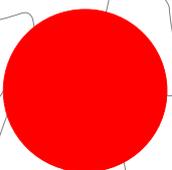


*EXPERT REPORT*

Consequences of the EU-Turkey Statement  
The Situation of Syrian Asylum Seekers  
on the Greek Aegean Islands

July 2021

*Equal Rights Beyond Borders*



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# TABLE OF CONTENTS

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ABBREVIATIONS	IV
SUMMARY & METHODOLOGY	V
Executive Summary	V
Methodology and Scope	VII
1. INTRODUCTION	1
2. CONDITIONS ON CHIOS AND KOS	2
3. LEGAL CONTEXT	3
A. EU-Turkey Statement and the Hotspot Approach	3
B. Safe Third Country Law in Greece and the EU	4
C. Safe Third Country Practices in Greece and the June 7 <sup>th</sup> Joint Ministerial Decision	4
D. Border Procedures on the Eastern Aegean Islands	5
4. FIRST INSTANCE PROCEDURES FOR SYRIANS ON THE AEGEAN ISLANDS	7
A. Quality of Interviews	8
1. Procedural Safeguards for Applicants for International Protection	8
2. Legal Guarantees for Vulnerable Groups	9
3. General Interview Practices on Chios and Kos	10
4. Poor Quality of Interviews for Syrian Applicants	10
5. No Individualized Assessment	10
6. Refusal to allow Applicants to add Additional Information	11
7. Resignation of Applicants	12
B. First Instance Decisions on Admissibility for Syrians	13
1. Legal Preconditions	13
2. Modus Operandi in Greece	13
3. First Instance Decisions on Chios	13
a. Credibility Assessment by GAS/EASO	14
b. Legal Assessment by GAS/EASO	14
c. Shortcomings in Approach: No Assessment of Future Risk in Turkey	15
d. Interim Outcome	16
4. First Instance Decisions on Kos	17
a. Comparison to Practice on Chios	17
b. Credibility Assessment by GAS/EASO	17

c. Legal Consequences of Credibility Assessments	19
C. Shortcomings at the First Instance Level	19
1. Failure to Address Vulnerabilities	19
2. Failure to Analyse Current Serious Claims of Risk of Harm in Turkey and Reliance on Outdated Information	21
D. Summary	24
5. APPEALS PROCEDURE AND OTHER REMEDIES	26
A. The Appeals Procedure Under Article 90 L. 4636/2019	26
1. Legal Preconditions	26
2. Lack of Legal Aid and Extraordinary High Rejection Rate	26
3. Syrian Applicants' Unwillingness to Submit Appeals	27
B. Second Instance Decisions for Syrians	27
Predetermined Outcomes Regardless of Individual Circumstances or Country of Origin Reports	28
C. Annulment procedure	31
D. Summary	31
6. PROCEDURES & CONDITIONS FOLLOWING THE SECOND REJECTION	32
A. Chios: "Voluntary" Return Papers	33
B. Kos: Detention and "Voluntary" Return Papers	34
1. Detention	34
a. Legal Framework for Detention of Asylum Seekers and Migrants	34
b. Practice and Situation on Kos	35
c. Detention Conditions on Kos	35
2. "Voluntary" Return Papers	37
C. Solution Provided by EU Law: Assessment on the Merits	37
D. Summary	38
7. LEGAL IMPLICATIONS	40
A. Lack of Individualised Assessment	40
1. Preconditions in Greek, EU and Human Rights Law	40
2. Practice in Greece	41
B. Denial of the Right to an Effective Remedy	42
1. Preconditions in Greek, EU and Human Rights Law	42
2. Practice in Greece	43

8.	CONCLUSION	45
	ANNEX	46
	Annex I - Interviews	46
	Interview 1	46
	Interview 2	53
	Interview 3	56
	Interview 4	60
	Interview 5	63
	Annex II - Selected First-Instance Decisions	67
	Annex III - Selected Second-Instance Decisions	67
	Annex IV - Definitions	67

# ABBREVIATIONS

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AIDA	Asylum Information Database
CAT	Convention against Torture
CEAS	Common European Asylum System
CFR	Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
ComAT	Committee against Torture
CPT	European Committee Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DGMM	Directorate General of Migration Management
EASO	European Asylum Support Office
ECHHR	European Centre for Constitutional and Human Rights
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
HRW	Human Rights Watch
GAS	Greek Asylum Service
ICCPR	International Covenant on Civil and Political Rights
ILGA	The International Lesbian, Gay, Bisexual, Trans and Intersex Association
IRC	International Rescue Committee
JMD	Joint Ministerial Decision
MoMa	Ministry of Migration and Asylum
PRDC	Pre-Removal Detention Centre
RIC	Reception and Identification Centre
RIS	Reception and Identification Services
RSA	Refugee Support Aegean
RAO	Regional Asylum Office
UNHCR	United Nations High Commissioner for Refugees

# SUMMARY & METHODOLOGY

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## *Executive Summary*

This report documents the Greek authorities' treatment of Syrian asylum seekers who arrive on the Greek Aegean islands. This report looks at the practices on the islands of Chios and Kos and documents the challenges Syrian asylum seekers experience when applying for international protection on those islands. The data collected for this report shows that authorities on the Aegean islands reject Syrian applicants at nearly a 100% rate on the grounds that Turkey is a safe third country for them, regardless of a person's individual circumstances. The report goes on to conclude that this practice violates EU, Greek, and human rights law, impedes the right to an effective remedy, and undermines the entire asylum procedure in Greece and the EU. In presenting its findings and conclusions, this report relies on a combination of personal interviews, primary source data, secondary sources, and the first-hand experience of lawyers and interpreters working for Equal Rights. The information used in this report was gathered between January 2020 and June 2021. Two accompanying documents are published alongside this report: first, a sampling of the personal interviews with Syrian asylum seekers conducted by Equal Rights between March and April 2021 and, second, a group of first and second instance decisions analysed in detail in the report. In particular, the accompanying interviews offer an opportunity for the people most affected by the island procedures to share their stories and reveal the devastating personal and human cost of externalization policies.

**Sections I-III** offer an introduction to the political and legal landscape for asylum seekers on the Greek Aegean islands. Section II briefly describes the conditions for asylum seekers on Chios and Kos, noting that Kos is the only EU Hotspot that currently hosts a Pre-Removal Detention Centre. Section III goes on to provide the legal context under Greek law for the so-called border procedures that apply not only to Syrians but to all asylum seekers on the islands. Those procedures accelerate the asylum process for any migrant who arrives on the islands and require that Syrians undergo an admissibility interview to first determine whether Turkey is a safe third country for them. The foundation for this procedure is the EU-Turkey Statement, under which Turkey agreed to accept returns from the Greek islands in exchange for EU financial support for refugees in Turkey.

**Section IV** provides an overview of the first instance procedure for Syrian applicants for international protection on the Aegean islands. In addition to reviewing the legal standards and context for the first instance procedure, Section IV analyses the first instance outcomes for 47 Syrian cases from Chios and Kos, describes in detail the admissibility interview Syrians undergo on the islands, and provides a detailed analysis of 10 first instance decisions. Looking at the quality of first instance interviews and decisions, Section IV identifies several serious shortcomings in the first instance procedure for Syrians, including poor quality interviews, copy-paste decisions and the authorities' failure to take seriously any Syrian claim, and raises doubt as to whether this procedure complies with EU, Greek, and European human rights law. Of the 47 cases analysed in Section IV, GAS rejected 100% subject to the admissibility procedure on the basis that Turkey is a safe third country. Taking into account certain factors that would normally affect a person's asylum procedure in Greece and the EU, including vulnerability status, the presence of a lawyer, and having a credible, serious claim, Section IV also concludes that none of these factors have an impact on the final outcome of Syrian cases.

**Section V** describes the legal remedies available to asylum seekers who receive rejections at the first instance

level and documents the barriers that Syrians in particular face in challenging negative decisions. Section V looks at data from 31 cases where there was a second instance decision from the Appeals Committees. Twenty-eight of the cases received second rejections, two received subsidiary protection, and one person received refugee status. Although the acceptance rate was slightly higher for Syrians at the second instance level than at the first instance level, the chances of a positive decision on appeal are extraordinarily low for Syrian applicants. In the three cases where people received positive second instance decisions, there was no clear reason why their cases were accepted while others were not. One was for a single man with no obvious vulnerabilities, another was for a single woman, and the third was for a single woman with children. Like other Syrians, they had all faced detention, insecurity, and a lack of access to the temporary protection system in Turkey, but otherwise their cases were not radically different from the 28 cases that were rejected by the Appeals Committees. Further, two of the applicants had a lawyer for their appeals and one submitted her appeal on her own. In addition to looking at data from 28 cases, Section V analyses three second rejections in detail. The analysis shows that, although they tend to cite more updated sources, second rejections rely on the same flawed reasoning as first rejections to reject Syrian applicants en masse. In one case, the Appeals Committee went to enormous lengths to find that Turkey was, in fact, a safe third country for an LGBTI applicant because he had not personally faced any harm there based on his sexual orientation. Finally, Section V describes some of the collateral consequences of the admissibility procedure for Syrians. In particular, this report identifies a pattern of Syrian applicants refusing legal remedies because they know they will receive rejections and are afraid of prolonging their time on the islands.

**Section VI** looks at the conditions Syrians face on the islands after they receive their second rejections. Greek law considers a second rejection a final decision, and so once a person receives her second rejection she is no longer, legally speaking, an asylum seeker. She is also then eligible for deportation, or, in the case of Syrians on the islands, “readmission” to Turkey. However, as documented in this report, Greece has been unable to deport any migrants to Turkey since March 2020 because of the Covid-19 pandemic and poor political relations between the two countries. As such, rejected Syrian asylum seekers are caught in a legal limbo: on the one hand they are rejected at nearly a 100% rate on the grounds that Turkey is a safe third country, and on the other they cannot return to Turkey either “voluntarily” or by force. As documented in Section VI, the Greek authorities’ approach in this regard has been varied depending on the island. On Kos, Syrians are detained (or their detention is extended) upon receiving second rejections in “preparation” for their deportation, a practice that violates both Greek and EU law. Further, on both Chios and Kos, authorities have been issuing rejected asylum seekers so-called “voluntary return papers” that give people 10 to 30 days to leave the country. Practically speaking, the voluntary return papers allow people to leave the islands, but they do not provide people with any legal way to leave Greece. Rather, in many of the cases followed for this report, people have arrived on the mainland to find themselves homeless, without any legal protection or rights, and without access to basic services.

Finally, **Section VII** looks at the legal implications of the procedures for Syrians on the Aegean islands and argues that the procedures violate Greek, EU, and European human rights law. The section begins by outlining Greece’s obligations under Greek, EU, and European human rights to individually assess claims for international protection before returning a person to a country where she might face harm. Section VII goes on to argue that because the admissibility procedure does not consider any individual circumstances, it is not individualised in fact, even if people do undergo personal interviews. Next, Section VII addresses lays out the criteria for guaranteeing the right to an effective remedy and argues that the admissibility procedure for Syrians violate their right to an effective remedy in several respects. In addition to the numerous barriers to an effective remedy all asylum applicants face in Greece, Syrians on the Aegean islands in particular must

contend with poorly reasoned, copy-pasted first instance decisions and a failure by the Appeals Committees to address applicants' valid legal arguments. Also, a barrier to the right to an effective remedy, is the fact that many Syrians interviewed for this report either refused or were hesitant to submit legal remedies such as appeals and annulments because they knew that they would receive another rejection. Consequently, although the law establishes certain legal remedies to address negative first instance decisions, the remedies are not available in fact because the system is designed to bar people from accessing them in both direct and indirect ways.

## *Methodology and Scope*

This report relies on a mix of methodologies and analyses primary and secondary sources. For the report, Equal Rights interviewed 11 Syrian asylum seekers who applied for asylum on the Greek Aegean islands of Chios and Kos. Five of the people interviewed lodged their asylum applications on Chios and the other five on Kos. Three of the interviews were conducted with people who were detained in the Kos PRDC at the time of the interview. One more person had been in detention on Kos at some point but was released prior to the interview. All of the interviews were conducted over the phone by staff at Equal Rights and consisted of seven sections, including a vulnerability screening and sections covering each stage of the asylum procedure in Greece. Interviewees were diverse in gender and age and included two single women, one family, one unaccompanied minor, and six single men. Their ages ranged from 17-44. In addition to interviews, Equal Rights collected data from 47 cases of Syrian applicants for international protection on Kos and Chios. Thirty-three of the cases were from Kos and 14 were from Chios. Staff from Equal Rights analysed those cases to account for the following factors: first instance outcome, second instance outcome, the presence of a lawyer at either the first or second stage, vulnerability (if known), and the claim each applicant made with respect to Turkey. Regarding the latter point, the types of claims were broken down into the following categories: refoulement from Turkey to Syria, forced to sign a "voluntary" return paper in Turkey, detention in Turkey, and other serious harm, including rape, torture, and physical and verbal abuse. In addition to analysing data from the 47 cases, Equal Rights analysed 10 first instance decisions in detail, five from Chios and five from Kos, and three second instance decisions, one from Chios and two from Kos. Eight first instance decisions and two second instance ones are published as an accompanying resource to this report. In addition to the case analyses and interviews, parts of this report are also based on the first-hand experience of Equal Rights staff working on Chios and Kos. Since opening in 2016, Equal Rights has represented hundreds of asylum seekers applying for asylum on Chios. Although the Kos office opened only recently in January 2021, the office has undertaken nearly 50 cases in that time, and the office's lawyers have several years of experience representing asylum seekers on the Aegean islands.

This report is also limited in scope several ways. First, data for this report was only collected from Chios and Kos. The report does not include information from the three other Aegean islands with EU Hotspots—Leros, Lesvos, and Samos. Even so, the procedures described below apply to all five of the EU Hotspots and, based on the authors' experiences working with other legal NGOs on those islands, the situation for Syrian asylum seekers on Leros, Lesvos, and Samos is largely the same. Second, although Equal Rights was able to determine the outcomes for all 47 of the cases analysed, in some cases the writers were not able to analyse certain details about the cases, for example vulnerabilities or particular harms faced in Turkey. This is because in some cases the writers were only able to access part of the person's file, e.g. the decision or interview, rather than the entire file. Where this limitation might affect any of the report's conclusions, it is noted directly in the report. Finally, the report analyses several EASO interviews in detail and makes several claims based on that analysis. Those interviews are not published because Equal Rights does not believe there is a way to publish them, even in redacted form, that sufficiently protects the applicant's identity. Moreover, as many of the applicants in the

# 1. INTRODUCTION

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On June 7, 2021, the Greek Ministers of Foreign Affairs and Immigration and Asylum issued a Joint Ministerial Decision establishing Turkey as a “safe third country” for asylum seekers from Syria, Afghanistan, Pakistan, Bangladesh, and Somalia. According to the decision, authorities in Greece will begin screening asylum seekers from those five countries to see if they can be safely returned to Turkey before allowing them to continue with their asylum procedures in Greece. The June 7<sup>th</sup> decision was swiftly condemned by lawyers and activists alike,<sup>1</sup> and in many ways is just the next iteration of efforts by the Greek government to take an increasingly hard-line stance against migration. However, in other ways, the decision codifies and expands on a practice the authorities have applied to asylum seekers on the Eastern Aegean islands for years now. Since the EU-Turkey Statement went into effect in 2016, tens of thousands of asylum seekers on the Aegean islands of Kos, Chios, Leros, Lesvos, and Samos have been rejected under the guise that Turkey is a safe third country for them, even though very few have ever been returned to Turkey. Syrian asylum seekers have borne the brunt of this policy because Turkey has a special protection regime for Syrians, and for that reason are the subject of this report.

This report documents the treatment of Syrian asylum seekers on the Greek Aegean islands of Kos and Chios following the implementation of Law 4636/2019 in January 2020. Based on a detailed review and analysis of 47 Syrian applications for international protection, this report analyses the outcomes for Syrian asylum seekers at each stage of the asylum procedure on the two islands. Overall, the report found that the authorities rejected nearly 100% of applicants on the grounds that Turkey is a “safe third country.” The report also identified a pattern of copy-paste first instance decisions and a complete failure by the authorities to thoroughly assess Syrian claims, particularly at the first instance stage. In addition to analysing the outcome of the cases, the authors of this report also interviewed 11 Syrian asylum seekers on Kos and Chios about their experiences going through the asylum procedure on the islands. Those interviews highlight both the extent to which Syrian asylum seekers on the Aegean islands are aware that they will be rejected, and the despair that accompanies such knowledge.

The situation described in this report has broad implications for Greece and the EU’s commitment to some of the most basic tenets of refugee and human rights law, including *non-refoulement*, the right to an individualised assessment, and the right to an effective remedy. Although the June 7<sup>th</sup> Joint Ministerial Decision will change some of the conditions described below, the decision ultimately makes this report all the more relevant and urgent. What was formerly an unwritten policy for Syrian asylum seekers on the islands, has now been codified and expanded to include other nationalities who apply for asylum across Greece. Or, as in the words of the Minister of Migration and Asylum Notis Mitarachi, the decision will be a tool that “enhances Greece’s legal arsenal against requests by citizens from countries [...] that have no reason whatsoever to consider Turkey a non-safe country.”<sup>2</sup> And so, rather than imagine what the consequences of the Joint Ministerial Decision are, this report reveals what they already are.

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1 Intersos, *Rifugiati in Grecia, “Inaccettabile considerare la Turchia paese terzo sicuro,”* 15 June 2021, available at: <https://bit.ly/3vBIZ3e>, Equal Rights Beyond Borders & HIAS, *Refugees in Limbo: Another Overlooked Casualty of Externalizing Asylum at any Cost* (18 June 2021), available at: <https://bit.ly/2TVnRqp>. All links last accessed: 01/07/2021.

2 Asylum Service, Press Release, *Greek legislation designates Turkey as a safe third country, for the first time. This decision is for asylum seekers from Syria, Afghanistan, Pakistan, Bangladesh and Somalia* (7 June 2021), available at: <https://bit.ly/3z9p-Wz5>.

## 2. CONDITIONS ON CHIOS AND KOS

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The Greek Aegean islands of Kos and Chios host two of the five Greek EU Hotspots. As of June 24, 2021, there were 491 asylum seekers officially residing in the Chios Reception and Identification Centre (RIC) and another 300 living elsewhere on the island.<sup>3</sup> That number is drastically lower than the one from just six months earlier when thousands of people were living in the Chios RIC,<sup>4</sup> and is the result of a renewed effort by Greek authorities to reduce the number of people on the Aegean islands. The numbers of asylum seekers on Kos are similarly far fewer than previous years. According to Greek government statistics, there were 233 asylum seekers on Kos as of June 24, 2021,<sup>5</sup> compared to the nearly 2,000 asylum seekers who were on Kos as recently as August 2020.<sup>6</sup>

Although the procedures for asylum seekers and refugees on the two islands are largely the same, the conditions on Kos and Chios differ in important ways. Most significantly, Kos is home to the only Pre-Removal Detention Centre (PRDC) on the Aegean islands. Despite its name as a pre-removal centre, the Kos PRDC operates broadly as a detention centre for both asylum seekers and rejected applicants. In January 2020, a new asylum law went into effect in Greece, Law 4636/2019 (L. 4636/2019). Among other things, the law vastly expanded the grounds for detaining asylum seekers and increased the maximum duration of detention from six to 18 months.<sup>7</sup> Consequently, after L. 4636/2019 went into effect, authorities on Kos began summarily detaining newly arrived asylum seekers. Today on Kos, the police detain almost all new arrivals for the duration of their asylum procedures, with the exception of pregnant women, recognised unaccompanied minors, and families with children under six months old.<sup>8</sup> Chios, on the other hand, hosts a RIC with a capacity of approximately 1000 people located eight kilometres from the city of Chios. The RIC is made up of containers, structured tents, camping tents, and other makeshift accommodations. In 2020, in the midst of the Covid-19 pandemic, the numbers of people living in the Chios RIC peaked at almost 5000 individuals,<sup>9</sup> rendering the already unbearable living conditions all the more unacceptable and making social distancing and other preventive health measures impossible for residents to follow.<sup>10</sup>

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3 General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at the Eastern Aegean Sea: 24/06/2021* (24 June 2021), available at: <https://bit.ly/3dkXota>.

4 General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at the Eastern Aegean Sea: 06/08/2020* (9 August 2020), available at: <https://bit.ly/3vhX70S>.

5 General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at the Eastern Aegean Sea: 24/06/2021* (24 June 2021), available at: <https://bit.ly/3dkXota>.

6 General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at the Eastern Aegean Sea: 06/08/2020* (9 August 2020), available at: <https://bit.ly/3vhX70S>.

7 See Art. 46 L. 4636/2019.

8 Beginning in April 2021, the police began releasing families with minor children from the PRDC, however because there have been so few new arrivals since then it is unclear whether the practice will be to detain families with minor children upon arrival, as has been the practice since January 2020.

9 Hellenic Ministry of Migration and Asylum, *Yearly Report 2020*, p 3, available at: <https://bit.ly/3oVshIF>.

10 Greta Albertari et. al., *'Abandoned and Neglected.'* *The Failure to Prepare for a Covid-19 Outbreak in the Vial Refugee Camp, November 2020 Update*, Equal Rights Beyond Border (November 2020), available at: <https://bit.ly/3uoOTTH>.

# 3. LEGAL CONTEXT

## A. EU-Turkey Statement and the Hotspot Approach

March 18, 2021 marked the five-year anniversary of the EU-Turkey Statement. The Statement, which sought to deter migrants from irregularly entering the EU and create a mechanism for returning them to Turkey, primarily affected asylum seekers who arrived on the Eastern Aegean islands in Greece. As part of the EU-Turkey Statement, Turkey agreed to accept returns from the Greek islands in exchange for EU financial support for refugees in Turkey.<sup>11</sup> The EU and Greece continue to justify returns to Turkey by relying on the “safe third country” principle, which allows states to return asylum seekers to countries where they previously enjoyed refugee status or adequate protection, or where they will not face persecution or a risk of refoulement.<sup>12</sup>

Chios and Kos host two of the five EU Hotspots in Greece; the other three are located on the Eastern Aegean islands of Lesbos, Leros and Samos.<sup>13</sup> The European Commission first proposed the EU Hotspot Approach in May 2015 as a part of the European Agenda on Migration.<sup>14</sup> Initially, there was no precise legal definition or legal framework regulating the Hotspot Approach. The reformed Frontex Regulation of 2016 provided the first legal definition of “Hotspot,” defining it as “an area in which the host Member State, the Commission, relevant Union agencies, and participating Member States, cooperate, with the aim of managing any existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders.”<sup>15</sup>

After the EU-Turkey Statement entered into force on March 20, 2016, the Greek EU Hotspots transformed from centres meant to swiftly register and identify asylum seekers into mechanisms for implementing returns to Turkey. In the words of the European Commission: “the hotspots have been adapted to facilitate swift returns to Turkey from the islands.”<sup>16</sup> This approach has had enormous consequences for the tens of thousands of asylum seekers who have been forced to live in deplorable conditions in the island refugee camps. Under Greek asylum law, the vast majority of people are restricted from leaving the Eastern Aegean island on which they arrive for the duration of their asylum procedures on the assumption that Greece may return them to Turkey. Yet, in practice, Greece has never been able to effectively implement returns to Turkey, leaving many people trapped on the islands and in a legal limbo for lengthy periods. In total, the Greek authorities have deported only 2,140 people to Turkey (many of whom were never able to register as asylum seekers and so did not actually have their asylum claims examined).<sup>17</sup> In 2019, 195 people were readmitted to Turkey, while over 120,000 people arrived on the East Aegean islands.<sup>18</sup> Since March 2020, Greece has not been able to return rejected asylum seekers to Turkey at all. Even so, authorities continue to implement the Hotspot approach and reject applicants

11 European Council, *EU-Turkey Statement*, 18 March 2016, available at: <https://bit.ly/3gKq3GK>.

12 Art. 56 (1) L 4375/2016, Art. 86(1) L. 4636/2019. Safe third country policies are sometimes also referred to along the concept of first country of asylum. Although the concepts are similar, the Procedures Directive defines first country of asylum and safe third country separately. Art. 35, 38 Directive 2013/32/EU. In discussing safe third country policies in Greece, this report refers to the concept of safe third country, rather than first country of asylum.

13 AIDA, *Reception and Identification Procedures*, available at: <https://bit.ly/34UN9bH>.

14 The Agenda intended to ‘address immediate challenges’ linked to the refugee crisis and ‘equip the EU with to better manage migration.’ See: European Commission, *European Agenda on Migration*, COM(2015) 240 final, Annex II concerning the EU Hotspot Approach.

15 Art 2 para. 10 Frontex Regulation 2016/1624.

16 European Commission, *Second Report on the progress made in the implementation of the EU-Turkey Statement*, COM(2016) 349 final, p. 6.

17 Ibid p. 6.

18 Cf. UNHCR, *Mediterranean Situation*, available at: <https://bit.ly/3bWeM3L>.

on the grounds that they can be returned to Turkey.

Finally, while the legal nature of the Statement is unclear, it constitutes a modus of how elements of asylum law are applied. It does not constitute new (asylum) law but only politically determines that the rules governing the so-called safe third country concept are implemented.<sup>19</sup>

## *B. Safe Third Country Law in Greece and the EU*

Safe third country policies are relatively new in the field of refugee and asylum law, but have been gaining popularity since the 1990s as states have taken an increasingly hard-line approach to migration.<sup>20</sup> Although they have no legal basis in the Geneva Convention, the operating theory behind safe third country law is that if a person had the opportunity to apply for and receive protection in another country where she will not face harm, a receiving country can reject her application on the grounds that she can be returned to that other country. In other words, under safe third country policies, states transfer their responsibility for a person's asylum application from their state to another.

The safe third country concept has been a part of EU law since the EU adopted the 2005 Asylum Procedures Directive, and today, Greece regularly relies on safe third country law to reject asylum seekers at its borders.<sup>21</sup> Even so, the criteria for establishing a third country as safe is fairly robust. Article 38 of the EU Directive 2013/32 (Procedures Directive), which was transposed into Article 86 L. 4636/2019, requires safe third countries to meet the following standards: there is no threat to the person's life or liberty on account of race, religion, political opinion, nationality, or membership in a particular social group; there is no risk that the person will face "serious harm"; the country respects the principle of *non-refoulement*; and the person will have the opportunity to apply for asylum and receive protection in accordance with the Geneva Convention. Article 86 adds the criteria that a person must have "links" with the third country and provides examples including, prior transit, professional or cultural connections, or even having distant relatives. Notably, if a country fails to meet any one of these criteria, states cannot consider it safe under Article 38.

