EUROPEAN COURT OF HUMAN RIGHTS

Application No. 54796/16

BETWEEN:

J.B.

Applicant

-and-

Greece

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

The AIRE Centre (Advice on Individual Rights in Europe), DCR (Dutch Council for Refugees), ECRE (European Council on Refugees and Exiles) and ICJ (International Commission of Jurists).

4 October 2017

1. ECHR right of *non-refoulement* under Art. 3

1. The background to this litigation is the implementation of the statement adopted jointly by the Member States of the EU and Turkey on 18th March 2016 for the processing of refugees and migrants, including asylum seekers, who arrived in Greece from Turkey after 20th March and with the aim of ending 'irregular migration' from Turkey to the EU, under the assumption that Turkey constitutes a 'Safe Third Country' (STC).[1] This section focuses on the obligations of the Contracting Parties to the Convention, including the *non-refoulement* principle, in the context of returns to Turkey of refugees and migrants, with special reference to returns carried out in application of a STC rule.
2. Under this Court's jurisprudence in application of the principle of *non-refoulement*, the assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Art. 3 in the destination country first requires the Court to examine the conditions in that country in the light of the standards of Art. 3 of the Convention.[2] Such assessment must be 'a rigorous one'.[3] Initially it is in principle for the applicant to adduce evidence 'capable of proving' the classic *Soering* test.[4] But, ultimately, the decision-maker must 'assess the issue in the light of all the material placed before it and, if necessary, material obtained of its own motion'.[5] Where evidence 'capable of proving' such risk is adduced, 'it is for the Government to dispel any doubts about it'.[6] Where the situation in the receiving state is such that the removing state can be deemed to have constructive knowledge of it, it is under a duty of enquiry to verify, before removal, that the person concerned will not face a real risk of prohibited treatment in the country of destination.[7] The assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination' and '[t]his in turn must be considered in the light of the general situation there *as well as* the applicant's personal circumstances'(*emphasis added*).[8] This Court has reaffirmed that the fact that an applicant might fail to describe the risks faced does not exempt the sending country from complying with its positive obligations under Art. 3 of the ECHR.[9] It is the responsibility of the removing State to ensure respect for the principle of *non-refoulement*.[10] Consequently, the sending State also has a positive obligation to carry out an appropriate examination of individual asylum applications.[11]
3. In *non-refoulement* cases, this Court, in assessing the compatibility with Art. 3 of a removal that has already taken place considers the information and the facts that were known or that ought to have been known to exist at the time of removal.[12] In cases where the prospective removal has yet to take place, the Court will assess the situation on the basis of information known to it at the time when the Court considers the case.[13] In *F.G. v Sweden*, the Grand Chamber of this Court held that the competent domestic authorities should investigate, 'of their own motion', not only circumstances presenting 'a well known general risk' in relation to which 'information […] is freely ascertainable from wide number of sources'[14], but also 'facts relating to a specific individual that could expose him to a risk of ill treatment in breach of [Art. 2 and 3 ECHR]' when these are made known to them.[15] Where the

[1] European Union: Council of the European Union, EU-Turkey statement, 18 March 2016, 18 March 2016, available at: http://www.refworld.org/docid/5857b3444.html; See also UN High Commissioner for Refugees (UNHCR), Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016, available at: http://www.refworld.org/docid/56f3ee3f4.html
[2] *Mamatkulov and Askarov v. Turkey* [GC] nos 46827/99 and 46951/99, §67; F.*G. v Sweden* [GC] no. 43611/11, §112.
[3] *Sufi and Elmi v. UK*, nos 8319/07 11449/07, (ECtHR, 28 June 2011) §214; *Chahal v. UK* no 22414/93 (ECtHR, 27 June 1995), § 96; *Saadi v. Italy* no 37201/06 (ECtHR, 28 February 2008), § 128.
[4] *Sufi and Elmi v UK*, above, §214.
[5] *N v. Finland* no 38885/02 (ECtHR, 26 July 2005), §160; *Hilal v. UK* no 45276/99 (ECtHR, 6 March 2001)*, §*60; *Vilvarajah and Others v. UK* no. 45/1990/236/302-306 (ECtHR 26 September 1991), §107.
[6] *N. v. Sweden* no 23505/09 (ECtHR, 20 July 2010), §53; *R.C. v. Sweden* no 41827/07 (ECtHR, 9 June 2010), §50.
[7] *Mamatkulov and Askarov v. Turkey* [GC] (see *supra* no. 2), §69.
[8] *Sufi and Elmi v UK* (*supra* no.3), §216; *Vilvarajah v UK* (*supra* no.5) §108
[9] *Hirsi Jamaa and Others v. Italy* no 27765/09 (ECtHR, 23 February 2012), §157
[10] *Sharifi and Others v. Italy and Greece* no 16643/09 (ECtHR, 21 October 2014), §232, reminiscent of the principles of *M.S.S. v. Belgium and Greece* [GC] no 30696/09 (ECtHR, 21 January 2011) and Hirsi Jamaa and Others [GC] (above), §§338-343 and 146-148 respectively.
[11] *M.S.S. v. Belgium and Greece* (above), §321.
[12] *Ilias and Ahmed v. Hungary* no 47287/15 (ECtHR, 14 March 2017), §105, cross-referencing: *Muminov v. Russia*, no. 42502/06, (ECtHR 11 December 2008), §§ 91-92. See also: *F.G. v Sweden* (*supra* no.2), §115, cross-referencing *Chahal v. UK* (*supra* no.3), §86
[13] *Chahal v. UK* (*supra* no.3), §86; *Ahmed v. Austria* no 25964/94 (ECtHR, 17 December 1996), §43.
[14] F.*G. v. Sweden* [GC] no 43611/11 (ECtHR, 23 March 2016), §§126 and 157; *Hirsi Jamaa and Others v. Italy* (*supra* no.9) §§ 131-133; *M.S.S. v. Belgium and Greece (supra* no.10) §366.
[15] *F.G. v. Sweden*, above, §127 and 157.

applicant specifically claims to be 'a member of a group systematically exposed to […] ill-treatment', the protection of Art. 3 is engaged 'when the applicant established […] that there are serious reasons to believe in the existence of [such] practice […] and in his or her membership of the group concerned'. [16]

4. Most recently, this Court has had the opportunity to consider in particular returns pursuant to the STC rule in the case of *Ilias and Ahmed v Hungary*, which is now before the Grand Chamber at the request of the Hungarian Government.[17] In its Chamber judgment, this Court first found that the approach of the Hungarian authorities created an 'unfair and excessive burden of proof';[18] and secondly, it held that the authorities had failed to comply with their obligation to consult available material from reliable sources that clearly stated that neither Serbia, nor the former Yugoslav Republic of Macedonia nor Greece[19] had adequate asylum systems at the material time.[20] The inclusion of a country in a STC list does not alter the principle that the returnee must have access to an individualized, fair and efficient asylum procedure for the protection against arbitrary *refoulment* to be practical and effective, as opposed to theoretical and illusory.[21]
5. Similarly, the interveners note that a Contracting Party's obligations to prevent Art. 3 violations require a thorough investigation of the general situation for those returned to Turkey and for each individual in particular. The EU-Turkey press statement does not contain an explicit assessment of whether Turkey is a STC for international protection applicants,[22] but includes only generic and unverified assumptions.[23] In reality, despite some positive steps by the Turkish government, Turkey's asylum system is still characterized by multiple deficiencies.[24] These include: its dual protection structure[25] and the maintenance of a 'geographical limitation' to the 1951 Refugee Convention; the lack of a registration system: instances of forcible returns with a potential risk of Art. 3 violations; lack of procedural safeguards during the asylum procedure; and denial of access to effective remedies in law and in practice.[26]
6. **The interveners submit that asylum procedures reliant on STC and FCA listing - without a thorough, individualised assessment of all the relevant facts and circumstances of each and every individual case – leads to a violation of the non-refoulement principle under Art. 3.[27]**

Bilateral diplomatic assurances and the 'safe third country' concept

7. This Court has not yet expressly addressed the issue of diplomatic assurances linked to the STC presumption. However, according to this Court's established case law on diplomatic assurances[28] in general, a State wishing to rely on diplomatic assurances must ascertain, on the basis of objectively verifiable evidence, that the assurances are reliable.[29] The risk of ill- treatment must be ruled out.[30] Furthermore, the assurances must be given by an organ empowered to provide such assurances on

[16] *Ibid. §127*
[17] *Ilias and Ahmed v. Hungary* (*supra* no.12): this judgment is not final. Request for referral to the GC has been accepted.
[18] In particular, the Court considered that such approach would create a presumption that needed to be rebutted by the applicants, *ibid.* §118. This issue will not be discussed in detail in this comment.
[19] *M.S.S. v. Belgium and Greece* (*supra* no.10) § 62 - 86, 231, 299-302 and 321
[20] *Ilias and Ahmed v. Hungary*, (*supra* no.12), §§ 121 - 123
[21] *Ibid.* §117-124
[22] EU-Turkey statement (*supra* no.1): '*All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulment'*.
[23] *Ibid.*
[24] Please refer the the Annex
[25] *Ibid.*
[26] *Ibid. ,*
[27] *Ilias and Ahmed v. Hungary* (*supra* no.12), §124-125
[28] Even where such high levels of safeguards do apply, the former UN Special Rapporteur on Torture affirmed that, 'diplomatic assurances with regard to torture are nothing but attempts to circumvent the absolute prohibition of torture and refoulement.'(Manfred Nowak, UN Special Rapporteur on Torture, Annual Report to the General Assembly, UN Doc. A/60/316, 30 August 2005 (Nowak Report 2005), §32). The ICJ supports this position and opposes all use of diplomatic assurances against torture or other ill-treatment (See, ICJ, *Assessing Damage, Urging Action, Report of the Eminent Jurist Panel on Terrorism, Counter-terrorism and Human Rights*, (ICJ, 2009), pp.104-106 & 118-119; ICJ, Legal Commentary to the ICJ Berlin Declaration (ICJ, 2008), pp.100-104.). See also: Amnesty International, Human Rights Watch and International Commission of Jurists, Reject Rather than Regulate: Call on Council of Europe Member States not to Establish Minimum Standards for the Use of Diplomatic Assurances in Transfers to Risk of Torture and Other Ill-Treatment (December 2005)
[29] *Othman (Abu Qatada) v. UK* no 8139/09 (ECtHR, 17 January 2012), § 189
[30] *Saadi v. Italy* [*supra* no.2] §148; *Ismoilov and Others v. Russia* no 2947/06 (ECtHR, 24 April 2008), § 127; *Ryabikin v. Italy* no 8320/04 (ECtHR, 19 June 2008), § 119.

