



Caught in a Loop

The Narrowing Access to Asylum in Greece Since the EU-Turkey Statement

*Updates Since our 2021 Report
"Five years of the EU - Turkey Statement:
Past, present and future"*

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INTRODUCTION

March 2022 marks the anniversaries of several events that have been key in shaping today's EU migration policy, and that have ultimately led to the restriction of access to asylum in Greece and the EU. On March 15th it will be 11 years since the war in Syria began, prompting a surge of displaced people arriving to Europe's borders seeking safety. March 18th marks six years since the subsequent *EU-Turkey Statement*¹, wherein political leaders sought to address this surge, particularly at the entry point of the Eastern Aegean Islands.² Finally, on March 16th it will be two years since readmissions to Turkey from the Islands, as envisioned by the *EU-Turkey Statement*, were suspended. As highlighted by Fenix - Humanitarian Legal Aid (Fenix) in 2021 and as reported by several organisations, the *EU-Turkey Statement* has set in motion a series of "unsustainable, ineffective, and dangerous" measures by the Greek authorities.³ The *EU-Turkey Statement* describes itself as a "temporary and extraordinary measure". Six years on not only is it still being relied on as a seemingly permanent measure, but its impacts have been expanded upon by the implementation of new restrictive asylum laws in Greece over the past two years.

¹ Full text of EU-Turkey Statement available at: <https://tinyurl.com/yn72m7pa>

² This term refers to the five Greek Eastern Aegean islands containing registration facilities for asylum seekers: Lesbos, Samos, Chios, Leros, and Kos.

³ See Fenix report "Five years of the EU-Turkey Statement: Past, present, and future" at page 13, available at <https://tinyurl.com/37dj4s2y>, and Oxfam press release dated March 13, 2019, available at <https://tinyurl.com/33y4h6rj>.

1. TURKEY IS STILL CONSIDERED “SAFE”

In line with the *EU-Turkey Statement*, the concept of “safe third country” contained in EU Directive 2013/32⁴ was recognised under Greek Law 4375/2016,⁵ and later maintained under Law 4636/2019.⁶ In practice, the Greek authorities applied the concept of Turkey as a safe third country under the fast-track border procedure in 2016, and later applied it under the regular procedure for asylum claims on the mainland beginning in 2021.⁷ Six years on, the *EU-Turkey Statement* continues to negatively impact Greek asylum policy and procedure, with the application of the safe third country concept proving to be a main determining factor in the outcome of asylum decisions.

The concept of a “safe third country” is specifically defined under international law. Article 38 of EU Directive 2013/32 sets out parameters for what this concept entails and what elements make a country “safe” for an asylum seeker. There are five elements to the definition, requiring that in the relevant third country: (i) life and liberty are not at risk, (ii) there is no risk of serious harm, (iii) the principle of non-refoulement will be respected, (iv) the right to freedom from torture will be respected, and (v) the possibility exists to receive

⁴ Article 38 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection OJ L 180. See also minutes of meeting of the Justice and Home Affairs Council of the Council of Europe from June 9 and 10th, 2016, available at: <https://www.consilium.europa.eu/en/meetings/jha/2016/06/09-10/>

⁵ Law no. 4375, Organisation and Operation of the Asylum Service, the Refugee Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, Adaptation of Greek Legislation to the Provisions of Directive 2013/32/EU of the European Parliament and of the Council “On Common Procedures for Granting and Withdrawing International Protection Status (recast)” (L 180/29.6.2013), Provisions on the Employment of Beneficiaries of International Protection and Other Provisions (Government Gazette A' 51/3-4-2016), available at: <https://www.synigoros.gr/resources/docs/n-4375-2016.pdf>

⁶ Law no. 4636 (Government Gazette A '169 / 01-11-2019 and Corrections of errors Government Gazette A' 173 / 05-11-2019) on International Protection and other provisions, available at: <https://tinyurl.com/4636-2019>.

