



Greece arbitrarily deems Turkey a “safe third country” in flagrant violation of rights

February 2022

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Introduction

For more than five years, the Greek authorities have systematically dismissed asylum applications as inadmissible based on the “safe third country” concept under a practice and procedures violating a series of provisions of international and EU law.¹ These include Article 33 of the Refugee Convention, Article 3 of the Convention against Torture, Article 3 ECHR, Article 7 ICCPR, Article 19(2) of the Charter of Fundamental Rights, Articles 10(3)(b), 12(1)(d), 24(3), 38(2)(a)-(c) and 46(7) of the Asylum Procedures Directive. These violations have been directly brought before the European Commission through complaints on violations of the EU *acquis* and on poor transposition and implementation of the Directive. The examination of the complaints has been pending from the summer of 2021 to present.²

Infringements equally stem from the deliberate and systematic refusal of the Greek authorities to apply Article 38(4) of the Asylum Procedures Directive³ and to examine asylum applications on their merits “when the third country does not permit the applicant to enter its territory”, four years from the suspension of the Greece-Turkey Bilateral Readmission Protocol and two years from the suspension of readmissions under the EU-Turkey Statement by the Turkish authorities.⁴

The number of asylum claims dismissed as inadmissible has sharply increased since June 2021, as Greece channels all nationals of Syria, Afghanistan, Somalia, Pakistan and Bangladesh throughout the territory into the “safe third country” concept pursuant to Joint Ministerial Decision (JMD) 42799/2021 setting out a national list of safe third countries.

In this note, Refugee Support Aegean (RSA) and PRO ASYL summarise the ongoing arbitrary dismissal of asylum applications as inadmissible and the prevention of refugees’ access to new procedures for seeking international protection, resulting in the rejection of protection claims, on the one hand, and in the denial of even basic support to those who need it, on the other. Greece pursues the practice despite the competent authorities’ official acknowledgment of the demonstrable impossibility to carry out readmissions to Turkey for four years under the Bilateral Readmission Protocol and two years under the EU-Turkey Statement. It thus contravenes Articles 6(1), 38(2)(c) and (4), 40(2) and 46(3) of the Asylum Procedures Directive, Article 4(3) of the Qualification Directive and Article 3(4) of the Return Directive. The note concludes with the institutional responsibility of the European Commission to ensure compliance with and respect for international and EU asylum law, and calls the Commission to immediately launch infringement proceedings against Greece.

¹ RSA & Stiftung PRO ASYL, *EU-Turkey deal: 5 Years of Shame – Rule of law capture by a Statement*, March 2021, 5-6, available at: <https://bit.ly/3IMKyB5>; *Submission in M.S.S. and Rahimi v. Greece*, July 2020, paras 29-34, available at: <https://bit.ly/3AHBzYa>.

² CHAP(2021)02261, 7 June 2021; CHAP(2021)02274, 8 June 2021, CHAP(2021)02994, 31 July 2021. See also RSA, ‘Asylum seekers in Greece lodge complaint on infringement of Asylum Directives’, 16 June 2021, available at: <https://bit.ly/3tkl5ZV>.

³ Transposed by Article 86(5) International Protection Act (IPA), L 4636/2019.

⁴ European Council on Refugees and Exiles (ECRE), *Country Report Greece, 2020 Update*, 140-141, June 2021, available at: <https://bit.ly/3KTxtrs>; HIAS & Equal Rights Beyond Borders, *Refugees in legal limbo*, 18 June 2021, available at: <https://bit.ly/3geDRLL>; Fenix, ‘Fenix calls the Greek authorities to examine the merits of asylum applications rejected on admissibility’, 6 December 2021, available at: <https://bit.ly/3r9Nbqz>.

