

The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey

May 2016

Introduction

1. Following a long debate¹ on cooperation with Turkey and its designation as a safe third country, on 18 March 2016² the EU and Turkey reached an agreement on a number of action points discussed since November 2015, including refugee issues. The present EU-Turkey cooperation *inter alia* envisages the return to Turkey³ of all irregular migrants and asylum seekers whose asylum applications have been declared inadmissible and who entered Greece through Turkey.
2. Following amendments to Greek legislation, asylum applications of persons arriving from Turkey to Greece after 20 March 2016 may be examined by the Greek Asylum Service on the basis that Turkey can be considered as a safe third country or a first country of asylum.
3. The application of the safe third country or first country of asylum concept with respect to Turkey has been widely criticised by civil society organisations in Turkey⁴ and the EU⁵, legal experts⁶, Council of Europe⁷ and UNHCR.⁸
4. This note analyses relevant aspects of the procedures in place with regard to international protection and the situation of those in need of protection or benefiting from protection in Turkey. It addresses the question whether Turkey can be considered as a safe third country and a first country of asylum in light of the legal safeguards under international refugee law, the EU asylum *acquis* and the factual situation in Turkey for those in need of international protection. This note is based on the collation and analysis of publicly available material; sources and references are included throughout the document.

¹ See, *inter alia* [Statement of the EU Heads of State or Government](#), 07 March 2016.

² See, [EU-Turkey statement](#), 18 March 2016.

³ The European Commission reports the return of 386 migrants who had not made asylum applications in Greece from the Greek islands to Turkey, in full respect of EU and international law. See, European Commission - [Fact Sheet](#): Implementing the EU-Turkey Agreement – Questions and Answers, 4 May 2016.

⁴ See, [Turkey as a Safe Third Country?](#), Guest post by Orçun Ulusoy, 29 March 2016.

⁵ See, ECRE's [Memorandum to the European Council Meeting](#) 17-18 March 2016. Time to save the right to asylum, Brussels, 11 March 2016, pp. 1-2 and ECRE, [ECRE strongly opposes](#) legitimising push-backs by declaring Turkey a “safe third country”, January 2016.

⁶ See, [Analysis](#) Why Turkey is Not a “Safe Country” by Emanuela Roman, Theodore Baird, and Talia Radcliffe, 2016.

⁷ See, PACE, [The situation of refugees and migrants under the EU-Turkey Agreement](#) of 18 March 2016, Resolution 2109 (2016)1, Provisional version, text adopted by the Assembly on 20 April 2016 (15th Sitting).

⁸ See, UNHCR, [Legal considerations](#) on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016.

Legal requirements under EU law and the European Convention on Human Rights

Safe third country concept (STC)

5. Article 38 Directive 2013/32/EU⁹ (rAPD) stipulates that Member States may apply the safe third country concept only when the competent authorities are satisfied that a person seeking international protection will be treated in accordance with certain principles in the third country concerned. These principles, which are cumulative, are the following:
- life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
 - there is no risk of serious harm as defined in Directive 2011/95/EU¹⁰;
 - the principle of *non-refoulement* in accordance with the 1951 Geneva Convention is respected;
 - the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
 - the possibility exists to request refugee status and, if found to be a refugee, to receive protection;
 - the existence of national law requiring a connection between the applicant and the third country concerned, including the admittance to the territory of the country concerned and reasonableness for the applicant to go to that country and apply for asylum there.¹¹

First country of asylum concept (FCA)

6. Article 35 Directive 2013/32/EU stipulates that Member States may apply the first country of asylum concept with respect to a particular applicant only if:
- the applicant has been recognised as a refugee in that country and he or she can avail himself/herself of that protection or;
 - the applicant enjoys otherwise sufficient protection in that country¹², including respect for the principle of *non-refoulement*; and
 - he or she will be readmitted to that country.

Member States may apply the same criteria listed in Article 38(1) rAPD with respect to the FCA concept, and an effective remedy against a negative decision must be available.¹³

⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

¹⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

¹¹ See, ECRE's [Information Note](#) on Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast), pp. 43-45.

¹² ECtHR, *Abdolkhani and Karimnia v. Turkey*, Application No 30471/08, Judgment of 22 September 2008, para 89.

¹³ See, ECRE's [Information Note](#) on Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast), p. 41.

7. When applying the FCA and STC concepts all basic principles and guarantees laid down in Chapter II of the rAPD must be respected as the examination of asylum applications carries with it certain obligations¹⁴ on Member States and, subsequently, rights for individual applicants. This includes, for example, Article 10 of the rAPD, which obliges national authorities to take a decision after an appropriate examination of a claim, comprising of an individual, objective and impartial assessment.¹⁵ Contingent on this are information duties incumbent on the Member State concerning the proposed country of return as well as communicative guarantees, which stem from the right to a personal interview before the decision is taken by determining authorities as well as the right to be heard.¹⁶
8. These guarantees apply equally to cases processed in accordance with Articles 35 and 38(2)(c) rAPD, which require an individual examination of whether a third country is safe for the particular individual in accordance with international law rules. Accordingly, and given the absolute nature of Article 2 and 3 of the European Convention on Human Rights (ECHR), national authorities, in their assessment of whether the proposed country of return abides by the requirements of Articles 38(1) and 35, are obliged to fully examine presented risks and where general risks are well-known the authorities are obliged to carry out an assessment of that risk of their own motion.¹⁷
9. Such individual examination necessarily requires a rigorous assessment of evidence in line with Article 10(3)(b) rAPD, as well as an assessment of the existence of a connection between the applicant and the safe third country concerned on the basis of which it would be reasonable for that person to go to that country and apply for international protection there. The latter is implied in the obligation under Article 38(2)(a) and (c) rAPD to have rules requiring such connection and the possibility for the applicant to challenge the existence of such a connection, which must be “sufficient”.¹⁸ The existence of such a sufficient connection cannot be derived from mere transit through a third country or entitlement to entry without actual presence.¹⁹
10. The requirement of an-in depth examination of the evidence can also be derived from the States’ obligations of cooperation with the applicant and issuance of a reasoned decision, which is inextricably linked to the right to be heard and an effective remedy.²⁰

¹⁴ See, ECRE and the Dutch Council for Refugees, [The application of the Charter of Fundamental Rights of the EU to asylum procedural law](#), October 2014.