behalf of the State.[31] The Court will question the value of assurances that an individual would not be subjected to torture, when there appears to be no objective means of monitoring their fulfilment.[32] At the very least, under this Court's case law, diplomatic assurances must fulfil the 11 minimal conditions outlined in its landmark judgment *Othman v. UK*, including the need for assurances to be specific.[33]

8. In *M.S.S. v. Belgium and Greece*,[34] the Grand Chamber of this Court concluded that the 'assurances given by the Greek Government were inadequate and should not have been relied upon'. The assurances were effectively rebutted by detailed information from credible sources, including reports by reputable human rights organisations. **The interveners submit that generic diplomatic assurances on the STC concept must not only be tested against such detailed and documented information but also by examining the context in which such assurances are given.[35] The interveners consider that in countries where conditions rapidly change, there are high numbers of people in need of protection, inadequate reception conditions and deficiencies in an asylum system, general assurances cannot be relied upon at all.**

The use of international reports and evidence

9. In *MSS*, the Grand Chamber reiterated the view it had taken in *Saadi v Italy* that '*the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention*'.[36]
10. This Court has for years affirmed the importance of international and national NGOs in monitoring, reporting and providing evidence of the actual human rights situation in a particular country, and specifically, in relation to the contemplated return of people raising the potential danger of Art. 3 violations.[37] According to this Court, in order to evaluate a 'country's safety', due consideration must be given to the range of the publications available and the consistency of the nature of the information reported.[38] With respect to this, most recently in the case of *Ilias and Ahmed* the Court held that the mere inclusion of a country in a safe third country list does not suffice to conclude that the country is safe for a particular applicant, and that facts and relevant reports must be given serious consideration.[39]
11. The interveners place at the disposal of this Court Annex/50, which contains a non-exhaustive list of reports by international and civil society organisations documenting the situation in Turkey.
12. **The interveners submit that a full, Convention-compliant assessment must be carried out, with the required 'anxious scrutiny', to determine whether Turkey can be considered as systemically or systematically a safe third country. Such assessment must entail: (i) an analysis and assessment of reports of international and civil society organisations on that country, including whether such organisations, in turn, are able to carry out independent human rights monitoring activities, including of the situation of returnees, in that country; and (ii) an assessment of the ability to credibly monitor the relevant human rights situation in a country under a state of emergency. In addition, in relation to each individual, there must be a detailed and individualised assessment of whether Turkey will be safe for the particular asylum seeker whose**

[31] *Soldatenko v. Ukraine* no 2440/07 (ECtHR, 23 October 2008), § 73.
[32] Shamayev and Others v. Georgia and Russia, no. 36378/02 (ECtHR, 12 October 2005) §350; *Mamatkulov and Askarov v Turkey*, Nos. 46827/99 and 46951/99 (ECtHR GC 4 February 2005) §73, See: Wouters, Cornelis Wolfram. *International legal standards for the protection from refoulement.* Diss. Intersentia Publishers, Antwerpen, 2009, § 3.3.2.6b, p.287
[33] *Othman (Abu Qatada) v. UK* (*supra* no 29) §189
[34] *M.S.S. v. Belgium and Greece* [*supra* no.10], §§348-353
[35] This is in line with the UNHCR, *Note on Diplomatic Assurances and International Refugee Protection*, August 2006, §§48-49: *'In assessing the weight which may be given to diplomatic assurances in the examination of an asylum claim, the decision-making authority should be guided by the criteria which have been developed under international and regional human rights law for the evaluation of diplomatic assurances.'*
[36] *M.S.S. v. Belgium and Greece* [*supra* no.10], §353; *Saadi v. Italy* [*supra* no 2] §147
[37] *Mohammed v. Austria* no 2283/12 (ECtHR, 6 June 2013) §§97-102; *Sharifi v. Austria* no 60104/08 (ECtHR, 5 December 2013) §46; *Mohammadi v. Austria* no 71932/12 (ECtHR, 3 July 2014) §69; *M.S.S. v. Belgium and Greece* [*supra* no.10] *§§346-353*; *F.G. v Sweden [GC]* no. 43611/11 (ECtHR, 23 March 2016)*, para 117, cross-referencing Safaii v Austria* no 44689/09 (ECtHR, 7 May 2014) *§ 44&46.*
[38] *Safaii v. Austria* [*above*],§§46-47.
[39] *Ilias and Ahmed v Hungary* [*supra* no.12], §117-124

return is contemplated, in line with this Court's case law, and of the vulnerability that this situation creates for those returned.[40]

The Safe Third Country concept in international refugee law

13. States parties to the 1951 Refugee Convention (RC) and its 1967 Protocol are normally required to accept those who claim to be refugees or to examine their claim.[41] However, States may, in certain circumstances, send asylum-seekers to countries that can be considered safe, provided that removal there is in line with their obligations under the Refugee Convention and, in particular, the principle of *non-refoulement* under Art. 33 of the Refugee Convention.[42]
14. The UN High Commissioner for Refugees (UNHCR), scholars and domestic judges, have expressed the view that a State may only send an asylum-seeker to a country where he or she will be granted protection 'comparable' or 'equivalent' to that to which he or she is entitled under the Refugee Convention in the sending State, including, at least, all the rights that the Refugee Convention guarantees.[43] The sending State must also satisfy itself that the receiving State interprets refugee status in a manner that respects the true and autonomous meaning of the refugee definition set by Art. 1 of the Refugee Convention.[44]
15. **The interveners submit that a return that exposes applicants to the risk of *refoulement*, and deprives them of rights guaranteed by international law, including the Refugee Convention in particular, clearly violates these principles, regardless of whether the third country is listed as a 'safe third country' or not.**[45]

Relevant provisions under EU fundamental rights legislation and the CEAS

16. The EU Charter of Fundamental Rights (CFR)[46] enshrines guarantees fundamental to the issues under consideration, such as the right to asylum (Art.18), the protection of human dignity (Art.1) and the prohibition of torture and inhuman and degrading treatment (Art.4). As the CFR forms part of the EU primary legislation, instruments of secondary EU law and the provisions of the rAPD specifically must be interpreted in line with it.
17. As regards EU Member States, the STC concept is regulated under Art.38 rAPD [47] and mentioned under Art.3§3 of the Dublin III Regulation. [48] By identifying a third country as a STC the State with which an asylum application has been lodged is empowered to conclude the asylum procedure at the admissibility stage, exempting itself from the obligation to examine it on the merits,[49] 'where it can

[40] *Tarakhel v. Switzerland [GC]* no 29217/12 (ECtHR, 4 November 2014).
[41] UNHCR, *Background Note on the Safe Country Concept and Refugee Status Background Note on the Safe Country Concept and Refugee Status* EC/SCP/68, 26 July 1991, para 16.
[42] UNHCR, *EXCOM Conclusions No. 15 (XXX) of 1979 on refugees without an asylum country and No. 58 (XL) of 1989 on the irregular movement of asylum-seekers, in Compilation of Conclusions Adopted by the Executive Committee on the International Protection of Refugees: 1975-2004*, available at http://www.unhcr.org/uk/publications/legal/41b041534/compilation-conclusions-adopted-executive-committee-international-protection.html
[43] Michelle Foster, *Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State*, 28 Michigan Journal of International Law 233 (2007), available at http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1175&context=mjil, p. 264-5.
[44] University of Michigan Law School, *The Michigan Guidelines on Protection Elsewhere*, Michigan Journal of International Law 209 (2007), available at http://www.refworld.org/docid/4ae9acd0d.html, para 4 and UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016, available at: http://www.refworld.org/docid/56f3ee3f4.html p. 2
[45] Joined Cases C-411/10 *N.S. v. Secretary of State for the Home Department* and C-493/10 *M.E. and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, ECLI:EU:C:2011:865.
[46] Council of the EU, *Charter of Fundamental Rights of the European Union* (*2007/C 303/01*), 14 December 2007, C 303/1, at: http://eur-lex.europa.eu/legal-content/En/ALL/?uri=OJ:C:2007:303:TOC
[47] Council of the EU, *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 ("Recast Asylum Procedures Directive", hereafter "rAPD"),* 29 June 2013 OJ L 18/60-180/95, http://bit.ly/2oU5GfH
[48] Important sources on the 'Safe Country' concepts include: *the Council Resolution (EC) of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries ("London Resolution")*; *Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention")*, [1990] OJ L 176/98, p. 0001 - 0012; UNHCR, *Background Note on the Safe Country Concept and Refugee Status*, 26 July 1991, EC/SCP/68, § 3, at: http://www.unhcr.org/uk/excom/scip/3ae68ccec/background-note-safe-country-concept-refugee-status.html; UNHCR, *Note on Legal Considerations for Cooperation between the European Union and Turkey on the Return of Asylum-Seekers and Migrants*, 10 March 2016, at http://www.unhcr.org/uk/protection/operations/56f3af909/note-legal-considerations-cooperation-european-union-turkey-return-asylum.html; European Council on Refugees and Exiles (ECRE), *"Safe Countries of Origin": A safe concept?*, September 2015, AIDA Legal Briefing No. 3, at https://www.ecre.org/wp-content/uploads/2016/06/AIDA-Third-Legal-Briefing_Safe-Country-of-Origin.pdf.
[49] rAPD (*supra* no 47) Recitals 43-44 and 46 and Art. 33(2).

reasonably be assumed that' another country can be entrusted with the processing of the asylum claim or provide sufficient protection' or where 'a first country of asylum has granted the applicant refugee status or […] sufficient protection', and would grant the applicant's readmission.[50]