Admission of the manifest impossibility of readmissions to Turkey

On the Eastern Aegean islands

The suspension of readmissions under the EU-Turkey Statement is publicly acknowledged by both the European Commission⁵ and the competent Ministers of the Greek government. The Minister of Citizen Protection explicitly stated at the end of last year that Turkey refuses to implement the Statement and invokes the COVID-19 pandemic as grounds for suspending readmissions.⁶ The Minister of Migration and Asylum noted in early 2022 that “Turkey has unilaterally suspended admission of those who do not qualify international protection since March 2020, under the pretext of COVID”.⁷ In a previous statement, said Minister stressed that Turkey “has refused to implement its commitments, and continues to refuse to engage in any way on the issue”.⁸

In at least sixteen cases from summer 2021 to present, RSA lawyers have requested the Directorate of the Hellenic Police to provide information on the suspension of readmissions to Turkey and to specify whether a readmission request has been sent to the Turkish authorities for the particular asylum seekers undergoing a “safe third country” assessment and facing return thereto. The replies of the Readmission Unit of the Migration Management Directorate of the Hellenic Police systematically confirm the absence of any prospect of removal of refugees from the Eastern Aegean islands to Turkey. They also confirm that readmission requests are no longer being sent to the Turkish authorities:

“[W]e inform you that readmission of third-country nationals from Eastern Aegean islands to Turkey in the framework of the EU-Turkey Statement (Brussels, 18-03-2016) is carried out pursuant to Laws 3386/2005, 3907/2011 and 4636/2019... The conduct of such operations was suspended by the Turkish authorities on 16-03-2020. We note that readmission requests based on the EU-Turkey Statement are sent in the context of the respective readmission operations. Therefore, given that the conduct of readmission procedures to Turkey has been suspended, the relevant requests are not being sent.”⁹

⁵ European Commission, *Turkey Report 2021*, SWD(2021) 290, 19 October 2021, 48; Reply to parliamentary question P-000604/2021, 1 June 2021, available at: <https://bit.ly/3lIx2hW>.

⁶ Hellenic Parliament, *Defence and Foreign Affairs Committee Meeting*, 17 December 2021, available at: <https://bit.ly/3g864nv>.

⁷ Παραπολιτικά, ‘Μηταράκης στα Παραπολιτικά 90,1: Η Τουρκία έχει διακόψει την αποδοχή όσων δικαιούνται προστασίας – Προκλητική η εικόνα με τους μετανάστες στην πλατεία Συντάγματος’, 5 January 2022, available at: <https://bit.ly/3r9golv>.

⁸ Ministry of Migration and Asylum, ‘New request from Greece for the return of 1.908 illegal economic migrants to Turkey’, 28 July 2021, available at: <https://bit.ly/35jDBJx>.

⁹ Directorate of the Hellenic Police, Reply 4666/3-123815, 26 February 2022; 4666/3-123679, 11 February 2022; 4666/3-123672, 2 February 2022; 4666/3-123670, 31 January 2022; 4666/3-123598, 20 January 2022; 4666/3-123580, 17 January 2022; 4666/3-123567, 15 January 2022; 4666/3-123539, 11 January 2022; 4666/3-229920, 27 December 2021; 4666/3-229748, 29 November 2021. See also Directorate of the Hellenic Police, 4666/3-229560, 1 November 2021; 4666/3-229453, 17 October 2021; 4666/3-229262, 24 September 2021; 4666/3-229165, 14 September 2021; 4666/3-235950, 5 July 2021.

At the same time, the case law of the Administrative Court of Rhodes on judicial review of detention affirms the manifest lack of prospects of readmission to Turkey, highlighting that *“the competent police authority does not invoke or produce evidence to the contrary, i.e. does demonstrate that it has taken any specific action to execute the... readmission decision”*.¹⁰

On the mainland

Per the letter of the EU-Turkey Statement¹¹ and express provisions of Greek legislation, *“in the framework of implementation of the EU-Turkey Statement of 18-03-2016 and pursuant to practice to date, applicants for international protection who have entered Greece through Turkey and who do not remain on the Aegean islands are not accepted by Turkey for return in case their application is rejected.”*¹² Accordingly, asylum seekers present on the Greek mainland fall outside the scope of the Statement and of the border procedure.¹³