¹⁵ CJEU, Joined Cases C-411/10 and C-493/10, *N.S. v. Secretary of State for the Home Department and M.E. and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, 21 December 2011.

¹⁶ The right to be heard requires the authorities to pay due attention to the observations submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision, CJEU, Case C-277/11, *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, 22 November 2012, para 88.

¹⁷ ECtHR, *F.G. v. Sweden*, Application No. 43611/11, Judgment of 23 March 2016.

¹⁸ Recital 44 rAPD.

¹⁹ See UNHCR, *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016, p. 6.

²⁰ CJEU Case C-277/11, *M. M. v. Minister for Justice, Equality and Law Reform, Ireland and Attorney General*, November 2012, para 66; CJEU, Case C-269/90, *Technische Universität München*, 21 November 1991, para 14.

11. In line with the ECtHR case law,²¹ the individualised assessment of safety and enjoyment of effective protection in a third country should include the evaluation of the practice in the country concerned and cannot be limited to a mere review of the legal provisions in national law or adherence to international human rights treaties.
12. Moreover, the mere finding that an applicant transited through a third country and that there is a possibility for asylum seekers to apply for international protection there, cannot be considered a thorough and individualised assessment that takes into consideration the personal circumstances of the applicants and the general situation prevailing in the country of return in light of ECtHR jurisprudence.²² The same applies with regard to the FCA concept as expulsion to a country on the basis of the mere fact that the applicant has access to some type of protection in that country will contravene States' positive obligations under the ECHR and the 1951 Geneva Convention.
13. The abovementioned obligations under Article 10 rAPD and the requirement of an individual assessment of the presented risks, including an assessment of such risks by the authorities of their own motion apply *mutatis mutandis* to the examination of whether a country can be considered as a FCA for an applicant in accordance with Article 35 recast Asylum Procedures Directive, which requires at a minimum that the applicant enjoys sufficient protection in that country. An EU Charter compliant interpretation²³ of this concept requires that protection is effective and accessible in law and in practice. In line with UNHCR's definition this requires that guarantees must be provided in each individual case that there is (1) no risk of persecution within the meaning of the 1951 Refugee Convention (2) no risk of onward *refoulement* (3) access to rights to adequate living standards, work, education and health care (4) access to a secure legal status (5) assistance to persons with special needs and (6) timely access to a durable solution.²⁴

Safeguarding the principle of *non-refoulement* in Turkey

14. According to many reports Turkey frequently engages in policies of non-entrée, including towards those fleeing from Syria. Documentation has also surfaced on the violent, sometimes, lethal pushbacks at the border committed by Turkish authorities.²⁵ Both practices are in clear violation of the foundational principle of international refugee law:

²¹ ECtHR, *Saadi v. United Kingdom*, Application No. 13229/03, para 147: "In that connection, the Court observes that the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention."

²² ECtHR, *Neulinger and Shruk v. Switzerland*, Application no 41615/07, judgment [GC] 6 July 2010; *X. v Latvia*, Application no 27853/09, 2013; *Sharifi and others v Italy and Greece*, Application no 16643/09; *Tarakhel v. Switzerland*, Application no. 29217/12, judgment [GC] 4 November 2014.

²³ European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, Articles 4, 18 and 19.

²⁴ See, UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept.

²⁵ On April 12 and 13, 2016, Human Rights Watch interviewed eight people who described how Turkish border guards at the Syrian border violently pushed them and dozens of others back to Syria in February and March 2016. Two described how Turkish border guards beat fellow asylum seekers so badly they could not recognize their faces." Human Rights Watch, Turkey: [Open Borders to Syrians Fleeing ISIS](#), 14 April 2016.

non-refoulement.

15. The AIDA report documents a continued practice of persons in need of international protection in airport transit areas being returned to their country of origin or transit without having had an effective opportunity to access the international protection procedure in Turkey or get effective access to UNHCR or legal assistance.²⁶ To illustrate, in January 2016, Turkey introduced new regulations that require Syrians to have a visa to enter the country by air or sea.²⁷ Due to these regulations, on 8 January 2016, 400 Syrians who were trying to fly to Turkey were stopped at Beirut airport and forced to return to Damascus by the Lebanese authorities.²⁸
16. According to a report by Human Rights Watch, 'Turkey has all but closed its borders to Syrian asylum seekers and is summarily pushing back Syrians detected as they try to cross'. Syrian asylum seekers told the researchers that Turkish border guards intercepted them at or near the border, 'in some cases beating them, and pushing them and dozens of others back into Syria or detaining and then summarily expelling them along with hundreds of others'.²⁹
17. In February 2016 Human Rights Watch stated that 'while a few people with serious injuries have been allowed to cross to Turkey for medical treatment, thousands have been refused entry at the Öncüpınar / Bab al-Salama border crossing, remaining near the border in poor conditions'.³⁰ In May 2016 Human Rights Watch published an article on the number of assaults, injuries and deaths of Syrians at the hands of Turkish border police at several different border crossings.³¹ In mid-April 2016 Doctors Without Borders (MSF) reported that the number of persons amassed at the border had increased to 100,000.³² The use of water cannons and gunfire has further prevented entry at the border with the latest reports documenting that eight persons, including women and children, had been shot dead by Turkish border guards at the border.³³
18. Within the territory, Amnesty International in April 2016³⁴ stated that 'Turkish authorities have been rounding up and expelling groups of around 100 Syrian men, women and children to Syria on a near-daily basis since mid-January 2016'. In the last week of March, Amnesty researchers gathered 'multiple testimonies of large-scale returns from Hatay province, confirming a practice that is an open secret in the region' and stated that 'it seems highly likely that Turkey has returned several thousand refugees to Syria in the last seven to nine weeks.'
19. Similar testimonies have been collected by Mülteci-Der³⁵ where a number of Syrian

²⁶ See, AIDA *Country Report Turkey, First Update*, December 2015, p. 32 and pp. 50-51.