18. The UNHCR has observed that allowing a country not to examine an asylum application on the merits on the basis of a 'safe country' rule, creates a 'grave confusion' between admissibility decisions 'made on purely formal grounds' and decisions on the substance of the claim, which, in turn, pertain to a claim's well-foundedness and should be treated autonomously. To collapse these two steps into one would amount to denying the applicant 'the opportunity […] to present the grounds' on which his or her claim to international protection is premised.[51] This is all the more so when the applicant's transfer is performed on the basis of a 'sufficient connection'[1] with a third country, based on which he/she 'can reasonably be expected to seek protection' there. Sometimes it has even been claimed that the mere transit of the applicant through the country satisfies the sufficient connection requirement.[52] The UNHCR contested the assimilation of merely transiting with sufficient connection, stating that transit thus defined 'does not, in and by itself, provide sufficient grounds'[53] for a State 'to refuse considering [the request] in substance'.[54] Transit is 'often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection'. When a transfer is based on an agreement with a third country by which the latter commits to providing asylum determination and international protection,[55] other commentators have noted that this too does not equate to an '[a]ssurance that the […] country will actually provide a fair refugee status determination (or […] effective protection […]'.[56]
19. The Member State must assess the safety of the STC taking into consideration the applicant's specific circumstances.[57] To this end, the situation in the STC shall be such as to ensure that: '(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; […] (c) the principle of *non-refoulement* in accordance with the Geneva Convention [RC] is respected; (d) the prohibition of removal, in violation of the [rights under - among others - Art.3 ECHR, Art.4 CFR] is respected; and (e) the possibility exists to request refugee status and […] receive protection in accordance with the [RC]'. The rules governing the designation of a country as a STC must be laid down in national law in line with the criteria under Art.38.3 rAPD.[58]

The EU-Turkey statement and responsibility under ECHR

20. The legal nature of the EU-Turkey agreement is unclear. Despite its name, according to the CJEU in the cases *of NF NG and NM v European Council* (appeal pending),[59] it is not an act of the European Council or of any other institution of the EU, but an arrangement between individual Member States and Turkey. Thus, as the CJEU ruling stands at present, the *Bosphorus*[60] principle does not apply. The safeguards of the ECHR remain, as always, in place. Responsibility remains with the Greek authorities to ensure that, in implementing the agreement, respect for the principle of *non-refoulement* and the right to an effective remedy under the ECHR are upheld.[61]

[50] rAPD, (*supra* no 47) Recitals 43 and 44.
[51] UNHCR, *Background paper No. 2: The application of the "safe third country" notion and its impact on the management of flows and on the protection of refugees*, May 2001, available at: http://bit.ly/2hLhym9
[52] See: Rosemary Byrne and Andrew Shacknove, *The Safe Country Notion in European Asylum Law* 9 Harvard Human Rights Journal 185 (1996); p.9. cross-ref, UNHCR, *The Concept of 'Protection Elsewhere'*, 7 International Journal of Refugee Law 123 (1995), p.125.
[53] UNHCR, Background paper No. 2 [*supra* no 48]; UNHCR Executive Committee Conclusions [*supra* no 42]
[54] See: *supra no 48;* Violeta Moreno-Lax, *The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties,* in Guy S. Goodwin-Gill and Philippe Weckel (eds) *Migration & Refugee Protection in the 21st Century: Legal Aspects* (Brill, 2015), p.681.
[55] Violeta Moreno-Lax, *The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties, above,* p.632.
[56] Legomsky, Stephen H. *Secondary refugee movements and the return of asylum seekers to third countries: the meaning of effective protection*, International Journal of Refugee Law 15.4 (2003): p567-677; p.633.
[57] rAPD, (*supra* no 47) Art. 38
[58] Prior to the rAPD, the term 'sufficient' to define the protection to be afforded in the STC was questioned by the UNHCR comments that protection had to be 'effective' and 'available in practice'. See: UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004) p.34 http://www.unhcr.org/protect/PROTECTION/43661ea42.pdf.
[59] Case T-192/16 NF v European [2017] ECLI:EU:T:2017:128 ; T-193/16 NG v European Council [2017] ECLI:EU:T:2017:129 and T-257/16*NM v European Council* [2017], ECLI:EU:T:2017:130
[60] *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v Ireland*, no 45036/98 (ECtHR, 30 June 2005)
[61] See *M.S.S. v. Belgium and Greece*[*supra* no.10] in a situation, which is regulated at national level by EU law.

21. The Greek measures implementing the EU-Turkey agreement [Art. 60(4) of L 4375/2016] were voted into law a few days after its entry into force, and foresee the creation of an expedited asylum procedure, 'in case of arrival of third country nationals or stateless persons arriving in large numbers who apply for international protection at the border or in port transit zones or national airports or during their stay in Reception and Identification Centres (RICs).'[62] It is claimed that the 'fast track' border procedures provided for in Art. 60(4) form part of the transposition into Greek law of rAPD.[63] In essence, this legislation introduces an even more expedited procedure than the 'fast track' procedure already in place at the Evros Greek-Turkish border. These new provisions introduce a special border procedure, known as the 'fast-track' border procedure (Eastern Aegean islands).[64] As measures adopted as part of the transposition of the EU rAPD into Greek legislation, their implementation attracts the safeguards of the CFR and the recast rAPD, which are thus applicable to the procedures foreseen in Art. 60(4) L 4375/2016. As noted above the safeguards of the ECHR, as always, remain in place.

Section II: Procedural implications under Art. 13 ECHR (and Art. 47 CFR) and the relevant aspects of the CEAS and Greek Asylum Law

22. When assessing remedies against potential violations of the principle of *non-refoulement,* under Art. 13 ECHR read together with Art. 3 ECHR (but also, depending on the case, Art. s 2, 5 or 6 ECHR), this Court maintained that in order to be effective they require an 'independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Art.3,'[65] as well as automatic suspensive effect on the execution of removal measures.[66] In relation to Greece, the Court has already held that the right to an effective remedy against a negative substantive or procedural asylum decision must ensure that effective domestic procedural safeguards exist to protect applicants against arbitrary removal when risks of a breach of *non-refoulement* arise.[67]
23. When no further independent and effective remedy with automatic suspensive effect exists, this Court's case law obliges states to conduct rigorous examinations of all appeals against asylum decisions that risk causing a violation of the principle of *non-refoulment.*[68] This level of scrutiny must be applied equally to situations where an asylum applicant is to be returned to a country other than that from which they originally fled, even if the proposed State is a signatory of the ECHR.[69]
24. For a remedy to be effective in practice as well as in theory,[70] this Court's case law underlines the need for effective access to asylum appeals procedures. The Court has ruled that the lack of legal assistance can render domestic remedies inaccessible and, therefore, ineffective, amounting to a violation of Art. 13 ECHR.[71] In *M.S.S. v. Belgium and Greece*, the Court considered that *inter alia* the shortage of legal aid lawyers rendered the system ineffective in practice and 'may also be an obstacle hindering access to the remedy' under Art.13 'particularly where asylum-seekers are concerned.'[72] This Court has stated in various cases that the denial of - or the lack of - access to asylum procedures hinders the right to an

[62] Greek Council for Refugees (GCR), Fast-Track Border Procedure (Eastern Aegean Islands), available at Asylum Information Database (AIDA) http://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/fast-track-border-procedure-eastern-aegean
[63] rAPD, (*supra* no 47)
[64] *Greece: Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC* [Greece], 3 April 2016, at https://www.synigoros.gr/?i=foreigner.el.politikoi-nomoi.359552. The fast track border procedure under Article 60(4) applies to seekers of international protection subject to EU-Turkey statement (namely applicants arrived on Greek Islands of Eastern Aegean Sea after 20 March 2016 and remain in those islands' RICs. Art. 60(4) doesn't refer to the statement, but applies to "the situation of large arrivals", so I'd word this more carefully in the footnote or delete an explanation
[65] *M.S.S. v. Belgium and Greece* [*supra* no.10] para 293; see also *Jabari v. Turkey* no 40035/98 (ECtHR, 11 July 2000), para 50; *Abdolkhani and Karimnia v. Turkey* no 30471/08 (ECtHR, 22 September 2009), para 108.
[66] *Gebremedhin v. France* no 25389/05 (ECtHR, 26 April 2007), para 67.
[67] Either directly, or through removal to a State which is likely to return the applicant to a country where their Article 3 rights are at substantial risk of violation, i.e. 'indirect' or 'chain' *refoulement*, as in *M.S.S. v. Belgium and Greece* [*supra* no.10].
[68] Under the ECHR, the Court has held that, when an individual appeals against a refusal of his or her asylum claim, the appeal must have an automatic suspensive effect when the implementation of a return measure against him or her might have potentially irreversible effects contrary to Article 3. See European Union Agency for Fundamental Rights (FRA), *Handbook on European law relating to asylum, borders and immigration* (FRA 2013), p. 102, cross-citing Čonka v. Belgium no 51564/99 (ECtHR, 5 February 2002), §§81-83; *Gebremedhin* [*supra* no.66], §66; *M.S.S. v. Belgium and Greece* [*supra* no.10], §§290-293; and *I.M. v. France* no 9152/09 (ECtHR, 2 February 2012), §§132-134.
[69] *M.S.S. v. Belgium and Greece* [*above*]; *T.I. v. UK* no 43844/98 (ECtHR, 7 March 2000); *K.R.S. v. UK* no 32733/08 (ECtHR, 2 December 2008).
[70] See e.g. *McFarlane v. Ireland*, no 31333/06 (ECtHR, 10 September 2010), para 114.
[71] *M.S.S. v. Belgium and Greece* [*supra* no.10], para 319; *I.M. v. France* [*supra no 68*] §26&151.
[72] *M.S.S. v. Belgium and Greece* [*supra* no.10], para 319.

effective remedy.[73] In addition, where EU MS are concerned, the importance of legal assistance in ensuring an accessible and effective remedy is set out in EU law in the Charter of Fundamental Rights (CFR)[74] and Recast Asylum Procedures Directive.[75]