The Greece-Turkey Bilateral Protocol forms the sole basis for readmission of persons on the mainland to Turkey, since Turkey has never applied the third-country national clause of the EU-Turkey Readmission Agreement. However, the implementation of the Bilateral Protocol has been suspended by the Turkish authorities from 2018 to present, as confirmed by official reports of the European Commission¹⁴ and by replies of the Readmission Unit of the Migration Management Directorate of the Hellenic Police in individual cases of asylum seekers:

*“In addition, we inform you that the readmission of third-country nationals from the mainland to Turkey is carried out pursuant to the Greece-Turkey bilateral Readmission Protocol (ratified by L. 3030/2002, Gov. Gazette A' 163/15.07.2002)... Furthermore, we note that the implementation of the above bilateral Protocol was suspended by the Turkish Authorities in the course of 2018, for which reason no third-country national has since been returned to Turkey. More specifically, for national... our Directorate (M.M.D.) has sent the... readmission request to the Turkish authorities, to which we have not received a reply.”*¹⁵

Arbitrary, generalised infringement of international and EU rules on asylum procedures and international protection

Refusal to process asylum claims on the merits, in breach of Article 38(4) of the Asylum Procedures Directive

¹⁰ See e.g. Administrative Court of Rhodes, AP515/2021, 16 December 2021, para 3; AP514/2021, 16 December 2021, para 3; AP450/2021, 3 November 2021, para 4; AP136/2021, 24 March 2021, para 4; AP122/2021, 4 March 2021.

¹¹ European Council, *EU-Turkey Statement*, 18 March 2016, para 1.

¹² Recital 10 MD 1140/2019, Gov. Gazette B' 4736/20.12.2019.

¹³ 13th Appeals Committee, 34760/2021, 31 May 2021, para 4; 9th Appeals Committee, 238593/2021, 13 September 2021; 15th Appeals Committee, 415514/2021, 26 November 2021, para 4.

¹⁴ European Commission, *Turkey Report 2021*, SWD(2021) 290, 19 October 2021, 48.

¹⁵ Directorate of the Hellenic Police, 4666/3-229165, 14 September 2021. See also Directorate of the Hellenic Police, 4666/3-123539-β, 7 February 2022.

Article 38(4) of the Asylum Procedures Directive, as transposed by Article 86(5) IPA, provides that *“where the third country does not permit the applicant to enter its territory, the application is examined on the merits by the competent decision-making authorities.”*

Greece has systematically breached this safeguard over the past two years. Despite the manifest and officially confirmed suspension of readmissions to Turkey, whether from the islands or from the mainland, the Asylum Service insists on applying the “safe third country” concept to all Syrian nationals on the Eastern Aegean islands. Since June 2021, it channels all nationals of Syria, Afghanistan, Somalia, Pakistan and Bangladesh throughout the Greek territory into the concept pursuant to JMD 42799/2021 on the national list of safe third countries.¹⁶ Judicial review of the Joint Ministerial Decision is currently pending before the Plenary of the Council of State.¹⁷

In 2021, the Asylum Service dismissed 6,424 asylum applications as inadmissible based on the “safe third country” concept. This is more than double the number of inadmissibility decisions issued in the previous year. The overwhelming majority of such decisions (5,922) were issued under JMD 42799/2021. It is worth highlighting that only 979 of the 6,424 inadmissibility decisions concern the border procedure on the islands and thereby the implementation of the EU-Turkey Statement.¹⁸