⁷ The safe third country concept was applied on the mainland under Joint Ministerial Decision 42799/2021. The fast-track border procedure was introduced in 2016 and updated under Article 90 of Law 4636/2019. In practice, from 2016 to 2019 non-Syrians from a country with a recognition rate of over 25% would have their application for international protection assessed both on admissibility (under the safe third country concept) and on the merits (“merged procedure”), while non-Syrians from a country with a recognition rate of under 25% would have their application only examined on the merits. In contrast, Syrian nationals would have their application for international protection only examined on admissibility under the safe third country concept. The practice changed in 2020. Only Syrian nationals were examined on admissibility, while the rest of the application were examined only on the merits. Despite the fact that an admissibility decision would not be included in an applicant’s file with GAS, the Hellenic Police were automatically issuing a readmission decision to Turkey after their arrival at the Eastern Aegean Islands. These decisions would be suspended when the applicant applied for asylum. See AIDA Asylum Information Database ‘Country report: Greece’, 2019 update, p. 93-94, available at <https://tinyurl.com/GreeceCountry>.

protection in accordance with the Geneva Convention, if found to be a refugee.⁸ Although it is not certain that any of the five elements are met in the context of Turkey, and there is documented evidence of harm to asylum seekers under the other elements, here we will focus on elements (iii) and (v).⁹

1.1 Principle of non-refoulement

An important element of the safe third country definition is the requirement that the principle of non-refoulement will be respected in the relevant third country. The principle of non-refoulement has been described as a “cornerstone” of international protection¹⁰. Article 33(1) of the 1951 Geneva Convention states that no Contracting State can “expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened...”.¹¹ The EU Charter of Fundamental Rights recognises this principle in Article 19(2).¹² Greek law transposes this principle from EU Directive 2011/95,¹³ and states at Article 21 (1) of Law 4636/2019 that “[t]he competent authorities shall respect the principle of non-refoulement in accordance with the international obligations of the State”. Case law has recognised this principle as being interlinked with Articles 2 and 3 of the European Convention on Human Rights, as being absolute, and as also applying to asylum seekers not yet granted refugee status.¹⁴ It should be noted that both direct and indirect violations of the principle of non-refoulement are prohibited.¹⁵ This means that Greece is prohibited from removing an individual to a territory where there is a risk of further deportation to

⁸ See EU Directive 2013/32 at Article 38 for full definition, available at: <https://tinyurl.com/EU-Directive>

⁹ See for example description incidents of ill-treatment and torture at page 116 of the AIDA Asylum Information Database Country Report: Turkey, 2020 Update, available at: <https://tinyurl.com/AIDATurkey20>.

¹⁰ See “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol” by UNHCR in 2007 at page 2, available at: <https://www.unhcr.org/4d9486929.pdf>

¹¹ Available at <https://www.unhcr.org/4d934f5f9.pdf>.

¹² Article 19 (2) states “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” Full provision available at https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

¹³ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the content of the Protection Granted (recast), Article 21, available at: <https://tinyurl.com/EU2011-95>.

¹⁴ See *Soering v. UK* 14038/88 available at <https://tinyurl.com/SoeringUK>, *Saadi v Italy* 37201/06, available at <https://tinyurl.com/Saaditaly>, and *Abdulaziz, Cabales and Balkandali v. UK* 9214/80, available at <https://tinyurl.com/AbdulazizUK>.

¹⁵ See *M.S.S. v. Belgium and Greece* 30696/09, available at: <https://tinyurl.com/MSSBelgium>.

a third country where life and liberty are at risk, even if that risk is not present in the first country of removal.¹⁶

Reports from international organisations have called into question whether the principle of non-refoulement is respected within Turkey. Derogations from the principle based on security and public order reasons were introduced into Turkish law in February 2018.¹⁷ Although EU Directive 2011/95 contains specific exemptions from the principle at Article 21(2),¹⁸ it has been noted that the Turkish provisions are broader in nature and could be interpreted more widely, which could lead to the provisions being applied arbitrarily, and ultimately result in a violation of the principle.¹⁹ It has been noted that removal decisions have increasingly been issued to Syrians under these new laws and that “voluntary” deportations, in reality, have been forced.²⁰ Whether returns are truly voluntary was a particular concern from detention, which can occur immediately on arrival into Turkey.²¹ Individuals caught in these concerning trends face the risk of deportation without ever having their asylum claim assessed.

Additionally, pushbacks have been reported by a number of organisations on the Turkey/Syrian border.²² These reports are extremely concerning given the ongoing situation in Syria.²³ Similar information has been reported regarding pushbacks on the Turkey/Iran border, especially after the fall of Kabul to the Taliban in August 2021.²⁴

The above-described reports suggest that the principle of non-refoulement is not being consistently respected within Turkey. Therefore, the return of asylum seekers

¹⁶ The obligation of Greece to ensure Turkey respects the principle of non-refoulement within its territory is contained in Law 4636/2019 at Article 86 (1)(b).