25. The interveners also draw the Court's attention to the specific considerations applying to the rights under Art. 13 ECHR when invoked in matters to which EU Law applies. This Court has repeatedly affirmed that, for ECHR purposes, migration and asylum matters do not fall under the scope of Art. 6 ECHR, in that they do not concern 'civil rights' within the meaning of this provision.[76] Where there has been an arguable violation of another Convention right, any right to an administrative review of a decision or to an appeal must therefore be compliant with the requirements of Art.13 ECHR.[77] In some cases the only remedy that will suffice in this respect is a judicial remedy,[78] thus effectively importing the 'access to court' requirement of Art. 6[79] into Art. 13. The interveners submit that, when a case involves a State that is both a party to the ECHR and a EU MS the situation is, however, different. Art. 47 of the CFR codified the EU law *acquis* on effective judicial protection, bringing the right to an effective remedy and that to a fair trial (Art. 6(1) ECHR) under the same provision, specifying that the former covers remedies 'before a court'.[80] The explanations to the CFR in relation to its Art. 47 make expressly clear that the standards and requirements of Art. 6(1) ECHR apply in the interpretation of its provisions. Art. 47 CFR applies to matters of EU law, including migration and asylum that are not governed by Art. 6 as a matter of ECHR law.[81] The interveners wish to draw this Court's attention to the fact that the explanations to the CFR explicitly extend the right to a 'fair and public hearing […] within a reasonable time by an independent and impartial tribunal established by law' beyond 'disputes relating to civil law rights and obligations', to the right to 'being advised, defended and represented' and the right to be granted legal aid in situations where the person concerned 'lack[s] sufficient resources' and 'in so far as [it] is necessary to ensure effective access to justice'. [82] Art. 53 ECHR requires the Court to take this into account.[83]
26. In response to an 'arguable complaint' of a potential Art. 3 ECHR violation, to satisfy the conditions of Art. 13, this Court's case-law holds that an effective remedy must ensure a high threshold of scrutiny of these cases, and must take into account all known details of the applicant's condition and country of proposed return when evaluating these risks as grounds for protection. Furthermore, the authorities must automatically suspend the execution of any expulsion measure until the *non-refoulement* risk is evaluated at all levels of the remedy procedure.[84]

The right to an effective remedy under EU law taken together with the ECHR, under Art. 53 ECHR

27. The CFR establishes the right to an effective remedy (Art. 47 CFR), which includes the right to a fair and public hearing (Art. 47§2).[85] Art. 41§2 CFR also provides for 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken'. **This provision means that asylum applicants must have an effective opportunity to put forward - and have note taken of - all elements that are relevant to their claims for protection, including at the admissibility stage**.

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[73] Ibid, para 304; the same principles were reiterated in *Hirsi Jamaa and Others v. Italy* [*supra* no.9].
[74] Council of the EU, *Charter of Fundamental Rights of the European Union 2007/C 303/01* (CFR), 14 December 2007, Art. 47: "[l]egal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."
[75] See, in particular, rAPD, (*supra* no 47), Art 20.
[76] See e.g. *Maaouia v France* no 39652/98 (ECtHR, 5 October 2000).
[77] See *Maaouia v. France* [above], §38; see also *G.R. v. the Netherlands* no 22251/07 (ECtHR, 10 January 2012), § 49-50.
[78] See e.g. *Z and Others v. the United Kingdom* no 29392/95 (ECtHR, 10 May 2001).
[79] See e.g. *Golder v. UK* no 4451/70 (ECtHR, 21 February 1975), § 36.
[80] Explanations Relating To The Charter Of Fundamental Rights (2007/c 303/02), in particular references to: Case 222/84 Johnston [1986] ECR 1651; and others (Title VI, Explanations to Art. 47). http://bit.ly/2fN6yAz
[81] See e.g. Case C-199/11 *Europese Gemeenschap v. Otis NV and Others* [2012] ECLI:EU:C:2012:684, para 49; Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland* [2010] ECLI:EU:C:2010:811, para 60; see also International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: a Practitioners' Guide* (International Commission of Jurists 2006), 46-49.
[82] CFR, Art. 47. The requirements and procedural guarantees surrounding the right to an effective remedy in the specific context of asylum decisions, as set out under secondary EU law, will be dealt with in more detail in the next section.
[83] ECHR, Art. 53: "Safeguard for existing human rights: Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party."
[84] *M.S.S. v. Belgium and Greece* [*supra* no 10], § 293.
[85] Case C-166/13 *Sophie Mukarubega v. Préfet de police, Préfet de la Seine-Saint-Denis* [2014] ECLI:EU:C:2014:2336, para 46, repeated that: "The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely."

28. The right to receive legal advice, defence and representation, under Art. 47§2, was clarified by the CJEU in *Marks and Spencer plc v. Commissioners of Customs & Excise*, [86] establishing the principle whereby 'individuals are […] entitled to rely before national courts, against the State […] not only when the Directive has not been implemented or has been implemented incorrectly, but also where the national measures correctly implementing the Directive are not being applied in such way as to achieve the result sought by it'.[87] The above provisions also establish a right of access to a remedy that should be prompt, and available before an independent authority.[88] The provision of legal aid is deemed as a precondition to ensure the effectiveness of access to justice. [89] This approach corresponds to this Court's principle that rights must be practical and effective, not theoretical and illusory, and that remedies 'must be 'effective' in practice and law.[90]
29. The Common European Asylum System (CEAS), comprising, *inter alia*, the Dublin III Regulation and the Recast Qualification (QD), Asylum Procedures (rAPD) and Reception Conditions Directives (RCD),[91] states that observance of their provisions should be in compliance with MS obligations under the Geneva Convention (RC)[92] and 'other relevant Treaties'[93], the CFR, CJEU and the ECtHR case law.[94] On various occasions this Court reviewed the compatibility of acts adopted by MS when discharging their EU obligations.[95]
30. <u>*Conditions for effective access to the asylum procedure:*</u> The rAPD sets common rules on the requirements and procedures provided for asylum applications in almost all EU Member States; Art. 38 rAPD, in particular, concerns the STC concept.[96] Under the rAPD, applicants should have effective access to the procedure,[97] have 'the opportunity to cooperate […] with the competent authorities', and have 'sufficient procedural guarantees'. For an application examination to be 'appropriate',[98] the assessment and the decision must be carried out 'individually, objectively and impartially', and the information relied upon has to be 'precise and up-to-date', and cover the condition of both the country of origin and that of transit, where relevant.[99] The assessment must consider the applicant's background and personal circumstances (Art. 4.3.c QD).
31. The interveners restate that under this Court's case law, cases involving an individual at risk of *refoulment*[100] and, in particular, when he/she claims to belong to a group 'systematically exposed to [....] ill-treatment' particular considerations apply. [101]

<u>*The role of EASO in Greece within Art. 60(4) of Greek Law L4375/16):*</u>

32. According to Art. 60(4) of L.4375/16, among the measures to be undertaken in situations of high migratory pressure, is the possibility for 'staff and interpreters deployed by the European Asylum Support

[86] Case 62/00 *Marks and Spencer plc v. Commission of Customs & Excise* [2002] ELI:U:C:2002:435, para 27.
[87] Ibid.
[88] International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: a Practitioners' Guide* (International Commission of Jurists 2006), available at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/08/right-to-remedy-and-reparations-practitioners- guide-2006-eng.pdf, 46-49.
[89] Explanations Relating to the CFR, Title VI — Justice, Explanation on Article 47, Official Journal of the European Union C 303/17 - 14.12.2007 and by analogy Case C-63/01, Evans and the Secretary of State for the Environment, Transport and the Regions, and The Motor Insurers' Bureau, judgment of 4 December 2003, §77; Case C-279/09, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland, judgment of 22 December 2010, §. 42
[90] See, among others, *Artico v. Italy* no 6694/74 (ECtHR, 13 May 1980); *Ilias and Ahmed v. Hungary* [*supra* no.12], § 98.
[91] Respectively: Regulation No. 604/2013/EU; Directive no. 2011/95/EU, Directive no. 2013/33/EU
[92] In *N.S.* and *M.E.* [*supra* no 10] the CJEU established that the operation of the CEAS is based on the full and inclusive application of the Geneva Convention and *Non-Refoulment* principle. Cross referencing cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and Others v. Bundesrepublik Deutschland* [2010] ECLI:EU:C:2010:105 and case C-31/09 *Nawras Bolbol v. Hungary* [2010] ECLI:EU:C:2010:351, §38.
[93] Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C 115/47, art 78; particular reference to United Nations Convention against Torture (UNCAT, 4 February 1984) and International Covenant on Civil and Political Rights (ICCPR, 16 December 1966).
[94] Cases C-411/10 *N.S. v.* and C-493/10 *M.E.* [*supra* no 45], §§ 63, 68, 87-91.
[95] See: *inter alia*, *M.S.S. v. Belgium and Greece* [*supra* no 10], §§57-86 and 250; *Sufi and Elmi v. UK* [*supra* no 10] §§30-32 and 219-226.
[96] See European Union Agency for Fundamental Rights (FRA), *Handbook on European law relating to asylum, borders and immigration* (2014), p. 64-65.
97 rAPD, (*supra* no 47) Recital 25, Art. 6.
98 *Ibid*, Art. 10.
[99] *Ibid.* Art.10(2)(b)
[100] *F.G. v. Sweden* (*supra* no.2) §§ 126, cross-citing *M.S.S: v Belgium and Greece (supra* no.10) §366
[101] *F.G. v. Sweden* (*supra* no.2) §120&127

Office ('EASO')[102] to assist the Greek Asylum Service in meeting its obligations under Art. 60(4)(a), *inter alia*, 'in the conduct of interviews with applicants' and other related procedures. The obligations, however, remain those of the Greek Asylum Service. The measures introduced with L.4375/16 set a deadline of one day for applicants to prepare for the interview, and a maximum time limit of 3 days for deciding on appeals.[103]