The administration systematically disregards the position of the Ombudsman, who highlights that *“if readmission to that country is not possible, the application must be examined by the Greek authorities on the merits. Otherwise, this creates a perpetual cycle of admissibility assessments of applications for international protection, without ever examining their merits and without readmission to seek protection in the safe third country being possible. As a result, the fulfilment of the objective of the Geneva Convention and of relevant European and national legislation on refugee protection is essentially rendered null and void.”*¹⁹ It also disregards the fact that *“such a position would only result in unnecessary delays in the examination procedure, given that, following the refusal of the third country to admit the applicant on its territory, their application would in any way have to be examined on the merits by the competent decision-making authorities. Such an interpretation would contravene the principle of rapid completion of said procedure, enshrined in Article 31(2) of the Directive and aiming, according to Recital 18, at serving the interests of both Member States and applicants.”*²⁰

Moreover, contrary to Article 4(3) of the Qualification Directive,²¹ the Asylum Service refrains from assessing or even mentioning statements by applicants as regards the applicability of Article 38(4) of the Asylum Procedures Directive in their case, presented

¹⁶ JMD 42799/2021, Gov. Gazette B' 2425/07.06.2021. See also RSA, '6 Questions & Answers on the unlawful Greek “safe third country” list', 8 September 2021, available at: <https://bit.ly/33Lz0PQ>.

¹⁷ RSA & Greek Council for Refugees, 'Decision declaring Turkey a “safe third country” brought before Greek Council of State', 8 October 2021, available at: <https://bit.ly/3sesBpQ>.

¹⁸ Ministry of Migration and Asylum, Reply to parliamentary question, 97157/2022, 17 February 2022, available at: <https://bit.ly/3oXKvuD>.

¹⁹ Ombudsman, Letters 301551/41050/2021 and 301755/41017/2021, 22 July 2021.

²⁰ 21st Appeals Committee, 364000/2021, 4 November 2021, 10-11.

²¹ Article 4(3) IPA.

in the form of stand-alone applications and of objections on the personal interview. By way of exception, one decision of the Regional Asylum Office of Chios accepted the applicant's statement regarding the impossibility of readmission to Turkey, without, however, any influence on the assessment of the admissibility of the claim by the Asylum Service.²²

Refusal to assess statements in appeals, in breach of Article 4(3) of the Qualification Directive and Article 38(4) of the Asylum Procedures Directive

The generalised breach of Article 38(4) of the Asylum Procedures Directive and the corollary provision of Article 86(5) IPA is repeated in the second-instance examination before the Appeals Authority. Appeals Committees not only refrain from applying Article 86(5) IPA *ex officio*, as they should, but systematically refuse to assess or even mention statements made before them regarding the duty to examine the application on the merits²³ or statements and evidence regarding the applicability of the *non-refoulement* principle. In one case, the Appeals Committee not only refrained from examining such a statement, presented both at first instance and on appeal, but incorrectly held that "no element of the file demonstrates that this particular appellant is not admitted by Turkey".²⁴

This tactic also breaches Article 4(3) of the Qualification Directive²⁵ and Article 46(3) of the Asylum Procedures Directive²⁶ on the obligation of Appeals Committees to carry out a fresh evidence assessment and to take into consideration the appellant's statements when conducting a full and *ex nunc* examination of the asylum application.²⁷

The sole exception to the refusal to implement Article 86(5) IPA known to RSA and PRO ASYL is a ruling of the 21st Independent Appeals Committee in single-judge composition, which applied the provision in an individual case, deeming it "*clear, given the practice followed by a particular country either generally or vis-à-vis specific categories of persons or vis-à-vis the individual applicant, that it will not accept the applicant's admission to its territory, while it cannot be expected that its position will change in the future, therefore it must be accepted that the relevant application cannot be dismissed as inadmissible on the ground that said country is a 'safe third country' for that applicant, even if that country fulfils the substantive criteria set out in Article 38 of Directive 2013/32/EU and Article 86 of L 4636/2019. As a result, given, as*

²² Regional Asylum Office of Chios, 193407/2021, 19 August 2021, para 3.2, Asylum Case Law Report 1/2021, available at: <https://bit.ly/3ovtJ6f>.