¹⁷ Law 7070, February 1, 2018, available in Turkish at <https://tinyurl.com/law7070>.

¹⁸ See Article 21 (2)(a) and (b) of Directive 2011/95/EU, available at: <https://tinyurl.com/EU2011-95>.

¹⁹ See AIDA Asylum Information Database Country Report: Turkey, 2020 update, at pages 30–33, available at <https://tinyurl.com/AIDATurkey20>.

²⁰ *Ibid* at pages 140–141, 150–151. See also Amnesty International Report “Turkey: Syrians illegally deported into war ahead of anticipated ‘safe zone’” October 25, 2019, available at: <https://tinyurl.com/AmnestyInter>.

²¹ *Supra* note 17 at pages 19 and 101.

²² See Asylum Information Database report “Admission to Territory” available at: <https://tinyurl.com/AdmissionTurkey>. See also Human Rights Watch report “Turkey: Mass Deportations of Syrians”, March 22, 2018, available at: <https://tinyurl.com/HRWTurkey>.

²³ See for example, Human Rights Watch “Syria Events of 2021”, available at: <https://tinyurl.com/Syria2021>.

²⁴ See Human Rights Watch “Turkey: Soldiers Beat, Push Afghan Asylum Seekers Back to Iran”, October 15, 2021, available at: <https://tinyurl.com/HRWAfghans>. See also Guardian article “Afghan refugees accuse Turkey of violent illegal pushbacks”, available at: <https://tinyurl.com/GuardianTurkey>.

by Greek and European authorities to Turkish territory potentially leads to a violation of the fundamental principle of non-refoulement.

1.2 Access to Asylum

For a country to be a “safe third country”, Article 38 (1)(e) of EU Directive 2013/32 requires “the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention” in the country. The requirement is contained in Greek Law 4636/2019 at Article 86 (1)(e).

Individuals applying for international protection in Turkey will be assessed differently depending on their nationality, and ultimately will be eligible for different types of protection. People from “European countries of origin” continue to be the only group eligible to receive “refugee” status, whereas Syrians are eligible for “temporary protection”, and other nationalities are eligible for subsidiary protection.²⁵ The “temporary protection” status was introduced in 2014 to deal with mass influx situations, but is still applied to Syrians in Turkey today.²⁶

The AIDA Asylum Information Database 2020 Country Report on Turkey highlights the difficulties in accessing asylum on a practical level. Applicants need to present themselves in person to an office of the Directorate General for Migration Management (DGMM) in one of the Turkish provinces, where they may be registered or else be directed to register in a satellite city within 15 days.²⁷ Transportation to the satellite city is not provided.²⁸ This process in itself shows the simple act of registering for the asylum process in Turkey is not straightforward. Although Covid-19 exacerbated the problem during 2020, problems with practical access to asylum have been noted for many years.²⁹

²⁵ See Fenix report “Five years of the EU-Turkey Statement: Past, present, and future” at pages 7-8, available at <https://tinyurl.com/37dj4s2y>. See also *supra* note 17 at page 125.

²⁶ *Ibid* at page 8, “The temporary protection regime was introduced in October 2014, and it is applied to third-country nationals who have been forced to leave their country and who have crossed the borders of Turkey in a mass influx situation. This has been frequently applied to persons forcibly displaced from Syria. It is not considered a type of international protection but a complementary measure to be applied in situations where individual assessments are not possible due to the large number of applicants”.

²⁷ *Supra* note 17 at page 25. In practice, registration can be refused and no referral to another DGMM office provided.

²⁸ *Ibid*.

²⁹ The AIDA Asylum Information Database Country Reports on Turkey have highlighted these issues since 2018, see for example 2018 Country Report on Turkey at page 21, available at: <https://tinyurl.com/AIDATurkey18>. Particularly during 2020, entry to PDMM government offices was difficult for both asylum seekers and lawyers, and new registrations were suspended for 3 months. See *supra* note 17 at page 40.

