

Ms Ylva Johansson
European Commissioner for Home Affairs
European Commission
Rue de la Loi 200, B-1049, Brussels, Belgium

Athens, 8 March 2022
Reference No: β/50/4.3.2022

Re: Implementation of the safe third country concept in Greece

Honourable Commissioner,

We, representatives of 27 civil society organisations active in the areas of asylum and migration in Greece, wish to hereby convey to you our concerns regarding systematic non-compliance by Greece with the Asylum Procedures Directive as regards the safe third country concept.

Article 38(4) of the Asylum Procedures Directive, per which “[w]here the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II”, is transposed into Greek law through Article 86(5) of the International Protection Act (IPA),¹ which specifies that applications shall be examined on their merits in such cases.

The provision is applicable on the Greek mainland under the current circumstances insofar as Turkey has never applied the third-country clause of the EU-Turkey Readmission Agreement² and has suspended the application of the Greece-Turkey Bilateral Readmission Protocol³ since 2018.⁴ As a result, readmission requests sent by the Greek authorities receive no reply from the Turkish authorities.⁵

On the other hand, as regards persons on the Eastern Aegean islands, readmissions to Turkey under the EU-Turkey Statement, including of persons whose asylum application is dismissed as inadmissible based on the safe third country concept, have been suspended from March 2020 to present.⁶ Due to this suspension, the Greek authorities do not send readmission requests to the Turkish authorities regarding persons whose applications are examined under the safe third country concept.⁷

¹ L 4636/2019, Gov. Gazette A' 169/01.11.2019.

² Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation [2014] OJ L134/3.

³ Protocol for the implementation of Article 8 of the Agreement between the Government of the Hellenic Republic and the Government of the Republic of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration, ratified by L 3030/2002, Gov. Gazette A' 163/15.07.2002.

⁴ European Commission, *Turkey Report 2021*, SWD(2021) 290, 19 October 2021, 48.

⁵ See e.g. Hellenic Police, 4666/123539-β, 7 February 2022; 4666/3-229165, 14 September 2021.

⁶ European Commission, *Turkey Report 2021*, SWD(2021) 290, 19 October 2021, 48; Reply to parliamentary question P-000604/2021, 1 June 2021; EASO, *Asylum Report 2021*, 29 June 2021, 242; Hellenic Parliament, *Defence & Foreign Affairs Committee*, 17 December 2021, available at: <https://bit.ly/3g864nv>.

⁷ See e.g. Hellenic Police, 4666/3-123706, 14 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.

However, the Greek asylum authorities systematically apply the safe third country concept based on Joint Ministerial Decision 42799/2021 vis-à-vis applicants originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh, leading to a large number of applicants having their claims dismissed as inadmissible and being ordered to return to Turkey, without any prospects of such a readmission. As many as 6,424 asylum applications were dismissed as inadmissible based on the safe third country concept in 2021, i.e. a 126% increase compared to the previous year. The overwhelming majority of those decisions (5,445) concerned the mainland.⁸ Subsequent applications lodged following a final rejection of an application for international protection as inadmissible are channelled again into admissibility procedures and dismissed based on the safe third country concept⁹ or due to lack of new elements.¹⁰

The practice exposes applicants for international protection to a legal limbo whereby they are never granted access to an examination of their applications on their merits, contrary to the purpose of the Geneva Convention and of the Asylum Procedures Directive. It also leads to exclusion of people from reception conditions, resulting in inability to have access to dignified living standards and to cater for their basic subsistence needs, including health care and food.

The European Commission has received at least three targeted written questions from the European Parliament on non-compliance by Greece with Article 38(4) of the Asylum Procedures Directive,¹¹ letters from stakeholders,¹² as well as direct complaints from applicants for international protection affected from the aforementioned violations.¹³

Despite the Commission's efforts and ongoing dialogue with the Greek authorities, Greece has not complied with EU law. Over the past year, the use of the safe third country concept in line with the EU *acquis* has not been revisited, nor have the recommendations from the Commission. Greece has also taken further legislative steps to limit access to refugee status determination to persons affected by the aforementioned violations through: JMD 42799/2021 declaring Turkey a safe third country and triggering admissibility procedures throughout the territory; JMD 458568/2021 amending said list; Art 23 L 4825/2021 and JMD 472687/2021 introducing a 100 € fee per person for second subsequent applications, including vis-à-vis persons whose claims have been unlawfully dismissed as inadmissible.

For those reasons, we would therefore urge again the European Commission to promptly take the necessary measures against Greece to ensure effective compliance with Article 38(4) of the Asylum Procedures Directive, so as to ensure that asylum seekers to whom the safe third country concept has been applied have their applications promptly examined on the merits and are provided with respective legal status and adequate reception conditions, as well as to safeguard the integrity of the Common European Asylum System against systematic non-compliance.

⁸ Ministry of Migration and Asylum, Reply to parliamentary question, 97157/2022, 17 February 2022, available at: <https://bit.ly/35cmM30>.

⁹ See e.g. Regional Asylum Office of Thessaloniki, 59252/2022, 16 February 2022.

¹⁰ Ministry of Migration and Asylum, Circular 112808/2022, 7 July 2021, available at: <https://bit.ly/3p5CtjD>, providing, contrary to Article 40 of the Asylum Procedures Directive, that subsequent applications lodged following the dismissal of the initial claim under the safe third country concept in the border procedure are subject to a preliminary admissibility assessment solely on new elements relating to whether or not Turkey is a safe third country.

¹¹ P-000604/2021; E-004131/2021; E-005103/2021.

¹² Ares(2021)4786083; Ares(2021)7554555; Ares(2021)7836311; POL-COM-LIBE D(2022) 3974.

¹³ CHAP(2021)02994.

We thank you in advance for your consideration and remain at your disposal for any additional information or clarification required.

Yours sincerely,

1. Action for Women
2. ARSIS – Association for the Social Support of Youth
3. Danish Refugee Council (DRC)
4. ECHO100PLUS
5. Equal Rights Beyond Borders
6. Europe Must Act
7. European Council on Refugees and Exiles (ECRE)
8. European Lawyers in Lesvos
9. Fenix – Humanitarian Legal Aid
10. Greek Council for Refugees (GCR)
11. HIAS Greece
12. HumanRights360
13. International Rescue Committee
14. INTERSOS Hellas
15. Legal Centre Lesvos
16. Lesvos Solidarity
17. METAdrasi – Action for Migration and Development
18. PRO ASYL
19. Refugee Legal Support (RLS)
20. Refugee Support Aegean (RSA)
21. Refugees International
22. Safe Passage International
23. Samos Volunteers
24. SolidarityNow
25. Still I Rise
26. Symbiosis-School of Political Studies in Greece, Council of Europe Network
27. Terre des hommes Hellas