²³ See e.g. 18th Appeals Committee, 165163/2021, 3 August 2021; 20th Appeals Committee 260356/2021, 21 September 2021; 20th Appeals Committee, 260375/2021, 21 September 2021; 7th Appeals Committee, 378505/2021, 11 November 2021.

²⁴ 6th Appeals Committee, 248623/2021, 16 September 2021, 16.

²⁵ Article 4(3) IPA.

²⁶ Article 97(10) IPA.

²⁷ See e.g. 8th Appeals Committee, 1592/2021, 10 March 2021, para 3; 19th Appeals Committee, 6219/2021, 25 May 2021, para 4; 12th Appeals Committee, 56970/2021, 10 June 2021, para A.7; 11th Appeals Committee, 59841/2021, 11 June 2021; 3rd Appeals Committee, 75059/2021, 18 June 2021, para II.2; 6th Appeals Committee, 140330/2021, 21 July 2021, 12; 12th Appeals Committee, 233902/2021, 9 September 2021, 3. This constitutes a ground for annulment: Administrative Court of Appeal of Piraeus, A252/2020, 18 June 2020, para 8, Asylum Case Law Report 1/2021, available at: <https://bit.ly/3ovtJ6f>.

discussed in the previous paragraph, the practice of absolute exclusion of returns of migrants/refugees who irregularly entered Greece through its territory, it is certain that Turkey will not allow the appellant to enter its territory".²⁸ Nevertheless, according to the Ministry of Migration and Asylum, "during the year 2021, Article 86(5) IPA was applied by the Independent Appeals Committees in 314 decisions."²⁹

Dismissal of subsequent applications as inadmissible, in breach of Articles 38(2)(c) and 40(2) of the Asylum Procedures Directive

Until July 2021, subsequent asylum applications lodged after a final rejection of the initial claim based on the "safe third country" concept were again examined based on that notion. The Asylum Service and Appeals Committees thereby breached Article 38(4) of the Asylum Procedures Directive anew, even in the case of applicants who substantiated the impossibility of readmission to Turkey with their subsequent claim.³⁰

However, through a circular issued on 7 July 2021, i.e. one month after the publication of JMD 42799/2021 on the national list of "safe third countries", the Ministry of Migration and Asylum clarifies that subsequent applications made after a final rejection of the initial claim based on the "safe third country" concept in the context of the border procedure are subject to the preliminary examination of Article 40(2) of the Asylum Procedures Directive – transposed by Article 89(2) IPA – as regards new substantial elements. The circular stresses that:

*"Specifically, for applicants arriving from Turkey, new substantial elements shall exclusively bear on the assessment of the initial application based on the law and the EU-Turkey Statement relating to whether or not Turkey – as a transit country for the individual applicant – constitutes a safe third country according to national and European legislation. Where no new substantial elements arise as above, the subsequent application shall be dismissed by the competent authorities as inadmissible, pursuant to Article 89(4) IPA."*³¹

This practice violates Article 40(2) of the Directive, insofar as the preliminary assessment of subsequent applications should examine the existence of new substantial elements "which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU". In addition, contrary to Article 4(3) of the Qualification Directive and to Article 38(2)(c) of the Asylum Procedures Directive, the Greek authorities dismiss as non-substantial even new

²⁸ 21st Appeals Committee, 364000/2021, 4 November 2021, 22-23.

²⁹ Ministry of Migration and Asylum, Reply to parliamentary question, 97157/2022, 17 February 2022, available at: <https://bit.ly/3oXKvuD>.

³⁰ See, for instance, 18th Appeals Committee, 165163/2021, 3 August 2021 on a subsequent application following the dismissal of the first claim by 12th Appeals Committee, 31200/2020, 29 January 2021; 11th Appeals Committee, 2075/2021, 26 February 2021 on a subsequent application following the dismissal of the first claim by 9th Appeals Committee, 2548/2020, 24 April 2020.