2. INTRODUCTION OF JOINT MINISTERIAL DECISION NO. 42799/2021

Perhaps the most impactful of the recent restrictive measures introduced by the Greek authorities has been Joint Ministerial Decision No. 42799/2021 (JMD), issued on June 7, 2021.³⁰ The JMD extends the reach of the designation of Turkey as a safe third country, and of the resultant admissibility procedure, to applicants from five countries: Syria, Afghanistan, Somalia, Bangladesh, and Pakistan. During 2020, these nationalities accounted for 65.86% of all asylum applications in Greece,³¹ and 60.14% during 2021.³² More recently, these nationalities represent at least 83% of the Lesvos RIC population as of February 27, 2022.³³

The asylum procedure for this large group of applicants is distinct from the procedure for all other nationalities. Prior to any examination of the merits of their asylum claim, they firstly have to pass an admissibility hurdle, i.e. prove that Turkey is not safe for them. As the JMD provides for the blanket presumption that Turkey *is* safe based on their nationality, in practice it is difficult to overcome this hurdle. In their asylum interviews, they are only asked questions about Turkey, and are not given the chance to explain why they need to seek asylum, conditions in their country of origin, the circumstances that prompted them to leave, and any dangers or trauma they faced. Rejections based on the safe third country concept doubled in 2021 compared to 2020.³⁴ These rejections occur despite requirements in EU Directive 2013/32 that asylum seekers receive an individualised assessment, and be given the opportunity to show why a particular country is not safe for them.³⁵

The JMD designated Turkey as a safe third country for applicants of the five aforementioned nationalities applying on the Eastern Aegean Islands under the border procedure, but also for applicants on mainland Greece applying under the regular procedure, representing an extension of who has their asylum claim examined on admissibility in practice. Given that in 2021, there were more land arrivals to Greece than arrivals by sea for the first time since

³⁰ Joint Ministerial Decision No. 42799/2021, (Government Gazette 2425/B/7-6-2021), Designation of Third Countries that are Characterized as Safe and Compilation of a National List, According to the Provisions of Article 86 of Law 4636/2019, available in Greek at: <https://tinyurl.com/JMD42799>.

³¹ 26,715 out of 40,559 total applicants were from one of the five countries contained in the JMD, see 2020 Report on Ministry of Migration and Asylum website, available at: <https://tinyurl.com/MOMA20>.

³² 17,033 out of 28,320 total applicants were from one of the five countries contained in the JMD, see 2021 Report on Ministry of Migration and Asylum website, available at: <https://tinyurl.com/MOMA2021>.

³³ UNHCR Lesvos Island Weekly Snapshot, February 21 to 27, 2022. 83% of total residents are from Afghanistan, Somalia, and Syria.

³⁴ See Refugee Support Aegean (RSA) Legal Note “Greece arbitrarily deems Turkey a “safe third country” in flagrant violation of rights” at page 5, available at <https://tinyurl.com/RSASTC>. RSA also note that the “overwhelming majority” of the rejections on admissibility in 2021 were issued under the JMD.

³⁵ See Article 38 (2)(c) of EU Directive 2013/32.

the surge in arrivals began,³⁶ this extension ensures that an even higher number of asylum seekers are caught under the JMD. On the Islands, applicants continue to be subject to a fast-track border procedure pursuant to Greek Law 4375/2016, and updated in Law 4636/2019.³⁷ The combination of the high number of applicants caught under by the JMD, the examining of their applications on admissibility, and the fast-track border procedure covering the Islands (where these five nationalities make up a particularly high percentage of all applicants), converge to amount to an externalisation of the asylum procedure by Greece.

2.1 Investigation prior to designation

In addition to proving that the five elements of the definition of safe third country exist, EU Directive 2013/32 also requires that the examining country adopts methodology for investigating and concluding that a third country is safe.³⁸ Greek law 4636/2019 at Article 86 (3) states that information relied on in designating a third country as safe should be updated and reliable, and that the designation should be reviewed every year.

Information about in-country conditions in Turkey and the asylum process are publicly available, contained in reports from various organisations and institutions.³⁹ Greece began the practice of designating Turkey as safe for certain asylum seekers in 2016, and adopted the JMD into law in 2021, which specifically names Turkey as a safe country for applicants of certain nationalities.⁴⁰ The Greek authorities did not publish evidence of their process for investigating and concluding why Turkey is a safe third country on either occasion, despite available evidence. At the time of adoption of the JMD, they produced no proof of having satisfied themselves that asylum seekers from the five relevant countries could safely be returned to Turkey and would not suffer the harms envisioned by the five elements of the definition while there.