33. The Ministerial Decision, published in the Government Gazette 3455 B / 26.10.2016, provides further details of EASO's participation in the interviews. The requirement for the Greek Asylum Service to cooperate 'with other concerned national [and international bodies], other competent EU Member State authorities as well as the [EASO]'[104] is limited to a contribution to 'the correct research evaluation and gathering of information on the situation of the applicants' countries of origin, ensuring *inter alia* 'the quality of international protection decisions'.[105]
34. In 2016, EASO deployed officers in the Greek Hotspots specifically to assist with the 'extraordinary measures agreed under the EU-Turkey arrangement.[106] Interviews were conducted by EASO officials from other MS who were not civil servants under Greek law.[107] Actual admissibility decisions, however, are taken by Greek civil servants, often employed on short temporary contracts, on the basis of EASO's recommendations.[108]
35. Under Art. 2(6) of the EASO Regulation,[109] EASO has 'no powers in relation to the taking of decisions by [MS'] asylum authorities on individual applications for international protection'.[110] However, EASO's activities in the hotspots explicitly include 'admissibility interviews conducted, opinions drafted and decisions recommended'.[111] EASO is responsible for operational decision-making as to the interviews' methodology, but also for making the final admissibility 'recommendation'.[112]
36. There is of course no reason in principle why States should not discharge their obligations under the Convention by delegating those obligations to non-State bodies.[113] However, whether the failures are the consequences of the acts or omissions of public officials or delegated individuals or a combination of the two,[114] the Contracting Parties remain responsible under Art. 1 ECHR for securing all the Convention substantive and procedural rights.
37. The interveners are aware of consistent practice by the Greek Asylum Service by which it does not normally have any direct contact with the applicants for the purpose of verifying the information or asking further questions.[115] Although being established in Greek Law, the above arrangement, in practice, means that admissibility decisions on asylum applications in Greece are often based exclusively on EASO interviews and recommendations.[116] Other concerns about EASO's acts have been raised elsewhere.[117]
38. Importantly, we have been made aware of language barriers emerging in communication between both the applicants and EASO Officers/interpreters and between EASO and the Greek Asylum Service that hamper the effective exchange of information required for the adoption of decisions based on a

[102] Greece: Law No. 4375 of 2016 (*supra* no.66), Art. 60(4)(b)
[103] Greece: Asylum Reform in the wake of the EU-Turkey Deal, available at: http://www.asylumineurope.org/news/04-04-2016/greece-asylum-reform-wake-eu-turkey-deal - in particular: Art. 60(4)(b) 'was amended by Art. 86 of Law 4399/2016 to provide for EASO's involvement, while the possibility for the asylum interview to be conducted by an EASO caseworker was introduced by an amendment of June 2016. Art. 80(26) of Law 4375/2016 stresses the 'exceptional' nature of Art. 60 (4), stating that its validity shall not exceed 6 months and may be prolonged for a further 3-month period by a decision of the Minister of Interior and Administrative Reconstruction.'
[104] Greece: Law No. 4375 of 2016 (*supra* no.66), [Art. 1(4)(f) of Greek Law 4375/2016 (*supra* no.66).
[105] *Ibid.*
[106] ECCHR, Case report Greece: EASO's influence on inadmissibility decisions exceeds the Agency's competence and disregards fundamental rights, April 2017, at: http://bit.ly/2uhlhZF; AIDA, The Concept of vulnerability in European Asylum Procedures, Report, September 2017, p.29 at: http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_vulnerability_in_asylum_procedures.pdf
[107] AIDA Report, *above*, p.30-31; ECCHR, Case report, *above*.
[108] I*bid.*
[109] European Union, *Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office*, 19 May 2010, OJ L.132/11-132/28.
[110] *Ibid.*, Art. 2(6)
[111] ECCHR, Case report, (*supra* n.113)
[112] *Ibid.*
[113] See *mutatis mutandis*: *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, no. 5095/71; 5920/72; 5926/72 (ECtHR, 7 December 1976); *Costello Roberts v UK,* no. 13134/87 (ECtHR, 25 March 1993)
[114] See *mutatis mutandis: Riera Blume and others v Spain*, no. 37680/97, (ECtHR 14 October 1999), *inter alia §35.*
[115] Greece – Council of State Decision No 2347/2017, 22 September 2017: http://bit.ly/2xU3wlW
[116] ECCHR, Case report, (*supra* n.113)
[117] ECRE, *The Implementation of the Hotspots in Italy and* Greece, 5 December 2016, p.38, 44, at: http://bit.ly/2s0I37g

comprehensive account of the applicant's claims (see HIAS letter attached).[118] In light of this, it remains unclear how EASO interviewers, who do not normally speak, read or write Greek, communicate with the Greek contract staff recruited on a temporary basis by the Greek Asylum Service to make decisions after considering EASO interviewers' recommendations, as at the time of writing, the Greek Asylum Service has not yet made publicly available its Standard Operating Procedures (SoPs). The decision is taken in writing in Greek, and its bare substance, positive or negative, is communicated to the applicant – normally through an interpreter. At this stage neither the EASO interviewer nor the interpreter nor the applicant has access to the reasons in fact and law underlying the decision, which are in Greek rather than in a language any of them understands.[119] Neither the EASO officer nor the applicant has any means of knowing if the points raised in the interview were addressed.[120] Due to the inadequate provision of information and details of EASO's findings, and also often due to language barriers (EASO's working language being English),[121] local Greek lawyers often have difficulties in bringing effective challenges against the decisions resulting from EASO's work (see the attached HIAS letter).

39. This practice, in the instances in which it arises, is at variance with EU Member States' obligations under ECHR and EU law and specifically the right for effective access to a remedy and its link with language accessibility as this been highlighted both by ECHR law and case law[122] and EU law.[123]
40. Ensuring the right for the lawyer and the applicant to access the information on which decisions affecting the fundamental rights of the applicants are based, including the EASO recommendations, are crucial requirements guaranteeing the effectiveness of the remedy.[124]
41. Under the rAPD, the treatment of asylum applications in 'fast-track border procedure' cannot result in a failure to provide adequate procedural guarantees or be justified by the large numbers of arrivals. Decisions to return applicants to Turkey (based on the STC principle) take the form of inadmissibility decisions and must provide the legal ground for the return. The procedural shortcomings described above risk undermining the applicant's right to 'effective legal protection' of the rights under the EU asylum acquis. They also risk breaching the *non-refoulement* principle under refugee law and international human rights law, including Art. 3 ECHR.[125] Statements made by an applicant during the personal interview are considered to play an essential role in the assessment of the risk of *refoulement.* It is thus essential that the applicant and the EASO officials conducting the interviews, and the Greek Asylum Service decision makers are able to communicate effectively with one another during this process and the principles of transparency and legal certainty are guaranteed.
42. The interveners submit that, owing to its implementation in practice and insofar as the individual cases in which it is involved, the arrangement under which EASO exercises its functions within the Greek Asylum Procedure may constitute a *de facto* delegation by the Greek State of its decision-making powers and obligations. **This can lead to a failure on the part of Greece to ensure the 'rigorous scrutiny' required and to provide a clear and reliable framework for an effective remedy against *refoulement* in compliance with Art. 13 and 3 ECHR and the requirements of EU Law.**

[118] See Letter from Vassilis Kerasiotis, Country Director at HIAS (Greece) (*supra* no-123) (in the Annex)
[119] See *mutatis mutandis: Hadjianastassiou v. Greece* no. 12945/87 (ECtHR, 16 Dec 1992)
[120] See *mutates mutandis: Pronina v Ukraine* no. 63566/00, (ECtHR, 10 January 2006); *Hiro Balani v Spain* no. 18064/91 (ECtHR 9 December 1994); Georgiadis v Greece no. 21522/93 (ECtHR of 29 May 1997), Dulaurans v France, no 34553/97 (ECtHR, 21 March 2000).
[121] See *mutates mutandis*: *Kamasinski v Austria* no 9783/82, (ECtHR, 19 December 1989); *Lagerblom v Sweden* no 26891/95 (ECtHR, 14 April 2003)
[122] *Ilias and Ahmed v. Hungary* (*supra* no.12) §124: the provision of legal information in a language that applicant did not understand contributed to make 'his chances of actively participating in the proceedings and explaining the details of his flight […] extremely limited'. Similarly, in *M.S.S. v. Belgium and Greece* (*supra* no.10), §301 the shortage of interpreters was identified as one of the deficiencies of the Greek asylum procedure. In *I.M v. France*, no. no. 9152/09 (ECtHR, 2 February 2012), §145 the lack of linguistic aid affected the applicant's ability to present his asylum claim. See also: Beck, Gunnar, Nuale Mole, Marcelle Reneman. '*The application of the EU Charter of Fundamental Rights to asylum procedure law, European Council on Refugees and Exiles*', October 2014, p.77.
[123] The APD, (*supra* no 47) stresses that the language factor is a key element in guaranteeing effective access to the asylum procedures: Art. 12(1)(a), (b) and (f); Art. 15(3)(c) (Personal Interview); Art. 38(3)(b) (Procedures under the STC rule); Art. 17(3).
[124] *Ruiz Mateos v Spain* no 12952/87*, [ECtHR 23 June 1993]; Lobo Machado v Portugal* no 15764/89 (ECtHR 20 Feb 1996), *Borgers v Belgium,* no 12005/86 *(* ECHR 30 October 1991), *Vermeulen v Belgium* no. 19075/911996 (ECtHR 3 October 2008).
[125] ECCHR, Case report, (*supra* n.113)

BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Application No.54796 /16

B E T W E E N:

J.B. Applicant

- and -

Greece

Respondent

SUBMISSIONS FOR THE INTERVENORS
THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE), THE DUTCH COUNCIL FOR REFUGEES (DCR), THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) AND THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)

Notes:

(1) The order of the annexes corresponds with the order of appearance in the text and endnotes of the Intervention.

(2) Hard copies of the Annexes referred to follow, except where provided by hyperlink.