²⁷ Ibid.

²⁸ According to [the New York Times](#), 'it was not clear how many of the 400 passengers were refugees'.

²⁹ See, Human Rights Watch: [Syrians Pushed Back at the Border](#), 23 November 2015.

³⁰ Human Rights Watch, [Turkey: Let Stranded Syrians Seek Protection](#), 10 February 2016.

³¹ Human Rights Watch, [Turkey: Syrians Pushed Back at the Border](#), May 2016.

³² MSF, [More Than 100,000 People Trapped in Northern Syria by Renewed Fighting](#), 18 April 2016.

³³ The Independent, [Turkish border guards 'shoot eight Syrian refugees dead' including women and children trying to reach safety](#), 22 April 2016.

³⁴ Amnesty International, Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal, 1 April 2016; <https://www.amnesty.org/en/latest/news/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

³⁵ Mülteci-Der, [Observations on refugee situation in Turkey](#), April 2016.

nationals have been detained on grounds linked to highly tenuous criminal allegations and presented with either indefinite detention or return to Syria. Many felt obliged to sign “voluntary” return agreements and were later deported to Syria.

20. The abovementioned practices also apply to other nationalities. One of the most recent examples is a report by Amnesty International of 'around 30 Afghan asylum-seekers detained, denied access to asylum procedures and forcibly returned to Afghanistan'.³⁶
21. With respect to returns to Syria, Afghanistan and Iraq, the Turkish authorities claim these are voluntary. However, according to both Amnesty International and Mülteci-Der asylum seekers are forced to sign documents agreeing to their 'voluntary return'.³⁷
22. This information has been corroborated by other Turkish reports stating that at the end of September 2015 Syrians demonstrating against European border policies in Turkey were apprehended, detained in various removal centres and deported to Syria.³⁸ By virtue of steady and ongoing deportations Amnesty has reported that many Syrians refrain from approaching Turkish authorities and remain unregistered out of fear of later being removed.³⁹

Access to asylum in Turkey

23. A Treaty and EU Charter compliant interpretation⁴⁰ of Article 38 rAPD and international human rights law require that the applicant has a possibility to apply for international protection in a third country and that where an applicant is found to be a refugee, he or she will receive protection in accordance with the 1951 Convention, as ‘amended’ by the 1967 Protocol⁴¹. Article 38 rAPD also requires that access to refugee status and to the rights of the 1951 Convention must be ensured in law, including ratification of the 1951 Convention and/or the 1967 Protocol, and in practice.⁴² By virtue of the “geographical limitation”⁴³ that Turkey maintains towards the 1951 Convention it considers itself not to be bound by the Convention’s obligations regarding refugees originating from “non-European” countries. Therefore, a non-European cannot request nor be given Convention refugee status in Turkey.
24. Turkey has a dual legal framework for asylum for “non-Europeans”, namely the Law on

³⁶ Amnesty International, [Turkey ‘safe country’ sham](#) revealed as dozens of Afghans forcibly returned hours after EU refugee deal, 23 March 2016.

³⁷ Amnesty International, [Europe’s gatekeeper unlawful detention](#) and deportation from Turkey, 15 December 2015.

³⁸ Dikin, [Edirne valisinin istediği oldu: Suriyeliler kentten gönderildi, direnenler gözaltında](#), 24 September, 2015.

³⁹ Amnesty International, [Turkey ‘safe country’ sham](#) revealed as dozens of Afghans forcibly returned hours after EU refugee deal, 23 March 2016.

⁴⁰ Article 78 Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01; European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, Articles 4, 18 and 19.

⁴¹ Article 2(a) of the rAPD.

⁴² Recital 3 of the rAPD and UNHCR, [Legal considerations](#) on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016.

⁴³ Turkey signed the Convention prior to 1967 and therefore retained the option of limiting its obligations under the Convention to refugees originating from ‘European’ countries of origin.

Foreigners and International Protection (LFIP), providing both a “conditional refugee” and “subsidiary protection” status to principally non-Syrians, otherwise known as the international protection procedure.⁴⁴ The second procedure, which is not part of the country’s international protection system, is the temporary protection regime (TPR), specifically established for Syrian nationals and stateless Palestinians originating from Syria provided that they have arrived in Turkey directly from Syria.⁴⁵

25. In general access to the international protection procedure is severely hampered by a lack of staffing (including interpreters) in provincial Directorate General of Migration Management (DGMM) departments, which are further stretched on account of their registration duties towards temporary protection applicants. During the registration procedure, which is simply meant to ascertain identity, reasons for fleeing the country and travel mode, an application can be found to be inadmissible, which, depending on the ground of inadmissibility, can be subject to the initiation of return proceedings, detention and curtailed time limits to lodge a judicial appeal which is then final.⁴⁶
26. Capacity constraints of the DGMM have led to ongoing subcontracting for registration to Provincial Police Directorates. Delays for registration appointments are consistent and as is the case for international protection applicants leads to a gap in the provision of health care.⁴⁷ Moreover, since March 2016 the DGMM has started to introduce a new “pre-registration and screening” phase to the temporary protection procedure, whereby new applicants for “temporary protection status” are subjected to security checks by the National Police before the finalisation of the registration and issuing of the Temporary Protection Identification Card (TPIC) by DGMM. Given the wording of the new amendment to the TPR, for those readmitted to Turkey from the Greek islands (see below), it appears that such screening will also apply to Syrian returnees. This screening period is particularly lengthy and thereby hinders access to the TPIC and related social service rights.
27. Concerning access to the international protection procedure from detention places and border locations, it is worth bearing in mind that the detention regime in Turkey allows for the detention of international protection applicants in border premises as well as applicants after they were intercepted in border regions or apprehended in interior regions for irregular presence, before or after a deportation decision was issued for their removal.⁴⁸
28. Conditions within detention give rise to a plethora of different challenges hindering access to the protection procedure. Reports have surfaced from Mülteci-Der⁴⁹ that detainees are often deprived of access to a pen and paper by which to submit an asylum claim. Deliberate misinformation or lack of provided information as to applicant’s rights