## *C. Safe Third Country Practices in Greece and the June 7<sup>th</sup> Joint Ministerial Decision*

Historically, the safe third country concept has been particularly relevant to asylum seekers on the Aegean islands because the returns envisioned by the EU-Turkey Statement apply only to the islands. Consequently, although in theory Greek and EU law allow authorities to screen any application in Greece to see if Turkey is a safe third country, in practice the policy until now has only applied to asylum seekers who arrive by sea, and primarily to Syrians. In other words, under the practices in place prior to June 2021 (when the new JMD was issued), a Syrian asylum seeker who arrived on Kos would have been interviewed exclusively about the conditions in Turkey, while an asylum seeker from Afghanistan who arrived at the same time was interviewed about why she left Afghanistan. At the same time, a Syrian applicant who arrived in Greece via the land border would have been interviewed about why she left Syria. However, the June 7<sup>th</sup> JMD will change that practice.

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19 Cf. Ziebritzki/Nester, 'Hotspots' an der EU-Außengrenze. Eine rechtliche Bestandsaufnahme. Arbeitspapier ('Hotspots' at the EU External Border. A Legal Survey), Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2017-17, available at: <https://bit.ly/3xwL1BE>.

20 See e.g., Yuval Livnat, *Compulsory Second Movement and Article 32 of the Refugee Convention*, RefLaw (28 August 2019), available at: <https://bit.ly/348SSch>.

21 Art. 27 Directive 2005/85/EC.

The decision presumes Turkey to be a safe third country for applicants from Syria, Afghanistan, Pakistan, Bangladesh, and Somalia, regardless of how or where they entered the country. Thus, in addition to codifying the previous practices on the Aegean islands, the decision also widened them in two respects: it extended the safe third country assessment to five countries of origin and removed any geographical limitation to its application.

The June 7<sup>th</sup> JMD entered into force the same day it was issued. Alongside it, the Greek authorities established a set of specific procedures for applicants coming from those five countries that presume that Turkey meets the safe third country criteria established by Greek and EU law. The creation of a national list of safe third countries is not clearly provided for under EU law, but it was provided in 2019 as an option under the Greek asylum law. Article 86(3) L. 4636/2019 allows authorities to designate a third country as safe for “certain categories of asylum seekers according to their characteristics.” Article 86(2) L. 4636/2019, as amended by Article 16 L. 4686/2020, requires case-by-case individualised examinations of the criteria defining a safe third country established in Article 86 of the law, “unless the third country has been designated as generally safe and included in the national list of safe third countries.” Asylum seekers can challenge this presumption by establishing that a country is not safe for them specifically, but the starting point from which interviews will be conducted and decisions drafted will be a general presumption of safety.

The June 7<sup>th</sup> JMD was issued only a few weeks before this report, and so how authorities will implement the new procedures was not fully clear at the time this report was published. Even so, the JMD raises serious legal questions and human rights concerns and is likely to have consequences similar to those described throughout this report.<sup>22</sup>

## *D. Border Procedures on the Eastern Aegean Islands*

Asylum seekers who arrive on Chios, Kos, Leros, Lesbos, or Samos are subject to the so-called accelerated border procedures laid out in Article 90 (3) L. 4636/2019. Among other things, Article 90(3) establishes a significantly sped up timeline for filing and assessing applications for international protection. Notably, Article 90(3) is only meant to be used in situations of “mass arrivals,” however it remains the ruling law on the islands despite very few arrivals in 2020 and 2021.<sup>23</sup> The procedures established by Article 90(3) are not new, but rather expand on those that were already in place under the previous law, L. 4375/2016. However, L. 4636/2019 departs from its predecessor in an important way: it —as a rule — no longer exempts vulnerable applicants from the border procedure, allowing authorities to apply the safe third country concept to the majority of vulnerable applicants. This change in particular has had profound consequences for Syrian asylum seekers on the islands, against whom the safe third country policies were historically applied.

Article 90(3) does not establish a special admissibility procedure for people in the accelerated border procedure, however the question of admissibility is central to the procedures on the islands. In theory, the EU-Turkey Statement and the procedures that stem from it applies to any asylum seeker who arrives on one of the five Aegean islands. In practice though, the procedures that authorities apply in a given case have historically depended on the asylum seeker’s nationality. For example, under the previous asylum law the practice on the islands

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22 Whether the above-mentioned Ministerial decision complies with the prerequisites for its adoption as established under Greek Asylum law is a question that goes beyond the scope of this report and needs additional consideration and analysis in the upcoming weeks.

23 According to UNHCR 9,714 migrants arrived in Greece by sea in 2020 and only 993 migrants had arrived by sea between 01/01/21 and 25/04/21. This is a drastically lower number than the nearly 60,000 migrants who arrived by sea in 2019 and a small fraction of the nearly 900,000 people who arrived by sea in 2016. UNHCR, *Mediterranean Situation: Greece*, available at: <https://bit.ly/3hOBI15>.

was as follows: interviews for Syrians focused exclusively on admissibility, with questions mainly focusing on Turkey; non-Syrian applicants from countries with a recognition rate below 25% were examined directly on the merits without a formal admissibility assessment, and non-Syrians applicants from countries with a recognition rate over 25% were subject to a so-called merged procedure “where the ‘safe third country’ concept was examined together with the merits of the claim.”<sup>24</sup> However, since January 2020, when L. 4636/2019 took effect, only Syrians have been subject to the admissibility procedure on the islands.<sup>25</sup> Authorities justify the differential treatment because Syrians are eligible for a temporary protection status in Turkey,<sup>26</sup> while other nationalities do not qualify for the same or similar type of protection.<sup>27</sup> According to Greek case law, the temporary protection status for Syrians in Turkey is in line with the Geneva Convention, and so meets the criteria established under Greek and EU safe third country law.<sup>28</sup>

Around January 2020, staff from Equal Rights began noticing a shift with regards to procedures on the islands: authorities were rejecting all Syrian applications as inadmissible, regardless of any vulnerability or serious claim of persecution in Turkey. This is not a new practice and is, to some extent, in line with the procedures under Article 90(3) L. 4636/2019, which no longer exempts vulnerable applicants from the accelerated border procedures. Even within the context of past practices and the new asylum law, however, the extent to which authorities have been summarily rejecting Syrian claims since January 2020 is extreme. In a July 2020 meeting with UNHCR and other NGOs on the island, a UNHCR employee stated that EASO had unofficial orders to reject all Syrian applicants as inadmissible, unless a case was truly extraordinary. Yet even in exceptional cases, authorities still reject Syrian applicants as inadmissible.

The move to reject essentially all Syrian applicants on the islands has had a deep and lasting impact on the procedures for Syrian asylum seekers at every stage of the process. Authorities from GAS and EASO treat the outcome in Syrian cases as a forgone conclusion. As a result, the procedures for Syrians have deteriorated in every respect—interviews lack procedural safeguards, negative decisions often fail to analyse serious claims, and, desperate to escape the dire conditions on the islands, Syrian asylum seekers often refuse legal assistance in the hopes that acting without a lawyer will help them get rejections faster.

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24 AIDA, *Country Report: Greece* (31 December 2019), 95, available at: <https://bit.ly/3fFlcbl> [updated June 2020] [hereinafter ‘AIDA Greece Report’].

25 Equal Rights’ offices on both Kos and Chios observed this shift in practice beginning in January 2020. Since then, lawyers from Equal Rights on Kos and Chios have provided first instance support to more than 100 asylum seekers with a wide range of nationalities. These include people from Syria, Afghanistan, Iraq, Guinea, Togo, Gambia, Cameroon, the Democratic Republic of Congo, and Somalia, and only Syrians have undergone extensive questioning about their stay in Turkey.

26 AIDA Greece Report, *supra* note 27, at 141.

27 Turkey is a signatory to the 1951 Geneva Convention, but not the 1967 Protocol, which lifted the original Convention’s geographical restriction. Therefore, Turkey only applies the Refugee Convention to refugees coming from European countries. In April 2013 Turkey did adopt a law on international protection which established a conditional refugee status for persons coming from non-European countries. AIDA, *Country Report: Turkey* (31 December 2020), 20, available at: <https://bit.ly/3xH4Oyt> [updated May 2021] [hereinafter ‘AIDA Turkey Report’].

28 AIDA, *Country Report: Greece* (31 December 2017), 102-103, available at: <https://bit.ly/3gMWxCc>.

# 4. FIRST INSTANCE PROCEDURES FOR SYRIANS ON THE AEGEAN ISLANDS

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For this report, Equal Rights analysed 47 cases involving Syrian applicants for international protection—14 from Chios and 33 from Kos. Forty-three of the 47 cases were rejected as inadmissible at the first instance stage on the grounds that Turkey is a safe third country. One received refugee status, and the other three cases were pending at the time this report was published. In the sole case where there was a positive decision, the person never went through the admissibility procedure. Instead, the authorities on Kos put him through the regular procedure, meaning they assessed his claim directly on the merits, because of how the police had charged him when they initially arrested and detained him on Kos.<sup>29</sup> As a result, he was interviewed about why he left Syria rather than on the conditions in Turkey. In other words, of the 43 cases where there was a decision on admissibility, 100% were rejections.

At the first instance stage, there were no factors that seemed to affect the outcome of a given case. Of the 47 cases Equal Rights analysed, 26 of them involved people with a clear vulnerability, including pregnant women, single parent families, victims of torture, and survivors of gender-based violence. All of these cases were rejected, and, in the cases for which Equal Rights had access to the first instance decision, the decisions did not address whether particular vulnerabilities would expose the person to violence, persecution or harm in Turkey. Similarly, having a serious claim to Turkey did not affect the outcome of any cases at the first instance level. In 13 cases analysed for this report, people claimed that the Turkish authorities had refouled them to Syria, 10 cases involved detention, and five people stated that they had been forced to sign “voluntary return papers”—i.e. a declaration that they agree to voluntarily return to Syria—in Turkey. In three cases, the applicants were Kurdish and from regions in Syria that Turkey either currently or previously has controlled. In two cases, the applicants submitted copies of the “voluntary” return papers they were forced to sign in Turkey. Finally, having a lawyer did not generally affect the outcome of cases at the first instance level. Applicants received legal support at the first instance level in 11 cases and no legal support in 36 cases; however, the outcome remained the same in each case.

In many cases, especially on Kos, serious claims were rejected by the authorities as not credible; but even in cases where the claim was accepted, the decision was still negative. For example, in one case the person claimed that the Turkish authorities had refouled him to Syria 13 times. Although EASO accepted the person’s claim as credible and even recommended that his claim be found admissible, GAS still rejected his application as inadmissible. In another case, an applicant claimed that he had been tortured by Turkish gendarmerie. Both EASO and GAS accepted his story as credible but rejected his application as inadmissible, nonetheless.

Knowing that the outcome is a foregone conclusion, both authorities and applicants treat the asylum procedure for Syrians as if the actual substance of it matters little. This is particularly true at the first instance stage, which is arguably the most important stage of the asylum procedure.<sup>30</sup> Interviews seem scripted, do not adequately

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<sup>29</sup> Specifically, the police charged him with ‘illegal stay’ rather than ‘illegal entry,’ which most migrants are charged with when they are arrested and detained on Kos. Because of this, the asylum service decided to put his application through the so-called regular procedure, meaning that he did not have to first go through an admissibility interview to determine if Turkey could be considered a safe third country.

<sup>30</sup> This report makes the claim that the first instance proceedings are the most consequential stage of a person’s asylum procedure in Greece because the Appeals Committees reject appeals at an extraordinarily high rate. Further, the annulment procedure is practically unavailable to most rejected asylum seekers (cf. section V(c)). As a result, if a person is rejected at the first stage, the chances that they will be granted international protection at a later stage are

address serious claims or vulnerabilities, and often fail to guarantee even basic procedural rights; decisions are copy pasted from one to the next and do not analyse individual claims. Applicants themselves are also well aware that there is little they can do to avoid a rejection. Yusuf,<sup>31</sup> a single man who went through the procedure on Chios stated about his interview, “I knew it was useless. I did it in July, almost one year from the arrival so by that time I knew it was a waste of time and bullshit.” Musa, another single man who was detained on Kos for 18 months, told Equal Rights, “When I first decided to submit an application for asylum my friends in detention were like: there’s no point in doing it. And I said maybe I’m a special case, I have medical problems, I’ve been injured, I’ve escaped from the army service, so probably I’ll have some priority. Eventually I find out that they were right, and I was wrong.”

## A. Quality of Interviews

The asylum interview is among the single most important elements of the asylum procedure on the Aegean islands. Migrants arrive on the islands almost exclusively by small rubber rafts, and by the time most of them make it to Greece, their documents and phones have been lost at sea. Consequently, the asylum interview often serves as an applicant’s primary, and in many cases, sole piece of evidence. At the same time, appeals in Greece are rejected at an astonishingly high rate—according to AIDA, 87.9% of appeals were rejected in 2019,<sup>32</sup> while the organisation RSA reported that that number rose to 94.5% during the first half of 2020.<sup>33</sup>

### 1. Procedural Safeguards for Applicants for International Protection

Because cases can often turn on the interview, EU and Greek law establish numerous procedural and substantive guarantees aimed at protecting applicants during their interviews. In general, EU and Greek law grant applicants for international protection the right to present the necessary information required to substantiate their claims during their personal interviews.<sup>34</sup> Article 15 of the Procedures Directive also mandates that states conduct interviews “under conditions which ensure confidentiality.”<sup>35</sup> These procedural safeguards apply to both admissibility and eligibility procedures. This follows from Article 4 of the Directive 2011/95/EU (Qualification Directive), which lays out the duty of the applicant to submit all elements needed to “substantiate the application for international protection,” and similarly imposes a duty on Member States to assess applications on an individual basis. In this respect, the CJEU has recently clarified that “the statements made by an applicant [...] constitute merely the starting point in the process of assessment of the facts and circumstances carried out by the competent authorities”<sup>36</sup>. While it could be argued that the Qualification Directive is about the “qualification of [...] persons as beneficiaries of international protection” (cf. its title) by Member States, and the purpose of an admissibility procedure and deporting people to an allegedly safe country is precisely to avoid assessing qualification, the uniform “application for international protection” must also be taken into account. The asy-

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extremely low.

31 All names in this report have been changed to pseudonyms to maintain client confidentiality, and Equal Rights obtained consent from the individuals interviewed to include their thoughts and/or decisions in this report.

32 AIDA, *Statistics: Greece*, available at: <https://bit.ly/349ghds> [last updated 30 November 2020].

33 Refugee Support Aegean, *The Greek Appeal Procedure in the First Half of 2020* (21 August 2020), available at: <https://bit.ly/3oNorls>.

34 Art. 77 L. 4636/2019 guarantees applicants the opportunity to present the information required to substantiate the application for international protection. Art. 15(3) of EU Directive 2013/32 requires Member States to take appropriate steps “to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their application in a comprehensive manner.”

35 Art. 15 EU Directive 2013/32.

36 CJEU, Judgement of 19 November 2020, *EZ v. Bundesrepublik Deutschland*, C-238/19, para 52. See, to that effect, CJEU, Judgement of 25 January 2018, F, C473/16, EU:C:2018:36, para 28.

lum procedure, as all administrative procedures, consists of two stages that are respectively triggered by an event, in this case the application for international protection. While at the first stage it is assessed whether *the application* is admissible—i.e. whether a state is responsible or other formal requirements have not been met—at the second stage the content of *the application* is further assessed, in case it was found admissible. However, Art. 4(1) Qualification Directive is not talking about the admissibility or the eligibility stage, but about the application itself, that is commonly understood in all legal instruments of the CEAS as:

“a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately” (cf. Article 2 lit. h Qualification Directive, Art. 2 lit. a Reception Conditions Directive in conjunction with Art. 2 lit. h Qualification Directive, Art. 2 lit. b Asylum Procedures Directive, Art. 2 lit. b Dublin-III-Regulation in conjunction with Art. 2 lit. h Qualification Directive).

One aspect of “the assessment” in the sense of Art. 4(3) Qualification Directive is therefore the assessment of the admissibility of the application, even though finding an application inadmissible would exclude the granting of international protection as outlined in its material criteria by the Qualification Directive. Further, Art. 4 Qualification Directive often reproduces guarantees arising from human rights and international law (cf. below) and the prerequisites are to be taken into account anyway.

Further, Article 3 of the European Convention of Human Rights imposes a separate procedural obligation on states to conduct effective, thorough examinations before returning a person to a country where she might face torture or inhuman or degrading treatment. In particular, there is a “procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing” a person from the territory.<sup>37</sup> Where evidence points to a real risk of an Article 3 violation, it is then the Government’s burden to remove any doubt.<sup>38</sup> States must assess all foreseeable consequences of the individual’s return or denial of entry to the country “in the light of the general situation there as well as the applicant’s personal circumstances.”<sup>39</sup> Therefore, the asylum procedure itself must be effective, thorough, and accessible in order to assess any possible violations of the Convention.<sup>40</sup>

## 2. Legal Guarantees for Vulnerable Groups

Beyond the legal guarantees for all applicants, both Greek and EU law establish certain procedural safeguards for members of vulnerable groups. Specifically, Greek asylum law states that certain applicants may require special safeguards as a result of their sexual orientation or as a result of torture, rape or other serious forms of physical, psychological, or sexual violence.<sup>41</sup> Among the procedural safeguards guaranteed for vulnerable applicants are the right to take additional breaks during the personal interview, the possibility to move during the personal interview, and the benefit of the doubt in the case of minor inconsistencies.<sup>42</sup> Article 24 of the Procedures Directive creates special protections for survivors of rape, torture, and other forms of sexual violence. Article 24 makes clear that applicants should have access to these special protections even “where such a need becomes apparent at a later stage of the procedure.” Thus, even though L. 4636/2019 no longer exempts vulner-

37 ECtHR, Judgment of 23/11/2019, No. 47287/15, *Ilias and Ahmed v. Hungary*, para 163.

38 ECtHR Judgment of 20/07/2010, No. 23505/09, *N. v Sweden*, § 53; ECtHR Judgment of 09/06/2010, No. 41827/07, *R.C. v. Sweden*, para 50.

39 ECtHR Judgment of 28/06/2011, No. 8319/07, 11449/07, *Sufi and Elmi v. UK*, para 216.

40 ECtHR, Judgment of 21/01/2011, No. 30696/09, *M.S.S. v Belgium and Greece*, para 301.

41 Art. 67(1) L. 4636/2019.

42 *Ibid.*

able people from the border procedure, whether a person is a member of a vulnerable group is still important to her legal case.

### 3. General Interview Practices on Chios and Kos

The interviews on Kos and Chios are conducted by either GAS or EASO. Historically, EASO conducted admissibility interviews while GAS conducted eligibility interviews. At the time this report was published however, both EASO and GAS were conducting admissibility interviews on the islands, and there was no obvious rhyme or reason to how authorities divided the interviews between the two agencies. EASO employees are not able to make a final decision on applications for international protection.<sup>43</sup> However, in Greece, EASO caseworkers write initial opinions on cases, which GAS almost always accepts, a practice that led the European Centre for Constitutional and Human Rights (ECCHR) to file a complaint with the European Ombudsman in 2017, alleging that EASO was acting outside of its mandate by effectively making decisions on the admissibility of applications for international protection.<sup>44</sup>

### 4. Poor Quality of Interviews for Syrian Applicants

Observers have complained for years about the quality of the personal interviews conducted by the authorities on the Aegean islands.<sup>45</sup> However, starting in January 2020, staff from Equal Rights began to notice that the quality of Syrian interviews in particular began to decrease significantly and that many caseworkers began to drop all pretence that the interviews mattered at all. In some cases, interviews were rushed, and caseworkers skipped over important elements, while other interviews took place in non-confidential settings. For example, during an interview attended by a lawyer from Equal Rights on Chios in September 2020, the caseworker informed the applicant at the outset that he only had one and a half hours for his interview and that he would not be granted a second interview if time ran out. The interview, which was scheduled for 3:00pm, started after 6:00pm, and the caseworker pointed to her watch several times during the interview to speed the applicant along. The applicant, who was tortured in a Syrian regime prison, mentioned to his lawyer after the interview that he wanted to take breaks but was afraid that they would cut into his time. The interview also took place in a non-confidential setting, with other GAS employees working in the same room at the time of the interview. The other employees did not identify themselves, and the caseworker did not mention them either. In another interview of a single male applicant who is a torture and SGBV survivor also attended by an Equal Rights lawyer on Chios in September 2020, three other Syrian applicants were already in the interview room at the start of the interview. The faces of the other applicants were visible to all of the other applicants in the room, and their stories could be heard clearly by both the applicant and lawyer. The lawyer intervened, and the caseworker agreed to move the interview to a private room; however, the other interviews in the room carried on as usual. The interview also started after 6:00pm and finished close to 10:00pm, at which point the applicant was exhausted and had trouble focusing.

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43 Art. 2(6) Regulation 439/2010/EU states that EASO “shall have no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection.”

44 European Ombudsman, *Decision in case 735/2017/MDC on the European Asylum Support Office’s (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews* (5 July 2018), available at: <https://bit.ly/2XVUfXq>.

45 See e.g., *ibid* at para 33. See also, Yiota Masouridou et al., *The EU-Turkey Statement and the Greek Hotspots - A Failed European Pilot Project in Refugee Policy* (June 2018) 15 and  *fwd*, available at: <https://bit.ly/3gjQXai>.

## 5. No Individualised Assessment

Substantively, the interviews for Syrians do not vary based on a person's status or background, raising questions about whether the personal interviews, in fact, allow the authorities to assess Syrian applications on an individualised basis.<sup>46</sup> Interview transcripts collected for this report, along with Equal Rights staff members' first-hand experience accompanying Syrian clients to six personal interviews, revealed the extent to which interviews for Syrians all follow a standard script. This perception is shared by applicants themselves, as is evident from the words of Nabil: *"I felt like the questions were like a routine, like it's already written. It's not about my case itself, just a system on the computer. They ask the same things to all Syrians."*

Neither did the interview questions change to reflect or analyse an applicant's vulnerability. This was true for Syrian applicants regardless of whether a lawyer accompanied them or not. For example, during one interview attended by a lawyer from Equal Rights, the caseworker did not ask a single woman and SGBV survivor any questions about the conditions for women or SGBV survivors in Turkey, or what kind of legal and social protections would be available to her there. During another interview also attended by a lawyer from Equal Rights, a man with schizophrenia was not asked any questions about whether he had tried to receive medical treatment in Turkey or if he would face any kind of discrimination or harm based on his medical condition. Caseworkers also did not ask torture survivors any questions other than the standard questions, even when applicants stated that they had been tortured either in Syria or in Turkey. During a particularly bad interview, an LGBTI applicant was asked how his sexual orientation was "related to your application for asylum," but the caseworker did not go on to ask him any questions about the conditions for gay men in Turkey. Only after lawyers from Equal Rights intervened in the case did the caseworker eventually agree to ask the applicant some follow up questions about his sexual orientation. In the same case, the applicant gave the caseworker an original copy of a "voluntary" return paper he was forced to sign in Turkey, but the caseworker did not ask him any questions about what the paper was or under what circumstances the applicant had signed it.

## 6. Refusal to allow Applicants to add Additional Information

In theory, applicants have an opportunity to add any additional information they may want to at the close of their personal interviews. While caseworkers do in general end interviews by asking applicants if they have anything to add, caseworkers also refuse to let Syrian applicants expand on their stories if they try to talk about an event that occurred outside of Turkey. When a lawyer from Equal Rights tried to establish that an applicant was a victim of torture during an interview on Chios in September 2020, the caseworker stopped her and said, *"This is an admissibility interview, not an eligibility interview, so you are not allowed to ask questions on Syria, only on Turkey."* At the end of another interview that also took place on Chios in September 2020, an applicant similarly tried to describe how he had been tortured by the Nusra Front, the Syrian arm of Al-Qaeda, but the caseworker also stopped him. In this case, in addition to establishing that he was a victim of torture, the applicant's experiences in Syria after Turkey deported him were directly connected to his stay in Turkey. He claimed that the Nusra Front arrested and tortured him after Turkey deported him to Syria, even though he warned the Turkish authorities that this would happen because he is a religious minority. What happened after he was deported speaks to both his story's credibility and the serious risks he faces if returned to Turkey.

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<sup>46</sup> Greek Council Refugees, *Report of the Greek Council for Refugees to the UN Committee Against Torture in View of its 67th Session* (25 May 2017) 8, available at: <https://bit.ly/3g5g55Z>.

The exchange went as follows:

**Applicant:** you must know the details of what happened to me after I was deported by the Turkish to Syria . . .

**Caseworker:** As I have already informed you this interview is about Turkey . . . this is what we examine in this interview.

The authorities' rigid approach to admissibility interviews has serious consequences for applicants with non-physical vulnerabilities who otherwise do not have an opportunity to establish their status with the asylum service. Kos and Chios both suffer from an almost complete lack of mental health services.<sup>47</sup> On Chios, there are currently three social workers and four psychologists, and on Kos there is one social worker and one psychologist in the PRDC, and one psychologist in the RIC.<sup>48</sup> These ten people have been historically responsible for meeting the needs of thousands of asylum seekers, most of whom have experienced some form of serious trauma.<sup>49</sup> Further, even if some asylum seekers do manage to have access to mental health services, receiving services does not always have an impact on their asylum application. On Chios, psychologists from independent NGOs submit reports to the asylum service stating that they are treating a person, but they will not provide any kind of assessment, such as confirming that the person is indeed a survivor of SGBV or torture. The psychologist in the Kos PRDC and the Chios RIC will also submit reports to the asylum service, but they similarly cannot provide formal assessments about whether people should be considered vulnerable. Consequently, the personal interview is often a person's sole opportunity to establish that she is a member of a vulnerable group. And although being recognised as vulnerable does not have any real impact on the outcome of a Syrian applicant's first instance procedure, it can be important to the legal remedies that follow.

