At the moment of writing this preface to the report of Giota Theodoropoulou on the Greek asylum procedure, a record number of 75,000 migrants is staying in Greece. The reception centres are overcrowded, thousands of families with minor children are living in the streets or in self-built tents. It is clear that Greece is not able to fulfill its obligations under the Common European Asylum System and the EU Charter, the Refugee Convention and the European Convention of Human Rights. Asylum seekers in Greece are staying there under inhuman and degrading circumstances. This leads to the question whether this is solely the responsibility of Greece or if an obligation rests on the other EU Member States as well.

The situation is at least partly caused by EU Member States that in March 2016 closed a deal with Turkey in order to end irregular migration from Turkey to North-West Europe via the so-called Balkan route. According to this deal Turkey would take back migrants that had entered Greece in an irregular manner. In exchange for that Turkey would receive financial support for the reception of refugees, the visa requirements for Turkish citizens would be abolished and the accession negotiations between Turkey and the EU would be speeded up. Furthermore, a so-called one to one exchange was agreed upon. For each Syrian that would be returned from the Greek Islands to Turkey, another Syrian would be brought to the EU by Turkey. The legal status of this deal is unclear. According to the Court of Justice of the EU it is not an EU-agreement but an agreement of the Member States with Turkey, meaning that EU law is not applicable.

Greece is according to EU-law, especially Directive 2013/32/EU (on Asylum Procedures), obliged to process every asylum request, also requests from asylum seekers who travelled to Greece via Turkey. The Turkey deal is however based on the presumption that Turkey is a safe third country. Article 33, par. 2c Directive 2013/32/EU allows Member States to return asylum seekers to a safe third country without dealing with their asylum claims on the content. This is also implemented in Greek law. Consequently many asylum applications from asylum seekers who travelled via Turkey were declared inadmissible.

However, is Turkey really a safe third country and does it fulfill the requirements of Article 38 Directive 2013/32/EU? It is known that Turkey has returned many Syrian asylum seekers to Syria, without offering them the possibility to lodge an asylum request. Since the failed coup d'état the human rights situation in Turkey has deteriorated. Freedom of speech has been restricted and torture, cruel, inhuman and degrading treatment and punishment on a large scale were reported.
Moreover, Turkey would insufficiently protect particular social group like Alevites and Christians against discrimination and violence. Finally, Turkey has made a reservation to the Refugee Convention. Only people of European origin can be recognized as refugees by Turkey, meaning that for example Syrians, Afghans and Iranians cannot be recognized as such. Although Turkey offers some alternative temporary protection for those groups, this cannot be seen as protection as required by the Refugee Convention.

This report is, however, not about the situation in Turkey but about the situation for asylum seekers in Greece. Giota Theodoropoulou has researched both Greek and EU law and whether the situation of asylum seekers in Greece is in compliance with these legal requirements. After that she has interviewed many actors involved, both on EU, Greek and NGO level.

Her research shows that the Greek asylum procedure and reception are failing. In fact there is not one Greek asylum procedure but there are two. A fast-track-border procedure on the islands Lesbos, Kos, Leros, Samos, Chios and Rhodes (for all not vulnerable asylum seekers) and the ‘normal’ procedure on Evros and the Greek mainland. Lack of available legal aid is a problem for both types of procedures. The involvement of EASO in the Greek asylum procedure is questioned, among others by the European Ombudsman, who on 1 July 2018 expressed serious concerns about ‘the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted’. Detention of asylum seekers takes place based on their nationality and there is insufficient attention for the position of vulnerable groups, including children.

The research also gives a picture of failing responsibilities and lack of solidarity with Greece and with the asylum seekers fixed there. Greece is not able to fulfil its obligations under national European and international law. The EU is failing to help Greece and to take responsibility for resettlement as was promised.

I hope this report makes the reader aware of the obligations of the EU and of the importance that these obligations are more than just the law in the books and will result in law in action, especially where it concerns asylum seekers in Greece. I also hope that every actor involved will feel responsible to end the inhuman and degrading situation these asylum seekers find themselves in for too many years already.