Annex	Document
1.	EU-Turkey statement, Press release 144/16, Foreign affairs & international relations, 18 March 2016: http://bit.ly/1VjZvOD
2.	C W Wouters, International Legal Standards for the Protection from Refoulement (Hart Publishing Ltd, 2009): http://bit.ly/2g9qoX5
3.	UN High Commissioner for Refugees (UNHCR), Note on Diplomatic Assurances and International Refugee Protection, August 2006: http://bit.ly/2y0lNQI
4.	UN High Commissioner for Refugees (UNHCR), Background Note on the Safe Country Concept and Refugee Status Background Note on the Safe Country Concept and Refugee Status EC/SCP/68, 26 July 1991, para 16: http://bit.ly/2y03j2T
5.	UN High Commissioner for Refugees (UNHCR), Conclusions Adopted by the Executive Committee on the International Protection of Refugees 1975-2009 (December 2009): http://bit.ly/2y09hB0
6.	Michelle Foster, Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State (2007) 28 University of Melbourne Law School 233: http://bit.ly/2ynxz8W
7.	University of Michigan Law School, *The Michigan Guidelines on Protection Elsewhere*, 2007, Michigan Journal of International Law 209: http://bit.ly/2xQO3pv
8.	UN High Commissioner for Refugees (UNHCR), Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016: http://bit.ly/1MjYUuA
9.	European Union, Council of the EU, Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries ("London Resolution") (30 November 1992): http://bit.ly/2ynz1bo
10.	European Union, Convention Determining the State Responsible for Examining

	Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention"), [1990] OJ L 176/98, 15 June 1990, p. 0001 – 0012: http://bit.ly/2xSYy95
11.	European Council on Refugees and Exiles, "Safe Third Countries": Myths and Realities, February 1995: http://bit.ly/2hLgFKl
12.	UN High Commissioner for Refugees (UNHCR), Note on Legal Considerations for Cooperation between the European Union and Turkey on the Return of Asylum-Seekers and Migrants, 10 March 2016: http://bit.ly/2fQh8Ks
13.	European Council on Refugees Exiles (ECRE), "Safe Countries of Origin": A safe concept? , September 2015, AIDA Legal Briefing No. 3: http://bit.ly/2tKOG1f
14.	Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2005] OJ L 326/13, p. 13-34 "Asylum Procedures Directive" (APD): http://bit.ly/2o4OJ5m
15.	UN High Commissioner for Refugees (UNHCR), Background paper No. 2: The application of the "safe third country" notion and its impact on the management of flows and on the protection of refugees, May 2001: http://bit.ly/2hLhym9
16.	Rosemary Byrne and Andrew Shacknove, The Safe Country Notion in European Asylum Law (1996) 9 Harvard Human Rights Journal 185.
17.	UN High Commissioner for Refugees (UNHCR), The Concept of 'Protection Elsewhere', (1995) 7 International Journal of Refugee Law 123: http://bit.ly/2yYoHUr //
18.	Violeta Moreno-Lax, The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties, in Guy S. Goodwin-Gill and Philippe Weckel (eds) Migration & Refugee Protection in the 21st Century: Legal Aspects (Brill, 2015): http://bit.ly/2fQoeyQ
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22.	The Joint Ministerial Decision for the implementation of the procedure, was published on 26 October 2016, despite procedure being activated on 20 March 2016: http://bit.ly/2fJaa6z
23.	Fast-Track Border Procedure (Eastern Aegean Islands), Greek Council for Refugees (GCR): http://bit.ly/2fJaa6z
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27.	European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1: http://bit.ly/2oE2wNZ
28.	International Commission of Jurists, The Right to a Remedy and to Reparation for Gross Human Rights Violations: a Practitioners' Guide (International Commission of Jurists 2006), p.46-49: http://bit.ly/2fQV2I3

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31.	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 interntioanl protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ("Recast Qualification and Reception Conditions Directive"), OJ L 337, 20.12.211 http://bit.ly/2pFInvb
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37.	European Center for Constitutional and Human Rights (ECCHR), Case Report: EASO's influence on inadmissibility decisions exceeds the agency's competence and disregards fundamental rights, April 2017: http://bit.ly/2fOQ3r4
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40.	EASO's Special Operating Plan to Greece (EASO/DOP/OU/2016/1812): http://bit.ly/2h1M2dF
41.	Letter from Vassilis Kerasiotis, Country Director at HIAS (Greece) to ECRE of 24 September 2017
42.	European Council of Refugees and Exiles (ECRE) and Dutch Council for Refugees (DCR), The Application of the EU Charter of Fundamental Rights to asylum procedural law, October 2014, p.77: http://bit.ly/2uQ3dK7
43.	Greece – Council of State Decision No 2347/2017, 22 September 2017: http://bit.ly/2xU3wlW
44.	UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992: http://bit.ly/2u6bKFx
45.	Manfred Nowak, UN Special Rapporteur on Torture, Annual Report to the General Assembly, UN Doc. A/60/316, 30 August 2005 (Nowak Report 2005): http://bit.ly/2xhHtJ6
46.	International Commission of Jurists (ICJ), Assessing Damage, Urging Action, Report of the Eminent Jurist Panel on Terrorism, Counter-terrorism and Human Rights (ICJ, 2009): http://bit.ly/1zacuJr
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49.	UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016: http://bit.ly/1Mrxmnc
50.	ECRE, Interveners' Compilation of Country of Origin Information on Turkey.

Lesvos, 24 September 2017

Dear colleagues at ECRE,

Concerned about the way the asylum procedures are being conducted in Greece, and specifically in the Regional Asylum Office of Lesvos in Moria, we are writing this letter in order to draw your attention to shortcomings and problems that we have identified during our work on the ground the past fourteen months. We hope that you would consider our input in any of your future advocacy endeavours.

Our main concerns are related to EASO's participation in the asylum procedure in the hotspots of the Aegean islands. We are summarising below the shortcomings that our lawyers, who represent asylum- seekers during their interviews with EASO caseworkers, have identified.

Quality of the interview

Having participated in several interviews as legal representatives of applicants for international protection and having analysed a series of admissibility, eligibility, and merged admissibility/ eligibility transcripts, we are particularly concerned by the quality of the interviews conducted by EASO.

Specifically, one of the major issues that we are facing is the lack of audio recording of the interviews conducted by EASO caseworkers, despite the legal provision that the interviews should in principle be audio recorded.[1] From the wording of Article 15 of the Regulation of the Greek Asylum Service, it is clear that the omission of audio recording of the interview should be tolerated only in exceptional circumstances. Furthermore, the same Article requires that, in those exceptional circumstances, a precise and full transcript is kept that should include, *inter alia,* everything that was asked, answered or mentioned during the interview by any of the participants. The fact that, in all EASO interviews, the caseworker is the one asking the questions, observing the applicant as he/she tells the account and focussing on typing the transcript of the interview, without an audio recording, could undermine the quality of the procedure, as one person is responsible for multiple important tasks at the same time. Importantly, we have observed that the caseworkers are not always keeping a precise and full transcript, and are frequently omitting the lawyer's comments and objections, resulting in a transcript that does not exactly reflect what happened during the interview. In view of the above, the absence of audio recording deprives the reviewers in second instance or court proceedings, who often do not have any contact with the applicant and base their decision solely on the information deriving from the interview records, from a full and accurate account of what took place during the interview (possible inaccuracies in interpretation, silences, tone of voice etc). It should also be noted, that, at the end of the interview, the transcript is signed by all the participants,

[1] According to the Regulation of the Greek Asylum Service (Κανονισμός Λειτουργίας Υπηρεσίας Ασύλου) (YA 6416/2014), Article 15 *(Transcribing the Interview) In principle, the interview is being audio recorded […]*

but a copy of the signed document is not given immediately to neither the applicant nor the lawyer present, raising transparency and good administration issues.[2]

Moreover, the interviews usually last around 8 hours per session, and most eligibility interviews take more than one session to be completed. This results in applicants being sometimes interviewed for more than 20 hours in total. The length of the interview is resulting in exhaustion and traumatization of the applicant, especially when the latter belongs to a vulnerable group.

Another important issue is the low quality of interpretation. In many cases, and especially in uncommon languages, the interpreters do not speak English at an adequate level and cannot interpret the applicant's story accurately. Also, many of the interpreters prefer to summarise the applicant's answer instead of interpreting *verbatim* as they should. This results in the claim articulated being distorted and, thus, in violating the applicants' right to a fair hearing, as safeguarded in, *inter alia,* Article 41 (2) (a) of the Charter of Fundamental Rights of the European Union.

Lastly, the EASO caseworker is usually guided by a set template of questions, which seems to include several closed questions that do not afford room to the applicant to articulate in a personalised and thorough manner his/her story and asylum claim and do not allow a proper assessment of the case.[3]

On the other hand, EASO's negative Concluding Remarks/Opinion often invoke Country of Origin Information that has not been "provided" to the applicant during the interview, denying, thus, the latter the opportunity to know and address the case against him/her.

Application of Greek and European law

Another serious concern is the fact that EASO caseworkers are often not familiar with the Greek legal framework relating to the asylum procedures. They seem to have a different understanding about the role of the lawyer in the procedure: in cases represented by us, they often refuse to hear, heed or record the lawyer's objections in relation to the legality or fairness of the procedure and, on several occasions, resist recording objections and/or observations made by the lawyer, despite the clear stipulation in the Regulation of the Greek Asylum Service.[4]

Furthermore, EASO caseworkers are in the vast majority of admissibility cases misapplying the concept of the 'safe third country', as provided in Article 38 of the EU Directive 2013/32/EU and Article 56 of the Greek Law 4375/2016. Although the application of the "safe third country" clause requires that the six criteria be met cumulatively, both the information provided to the applicant,

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[2] According to the current practice, the applicant can have a copy of the transcript five days after the interview.

[3] Importantly, this also forms part of the ECCHR's (European Centre for Constitutional and Human Rights) recent complaint against EASO before the EU Ombudsman, which is still pending. For more information: https://www.ecchr.eu/en/international-crimes-and-accountability/migration/greek-hotspots.html

[4] According to the Regulation of the Greek Asylum Service (YA 6416/2014), Article 14 (10) (Conducting the Interview*): The lawyer or counselor of the applicant, as well as the guardian or representative of the unaccompanied minor, who are present during the interview, can, after the caseworker has finished his/her questions, ask questions or make observations, which areincluded in the transcript. The lawyer or counselor should not interrupt the interview or intervene in the procedure, but to raise objections in relation to the legality or fairness of the procedure, which are recorded in the transcript or the report.*

regarding what this clause entails, and the concluding remarks of EASO, often omit to address the "*connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country*." Also, in relation to the other criteria, EASO caseworkers usually base their Opinion on vague legal reasoning and general information provided almost exclusively by the Turkish authorities. As a result, the applicant's claim is often rejected without a rigorous examination and a reasoned determination.