## 7. Resignation of Applicants

The poor quality of interviews for Syrian asylum seekers has led Syrian applicants to also conclude that the personal interview is pointless. All 11 of the applicants Equal Rights interviewed for this report were aware that the vast majority of Syrians on the islands are rejected before going into their interview. Thus, many of them went into their interviews with the sense that the procedure was essentially rigged from the start. Ahmed, a Syrian man with a serious mental illness, told Equal Rights that after the interview he felt that, *"For sure there is no good feeling . . . because it's useless."* Regarding the personal interview, Abbas, another young Syrian man stated that, *"With EASO it was clear there is no result out of it, and it is a rejection. I know of people that entered the EASO interview that were refusing to answer the questions and saying to the caseworker 'you can write whatever you want, why to ask me? There's no benefit in this questioning.'" When asked how she felt prior to her interview, Zeana, a single woman and survivor of SGBV told Equal Rights, "Really, I was very scared. I know that the majority of Syrians are rejected. I didn't have any hope at all that I would be accepted. I didn't really want to do the interview to be honest because the situation for getting asylum is really bad for Syrians."*

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47 IRC released a report in December 2020 detailing the significant gaps in mental health services for asylum seekers living in the Aegean island hotspots. IRC, *The Cruelty of Containment: The Mental Health Toll of the EU's 'Hotspot' Approach on the Greek Islands* (December 2020), available at: <https://bit.ly/3yzOxwE>. For an account of the flaws of the vulnerability assessment procedures and their impact on living conditions of asylum seekers, see, Oxfam, *Vulnerable and abandoned - How the Greek Reception system is failing to protect the most vulnerable people seeking asylum* (January 2019), available at: <https://bit.ly/3hXchoE>.

48 Notably, though, the psychologist in the PRDC does not have access to interpreters and can therefore not communicate with most applicants.

49 Sixty percent of the people surveyed for the IRC report were categorised as vulnerable. Sixteen percent were SGBV survivors, while 15% were survivors of torture. *Ibid* at 14. Further, although the number of asylum seekers on Kos, Chios, and the Aegean islands more broadly was relatively low at the time this report was published (cf. note 7). Historically, the numbers have been much higher (cf. note 6).

## *B. First Instance Decisions on Admissibility for Syrians*

### **1. Legal Preconditions**

If the asylum interview represents the central element of the asylum procedure on the Aegean islands, the decision determines its outcome and the consequent legal status of the applicant. The duty to issue individualised decisions is enshrined in Article 82(8) L. 4636/2019, which states that “the decision rejecting an application for international protection shall state the actual and legal reasons for the refusal.” Even though admissibility decisions do not reject an application for international protection, the Procedures Directive obliges Member States to ensure the possibility for applicants to have these decisions reviewed through access to an effective remedy before a court or tribunal.<sup>50</sup> The Directive provides that applications of safe third country concepts must be “subject to rules allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept.”<sup>51</sup> Thus, issuing a fully reasoned decision becomes a necessary prerequisite to granting access to an effective remedy within the meaning of EU law. This right can in fact only be effectively exercised if the person concerned knows the reasons underlying her negative decision. This requirement renders it necessary for admissibility decisions to specify the reasons for the rejection in a clear and exhaustive manner, by stating the factual and legal reasons for it.

### **2. Modus Operandi in Greece**

Admissibility interviews of Syrians, as mentioned earlier, are often conducted by EASO. Therefore, the final decision of the applicant’s case will be made on the basis of a first EASO Opinion, which GAS almost always follows when issuing its decision. In general, first instance admissibility opinions and decisions all follow a similar template: the first section lays out the procedure, the second section addresses the various allegations made by the applicant, and the third one provides the legal analysis and conclusion. Of the 43 inadmissibility decisions obtained for this report, Equal Rights analysed 10 in detail, five from Chios and five from Kos.<sup>52</sup> Despite the legal requirement to assess cases on an individual basis, the admissibility decisions on Chios and Kos all present the same reasoning, structure, legal analysis, and conclusion. Although the decisions address the individual claims made by each applicant, the assessments are generally very short and often fail to address several aspects of the applicants’ claims. The decisions also cite very few country-of-origin reports, and most of them are outdated and of general scope. Beyond that, the legal analysis section is nearly word for word the same in all 10 of the decisions, leading Equal Rights to confirm the conclusion that first instance decisions are largely copy-pasted from one to the next.<sup>53</sup>

### **3. First Instance Decisions on Chios**

In each of the five decisions issued by Chios RAO and that Equal Rights analysed, GAS followed the same reasoning and structure of the EASO Opinion to develop and justify the decision. Decisions start with verification of personal details and allegations about what the applicants experienced in Turkey.<sup>54</sup>

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50 Art. 46(1)(a)(ii) Directive 2013/32/EU.

51 Art. 38(2)(c) Directive 2013/32/EU.

52 Eight of those decisions are published as an annex to this report. See, Annex II.

53 AIDA Greece Report, *supra* note 27, at 128.

54 The information usually analysed is personal information, nationality, family status and travel to Greece.

In the decisions analysed, the applicants' claims about Turkey regard the following:

- Arrests and the conditions experienced in detention in Turkey;
- Expulsions and returns from Turkey to Syria (in one instance a person was refouled 13 times);
- A five-year entry-ban imposed by the Turkish authorities to one of the applicants; and
- Abuses perpetrated by the Turkish authorities while one of the applicants tried to cross the border.

#### a. Credibility Assessment by GAS/EASO

In four out of five decisions, both EASO and GAS accepted all of the allegations presented by the applicants as credible, not only based on the applicants' inherent credibility and coherence (internal credibility), but also by supplementing their testimonies with outside sources and country information researched by EASO and GAS themselves (external credibility).<sup>55</sup> For example, allegations about returns from Turkey to Syria are accepted, citing sources that found that "there are reports<sup>56</sup> of the humanitarian situation of Syrians being returned to Syria with serious human rights abuses, including arbitrary detention without access to legal aid or international protection."<sup>57</sup> In another decision,<sup>58</sup> the external reliability of the applicant's allegation regarding the abuses of the Turkish authorities while he was trying to cross the Syrian-Turkish border was accepted based on a report that found that "persons attempting to cross from the Turkish-Syrian border face significant obstacles, including the risk of being captured by the Turkish Armed Forces, while there are also allegations of deportations and violence against refugees at the border."<sup>59</sup> In another case, GAS accepted the applicant's allegation that he was arrested and interrogated by the Turkish port authorities even if "the incident cannot be refuted or confirmed by existing sources."<sup>60</sup>

#### b. Legal Assessment by GAS/EASO

Even if GAS on Chios generally accepts Syrian claims as credible, the accompanying legal analysis resulted in a rejection in each case, regardless of the seriousness of the claim. In particular, rejections follow precisely the same structure of Article 86(1) L. 4636/2019, which defines the safe third country criteria. The legal analysis invariably follows the same structure and presents the same arguments, only slightly tailored to the specific case of the applicant. First, all decisions state that the life of the applicant is not considered at reasonable risk in Turkey. Second, the decisions note that Turkey respects the principle of non-refoulement with the sole exception of cases involving national security and public order, and that, regardless, Turkish authorities have reaffirmed the respect of this principle for those returning under the EU-Turkey Statement. Third, the decisions state that there is no risk of serious damage to the applicant within the meaning of Article 15 L. 4636/2019, again without providing additional analysis or justification. The decisions go on to note that Turkish law prohibits the removal of the applicant to a country where he or she is at risk of torture or cruel, inhuman or degrading treatment or punishment, as defined in international law. Fourth, the decisions point out that Turkey grants temporary protection to Syrians and that the Turkish legal framework is equivalent to the protection afforded under the Ge-

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55 Reference to internal and external credibility is drawn from EASO guidelines and opinions. The same language is then also adopted by GAS. See EASO, *Practical Guide: Evidence Assessment* (2015), 10 and fwd, available at: <https://bit.ly/2TQMpRI>.

56 AIDA Turkey Report, *supra* note 30.

57 Annex II, First instance decision n. 4.

58 Annex II, First instance decision n. 1.

59 AIDA Turkey Report, *supra* note 30.

60 Annex II, First instance decision n. 3.

neva Convention. Finally, the decision takes into account the applicant's connection to Turkey.<sup>61</sup> Notably, the authorities regularly consider this condition met on the basis of "the transit of the applicant through Turkey, in combination with other circumstances concerning him, such as, inter alia, the length of his stay there or the fact that the country is close to his country of origin." As a result, the decisions do not apply the legal standards to the individual circumstances of the case, and the reasoning of the rejections is vague, repetitive, and not tailored to individual claims. As with the personal interviews, the decisions do not consider the vulnerabilities of the applicants or their specific histories, but rather only aim to prove that Turkey is a safe third country on the basis of its legal framework, even if it is not respected in practice. The final impression is that the legal basis provided in the rejections is copy-pasted and deprives the applicants of a fair judgment.

### c. Shortcomings in this Approach: No Assessment of Future Risk in Turkey

At the core of the flawed decision-making lies a problem of irreconcilability between the past-oriented assessment of credibility, which can be supported by external sources, and the actual assessment that the decision maker is called to do: a future-oriented assessment of risk upon return to Turkey. The argument that the authorities consistently rely on to find that Turkey is a safe country is a very simplistic one with little legal basis. After accepting as credible and reliable that most applicants have experienced events which would not make Turkey qualify as a safe third country within the meaning of Article 86 L. 4636/2019, the decisions move to the assessment of future risk. The question that the decision maker is called to answer thus becomes the following: "Having accepted all of this, will the same likely happen in case of return to Turkey from Greece?" The answer is always no, and the way the answer is reached is worth analysing.

When addressing the issue of refoulement or access to temporary protection status for Syrians in Turkey, all decisions state that: "The legal regime in Turkey provides that *returned Syrians* are explicitly protected from refoulement, a fundamental concept of international protection, and automatically enjoy the protection of temporary protection status"<sup>62</sup> or that: "Turkish authorities reaffirm the observance of the principle of non-refoulement for those returning under the EU-Turkey Statement."<sup>63</sup> Thus, whereas the earlier sections of the decision accept and report on evidence that instances of refoulement regularly take place in Turkey, that information seems to lose relevance as soon as the same individuals who were prevented from having access to temporary protection or were arbitrarily deported back to Syria are now to be returned to Turkey in the framework of the EU-Turkey Statement. The fact that the principle of refoulement is a fundamental and non-derogable precept of international law to which Turkey is bound *per se*, and not just for those returned under the Statement, compounded with the fact that Turkey systematically violates it with regards to Syrians in its territory, is not considered relevant at all for this assessment. For people returned to Turkey from Greece, the argument goes that everything will be different because they are being returned under the EU-Turkey Statement: whereas access to asylum procedures is quite difficult for Syrians in general, for those returned from Greece it will be "automatic"; whereas the decisions generally accept that Syrians are frequently and arbitrarily deported back to Syria, returnees "are explicitly protected from refoulement." The example of one of the first instance decisions published as an annex to this report is telling: both EASO and GAS accepted the applicant's claim as internally and externally credible that he had been deported from Turkey to Syria 13 times.<sup>64</sup> However,

61 In addition to the other criteria laid out in Art. 38 of the Procedures Directive, Art. 86(1)(f) of Law 4636/2019 adds the additional criterion that applicants have a link with the third country. Art. 86(1)(f) provides several examples of possible links, including time of stay in the third country, knowledge of the language, geographical proximity to the country of origin, and the existence of "even distant" relatives.

62 Italics added. Annex II, First instance decision n. 4.

63 Annex II, First instance decisions n. 1 and 2.

64 Annex II, First instance decision n. 2. This assessment led EASO to consider the application admissible on the basis

the decision reads: “taking into account the EU-Turkey Statement, [GAS] considers that there is no possibility that the applicant will again be faced with a similar refoulement treatment upon return to Turkey.” Interesting to note is that of the decisions analysed for this report, this was the only one where the EASO and GAS opinions differed. EASO found the applicant’s application admissible on the basis that “given his previous experiences of deportations, there was a reasonable chance that he would be at risk of refoulement to Syria.” GAS, however, reversed EASO’s assessment and ultimately rejected his application as inadmissible.

Although the decisions all cite the EU-Turkey Statement as a reason for finding that Syrian applicants will receive adequate protection in Turkey, they do not cite any sources to support that claim. The only reference made in all the decisions analysed for this report is a general one to the 2018 update of the AIDA Country Report on Turkey on its section “Registration of the Asylum application.”<sup>65</sup> However, the version GAS cites in the admissibility decisions is an outdated one, and the same section of the most recent version states that, “DGMM<sup>66</sup> has established a specific code [...] entitled “Greece –return,” but stakeholders have not referred to this being used in practice. Reports on the post-return human rights situation of Syrians document serious human rights violations such as arbitrary detention and deportation without access to legal aid and international protection.”<sup>67</sup> Accurate information concerning what has actually happened to the 404 Syrians returned to Turkey in the framework of the EU-Turkey Statement is nearly impossible to find.<sup>68</sup> Indeed, Turkish lawyers with whom Equal Rights is in contact, themselves struggle to gather information about the fate of returnees. Information regarding access to the temporary protection scheme for Syrians returned from Greece is similarly unavailable. The scarce information that can be found, however, does not indicate that return from Greece offers blanket protection to Syrians from detention, refoulement, and serious harm. The Turkish regulation on the Temporary Protection regime, as amended in April 2016, states that Syrian nationals who are readmitted from Greece “*may* have their protection status installed upon arrival.”<sup>69</sup> However, the law does not guarantee automatic access (or re-access) to the temporary protection regime, leaving returnees vulnerable to the discretion of the administration to reinstall their status.<sup>70</sup> A UNHCR letter from December 2016 stated that UNHCR faced obstacles in monitoring the situation of Syrian returnees as it did not have unhindered and predictable access to detention or removal centres in which returnees were kept. The letter also noted that UNHCR did not receive systematic information from the Turkish authorities on the legal status and location of individuals readmitted from Greece, hampering its ability to monitor their situation.<sup>71</sup>

#### d. Interim Outcome

It is a well-established principle of refugee law, also established in Article 4 of the Qualification Directive, that past persecution or serious harm “is a serious indication of the applicant’s well-founded fear of persecution or

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that it found a reasonable chance that the applicant will be at risk of refoulement to Syria if returned to Turkey.

65 AIDA, *Country report: Turkey* (31 December 2018), available at: <https://bit.ly/34Afhzv>.

66 Turkish Directorate-General for Migration Management.

67 AIDA, *Country report: Turkey* (31 December 2018), 36, available at: <https://bit.ly/3wPF3Mf>. Reference to Koc University, *An overview of the EU-Turkey Deal*, (April 2019), available at: <http://bit.ly/33oZLol>.

68 UNHCR, *Returns from Greece to Turkey (under EU-Turkey statement) as of 31 March 2020*, available at: <https://bit.ly/3qf-3pN8>. The number is updated to March 31, 2020. However, from that date on, there have been no readmissions to Turkey in the framework of the EU-Turkey Statement.

69 AIDA, available at: *Country report: Turkey* (31 December 2019), 125, available at: <https://bit.ly/2SyhEA1> (emphasis added).

70 H. Battjes et al., *Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement*, VU Migration Law Series 15 (2017) 25-26, available at: <https://bit.ly/3wcs9b2>.

71 UNHCR Greece, *Response to query related to UNHCR’s observations on Syrians readmitted to Turkey* (23 December 2016), available at: <http://bit.ly/2B5lyk>.

real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.” Given that Member States can only return people to “safe third countries” if they will have an opportunity to enjoy there the rights and benefits arising from European and international refugee law, this standard is applicable for the admissibility examination as well. Refusing to take past events into account is not only fundamentally against this principle, but is an objectively illogical way to assess whether a person will face risk somewhere in the future. However, the first instance admissibility decisions issued by GAS render people’s past experiences irrelevant because none of the applicants were previously readmitted to Turkey under the EU-Turkey Statement. Yet, the conclusions reached by GAS are not backed by any source or accompanied by anything more than diplomatic assurances. They are therefore not a sufficient basis for sound decision-making on applications for international protection, cases that often involve serious risks to individuals’ life and dignity. Because most applicants for international protection in Greece have never been readmitted to Turkey under the EU-Turkey Statement, their previous experiences are all but irrelevant, regardless of how serious they are.<sup>72</sup> Whatever happened to the applicants in the past, even if confirmed by COI, is considered “not to be an indication” of what will happen if Greece returns them to Turkey under the EU-Turkey Statement. The Statement is considered as a *carte blanche* for refusing to conduct *any* individualised assessment. This is, however, an entirely false assumption because the Statement only politically determines that the safe third country concept may be applied, but the requirements arising from European law still must be met in each case.

Such an assessment ultimately renders the interview a mere procedural formality, in which caseworkers question applicants on their past experiences knowing that the decision will not change based on those answers. Nonetheless, the little information available on the situation for returnees indicates that what applies for all Syrians in Turkey applies to people returned under the EU-Turkey Statement, and, regardless, there is no evidence that applicant’s past experiences in Turkey can be systematically disregarded by decision makers.

## 4. First Instance Decisions on Kos

### a. Comparison to Practice on Chios

The decisions on Kos largely follow the same structure as those on Chios, particularly with respect to the legal analysis and sources cited.<sup>73</sup> The legal analysis in the decisions analysed from Kos use almost exactly the same language as the decisions from Chios and is therefore not analysed in further detail here. However, there was one major difference between the first instance decisions on Chios and on Kos. Whereas the Chios RAO generally accepted the applicants’ claims as credible, the Kos RAO rejected almost all claims unrelated to personal data as both internally and externally unreliable. Additionally, although on Chios the assessment was generally future-oriented, i.e., whether the person would face harm if returned under the EU-Turkey Statement, the practice on Kos is both past and future oriented, i.e., questioning applicants’ credibility regarding their past experiences and analysing the situation of returnees in Turkey.

For this report, Equal Rights reviewed 21 first instance decisions for Syrian applicants issued by the Kos RAO and analysed five in detail. The decisions are analysed in detail below.

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<sup>72</sup> None of the individuals whose cases were analysed for this report had ever successfully registered for asylum in Greece before, and data concerning cases where individuals were returned under the EU-Turkey Statement to Turkey and managed to re-enter Greece are not available. However, it is worth noting that in one case analysed for this report the applicant claimed that she had previously entered Greece via the Greek-Turkish land border. In her interview, she stated that after she entered near Evros, she was arrested by the Greek police and handed over to Turkish authorities who detained her for five days, forced her to sign a voluntary return paper, and then forced her to re-enter Syria.

<sup>73</sup> See Annex II, First instance decisions n. 5-8.

## b. Credibility Assessment by GAS/EASO

Like on Chios, the Kos RAO generally accepted the applicants' personal data, i.e. their names, countries of origin, dates of birth, and so on. However, in 18 of the 21 decisions, GAS found that the applicants' substantive claims were unreliable. The two claims that were accepted were still rejected as inadmissible, however, for reasons similar to the decisions from Chios. Among the claims found not credible were:

- Multiple claims of sexual harassment and sexual assault;
- Multiple claims regarding refoulement and forcible voluntary return;
- Multiple claims that the person could not access the temporary protection system;
- The claim that Turkey is not safe for Kurdish-Syrians;
- The claim that Turkey recruits young Syrian men to fight in Libya;
- Multiple claims regarding lack of access to medical treatment;
- Multiple claims regarding unsafe conditions for single women in Turkey.

In finding the claims unreliable, GAS relied on vague assertions that the applicants' statements were not clear or detailed enough, but rarely cited specific examples. One decision in a case described in detail later in this report rejected the applicant's claim that she was arrested, detained, forced to sign a "voluntary" return document, and deported by the Turkish authorities as unreliable because her allegations were not "clear and detailed" and because she failed to give "convincing" answers. The decision, however, does not point to any specific example in support of its claim, and instead simply cites a broad section of the interview transcript without further explanation. The caseworker also never confronted the applicant about any inconsistencies or lack of detail during the interview.<sup>74</sup> Moreover, in this case the applicant actually submitted a copy of her „voluntary“ return paper from Turkey to corroborate her claim. The decision, however, does not mention this.<sup>75</sup> In another case, GAS rejected the applicant's claim that she would be targeted by a male family member in Turkey as not credible because it is a private claim that cannot be verified by external sources, and regardless she would be able to apply for temporary protection in Turkey. Regarding her claim that she would face poverty in Turkey, the decision states that she lacked consistency. Like the previous example, the decision does not cite any specific examples but instead cites the latter half of the interview in its entirety.<sup>76</sup>

Even in decisions where GAS does cite a specific example regarding the applicant's credibility, the examples are very minor and make no mention of the benefit of the doubt.<sup>77</sup> In one case, GAS found the applicant lacked

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<sup>74</sup> Annex II, First instance decision n. 8. A lawyer from Equal Rights accompanied the applicant to her interview.

<sup>75</sup> Annex II, First instance decision n. 8.

<sup>76</sup> Annex II, First instance decision n. 6.

<sup>77</sup> The principle of the benefit of the doubt is a common principle in refugee law, and acknowledges that, in most cases, people fleeing war and persecution will not have all of the necessary proof to substantiate their claims. Art. 4 L. 4636/2019 applies the principle of the benefit of the doubt to the assessment of applicants' cases. UNHCR handbook on procedures for determining refugee status under the Convention state that "it is hardly possible for a refugee to 'prove' every part of his case, and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore **frequently** necessary to give the applicant the benefit of the doubt. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (January 1992), available at: <https://bit.ly/3yxwlnf> [emphasis added]. Moreover, the ECtHR has held on numerous occasions that it will frequently be necessary for states to give applicants for international protection the benefit of the doubt. For example, in *JK and Others v Sweden*, the Court held that "[o]wing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when assessing the credibility of their statements and the documents submitted in support thereof . . . Even if the applicant's account of some details may appear somewhat implausible, the Court has considered that this does not necessarily

consistency because he initially stated that when the Turkish authorities deported him to Syria, they “handed him over” to the Nusra Front. When the caseworker asked him to clarify this comment, he stated that he did not mean that the Turkish authorities “literally” handed over to the Nusra Front, but rather that they forced him to return to Syria via a road controlled by the group.<sup>78</sup> His statements are consistent with reports confirming that the Nusra Front controls the large parts of the Idlib region and the Bab Al-Hawa border crossing between Turkey and Syria.<sup>79</sup> However, the following paragraph goes on to state that the applicant’s claims regarding his refoulement to Syria cannot be established by external data because there is no “information to verify based on available sources.” Yet there are in fact numerous sources that have documented Turkey’s practice of forcibly returning Syrians to Syria<sup>80</sup>—which are also taken into account by Chios RAO—as well as sources that document Turkey’s cooperation with the Nusra Front in controlling and managing parts of the Syria-Turkey border.<sup>81</sup> In another case, the decision found that the applicant’s fears regarding Turkey were unfounded because, although she had heard from her family members that many asylum seekers were returned to Syria, she only personally knew of one person who was actually refouled to Syria and had since lost contact with him.<sup>82</sup> Similar to the other decisions, the analysis on external credibility ignores any recent reporting from Turkey and instead simply notes that the German Migration and Integration Centre found that “55% of Syrian refugees want to stay in Turkey and 20% want to return to Syria.”<sup>83</sup>

### c. Legal Consequences of Credibility Assessments

Rejections based on credibility have massive implications for a person’s chances of success at later stages of the asylum procedure. Appeals Committees are generally hesitant to overturn decisions based on credibility because its members were not present during the interview. Further, later judicial remedies, so-called annulments must be based on legal rather than factual error, meaning that lawyers and applicants cannot challenge the first instance credibility finding *per se* but only the way it was assessed by the Appeals Committee. In other words, once the authorities at the first instance level decide a person is not credible, reversing that conclusion is extraordinarily difficult for applicants. This report does not draw any conclusions on either the conditions for Syrian asylum seekers in Turkey or the credibility of the individual cases analysed for this report. There are certainly cases where it is both difficult for the authorities to verify a person’s credibility and where it is impossible for them to extend the benefit of the doubt. However, it is harder to accept that none of the Syrians who apply for asylum on Kos present credible stories. Fundamentally though, the decisions reveal that the asylum service on Kos has a pattern of relying on credibility as an easy way to reject Syrian applicants without substantiating those decisions with either specific examples from the person’s interview or external country of origin reports.

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detract from the overall credibility of the applicant’s claim.” ECtHR, Judgment of 23/08/2016, No. 59166/12, JK and Others v Sweden, para. 93.

78 This decision is not published in the accompanying Annex.

79 EASO, *Syria Actors: Country of Origin Information Report* (December 2019), 49, available at: <https://bit.ly/3jeBszO>.

80 See e.g., Human Rights Watch, *Turkey: Syrians Being Deported to Danger* (24 October 2019), available at: <https://bit.ly/3hg0D4>; Amnesty International, *Sent to a War Zone: Turkey’s Illegal Deportations of Syrian Refugees* (2019), 5, available at: <https://bit.ly/32ci3ue>.

81 See e.g., European Council on Foreign Relations, *A New Gaza: Turkey’s border policy in northern Syria* (28 May 2020), available at: <https://bit.ly/2He5erD>; The Telegraph, *Turkish Government Co-Operated with al-Qaeda in Syria, Says Former Ambassador* (12 September 2014), available at: <https://bit.ly/31jpwqj>; Hurriyet Daily News, *Ankara Refutes UN Report Claiming Turkey Route for Arms to Al Qaeda* (30 December 2014), available at <https://bit.ly/3kpSzQw>.

82 Annex II, First instance decision n. 6.

83 Ibid.

## C. Shortcomings at the First Instance Level

### 1. Failure to Address Vulnerabilities

When authorities introduced the so-called fast-track border procedure on the Aegean islands, the law at the time exempted members of vulnerable groups from the border procedure.<sup>84</sup> However, when L. 4636/2019 was enacted in January 2020, legislatures amended the border procedure to include members of vulnerable groups. As a result, beginning in January 2020 members of vulnerable groups became eligible for deportation to Turkey for the first time since the EU-Turkey Statement was signed. At the same time, the Greek authorities did not change how they conducted interviews or issued decisions to account for this change in the law. However, even if it is not relevant to which procedure a person is in, vulnerability remains relevant to a person's asylum procedure more generally. For example, Greek law states that certain applicants may require special safeguards as a result of their sexual orientation or as a result of torture, rape or other serious forms of physical, psychological, or sexual violence.<sup>85</sup> Among the procedural safeguards guaranteed for vulnerable applicants are the right to take additional breaks during the personal interview, the possibility to move during the personal interview, and the benefit of the doubt in the case of minor inconsistencies.<sup>86</sup> Article 24 of Procedures Directive similarly requires special protections for survivors of rape, torture, and other forms of sexual violence. Article 24 makes clear that applicants should have access to these special protections even "where such a need becomes apparent at a later stage of the procedure." Furthermore, the EASO Practical Guide for Personal Interviews also lays out guidelines for identifying vulnerable persons in need of special procedural guarantees.<sup>87</sup>

Despite the many additional protections the law grants to members of vulnerable groups, the procedures on the islands for Syrians rarely take vulnerability into account. For example, there is no section in either the interviews or first instance decisions dedicated to assessing vulnerability. In fact, as described earlier in this report there is no difference at all between the interviews and decisions for vulnerable persons and people who are not members of vulnerable groups. In some cases, this is possible because the authorities never formally conducted a vulnerability assessment or declared the person vulnerable, as is the case for most victims of torture and survivors of SGBV on Chios and Kos. Of the three decisions concerning survivors of SGBV analysed in detail for this report, none of them addressed the conditions for either SGBV survivors or single women in Turkey. The first decision found that the applicant's claim that multiple people attempted to rape her in Turkey could not be verified due to the "private nature" of the claim;<sup>88</sup> the second decision merely notes that Syrians can apply for temporary protection status in Turkey,<sup>89</sup> and the third decision does not mention the woman's claims that she was sexually assaulted multiple times in Turkey at all.<sup>90</sup> None of the decisions cite a single country of origin report regarding the conditions for Syrian single women, police protection for SGBV survivors, or resources and support available to them in Turkey.