⁴⁴ Whilst not reflected in the DGMM’s international protection case load Iraqis registered with the UNHCR in Turkey are able to benefit from humanitarian residence permits as per Article 46 of the LFIP. This permit grants the right to legal stay and allows holders to choose where they want to live (the opposite of what international protection applicants and status holders are entitled to). Iraqis are also provided with a level of free health care.

⁴⁵ For more information see, AIDA, [Country Report Turkey](#), December 2015, p. 16. DGMM, [Types of International Protection](#), 2015.

⁴⁶ Ibid, p.31.

⁴⁷ Ibid, p.32.

⁴⁸ Ibid.

⁴⁹ Mülteci-Der, [Observations on refugee situation in Turkey](#), April 2016.

and interpretation⁵⁰ have also been reported as well as circumscribed legal aid by virtue of the refusal of bar associations to furnish free legal aid to detainees and the impossibility to acquire power of attorney due to clients not having a valid ID or passport. Visits from lawyers are subject to permission by the detention authority, who can also dictate the duration of such meetings. In this regard Mülteci-Der has reported Turkish authorities often refusing permission to access those in detention for lawyers and family members, in direct violation of Articles 59(1)(b) of the LFIP.⁵¹ Reports also document applicants being moved from removal centre to removal centre without the lawyer's prior notification.

29. With regards to the quality of the international protection procedure in Turkey, it is worth reiterating the insufficient supply of interpreters for the personal interview and reliance instead on community interpreters, raising serious concerns over the quality and impartiality of interpretation. Moreover, the quality of decisions has been questioned in a report from Statewatch documenting the parallel asylum procedures between the UNHCR and Turkey, with a preference to conclude upon negative assessments even where the UNHCR has come to an opposite conclusion.⁵²

Access to asylum for those returning from Greece

30. On the 7 April 2016 the Turkish Council of Ministers amended the Temporary Protection Regulation⁵³ as an additional confirmation that readmission returnees from the EU will again have “temporary protection” status upon their return to Turkey.⁵⁴ This amendment provides that “nationals of Syria” who have arrived to the Greek islands in an irregular manner on 20 March or later and have subsequently been readmitted by Turkey “may be” extended “temporary protection” status in Turkey upon return where this is requested.

31. Whilst the “direct arrival” from Syria requirement as per Article 1 of the TPR is not a feature of the amendment, the 7 April provision only relates to Syrian nationals, whereas stateless persons of concern from Syria (i.e. stateless Kurds and stateless Palestinians originating from Syria), whom DGMM normally considers to fall within the scope of the “temporary protection regime” are not specified. Concretely this means that for these groups Article 13 of the TPR will be applicable, meaning that the DGMM has a discretion as to whether or not the provisions of the TPR will apply to persons previously registered as temporary protection beneficiaries but whose status is deemed to have “ceased” as a consequence of voluntary departure from Turkey. Moreover, the use of the phrase “may be granted” implies that even for Syrian nationals there is no absolute guarantee that renewed access to “temporary protection status” is ensured. Additionally, the scope of the amendment is limited temporally to arrivals to the Greek islands on or after the 20 March 2016.

⁵⁰ Report from GUE/NGL Delegation to Turkey, May 2-4, 2016, [What Merkel, Tusk and Timmermans should have seen during their visit to Turkey](#), 10 May 2016.

⁵¹ See, Mülteci-Der, [Press Release](#), Readmission from Greece to Turkey: what happens after the readmission, April 2016.

⁵² Statewatch, Analysis, Why Turkey is Not a “Safe Country”, p. 19.

⁵³ Turkish Council of Ministers Regulation No: 2016/9722 on Amendments to the Temporary Protection Regulation, published on 7 April 2016.

⁵⁴ See AIDA, *Country Report Turkey, First Update*, December 2015, pp. 110-111.

32. 370 people have thus far been returned from the Greek islands to Turkey, the majority of which have been transferred to Kirklareli removal centre. A report from the EP GUE/NGL delegation to Turkey in May 2016 documents that, up until now, non-Syrians who have been returned from Greece have had no opportunity to ask for asylum, a finding which also related to their time spent in Greece.⁵⁵
33. Syrian nationals and stateless persons falling outside the temporary protection regime upon return to Turkey are subject to onward deportation and associated detention proceedings unless they request to apply for an “international protection status” in Turkey. However, as explained below, access to the international protection regime will depend on the timings of when an application is made.
34. For non-Syrians (i.e. those falling outside the temporary protection regime and potentially Syrians and Stateless persons as listed above) readmission to Turkey has, as stated above been, met with immediate transfer to Pehlivan köy/Kirklareli removal/detention centre for the purposes of deportation on the basis of removal grounds as per Article 54 of LFIP.⁵⁶ Demonstrative of this is a statement from the Turkish authorities during the GUE/NGL Delegation in which the official confirmed that as all returnees from Greece had the opportunity to request asylum in Greece “the aim is to ensure deportation of the entirety of the people being returned from Greece, 100% if possible”⁵⁷
35. Detention is provided for under Article 57 of the LFIP which relates to a separate “administrative detention for the purpose of removal” decision and allows for detention up to 12 months. Article 57 does, however, leave open the possibility of non-detention sanctions where deemed appropriate. It seems that all returnees thus far have, however, not benefited from such possibilities. According to official statements for those who have been returned to Turkey “travel documents will be promptly prepared followed by readmission, where readmission agreements are in place⁵⁸, or return, where there are travel documents, to the countries of origin or transit.” These statements implicitly signal a lack of access to the asylum procedure for non-Syrian returnees.
36. It appears that ‘refugees in transit’ intercepted or apprehended in Turkey by authorities from the Greek islands are not given the opportunity to register an ‘international protection request’ before they are actually issued a deportation decision by DGMM.⁵⁹ Where an international protection request is made⁶⁰ the application is instead processed