³⁶ 4,826 land arrivals compared with 4,331 sea arrivals recorded in 2021. See UNHCR land and sea arrival statistics for Greece, covering 2014 to 2022, available at: <https://tinyurl.com/GreeceArrivals>.

³⁷ As highlighted by Fenix in “From arrival to rejection in one week”, the short deadlines required throughout the border procedure are problematic. Available at: <https://tinyurl.com/FromArrival>

³⁸ Article 38(2)(b) of EU Directive 2013/32 requires Greece to implement and follow specific “methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country...”.

³⁹ Information on the asylum process in Turkey and related challenges have been published in the AIDA Asylum Information Database Country Reports since 2015 and are publicly available online at <https://asylumineurope.org/reports/country/turkey/>. See also information and reports relating to in-country conditions and human right abuses in Turkey at <https://www.hrw.org/europe/central-asia/turkey>.

⁴⁰ Available in Greek at: <https://tinyurl.com/JMD42799>.

Shortly after the adoption of the JMD, HIAS Greece and Equal Rights Beyond Borders requested access to the ‘Opinion Recommending Turkey to be designated as a safe third country’ from the Head of the Greek Asylum Service (GAS) on behalf of their clients.⁴¹ They eventually received access to the ‘Opinion’ after an initial rejection by the Head of GAS, and only after an order by the Public Prosecutor of Athens.⁴² When the documentation was eventually disclosed, these organisations learned that the opinion contained no legal reasoning for the designation of Turkey as a safe third country for nationals of the five aforementioned countries, but only a list of sources to information on Turkey, including information suggesting the country is in fact, *not* safe.⁴³ Needless to say, as this documentation is the foundation for the JMD which has had such a large impact on the asylum process in Greece, this disclosure is very concerning.

The European Union and its Member States should not assume that Turkish law provides for refugee protection equal to the protection envisioned by the Geneva Convention, or that international protection is readily accessible. As outlined above, evidence of the risk of expulsion either through deportations or pushbacks also calls into question respect for the principle of non-refoulement. It has been reported that 2020 saw less asylum registrations in Turkey, at 31,334 total applications, down from 114,537 in 2018 and 56,417 in 2019.⁴⁴ Of those who are able to register, Afghan nationals continue to represent the largest proportion, at 72.14% of all applications in 2020.⁴⁵ Whether full refugee protection as envisioned by the Geneva Convention is accessible and available to asylum seekers in Turkey is at best, not certain. Greek authorities must comply with their national and international obligations and thoroughly investigate the five elements of the definition, prior to continuing with the widespread use of the safe third country concept.

⁴¹ See HIAS and Equal Rights Beyond Borders report “The Greek Asylum Service Finally Shares The “Opinion” On The Basis Of Which Turkey Was Designated As A Safe Third Country And It Only Seems To Be Saying The Contrary” , available at: <https://tinyurl.com/HIAS-ERBB>.

⁴² *Ibid*.

⁴³ *Ibid* at pages 2-3. One example provided is the numerous allegations of pushbacks to Syria.

⁴⁴ See numbers of international protection applicants under “Statistics” at beginning of Asylum Information Database Country Reports on Turkey, available at: <https://tinyurl.com/AIDATurkey20> (2020), <https://tinyurl.com/AIDATurkey2019> (2019), <https://tinyurl.com/AIDATurkey2018> (2018).

⁴⁵ See AIDA Asylum Information Database Country Report 2020, available at: <https://tinyurl.com/AIDATurkey20>.

3. SUSPENSION OF READMISSIONS TO TURKEY CONTINUES

Compounding the problematic nature of the JMD is the reality that Turkey has stopped readmitting rejected asylum seekers back from Greece since March 16, 2020 (including the large number of applicants who have had their claims rejected on admissibility).⁴⁶ Fenix previously requested clarifications on the state of the readmission procedure on behalf of several clients from the Readmission Unit of the Hellenic Police Headquarters. In its response,⁴⁷ the Readmission Unit confirmed that Turkey has indefinitely suspended readmission from Greece since March 16, 2020, and as a result, the Greek authorities are not currently sending readmission requests to Turkey. Meanwhile at the same time, the Greek authorities continue to issue rejections to a high proportion of asylum seekers based on the reasoning that they can safely be returned to Turkey. It should be noted that returns under the *Greece-Turkey Bilateral Protocol* have also been suspended with respect to applications submitted on the mainland since 2018.⁴⁸