³¹ Circular 112808/2021 of the Ministry of Migration and Asylum, «Υποβολή σε Περιφερειακά Γραφεία και Αυτοτελή Κλιμάκια Ασύλου της ενδοχώρας μεταγενέστερων αιτήσεων από πολίτες τρίτων χωρών ή ανιθαγενείς, των οποίων προηγούμενη αίτηση για παροχή διεθνούς προστασίας έχει εξεταστεί με τη διαδικασία του άρθρου 90 του ν. 4636/2019 (Α' 169) και έχει απορριφθεί τελεσίδικα ως απαράδεκτη κατ' άρθρο 84 παρ. 1 περ. (δ).», 7 July 2021.

elements affecting the application of the “safe third country” concept such as those relating to vulnerability and to the state of health of the applicants.³²

Here too, the authorities breach Article 86(5) IPA by continuing to refrain from applying the provision and by refusing to comply with repeated guidance from the European Commission regarding the implementation of Article 38(4) of the Asylum Procedures Directive. Specifically, the Commission has highlighted that:

- Applicants “whose applications have been declared inadmissible and have not been removed to Turkey should be able to apply again”;³³
- “The condition for the application of Article 38(4) of the Asylum Procedures Directive is that ‘the third country does not permit the applicant to enter its territory’. If that condition is met, Member States shall ensure that access to a procedure on substance is given, and therefore shall not reject the subsequent application as inadmissible on the basis of the safe third country concept.”³⁴

It is worth noting that certain Appeals Committees have held that circumstances such as the COVID-19 pandemic amount to new substantial elements apt to restart the examination of the asylum application, on account of its consequences on the international protection system of Turkey. They have nevertheless insisted on not applying Article 86(5) IPA.³⁵

According to figures released by the Ministry of Migration and Asylum, 80 subsequent applications had been lodged by the end of 2021 further to claims initially dismissed under JMD 42799/2021 declaring Turkey as a “safe third country”.³⁶

Refusal to register second subsequent applications, in breach of Article 6(1) of the Asylum Procedures Directive

The amendment of the IPA by L 4825/2021 introduced Article 89(10) IPA. The provision states that the making of a second subsequent application is subject to a 100 € fee. The Joint Ministerial Decision, outlining the procedure and providing that the 100 € fee shall be paid separately per family member making such an application, was only published on 27 December 2021. This measure poses a serious and unacceptable

³² See e.g. 3rd Appeals Committee, 307768/2021, 12 October 2021 on a subsequent application following the dismissal of the first claim by 18th Appeals Committee, 68486/2021, 16 June 2021.

³³ European Commission, Reply to parliamentary question E-004131/2021, 21 December 2021, available at: <https://bit.ly/3g68gfc>; Reply to parliamentary question P-000604/2021, 1 June 2021, available at: <https://bit.ly/3lIx2hW>. See also European Commission, Letter Ares(2021)4786083, 26 July 2021.

³⁴ European Commission, Reply to parliamentary question E-005103/2021, 25 January 2022, available at: <https://bit.ly/3GdF3tz>. See also European Commission, Letter Ares(2021)7554555, 7 December 2021, available at: <https://bit.ly/3GcYnar>.

³⁵ See e.g. 20th Appeals Committee 260356/2021, 21 September 2021, para A.4 and 20th Appeals Committee, 21 September 2021, para A.4, Asylum Case Law Report 1/2021, available at: <https://bit.ly/3ovtJ6f>.