⁵⁵ [Report](#) from GUE/NGL Delegation to Turkey, May 2-4, 2016, [What Merkel, Tusk and Timmermans should have seen during their visit to Turkey](#), 10 May 2016.

⁵⁶ According to Article 54 (1) (h) of LFIP those who breach the terms and conditions for legal entry into or exit from Turkey will be given deportation orders. Moreover, Article 54 (1) (i) of LFIP states that even where an individual had previously registered the asylum claim, it will be considered withdrawn.

⁵⁷ Report from GUE/NGL Delegation to Turkey, May 2-4, 2016, [What Merkel, Tusk and Timmermans should have seen during their visit to Turkey](#), 10 May 2016.

⁵⁸ According to the Turkish Ministry of Foreign Affairs 14 readmission agreements with so-called “countries of origin” are in place and another 20 are currently being negotiated. The latter include proposed agreements with, inter alia, Iraq, Iran, Afghanistan, Somalia and Sudan.

⁵⁹ Even if the international protection request is processed and the application is registered by DGMM before a deportation decision, LFIP allows for the administrative detention of international protection applicants up to 30 days on the basis of grounds listed in Article 68 of LFIP. In situations involving readmission returnees, it is highly likely that such an Article 68 administrative detention decision will be issued for the person concerned and he or she will continue to be detained in whichever removal centre to which he or she was transferred upon arrival in Turkey.

⁶⁰ GUE/NGL Delegation reports that 8 cases out of the 370 returned from the Greek islands had been referred to as international protection cases upon their arrival in the centre. Report from GUE/NGL

and registered after a deportation decision (per Article 53) and the associated administrative detention decision (per Article 57). In practice this means that DGMM will not terminate either decisions and instead hold that the Article 57 administrative detention decision remains in place, despite the fact that the Article 53 deportation decision is no longer actionable, since the LFIP guarantees all international protection applicants the right to stay in Turkey until the final exhaustion of applicable remedies. In general, and not only applicable to returnees from Greece, is the finding of AIDA on the frequent practice in Turkey of not changing the ground of detention to Article 68 of the LFIP where an international protection application is made from detention. The non-application of article 68 LFIP, an article which allows for the detention of international protection applications for up to thirty days under certain grounds, leads to procedural obligations of notification being ignored and detention lasting beyond the prescribed 30 days.⁶¹

37. For returnees an accelerated procedure is put in place where a first interview will be held within three days and a first instance decision taken within five days, “suspending” the implementation of the deportation decision pending the finalisation of the adjudication of the international protection application. This has grave consequences on the timings of filing a judicial appeal to seek the annulment of the previously issued Article 53 deportation decision, which must be done within 15 days. Where these time limits are not complied with and a final instance negative decision is given on the international protection application it means that the deportation decision can no longer be subject to an appeal and the only judicial recourse will be to the Turkish Constitutional Court or a Rule 39 interim measure before the European Court of Human Rights. Such cumbersome judicial proceedings are hampered by lack of access by lawyers to returnees held in the removal centres, thereby increasing the risk of *refoulement* to an applicant’s country of origin.⁶² Indeed, according to an internal circular lawyers must have contact with either the detainee or the detainee’s family member in order to be able to access their clients in the removal centre.⁶³

Access to an effective remedy in the asylum procedure

38. The criteria of *non-refoulement* listed in Articles 35 and 38 rAPD and requesting refugee status listed in the latter article, clearly depend on the person having access to an effective remedy in order to establish whether a negative decision has been taken in accordance with the law. Turkish law provides for a number of remedies against negative asylum decisions. However according to the ECtHR case law in order to be effective a remedy must be accessible both in law and in practice and allow for an independent and rigorous scrutiny against a real risk of treatment contrary to Article 3 ECHR.⁶⁴ The latter necessarily implies a full assessment of the available protection from *refoulement* in the destination country in practice beyond safeguards laid down in national legislation, in

Delegation to Turkey, May 2-4, 2016, [What Merkel, Tusk and Timmermans should have seen during their visit to Turkey](#), 10 May 2016.

⁶¹ See AIDA, [Country Report Turkey](#), First Update, December 2015, pp. 95. Article 57 allows for the administrative detention of foreign nationals pending deportation for up to 12 months.

⁶² See, Mülteci-Der, [Press Release](#), Readmission from Greece to Turkey: what happens after the readmission, April 2016.

⁶³ Report from GUE/NGL Delegation to Turkey, May 2-4, 2016, , [What Merkel, Tusk and Timmermans should have seen during their visit to Turkey](#), 10 May 2016.