Article 38 (4) of EU Directive 2013/32 and Article 86 (5) of Greek Law 4636/2019 require that when the relevant country designated as a safe third country does not permit a rejected asylum seeker to enter its territory, Greece must provide access to an asylum procedure. Greek law specifically states that where the third country does not permit entry to the asylum seeker, the Greek authorities must examine the application on the merits.⁴⁹ Fenix and other NGOs, as well as the European Commission, have previously called on the Greek authorities to comply with their national and international obligations and examine the applications of asylum seekers covered by the JMD on the merits, given the current context with Turkey.⁵⁰

⁴⁶ See for example, reference to the suspension by the European Commission at page 48 of the Turkey 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, October 6, 2020, available at: <https://tinyurl.com/zaa962zj>. The Commission note “[f]rom 16 March to June 2020, the Turkish authorities suspended return operations due to the COVID-19 pandemic until further notice”.

⁴⁷ The responses are dated October 25, 2021, October 27, 2021, January 11, 2022 and February 16, 2022. See Fenix Press Release, “Fenix calls the Greek authorities to examine the merits of asylum applications rejected on admissibility”, December 6, 2021, available at: <https://tinyurl.com/FenixAdmiss>.

⁴⁸ See *supra* note 32 at page 4.

⁴⁹ See Article 86(5) of Law 4636/2019.

⁵⁰ See *supra* note 32 and *supra* note 45 as examples. See also response by Commissioner Johansson on June 1, 2021: “Article 38(4) of the Asylum Procedures Directive provides that ‘where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to [an asylum] procedure is given’. In line with that provision, applicants whose application has been declared inadmissible are therefore able to apply again. In re-examining and deciding on those applications, Greece will need to take into account the circumstances at the time of the (re-) examination of the individual applications, including with regard to the prospect of return in line with the EU-Turkey Statement. In the meantime, applicants shall have access to material reception conditions under the conditions set out under the EU Charter of Fundamental Rights, EU and national law.” P-000604/2021 Answer given by Ms Johansson on behalf of the European

Nevertheless, the Greek authorities continue to refuse to examine applications of those covered by the JMD on the merits.

4. DETERIORATING LIVING CONDITIONS FOR REJECTED ASYLUM SEEKERS EXACERBATED BY THE JMD

Other changes to Greek law in the past two years have resulted in additional hardships to individuals seeking international protection. Since January 1, 2022, Joint Ministerial Decision 472687/2021 requires each asylum seeker to pay a €100 fee for a second subsequent asylum application, and each application thereafter.⁵¹ This fee applies per person, per application, whereas previously the fee was intended to be applied per application.⁵² For families, this can result in a costly process.⁵³

Under EU and Greek law,⁵⁴ Greece has the responsibility to ensure minimum material reception conditions for asylum seekers. Such obligations cease when the applicant receives a “final” rejection. This means the determining factor for receipt of essential support like cash assistance, housing, and food support, comes to the question of who qualifies as an active “asylum seeker”.

Directive 2011/95/EU defines an ‘applicant’ for international protection as a “[...] third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken [...]”.⁵⁵ The definition is complemented by Article 2(e) of EU Directive 2013/32 which defines a decision as “final” when (i) the issue of whether the third-country national or stateless person should be granted refugee or subsidiary protection status has been decided on, and (ii) the decision is no longer subject to a remedy. For asylum seekers who have had their asylum application rejected on admissibility, there has not been an assessment of whether or not the applicants should be granted refugee status or subsidiary protection (because the only question assessed was whether Turkey was safe for them). Therefore, applicants who have had their asylum application deemed inadmissible should not lose their status as “asylum seekers” on

⁵¹ Joint Ministerial Decision no. 472687/2021, Government Gazette 6246/B/27.12.2021, Defining a Procedure for Registering Credits in the Regular Subdivision of the Ministry of Immigration and Asylum according to the Revenues Collected in ALE 1450114001 "Payments of each subsequent of the first application by an applicant for international protection" and Other Related Issues, available in Greek at: <https://mydocman.gr/472687-2021>.