Similarly, the decisions involving victims of torture make no mention of the applicants' claims of tortures, nor do they reference any of the applicable law for members of vulnerable groups. In one of the cases analysed for this report, the applicant described the torture in extreme detail during his interview and made a very direct connection to his mental health. Although he was able to remember specific details and describe the torture he

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84 Art. 14 L. 4375/2016.

85 Art. 67(1) L. 4636/2019.

86 Art. 67(1) L. 4636/2019.

87 European Asylum Support Office, *Practical Guide: Personal Interview* (December 2014) p. 2, available at: <https://bit.ly/3a-MOS58> [hereinafter EASO Guide].

88 Annex II, First instance decision n. 7.

89 Annex II, First instance decision n. 6.

90 Annex II, First instance decision n. 8.

had experienced, the decision did not mention that he claimed to be a victim of torture. In fact, during his interview the applicant stated that he experienced “*the worst kind of torturing, psychological [and] physical torture.*” He went on to describe his imprisonment and torture by the Nusra Front with the following detail:

*“[T]hey let me see people being tortured, people being slaughter, they started giving me medicine, they put me in place where there was no light, hang me from my legs, they put for me music, special kind of music that is in my ears it was a religious music. I cannot describe everything I was thinking about a way to kill myself. They were always trying to send me back to the regime territories, they wanted to do an exchange, they took me to places where there were conflicts, I don’t know those places. They put an explosion belt in order to go and explode myself. Of course, I didn’t do that thing. That wasn’t real, it was just psychological terrorism, because when I walked away from them I press all the bottom and nothing happened it was fake. I did the thing in order to kill myself. They knew that I will do that, but they didn’t give me the right to kill myself.”*

The applicant’s experiences had an obvious impact on his mental health, something that even the caseworker seemed to be aware of and note. The caseworker wrote nine times in his interview transcript that “the applicant is thinking” when he was recalling traumatic episodes. Most of the moments in which the applicant was thinking were followed by pauses in which he needed to ask for the question to be repeated or where he lost the point of what he was saying and needed to start over. However, none of this is addressed, let alone considered, in the decision.

## *2. Failure to Analyse Current Serious Claims of Risk of Harm in Turkey and Reliance on Outdated Information*

Lawyers and human rights observers have been questioning Turkey’s label as a safe third country since the moment the EU-Turkey Statement was signed in 2016.<sup>91</sup> Indeed, recent reporting on Turkey continues to raise the question of whether the country can be considered a safe third country for any asylum seeker, based on reports of refoulements,<sup>92</sup> a general lack of access to the temporary protection system,<sup>93</sup> and inhuman and degrading treatment by Turkish authorities.<sup>94</sup> Although, this report does not conclude whether Turkey is in fact a safe third country, even if Turkey does meet the legal definition of a safe third country for *some* Syrian asylum

91 See e.g., Amnesty International, *The EU-Turkey Deal: Europe’s Year of Shame* (20 March 2017), available at: <https://bit.ly/3oPcMm3>.

92 Cf. note 83.

93 In general, registration for Syrians has become increasingly difficult over the past several years. The most recent AIDA report on Turkey notes “severe obstacles to access to the asylum procedure” and that in 2018 authorities in provinces such as Istanbul, Hatay, and Mardin “de facto stopped registering and granting documents to newly arriving cases.” AIDA, *Country Report: Turkey* (2019) 28, 128, available at: <https://bit.ly/3l6iw91>. According to Human Rights Watch, based on the accounts of three agencies working closely with Syrian refugees, a European Commission official and a Turkish public official, an additional eight provinces on or near the Syrian border – Adana, Gaziantep, Kahramanmaraş, Kilis, Mardin, Mersin, Osmaniye and Sanliurfa – had suspended registration for newly arriving Syrians since late 2017 or early 2018. Human Rights Watch, *Turkey Stops Registering Syrian Asylum Seekers* (16 July 2018), available at: <https://bit.ly/3qCGYQy>. The report also contains testimonies by 32 Syrian asylum seekers who had not been able to access the temporary protection system and outlined experiences including being turned away by registration offices and seeing signs on registration offices stating “no more kimliks here.” *Ibid.* As of 2019, another report found that Syrians could only register in the following areas: Adana, Çanakkale, Diyarbakır, Elazığ, Gaziantep, Hatay, Kayseri, Kocaeli, Mardin, Tekirdag, Şanlıurfa and Kilis. Heinrich Böll Stiftung, *Report on Turkey’s Asylum Law and Policies* (December 2019) 15, available at: <https://bit.ly/3l18hmm>.

94 See e.g., Human Rights Watch, *World Report 2021: Turkey Events of 2021*, available at: <https://bit.ly/35KASFN>, Esra S. Kaytaz, *Helld at the gates of Europe: barriers to abolishing immigration detention in Turkey*, *Citizenship Studies* 25 (22 December 2020) 7.

seekers, it simply cannot be the case that Turkey is a safe third country for every Syrian asylum seeker given the strict criteria laid out in Article 38 of the Procedures Directive.

In particular the first instance procedure focuses on the fact that Syrians can apply for a temporary protection scheme in Turkey. Caseworkers dedicate a significant portion of the interviews to whether or not an applicant applied for temporary protection in Turkey, and all of the first instance rejections claim that applicants will be safe in Turkey because they can apply for such status. However, numerous reports have found that Turkey has made it increasingly difficult for Syrians to apply for this status and has even completely closed the program to new applicants in many parts of the country.<sup>95</sup> Similarly, Amnesty International, Human Rights Watch, and other human rights observers have extensively documented for years Turkey's practice of either deporting Syrians back to Syria or forcing them to sign "voluntary" return papers and leave on their own accord.<sup>96</sup> Some of the decisions Equal Rights reviewed do note that in 2017 and 2018 Human Rights Watch documented several hundred deportations from Turkey to Syria that took place at the Turkish border, however they do not cite any reports that show that this is an ongoing practice.<sup>97</sup> Even in this respect, the decisions cite very few sources, all of which are outdated and only cite the article title and link without making any specific reference to pages or sections. The one oft-cited report is the AIDA Country report on Turkey, a 200-page report, which GAS decisions cite without referring to a specific section or page number and whose 2019 version is used even in 2021 decisions, although there is an update available from April 2020.<sup>98</sup>

The authorities' reliance on outdated and hand-picked sources is particularly problematic in cases where people claim that they have been or will be subject to certain types of harm in Turkey. Of the 47 cases Equal Rights analysed for this report, 13 involved refoulement to Syria, 10 involved people in immigration detention, five included claims by people who were forced to sign "voluntary" return papers, and one involved a person who identifies as LGBTI. The actual number of cases involving similar claims is likely much higher because Equal Rights did not have access to the interview transcript for every case included in this report. These experiences, however, still led to the same outcome for applicants, even in cases where GAS accepted the claims. The following two cases demonstrate the immense challenges Syrian applicants face when applying for asylum on the Aegean islands.

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95 AIDA, *Country report: Turkey* (31 December 2019), 25-fwd, available at: <https://bit.ly/3vwpHfa>; Norwegian Organization for Asylum Seekers (NOAS), *Seeking Asylum in Turkey: A critical review of Turkey's asylum laws and practices* (December 2018), 26, available at: <https://bit.ly/3yEwxBp>; HRW, *Turkey Stops Registering Syrian Asylum Seekers* (16 July 2018), available at: <https://bit.ly/3bUDFzQ>; UNHCR, *United Nations High Commissioner for Refugees (UNHCR) Will End Registration Process in Turkey on 10 September 2018*, available at: <https://bit.ly/3bSaYDx>.

96 The most recent AIDA report on Turkey found that returns from the Izmir removal centre that were purported to be voluntary were actually coerced. The report documented that "people reported they were forced to sign the forms by threat or were given the wrong information. There were also allegations that an illiterate Syrian had his finger broken while forcing him to put his fingerprint on the form." AIDA, *Removal and Refoulement: Turkey* (30 November 2020), available at: <https://bit.ly/3wwD8Mm>. In 2020, the German Institute for International and Security Affairs further confirmed that "humanitarian organizations claim that Turkey has been deporting refugees to Syria on illegal grounds...Syrian refugees are reportedly forced to sign declarations of "voluntary" departure and face deportation to Syria under inhuman conditions, including refusal of food." Sinem Adar, *Repatriation to Turkey's "Safe Zone" in Northeast Syria: Ankara's Goals and European Concerns* (1 January 2020), available at: <https://bit.ly/2SkdWK5>. Finally, HRW and Amnesty International have been documenting refoulement from Turkey to Syria for several years now, and HRW went so far as to conclude that "any Syrian forcibly returned from Greece would face a risk of onward refoulement to Syria." Amnesty International, *Sent to a War Zone: Turkey's Illegal Deportations of Syrian Refugees* (2019) 5, available at: <https://bit.ly/32ci3ue>; Human Rights Watch, *Turkey: Syrians Being Deported to Danger* (24 October 2019), available at: <https://bit.ly/3hg0D4d>.

97 *Ibid.*

98 This is the case for all the decisions analysed for this report, which were issued between July 2020 and June 2021.

**Hasan** is a young Syrian man who arrived in Greece alone in 2019. His interview took place in mid-2020 and was conducted by EASO. Hasan is Arab-Syrian and a member of a religious minority that has been targeted by extremist groups in Syria, several of which control areas of Syria near the Syria-Turkey border. Hasan travelled from Syria to Turkey in 2019 and was arrested by the Turkish authorities shortly after he crossed the border. When he was arrested, the Turkish authorities confiscated his passport and other belongings and detained him in a small police station near the border. Hasan is not Kurdish, but he had previously travelled to Erbil in Iraqi Kurdistan to evade the Syrian army and look for work. When the Turkish authorities saw his passport, they proceeded to interrogate him about his time in Erbil and tortured him. They then told him they were going to deport him to Syria because he had stayed in Erbil. Hasan begged the Turkish authorities not to deport him, telling them that the extremist group that controls the border crossing would arrest him because he is a religious minority. Even so, the Turkish authorities deported Hasan to Syria on a bus with other migrants. When the bus arrived at the border crossing, members of the extremist group forced everyone off and proceeded to review their identity documents. The border guards let most people go, but arrested Hasan because of his religious identity. The group detained Hasan for several weeks, subjecting him to unspeakable forms of physical and psychological torture. Hasan was eventually able to escape, cross into Turkey again, and safely travel to Greece. In his asylum interview he claimed that if returned to Turkey he would again be subject to the same treatment he faced when he first crossed the border because he still possesses the passport with the stamp from Erbil and because all of his personal data were taken by Turkish police when he was first detained. In support of his case, Hasan submitted his original passport with the stamp from Erbil and proof of his status as a religious minority. Hasan’s lawyers also submitted a legal memo on his behalf citing extensive country of origin reports corroborating his story.

GAS rejected Hasan’s application for international protection as inadmissible on the grounds that Turkey is a safe third country for him. Unlike most Syrian applicants, Hasan’s interview was extremely detailed and comprehensive, in large part because he had a lawyer present with him. In total, his interview lasted for approximately six hours over a period of two days and produced a 20-page transcript (other transcripts analysed for this report ranged from eight to 13 pages with most interviews lasting approximately one and a half to three hours). However, the substance of his decision was only a few pages, and, like the decisions described earlier in this report, mainly a copy-paste of the generic Syrian inadmissibility decision. Although GAS accepted Hasan’s claims as credible, they rejected his application because Turkey offers a temporary protection status to Syrians, and he did not attempt to apply for it. The decision ignores the fact that Hasan did orally ask for protection in Turkey and told the Turkish authorities several times that he was a religious minority who would be persecuted in Syria—arguably a request for asylum under EU and Greek law.<sup>99</sup> However, because he did not specifically apply for the temporary protection status his application was deemed inadmissible. Further, the decision does not actually address the core of Hasan’s claim, namely that he was specifically and individually targeted by the Turkish authorities because of his past travel to Erbil and deported from Turkey to Syria on that account. This incident is reported in the allegations of the applicant, but it is not addressed in the body of the decision, not

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<sup>99</sup> Art. 2(b) of the Procedures Directive defines an applicant or application for international protection as “a request made by a third- country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status.” Art. 2(b) therefore includes both people who submit formal applications for asylum and people who make oral requests for protection to the authorities in its definition of an applicant for international protection. Although Turkey is not bound by EU law, Art. 2(b) is relevant because the Greek authorities claimed in this decision that the applicant did not make a request for international protection because he did not present himself to the correct bureaucratic office in Turkey to apply for the temporary protection system. Thus, the decision issued by the Greek authorities, who are bound by EU law, defines application for international protection in a much narrower way than EU law.

even to reject it as unreliable. Thus, the decision concludes that “given that the applicant has not invoked incidents of threat to his life or freedom on grounds of race, religion, nationality, membership of a particular social group or political opinion during his stay in Turkey [...] it cannot be considered that there is a reasonable risk to his life and freedom on the above grounds in Turkey.” On the contrary, the decision notes and accepts that the Turkish military shot at him while he was trying to cross the border and arrested him and returned him to Syria. In so doing, it refers and accepts reports that allege numerous instances of refoulement at the border, as well as instances of Turkish authorities opening fire at and killing people trying to cross.<sup>100</sup> However, when assessing the risk of whether he will be subjected (again) to refoulement to Syria, the decision found that there would be no risk on the mere ground that, this time, Hasan would be returned to Turkey on the basis of the EU-Turkey Statement.

**Zeana** is a young single woman. She arrived in Greece in the summer of 2020 along with her adult brother and his family. Her husband is a recognised refugee in Austria. She applied to be reunited with him under the Dublin III Regulation, however, the Austrian authorities denied her request. Zeana’s interview was conducted by EASO in the winter of 2021. During her interview, Zeana described in detail her many attempts to cross the Turkey-Syria border and the violence she experienced along the way. During her first attempt to enter Greece, she travelled alone without any other members of her family. Zeana was arrested by the Turkish police near Izmir after attempting to cross into Greece. In the police station where she was detained, the Turkish police gave Zeana one meal per day and denied her access to the bathroom. She did not have any sheets or blankets even though it was February, and the weather was very cold. Zeana asked the Turkish police if she could apply for asylum or meet with a lawyer, but they refused to let her speak with anyone. Eventually, the police transferred Zeana to another police station where they forced her to sign a “voluntary” return paper. She refused to sign the paper at first, but the police told her they would deport her either way, and so eventually she signed it. She still has the “voluntary” return paper with her today that contains her full name, date of birth, and signature. After she signed the „voluntary“ return paper, the Turkish authorities drove her from Izmir to the border and forced her to cross the border into Syria. She later returned to Turkey with her brother. During her second attempt to cross through Turkey she was again detained by Turkish authorities who physically and verbally sexually harassed her. Later, when she was staying in a town near the Turkish coast, she was sexually assaulted on her way to the market. The assault caused her to attempt suicide, and she was briefly hospitalised in a private clinic. She did not approach the police to report the assault because she was afraid that she would be deported to Syria again.

In support of her claim, Zeana submitted an original copy of the „voluntary“ return paper along with photographs from her hospitalisation in Turkey. Her lawyers also submitted a legal memo on her behalf that specifically addressed the unsafe conditions for single Syrian women in Turkey. GAS rejected Zeana’s claim, finding generally that Turkey was a safe third country for her. The decision, like the other decisions, makes almost no reference to her specific claim but rather uses the template language of the admissibility decisions, stating that Turkey is safe because she faces no threat of persecution there, the country respects the principle of non-refoulement, and the possibility exists to apply for refugee status. Regarding her claim that she was detained and deported by the Turkish authorities, the decision includes one short paragraph on this point, finding that Zeana’s claims were not detailed enough and therefore not credible, the standard practice on Kos. However, in Zeana’s case she was able to provide a copy of her original “voluntary” return paper, which the decision does not mention at all. Moreover, Zeana’s decision does not mention her claims that she was sexually assaulted and harassed in Turkey nor provides any analysis on the conditions for single Syrian refugee women in Turkey.

<sup>100</sup> AIDA, *Country report: Turkey* (31 December 2018) 117-118, available at: <https://bit.ly/3wHTsKI>

## D. Summary

What emerges from an analysis of first instance interviews and decisions is that the outcome of the first instance procedure is determined for Syrians even before they register for asylum, regardless of any vulnerability or experiences of past harm in Turkey. Although there are minor differences between the practices on Kos and Chios, they both ultimately lead to the same outcome: a rejection on the grounds that Turkey is a safe third country.

On both Chios and Kos, the decisions rely on the premise that the EU-Turkey Statement provides broad protections to Syrians returned to Turkey from Greece. And yet, at the same time, the first instance rejections for Syrians ignore the many ways in which conditions for Syrians in Turkey have either deteriorated or changed significantly since the EU-Turkey Statement was signed in 2016.

In the end, this analysis raises serious doubt that the admissibility procedure adheres to Greece's non-refoulement obligations under International, EU, and Greek law, a question analysed in further detail below. Thirty-one of the 47 cases reviewed for this report had second instance decisions at the time this report was published. Twenty-eight of those decisions were negative, two granted the applicants subsidiary protection, and one received refugee status. Notably, the two people who received subsidiary protection were never interviewed on the merits of their asylum claim, i.e. about why they left Syria.<sup>101</sup> In the one case where the applicant received refugee status, the Appeals Committee noted that she had stated during her interview that she left Syria because she was involved in anti-regime activities. However, as mentioned earlier in this report, caseworkers normally do not allow Syrian applicants to state the reasons why they left Syria in their admissibility interviews, and the applicant in this case had a lawyer present with her during her interview. In the two cases where the applicants received subsidiary protection, the Appeals Committee mentioned the Covid-19 pandemic as a reason for finding that Turkey is not a safe third country. The second decision also cited the conditions for single women and single-parent families in Turkey. Otherwise, the 28 second rejections generally reaffirmed the findings of the first instance decisions, finding that Turkey is a safe third country because it meets the conditions laid out in Article 86 L. 4636/2019.

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101 Although subsidiary protection and refugee status are both forms of international protection under EU law and both grant the person access to the labour market, there are real personal and legal consequences to receiving subsidiary protection over refugee status. First, refugee status is a slightly stronger form of protection (e.g. people with refugee status only need to renew their residency permits every three years as opposed to one year for those with subsidiary protection). Marion MacGregor, *What is the difference between refugee status and subsidiary protection*, InfoMigrants (19 June 2021), available at: <https://bit.ly/3wJBWpr>. Whether a person receives refugee status or subsidiary protection can also have an effect on her right to family reunification. *Ibid.* In Greece, refugee status also makes a person eligible for a Refugee Travel Document that allows people to travel freely throughout the EU. Art. 25(1) L. 4636/2019. People with subsidiary protection are not eligible in the same way for these travel documents. *See* Art. 25(3) L. 4636/2019. The ability to travel freely throughout the EU is critical to many refugees who often have close family living across Europe, including parents and family, and from whom they have been separated for many years.

# 5. APPEALS PROCEDURE AND OTHER REMEDIES

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## *A. The Appeals Procedure Under Article 90 L. 4636/2019*

### **1. Legal Preconditions**

Applicants have 10 days from notification to lodge an appeal against a first instance negative decision or admissibility decision taken under the accelerated border procedures.<sup>102</sup> Under Article 93 L. 4636/2019, appeals must be submitted in written form and mention the “specific grounds” on which the applicant is appealing.<sup>103</sup> Otherwise, the Appeals Committee may reject the appeal as inadmissible.<sup>104</sup> Practically speaking then, appeals in Greece require the assistance of a lawyer. Greek law does grant asylum seekers the right to free legal aid for the appeals procedure and there is a state-sponsored legal aid program available to asylum seekers.<sup>105</sup> However, AIDA’s 2020 report on Greece found “significant shortcomings in the provision of free legal assistance under the free legal aid scheme,” making the appeals procedure “practically non-accessible for the vast majority of applicants.”<sup>106</sup> In fact, AIDA reported that of the 15,355 appeals lodged in 2018, only 3,351 (21.8%) “benefitted from the state-funded legal aid scheme.”<sup>107</sup> That number increased to 33% in 2019.<sup>108</sup>

### **2. Lack of Legal Aid and Extraordinary High Rejection Rate**

In addition to the state legal aid scheme, asylum seekers can also submit appeals through lawyers working for independent NGOs and legal aid organisations, as well as private lawyers who generally charge a fee for their services. However, the inadequate number of lawyers on both Chios and Kos has been and remains a major problem. On Chios, there has been one registry lawyer for most of the time period covered in this report.<sup>109</sup> In addition to the registry lawyer, there were eight lawyers working for legal aid organisations who undertook appeals at the time this report was published. These lawyers were expected to meet the appeals needs of thousands of asylum seekers residing on the island during that period.<sup>110</sup> On Kos, there has also been one registry lawyer for the time period covered by this report, complemented by six lawyers working for NGOs. Although the number of asylum seekers living on Chios and Kos at the time this report was published was relatively low,

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<sup>102</sup> Art. 90(3)(c) L. 4636/2019.

<sup>103</sup> Art. 93 L. 4636/2019.

<sup>104</sup> Ibid.

<sup>105</sup> Ministerial Decision 3686/2020, Gov. Gazette 1009/B/24-3-2020, which repealed MD 12205/2016 according to Article 6(2) MD 3686/2020.

<sup>106</sup> AIDA Greece Report, *supra* note 27, at 20.

<sup>107</sup> Ibid at 70.

<sup>108</sup> Ibid.

<sup>109</sup> Asylum Service, Decision No. 20165/2019 (13 December 2019), available at: <https://bit.ly/3ukczZ5>. This decision appointed nine lawyers on the islands in order to provide free legal aid on the second instance procedure under the state funded legal aid scheme. Appointed lawyers were to be divided as follows: two lawyers on Lesbos, one lawyer on Samos, one lawyer on Chios, one lawyer on Kos, and two lawyers on Rhodes.

<sup>110</sup> Hellenic Ministry of Migration and Asylum, *Yearly Report 2020* (31 December 2020) 3-4, available at: <https://bit.ly/3yJvfVy>.

over 10,000 asylum seekers were on the two islands at some point during the period covered by this report.<sup>111</sup> However, regardless of whether a person has a lawyer or not, a person's chances of success on appeal is extraordinarily low.<sup>112</sup>

### 3. Syrian Applicants' Unwillingness to Submit Appeals

Syrian asylum seekers on the Aegean islands are aware that their appeal will likely lead to a second rejection, and as a result are often unwilling or hesitant to seek legal aid. In particular, applicants have increasingly begun to reject legal aid offered by NGOs on the premise that lawyers will take the whole 10 days deadline to draft the appeal and that the Appeal Committee will analyse their appeals more thoroughly, prolonging their procedure on the whole. The idea that legal aid is meaningless is grounded not only people's certainty that their appeals will be rejected, but also in the idea that a lawyer will only slow down the legal process without have any effect on the final decision. The way Musa explained the procedure is telling: *"I submitted the appeal, and I knew they'd send the second rejection right away. It was something like a routine, you know you should do it, but you also already know what the result will be. So when I submitted the appeal I was hoping I would get expulsion papers and could leave Kos."* As discussed in later sections, applicants eagerly await their second rejections because they may come with a so-called "voluntary" return paper, which offers their only chance of leaving the island. This idea is reflected in the words of Adil: *"We wanted to leave Greece, but we were forced to appeal. We didn't want to. We wanted to leave."*

The decision by people to refuse legal aid or even submit their appeals has both individual and systemic consequences. At an individual level people are refusing legal remedies to which they are entitled because they, correctly, understand that it is unlikely to have any effect on the final outcome of their cases. However, at a system-wide level, this leaves little room for legal advocates to challenge the unlawful practices on the islands. For example, Equal Rights' decision in the early months of 2020 to represent as many Syrian applicants as possible in the hopes of, at the very least, creating a body of case law and decisions to challenge at higher stages, was made difficult by people's hesitancy to accept legal representation. From a rule of law perspective this finding is remarkable. In a system based on the division of powers, it is the task of the judicative to examine whether the action of the executive was in line with the legal preconditions or not. This is why the CJEU has stressed on many occasions that an (effective) remedy is not only meant to protect the rights of individuals, but also the system itself; in a system based on individual protection as such, that remedy also serves the purpose to—on a broader basis—assess whether the administration is adhering to the law or not. The CJEU has thus expressed in various places that effective individual legal protection, in addition to serving the individual, also serves to give Union law and its provisions the most effective, i.e. also legally correct, application possible.<sup>113</sup> This follows from Art. 47 CFR<sup>114</sup> but also from the manifest principle of EU Law of *effet utile*, with which the CJEU seeks to secure as effective an application of EU Law as possible.<sup>115</sup> The situation on the Aegean islands, in which people refuse to proceed with their legal rights out of pure resignation—rights that also serve to ensure that states are applying the law correctly and safeguard the functioning of the state based on the rule of law—is exactly what the CJEU wants to avoid at all costs: an unlawful practice that is manifested and cannot be overcome by the responsible Courts.

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111 Ibid.

112 Cf. notes 35-36.

113 Cf. only CJEU, Judgement of 25 July 2002, Unión de Pequeños Agricultores, C-50/00 P, para. 38 et seq.

114 Cf. In this regard extensively below under E.

115 Cf. already CJEU, Judgement of 19 June 1990, The Queen v Secretary of State for Transport, ex parte Factortame, para 20 et seq.