⁶⁴ ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011, par. 288.

particular where there are credible reports evidencing human rights violations in the country of destination.⁶⁵

39. Closely associated with an effective remedy is an obligation to state reasons for a decision and, as per the requirements of Article 13 of the ECHR, the applicant has a right to be informed of the negative decision⁶⁶ and of the available remedies.⁶⁷
40. Current practice in Turkey shows that communicated negative decisions from the DGMM “do not contain any substantiation regarding details of the rejection grounds,” are written in Turkish and only interpreted orally to the applicant upon notification of the decision.⁶⁸
41. Whilst negative decisions under the regular procedure can either be subject to an administrative or judicial appeal, the latter appeal is only available to administrative detention decisions, decisions that an international protection application is inadmissible, and decisions relating to accelerated review of applications. With regards to administrative detention decisions the court has 5 days in which to finalise an appeal, whereas the court has 15 days to finalise the appeal for inadmissibility decisions and for decisions taken within the accelerated procedure. For all of the three decisions above the court’s ruling is final, therefore a deportation decision may be taken for the removal of the applicant.⁶⁹
42. Since 2012 it has also been possible to lodge an individual complaint with the Turkish Constitutional Court, where breach of fundamental constitutional rights and liberties is concerned and after all other domestic remedies are exhausted. This procedure is occasionally used to halt potentially unlawful deportations.⁷⁰ The individual complaint procedure does not have an automatic suspensive effect, although an urgent interim measure can be requested.
43. For temporary protection applicants the TPR does not explicitly provide for remedies where an unfavourable decision, *inter alia* exclusion, is given to temporary protection applications or beneficiaries. The only exception to this is where a deportation decision is given. This can be challenged at a competent administrative court within 15 days. Appeals against deportation decisions have automatic suspensive effect. Administrative court decisions on deportation appeals are final and may not be appealed onward to a higher court.⁷¹ All other negative decisions are also subject to judicial review and must be challenged within 60 days at competent administrative courts. Applications filed with an administrative court generally do not carry automatic suspensive effect, but applicants may file an associated halt of execution request, which may or may not be granted. Unfavourable judgments of administrative courts can be challenged in the higher administrative court. In practice, the access to all of the appeal processes faces a number of obstacles that in many situations may render the remedy ineffective.

⁶⁵ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, Judgment of 23 February 2012, para. 128.

⁶⁶ ECtHR, *Abdolkhani and Karimnia v. Turkey*, Application No. 30471/08, 22 September 2009, para. 116.

⁶⁷ ECHR, *Čonka v. Belgium*, Appl. no. 51564/99, 5 February 2002, para. 44.

⁶⁸ See AIDA, [Country Report Turkey](#), First Update, December 2015, pp. 37. AIDA notes that all written notifications from the DGMM are written in Turkish.

⁶⁹ Art 54-1-(i) of LFIP.

⁷⁰ See, NOAS, [Seeking Asylum in Turkey](#), A critical review of Turkey’s asylum laws and practices, April 2016, pp. 35.

⁷¹ See AIDA, [Country Report Turkey](#), First Update, December 2015, pp. 121.

44. There is a serious lack of access to legal information and to lawyers in practice. Considerable impediments to accessing legal aid⁷² and representation as well as the substantial costs borne by the applicant in bringing a case before an administrative court means that an effective remedy to appeal decisions is severely hampered. Moreover, whilst domestic legislation allows for applicants and their lawyers to access and obtain copies of their files, such access can be denied on grounds of national security or public order or the prevention of crime. As NOAS argues, such vague language can be used to the benefit of arbitrariness.⁷³
45. Access to lawyers and legal assistance may also be hampered by the placement of the individual in the ever-increasing detention facilities in Turkey and processing claims in an accelerated procedure on broadly formulated grounds such as grounds of uncertainty over national identity or serious danger to public order.
46. Apart from the fact that the execution of one of the leading cases on the effective remedy against removal in Turkey is being examined by the Committee of Ministers of the CoE since 2009,⁷⁴ a number of recent judgments against Turkey also highlight serious obstacles related to access to remedies.⁷⁵

Detention, inhumane and degrading treatment

47. In current practice in Turkey, most international protection applicants are not detained unless they belong to one of the following categories:
- persons who make an international protection application in border premises;
 - persons who apply for international protection after they were intercepted in border regions or apprehended in interior regions for irregular presence, before or after a deportation decision was issued for their removal.⁷⁶
48. The LFIP provides for two types of administrative detention:
- Administrative detention for the purpose of removal; and
 - Administrative detention of international protection applicants during the processing of their applications.
49. While removal centres are essentially defined as facilities dedicated for administrative detention for the purpose of removal, in practice, they are also used to detain

⁷² Ibid, LFIP envisages the right to legal representation; however Turkey's state-funded Legal Aid Scheme is implemented by the bar associations in each province subject to means and merits criteria. Despite efforts to mobilize the Legal Aid mechanism for asylum seekers and capacity-building activities by UNHCR, Refugee Rights Turkey and other NGO actors, the current level of involvement of bar associations in the field of refugee law remains limited. One practical impediment to more involvement by bar associations is the overall scarcity of Legal Aid funding made available to bar associations from the state budget. While the LFIP makes plentiful reference to the possibility of persons within the scope of the LFIP seeking free legal representation via the Legal Aid Scheme, it does not commit any additional financial resources for the bar associations to build dedicated operational capacities to extend services to asylum seekers and migrants who cannot afford to pay a lawyer.

⁷³ See, NOAS, [Seeking Asylum in Turkey](#), A critical review of Turkey's asylum laws and practices, April 2016, pp.36.

⁷⁴ Abdolkhani and Kariminia v Turkey, (No. 3471/08), 22 September 2009. See here for more information: <http://bit.ly/1STWM9n>.

⁷⁵ A.D and others v Turkey, (No. 22681/09), 22 July 2014.

⁷⁶ For more information see AIDA, [Country Report Turkey](#), First Update, December 2015.

international protection applicants. There are currently no publicly available comprehensive statistics on the number of international protection applicants processed. Neither is there any publicly available information on the number of international protection applicants currently in detention.