Vulnerability assessment

As per the latest EASO Special Operating Plan to Greece (December 2016)[5], amongst EASO duties on the islands, while supporting the implementation of the EU-Turkey statement, is the identification of vulnerability. Towards this end, EASO has deployed vulnerability experts to undertake this task. In practice, however, we have observed several flaws in the procedure, that result in many vulnerable people being unidentified. These could be briefly summarized as follows.

Firstly, the applicant is never informed that the interview will include assessing any possible vulnerabilities -and how these are defined under Greek law- and therefore he/she is not prepared to elaborate on this matter and furnish relevant evidence, such as medical reports or expert witnesses. This is often further exacerbated by the absence of appropriate follow up questions, despite the applicants' statements' including indications of vulnerability, which would warrant further elaboration. Secondly, the applicants are often discouraged or prevented from talking about incidents that took place in their country of origin, on the basis that the admissibility interview is not concerned with the merits of their application. Nevertheless, such incidents could reveal vulnerabilities such as the applicant being a victim of torture, sexual violence, physical violence, PTSD etc. Lastly, the threshold above which a referral is made by the caseworker to the vulnerability expert remains unclear.

We hope that our experience will prove useful to you in your advocacy and legal research work and we remain at your disposal should you need further information or clarifications.

On behalf of the legal team,

Vassilis Kerasiotis
Country Director
HIAS Greece

For more information, please contact **Danai Papachristopoulou** (danai.papachristopoulou@hias.org) and **Elli Kriona Saranti** (elli.kriona@hias.org)

[5] EASO Activity HEL 4: Support with the implementation of the EU TR statement and enhancement of the Asylum and Reception System […] Deliverables: *Vulnerability assessments and best interest assessment of separated children conducted to identify and refer vulnerable applicants to the appropriate procedure.*

Annex 50
Compilation of Country of Origin Information on Turkey

❖ Statistics from the Turkish Directorate General of Migration Management ('DGMM') on Temporary Protection and International Protection Applicants

- Number of Syrians under Temporary Protection('TP') as of 17 August 2017 is 3.141.380. Over a third are under 18s.
- The number of Syrians pre-registered is 81.977 as of 6 July 2017.
- The largest concentration of registered Syrians under the TP regime are based in Istanbul.
- The vast majority of registered Syrians under the TP regime are outside of State funded accommodation (2.908.234). There are 233.146 Syrians within the 21 accommodation centres across 10 provinces.[1]
- There have been 66,167 International Protection ('IP') applications in 2016.
- The DGMM granted international protection in 23,886 cases and rejected 6,494 applications in 2016.[2]

❖ Statistics from the Turkish Directorate General of Migration Management on Removal Centres

- 39 removal centres are either in operation or being planned, 7 of which are provided with funds from the EU. The total capacity of all established and planned centres is 15.576.[3]
- One centre, Van, originally conceived as a Reception and Accommodation Centre will soon be converted into a removal centre and has a capacity of 750.[4]

❖ Statistics from the European Commission on the Implementation of the EU-Turkey Statement

- Since 20 March 2016 to 4 September 2017, 1,307 third country nationals have been returned from Greece to Turkey under the EU-Turkey statement, 212 of whom are Syrian nationals.[5]
- Since 20 March 2016 to 4 September 2017, 589 third country nationals have been returned from Greece to Turkey on the basis of the bilateral readmission agreement between the two countries.
- Non-Syrians are returned by boat to a removal centre in Kayseri.[6] Out of those returned who are not Syrian, 57 have submitted IP applications and two have been granted. 831 persons have been returned to their countries of origin from Turkey.

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[1] It is to be noted that the number of accommodation centres has decreased on the official DGMM webpage. In August the number of accommodation centres was 23 across the 10 provinces whereas in September this number had decreased to 21 without any explanation.
[2] DGMM, TP and IP Statistics, accessible at http://bit.ly/2jnKp08 (last updated August 2017).
[3] It is to be noted that the information provided by the DGMM differs in respect of removal centres and the authors have chosen the page which is the most updated, see here: http://bit.ly/2h2XFTw and here an older page here: http://bit.ly/2wcTVJi.
[4] DGMM, Removal centres, accessible at http://bit.ly/2h2XFTw (last updated August 2017).
[5] This figure has been calculated from the seven Commission implementation reports which have been published.
[6] See European Commission, Sixth report of on the Progress made in the implementation of the EU-Turkey Statement, June 2017, accessible at: http://bit.ly/2v7nbR2.

- Syrians are returned by plane from the Greek islands and are placed in a refugee camp in İslahiye 2 temporary accommodation centre located close to the border with Syria.[7] All returned Syrians were pre-registered for temporary protection with the exception of 16 persons who decided to return voluntarily to Syria.
- 19 Syrians decided to stay in the accommodation facilities provided by the Turkish authorities and 177 of them chose to live outside.
- As of 4 September 2017, 8.834 Syrians have been resettled to EU Member States under the 1:1 resettlement scheme. [8]

❖ Access to Protection in Turkey

- As of February 2017, the construction of half the 511-kilometer long concrete wall on the Turkish-Syrian border had been completed.[9]
- There have been consistent and very recent allegations of non-refoulement and collective expulsions of Afghans and Syrians.[10]
- 3 million Syrians are currently living under the Temporary Protection regime in Turkey with 264,169 persons being accommodated in 24 camps in South East of the country.[11]
- Syrians are legally barred from applying for international protection under Turkish law. There is a great uncertainty as to how long temporary protection will last. The Turkish Council of Ministers have full discretion to terminate the temporary protection of Syrians at any time, as well as to determine what happens after such termination.[12]
- Pre-registration compounds the existing delays and is a process which is exceptionally opaque.[13]
- Capacity constraints within the DGMM have led to lengthy delays at pre-registration and registration.[14]
- Lack of clarity as to the organisation of quotas for Syrians per province and how they are distributed to each province. Once the quota has been reached in the respective province, the registration either stops or delays are extremely lengthy. Registration can take months and potentially longer.[15]

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[7] See European Commission, Sixth report of on the Progress made in the implementation of the EU-Turkey Statement, June 2017, accessible at: http://bit.ly/2v7nbR2.
[8] European Commission, Seventh report of on the Progress made in the implementation of the EU-Turkey Statement, September 2017, accessible at: http://bit.ly/2h2hev3.
[9] C. Soykan, The EU – Turkey Deal One Year On: The Rise of Walls of Shame…, ECRE, 17 March 2017, http://bit.ly/2wWqfzX.
[10] Amnesty International, Refugees at heightened risk of refoulement under Turkey's state of emergency, 22 September 2017, accessible at: http://bit.ly/2wMfFXZ; UN Committee Against Torture, Concluding observations on the fourth periodic reports of Turkey, 2 June 2016, accessible at: http://bit.ly/2x05fpC and NOAS, A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey, April 2016, accessible at: http://bit.ly/2nsJOYX.
[11] C. Soykan, Access to International Protection: Border Issues in Turkey accessing asylum in States, the Law and Access to Refugee Protection: Fortresses and Fairness, March 2017 (time frame 2016 and research carried out from 2008-2012).
[12] NOAS, A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey, April 2016.
[13] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016, accessible at: http://bit.ly/2bnNllx.
[14] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016, accessible at: http://bit.ly/1svJXfv.
[15] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016.

- Nascent asylum system with a lack of publicly available data on the implementation of the asylum system in Turkey.[16]
- Paucity of information in respect of the number of decisions handed down by DGMM and reports of the scarcity of reasoning in decisions rejecting the asylum applicant.[17]
- Legal aid capacity is very limited, due to limited funding and relevant expertise. Only a small percentage of applicants can obtain legal assistance.[18]
- Current practice in Turkey shows that communicated negative decisions from the DGMM "do not contain any substantiation regarding details of the rejection grounds," are written in Turkish and only interpreted orally to the applicant upon notification of the decision.[19]
- The Temporary Protection Regime does not explicitly provide for remedies where an unfavourable decision, *inter alia* exclusion, is given to temporary protection applications or beneficiaries. The only exception to this is where a deportation decision is given. This can be challenged at a competent administrative court within 15 days. Appeals against deportation decisions have automatic suspensive effect. Administrative court decisions on deportation appeals are final and may not be appealed onward to a higher court.[20]
- No complete information on the procedures is in place for the timely identification of victims of torture among asylum seekers.[21]

❖ Access to Protection in Turkey for Returnees

- Reports of detention upon return to Turkey and then refoulement to countries of origin.[22]
- Following the deal Turkey started negotiating readmission agreements with Nigeria, Yemen and Pakistan.[23]
- For Syrian returnees the DGMM has a discretion as to whether or not the provisions of the Temporary Protection Regime will apply to persons previously registered as temporary protection beneficiaries but whose status is deemed to have "ceased" as a consequence of voluntary departure from Turkey.[24]
- Syrian returnees from Greece are sometimes sent to Düziçi, a container camp with a capacity of 5,000. This is a detention centre rather than a reception one, despite it being officially categorised as a temporary accommodation centre. Conditions here are poor, dangerous and

[16] Amnesty International, No safe refugee: Asylum seekers and refugees denied effective protection in Turkey, June 2016, accessible at: http://bit.ly/1XVACtr.
[17] Amnesty International, No safe refugee: Asylum seekers and refugees denied effective protection in Turkey, June 2016.
[18] NOAS, A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey, April 2016.
[19] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016.
[20] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016.
[21] UN Committee Against Torture, Concluding observations on the fourth periodic reports of Turkey, 2 June 2016.
[22] Forced Migration Review, Sevda Tunaboylu and Jill Alpes, The EU-Turkey deal: what happens to people who return to Turkey?, Feb 2017 (time frame 2016), accessible at: http://bit.ly/2eV87vx and European United Left/Nordic Green Left (GUE/NGL) report on Delegation to Turkey, 2-4 May 2016, accessible at: http://bit.ly/2axtNhW which states that for non-Syrians there has been no opportunity to ask for asylum.
[23] Forced Migration Review, Sevda Tunaboylu and Jill Alpes, The EU-Turkey deal: what happens to people who return to Turkey?, Feb 2017 (time frame 2016).
[24] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016.