³⁶ Ministry of Migration and Asylum, Reply to parliamentary question, 97157/2022, 17 February 2022, available at: <https://bit.ly/3oXKvuD>.

barrier to the submission of subsequent applications as it fully prevents access to the asylum procedure, particularly in the case of large families.³⁷

Article 89(10) IPA and Article 1(1) JMD 472687/2021 provide that the fee is a precondition for the “making” of an asylum application. This formulation is in direct contravention of Article 6(1) of the Asylum Procedures Directive, given that the “making” of an application under EU law (upon which the status of “asylum seeker” is acquired)³⁸ consists in the expression of the person's intention to lodge an application for international protection. As highlighted by the CJEU, “the act of ‘making’ an application for international protection does not entail any administrative formalities”.³⁹ Furthermore, whereas “Article 6(3) of that directive allows Member States to require that applications for international protection be lodged at a designated place, it must be noted that no provision of that directive establishes a similar rule regarding the making of applications for international protection”.⁴⁰

Imposing a fee as a requirement for making an asylum application and for scheduling a lodging appointment⁴¹ amounts to an impermissible condition and restriction on the exercise of the right to submit an asylum claim, in a manner “undermining the effectiveness of Article 6 of that directive”.⁴² The Commission itself has recently “indicated to the Greek authorities that the unconditional application of a EUR 100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure.”⁴³

In practice, from the entry into force of L 4825/2021 in September 2021 until the issuance of the aforementioned Joint Ministerial Decision at the end of December 2021, the Asylum Service refused to register second subsequent applications, citing awaited instructions.⁴⁴

Orders to return within a voluntary departure period without a destination, in breach of Article 3(4) of the Return Directive

Appeals Committees rejecting asylum applications at second instance either order the readmission of the refugees concerned to Turkey⁴⁵ or their return within a voluntary departure period without specifying where the persons should return.⁴⁶ In the latter

³⁷ Article 1(2) JMD 472687/2021, Gov. Gazette B' 6246/27.12.2021.

³⁸ Article 2(c) Asylum Procedures Directive; Article 65(8) IPA.

³⁹ CJEU, Case C-36/20 VL v Ministerio Fiscal, 25 June 2020, para 93.

⁴⁰ CJEU, Case C-808/18 Commission v Hungary, 17 December 2020, para 96.

⁴¹ Regional Asylum Office of Lesbos, Καταγραφή 2^{ωv} + μεταγενέστερων αιτήσεων – Καταβολή παραβόλου, 66654/2022, 4 February 2022.

⁴² CJEU, C-808/18 Commission v Hungary, 17 December 2020, σκ. 103.

⁴³ European Commission, Reply to parliamentary question E-005103/2021, 25 January 2022.

⁴⁴ See also Ombudsman, Διερεύνηση αναφοράς σχετικά με τη μη καταγραφή δεύτερης μεταγενέστερης αίτησης, 308320/2331/2022, 17 January 2022.

⁴⁵ See e.g. 18th Appeals Committee, 165176/2021, 3 August 2021; 5th Appeals Committee, 202789/2021, 25 August 2021; 5th Appeals Committee, 202946/2021, 7th Appeals Committee, 249361/2021, 16 September 2021; 7th Appeals Committee, 249386/2021, 16 September 2021; 12th Appeals Committee, 281102/2021, 30 September 2021.

⁴⁶ Ενδεικτικά, 11th Appeals Committee, 2075/2021, 26 February 2021; 11th Appeals Committee, 67923/2022, 7 February 2022. See also HIAS & Equal Rights Beyond Borders, Refugees in legal limbo, 18 June 2021, available at: <https://bit.ly/3geDRLL>.

case, the return decision is issued in breach of Article 3(4) of the Return Directive,⁴⁷ “an obligation to return being inconceivable, in the light of paragraph 3 of that article, unless a destination... is identified”.⁴⁸

In any event, Greece cannot reasonably expect applicants whose claims are dismissed based on the “safe third country” concept to return to Turkey despite its demonstrable refusal to admit them on its territory, or to their country of origin without a prior assessment of the reasons they fled it and thereby a risk of irreparable harm upon return thereto.⁴⁹ In light of the above, the erroneous reference by Circular 112808/2021 to a “systematic violation on the part of applicants for international protection of the condition of voluntary departure in return decisions incorporated in final negative decisions on international protection” gives pause.⁵⁰

It is clear that the practice of ordering return within a voluntary departure period without a destination severely violates international, EU and domestic law on international protection. It also deprives persons in need thereof from basic rights and renders them marginalised, trapped and condemned to conditions of destitution and despair.