50. Amnesty International reports that hundreds of asylum seekers are placed in detention facilities in Turkey, where they are subject to poor detention conditions and ill-treatment.⁷⁷ According to consistent accounts given by refugees and asylum-seekers, 'in September 2015 the Turkish authorities began apprehending some of those who attempted to cross irregularly to the EU, and transporting them more than a thousand kilometres by bus to isolated detention centres in the south or east of the country'. Refugees and asylum-seekers said they were detained 'for between several weeks and approximately two months, and were not given any reasons for their detention'. The Turkish authorities do not regard detention camps as places of detention but rather accommodation centres.⁷⁸
51. For their part, the GUE/NGL Delegation to Turkey reported overcrowding in Edirne Removal Centre, the detention of unaccompanied children with unrelated adults and a delayed access to health care for detainees in both Edirne and Kırklareli.⁷⁹
52. Turkish lawyers also reported unlawful practices of the staff working in a removal centre in Askale, in the East of the Country, "such as access to clients being arbitrarily blocked, clients' asylum applications being denied without proper examination, minors being kept in isolated cells without access to family members, and possible cases of ill treatment and torture".⁸⁰
53. Moreover, following the suspicious suicide of a Syrian detainee at the Erzurum Removal Centre on 31 December 2015, a number of refugee rights and human rights organisations in Turkey issued a common statement about the conditions at Erzurum Removal Centre, stating that the detainees at the centre are denied contact with their families and lawyers (through telephone and otherwise), that lawyers have been denied access to their clients and their files on multiple occasions, and that some detainees are held on "terror suspicion" without any formal investigation or proceedings. The statement demands that the serious allegations of ill-treatment at the centre (including chaining and total isolation of some detainees) be investigated.⁸¹
54. The statement also refers to 20 children held at the centre with their families. Separately, the Union of Turkish Bar Associations' report from February 2016 is enlightening in terms of describing the insufficiency of the living conditions at removal centres. The report states that the centres are overcrowded and detainees are denied contact with their

⁷⁷ Amnesty International, Europe's gatekeeper unlawful detention and deportation from Turkey, 15 December 2015.

⁷⁸ Amnesty International were told that people "who were currently "accommodated" in Düziçi camp were those who were "homeless or engaged in begging." Officials confirmed that 'refugees and asylum-seekers were brought to the camp on the basis of a decision by the authorities, rather than of their own will, and were not permitted to leave the camp making it a de facto place of detention.'

⁷⁹ Report from GUE/NGL Delegation to Turkey, May 2-4, 2016, What Merkel, Tusk and Timmermans should have seen during their visit to Turkey, 10 May 2016.

⁸⁰ [Turkey as a safe third country](#), Guest post by [Orçun Ulusoy](#), a human rights lawyer from Turkey and a founding member of [Mülteci-Der](#), March 2016.

⁸¹ See, NOAS, Seeking Asylum in Turkey, A critical review of Turkey's asylum laws and practices, April 2016, pp. 34.

families, and it points to various problems in terms of access to lawyers (including procedural problems involving granting power of attorney to lawyers, lack of separate rooms where the detainee and his/her lawyer can talk in confidence and lack of reliable translators).⁸²

55. Equally disconcerting are findings that those falling within the scope of temporary protection are also being detained on highly opaque grounds, in part, related to administrative discretion. To illustrate persons can be detained under Article 8 of the TPR where they are excluded from temporary protection but may not be able to be deported in light of *non-refoulement* obligations. Such detention is neither accompanied by a decision nor subject to procedural safeguards in the form of a remedy by which to challenge the order, thereby infringing Article 5 of the ECHR.⁸³

Access to legal remedy against detention

56. As per Art 68-4 of LFIP, the decision to detain an international protection applicant during the processing of his or her claim must be communicated in writing. The notification letter must provide the reasons justifying detention and the length of detention. The applicants must also be notified of the legal consequences of the detention decision and available appeal procedure; however the provision does not impose a requirement to provide this information in writing.

57. While there is no requirement of automatic periodic review of the detention decision by the judiciary or the detention authority itself, the detainee, or his/her lawyer, may apply to the local criminal court to challenge the decision. The decision of the Magistrate's Court will be issued within 5 days and is final, meaning it cannot be appealed by either side in a higher court of law. Only if the relevant facts have changed can the applicant appeal again to the same court.⁸⁴

58. As stated above access to judicial review of a detention order should be set against the difficulties in obtaining legal assistance. The General Legal Aid system in Turkey requires the applicant to approach the bar association to make a formal request for legal aid, highly impossible for detainees as legal representation of a client in Turkey depends on the representative obtaining notarised power of attorney.⁸⁵ This is contingent on the International Protection Applicant Registration Document which is not provided for detainees.⁸⁶ A detainee's right to legal assistance is therefore nullified rendering access to an effective judicial remedy of the detention order void.

Access to rights according to the Refugee Convention

59. The rights attached to both protection statuses resulting from the recognition procedures described above can in no way be considered to align with Refugee Convention-level rights. By virtue of the geographical limitation to the Convention, those who do not

⁸² Ibid.

⁸³ The TPR itself does not designate any specific appeal mechanisms against unfavourable decisions, including decisions under Article 8 TPR.

⁸⁴ For more information see AIDA, [Country Report Turkey](#), December 2015; See, NOAS, Seeking Asylum in Turkey, A critical review of Turkey's asylum laws and practices, April 2016, pp.32.

⁸⁵ For more information see AIDA, [Country Report Turkey](#), December 2015, pp. 102.