## B. Second Instance Decisions for Syrians

Even if applicants do decide to submit an appeal, Appeals Committee decisions generally suffer from similar shortcomings to first instance decisions. The Appeals Committees generally overlook the analyses presented by applicants and lawyers on appeal, and many of their arguments remain unaddressed. The structure of second instance decisions mostly follows that of first instance ones, strengthening the soundness of administrative negative decisions. Second instance decisions, however, present some differences from first instance decisions. The following section is based on the analysis of three second decisions for Syrian applicants represented by Equal Rights, one from Chios and two from the Kos<sup>116</sup>. This section also draws on Equal Rights' representatives' general experience representing Syrian asylum seekers on appeal.

In general, second instance decisions for Syrians employ a larger number of country of origin sources, compared to the standardized and outdated ones used by the asylum service at the first instance stage. One of the analysed decisions, issued in February 2021, dedicated several pages to sources that confirmed the general conditions for Syrians in Turkey.<sup>117</sup> The situation is quite thoroughly evidenced, with more recent sources than the ones cited by the asylum service in first instance decisions. The decision paid particular attention to sources referring to consistent instances of refoulement, violence at the Syrian border, forced signing of "voluntary" returns documents, detention and deportations to Syria from the border, arrests and deportations of undocumented Syrians and challenges accessing temporary protection status for Syrians coming directly from Syria. Importantly, the decision made reference to problems accessing temporary protection status for Syrians returned from Greece, although it did not cite a source. Some of the sources used by the Appeals Committee were as recent as 2020 and quoted whole sections of a variety of reports ranging from governmental departments, UNHCR, and human rights organizations, all of which suggest that Turkey does not meet at least some of the requirements for qualifying as a safe third country under Greek legislation.<sup>118</sup>

### Predetermined Outcomes Regardless of Individual Circumstances or Country of Origin Reports

Although in the first case, the Appeals Committee cited myriad reports on the poor conditions for Syrian refugees in Turkey, when it then applied the safe third country criteria, the Committee went to great lengths to reach a negative outcome. As in many other second instance decisions, this section is a copy pasted version of the operative part of the first instance decision. Similarly, in another case from Kos, the applicant stated that he was gay and therefore could not be returned to Turkey. Reversing GAS's conclusion that the applicant was not credible, the Appeals Committee extended the benefit of the doubt to the applicant and held that he was gay. The decision, which is 72 pages long, described in detail the persecution LGBTI people face today in Turkey, citing

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<sup>116</sup> Two of those decisions are published as an annex to this report. See, Annex III.

<sup>117</sup> Annex III, Second instance decision n. 1.

<sup>118</sup> Among the sources quoted: "The deportation and oppression of refugees must stop without delay, as deporting Syrian refugees would lead to rights violations and loss of life." IHD - Human Rights Association, *IHD 2019 Report on Human Rights Violations in Turkey* (19 May 2020), available at: <https://bit.ly/3hVM1ec>; "Between July and October, at least 20 Syrians were forcibly and illegally returned to north-western Syria, where they faced a real risk of serious human rights violations. There are no official figures to estimate the number of people forced into deportation, but according to statements received by Amnesty International, returns during this period affected dozens of people at a time, suggesting that the total number forcibly returned is in the hundreds" [underlined in the original]; Amnesty International, *Public Statement - Turkey: Stop illegal deportation of people to Syria and ensure their safety* (29 May 2020), available at: <https://bit.ly/3fOQqNl>; "According to the respondents, there are many cases concerning the violation of the principle of non-refoulement for both international and temporary protection" [bold in the original].

pages of country reports.<sup>119</sup> Among those reports were:

- A 2016 U.S. State Department report that found that members of the LGBTI community in Turkey frequently experienced threats, violence, and discrimination;<sup>120</sup>
- A report describing the particular discrimination LGBTI refugees face and citing the murder of a gay Syrian refugee in 2016 named Mohammed Wisam Sankari;<sup>121</sup>
- A U.K. Home Office report stating that the Turkish government “does not effectively protect vulnerable populations from social abuse, discrimination and violence” and that the LGBTI persons are in particular “exposed to discrimination and abuse”;<sup>122</sup>
- A source finding that 78% of Turkish society considers differing sexual orientations to be morally unacceptable;<sup>123</sup>
- An ILGA report from 2020 that found that many stores had started to refuse service to LGBTI customers and that hate speech against LGBTI people increased in 2020. Regarding conditions for LGBTI asylum seekers, the report documented instances of abuse by the police and other authorities;<sup>124</sup>
- An ILGA article from February 2021 titled “Turkish Government Steps up its Attacks on LGBTI Citizens” regarding a government-backed media campaign calling LGBTI people “shameful,” “dirty,” and “perverted.”<sup>125</sup>

The decision cited numerous other reports and articles as well. However, despite building a strong case that LGBTI people, and refugees in particular, face harm, persecution, discrimination, and violence in Turkey, the Appeals Committee ultimately held that the applicant would not personally be at risk because he lived in Turkey for several months before traveling to Greece and did not face any serious harm during that period. At the same time, the applicant also stated in his interview that he hid his sexual orientation from most people in Turkey because he did not feel safe as a gay man. In other words, the Appeals Committee essentially concludes that there is no future risk to the applicant in Turkey as long as he continues to hide his sexual orientation. However, the CJEU considered the question of whether states could reject LGBTI applicants for international protection on this basis and held that “the person concerned must be granted refugee status . . . where it is established that on return to his country of origin his homosexuality would expose him to a genuine risk of persecution . . . the fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.”<sup>126</sup> Although the CJEU case concerned the question of whether asylum seekers who hid their sexual orientation could be returned to their *home countries* as opposed to

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119 The other decisions analysed for this report were on average approximately 20 pages.

120 United States Department of State, *2016 Country Reports on Human Rights Practices: Turkey* (3 March 2017), available at: <https://bit.ly/3vQIZv1>.

121 Ibid.

122 United Kingdom Home Office, *Country Policy and Information Note – Turkey: Human Rights Defenders* (June 2017), available at: <https://bit.ly/35SEW6N>.

123 Ibid.

124 ILGA, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Turkey Covering the Period of January to December 2020*, available at: <https://bit.ly/3j7eAWv> [last accessed 23 June 2021].

125 Ibid.

126 CJEU, joined cases C-199/12, C-200/12, X,Y and Z v Minister voor Immigratie en Asiel, 7 November 2013, para 70. Cf. Art. 10(1) (d) of the Qualification Directive: “a group shall be considered a particular social group where, in particular, the members of that group share a characteristic that is so fundamental to identity that a person should not be forced to renounce it.”

a *third country*, the first criteria listed in Article 38 of the Procedures Directive is that the person's "life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion." The language of Article 38(1) however is nearly identical to the legal definition of a refugee, and so the same principles should apply when deciding if a third country is safe for people who identify as LGBTI.<sup>127</sup>

In another negative decision issued in January 2021<sup>128</sup>, the line of reasoning from the Appeals Committee is, on the contrary, so general that it reads like a report on the legal framework and general conditions for Syrians in Turkey. The decision barely mentions the specifics of the applicant's individual case. In fact, the decision provides analysis of each criteria for the definition of "safe third country" by relying on broad and outdated sources and by making generalized assertions about the safety of Turkey, mostly based on the fact that it hosts over three million Syrians and that Turkey committed in 2016 to the EU-Turkey Statement. The decision broadly explains the diplomatic basis of the EU-Turkey Statement and other 2016 statements of intentions, like the law establishing Temporary Protection for Syrians; Turkish letters dated 2016 in which "the Turkish authorities are committed to allowing the European Union to regularly monitor the situation of Syrians and non-Syrians returning to Turkey, including access to camps and refugee reception centres"; and "recent public commitments of the Turkish authorities" upon which Greece is reassured about the adequacy of the system of protection of Turkey. No reference is made to any source about the actual implementation, outside of the expressed diplomatic commitments, in the five years that have elapsed since 2016.

The decision then moves to assess the criteria of Article 86(1) L. 4636/2019. Based on the fact that the applicant did not experience any treatment amounting to persecution during his 10-day-transit through the country, the decision found that Turkey is safe for him. As far as Turkey's respect for the principle of non-refoulement, the decision again refers to that fact that "the Turkish Government has provided the European Commission with assurances that Turkey is respecting the principle of non-refoulement in practice, which assurances are confirmed by reliable sources." These sources, however, are not cited to in the decision. On the contrary, the decision mentions that in 2019 there were reports of incidents of Turkey violating the principle of non-refoulement, and refers to dozens of people from Iraq or Afghanistan who were returned to their country of origin without consent; to Syrians and Iraqis removed from detention and returned upon "voluntary" repatriation, and to thousands of Syrians forcefully returned to Idlib in 2019 when fighting was escalating at the Syria-Turkey border. Nonetheless, based on the expression of renewed commitment of Turkish officials and comments of EU Commissioners, the conclusion is that "there are no circumstances in the above from which it can reasonably be inferred that there is a risk of the applicant being repatriated to Syria."

Concerning the requirement that the applicant should have a "link" to Turkey and that he was only there for 10 days, the decision found that "connecting with a wider community could also constitute a kind of connection with the third country. It is apparent from the entire administrative file that 2.7 million Syrians have taken refuge in Turkey, so that the large Syrian community in Turkey is capable of establishing the necessary link with that country while the applicant is a Sunni Muslim, as is the majority of the population in Turkey." Per this argument, there will always be a link to Turkey for Syrians, regardless of their actual personal ties to the country, rendering the criteria completely irrelevant and failing to provide applicants with an individualised assessment of their claim.

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<sup>127</sup> Art. 2(d) of the Qualification Directive defines a refugee as a third-country national who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable, or, owing to such fear, is unwilling to avail himself or herself of the protection of that country ..."

<sup>128</sup> Annex III, Second instance decision n. 2.

## C. Annulment procedure<sup>129</sup>

Once a person receives a second rejection, her only legal recourse is to file a so-called application for an annulment in front of an administrative court. Under the accelerated border procedures, applications for annulments must be submitted within 30 days of a second instance notification.<sup>130</sup> However, access to this procedure is even more limited than the appeals procedure. The 2020 AIDA report on Greece documented the following deficiencies in the annulment procedure: the requirement of a lawyer without the state providing legal aid, high court application fees, the annulment's lack of suspensive effect, the fact that courts can only examine a decision's legality and not a case on its merits, and lengthy procedures.<sup>131</sup> Both on Kos and on Chios, there are currently only 3 legal aid organizations that submit annulments, and in practice most rejected asylum seekers do not submit an annulment following a second rejection from the Appeals Committee.

## D. Summary

What emerges from an analysis of second and later instance procedures is that they come with similar shortcomings to first instance procedures. Obstacles to accessing appeals and annulment procedures are often insurmountable, rendering these procedures inaccessible to most in practice. Among them: the short 10 day deadline for submitting an appeal under the fast-track border procedure; the increasingly observed practice of fictitious notifications which turns first instance negative decisions into final decisions against which no appeal can be submitted; the structural shortcomings in the provisions of free legal aid at second instance; the lack of capacity for independent lawyers to complement the gaps of state aid in second and to address the needs of annulment procedures; the incredibly high rejection rates on appeals which lead to the widespread perception of legal aid being meaningless and counterproductive as it only slows the procedure down.

Syrian applicants' second instance decisions also generally suffer from similar flaws to first instance decisions. Although they tend to include a higher number of sources concerning the situation in Turkey, decisions overall reconfirm the findings of administrative decision makers as to the safety of Turkey for the particular applicant and they fail to thoroughly analyse the claims submitted by applicants in their appeals.

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129 Because of the challenges related to the annulment procedure outlined briefly in this section, this report does not analyse in further detail the outcomes of annulment proceedings for Syrian asylum seekers who applied for protection on the Aegean islands.

Between January 2020 and June 2021, Equal Rights submitted one annulment for a Syrian asylum seeker who applied for asylum on Chios and is preparing a second one. The decision for the first applicant is still pending.

130 Art. 109 L. 4636/2019.

131 AIDA Greece Report, *supra* note 27, at 68.

# 6. PROCEDURES & CONDITIONS- FOLLOWING THE SECOND REJECTION

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Once outside the asylum procedure, the situation for Syrians who applied for asylum on the Aegean islands is dire. Under Greek law, migrants with second rejections are no longer asylum seekers and therefore have no legal right to remain on Greek territory, no legal right to work, and no access to asylum seeker benefits, such as accommodation in a reception centre or UNHCR cash assistance.<sup>132</sup> Migrants with second rejections can also be deported, even if they have an ongoing annulment procedure.<sup>133</sup> Given that Syrian applicants in the border procedure are rejected on the grounds that they can be safely returned to Turkey, a second rejection should lead to a deportation to Turkey. However, Greece has never been able to effectively implement its plan to return mass numbers of migrants to Turkey. Between April 2016 and March 2020, the Greek authorities deported only 2,140 people to Turkey, despite the hundreds of thousands of people who have applied for asylum during that period. Only 404 of those people were Syrian. The majority of them, 751, were Pakistani nationals, meaning that their applications were likely rejected as unfounded rather than because Turkey is a safe third country.<sup>134</sup>

In 2019, 195 people were readmitted to Turkey, while over 120,000 people arrived on the East Aegean islands that year.<sup>135</sup> Despite such low numbers, Greece historically did have the capacity to deport a small number of people to Turkey. However, since March 2020 Greece has not been able to deport any migrants to Turkey because of a combination of the Covid-19 pandemic and political tensions between the two countries. Even so, this has had no impact on the procedures for Syrian asylum seekers on the Aegean hotspots, leaving them in the absurd situation where on the one hand they are rejected at a nearly 100% rate on the grounds that Turkey is a safe third country, and, on the other, cannot be deported to that supposedly safe country. In fact, Syrian migrants cannot even voluntarily return to Turkey because they cannot travel internationally without proper visas and identity documents. Thus, people are left in a legal limbo where they do not have a right to remain in Greece but at the same time cannot legally leave the country.<sup>136</sup> Aware of the situation, the authorities have tried to address the problem by either detaining people “in preparation for their deportation” or facilitating their travel from the islands to mainland Greece.

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132 L. 4636/2019 applies only to applicants for international protection. Art. 2(c) defines an applicant for international protection as “a third-country national or stateless person who declares orally or in writing before any Greek authority . . . and on whose request no final decision has yet been taken.” Art. 63(a) goes on to clarify that a final decision means, *inter alia*, a decision by the Independent Appeal Committees determining the outcome of an appeal brought against decisions made by the Asylum Service. Therefore, once a person receives a rejection from the appeals committee, she ceases to be an asylum seeker within the meaning of L. 4636/2019, regardless of whether she goes on to submit an annulment. The practical consequence of this is that people lose access to any benefits granted to asylum seekers under L.4636/2019 once they receive a second rejection from the Appeals Committee.

133 The annulment itself does not have an automatic suspensive effect. Lawyers who submit annulments must submit a separate application for suspension. AIDA Greece Report. *supra* note 27, at 68.

134 UNHCR, *Returns from Greece to Turkey (under EU-Turkey statement) as of 31 March 2020*, available at: <https://bit.ly/3qf-3pN8>.

135 Cf. UNHCR, *Mediterranean Situation*, available at: <https://bit.ly/3bWeM3L> [last accessed 9 June 2021].

136 Equal Rights Beyond Borders & HIAS, *Refugees in Limbo: Another Overlooked Casualty of Externalizing Asylum at any Cost* (18 June 2021), available at: <https://bit.ly/2TVnRqp>.

## A. Chios: “Voluntary” Return Papers

Prior to March 2020, authorities would detain people in the Chios police department as soon as they were notified with their second rejection. The police would hold migrants in the Chios police department for the necessary time to arrange their return to Turkey, before transferring them to one of the PRDCs on the islands of Kos or Lesvos. However, with no deportations possible since March 2020, migrants awaiting deportation have found themselves in a state of legal limbo. In the first months after readmissions stopped, the Chios police department quickly reached its maximum capacity of 18 persons, and, as the authorities continued to issue negative decisions, the situation led to an unbearable overcrowding of the already run-down police station on Chios.<sup>137</sup> The practical impossibility of detaining all newly rejected applicants led to a new policy of temporary release in July 2020. Migrants were released from detention, however authorities continued to impose a geographical restriction on them to the island of Chios. These measures left dozens of people in a situation of material poverty and complete destitution, and their lack of legal immigration status prevented them from accessing reception conditions reserved for asylum seekers. As the situation dragged on, it became clear to the Greek authorities as well that the situation was untenable, and they began to shift their practices. Most of the rejected asylum seekers were allowed to reside in the RIC of Chios under exceptional circumstances, and Appeals Committees began to issue people “voluntary return provisions” alongside their second rejections.

Article 6 of the EU Directive 2008/115 (Returns Directive), regulating returns of third country nationals, states that Member States shall issue return decisions to third country nationals staying illegally on their territory<sup>138</sup> and that the return decision shall provide for an appropriate period for voluntary departure from the territory of that Member state.<sup>139</sup> This directive is implemented in Greece through Law 3907/2011. Article 22 of that law establishes that the voluntary departure should happen between seven and 30 days from the issuance of the return decision.<sup>140</sup> Moreover, if migrants do not comply with the return order within the period of voluntary departure or if this period has not been granted, Article 23 provides that “the police authorities should take all the necessary measures to enforce the return decision.”<sup>141</sup> In the more specific framework of Greek asylum procedures, Article 95(10) L. 4636/2019 states that “the decision rejecting the appeal may also order the return of the applicant in accordance with L. 3907/2011.”

With no readmissions to Turkey, an increasing number of second instance negative decisions began to include the following statement: “If you do not possess any documents legalizing your stay in Greece, you have to leave the country.”<sup>142</sup> These lines are referred to as “voluntary return provisions” or “expulsion papers”, the latter term being used primarily by asylum seekers on the islands. Authorities on the islands have interpreted the “voluntary” return decisions as implicitly lifting a person’s geographical restriction, because otherwise she would not be able to leave the country. Thus, people with “voluntary” return orders have been allowed to buy ferry tickets to mainland Greece, something that they were otherwise prevented from doing while their geographical restriction was in place (i.e. for the whole length of their asylum procedures). This has led to the absurd situa-

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137 CPT, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 13 to 17 March 2020* (19 November 2020), available at: <https://bit.ly/3chp2Xi>.

138 Art. 6 Directive 2008/115.

139 Art. 7 Directive 2008/115.

140 Art. 22 L. 3907/2011.

141 Art. 23 L. 3907/2011.

142 See, Annex III, Second instance decision n. 1, p 15. In this order, sometimes reference is made to Art. 95 L.4636/2019 and Arts. 21, 22, 23 L. 3907/2011. In some other instances, the order does not refer to any specific legal provision.

tion in which Syrian asylum seekers try to get “voluntary” return papers above all else. In the words of Musa: “I am currently waiting on the decision of the appeal. I’m expecting that it’s going to be a rejection. The only thing I want is expulsion papers.” Lawyers for Equal Rights frequently encounter clients who do not want to proceed with their asylum procedure in Greece for fear that it might delay getting a “voluntary” return paper. In one case, an applicant who had been imprisoned in Turkey for six years refused to do his appeal because he wanted the “voluntary” return paper instead. During one of the interviews that Equal Rights made for this report, an applicant who just received his second rejection asked Equal Rights to pursue the fastest procedure and strategy in order to get the “expulsion paper.” In another case Equal Rights represented during the period covered in this report, an LGBTI applicant refused to proceed with an annulment because he assumed it would be rejected and just wanted a “voluntary” return paper.

Even so, there is no procedure for applicants to apply for or request a “voluntary” return paper, and, even if there were, many lawyers would be unwilling to apply for deportation papers for their clients. Further, it is still not clear how authorities at international borders will actually enforce these orders and what will happen to people who leave the islands with them. There are myriad challenges to researching the conditions for Syrians who have left the Aegean islands with “voluntary” return papers. Although Equal Rights has maintained contact with some clients who have left the islands, many change their numbers or leave the country after leaving the islands. However, although people on the islands wait desperately for “voluntary” return orders, they are by a positive outcome. Of the people interviewed for this report who had left the islands with „voluntary“ return papers, one was an undocumented worker on a farm near Athens, one had travelled irregularly to Austria and applied for asylum, and another was homeless in Athens with his wife and four young children. Reports from other former Equal Rights clients still in contact with the organisation paint a similar picture—some people attempt to travel to western Europe via the “Balkan route”, while others stay in Greece and try to re-enter the asylum procedure by submitting subsequent applications in the mainland.

Ultimately, although the “voluntary” return papers have spared many Syrian asylum seekers from deportation to Turkey, they do not allow people to regularize their status. Even the “best-case” scenario in which people manage to leave Greece, make it to western Europe and get refugee status, comes at an immense cost. And, for every person who safely makes it to Austria, France, or Germany, another will face violence, abuse, or detention in Hungary or Serbia.<sup>143</sup> Although in theory a common European asylum system should protect asylum seekers from having to make dangerous journeys across Europe, the admissibility procedures for Syrians on the Aegean islands forces them to make precisely that choice.

## *B. Kos: Detention and “Voluntary” Return Papers*

On Kos, the practice following second rejections differs from that on Chios because of the presence of the PRDC. Unlike on Chios, where the authorities have had to stop detaining people with second rejections because of a lack of space in the police station, the Kos PRDC has capacity to hold 474 people, and the authorities continue to regularly detain people with second rejections.<sup>144</sup>

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<sup>143</sup> Doris Pundy, *Refugees Face Violence, Abuse on Europe’s new Balkan Route*, DW (15 April 2019), available at: <https://bit.ly/34exEtg>.

<sup>144</sup> General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at the Eastern Aegean Sea: 04/05/2021* (5 May 2021), available at: <https://bit.ly/2SqqAra>.

# 1. Detention

## a. Legal Framework for Detention of Asylum Seekers and Migrants in Greece

Article 46 L. 4636/2019 provides a list of specific reasons for detaining asylum seekers and significantly expands the grounds established by the previous asylum law.<sup>145</sup> However, once a person receives a second rejection, L. 4636/2019 no longer applies to them because they are no longer an asylum applicant within the meaning of the law. Instead, the authorities detain rejected asylum seekers under L. 3907/2011, which transposes the Returns Directive and governs the procedures for detaining migrants with return orders. While Article 46 L. 4636/2019 establishes a long list of reasons for detaining asylum seekers, including to verify her identity, establish elements of her claim, preventing a risk to national security, Article 30 L. 3907/2011 actually provides fairly narrow grounds for detaining migrants subject to return orders. Under Article 30, “third-country nationals who are the subject of return procedures” may be detained “in order to prepare the return and to carry out the removal process only if, in a specific case, there are no other sufficient but less coercive measures.” Detention must be for “as short a period as possible and as long as removal arrangements are in progress and executed with due diligence.”<sup>146</sup> As soon as there is no longer a “reasonable prospect of removal,” the grounds for detention cease to exist.<sup>147</sup> This is in line with the rules laid out in Article 15 of the Returns Directive. Similarly, Article 5(f) of the ECHR allows states to detain migrants where “action is being taken with a view to deportation.” The ECtHR has interpreted Article 5(f) to mean that, *inter alia*, there must be a realistic prospect of removal.<sup>148</sup> The Court reiterated this stance in a recent decision that found a migrant’s detention in Malta had not been lawful because his deportation had become unlikely for various reasons.<sup>149</sup>

## b. Practice and Situation on Kos

Since January 2020, the practice on Kos has been to detain all newly arrived asylum seekers and hold them in the PRDC for the duration of their procedures, with the exception of visibly pregnant women and unaccompanied minors. Unless a lawyer intervenes, the authorities will generally only release people after they receive a positive decision, a “voluntary” return order, or have spent 18 in detention, the maximum time allowed under Article 46(5) L. 4636/2019.<sup>150</sup> When a person receives a second rejection but no “voluntary” return order, as is common, the police will renew their detention on pre-removal grounds. However, given that Greece has been unable to deport any migrants to Turkey since March 2020, the current practice of detaining people with second rejections on the grounds that they are subject to a return order is blatantly unlawful. Equal Rights has successfully challenged this practice by submitting objections to an administrative court in Rhodes; however, the reality is that there are not enough lawyers on Kos to submit objections to detention for every person who is unlawfully detained. Consequently, because they are rejected at a nearly 100% rate, Syrians in particular are likely to spend an extended period of time in the Kos PRDC. Syrians detained on Kos are aware of this, too. As Zeana, a young woman in the Kos PRDC told Equal Rights, “*The police told me that after 25 days I would be released from prison and I believed them, but then when I spoke to the other Syrians in detention they said no, this is a lie. You will not be released after 25 days. You will receive two rejections, and you will stay here at least one year.*”

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145 This report does not address in detail the detention practices on Kos and in Greece more generally. The Equal Rights Kos office is currently working on a separate report on detention.

146 Art. 30 L. 3907/2011.

147 *Ibid.*

148 ECtHR, Judgment of 21/06/2018, No. 66702/13, *S.Z. v Greece*, para 54.

149 ECtHR, Judgment of 03/11/2021, No. 6865/19, *Feilazoo v Malta*, para 110.

150 See also, AIDA Greece Report, *supra* note 27, at 175.

### c. Detention Conditions on Kos

Little has been written about the conditions in the PRDC on Kos, and for over six months authorities have refused to allow UNHCR or other observers to enter the living areas of the detention centre because of Covid-19. However, CPT has documented the dire conditions in Greek immigration detention centres for years, including conditions that likely amount to inhuman and degrading treatment.<sup>151</sup> Moreover, Equal Rights Kos has either interviewed or represented in some capacity over 50 detained clients since opening in January 2021. Among Equal Rights' clients have been torture and SGBV survivors, single women, families with young children, people with serious medical conditions, and a 69-year-old woman. They have all described inadequate living conditions, including a complete absence of medical and psychological treatment, poor quality of food, ill treatment by police, and a lack of access to recreational spaces and educational resources, particularly for children. During her interview for this report, Zeana described life in detention in the following way: *"I am very upset about this situation. As far as the imprisonment, this imprisonment that we are in is very hard. Even for animals, it would be impossible to live here. In the end, we are not free in my opinion. My life has been taken from me. I'm not allowed to leave, and nothing is allowed to enter. Also, I am very afraid of what my decision will be. Any negative decision will mean more time here, and the conditions in this prison are very hard in terms of the food, in terms of the drinks and water, in terms of the life in general is very very hard, it is even forbidden for you to buy anything from outside and bring it inside."* Clients of Equal Rights on Kos frequently report suicidal ideations because of the conditions in the PRDC, and, in March 2021, a 44-year-old Guinean man died in the PRDC Kos of appendicitis. Witnesses report that he was screaming for days from the pain and the police failed to help him.<sup>152</sup>

The detention scheme on Kos has not only had a profound impact on the mental and physical health of asylum seekers on Kos generally, but, similar to Chios, it has had the perverse effect of discouraging Syrians applicants from moving forward with their asylum procedures at all. In some cases, clients of Equal Rights have foregone legal assistance to speed up their procedure by a matter of days. For example, as described earlier, applicants under the border procedure have 10 days to submit an appeal after receiving a first rejection. With such a short deadline, lawyers on Kos generally submit appeals on the tenth day. Without a lawyer, however, asylum seekers can submit the appeal the same day they receive their first rejection. Knowing that their appeal will be rejected regardless of whether they have a lawyer, many Syrians detained on Kos opt to submit appeals on their own to avoid prolonging their procedure even by 10 days. Equal Rights' office on Kos has had several Syrian clients refuse their assistance for precisely this reason. A client that Equal Rights recently prepared for his admissibility interview told a lawyer from Equal Rights even before he had his interview that he wanted to submit the appeal by himself because he did not want to wait the 10 days. Nabil, who was interviewed for this report, did not submit his appeal at all. As he told Equal Rights, *"I was like, if I submit the appeal, I'll get a second rejection, and then*

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151 For example, in a report from 2020 CPT documented the following conditions amounting to inhuman and degrading treatment: "access to natural light was limited and there was no artificial lighting, no heating, no beds and no mattresses. The detained migrants slept on blankets or on cardboard placed on the cell floor. The unpartitioned in-cell toilets were blocked and emitted a foul stench into the rest of the cell. Access to three portable toilets located outside the cell area was offered in small groups a few times a day. There was no communal area and no outdoor exercise yard. The migrants met had not had access to a shower for more than two weeks and no soap was given to them to wash their hands after going to the toilet. Women were given wet wipes, but they were not provided with any other hygiene products; many women recounted the embarrassing and unsanitary situation with which they had had to cope during their detention." CPT, *Report to the Greek Government on the visit to Greece carried out by the European Committee Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020* (19 November 2020), 14, available at: <https://bit.ly/34dI5NZ>.