The institutional responsibility of the European Commission

Over the past year, the European Commission, as exclusively competent for EU law enforcement, has received at least four written questions from MEPs on the legality of the application of the “safe third country” concept by the Greek authorities, including three (P-000604/2021, E-004131/2021 and E-005103/2021) specifically on Article 38(4) of the Asylum Procedures Directive. Similar questions have been put by MEPs to the Commission orally⁵¹ and via letters.⁵²

The Commission has also received at least three complaints (CHAP(2021)02261, CHAP(2021)02274 and CHAP(2021)02994) from asylum seekers for breaches of EU law, stemming from incorrect transposition and implementation of Article 38 of the Directive by the Greek authorities. One of those explicitly refers to infringements of Article 38(4) of the Directive.

In addition, a letter sent in March 2021 by the Commission itself to the Greek authorities through the “EU PILOT” system highlights in relation to Article 38 of the Asylum Procedures Directive that “the provision has not been fully transposed into national legislation”.⁵³

⁴⁷ Article 18(g) L 3907/2011.

⁴⁸ CJEU, Joined Cases C-924/19 and C-925/19 *FMS v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, 14 May 2020, para 115.

⁴⁹ Administrative Court of Athens, 113/2020, 11 March 2020; 127/2020, 23 March 2020; ΔΠρΑΘ 410/2020, 5 October 2020, Asylum Case Law Report 1/2021, available at: <https://bit.ly/3ovtJ6f>.

⁵⁰ Recital 4 Circular 112808/2021, 7 July 2021.

⁵¹ European Parliament, *Exchange of views on the situation in Greek islands*, 27 January 2021, available at: <https://bit.ly/33WS4e6>.

⁵² European Parliament, Letter D(2022)3974, 10 February 2022; MEP Tineke Strik, Letter to Commissioners Margaritis Schinas and Ylva Johansson, 26 May 2021, available at: <https://bit.ly/3g5Kksv>.

⁵³ European Commission, Letter EUP(2021)9874, 4 March 2021.

The Commission consistently repeats in the framework of parliamentary scrutiny that it “will continue to monitor the transposition and implementation of EU law on asylum and returns, and reiterates that Member States must act in full compliance with relevant international and EU law”⁵⁴ and that it “will not hesitate to launch, if appropriate, infringement proceedings” regarding violations of the *acquis* on returns.⁵⁵ However, the Commission has been unable to provide any information to date on the measures it is taking to ensure that Greek authorities comply with EU law.

In the meantime, the Greek government not only maintains the flagrant violations of the legal standards discussed above but has enacted the designation of Turkey as a “safe third country” under JMD 42799/2021 and introduced further restrictions on access to asylum procedures through L 4825/2021 and JMD 472687/2021, in complete dereliction of demands and concrete recommendations in public consultations – at a minimum – for bringing national law in line with the Directives.⁵⁶ These moves undoubtedly demonstrate an unwillingness on the part of the government to comply with its obligations and render ineffective any effort to remedy such systematic infringements through informal or diplomatic channels.

For those reasons, Refugee Support Aegean (RSA) and PRO ASYL call upon the European Commission to immediately launch infringement proceedings against Greece regarding violations of international law on international protection forming part of the Union *acquis*, as well as of EU asylum law, namely the Asylum Procedures Directive.

⁵⁴ European Commission, Reply to parliamentary question E-004183/2021, 6 January 2022, available at: <https://bit.ly/3u92Ulm>.

⁵⁵ European Commission, Reply to parliamentary question P-005159/2021, 19 January 2022, available at: <https://bit.ly/3oa6Zs6>.

⁵⁶ Council of Europe Commissioner for Human Rights, ‘Greece’s Parliament should align the deportations and return bill with human rights standards’, 3 September 2021, available at: <https://bit.ly/3AKokwF>.



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