⁸⁶ For more information see Refugee Rights Turkey, [Notarisation of Power of Attorney](#), February 2016.

originate from Europe lack long-term prospects due to statuses which do not intend to achieve for its holders any meaningful integration.⁸⁷

60. Firstly, international protection status holders are subjected to a restriction of movement whereby they must live in the province designated to them by the Directorate General of Migration Management (DGMM), which would otherwise be in breach of Article 26 of the 1951 Refugee Convention. They must periodically report to the allotted province (which excludes big cities, reducing chances for employment) and are only entitled to healthcare, schooling and other services in their specific province.⁸⁸ Moreover, both subsidiary protection beneficiaries and conditional refugees are only entitled to a “foreigners passport”, allowing either a single entry to or exit from Turkey, or a return trip.⁸⁹
61. Both international protection applicants and status holders shall secure their own accommodation by their own means due to limited reception capacity in Turkey. Reports from NOAS show that they are faced with homelessness for at least an initial period.⁹⁰
62. Conditional refugees are subject to particularly harsh conditions given that they are not entitled to an automatic right to work and instead are only allowed to apply for a work permit 6 months after submitting their international protection application.⁹¹ As they are required to work under sponsored permits, conditional refugees are often found without employment by virtue of the administrative and cost burden on the sponsoring employer as well as the restriction on their movement. Long-term integration for conditional refugees is also hampered by the denial of family reunification.
63. For temporary protection beneficiaries the TPR explicitly excludes any prospect of long-term legal integration by virtue of Article 25 stating that the “temporary protection” identification document issued to beneficiaries does not serve as a “residence permit” and may not lead to a “long term residence permit” in Turkey. Indeed, the temporary protection regime can be “limited”, “suspended” or “terminated” any time based on the discretion of Turkey’s Board of Ministers. In addition the TPR does not provide an explicit guarantee for persons concerned to be given an opportunity to file an individual “international protection” application in the event of termination of the temporary protection regime.
64. As is the case for international protection status holders, temporary protection beneficiaries are not entitled to government provided shelter. Whereas camps have been set up by the Disaster and Emergency Management Authority to host those from Syria, this is clearly insufficient to meet needs with 260,963 out of 2,226,117 beneficiaries being accommodated in camps. As a result NOAS reports that many Syrians are living in extreme poverty over the past few years.⁹²

⁸⁷ See, NOAS, [Seeking Asylum in Turkey](#), A critical review of Turkey's asylum laws and practices, April 2016, pp. 23 – 29.

⁸⁸ Ibid p. 25.

⁸⁹ Ibid 30.

⁹⁰ Ibid 26.

⁹¹ Unlike “European” refugees and subsidiary protection beneficiaries in Turkey who obtain work permits upon obtaining their legal statuses, conditional refugees do not acquire an automatic right to work in Turkey but are allowed to apply for a work permit six months after submitting their international protection application. Ibid p. 28.

⁹² Ibid p 26.

65. By virtue of an adopted Regulation in January 2016 laying out the conditions for employment for temporary protection beneficiaries, TP status holders are allowed to apply for a work permit 6 months after initial registration with the DGMM. However, quotas restrict the number of Syrians in a given workplace to no more than 10% of the number of Turkish citizens employed in the same workplace (excluding seasonal agricultural and livestock work). As NOAS highlights such a restriction could have serious implications upon access to the labour market for Syrians where they constitute a high percentage of the population.⁹³
66. Serious deficiencies in accessing education are also apparent with only an estimated 36.8% enrolment out of the number of children at school age. Additionally, a persistent shortcoming in access to public agencies, notably public healthcare institutions, has been felt most acutely for temporary protection beneficiaries who were registered by authorities before the entry into force of the Regulation on the 22 October 2014. An older assignation of a Foreigners Identification Number (FIN), required for applicants to access services such as health care, has meant that pre - 22 October 2014 beneficiaries of temporary protection encounter severe obstacles in the processing of their social security provision, entitling them to free of charge health services at public hospitals

Conclusion

67. Despite the positive steps taken by the Turkish authorities in order to introduce a fair and efficient asylum system, the research suggests that this has not been achieved so far. The asylum system in Turkey is characterized by multiple deficiencies, including its dual structure and maintenance of a “geographical limitation” to the 1951 Refugee Convention, lack of registration of asylum applications, routine push-backs, lack of procedural safeguards during the asylum procedure and access to effective remedies in law and in practice. This has been continuously and consistently recorded over the past two years in numerous publicly available reports of national and international organisations and also evidenced by the ECtHR case law.
68. Although the Turkish law (LFIP) provides for a legal framework for processing asylum applications of persons coming from “non-European” countries and establishes an administrative authority competent to deal with such applicants, it is clear that the DGMM is still in the phase of establishing the necessary institutional capacity and is currently unable to cope with the increased numbers of persons entering the international protection procedure. Delays in registration of asylum applications and obtaining the Identification Document combined with a lack of access to legal assistance result in many asylum seekers currently having no access to an asylum procedure.
69. Moreover, lack of access to legal information and legal aid means that essential safeguards that should be afforded to those in need of protection during the procedure in Turkey remain inaccessible to them in practice.
70. Furthermore, reception conditions are significantly lacking and do not meet current needs, especially given the over-burdening of the Turkish reception and asylum system. The lack of sanitary conditions, food and medical care result in many asylum seekers and refugees facing the risk of being subjected to inhuman and degrading treatment,

⁹³ Ibid p 29.

especially those in need of special protection due to their vulnerabilities, and are forced to seek protection elsewhere.

71. There is currently no meaningful capacity in Turkey for permanent independent monitoring of migration and border control management practices of Turkish authorities. In particular with regard to Turkey's extensive land borders in the south and east and the increasing number of detention centres that are being used and established by the Turkish authorities. This means that present practices of immigration and border authorities remain outside any meaningful and independent scrutiny.
72. Despite recent legislative changes improving access to the labour market, access to health care and education for Syrian refugees granted temporary protection, there remains a huge gap between what is stipulated in the law and access to such rights in practice.
73. The present analysis of the current legal framework for international protection in Turkey and the available evidence of gaps in asylum seekers' and refugees' access to human rights, absence of effective access to procedural guarantees during the asylum procedure, and documented cases of refoulement, does not allow for the conclusion that Turkey meets the criteria laid down in Article 38(1) and Article 35 recast Asylum Procedures Directive.



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