⁵² See original text of Law 4825/2021, Government Gazette 157/A/4-9-2021, Reform of Deportation and Return Procedures of Third Country Nationals, Attraction of Investors and Digital Nomads, Issues of Residence Permits and Procedures for Granting International Protection, Provisions of Competence of the Ministry of Migration and Asylum and the Ministry of Civil Protection and Other Urgent Provisions, available in Greek at: <https://tinyurl.com/4825-2021>.

⁵³ See further discussion in Fenix press release “Imposition of a fee of 100 euros for access to asylum from the 2nd and every following subsequent application to applicants for international protection, including minors!” available at <https://tinyurl.com/SecondFees>.

⁵⁴ See Article 17 of EU Directive 2013/33/EU and Article 55 of Greek Law 4636/2019.

⁵⁵ See Directive 2011/95/EU at Article 2(i).

the basis of such rejection. This interpretation is the only one that allows for a harmonious interpretation with asylum law as a whole, and goes in line with the opinion of the Advocate General Priit Pikamäe in the case of *FMS and Others*.⁵⁶

With only registered asylum seekers being eligible for reception conditions, the refusal by the Greek authorities to examine on the merits the applications of those who have been rejected on admissibility, the refusal to recognise the status of these individuals as “asylum seekers” after their initial rejection, and the lack of readmissions by the Turkish authorities are compounding to create a humanitarian crisis and difficulties in accessing basic needs like food and housing. Given the broad scope of the JMD, the number of people finding themselves in this category of “rejected” is growing.

The JMD also means that many applicants are increasingly finding themselves in an impossible situation of legal limbo. They are potentially rejected as soon as one week after arrival, at that point no longer recognised as an “asylum seeker”, and stuck in a situation where they receive no financial, food, or accommodation support, but cannot leave, seeing as they cannot be returned to Turkey.⁵⁷ If they decide to re-apply for asylum, they potentially enter into a cycle of repeated rejections, each based on admissibility, that will cost them €100 per family member per application, from the second subsequent application onwards.

⁵⁶ AG’s Opinion delivered on April 23, 2020 in the Joined Cases C-924/19 PPU and C-925/19 PPU. See in particular, paragraphs 116 to 127, available at: <https://tinyurl.com/JoinedCases>.

⁵⁷ Additionally, there are reports of further human rights abuses occurring as a consequence of receiving a “rejected” decision, such as indefinite detention practices occurring on Samos. See Amnesty International press release “Greece: Asylum seekers being illegally detained in new EU-funded camp”, available at: <https://tinyurl.com/AmnestySamos>.

CONCLUSIONS

1. Greece must thoroughly evaluate whether Turkey is a “safe third country” under its national and international obligations, and examine the available evidence of in-country conditions including problems accessing asylum and reports of forced deportations and pushbacks. The safe third country concept should not be applied until reasoned arguments have been established as to why the country is safe for applicants of international protection, and such arguments must be based on updated information.⁵⁸ Until such a time, Greece must examine the applications of nationals from Syria, Afghanistan, Somalia, Bangladesh, and Pakistan on the merits, ensuring the right to asylum under international law is respected and proper access to an asylum process is made available.
2. In the current context, Greece must analyse the claims of asylum seekers from Syria, Afghanistan, Pakistan, Bangladesh, and Somalia on the merits as they are obliged to do under Article 38 (4) of EU Directive 2013/32 and Article 86 (5) of Greek Law 4636/2019, in light of the fact that Turkey is not accepting any returns of rejected asylum seekers and has not done so for two years. Access to asylum is enshrined in international law as a basic human right.
3. The Greek authorities must address the humanitarian crisis that has been exacerbated as a result of the legal limbo prompted by the JMD, which may lead to large numbers of asylum seekers being “rejected” based on the “safe third country” concept. As highlighted by several organisations, there is evidence of large numbers of people going hungry in Greece today, or who are homeless as a result of their “rejected” status, many of whom are stuck in a legal limbo caused by repeated rejections based on admissibility.⁵⁹

⁵⁸ See Law 4636/2019 at Article 86 (3).

⁵⁹ See for example joint NGO briefing “NGOs raise alarm at growing hunger amongst refugees and asylum seekers in Greece”, available at: <https://tinyurl.com/NGOsRaiseAlarm>.