are ill-suited for persons requiring psycho-social support.[25] Moreover, there is no legal basis in Turkish legislation for this detention.[26]

- In Düziçi Syrians undergo pre-registration which is completed within seven days. They are then referred to a city where they wish to reside and are requested to contact the Provincial Directorates of Migration Management. At the end of December 2016 and out of the 82 Syrians readmitted at that time, only 12 of them had reacquired temporary protection, 13 were still in the process of completing the procedure and the remainder of Syrians were uncontactable.[27]
- Non-Syrian returnees are transferred to Kayseri Removal Centre. They are not allowed to communicate with their family members, lawyers and are often denied access to UNHCR representatives. Returnees are held in cells and unaccompanied minors are housed with adults or families in these cells. Detainees are faced with a lack of legal information, erroneous or non-translated information.[28]
- Applying for asylum in detention centres is practically impossible for non-Syrian returnees. No papers or pens are furnished to detainees, explicit requests for protection have been reported to have either been ignored or even refused and lawyers access to the detention centres is often prevented. [29] If a returnee is able to apply for asylum, usually with the intervention of a lawyer or a NGO, an accelerated procedure is put in place for non-Syrian returnees where a first interview will be held within three days and a first instance decision taken within five days "suspending" the implementation of the deportation decision pending the finalisation of the adjudication of the international protection application.[30]
- The UN Committee against Torture found that Turkey had not provided sufficient information concerning concrete measures adopted to accommodate returned refugees, asylum seekers and irregular migrants under the EU-Turkey agreement.[31]
- There had also been a lack of assurances from Turkey that applications for asylum and international protection will be individually reviewed and that individuals filing such applications will be protected from refoulement and collective return.[32]
- The UNHCR does not benefit from unhindered and predictable access to pre-removal centres in Turkey and to the Duzici reception centre. The UNHCR needs to seek authorisation to visit the centre at least five working days in advance which does not allow for timely monitoring of some individual cases.[33]

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[25] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016.
[26] Vrije Universiteit Amsterdam, Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement, published October 2017 and based on field and desk research between December 2016 and March 2017, accessible at: http://bit.ly/2xaf7vm.
[27] Letter from the United Nations High Commissioner for Refugees, Response to query related to UNHCR's observations of Syrians readmitted to Turkey, 23 December 2016, accessible at: http://bit.ly/2jjDWl0.
[28] Vrije Universiteit Amsterdam, Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement, published October 2017 and based on field and desk research between December 2016 and March 2017.
[29] Ibid.
[30] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016.
[31] UN Committee Against Torture, Concluding observations on the fourth periodic reports of Turkey, 2 June 2016.
[32] Ibid.
[33] Letter from the United Nations High Commissioner for Refugees, Response to query related to UNHCR's observations of Syrians readmitted to Turkey, 23 December 2016.

- The UNHCR does not systematically receive information on the legal status and location of individuals who have been readmitted from Greece and is not always able to track their location and monitor their situation once they have left the reception centre.[34]

❖ Detention in Turkey

- Decrees of 29 October 2016 (KHK/675 and 676) adds a new category to list against whom a removal decision can be issued. A removal decision can be taken for international protection holders and applicants if they are considered to be linked to a terrorist organisation (Article 54/2) and those who pose a threat to public health and order (this includes the use of a fake passport).[35]
- Applications for persons who used forged documents or identities, who are in detention awaiting removal or who are supposedly applying for asylum to frustrate the removal, will be fast-tracked within 5 days. Judicial review is the only form of appeal against a decision in the fast-track procedure and the courts will reach a decision within 15 days.[36]
- Detention of up to a year for persons caught be security forces who have entered or exited the country in an irregular manner or without legal documents and those who have overstayed their visas for more than 10 days or who worked in the country illegally. [37]
- From 2014 there has been an increase in the number of fast-track cases. Most international protection applications from detention are fast-tracked. Where an application is made in detention the applicant must give it to the "correct officer" and it will need to be translated into Turkish and sent to the governorship. Only if the governorship agree will the police officers then register the asylum application. [38]
- A decision imposing detention for the purpose of removal is not subject to an automatic judicial review but the applicant may apply to the local criminal court to challenge the decision. The decision by the court is non-appealable.[39]
- Where an applicant is in detention, visits from lawyers are subject to permission by the detention authority, who can also dictate the duration of such meetings.[40]
- Removal centres are overcrowded and detainees are denied contact with their families. There are various problems in terms of access to lawyers (including procedural problems involving granting power of attorney to lawyers, lack of separate rooms where the detainee and his/her lawyer can talk in confidence and lack of reliable translators).[41]
- UNHCR assistance in removal centres is based on the applicant calling them. Even then permission to see the individuals has often been denied by the Turkish authorities.[42]

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[34] Ibid.
[35] C. Soykan, Access to International Protection: Border Issues in Turkey accessing asylum in States, the Law and Access to Refugee Protection: Fortresses and Fairness, March 2017 (time frame 2016 and research carried out from 2008-2012).
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] NOAS, A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey, April 2016.
[40] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016.
[41] Ibid.
[42] C. Soykan, Access to International Protection: Border Issues in Turkey accessing asylum in States, the Law and Access to Refugee Protection: Fortresses and Fairness, March 2017 (time frame 2016 and research carried out from 2008-2012).

❖ Reception conditions in Turkey

- There is no systematic welfare provision.[43]
- Accommodation by one's own means has led to the impoverishment of thousands of refugees, exacerbated by the rapid rise in rents and making it difficult for those on low incomes to access adequate housing.[44]
- Discretion given to authorities to provide social assistance and services to Syrians under temporary protection and international protection applicants and beneficiaries. Both services are weak, limited and unevenly implemented.[45]
- Without government-provided shelter and with no access to legal employment until recently, many Syrians have been living in extreme poverty over the past years.[46]
- Majority of those interviewed for an Amnesty International study in 2016 stated that they lived off family or charitable donations. In addition there is a great saturation of the housing market which is an infrastructural problem, with the combined result that refugees are forced to live on the streets, under bridges etc.[47]
- Absence of integration on account of the conditional refugee status for both temporary protection and international protection beneficiaries.[48]
- For temporary protection beneficiaries, the temporary protection regime explicitly excludes any prospect of long term legal integration by virtue of Article 25 stating that the "temporary protection" identification document issued to beneficiaries does not serve as a "residence permit" and may not lead to a "long term residence permit" in Turkey.[49]
- The set of social and economic rights to which asylum seekers and refugees are legally entitled to is far from sufficient, and access to these rights in practice is even more limited. Main concerns are that there is a lack of state funded accommodation, limited access to legal employment and low levels of school enrolment.[50]
- Syrians who have been in Turkey for more than six months may obtain a work permit in the province where they have registered, however a quota exists stating that Syrians may not constitute more than 10% of a company's staff. In addition, the work permit must be requested by the employer and only once an employment contract has been obtained. There is little motivation for the employer to apply for work permits.[51] Information received from the

[43] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016.
[44] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016 and Amnesty International, No safe refugee: Asylum seekers and refugees denied effective protection in Turkey, June 2016.
[45] Amnesty International, No safe refugee: Asylum seekers and refugees denied effective protection in Turkey, June 2016.
[46] NOAS, A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey, April 2016
[47] Amnesty International, No safe refugee: Asylum seekers and refugees denied effective protection in Turkey, June 2016.
[48] Ibid.
[49] DCR and ECRE, The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016.
[50] NOAS, A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey, April 2016.
[51] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016.

authorities at the end of November 2016 signal that only 10,227 Syrian nationals, less than 0.4% of registered Syrians in Turkey, were granted working permits.[52]

- There is no recognition of academic or professional qualifications in Turkey.[53]
- Legal guardianship of children does not happen in practice and a large number of refugee children start working at a very early age.[54]
- Approximately 330,000 Syrians are enrolled in schools in Turkey. The rate of participation in education among refugee children living in camps is 85%. This rate decreases sharply for those who live outside camps. A number of children have been out of education for several years.[55]
- There are reports that children have been detained after being stopped by the police for street begging.[56]
- Before the UN International Convention on the Elimination of All Forms of Racial Discrimination, Turkey had not provided recent, reliable and comprehensive data either on economic and social indicators or on the use of mother tongues and languages commonly spoken, or other indicators of ethnic origin.[57]
- Syrian and Iraqi refugees face challenges, despite measures adopted by the State party, such as: (a) being at risk of racial discrimination; (b) the inadequate living conditions of Syrian refugees; (c) a lack of work permits; (d) reported violence against and trafficking in Syrian refugee women in camps; and (e) insufficient access to education for some Syrian refugee children, including in their mother tongue.[58]
- The reservation to the 1951 Convention prevents the full protection of refugee rights.[59]

❖ Turkey's International Obligations

- Turkey has derogated from certain provisions of the International Covenant on Civil and Political Rights Derogations ('ICCPR'), namely Article 2, para. 3 (the right to a remedy), which General Comment 29 by the Human Rights Committee makes very clear, is not subject to derogations and Article 10 (humane treatment of detainees).[60]
- Decrees issued by the Turkish government pursuant to a state of emergency have the force of law (Article 121) but are not subject to the scrutiny of the Constitutional Court, pursuant to Article 148.[61]
- Executive Decree 676 issued on 29 October 2016 extends the categories of third country nationals who can be issued removal orders, amends when a removal order can be given

[52] Vrije Universiteit Amsterdam, Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement, published October 2017 and based on field and desk research between December 2016 and March 2017.
[53] Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016.
[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] UN International Convention on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined fourth to sixth periodic reports of Turkey, January 2016, accessible at: http://bit.ly/2w8jaN9.
[58] Ibid.
[59] Ibid.
[60] M.Scheinin, Turkey's Derogation from Human Rights Treaties – An Update, August 2016, accessible at: http://bit.ly/2rYlvaO.
[61] Ibid.

(which is at any stage of the international protection proceedings) and has abolished the automatic suspensive effect of an appeal against such orders.[62]

[62] Amnesty International, Refugees at heightened risk of refoulement under Turkey's state of emergency, 22 September 2017, accessible at: http://bit.ly/2wMfFXZ.