152 Αριστείδης Μιαούλης, Κως: Εξελίξεις στο θέμα με τον αφάνητο θάνατο του 44χρονου πρόσφυγα, EPT News (26 March 2021), available at: <https://bit.ly/3pyGWKK>; DM Aegean, *Another Death in Prison - Outrage in Kos Detention Center after Medical Attention Withheld* (26 March 2021), available at: <https://bit.ly/3pEo650>.

*what will happen? And they said, stay 18 months in detention, or we'll take you back to Turkey. I said I'd prefer to go back than be detained for a year and a half.*" In other words, like on Chios, the goal for Syrians on Kos has become to get rejected and released as quickly as possible so that they can leave the island and try to apply for asylum elsewhere in Greece or Europe.

## 2. "Voluntary" Return Papers

In some cases, Syrians detained on Kos also receive "voluntary" return orders, either attached to their second rejection or given to them by the police at a later date. Despite the many differences between the two islands, the practices with regard to "voluntary" return orders are largely the same. As on Chios, people detained on Kos are often desperate to receive the so-called expulsion papers so that they can be released and leave the island, and yet the papers do not confer any legal status or allow people to actually leave the country. Increasingly, Syrian clients of Equal Rights' Kos office who have left Kos with "voluntary" return orders have contacted the organisation days later from Athens because they are homeless and have no access to any kind of state protection or benefits.

### *C. Solution Provided by EU Law: Assessment on the Merits*

The EU-Turkey Statement was premised on Turkey's willingness to accept a certain number of asylum seekers from the Aegean islands. However, as this report has already described, Turkey has not accepted any returns since March 2020. Although the EU-Turkey Statement did not foresee the current situation, the law provides a clear answer of the procedures that should be followed if a third country does not permit an asylum seeker to enter its territory. In that case, both L. 4636/2019 and the Procedures Directive state that the person should be given full access to the asylum procedure.<sup>153</sup> In other words, if Greece cannot return Syrian asylum seekers to Turkey, then the authorities should examine their cases on the merits and assess whether they can be safely returned to Syria. This reflects one of the main objectives of the common asylum system: to ensure that asylum seekers are not left in a legal limbo and have access to "legally safe and efficient asylum procedures."<sup>154</sup> Indeed, neither Greek nor EU law leave much room for interpretation on this matter. Article 38(4) of the Procedures Directive states that "where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to the procedure is given in accordance with the basic principles and guarantees described in Chapter II", while Article 86(5) L. 4636/2019 states that "where the third country concerned does not permit the applicant to enter its territory, his application shall be examined in substance by the Competent Decision Authorities." The wording from the Greek provision, in addition to EU law, clearly indicates that such a new examination must be initiated by the administration.

Greek officials have been pressuring Turkey to begin accepting returned asylum seekers for some time now. However, talks between the two countries have failed to produce any significant movement on the issue. It was in fact acknowledged in the Greek 2020 yearly asylum report that: "despite the lifting of the measures for the pandemic, from 01/06, the requests of missions-returns of the Greek authorities have not been answered."<sup>155</sup> Thus far in 2021, the Greek Ministry of Migration has been pushing Turkey to comply with its commitments and accept 1450 rejected asylum seekers within the scope of the EU-Turkey Statement, a request that Turkey initially refused and has yet to be carried out.<sup>156</sup> On an individual level, authorities on Kos have similarly ac-

<sup>153</sup> Art. 86(5) L. 4636/2019, Art. 38(4) 2013/32/EU (Procedures Directive).

<sup>154</sup> Recital 8, Directive 2013/32/EU (Procedures Directive).

<sup>155</sup> Hellenic Ministry of Migration and Asylum, *Yearly Report 2020* (31 December 2020) 5, available at: <https://bit.ly/3yK8elg>.

<sup>156</sup> Reuters, *Greece seeks to send 1,450 migrants back to Turkey* (14 January 2021), available at: <https://reut.rs/2RGNBGj>; Euobser-

knowledged that there is no plan to resume returns to Turkey in the near future. At the end of March 2021, a lawyer from Equal Rights' Kos office sent an email to the police, asking whether there were plans to deport her client to Turkey. She received the following: “[w]ith regard to the subject matter and in response to the following e-mail, you are informed that readmission operations in Turkey, on the basis of the EU-Turkey Joint Declaration, are carried out by the Greek authorities (locally competent Police Directorate), with the assistance of the European Border and Coast Guard Agency (FRONTEX). The conduct of these operations was suspended by the Turkish authorities on March 16, 2020. Therefore, there is no relevant programming at present. Please keep us informed.”

In light of this protracted situation, a priority parliamentary question on the applicability of Art. 38(4) of the Procedures Directive in Greece was addressed to the European Commission.<sup>157</sup> The Commission answered on June 1, 2021, urging Greece to implement Article 38(4) of the Procedures Directive and requesting that applicants whose application had been declared inadmissible be allowed to apply for asylum again. The letter further stressed that Greece will have to take into consideration the situation presented at the time of the re-examination of the individual applicants and the effective prospect of return as established by the EU-Turkey Statement.<sup>158</sup>

By denying Syrian applicants access to the main asylum procedure, Greek authorities are violating both Greek and EU law.<sup>159</sup> Yet, the authorities have refused to address this legal issue, even as it has dragged on for over one year now. At the first instance level, none of the decisions analysed for this report mention the fact that return to Turkey is not possible. At the second instance level, not only did the Appeals Committees fail to make this assessment *ex officio*, they also invariably rejected this argument when brought forward by lawyers and applicants. The argument was presented several times by both Equal Rights and rejected by the Appeals Committees on every occasion. Other legal aid organizations on the Aegean islands with whom Equal Rights is in contact shared the same experience of seeing this argument either rejected or completely disregarded by Appeals Committees, which have continued to reject Syrians on admissibility grounds despite the situation between Turkey and Greece. In one of the second instance negative decisions analysed for this report, the Appeals Committee rejected the argument because “the pandemic is temporary and does not constitute a permanent refusal by that country to accept the applicant’s return.”<sup>160</sup> The standard of a “permanent refusal” is thus arbitrarily added to the interpretation of the provision, while the temporary nature of the halt of readmissions is referred to as a given, even though it has been the status quo for over one year with no clear end in sight. Finally, on both islands, authorities reject subsequent applications from Syrians, even when applicants raise the fact that there are no returns to Turkey during their interviews.

## D. Summary

Today, Syrian asylum seekers on the Aegean hotspots find themselves in a situation where they are rejected at a nearly 100% rate on the grounds that Turkey is a safe third country on the one hand and cannot be deported to that supposedly safe country on the other. In such a situation, EU and Greek asylum law require that states analyse asylum seekers’ applications on the merits. Although Turkey has refused to accept any returns for over one year now, Greece has failed to comply with this obligation, instead choosing to wilfully ignore the

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ver, *Turkey snubs Greece on migrant returnees* (19 January 2021), available at: <https://bit.ly/3bWzZNX>.

157 The question tabled by MEP Erik Marquardt is available at: <https://bit.ly/3w8jB4Y>.

158 The answer by Commissioner Johansson is available at: <https://bit.ly/3g0cFRD>.

159 Cf, Equal Rights Beyond Borders et al., *Refugees in Legal Limbo: Another Overlooked Casualty of Externalizing Asylum at Any Cost* (18 June 2021), available at: <https://bit.ly/3iTpKhv>.

160 Annex III, Second instance decision n. 1.

current reality. Instead, the authorities have tried to address the problem by either detaining people indefinitely in “preparation for their deportation” or by facilitating their travel from the islands to mainland Greece by issuing “voluntary return orders” that ultimately leave people undocumented and vulnerable to exploitation and abuse. Although the practices vary to some extent between Chios and Kos, the outcome in both cases is the same: in the absence of an efficient asylum procedure on the merits, most Syrians who arrive on the Aegean islands are trapped in Greece without a way to legally leave the country or regularise their status.

The data, interviews, and field experience collected for this report reveal a system for Syrian asylum seekers that is marked by major structural deficiencies. Or as Ahmed put it, the procedure is “*absurd*.” As he says, “*it’s absurd that we came as asylum seekers, and now we’re hoping for deportation*.” On paper, Syrian asylum seekers on the islands do have access to an individualised asylum procedure with the opportunity to appeal negative decisions. However, in reality that procedure is so flawed that it fails to meet Greece’s obligations under Greek, EU, or international law.

# 7. LEGAL IMPLICATIONS

## A. Lack of Individualised Assessment

### 1. Preconditions in Greek, EU and Human Rights Law

The requirement to individually assess a claim before returning a person to a country where she might face harm is well established in EU, Greek, and European law. The obligation stems first and foremost from the principle of non-refoulement, a fundamental principle of refugee law. The principle of non-refoulement derives from the Geneva Convention, to which Greece is a party, and is written into both Greek and EU asylum law.<sup>161</sup> To protect the right to non-refoulement, applicants for international protection in the EU have the right to have their cases individually assessed by the state, regardless of whether the authorities assess their case on the merits or on admissibility grounds. Because safe third country policies create a real risk that a person will be refouled to her home indirectly, Article 38 of the Procedures Directive explicitly requires states to individually assess each case.<sup>162</sup> Recital 44 of the preamble to the Procedures Directive further emphasises this requirement, explaining that states may only proceed with safe third country procedures “where *that particular applicant* would be safe in the third country concerned.”<sup>163</sup>

Non-refoulement is also a cornerstone of European human rights law, and the ECtHR has developed a long line of cases establishing the right to an individual examination. This right extends back to the 1989 *Soering* judgement, where the Court first declared that Article 3 not only prohibits states from carrying out torture or inhuman and degrading treatment, but also prohibits states from returning a person to a country where she might face such treatment.<sup>164</sup> Since then, the ECtHR has developed an extensive line of case law reaffirming the *Soering* decision and emphasising the absolute nature of Article 3.<sup>165</sup> The rights read into Article 3 in *Soering* and the cases that followed it, not only prohibit states from returning a person to a country where she might face an Article 3 violation, but impose a positive obligation on states to assess cases “in the light of the general situation” in the third country or country of origin “as well as the applicant’s personal circumstances.”<sup>166</sup> The Court has also repeatedly held that in addition to being individualised, examinations must also be “thorough.”<sup>167</sup>

In safe third country cases, the Court is particularly concerned about whether effective guarantees exist to protect the applicant from refoulement to her home country, whether directly or indirectly.<sup>168</sup> This concern led the

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161 Art. 21 L. 4636/2019, which transposes Art. 21 of EU Directive 2011/95 (Qualification Directive), obliges Greek authorities to “respect the principle of non-refoulement in accordance with the international obligations of the State.”

162 Art. 38 states that “[t]he application of the safe third country concept shall be subject to rules laid down in national law, including . . . rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept *on the grounds that the third country is not safe in his or her particular circumstances.*” Art. 38(2)(c) Directive 2013/32/EU (emphasis added).

163 Recital 44, Directive 2013/32/EU (Procedures Directive).

164 ECtHR, Judgment of 07/07/1989, No. 14038/88, *Soering v United Kingdom*, para 91, holding that “the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country”

165 For an overview of ECtHR caselaw relating to non-refoulement and asylum procedures, including the line of cases that followed *Soering* see European Union Agency for Fundamental Rights, *Handbook on European law relating to asylum, borders and immigration* (July 2020), 106-107, available at: <https://bit.ly/3qm492U>.

166 ECtHR, Judgment of 28 June 2011, Nos 8319/07 and 11449/07, *Sufi and Elmi v the United Kingdom*, para 216.

167 ECtHR, Judgment of 04/11/2014, No. 29217/12, *Tarakhel v Switzerland*, para 104.

168 ECtHR, Judgment of 21/01/2011, No. 30696/09, *M.S.S. v Belgium and Greece*, para 298 (“[t]he Court’s primary concern is whether effective guarantees exist in the present case to protect the applicant against arbitrary removal

ECtHR to hold in *Ilias and Ahmed v. Hungary* that states have specific procedural duties they must adhere to before returning a person to a third country. First and foremost, the Court found that in these cases it is “the duty of the removing State to examine thoroughly the question whether or not there is a real risk of the asylum seeker being denied access, in the receiving country, to an adequate asylum procedure.”<sup>169</sup> According to the Court, states must also carry out a “thorough examination of the relevant conditions in the third country concerned and, in particular, the accessibility and reliability of its asylum system.”<sup>170</sup> This examination requires states to “carry out of their own motion an up-to-date assessment, notably, of the accessibility and functioning of the receiving country’s asylum system and the safeguards it affords in practice. The assessment must be conducted primarily with reference to the facts which were known to the national authorities at the time of expulsion, but it is the duty of those authorities to seek all relevant generally available information to that effect.”<sup>171</sup>

## 2. Practice in Greece

Although the law is very clear that states must individually assess each case in a way that is thorough and pays attention to the specific characteristics of each claim, the findings in this report show that the procedure for Syrians on the Aegean islands fails to meet those standards in any way. Although Syrian applicants in the admissibility procedure do receive personal interviews, those interviews are essentially scripted and do not address applicants’ specific circumstances or claims. Similarly, first instance decisions not only all reach the same conclusion—regardless of any individualised claim to Turkey—but many parts of the decisions are exactly the same from one decision to the next. Moreover, the first instance decisions cite out of date country of origin reports and fail to address the many ways in which conditions for Syrians have changed since 2016. Although second instance decisions are a bit more detailed and do cite more up-to-date sources, they too ignore critical information about the conditions in Turkey, particularly regarding access to the temporary protection system and the lack of readmission. In other words, the authorities fail to carry out any “up-to-date assessment” not only of Turkey’s asylum system, but of the conditions in Turkey more broadly.

The plain language of the asylum directives and ECtHR case law make clear that having an individualised procedure on paper is not sufficient for Greece to meet its non-refoulement obligations under Greek, EU or international law. The procedure must also be thorough and take into account each applicant’s specific claims, factual circumstances, and needs. Yet as long as the outcome of the decision is determined from the moment a person registers as Syrian on the Aegean islands, Greece cannot claim that it is individually assessing each claim, regardless of whether people receive personal interviews or not. The many flaws in the personal interviews and the lack of individualised assessments in the first instance decisions means that the procedure for Syrian asylum seekers on the Aegean islands exposes them to a real risk that they will be returned to a place where they will face harm, persecution, or refoulement to Syria. For this reason, in July 2019, the Administrative Court of Munich, Germany, refused to return a Syrian applicant to Greece on the grounds that there were “indications, that asylum applications of Syrian nationals [...] in Greece would be systematically treated in a way that is not in accordance” with the requirements of EU law.<sup>172</sup>

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directly or indirectly back to his country of origin”).

169 ECtHR, Judgment of 21/11/2019, No. 47287/15, *Ilias and Ahmed v Hungary*, para 134.

170 Ibid at 139.

171 Ibid at para 141.

172 Administrative Court Munich, Judgement of 17 July 2019, Nos. M 11 S 19.50722 and M 11 S 19.50769, para. 57; Cf.

Equal Rights Beyond Borders, Press Release of 16 August 2019, *Court of Munich again: Turkey is not a safe third country – Is the EU- Turkey Deal dead?*, available at: [https://bit.ly/M.S.S.\\_submission3](https://bit.ly/M.S.S._submission3) [translation by

Equal Rights Beyond Borders].

Although Greece does have a legal right to reject applicants on the grounds that Turkey meets the criteria under Articles 38 and 86 of the Procedures Directive and Greek asylum law respectively, authorities must also thoroughly establish that Turkey actually meets those standards in each individual case. Greece does not have the right to enact a blanket policy that rejects *all* Syrian applicants without providing any real opportunity for applicants to prove that Turkey is not safe for them. Such a practice is a form of collective expulsion under the guise of a legitimate procedure, similar to the pushbacks observers have been documenting in Greece at an alarming rate since March 2020.<sup>173</sup> Although there are important differences between the two practices—most notably the fact that in the former case people do manage to register for asylum and are often never actually returned to Turkey—the legal consequences are still the same: asylum seekers are first denied the right to a legitimate and individualised asylum procedure and subsequently returned to Turkey or issued orders to return

## *B. Denial of the Right to an Effective Remedy*

### **1. Preconditions in Greek, EU and Human Rights Law**

Procedures grounded in EU and European law must include the right to an effective remedy. Article 13 ECHR guarantees the right to an effective remedy before a national authority against violations of rights and freedoms laid down in the Convention. Where Article 3 ECHR violations are at stake, the remedy must thoroughly and accurately examine such risks.<sup>174</sup> Although states may provide for an accelerated procedure, the effected persons must still have time to submit relevant material to support her claim.<sup>175</sup> Article 47 CFR enshrines the right to an effective remedy in EU law. Paragraph 1 of Article 47 establishes that “everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.” Under Article 52(3) CFR, the rights laid out in Article 47 must be equal to or greater in scope as those provided for in Article 13 ECHR. However, the CJEU has interpreted Article 47 to specifically include the right to an effective remedy before a court.<sup>176</sup> Article 47 this requires an effective *judicial* remedy against both the rights laid down in the CFR itself and those established elsewhere in EU law, making it broader in scope than Article 13.<sup>177</sup>

The right to an effective remedy both protects a person’s fundamental rights *and* safeguards the legal system as a whole.<sup>178</sup> When a person’s fundamental rights are at stake, as is the case throughout the asylum procedure, the CJEU has held that it is particularly important for judicial protection to be effective.<sup>179</sup> The ECtHR has similarly held that that the asylum procedure must be effective, thorough and accessible,<sup>180</sup> and ensure effective guarantees to protect applicants against direct or indirect arbitrary refoulement.<sup>181</sup> In this regard, the ECtHR reads into Article 3 ECHR a “procedural obligation [...] to assess the risks of treatment contrary to that provi-

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173 See e.g., Amnesty International, *Greece: Pushbacks and violence against refugees and migrants are de facto border policy* (22 June 2021), available at: <https://bit.ly/3j49vye>. The Greek Ombudsman, *Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection* (31 December 2020), available at: <https://bit.ly/3qCpdCJ>.

174 ECHR Judgment of 21 January 2011, No. 30696/09, *M.S.S. v. Belgium and Greece*, para. 387.

175 *Ibid* at para. 389.

176 Case 222/84 *Johnston* [1986] ECR 16510 15 May 1986.

177 Cf. Only Lübke, *The Elephant in the Room*, *Verfassungsblog* 19/02/2020, available at: <https://bit.ly/3gOzwyW>.

178 CJEU, *Judgement of 15 October 1987, UNECTEF v Heylens and others*, 222/86; CJEU, *Judgement of 7 May 1991, Irène Vlassopoulou contro Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, C-340/89.

179 CJEU, *Judgement of 18 January 2007, Osman Ocalan, on behalf of the Kurdistan Workers’ Party (PKK) and Serif Vanly, on behalf of the Kurdistan National Congress (KNK) v Council of the European Union*, C-229/05, para 110.

180 ECtHR, *Judgement of 21 January 2011 (GC), No. no 30696/09, M.S.S. v Belgium and Greece*, para 301.

181 *Ibid* at para 286.

sion before removing” a person from the territory.<sup>182</sup> Article 13, when read in conjunction with Article 3 ECHR, includes a right to an effective remedy to challenge negative asylum decision, which itself must be “available in practice as well as in law” and “requires close scrutiny by a national authority” and an “automatic suspensive effect.”<sup>183</sup> In cases of forced returns, the ECtHR has affirmed several times that the remedy is only effective if it has a suspensive effect.<sup>184</sup> Finally, access to an effective remedy must exist in both law and in fact, including access to an examination of the complaint, particularly before the authorities can cause irreparable damage.<sup>185</sup> Thus, if the authorities structurally prevent access to appeals procedures, courts, or legal counsel, there is already de facto no effective legal remedy.

Moreover, Greece also has a duty to issue decisions that provide clear reasoning, a principle stemming from Article 296 on the Treaty of the Functioning of the European Union and Article 41(2) of the Charter, codified in Article 9 of the Procedures Directive.<sup>186</sup> Negative decisions must disclose clearly and unequivocally the reasoning followed.<sup>187</sup> In this respect, reasons of a general, stereotypical nature that do not contain any specific information relating to the case at issue cannot be considered sufficient.<sup>188</sup> Under ECtHR caselaw, authorities should give asylum applicants the opportunity to explain any alleged deficiencies in their interviews. Similarly, if the examining authorities question an applicant’s credibility, they must give her an opportunity to explain the alleged discrepancies.<sup>189</sup>

## 2. Practice in Greece

Across Greece, there are numerous practical and procedural barriers to submitting appeals and annulments. Reports have documented these challenges in detail for years now and they include language barriers, lack of access to legal counsel, fictitious notifications, high rejection rates, high court fees for annulments, and lack of suspensive effect for certain remedies.<sup>190</sup> Although these barriers are true for all asylum seekers in Greece and not only Syrians in the border procedure, the findings in this report also raise questions about whether the procedures for Syrians on the islands further violate the right to an effective remedy.

As documented in this report, personal interviews for Syrians on the islands are rushed and lack numerous procedural and substantive safeguards. First instance decisions are all identical in their reasonings, sources

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182 ECtHR, Judgement of 23 November 2019, No. 47287/15, *Ilias and Ahmed v. Hungary*, para 163, ECtHR, Judgement of 11 July 2000, No. 40035/98, *Jabari v Turkey*, para 40, ECtHR, Judgement of 22 September 2009, No. 30471/08, *Abdolkhani and Karimnia v Turkey*, para 115.

183 ECtHR, Judgement of 21 January 2011 (GC), No. 30696/09, *M.S.S. v Belgium and Greece*, paras 292 et seq.

184 ECtHR, Judgment of 21 January 2011, No. 30696/09, *M.S.S., v. Belgium and Greece*, para. 293, ECH Judgement of 05 February 2002 – Appl. no. 51564/09 – *Čonka*, Rec. 81-83.

185 ECtHR, Judgment of 21 January 2011, No. 30696/09, *M.S.S. v Belgium and Greece*, para. 288 et seq.

186 Article 296 TFEU and Article 41 of the Charter are directed towards the Institutions of the EU. However, from the case-law of the Court of Justice, it emerges that the duty to state reasons also applies to the national authorities taking a decision on the basis of EU legislation. CJEU, Judgement of 15 October 1987, *UNECTEF v Heylens and others*, 222/86, para 15; CJEU, Judgement of 15 February 2007, *BVBA Management, Training en Consultancy v Benelux-Merkenbureau*, C-239/05, para 36.

187 CJEU, Judgement of 6 March 2003, *Interporc v Commission*, C-41/00 P, para 55.

188 CJEU, Judgement of 15 September 2005, *Paola Casini v Commission of the European Communities*, T-132/03, para 35.

189 ECtHR, Judgement of 9 March 2010, No 41827/07, *R.C. v Sweden*, para 50, ECtHR, (Adm) Decision of 8 March 2007, No 23944/05, *Collin and Akaziebie v Sweden*.

190 The lack of an effective remedy in the asylum procedures in Greece could itself be an entire report. The AIDA report has for several years now documented some of the major challenges to accessing legal remedies for asylum seekers in Greece. See e.g., AIDA Greece Report, *supra* note 27, at 68-74. Because this report is concerned with the procedures for Syrian asylum seekers on the Aegean islands, it addresses the question of an effective remedy within that scope as well.

and conclusions, and second instance decisions largely follow the same structure. In particular, the absence of sufficiently reasoned decisions weakens the right to an effective remedy for applicants who find themselves incapable of effectively challenging negative first instance decisions. Without sufficient reasoning, applicants cannot possibly know or understand the reasons underlying negative decisions, and courts cannot thoroughly review them. The fact that the central arguments of both first and second instance decisions are so poorly argued represents the state's failure to meet its duty under the EU principle of good administration. Personal claims are either not addressed at all or overlooked. When they are addressed, that have no impact on the final conclusion. This constitutes a factual and legal denial of remedies, which dramatically increases the risk that an application will not be assessed in a sufficiently thorough manner and that an applicant will be subjected to inhuman and degrading treatment if returned to Turkey. Regarding asylum seekers' opportunity to challenge any problems during the interview, applicants are not able to read and confirm the content of the transcript, correct mistakes, or fill in potential gaps in the content. Moreover, there is no opportunity for the applicants to do this in the subsequent stages of her proceedings because Appeals Committees make decisions without holding an oral hearing.<sup>191</sup>

Of equal concern is the fact that many Syrians on the islands have become hesitant to submit appeals or begun refusing legal assistance because they are afraid of prolonging their procedure by even a few days. In some cases, the authorities directly discourage people from accessing an effective remedy—for example on Kos the police in the PRDC will frequently tell people that their procedures will be faster if they submit an appeal on their own rather than waiting to speak to a lawyer. However, in other cases the violation is indirect but exists, nonetheless. In these cases, Syrian asylum seekers are choosing not to appeal their rejections because they know they will result in a rejection and may even prolong their time on the islands. Trapped in miserable conditions either in refugee camps or detention centres, they have, often correctly, decided that their best option is to withdraw from the asylum procedure and try to leave the island at any cost. Thus, although L. 4636/2019 establishes a legal remedy to challenge negative decision, the remedy does not exist in practice because, *inter alia*, Greek authorities have designed a system that discourages Syrian applicants in particular from making use of it.

