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EU-Turkey deal puts human rights at risk, warns ICJ

The International Commission of Jurists (ICJ) today expresses serious concern that the deal concluded on Friday 18 March between the European Union and Turkey on the return of migrants and refugees to Turkey is likely to lead to serious violations of international and EU human rights and refugee law.

“This initiative carries high risks of infringing the right of asylum and the prohibition of *non-refoulement*, as well as the right to an effective remedy for potential violations of these rights”, said Róisín Pillay, director of the ICJ Europe Programme. All EU Member States, including Greece, have obligations to protect these rights under international human rights law, and Member States and EU institutions have similar obligations under the EU Charter of Fundamental Rights.

The agreement seeks to establish swift return from Greece to Turkey of any migrant or asylum seeker attempting to reach Greece who does not apply for international protection there or whose application is deemed unfounded or inadmissible. In order to facilitate such returns, Turkey may be declared to be a “safe third country” which could allow for the dismissal of asylum requests in Greece based on this element alone, and the rapid return of applicants.

The EU and Turkey, in their joint statement, contend that these operations will not be carried out in violation of international and EU law, including the prohibition of collective expulsions and the principle of *non-refoulement*, which prohibits return to a country where the returned person faces a real risk of torture or other serious violation of human rights. It is nevertheless unclear how the system proposed could lead to swift returns, while respecting international human rights and refugee law, the EU Charter of Fundamental Rights and the EU Asylum Procedure Directive, for a number of reasons.

First, the ICJ stresses that Turkey cannot be considered a “safe third country” for the return of migrants and refugees. Authoritative reports and international jurisprudence on Turkey demonstrate that neither the general human rights situation in Turkey, nor its asylum procedure and reception system are in line with international law, including Turkey’s obligations under the European Convention on Human Rights’ prohibition of inhuman and degrading treatment in article 3 ECHR.

Second, the ICJ affirms that the commitment of Turkey to adapt its refugee and asylum system to comply with international law and standards does not in itself allow for returns from EU countries in compliance with the principle of *non-refoulement*. International and EU law binding on Greece and other EU Member States requires an assessment of the situation in the country of return at the moment the return is effected to determine whether there is a real risk of violations of human rights. Therefore, at present, and irrespective of the commitments made on reform, any return to Turkey would be at high risk of infringing the principle of *non-refoulement* and the returning country’s legal obligations.

Crucially for the prospects of the new system, it is also clear that the Greek asylum system is not in a position to proceed to a swift consideration of asylum applications in compliance with human rights, including procedural guarantees.

"As is clear from ongoing Council of Europe discussions about implementation of European Court decisions against Greece, the Greek asylum procedure cannot yet provide for an effective remedy for cases of arbitrary *refoulement*. Without respect for such guarantees, many migrants will be left vulnerable." said Massimo Frigo, legal adviser at the ICJ.

The ICJ emphasises that, whatever co-operative arrangements are put in place, Greece and Turkey will have responsibility under international human rights and EU law as regards the rights of persons subject either to Greek or Turkish territorial jurisdiction or to Greek or Turkish authority and/or control. Furthermore, through its direct involvement in and financing of these arrangements, the EU itself may be complicit in any breach of the right of asylum, the prohibition of collective expulsions, the prohibition of *non-refoulement* or the right to an effective remedy.

The ICJ is further concerned at the "one for one" resettlement mechanism that will be established to settle one Syrian refugee in a EU country for every Syrian returned to Turkey. It is of serious concern that this mechanism contemplates the return of Syrians to Turkey. Syrians are *prima facie* entitled to international protection and would likely fall within one of the grounds of international protection of the EU Qualification Directive. It would therefore be unlawful under EU law to return them to Turkey.

Background: The content of the deal

The EU-Turkey statement affirms that "[a]ll new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey", but requires compliance with international and EU law, including the prohibition of collective expulsions and the principle of *non-refoulement*. It affirms that this measure is "temporary and extraordinary".

The swift return to Turkey will concern migrants or asylum seekers "not applying for asylum or whose application has been found unfounded or inadmissible" in accordance with the Asylum Procedure Directive.

Operationally, the executions of swift returns will imply the presence of "Turkish officials on Greek islands and Greek officials in Turkey" and the return operations will be financed by the EU.

A resettlement mechanism will be established to settle one Syrian refugee in a EU country for every Syrian returned to Turkey with priority given "to migrants who have not previously entered or tried to enter the EU irregularly". The maximum amount of resettlement places available will stand at 72,000, after which the resettlement mechanism will be discontinued.

Finally, "Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect."