretary General receives notification from Turkey of its intention to temporarily suspend part of the European Convention on Human Rights.

25th July 2016

End of large scale pre-registration on the mainland of Greece.

27th July 2016

Raid and evacuation of three refugee squats in Thessaloniki and Piraeus, informal transit camps

9th September 2016

A 20-year-old Syrian was the first to be informed about the rejection of his appeal by the new Appeal Committees. His asylum application was dismissed on the grounds that Turkey is a "safe third country." He is still in police custody on the Greek island of Lesbos. On the 14th of September the Council of State, Greece's highest administrative court, issued an interim order halting his deportation. His deportation back to Turkey would be the first since the government changed its asylum system (in April) after the EU-Turkey statement.

21st September 2016

Greece rejects asylum requests by three Turkish soldiers who fled there after the failed coup attempt in Turkey in July.

26th October 2016

Frontex gains, as the newly launched European Border and Coast Guard (EBCG) Agency, even more flexibility and power to deter refugees from seeking protection in Europe thus forcing them to put their lives at risk

24th November 2016

A 66-year-old Kurdish woman and her 6-year-old grandson burn alive at Moria hotspot after a gas canister they used to cook their own food and warm up explodes. The explosion leaves others seriously injured, destroys vital documents and is followed by major disturbances at the camp.

7th December 2016

Frontex, the European Border and Coast Guard Agency, start to deploy 1,500 border guards at short notice to assist member states in emergency situations at the EU's external borders.

8th December 2016

The Joint Action Plan for the implementation of the EU-Turkey Deal brings up the new measure to include vulnerable persons and persons eligible for family reunification through Dublin regulation into the admissibility procedure on the Greek islands and, thus, endangers them too, to be forcibly returned to Turkey.

8th December 2016

The EU Commission recommends resuming Dublin Returns to Greece from the 15th of March, 2017.

24th – 30th January 2017

Tough weather conditions hit the Greek islands. Three people lose their lives at Moria, reportedly having inhaled toxic fumes from a heater. Witnesses say they were burning waste in an effort to bear temperatures below 0 degree centigrade. An Afghan man who shared the same tent was hospitalized with carbon monoxide poisoning. Greek authorities have not confirmed the cause of death yet. On the 25th of January another person was reported dead on Samos.

28th February 2017

The General **Court of Justice (ECJ)** declares that it lacks jurisdiction to hear and determine the actions brought by three asylum seekers against the EU-Turkey statement which seeks to resolve the migration crisis.

10th March 2017

Hearing in the plenary of the Greek Council of State *to rule on deportation* cases of Syrians and on Turkey as a safe country

16th March 2017

Turkish Foreign Minister announced: "We are not applying the readmission agreement at the moment, and we are evaluating the refugee deal."