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191 Although the obligation of an oral hearing is not absolute under EU law, there are strong arguments in favor of the necessity of an oral hearing in the first instance or second instance appeal procedures if factual questions are at issue, if the credibility of the person concerned is disputed or in which the personal experiences of the person concerned play an important role. See Reneman, p 180-fwd.

# 8. CONCLUSION

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This report establishes that the Greek authorities' treatment of Syrian asylum seekers between January 2020 and June 2021 violated Greek, EU, and European and international human rights law. Yet, however disturbing the policies towards Syrian asylum seekers on the Aegean islands are, they must be understood in the broader context of the treatment of asylum seekers and refugees by Greece and the EU as a whole. The fact that Greece rejects all Syrian asylum seekers on the Aegean islands is neither an accident nor because Turkey truly is a safe country for every Syrian refugee. Rather, it is an integral part of Greece and the EU's broader attempts to externalise migration and to keep refugees from reaching and building a life in Europe. The treatment of Syrian applicants is just one piece of a story in which asylum seekers are forced to live in deplorable conditions on Greece's most Eastern islands—far away from mainland Europe—the EU pours millions of dollars into funding “controlled” camps, and Greek authorities carry out pushbacks and collective expulsions with impunity. Indeed, this is apparent from the draft of the New Pact on Migration and Asylum, which retraces the ‘best practices’ of border procedures for the creation of faster and more efficient asylum procedures across the EU.<sup>192</sup>

As the Greek authorities proceed with plans to apply safe third countries to an even larger group of people, the procedural inadequacies and human rights violations documented in this report become increasingly important to address. If the procedures in this report are any indication of what's to come following the June 7<sup>th</sup> JMD, then it will be hard for almost any asylum seeker to find protection in Greece, and by extension in the EU. Although CEAS aims to establish “an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union,” the new JMD only ensures that most people seeking protection in Greece will instead be left vulnerable to abuse and exploitation.<sup>193</sup> The human cost of this incalculable, and perhaps best explained by asylum seekers themselves. When asked what she wanted people to know about the situation in Greece, Fatima said: *“If I knew that it would be this way, I would have rather died in my country than have come here.”*

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<sup>192</sup> For an overview cf. Cornelisse/Reneman, *Border procedures in the Commission's New Pact on Migration and Asylum: A case of politics outplaying rationality?*, in *European Law Journal*, 07 May 2021, available at: <https://doi.org/10.1111/eulj.12382>.

<sup>193</sup> Para. 2 Preamble, EU Regulation 604/2013.

## *Annex I - Interviews*

### **Interview 1**

#### **Personal Information and Living Conditions**

**Name:** Musa

**Age:** 29

**Family Status:** Single

**Status:** Subsequent application, awaiting decision at second instance

#### **Could you introduce yourself?**

I am Musa, and I am a single man. I arrived in Greece with my younger brother.

#### **Where have you lived in Greece?**

I arrived in Farmakonisi, which is an uninhabited island with a military base. I only stayed there for one night. Then the coastguard moved us to Leros. We were taken to the hotspot in Leros, where I spent two months in the open camp, and where I first claimed asylum.

In January 2020, I went from Leros to Athens, where I stayed with a friend until August 2020. From there I went to Santorini, where I tried to fly to Switzerland. In Santorini, I was arrested in August 2020, and detained in a police station – I don't remember which one. After a few days I was transferred to Kos. I spent a few hours in the police station, and then I was brought here to detention. I have been here since then.

#### **First-Instance Procedure**

##### **When did you arrive in Greece?**

In October 2019

##### **What did you understand about the asylum procedure at this time?**

When we arrived in Leros, they put us in a closed place, it was nearly like a jail. Then they brought interpreters for different languages, they brought an interpreter for every single refugee. And they told us: "You need to submit an application, and if you don't want to, you're going to go back". We were treated really badly by the police and the people working there. We didn't understand each other at all because of the language barrier, and once we arrived, they took everything from us – the passports, the money, everything. And they didn't really let the other people who arrived before us speak with us.

Actually, we didn't have enough information at all, any at all. They didn't tell us what our rights were, what we were supposed to do, what was next, we didn't have any information. The only thing they did was fingerprinting us and giving us the police papers, and they didn't ask whether anyone had a medical problem, if they needed any type of care. They only cared about fingerprinting us and making us submit the applications. After they fingerprinted us, they gave us a blanket and they told us to leave. There wasn't enough space, so we left the hotspot. It was raining, it was a really bad situation. We took the blankets and we found old houses around

the hotspot, and we stayed in an old abandoned house to protect ourselves from the rain. Other people had small tents but, because of the rain, they couldn't stay inside. Me and my younger brother were staying in the abandoned house. Actually, not only me and my younger brother, we also found a pregnant woman on the island, who had arrived with her husband, but then they arrested her husband and they let her free. She had no idea where her husband was, so she came to stay with us in the old house, and we cleaned it together. There was no electricity, no toilet. It was really cold. No doors, no windows. We stayed like that for two and a half months.

We were trying to go and submit an asylum application and they told us: "You should make an appointment to do that". Because there were a lot of people trying to submit an application, it took a long time to get an appointment. The hotspot was really crowded, there were like 30 containers, and there were thousands of people. There wasn't enough space, it was like there were three times the number of people who could stay in the containers. They even came and kicked us out of the old house we were staying in, and said it didn't belong to the hotspot, so we should go back, even though there wasn't enough space for us to stay there, but they didn't really leave us alone.

Even in the hotspot, when it started to rain, it would flood with water inside the containers. How are people supposed to live there with the dirty water coming in? Thank God I wasn't living there: even if it was an old and abandoned house, it was still better than staying in the hotspot. We suffered a lot on the island. My younger brother and I ended up living in a small tent outside the hotspot. Finally, we thought: "That's it, we should leave. They don't offer us anything here. We couldn't get an appointment with the doctor or any medication, they're not helping us submit a refugee claim". We decided that it was it.

#### **Did you seek legal advice at this stage?**

I had no access to any legal service. You should know that, in Leros, the asylum service and other organisations are separated from the hotspot itself. If you went there and you asked for something, they wouldn't let you in if you didn't have an appointment. I didn't have a private lawyer or anyone to help me. No one told us where to find legal advice. I didn't know how to get a lawyer. We didn't have access. I don't speak English and, when I arrived, I knew no one, I wasn't able to find legal services. Even with the UN, if you want to talk to them, there is a huge number of refugees and few people working there, so whenever you go they will say: "Come tomorrow, tomorrow".

I didn't have an interview or anything in Leros. Just when I arrived there, they fingerprinted me, and after that they took our documents and passports, and they gave us the police papers, that's it. In Kos, I tried to seek legal advice, but you know the situation, the problem is that you're in detention and the organisations, the people who are responsible for this, are not really regularly coming in, it's really hard to get access to them. Even if you go to the asylum service they won't really help you. Even if you have a serious medical problem you will suffer till death until they allow you to go.

#### **Did anyone else advise you regarding the asylum procedure at this stage?**

It was only other Syrians, and they were telling me: "There's no point in staying here, it'll take a really long time to finish your procedure". Some were staying for 6 months, some for a year. They told me to get out. They told me it doesn't matter how long you stay, most of the time you'll be rejected.

I was also searching for some information on the internet, but it's completely different on the ground, the actual

things they're doing, the procedure they're making. For instance, when I looked into the internet, they said: "You can contact the UN, or other organisations by email", and I already did, but they never replied. All the things they show on social media and on the internet are completely different from the ones in the field. For instance, about my medical situation, when I was in the hotspot they didn't really let me receive any medical service. For instance, when I tried to ask for medical help, I was asking the people in front of the asylum service (the guards or something, I couldn't actually get into the asylum service) and they asked me what documents I had; I said I had a police paper. They said: "Arrange your first interview or we can't take you to the doctor or get medication". And I said: "Okay, get me an appointment for the interview", and they said: "It's not our business, it's the asylum service". Wherever you go, they send you somewhere else.

I tried to arrange an interview in Athens. It was by Skype, they gave us a number to do that and we were calling on the day for Arabic speakers, and no one really picked up the phone. My other friends tried as well. They give you a number but it's never really working. Also, I went to the Asylum Service in Athens and I tried to talk with them. They gave me a paper saying I should make an appointment on Skype. I didn't have an interview until I got to Kos, where I had four interviews – registration, second interview, another registration interview, then another second interview. Because I submitted an application twice.

### **How did you feel prior to your interview?**

It took three months after arriving in Kos before they arranged the first registration interview for me. I tried many times to ask for an appointment and no one contacted me. And one day I went to the doctor, and from the doctor I passed through the asylum service and tried to talk with them. And one rude worker came and talked to me in a really rude way, like: "Why are you asking to submit an application? We are the ones who are going to call you, you can't ask for an appointment, you should go back to detention and wait for us". He was really rude.

Then I had my first registration interview and it was a really bad interview. The interviewer was making fun of our story and of us, he was a really rude person. Then, my first substantive interview was in November 2020. Actually, I didn't really feel like a human being before the interview, I was thinking about the interviewer from the registration interview who was a really bad person, so I was wondering how it was going to be during the second one. I wasn't feeling good about it because of the interviewer during the interview and because I have psychological problems. I was in a really bad situation, I was really depressed during the interview.

### **What were your impressions of the interviewer or the interpreter?**

The interviewer was normal, she was normal. But the way that they conduct the interview, they only ask about Turkey, and if Turkey is a safe country for you. The way they're asking you, you feel like you're going to be rejected. You don't feel safe. You know that you're going to be rejected. I'm Syrian and I'm supposed to be asked about Syrian conditions, not Turkey, I'm not Turkish. And everyone knows that Syria is in a war, so it's unfair to ask me about a country that's not mine, not the country that I came from. And you should ask me also about my involvement in the army, and things happening in my life in Syria.

I understood the interpreter, we had a good understanding. He was Arabic, he wasn't from my hometown but we could understand each other. I don't really understand English or Greek so I can't tell if he interpreted correctly or not. They told me that the interpreter would write down information on the paper, and during the interview there were some things they didn't know, and I noticed that they missed some points when they were translating. They were looking up lots of words, which makes me feel like they missed some things.

**Do you think you said everything you wanted to say during your interview?**

Not really, I didn't say the things I wanted. I just replied to their questions.

**How did you feel following the interview?**

I just had the feeling that I'm supposed to talk about my country during the interview, not about other things, and that I should tell them about the suffering that I've been through in my country. I'm a Syrian and I escaped from the military service, the refugee claim I have is a political one. And no one asked me what type of refugee claim you want to submit or anything, the only thing they cared about was the period I spent in Turkey.

After I finished the interview they said: "Do you want to add something?" I wanted to add a lot of things, my whole life in Syria, but it's not about adding, it's the whole point of the interview. The whole interview was about Turkey and what happened in Turkey. I'm not Turkish. I thought there was no point mentioning anything at the end, if they wanted to ask about my country then they probably would have asked me from the beginning, they were only interested in Turkey and my life there, nothing about Syria. I felt really bad during the interview. I had psychological problems and big depression during that time.

**Second-Instance Procedure**

**What were your thoughts when you received your first instance rejection?**

I don't really remember. In the beginning, I already knew I'd be rejected. I was happy that I was rejected, because I thought that after the second rejection they'd give me an expulsion paper and I would be able to travel and go to the country where my mother lives. All the Syrians here in general get rejected, and I'm one of them. Because I've met all the Syrians inside detention, we communicate with each other and everyone knows everyone's stories, so we knew it. Most Syrians get rejected, except in 2021: right now there are some people who got accepted and they're Syrians, but it's so, so rare.

**Did anyone explain why you were rejected?**

No, never. We Syrians know that after they changed the Greek government here, this government claims that Turkey is a safe country for Syrians even if it's not. Everyone who is Syrian knows this. I don't know exactly when this happened, but I think it was in 2019. Before August 2019, Syrians had priority to be accepted as refugees, after that they started to reject them.

**Was the possibility and modality of submitting an appeal made clear to you? Did you try to find a lawyer after your first rejection?**

I didn't really know how to submit an appeal, but my friends in detention knew how to do it and helped me to do it. No one else explained. I tried to find a lawyer when I got into detention, but other people inside told me that the lawyers can't do anything about the situation. One of my friends outside Kos tried to talk with a lawyer, but when he explained to the lawyer that I'm inside detention in Kos, he said there's nothing he can help me with. So I did the appeal myself.

**How did you feel at this time?**

I submitted the appeal and I knew they'd send the second rejection right away. It was something like a routine, you know you should do it but you also already know what the result will be. So, when I submitted the appeal, I was hoping I would get expulsion papers and leave Kos. I met some people who didn't submit their appeals and didn't get expulsion papers and they kept them inside detention for a year and a half. If I knew they wouldn't give me expulsion papers after doing the appeal, I'd rather not have done it. I'm spending the same time in detention anyway, so what's the point of doing it? Actually, when I arrived here my friends told me that I shouldn't submit an application for asylum because I was going to be rejected anyway and that it was better not to be fingerprinted in Greece and to go to another country where the procedure is much better. But at that point I was already fingerprinted.

**Did anyone explain why you were rejected for the second time? How did you feel at that time?**

I got my second rejection in February 2021. No one explained why, they only gave me the rejection and they informed me that I only had 30 days to submit an appeal with a lawyer. Actually, they don't really explain and we don't really need their explanation, because we already know that we are going to be rejected and no one really knows why, but no one explains either. Actually, there are no exceptions with the procedures, they don't really care if you're really sick and need medication or if you're a political refugee, the only thing that they say and that they care about is whether Turkey is a safe country for Syrians and they don't really look at the issues and the case. So, first when I decided to submit an application for a refugee claim, my friends in detention were like: "There's no point in doing it". And I said: "Maybe I'm a special case, I have medical problems, I've been injured, I've escaped from the army service, so I'll probably have some priority". Eventually I found out that they were right and I was wrong.

When I received my rejection documents, they were in Greek. The last page was in Arabic, saying: "If you submit an appeal, you'll get a card". I don't know what they mean by card. They wrote it down in the first rejection and the second one, and until today I have no idea what card they're talking about. The second rejection was very similar to the first rejection. No one explained anything. The interpreter told me that I got the rejection, like the first time, and gave me the document, and that's it.

**Did anyone explain your options at this point? What were your plans after receiving your second rejection?**

No one said anything, except when I got the first rejection and they said that I had 10 days to submit an appeal. For the second rejection, they gave me the documents and they said that I had 30 days to submit an appeal through a lawyer. I already asked friends from inside and outside detention about the possibilities and what I should do. After I found out that there's nothing really to do, I didn't want to submit an appeal, it would have been useless, I would have spent the same time in detention anyway. If I get a lawyer and give him a legal authorization, he will need money. Most of the people I know paid money and the lawyers didn't really help. Most of the lawyers are not allowed inside detention anyway. We already tried to talk to the UN and send them emails, but they took a really long time to respond to me.

## **Subsequent Application**

### **When did you make your subsequent application?**

So, one of my friends talked to the UN and they told him: “You will have better opportunities if you open your file again, if you have extra things to add to your case that will be helpful to you”. Actually, I had a little bit of hope that they would change their mind about my case and if they didn’t change their mind, they would give me expulsion papers. So, when I submitted the first application, I didn’t have my documents that proved that I escaped from joining the army, but when I was thinking about the submission of the second application, I had it here: my brother in Turkey sent me some clothes and he put this document inside the clothes for me. So I said: “Okay, let’s do it”. I gave them the military booklet and I thought: “Even if I don’t get accepted, maybe I’ll get expulsion papers”. So a week after I got the second rejection, I submitted the second application myself.

### **Did you seek legal advice for this application?**

I asked the UN for a lawyer after my second rejection, for the second appeal. I emailed them right when I got the second rejection, the same day or in the next few days. I was waiting for the UN, they told me they were going to look for a lawyer for me, and that they would help me with that. But they came after 26 days, there were 4 days left and they said: “Because you are late to submit the second rejection, the lawyer can’t really help because you don’t have enough time” And she proposed to me to apply for a second time. I told her: “I already applied for the second application myself” and she was really surprised, she didn’t know about it. I submitted the new application a week after I received the second rejection documents.

I tried to talk with her and she told me: “In your second application, if you have any proof you’re going to add or anything that will make it stronger, you will be accepted as a refugee”. And she mentioned that Greece insists that Turkey is a safe country for Syrians, so she suggested that I try to prove to them that Turkey is not a safe country for me. I didn’t really ask for a lawyer for the subsequent application, and they didn’t say anything about it.

### **How was your interview?**

Before the interview, I was hoping that I’d be accepted. After I talked to the UN, they gave me some hope. I added some documents and I managed to remember a lot of bad things that happened to me in Turkey. But during the interview the only questions they were asking me were about Turkey, so I was really disappointed. I tried to talk about my condition in Syria and what my life was like there, but during the interview, most of the time they asked me about Turkey. I tried to explain about Syria but they get you into a circle that is only about Turkey, and they put you in a corner that you can’t really describe what you want about your life in Syria. When I realised, I knew that I would be rejected. I knew I’d be rejected after it, but I was hoping I’d get an expulsion paper with the rejection.

### **Did you seek legal advice after getting your rejection?**

When I got the rejection, I had already prepared the appeal and I gave it immediately to them. I told them that they didn’t need to explain to me more about why I was rejected. I told them that I had left the case number empty and asked them to put the new case number in. And they told me when they would open my file again, and which committee would be responsible for it. I didn’t have the hope that someone was going to contact me

and say: “I am your lawyer and I am going to help you”. I had no hope that someone would help me. I already sent emails to the UN, but nothing was really working for me until you contacted me and you tried to help me.

### **Perspective on Admissibility Procedure for Syrians**

#### **Do you understand why Turkey is deemed a safe country for Syrians? What are your thoughts on this?**

I’m going to reply with a question as well: so why didn’t they consider Turkey a safe country before 2019? And what changed after 2019 to make Turkey a safe country for Syrians? I think it’s a political issue. We don’t know what it is exactly. But Greece and Turkey have some fights between them and they try to push each other with their refugee problems. So we are in the middle, between these two countries that are fighting because of the refugee problem. It’s a political thing. And it’s not only me that thinks this way, most of the people that I know in detention think it’s political.

And actually it’s not about being safe inside the country. There’s no war inside Turkey, as we all know. The point is about the documents and identification proof. They don’t afford anything for Syrians. If I want to study or work, I can’t without these things. That’s only one of the reasons. You know how the Turkish people treat Syrians, how racist against Syrians they are, how they use violence with different people. These are just some of the reasons why Turkey is unsafe for Syrians, but there are many more. So, during my interview I already explained something personal that happened when I was in Turkey and I explained everything about how I was insulted and beaten and everything, but they didn’t really care about it. So I don’t know how they determine the criteria about whether something bad happened to me.

Are you aware that the asylum procedure for Syrians in Greece differs for those who arrive on the mainland and those who arrive on the islands? Or that the asylum procedure is different for different nationalities on the island?

Yeah, actually I realized it after I moved to the mainland. Once I reached Athens I already knew that there’s a different kind of procedure if you’re on the island or the mainland. I don’t know the details, but I know that if you’re on the mainland and they find you, they won’t get you to detention, they will give you documents and let you free. But if you are found on an island, you’re going to be in detention, and it’s harder, and you’re not allowed to go outside from the island, it’s complicated. We learned these things really late.

I get that the procedure is different, but even if I were in the mainland, it takes ages to get accepted, a couple of years, so what is the point in wasting all these years for an asylum claim? I was there and I saw the conditions in the mainland. I didn’t submit anything there. They only took my fingerprints, I didn’t go through procedures, but I knew what it was like to apply in the mainland. When I was in Athens, I tried to talk to a private lawyer and explain about my situation, and they said: “There’s nothing really we can do for you, except when you get the Skype interview and then we can be with you during the interview”. I tried to book an interview many times but it wasn’t working. They’re only open at specific times and days and there are a lot of people.

I also know that the procedure is different between nationalities. The guys from Pakistan, they’re different from us, they can request that they want to go back to their countries, they can do that. But Syrians can’t go back to their country. What’s the point with having different procedures for different countries? There is no way for Syrians to get accepted as refugees.

### **What do you want people to know about the situation for Syrians on the islands?**

The only thing that I want to add is if you can please send the tragic message about the conditions and the detention and how we're really suffering. No one is supposed to be detained only for being a refugee, only because he came, really that's not fair. No one should be detained because he got inside a country illegally. We're not killers and it's so beyond us to do these things with people who are seeking safety and a better future and nothing else.

## **Interview 2**

### **Personal Information and Living Conditions**

**Name:** Ahmed

**Age:** 38

**Family Status:** Single

**Status:** rejected at second instance, waiting for the submission of an annulment

### **Could you introduce yourself?**

I am Ahmed, and I am a single man. I arrived in Greece alone.

### **Do you have any medical conditions or disabilities?**

Yes, I have several medical problems: first I have to do some surgery, I have some problems with my stomach, and I have psychological problems.

### **Have you ever experienced any forms of serious violence?**

In Syria I was in prison for a week and in Turkey I was in prison for two days, and then they sent me back to Syria. I experienced serious violence in prison during all this time. In Greece, I have also experienced psychological violence from the situation in the camp and from the police. Every time I was outside of the camp of Vial, the police called me "Ali Baba" and I experienced violence once when I went out to go shopping in the city, and the police stopped me and interrogated me aggressively for two hours in the street because I didn't have the certificate to move. Once, in Vial there was a big fire, and the police came and took a lot of people who had nothing to do with the fire. Athens is not very different from the island, it's the same. I learnt how to be careful and to not meet the police, but a lot of people have troubles with the police. All the people that got a rejection are on the streets because they can't stay in the camp and RIS is not responsible for them so they can just stay in the street.

### **Where have you lived in Greece?**

I was first in Chios for over one year, and I lived in Vial, in a tent with three other people, and then last month I left for Athens.

## **First-Instance Procedure**

### **When did you arrive in Greece?**

In December 2019

### **What did you understand about the asylum procedure at this time?**

I had very basic information about any asylum system: you go, you stay in some camps, you start your procedure and then you get your decision. I was surprised about the situation I found, these camps are for animals not for people.

### **Did you seek legal advice at this stage?**

I couldn't reach any lawyers for the first six months. I needed to stay several nights at the info point queueing to try to get a lawyer. At last, I didn't get the lawyer through the info point, but through the UNHCR that referred my case to you. If I knew from the beginning about the chance to have a lawyer, it would have been better, because in Vial we had to fight for everything, including getting a lawyer. I should have had a lawyer from the very beginning.

### **Did anyone else advise you regarding the asylum procedure at this stage?**

I didn't ask and I didn't get any information from anybody else other than the lawyer. The procedure also changed, so we didn't know which law applied to whom. You never know how it works. I tried to look for some information on the internet, but then I found you and so I just asked you.

### **How did you feel prior to your interview?**

I was terrified: inside the room I thought I was under investigation, not an asylum seeker. I didn't take my psychological medication for the three days before the interview, so that I could concentrate and say everything, but it was terrifying.

### **What were your impressions of the interviewer or the interpreter?**

I didn't feel comfortable. The interviewer made me feel like I was under investigation, that I was watched, not safe. He asked me short questions, watching me not in a nice way. The interpreter wasn't good, because when I saw the transcript, I saw a mistake. When I told him about a friend who was living in Turkey, the interpreter translated that he was my cousin. But it wasn't true, it's a friend.

### **How did you feel about the questions you were asked?**

They were trying to make me doubt myself about where I was from, and they were asking questions about the place I was from, showing me the map and asking me about cities next to mine. They made me feel uncomfortable.

**Do you think you said everything you wanted to say during your interview?**

No, I didn't say everything. Every time I tried to explain something, the interpreter asked me the next question. For example I couldn't say anything about Syria and about the Turkish police, I couldn't explain what happened.

**How did you feel following the interview?**

For sure, there is no good feeling after the interview, because it's useless. Due to my psychological situation I knew someone at RIS and they told me that I arrived at the wrong time, because before someone would have read my file, but no one was recognising Syrians now.

**Second-Instance Procedure**

**What were your thoughts when you received your first instance rejection?**

I received the rejection in December 2020, one year after my arrival. I thought I would have been accepted, I mean, it's Syria. But it was a rejection.

**Did anyone explain why you were rejected?**

When I was given the decision I asked in Vial why Turkey was safe and they just told me that I arrived at the wrong time and that now Turkey is considered safe.

**Was the possibility and modality of submitting an appeal made clear to you?**

Yes, it was something obligatory to do in order to take back the *Khartia*. I then discussed it with you and I understood it was important to appeal but I didn't understand why I got a rejection in the first place.

**How did you feel at this time?**

It's absurd, there are a lot of absurd things in this procedure and we're at the point of waiting for the deportation instead of staying in Greece. It's absurd that we came as asylum seekers, and now we're hoping for deportation. Everyone knows that Greece doesn't respect the law, and also the people who were working in Vial knew it.

**Perspective on Admissibility Procedure for Syrians**

**Do you understand why Turkey is deemed a safe country for Syrians? What are your thoughts on this?**

Once I passed the border to Turkey and I got hurt, they brought me to the hospital and then they took me to jail. I don't understand how Turkey can be considered safe. I also got a 5-year entry ban, so I can't enter Turkey. And Turkish people are racist towards Syrians. It's not safe for me. In Turkey, sometimes, the police just attack Syrian shops. Three Syrian workers get the salary of one Turkish worker, and a lot of Syrians are used by the Turkish military as foreign fighters. It's a political fight, and now the relationship between Turkey, Greece and the EU is clear: when they want something, they just use the "Syrian card". Erdogan is clearly using the "Syrian card". How is such a country considered safe for anyone?

**Are you aware that the asylum procedure for Syrians in Greece differs for those who arrive on the mainland and those who arrive on the islands? Or that the asylum procedure is different for different nationalities on the island?**

After I arrived in Greece, I discovered this information. And yes, on the islands everybody gets asylum but not the Syrians. It seems like Syrians are the devil of the planet.

**How do you feel about your current situation?**

I had to leave Syria and I knew I couldn't stay in Turkey and I thought Europe was the land of rights and freedom. But I was shocked when I discovered it was like this. I wish I had died in an explosion in Syria instead of being here. I came to Greece by the sea and to take the boat, you have to be crazy or hopeless and want to search for a new life, but this is not the case here.