1. Executive Summary

The aim of this research was to identify the main challenges that asylum seekers currently face in Greece, to provide suggestions for solutions and to indicate who is responsible for the implementation of these solutions. The research has a qualitative character and is based on legal and empirical data. The empirical research exists of interviews with selected professionals representing Greece, the EU and other Member States, as MEPs, representatives of the Greek Ministry of Migration, the First Reception Service and the Asylum Appeals Committees, UNHCR and NGOs.

On March 2016, the EU-Turkey Statement foresaw the return from Greece to Turkey of all newly arriving migrants. In the same year, Greece adopted a new law, Law 4375/2016, transposing the EU Asylum Procedures Directive. This law made it possible to restrict the geographical movement of asylum seekers within Greek territory and created a special asylum procedure, the ‘fast track borders procedure’.

The newly created Asylum Service decided to oblige asylum seekers who arrive on the islands of Kos, Leros, Samos, Chios and Lesbos to remain there until a final asylum decision on their requests has been reached. The Asylum Service argued that this measure, known as ‘geographical limitation’, served public interest and was supposed to render the EU-Turkey Statement effective by facilitating returns.

As a result, since March 2016 thousands of migrants who arrived on the six islands of the Aegean were unable to move forward to the mainland. In 2018, another new Greek law, Law 4540/2018, entered into force, aimed at accelerating the processing of asylum claims examined under the fast track borders procedures for asylum seekers who were stuck on the islands. However, due to the large volume of asylum requests and the limited capacity of the authorities to deal with them, asylum seekers were kept in a limbo for several months and sometimes years, being subjected to harsh living conditions.

In order to render the examination more effective, EASO acquired a new role. Employees of this organisation started to participate in the examination of the asylum claims, conducting interviews at first instance, first on the islands and, as of 2018, on the mainland as well. This active involvement in a procedure that is the responsibility of the State was highly criticised by NGOs and the academia. However, the EU Ombudsman endorsed EASO’s opinion on this matter arguing that this organisation is only issuing opinions and, ultimately, it is up to the Greek officials to reach a decision on each asylum claim.

Furthermore, asylum seekers examined under the fast track borders procedure are not only geographically confined. In fact they are also disfavoured in comparison to asylum seekers who are examined under the regular procedure. This is the consequence of the fact that the Asylum Service with the help of EASO tends to apply the ‘safe third country’ concept described in the EU Asylum Procedures Directive only in the border procedures. As a result, asylum seekers examined on the six islands have to rebut the presumption that Turkey is a safe third country for them. Otherwise, their asylum claim will be considered inadmissible and they can effectively be returned to Turkey.

The implementation of this concept is not only discriminatory against asylum seekers whose claims are examined on the islands according to the fast-track borders procedures. The objection that asylum seekers can safely return to Turkey also only affects asylum seekers with specific nationalities. EASO tends to propose the safe return to Turkey of Syrians, Afghans and Iraqis whereas the Asylum Service tends to endorse the safe third country concept only with regards to Syrians. The Greek Council of State ruled that Turkey can be considered safe regardless of the fact that Turkey does not fully implement the 1951 Geneva Convention as it made a reservation by the New York Protocol of 1967 with the Convention, which in fact means that the Convention is only considered applicable for asylum seekers fleeing from Europe.

In order to avoid return to Turkey based on the safe third country concept, asylum seekers examined under the border procedures have had to prove themselves to be vulnerable. Vulnerable persons have access by law to special reception conditions. However, in the current state of affairs, vulnerability has acquired a new function. It has become the only available mechanism for asylum seekers to ‘escape’ the border procedures and to be examined under the regular asylum procedures, thus avoiding return to Turkey. As a matter of fact, the majority of asylum seekers examined under the border procedures have managed to be recognised as being vulnerable. Therefore, vulnerability is no longer an exceptional measure; it has become the norm. Nevertheless, due to a serious lack of doctors to assess persons claiming to be vulnerable and lack in accommodation on the mainland, vulnerable people have to remain on the islands for a very long time, living under harsh conditions.