**What do you want people to know about the situation for Syrians on the islands?**

We just seek a good life and understanding from the people. We came from a burnt country, otherwise we would have never left it. Please understand.

## **Interview 3**

### **Personal Information and Living Conditions**

**Name:** Nabil

**Age:** 38

**Family Status:** Married

**Status:** rejected at first instance

**Could you introduce yourself?**

I am Nabil, I'm from Syria, I'm married and I have four children. I'm in Greece alone.

**Where have you lived in Greece?**

I live in the detention center in Kos.

### **First-Instance Procedure**

**When did you arrive in Greece?**

I arrived in Greece in February 2020. This was the first time I attempted to come to Greece. I arrived in Kos. We arrived on the island, and once we landed, we were walking, then the police cars came and they took us in the car and they sent us to the hotspot. They talked to us a little bit, and then they fingerprinted us and put us, around 33 people, inside one caravan for three days outside detention, and then took us into detention. They took me straight to detention, never to the open hotspot.

**What did you understand about the asylum procedure at this time?**

Nothing. I didn't have the intention to apply for asylum before I came to Greece. I was planning to go to other European countries, like France or Germany, I have some relatives there. But the special police forced me to apply for asylum here. When we went to the asylum service, we were handcuffed.

**Did you seek legal advice at this stage?**

No. The time we arrived here, they put us in detention and no one explained anything to us. No one could understand what was really happening. We didn't really want to submit an application. They said: "If you don't want to, then you will stay for 18 months inside detention".

**Did anyone else advise you regarding the asylum procedure at this stage?**

The people inside detention told me that it's better to apply for asylum, because of the new rules, whoever doesn't submit an asylum application stays in detention for 18 months. And I didn't want to stay in detention for a year and a half because I have my wife and children in Syria. And then I got my first rejection.

**How did you feel prior to your interview?**

My interview was ten days after the registration interview. Imagine someone inside detention, how he would be feeling: that is how I felt. On the day of my interview, the police car came, and the police officer handcuffed me and put me inside the car, and they transferred me to the asylum service to have the interview. They opened the car, they let me out. They took the handcuffs, they released me. I felt like a criminal. Like a serial killer or something. Everyone in the open camp was looking at me like a criminal, not a refugee.

**What were your impressions of the interviewer or the interpreter?**

The interviewers were okay, they were asking the questions, writing the things I was saying. I understood the interpreter, he was translating the things I was saying. I asked him things, but he never replied. I think they do it on purpose, to not make us understand what's going on. I was asking generally about the Syrians' conditions here and for how long I would be staying in detention, about what would happen after spending 18 months in detention, and to get more details about our conditions.

**How did you feel about the questions you were asked?**

It was something really funny. They were treating me as a Turkish guy. All the questions were about Turkey, like: "Why you didn't stay in Turkey?" And I was like: "In Turkey they already deported me back to Syria three times", which they knew, but they kept asking me about Turkey. I felt like the questions were like a routine, like it's already written, it's not about my case itself, just a system on the computer, they ask the same things to all Syrians. They were asking me: "Why you didn't apply for asylum in Turkey and why is Turkey not a safe country for you?", and I was trying to explain everything, like how many times they already found me and my wife and children trying to cross the borders and already took me back to Syria and they already knew it. And they said: "Give us one reason why Turkey isn't safe for you", and I already explained about it, but they just kept going about it in this way. The interview did not take that long, as I mentioned before. The translation took a

while, but if the interviewer had spoken Arabic, then we could have done it in ten minutes and it would be done. They didn't ask me anything about Syria and my condition there. They only insisted on talking about Turkey: "Why didn't you stay there? Why didn't you apply for asylum there?" And for one second I felt I'm Turkish.

**Do you think you said everything you wanted to say during your interview?**

I had the intention to talk about Syria and my condition there. Because I have three children and my wife is pregnant, we were trying to live a safe life. But they didn't really want to hear that, the only thing they talked about was Turkey. Even when I started to mention anything about my condition in Syria, they would go back to the same point on how I crossed the borders to Turkey and how my life in Turkey was, in the period I was staying there.

**How did you feel following the interview?**

I was quite new to these procedures and these things. The only thing I was caring about was getting out of detention.

**Second-Instance Procedure**

**What were your thoughts when you received your first instance rejection?**

I was really shocked because the conditions in Syria are really bad. The war is still going on. And after all this, I got rejected.

**Did anyone explain why you were rejected?**

I went to the asylum office. The guy at the asylum service was really rude to me. He said: "You got your first rejection, either you submit an appeal or we'll take you back to Turkey". And I was like: "Please take me back to Turkey, I don't want to spend 18 months inside detention". And he said: "Within 10 days I can put you in something and take you back to Turkey". He was really rude and threw the documents in my face. No one explained why I got rejected, he only mentioned that if I don't submit an appeal, they'll take me back to Turkey, and I was like: "Please do it". And he was threatening me somehow, either you submit the appeal or you're going to...I was like: "If I submit the appeal, I'll get a second rejection, and then what will happen?" And they said: "Stay 18 months in detention or we'll take you back to Turkey". I said that I'd prefer to go back than be detained for a year and a half. During that period, I started to understand what was going on. Most of the Syrians – there were about 40 of us inside detention – got rejections. Consider hypothetically that I am lying on my case, and another is lying on his case, surely there was someone amongst the 40 who is telling the truth, no? But it's the same procedure for all of us, we get the same process, we all get rejections.

**Was the possibility and modality of submitting an appeal made clear to you?**

Not really, I didn't have enough information, the same office that gave me the rejection document was just giving us an empty white paper and said like: "Write your reasons". We knew it wouldn't make any difference. At that time I didn't see any lawyer, now there are some lawyers referred to me by the UN and they are helping, but then I didn't see any lawyer.

### **How did you feel after not being told the reasons for your rejection?**

I didn't submit any appeal. Because I knew I'd get the second rejection and I didn't think there was any point submitting the appeal, and if you want to take me back to Turkey then do it. And they started to make fun of me, the people who work inside the asylum service. Their questions don't make much sense, I'm not Turkish.

I stayed for one year inside detention, and no one talked with me during all this period, until I found a website for the UN for someone seeking help and I tried to talk with them, then two people there came and talked with me. They asked why I didn't submit an appeal, I said there's no point submitting one. They said that the solution for my case is to do a new application or follow up the old one. So, the UN told me they're going to send me a lawyer to help me with this, and we had a meeting for 4 hours about this, and I told her everything. The lawyer was looking at my documents and laughing. I asked why. She said she was not laughing at me, but at the documents. It says that if you get rejected within three months, you should be taken back to your country, not to Turkey. It doesn't really make sense, it's copied and pasted, it's not real what they're saying. Most of the Syrians, they have rejections. So I explained to the lawyer that the only thing important to me right now is getting out of detention. She said I could get out of here on the basis of being in a bad condition, which is easier and faster than doing a new asylum application. I haven't heard back. I have sent her messages. I have tried to call her, but she never replies back.

### **Perspective on Admissibility Procedure for Syrians**

#### **Do you understand why Turkey is deemed a safe country for Syrians? What are your thoughts on this?**

Yes, because of the deal that Erdogan had with the European Union, and with Greece in 2016, and they applied it in 2020 to take Syrians to Turkey. Before I travelled and I came to Greece, I had no idea about this deal. Since I came here, I was informed and knew about it. We checked it out on the internet after coming here, why they treat Syrians as though they are Turkish, and we understood what was the reason for that. For a second it makes you feel like you're Turkish, not Syrian. It's really unfair, there's a lot of asylum seekers of different nationalities who get accepted even if their countries aren't that dangerous. For us it is really dangerous and there is a war there. Legally when you get rejected within three days, they should send you back to your country, to your hometown, or to somewhere else. For us it's different because they can't deport us to Syria.

#### **Are you aware that the asylum procedure for Syrians in Greece differs for those who arrive on the mainland and those who arrive on the islands? Or that the asylum procedure is different for different nationalities on the island?**

No, I didn't know that. Okay, so I didn't know that much until one of my friends staying in Chios called me and asked: "where are you?" I said: "I'm in Kos". He said: "There is a family that submitted an application for asylum in Chios and they got rejected, then they gave them expulsion papers and they moved to Athens, they applied for asylum again and they got accepted", and I was like: "What's going on, is it a different country on the mainland?" He said he doesn't know but they got accepted. I have been here for 15 months and most nationalities are accepted except Syrians. Palestinians, Moroccans, Liberians are accepted. Palestinians said in the interview the reason why they left their country is because they don't have the stuff for the nargileh and then they got accepted. Except the Syrians, I wish that there was anyone who got accepted during the period I was staying.

### **How do you feel about your current situation?**

Well, it's really hard. I'm thinking sometimes to hang myself and end my life. If I knew that I was going to be arrested only for one day, I would never let them see my face. I would rather stay in Syria and be killed in my country after destroying my house, than being in jail one day here in Greece. During my stay here I overthink a lot and I can't sleep. Sometimes I think this is my life and I'll never get out of detention. The psychologist isn't really that professional, they give everyone Depon. We call the psychologist the "king of the Depon". We had someone who was sick and living next to us, and he asked for the doctors for 4 days, continually, and they wrote down his name but the doctor didn't call him, and he died, and no one asked about him. And then the police came to investigate if someone killed him, but it's their fault, they didn't care about taking him, and he was in a really bad medical situation. Since my lawyer is not responding to me, I get really anxious and I want to hit my head through the wall.

### **What do you want people to know about the situation for Syrians on the islands?**

Our only hope is just to get out of the detention, even if they want to send us back to Syria. I mean, we've been here a long period already. Some of us have already spent here a year and a half, a year and a couple of months. We've been separated from our families. We thought we were going to travel and support our families financially. Right now what's happening is quite the opposite, because we're inside detention, and the condition in Syria everyone knows it's really bad as well. The food in detention is really really bad, it's not a human living criteria, because there are a lot of small creatures inside, like mosquitoes, small things, bugs, the caravans are really bad for human beings to live inside. And the food is not enough, we just eat to not feel hungry, that's the only point.

My only question is why they arrested us and kept us inside detention for a year and a half. We're not criminals, we're refugees. Some people have criminal backgrounds, they sell hashish or they have it, and they arrest them for a while and bring them to detention, and after two months they get out of detention.

## **Interview 4**

### **Personal Information and Living Conditions**

**Name:** Abbas

**Age:** 27

**Family Status:** Widower

**Status:** rejected at first instance, now in Austria

### **Could you introduce yourself?**

I am Abbas, I was married and I am now widowed. It happened in Syria. I arrived in Greece alone.

### **Do you have any medical conditions or disabilities?**

I have Hepatitis B. It gives lots of symptoms that are always there: no appetite, yellowness of the eyes, vomiting blood. It got worse during the period in Greece. I still have the symptoms but the vomiting blood has stopped.

I also have a problem with my left hand, some veins are blocked. Now I'm in Austria and I can say that the difference between Greece and Austria is like between sky and earth, extremely different, especially as it concerns the medical system.

**Have you ever experienced any forms of serious violence?**

In Syria I lost all my family with Sarin gas. I had problems with the police in Syria and Turkey. I was in jail for 2 months, conditions there are generally bad.

**Where have you lived in Greece?**

I lived in a cave outside Vial, in terrible conditions, regardless of my medical condition.

**First-Instance Procedure**

**When did you arrive in Greece?**

In October 2019

**What did you understand about the asylum procedure at this time?**

In the first few weeks, I decided that I would stay in Greece. The procedure was clear at the beginning, they explained it to me.

**Did you seek legal advice at this stage?**

Yes. Most of what made me look for legal advice is my medical situation. I think there are more benefits from the NGOs than from the authorities and the government.

**Did anyone else advise you regarding the asylum procedure at this stage?**

Yes, other Syrians gave me some information about the asylum procedure. I was hearing mostly about the lies. If you want to talk to any authority, it is best for you to lie, not to tell the truth. To make a drama of the situation, in order to get what you want. With the NGOs it was different, they were saying all the time that you have to be honest.

It was very widespread information that for registration it was normal questioning and basic information. But with the EASO status determination interview, it was clear that no result would come from it and that you would be rejected. I know of people that entered the interview and were refusing to answer the questions and saying to the caseworker: "You can write whatever you want, why to ask me? There's no benefit in this questioning". It's widely known because of the experience of all the others. I have an episode to tell you regarding one of the camp authorities. They talk to Syrians in a way that shows that they don't like them, they underestimate them. There was this Syrian guy who had a dog. One of the camp authorities told this guy that he had to set the dog free because he would get a rejection and the dog would be sad because he would have to leave... She was anticipating the sadness of the dog. Animals are worth more than Syrians.

**How did you feel prior to your interview?**

I remember clearly that before the interview, a few minutes before, I was with my lawyer and I asked her if I could just leave the island and withdraw the application. I knew it was a waste of time. I knew the rejection was already ready and I was wondering: "Why do all this for nothing?"

**What were your impressions of the interviewer or the interpreter?**

The interviewer did not affirm my prior feelings of distrust. I was with my lawyer and they dealt with me with awareness, they were more careful. While I had no problems with the interpreter.

**How did you feel about the questions you were asked?**

It was clear it was routine questions, they don't care about details. They choose what they care about. If I had to ask the questions, they would have been different, to see if someone is really a refugee. Especially for Syrians, whatever you say and express they accept it as ok, they don't ask follow up questions.

**Do you think you said everything you wanted to say during your interview?**

I haven't said lots of things. The way they were dealing with the questions did not give me the chance to add explanations or thoughts. For example, when they asked about my family, they asked where they were. I told them they died. And they just went on with questions. It's a family, it's not one person. They didn't ask anything, they underestimate the life of the human. How can you not ask anything more than that?

**How did you feel following the interview?**

If I had a bit of hope before the interview (and I did not), after that I felt just like I am one more number to add to the Syrian population there to wait for a rejection, to wait for a second rejection and to get a deportation. I just wanted to fasten the procedure. And that's when I gave up and I left towards Austria. There was no hope at all.

**Perspective on Admissibility Procedure for Syrians****Do you understand why Turkey is deemed a safe country for Syrians? What are your thoughts on this?**

It's a very unfair decision. It is not safe at all.

**Are you aware that the asylum procedure for Syrians in Greece differs for those who arrive on the mainland and those who arrive on the islands? Or that the asylum procedure is different for different nationalities on the island?**

I heard that if you go to Athens or Thessaloniki it would be faster and easier. But because of my sickness, I chose the easier but more dangerous route that is the sea. I would have walked for weeks if I came by land. I don't really understand. I know some that entered around the same dates as I did, but in the mainland and they finished their procedure already. They are now getting their ID and passport. And why on the islands this is the situation? What's going on on the islands about having the Syrians separated from the others? It is really something I don't get. What is behind it? One of the UN employees, she spoke Arabic and she told me honestly:

“Leave this island and continue your way, it’s the best for you”. For 8 months I was fooled around. I believed in the system and that something would have happened, but it was just a waste of time.

**How do you feel about your current situation?**

Now that I’m in Austria I am much more comfortable and feel lots of hope. Besides, the healthcare system in Austria is very good, it’s a very known fact and I feel safer here.

**What do you want people to know about the situation for Syrians on the islands?**

As I know and experienced this unfair treatment, I am willing to help with the report. The guy who was living with me in the cave is now there for a year and half and he just received his first rejection. I want to spread the word on what’s going on because no one is focusing on it.

## **Interview 5**

### **Personal Information and Living Conditions**

**Name:** Zeana

**Age:** 22

**Family Status:** Married

**Status:** Rejected at first instance

**Could you introduce yourself?**

I’m Zeana, I’m married and my husband is in Germany.

**Do you have any medical conditions or disabilities?**

I have asthma and I have high blood pressure. I don’t have any medical papers from doctors in Greece but I saw a doctor in the RIC and in the detention centre. My psychological health is bad. I tried to commit suicide in Turkey and have thought about it here in Greece.

**Have you ever experienced any forms of serious violence?**

Attempted rape in Turkey and war in Syria.

**Where have you lived in Greece?**

I live in the detention center in Kos.

### **First-Instance Procedure**

**When did you arrive in Greece?**

In June 2020.

### **What did you understand about the asylum procedure at this time?**

When I came to the island of Kos and entered the camp, immediately, the Syrians said to me: “It’s over, the Syrians here are rejected. No Syrians get refugee status. The Syrians in general are rejected for asylum”. This is the thing that I knew when I arrived. I did not believe them at first. But now I see that no Syrians are accepted. Maybe one in a hundred only takes a residency permit. All of the others are rejected. They do not accept anyone, ever.

### **Did anyone else advise you regarding the asylum procedure at this stage?**

This is what I heard—that all Syrians are rejected. There are people here that have been here a year or a year and a half and until now their procedures have still not finished and then, in the end, they receive a rejection, and until now they have not been released. They sent them a deportation order but after a year or a year and a half they are still here. And I know that the Syrians, if they are rejected for asylum, they stay in detention for 18 months. This period of time is a really long time in a person’s life. And we are women who don’t have anyone with us and we are in here for 18 months – this is a thing that is really “haram.” Besides, they said that psychological reports would help you a bit with asylum, or if you are a bit sick and have a report, this would help you get asylum. But it is impossible here (in detention) to get reports. Here there is only one doctor and it is forbidden for people to go to visit the doctor, unless it is absolutely necessary and it is impossible for people to get reports. Maybe for one out of a hundred people they make reports. It is the detention center I’m talking about. In the open camp (RIC) there are doctors and reports. But here in detention you can never get reports or anything that would help you a bit in your asylum procedures. Or maybe if you have a paper that shows that you were imprisoned in Syria or that shows that your life was in danger in Turkey or Syria, this could maybe also help you with your asylum procedures. Medical reports and reports that show that your life was in danger in Turkey or Syria: this is what I heard would help me.

### **How did you feel prior to your interview?**

I was very scared. I know that the majority of Syrians are rejected. I didn’t have any hope at all that I would be accepted. I didn’t really want to do the interview, to be honest, because the situation for getting asylum is really bad for Syrians. But yes, I was very scared and anxious and I was afraid of their reactions during the interview—I mean how would they question me and things like that.

### **How did you feel about the questions you were asked? Do you think you said everything you wanted to say during your interview?**

I was really surprised after the interview. Between you and me, I was thinking: why were the majority of the questions about Turkey and why only for Syrians they ask only about Turkey. Why, for example, don’t Iraqis or Palestinians or other nationalities get asked about Turkey, why do they only ask Syrians about all of these questions about Turkey. In the end I know that most of what I spoke about was not put into the transcript, because I have a lot of friends that said a lot about Turkey, and spoke a lot about what happened to them when they were in Turkey, and then, when their decisions came, they were rejected and the rejections said that they did not say anything about why Turkey wasn’t safe in the interview. After the interview, I was really anxious about the questions. They asked me a lot of questions, and I was really tired without a break. I spent four hours in the interview and I was really tired, and most of the questions weren’t about me personally, they were just

about Turkey.

### **Perspective on Admissibility Procedure for Syrians**

#### **Do you understand why Turkey is deemed a safe country for Syrians? What are your thoughts on this?**

Of course the situation is very hard. And this thing that is happening is just not humane. Because of the dispute between Turkey and Greece, all of the Syrians are rejected and Greece came to consider Turkey a safe country and to reject the Syrians. But Turkey also rejects the Syrians. Greece rejects and Turkey rejects, so where should we go? Of course our life has become very hard. After exposing ourselves to the arrival in Greece and to smuggling and maybe to prison, then the last thing is that they give us two rejections and return us to Turkey. This is something really bad and not human at all.

#### **Are you aware that the asylum procedure for Syrians in Greece differs for those who arrive on the mainland and those who arrive on the islands? Or that the asylum procedure is different for different nationalities on the island?**

Yes I know this. But I didn't know this at all before I came to Greece. When I came here, I didn't know that I would be in the detention center and I didn't know that on the islands the Syrians are all rejected. I didn't know that in Athens Syrians are accepted, and on the islands they are rejected because the islands are a border between Turkey and Greece, and very close to Turkey. When they arrested me I was surprised, I thought: "Why?" And they told me that after 25 days I would be released from prison, and I believed them but then, when I spoke to the other Syrians in detention, they said: "No, this is a lie, you will not be released after 25 days and it is impossible to be released after 25 days. You will receive two rejections and you will stay here a year at a minimum". Once I came here I knew everything. I also know that the asylum procedure is different for different nationalities. For example there are people here with us, Palestinians for example, and their procedures differ from our procedures, their procedures are really easy. They go and they do the interview without any problem and after the interview, around a week, they receive a positive decision and are released. They go to the interview and all of them know that they will be accepted. So of course their situation is very different from the situation of Syrians.

#### **How do you feel about your current situation?**

I am very upset about this situation. This imprisonment that we are in is very hard. Even for animals it would be impossible to live here. In the end we are not free in my opinion. My life has been taken from me. I'm not allowed to leave and nothing is allowed to enter. Also, I am very afraid of what my decision will be. Any negative decision will mean more time here and the conditions in this prison are very hard in terms of food, in terms of drinks and water, in terms of life in general. It is very very hard, it is even forbidden for you to buy anything from outside and bring it inside, this is something that is forbidden from happening. Even money is forbidden from entering—only 50€ per person. And of course 50€ is not enough for people here, because here, you know, there is a small car that brings in food to sell and the prices from this car are very very expensive. It's not normal. I thought that Greece would respect me and respect human rights, but since I've come here and been imprisoned I have seen a completely different thing: they do not respect my humanity at all and they do not respect human rights at all. This is something that is rejected by European countries. And us, we didn't do anything, like commit a crime or anything, and so why are we here in detention? Why is this happening

### **What do you want people to know about the situation for Syrians on the islands?**

I want to say to them that the situation here is bad just for Syrians. Only for the Syrians you can be a million percent certain that they will get a rejection and you will stay in prison for a year or so and this is something that is completely inhumane. I would like to tell them that there is no humanity at all and no respect for the people's freedom at all. Here there is a big difference between some people and others. There's no equality and no mercy. The Syrians' lives here are very hard, very very hard. There are children, old women who are sick, there are people here, women who are crying, they are crying every day. Us here, our lives are very hard. Harder than our lives in Syria. We could not imagine this situation, ever. I hope for something that is not this. I hope for something that is just a little bit humane, where they don't put us in detention and where people are allowed to live freely on the island in order to complete their procedures. And I hope that no one receives a rejection. I hope that Syrians, or no person actually, are not put into detention—not children, not women, not the elderly. Now here there are really old people and they are sick and they don't release them. So I hope from the European countries that after explaining the situation, and that 99 percent of us receive rejections, they will help us. We fled war. We can't return. The biggest thing is that we are Syrian. Syria is not a safe country. There's a war. If there wasn't a war, then we wouldn't have left our country, we wouldn't have come to live in this camp.

## *Annex II - Selected First-Instance Decisions*

Machine translated selected decisions on the first instance of the application for international protection of Syrian nationals on Chios and Kos can be found online:



<https://web.tresorit.com/l/fXM10#M108xBPg6Cq-CTJsMUWfpw>

## *Annex III - Selected Second-Instance Decisions*

Machine translated selected decisions on the second instance of the application for international protection of Syrian nationals on Chios and Kos can be found online:



<https://web.tresorit.com/l/5uBVa#D14sJUi9LsMXNDQuZw-CSw>

## *Annex IV - Definitions*

### Migrants

This report uses the umbrella term migrant to describe “a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.”<sup>194</sup> This report uses the term migrant to refer to both people who are inside and outside of the asylum procedure.

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<sup>194</sup> International Organization for Migration (IOM), *Glossary on migration*, IML Series No. 34 (2019) 132-133 available at: <https://bit.ly/3zANygi>.

## Asylum Seekers and Refugees

Although the two terms are sometimes used interchangeably, EU and Greek law distinguish between asylum seekers and refugees. Asylum seekers are people who have applied for international protection and are in the asylum procedure, whereas refugees are people who have been granted refugee status by a member state. More specifically, EU law establishes two types of protection status—refugee protection and subsidiary protection.<sup>195</sup> This report occasionally uses the term “refugee” to apply broadly to both recognized refugees and applicants for international protection. However, wherever the context requires distinction, the report uses the terms asylum seeker to refer to people who are applicants for international protection and still inside the asylum procedure and refugee to refer to people who have been recognized by the Greek state as either refugees or beneficiaries of subsidiary protection.

## Vulnerability

Under Article 58(1) of Greek Asylum Law 4636/2019 (L. 4636/2019) and Article 21 of EU Directive 2013/33 (Reception Conditions Directive), members of vulnerable groups include the following persons: minors, unaccompanied or immediate relatives of shipwreck victims (parents and siblings), persons with disabilities, elderly persons, pregnant women, single parent families with minor children, victims of human trafficking, people with serious illnesses, people with mental illnesses, and victims of torture, rape, or other serious forms of psychological, physical or sexual violence. Because of serious deficiencies in the procedures for assessing vulnerability on the Aegean islands, many of the people in this report were never recognized by the Greek authorities as vulnerable, despite many qualifying as such under the law. Any reference this report makes to vulnerable persons thus includes both people who have been formally recognized as vulnerable by the Greek authorities *and* those who authorities never formally recognized as vulnerable but nonetheless fall into one of the vulnerable groups (e.g. they are a single parent or pregnant, have original identity documents that prove they are minors, have medical reports that document their psychological or physical illnesses, or have provided detailed reports to Equal Rights describing the serious violence they have experienced).

## Sexual and Gender-Based Violence (SGBV)

This report uses the term sexual and gender-based violence (SGBV) to describe “any act that is perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services.”<sup>196</sup>

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195 Art. 2(f) Directive 2011/95/EU (Qualification Directive).

196 UNHCR, *Gender-based Violence*, available at: <https://bit.ly/2RyxJ8L>.

# EQUAL RIGHTS *Beyond Borders*

is a Greek-German human rights organisation that works to enforce the rights of refugees and asylum seekers in Greece, Germany, and throughout the EU. Witnessing violations of our clients' fundamental rights on a daily basis, our international team of lawyers applies legal means to defend and protect the dignity and equality of every person.

We stand with refugees, fighting against undignified living conditions in the EU Hotspot camps on the Greek islands, unlawful detention, and illegal deportations, and advocating for family reunifications from all over the world.

At Equal Rights Beyond Borders, we provide free legal services to refugees in Greece and Germany with a focus on casework and litigation in front of Greek, German and international courts.

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Our work would not be possible without the support of our partners. For this report we would in particular like to thank:



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